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SC Court of Appeals

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.

APPEAL FROM THE ADMINISTRATIVE LAW COURT

THE HONORABLE RALPH KING ANDERSON, III,
CHIEF ADMINISTRATIVE LAW JUDGE

Appellate Case No. 2022-000289

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

V.

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

CONSOLIDATED RECORD ON APPEAL – VOLUME III

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May 17, 2023
Charleston, South Carolina

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class=3D"">Erik=E2=80=94 You have likely by now heard of what transpired =
at the CAA Board=E2=80=99s most recent special meeting today. =
 Here=E2=80=99s the problem:<div class=3D""><ul class=3D""><li =
class=3D"">The CAA Board is bound by two distinct contracts: One =
with you. One with us.
<li class=3D"">The CAA Board is =
prohibited from unilaterally amending either contract without SCPCSD =
approval. (It can=E2=80=99t amend ours without our approval =
either).
<li class=3D"">The CAA Board lacks the requisite =
approvals. <div class=3D""><div class=3D"">Although =
Nadine pronounced the following edicts this afternoon=E2=80=94 on behalf =
of a unanimous board=E2=80=94 each would unilaterally amend our contract =
without SCPCSD authorization. Consequently, we are prohibited from =
accommodating these edicts, and must ask for SCPCSD =
intervention. <div class=3D""><br class=3D""> <div =
class=3D""><b class=3D"">The Edicts: <div class=3D""><b =
class=3D"">1. Acceleration Academies prohibited from communicating with =
teaching staff except through the Board=E2=80=99s newest Alliance =
vendor: Prestige. <div class=3D"">We have no contract with =
Prestige. Nor does CAA=E2=80=94 at least one relating to student =
services, apparently (see #2 below).   <div class=3D""><br =
class=3D""> <div class=3D""><b class=3D"">2. The newest CAA =
chair is authorized to negotiate a contract =
with Prestige. <div class=3D"">So . . . a contract =
doesn=E2=80=99t exist yet. <div class=3D""><br class=3D""> <div =
class=3D""><b class=3D"">3. <b class=3D"">We are to =
immediately transmit all student records to Prestige. <div =
class=3D"">FERPA alone would prohibit such a transfer to a third-party =
vendor. <i class=3D"">It doesn=E2=80=99t even have a contract yet =
with CAA to provide any student-related service.</i> <div =
class=3D""><br class=3D""> <div class=3D""><b class=3D"">4. =
 All student data must be shifted to PowerSchool. <div =
class=3D"">It is already there. Apparently, this Board doesn=E2=80=99=
t realize that the data is consistently downloaded into =
PowerSchool. <div class=3D""><br class=3D""> <div class=3D""><b =
class=3D"">5. <i class=3D"">After </i>Acceleration =
Academies' immediate transfer of student data to Prestige, and <i =
class=3D"">after </i>SCPCSD approves a to-be-written contract with =
Prestige, the newest CAA chair is authorized to execute a =
Prestige-CAA contract. <div class=3D"">Again, Federal and state =
law would prohibit the transfer of personally-identifiable student =
information to third parties without binding safeguards. <div =
class=3D""><b class=3D""><br class=3D""> <div class=3D""><b =
class=3D"">6. Transition from Acceleration Academies to occur =
within 60-days. <div class=3D"">This appears to be premised on =
the unrelenting pretext of some undisclosed and undefined health/safety =

concern. NOTE: CAA Board member have rarely been on site. =
 =E2=80=9CChief=E2=80=9D Evans of TTC apparently provided Nadine a =
list of alleged safety =E2=80=9Cconcerns=E2=80=9D more than 3 weeks ago. =
 These were not shared with us by Nadine or =E2=80=9CChief=E2=80=9D =
Evans until I learned of them from John Reagle=E2=80=94 who had assumed =
I had received them graciously provided me a copy. <div =
class=3D""><br class=3D""> <div class=3D"">Again, we genuinely need =
your and SCPCSD=E2=80=99s guidance if we are to continue meeting student =
needs. We are entering our 2nd month of total nonpayment=E2=80=94 =
nonpayments that notably accrued long before this sudden =E2=80=9Csafety=E2=
=80=9D emergency. <div class=3D""><br class=3D""> <div =
class=3D"">Thanks, <div class=3D""><br class=3D""> <div =
class=3D"">David <div class=3D""><div class=3D""><div =
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style=3D"font-size: 9px;" class=3D""><b class=3D"">David Sundstrom<br =
class=3D"">Chairman of the Board<br class=3D"">Acceleration Academies, =
LLC<br class=3D"">910 W. Van Buren St.<br class=3D"">Chicago, IL =
60607<br class=3D"">direct: 904.662.0620<br class=3D"">e: <a =
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	)	C.A. No. 2019-CP-10-6592 **DEFENDANT'S MOTION TO DISMISS PURSUANT TO S.C. R. CIV. P. 12(b)(1), 12(b)(2) AND 12(b)(6)**

Defendant South Carolina Public Charter School District ("District") submits the following motion to dismiss pursuant to S.C. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6) in lieu of an Answer to Plaintiff's Amended Complaint, and requests that all claims of Plaintiff be dismissed with prejudice.[1] The grounds for this motion are:

1. the South Carolina Public Charter School Act of 1996 (the "Act") requires any challenge to a final decision by the District Board to be filed in the Administrative Law Court, which Plaintiff failed to do;

2. the Act provides that the District is immune from the claims asserted by Plaintiff;

3. Plaintiff was the first to breach the contract;

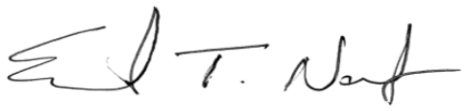
4. Plaintiff was not entitled to, and did not ask for, a constitutional due process hearing, but received due process anyway; and

5. Plaintiff's requests for Declaratory Judgment do not involve an actual case or controversy.

This motion will be supported by a memorandum of law and any other submissions permitted by the Court.

[1] To the extent an Answer to Plaintiff's Amended Complaint is required, Defendant denies all allegations asserting liability on the part of Defendant and denies Plaintiff is entitled to the relief requested in the Wherefore clause.

HARRELL MARTIN & PEACE, P.A.



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Chapin, South Carolina
February 13, 2020.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	)))))))))))	C.A. No. 2019-CP-10-6592 **DEFENDANT'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

Defendant South Carolina Public Charter School District ("District") submits the following in opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction ("Motion"). The grounds for opposing the Temporary Restraining Order are that this Court does not have jurisdiction over this administrative matter and, even if this Court did have jurisdiction, the elements for a restraining order are not met in this case.

Introduction

Plaintiff Charleston Advancement Academy High School ("School") asks this Court to restrain District from enforcing sanctions short of revocation pursuant to South Carolina's Charter Schools Act that have been superseded or already resolved an arbitration order. South Carolina's Charter Schools Act provides that any final decision of the District must be appealed to the Administrative Law Court. Plaintiff failed to do so. The Administrative Law Court is the proper court with jurisdiction to address this matter, as provided by the Legislature.

As a result, the District has not taken any action to enforce the previously issued sanctions since before this matter was filed, and has assured Plaintiff in writing copied to this Court that no additional adverse action would be taken without an opportunity for Plaintiff to be heard before

the District Board. As a result, even if this Court did have jurisdiction, the elements for a TRO are not met in this instance.

Background Information

The District was created in 2006 by the Legislature by amendment to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. § 15-40-10 to -240 (the "Act"). The District is a statewide public charter school district with the power to approve, exercise general supervision of, and revoke charter schools pursuant to the Act. S.C. Code Ann. § 15-40-230. The District is governed by a volunteer board of trustees consisting of up to nine members, seven appointed by the Governor, one by the Speaker of the House, and one by the President of the Senate. *Id.* Five of the seven members appointed by the Governor are recommended by stakeholder groups including the Chamber of Commerce, the South Carolina Association of School Administrators, the South Carolina School Boards Association, the South Carolina Alliance of Black Educators, and the Education Oversight Committee. *Id.*

Charter schools in South Carolina are structured as non-profit corporations, pursuant to the Act. The board chairs of the School during the relevant portions of these events have been Elizabeth Moffley and Nadine Deif.

The Act provides broad authority for the District to exercise is general supervisory powers. The Act expressly provides that the District Board of Trustees has "has the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State." S.C. Code Ann. § 59-40-230(B). The only exceptions provided are that the District Board of Trustees "may not offer application for a charter school, issue bonds, or levy taxes." *Id.*

Further, the Act also expressly provides that the District *must* revoke a charter if a charter school meets certain criteria, including what amounts to a material violation of the charter requirements or failing to meet academic expectations. S.C. Code Ann. § 59-40-110(C). The Act permits the District to "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(B)(8). The District's powers are broad enough, in fact, that it is permitted to take corrective actions or exercise sanctions short of revocation in response even to *apparent* deficiencies in charter school performance or legal compliance so that corrective actions or plans can be implemented. *Id.* This is sound policy, consistent with the national standards referenced in the Act – it allows the District to take action to protect students and taxpayer dollars immediately while providing the School an opportunity to correct the apparent deficiency.

The Act also provides protection to charter schools against any overreach by charter school sponsors. Section 59-40-90 of the Act allows any final decision of the District to be appealed to the Administrative Law Court. Further, the Act provides that the District is the Local Education Agency, subjecting it to the oversight and administrative procedures of the State Department of Education as the State Education Agency. S.C. Code Ann. § 59-40-40(4). Indeed, the Act even gives the State Department of Education authority to fine sponsors in certain circumstances. S.C. Code Ann. § 59-40-140.

In this case, the School terminated its management company, Acceleration Academies, without any plan at all to replace the management company's services. The School's charter specifically provides that the services are to be provided by the specific accredited management company that the School terminated. The School made this decision at a special-called board meeting without notice or permission from the District as to what the replacement services would be. In response to this undeniable breach of the charter, the District Board could have revoked the charter. Instead, the District Board only required that the School maintain the status quo as of November 14, 2019, which allowed the School to keep its newly hired administrator in place even though his position was not on the organization chart in the charter, until it provided an approved amended charter that required the level of detail required. For frame of reference, the School's charter with the management company is in excess of 500 pages.

The School ignored the District's requirement to maintain the status quo, implementing a new administrative structure, policies and procedures, adopting a new school name, new by-laws, and others too numerous to recount here but documented in the letters from the District attached to the Complaint and the public records of the District Board meetings and School Board meetings since October 2019. The District attempted both through letters and a special-called meeting scheduled for the sole purpose of addressing the School's alleged "confusion" what it meant to maintain the status quo.

Simultaneous to these events, the management company filed arbitration with the American Arbitration Association. The School voluntarily appeared in the arbitration. The arbitrator, Judge Robert Hunter, retired from the NC Court of Appeals, issued a separate Order on January 6, 2020 requiring the Parties to maintain the status quo. Judge Hunter's Order was consistent with the District's directives at the November 14, 2019 District Board meeting and the December 13, 2019 Board meeting in all material respects with the sole exception that Judge Hunter's Order required the status quo to be maintained prior to the notices of termination, or October 23, 2019. Therefore, because Judge Hunter's Order required the School to maintain the status quo as of a date earlier than the District, the arbitration order both includes and surpasses the scope of the District Order.

After Judge Hunter issued his Order, the Parties have been before Judge Hunter to address alleged violations of the status quo issue, and the School has paid approximately $57,000 as a result of an arbitration order requiring it to pay undisputed amounts as part of maintaining the status quo. This payment by the School pursuant to the arbitrator's Order was entirely consistent with the District's requirement for the Parties to maintain the status quo until replacement services for Acceleration Academy could be located. Moreover, as referenced in Ms. Dief's affidavit, the School has availed itself of the administrative processes available through the State Department of Education as a means to protect its rights. The School continues to operate on a daily basis, and

has suffered no interruption in service other than the unauthorized change to the school calendar unilaterally made by the School Board to extend the Winter Break.

After Judge Hunter issued the January 2, 2020 Order, the School filed this action and filed a separate action for TRO in the United States District Court for the District of North Carolina, No. 3:20-cv-00602 seeking to set aside Judge Hunter's Order. Both actions ironically seek an injunction, designed to protect the status quo, to enjoin an arbitrator and the District from enforcing the status quo. For the reasons set forth below, the Motion should be denied, and the School should be required to pay the fees and costs of the District related to this action.

Applicable Law

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Resources v. Bcs Life Ins. Co.*, 627 S.E.2d 687, 367 S.C. 540 (S.C. 2006). The remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* A plaintiff must prove three elements to receive the drastic remedy of a preliminary injunction: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law.") *Compton v. S.C. Dep't of Corr.,* 392 S.C. 361, 365-67, 709 S.E.2d 639, 642 (2011).

Discussion

The Motion should be denied because this matter should have been brought in the Administrative Law Court. Even if this Court did have jurisdiction, the Motion should be denied because the School has no realistic chance for success on the merits and is suffering no irreparable harm by continuing to operate the School just as it has been for the past approximately four months.

I. The School should have challenged the action of the District in the Administrative Law Court.

Section III.N and III.P allows any public citizen, including charter schools such as School, to bring any matter to the attention of the District Board, including matters that require a due

process hearing and matters that do not require that level of formality. Section 59-40-90 of the Act requires that any challenge to a final decision of the District be made to the Administrative Law Court. The Legislature specifically amended the Act in 2006 to remove the jurisdiction of appeals from sponsor decision from the Circuit Court to the Administrative Law Court. *See* 2006 Act No. 274. Simply put, the Act divests this Court of jurisdiction to decide the matter put before it.

Notably, Plaintiff's Complaint makes no reference to Section 59-40-90. The Motion for TRO, the Memorandum of Law in Support of the TRO, and the Amended Complaint are devoid of any substantive discussion of Section 59-40-90 or the jurisdiction of this Court. The undersigned raised this issue with opposing counsel prior to the hearing, and received no substantive reply as to why this Court has jurisdiction in light of Section 59-40-90.

The School's Motion therefore should be denied.

II. The Motion should be denied because it does not name all necessary parties.

Even if the Court had jurisdiction, both the management company and the State Department of Education would be necessary parties that the School failed to name. Otherwise, the District would be subject to the potential of conflicting directives from this Court and the State Department of Education, which would not be bound by the injunction. Similarly, the intervention of this Court now after the School and management company have agreed to an arbitration hearing scheduled for this month, could result in the parties being subject to conflicting orders from this Court and binding arbitration.

The Act provides a clear mechanism for dispute resolution between the School and District through the Administrative Law Court, and the School has a mechanism for resolution of its contractual argument with the management company in arbitration. In addition, the School also has access to the State Department of Education's administrative processes to seek relief to which it might feel entitled. Of course, the School has sought effectively the same relief in the Western

District of North Carolina, adding even more likelihood of the parties being subject to conflicting orders or directives.

Based on the above, it would be necessary for all parties to be joined in this one action for this Court to entertain the relief sought by the School. The School failed to include these necessary parties to this action. Therefore, the motion should be denied.

III. The Motion should be denied because the School seeks a Preliminary Injunction to destroy the status quo rather than preserves it.

The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corr.,* 392 S.C. 361, 365-67, 709 S.E.2d 639, 642 (2011). The School seeks to turn this well-settled law on its head by asking this Court to enter an injunction with the specific purpose of reversing actions by the District to preserve the status quo while the School develops its plan to serve students after termination of the management company.

The School's charter and contract required it to seek an amendment from the District before it changed the management company. This is not a District requirement – it is statutory. Section 59-40-60(F) sets out requirements for what must be included in the charter application, and Section 59-40-60(F)(8) specifies that an applicant must state "any proposed management company or educational service provider responsibilities."

To date, the District Board has not approved a charter amendment request submitted by the School. The School has not challenged the decision by the District Board to deny the amendment request it previously submitted, which plainly would have to be challenged in the Administrative Law Court. Any such challenge would be futile because the prior amendment requests, which did not comply with published District processes and procedures for submission, come nowhere near meeting the statutory criteria for an amendment that would adequately describe the school's governance, operations and educational program without using a management company, as is

required by Section 59-40-60(F). In fact, the School has never submitted a complete amendment request for the District Board to consider.

In any event, it is beyond reasonable dispute that the School has not submitted a complete plan to replace the services and programming provided by Acceleration Academies. Until that time, the status quo is for the School to operate under the approved charter. If this Court did have jurisdiction and if it were going to enter an injunction, the injunction should do exactly what injunctions are supposed to do and preserve the status quo: enjoin the school to reverse all actions it has taken to implement operations contrary to the existing charter, and require the management company, the District and the State Department of Education all to strictly comply with the existing approved charter until a charter amendment is approved through the administrative process.

IV. The School is not likely to succeed on the merits because the District is immune from liability, the School breached first, and the School is not entitled to constitutional due process related to contractual rights.

As an initial matter, the District is immune from liability based on the School's claims. Section 59-40-190(C) states:

> (C) A local school district, sponsor, members of the board or area commission of a sponsor, and employees of a sponsor acting in their official capacity are immune from civil or criminal liability with respect to all activities related to a charter school they sponsor.

Simply put, the District cannot be liable for activities related to the School. Therefore, the School is not likely to succeed on the merits.

Even if, somehow, the School could escape the plain language of the immunity provision above, the School still is unlikely to succeed on the merits. As noted above, the School breached its charter by terminating the management company without providing any advance notice to the District and without having any plan in place to replace the services of the management company. As a result, the School materially violated the terms of its charter in multiple ways before any of the alleged wrongs the School claims the District committed under the charter and contract. It is

well-settled that the first to breach 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). Further, as explained previously and as evidenced in the School's own briefing, the School has not been prevented from replacing any services. The District only has taken action to prevent the School from failing to provide services or failing to make adequate preparations to transition to a new service provider. Moreover, the District is expressly immune from

As such, the School cannot carry its burden of showing that it is likely to succeed on the merits against the District given that the School breached the charter prior to any alleged wrongdoing by the School.

Further, it is unlikely the School can succeed on its due process arguments. While the School may have due process rights regarding the process for its application being considered and its charter being renewed or revoked under the statute, the Act does not provide the School a due process right for every single contractual provision in its charter. The Act specifically requires that the approved application between the District and School becomes an agreement, and that the District and School further formalize the agreement between them into a contract. *See* S.C. Code Ann. § 59-40-60(B) ("A contract between the charter school and the sponsor must be executed and must reflect all provisions outlined in the application as well as the roles, powers, responsibilities, and performance expectations for each party to the contract."). Section 3.1(A)(vi) of the Contract negotiated and executed by the School expressly allows the District to take actions and exercise sanctions short of revocation in response to deficiencies by the School. Even if the statute somehow could be construed to require due process, the contract does not.

Moreover, the School was provided due process in this instance. At the November 14, 2019 hearing regarding the charter amendment, the School was represented by multiple counsel and given ample opportunity to speak and to argue its legal positions. Communication between counsel is not *ex parte*, of course, despite the School's hypocritical contention otherwise given the

amount of time spent on the phone and communicating with the many different counsel for the School. The special-called December District Board meeting was expressly not a hearing, called to clear "confusion" at the request of the School. Certainly, the School is not contending that every appearance before the District Board in public session is subject to due process.

The fact is that the School received a due process hearing regarding the charter amendment. The Act does not require a due process hearing for any other action taken by the District regarding the contractual relationship between it and the schools it sponsors, or its general oversight of schools, which are by law part of the District. It would be untenable for every single administrative decision of the District to be subject to constitutional due process. For example, under the School's legal theory, the School should have the right to a constitutional due process hearing regarding whether snow days are waived or required to be made up, a decision voted on by the District Board every year as a matter of state law.

To resolve the question of what issues required constitutional due process and what did not, the Legislature spelled out in the Act where and what kind of due process is required for applications and revocations of charters, for example. It did no such thing for sanctions, which are left to the discretion of the sponsor.

V. The school is not suffering irreparable harm.

The School's two arguments that it is being irreparably harmed are wrong based on both fact and law.

1. The School is not under, and was not under, any threat of constructive revocation.

The School argues that it cannot operate under the threat that the District will withhold state and federal funds every month. It is under no such threat, and the Act provides recourse with the Department of Education if it was.

The District is statutorily required to monitor the fiscal health of charter schools it sponsors, pursuant to the Act. It also is responsible for monitoring fiscal and legal compliance. *See* S.C. Code Ann. § 59-40-55. To provide some level of access to school financial information and some ability to act if the District comes into information that a school is not in fiscal compliance, the Act requires the State Department of Education to pass money for the Schools through the District. Section 59-40-55 of the Act requires that the District to "supply" categorical funds to schools within ten days of receipt, and section 59-40-140 requires the District to "provide" other funding to "eligible charters" within thirty days of receipt.

Importantly, nowhere in the Act does it state that the District is required to physically transfer the funds to the School within a certain amount of time. This makes sense of course, so that the District can exercise varying degrees of oversight over school expenditures if it appears a school is out of fiscal compliance. The District cannot prohibit the charter school from spending the money on legitimate school expenditures, but it would be an invitation to fraud if the District could never require a charter school identify the intended use of taxpayer funds prior to releasing those funds to the school. Once the District releases the funds to the charter schools, its only power then is limited to identify improper expenditures through audit process and the like long after the taxpayer money is gone – now that is irreparable harm.

What happened in this case is the precise kind of careful attention to taxpayer funds the Act requires. Faced with a pending arbitration proceeding, the unrefuted fact that the charter school had not paid the management company anything for at least six weeks, and the prospect that the management company would need to continue providing services until the School could identify replacement services, the District reasonably feared that taxpayer funds could be wasted during the dispute. Further, the School had not provided any kind of amended budget following termination of the management company. The School was sitting on a large amount of taxpayer money yet anxiously asking for more to be sent to it immediately, all while being tangled up in

arbitration and amidst reports that students were not being provided required services. Therefore, as indicated by the correspondence in the Record, the District required the School to obtain advance permission prior to expending further taxpayer money.

It was prudent and lawful for the District to ask questions and put safeguards in place prior to releasing significant amounts of taxpayer funds to the School, even though the State Department of Education's counsel threatened the District with a fine because the School complained. Even if the lawyer for the State Department is correct, however, it only proves that the harm to the School is not irreparable. All the School needs to do is to call the Office of General Counsel at the State Department of Education, which has the power to fine the District and pass the money on to the charter school if it really believes taxpayer money has to be released after ten days regardless of what concerns the District may have about whether it will be spent properly. *See* S.C. Code Ann. § 59-40-140.

Therefore, since the School knows and has utilized the State Department administrative process to address the issue of the timely transmission of funds, the harm alleged by the School is not irreparable.

2. The District properly exercises its general oversight authority to ensure services are in place for students.

The School next argues that it must have the ability to decide who to hire and fire at the School, and have total control over its property and contracts. This argument misstates the issues before this Court. First, the School is entirely funded with taxpayer money. As such, the School only has autonomy within very specific parameters provided by law, parameters the School's Board agreed to in its charter and contract but now seem to be laboring under. The Court cannot provide the School an injunction that it is not subject to oversight.

Second, the District's concern again is not with who provides the services to the students, but that the services are provided. The District was left with no choice but to act when the School

Board began unilaterally changing the entire management structure of the school without any evidence that it had made provision for all the administrative functions to be completed.

For example, prior to the notices of termination being sent, the School utilized two administrators, one at each site for the approximately three-hundred student school. After the termination, the School created a great deal of confusion regarding the chain of command by hiring a new administrator to be superior over the existing two administrators, who the School Board perceived as aligned with the management company. In fact, the day after the November 14, 2019 District Board meeting, the School Board terminated one of the administrators for attending the Board meeting and speaking out against the School Board. Subsequently, the other administrator was placed on paid administrative leave. The School could not, or would not, explain how its one administrative hire would replace of the previous two, all the while planning for the School to expand by two hundred students.

As a result, the District required the School to maintain the status quo. That meant keeping the same administrative structure in place. When the School began terminating people without replacements and for issues unrelated to job performance, the District required the School to reinstate the employees until the School could identify a resource – employee or vendor – to provide the services.

The School's argument that it is being irreparably harmed rings particularly hollow because the timing for all of this was entirely within its control. At the November 14, 2019 District Board meeting, the District Board made clear that it would consider a revised and complete charter amendment as soon as the School could submit it, even if it had to call a special meeting in December. At the January 9, 2020 District Board meeting, the School's Board Chair Nadine Deif admitted that the School intentionally had not provided the District its planning documents for the transition to self-management.[1] This purposeful withholding of critical information for the District

[1] The audio of this meeting is available to be transcribed and submitted, if necessary.

to perform its essential supervisory activities has delayed consideration of the charter amendment and delayed the transition out of the management company.

Therefore, the School is not suffering irreparable harm by being asked to prove it has made provision for the services to students before it makes the decision to make further staffing changes.

VI. The Motion should be denied because the School has an adequate remedy at law.

In fact, Plaintiff has multiple adequate remedies at law. It could have requested a hearing just on the sanctions issue before the District Board. It could have appealed the existing decisions to the Administrative Law Court. It could, and did, file complaints with the State Department of Education, according to the School's pleadings. Further, it already has sought to transfer its charter to another sponsor pursuant to the transfer provisions in the Act. An injunction is entirely inappropriate because the School has many options for remedies at law

VII. The School has unclean hands.

Because whether to issue an injunction is an equitable decision, the applicant must not have unclean hands. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). The School has unclean hands in this case, as evidenced by at least the following:

1. It breached the contract first, as set forth above, by terminating the management contract without having any plan to serve the students;

2. It still has not provided a plan to transition the school, and admitted it intentionally withheld this information from the District;

3. The School failed to disclose any of the safety issues or the possibility of terminating the management contract when seeking an amendment to the charter for an enrollment increase in September 2019; and

4. If the basis for terminating the management contract is safety issues, as alleged by the School, then the School Board is responsible for oversight of the management contract and the overall performance of the School, making the School Board ultimately responsible for whatever safety issues existed as of October 2019.

VIII. The balancing of the equities supports maintaining the status quo until a charter amendment is approved, as all sanctions, directives and actions of the District have been designed to do.

Justice and equity demand that the parties focus on the best interest of the students in determining the outcome of this matter. The school staff made plain, including the individual fired the next day, that all they wanted to do was teach the students at the school that they care so deeply about. The District wants only to fulfill its oversight responsibility to ensure that any changes made do not result in even one student being overlooked or harmed in even one small way. The injunction requested by the School would prevent the District from fulfilling that role by preventing the District from asking even the most obvious questions and requiring even the most elementary diligence information before the School makes substantial changes during this extremely turbulent time.

IX. If the Court does determine it has jurisdiction and does determine an injunction is warranted, the injunction should require a full return to the status quo ante.

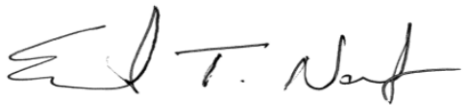
The School's request for an order returning the parties to the status quo is anything but. If the status quo were to be restored, then the School would be required to comply with its charter approved by the District in all respects until an amendment was approved by the District. It would not be allowed to operate under a name never approved by the District using an administrative and curriculum never approved by the District. The School would not be permitted to flout its contractual obligations to provide notice of board meetings, obtain permission to change the school's calendar, and would be able to sign its own students up for End-of-Course tests on time instead of having District staff do it for them. The District would welcome such an Order, if this Court had jurisdiction to issue it.

In addition, if the Court had jurisdiction to order an injunction, S.C. R. Civ. P. 65(c) would require that the School post a bond. The bond should be based on the school's annual budget so the District could provide replacement services for students and complete the wind-down process

for the School pursuant to the Act in the event the School closes, seeks to avoid a substantial judgment in the arbitration, or otherwise creates liability on the part of the State during any period when the District's oversight is restricted. However, no bond should be issued at all, as explained above.

CONCLUSION

For the reasons set forth above, the School's motion should be denied.



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February 13, 2020.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District, Defendant.	)	C.A. No. 2019-CP-10-06592 **PLAINTIFF'S MOTION TO ALTER OR AMEND THE ORDER DENYING PLAINTIFF'S MOTION FOR A TRO AND PRELIMINARY INJUNCTION**

Please take notice that Plaintiff, Charleston Advancement Academy High School ("CAA" or the "School") f/k/a Charleston Acceleration Academy, hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend its Order Denying Plaintiff's Motion for a TRO and Preliminary Injunction dated February 26, 2020 to (1) state that jurisdiction of CAA's legal claims is proper in Circuit Court, (2) find that Section 59-40-140 does not provide CAA an adequate remedy at law, and (3) find that CAA did not have unclean hands.

As grounds for this Motion, the Plaintiff would show the Court that:

1. The Circuit Court Properly Has Jurisdiction To Hear CAA's Legal Claims For Breach Of Contract And Violation Of Constitutional Due Process.

The Order states that Section 59-40-90 of the Charter Schools Act of 1996 (the "Act") divests this Court of jurisdiction to hear CAA's claims for breach of contract and violation of due process. (*See* Order ¶¶ 17–20.) Section 59-40-90 states, "A final decision of the school district . . . may be appealed by any party to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D)." S.C. Code Ann. § 59-40-90 (emphasis added). Importantly, Section 1-23-380 states, "This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law." *Id.* § 1-23-380.

There exist both a charter application, which constitutes an agreement between CAA and the SCPCSD pursuant to Section 59-40-60(A) of the Act, and a charter contract between CAA and the SCPCSD. CAA brought this lawsuit against the SCPCSD as a result of the SCPCSD's breaches of those contracts and violations of constitutional due process. Circuit Court in Charleston County, where CAA is located, is the appropriate jurisdiction and venue for CAA to litigate its legal claims.

Further, the SCPCSD's governing Board of Trustees did not make any final decision, as contemplated by the Administrative Procedures Act, with respect to the matters in CAA's Complaint. The Administrative Procedures Act, Section 1-23-350, states that a final decision "shall be in writing" and "shall include findings of fact and conclusions of law, separately stated." *Id.* § 1-23-350. The SCPCSD did not provide CAA constitutional due process or make a final decision on the matters described in the Complaint. Specifically, the SCPCSD Board of Trustees did not offer CAA a hearing, take a Board vote, or issue written findings of fact or conclusions of law before or after the SCPCSD Superintendent withheld CAA's allocated state and federal funding and the SCPCSD Superintendent and Board Chair issued written sanctions letters against CAA.

Further, even if, *assuming arguendo*, the SCPCSD had made a final decision after providing CAA with constitutional due process, which would allow CAA to appeal the SCPCSD's final decision to the Administrative Law Court, the right to appeal a final decision to the Administrative Law Court does not deprive a charter school of its right to bring a legal claim for a sponsor's breach of contract. The language of Section 59-40-90 is permissive rather than mandatory, and therefore, contemplates that a charter school may have legal claims against its sponsor that are not of the type that the Administrative Law Court is permitted to hear. Moreover, Section 59-40-90 references Section 1-23-380, which states "This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de

novo provided by law." Because, as here, a charter school may have legal claims against its sponsor that do not arise out of "a final decision of the sponsor," Circuit Court is the appropriate forum for a charter school to assert its legal claims against a sponsor. Accordingly, the Circuit Court in Charleston County is the proper jurisdiction for CAA's legal claims, and CAA respectfully requests that this Court alter or amend its Order to reflect the same.

2. The Statute Within The South Carolina Charter Schools Act Permitting The State Department Of Education To Fine The SCPCSD Does Not Provide An Adequate Remedy At Law To CAA.

The Order states that "[s]ection 59-40-140 of the Act specifies a statutory remedy for the School if it were to claim the District is withholding funds in violation of the Act . . . ." (Order ¶ 23.) Section 59-40-140(D) provides that "if the sponsor fails to [supply funds to CAA within ten business days], the Department of Education may fine the sponsor an amount equivalent to withheld amounts." S.C. Code Ann. § 59-40-140(D).

Initially, the Act does not state that a charter school cannot bring legal claims as a result of a sponsor's failure to timely distribute funds. Additionally, the Act does not state that any fine imposed by the State Department of Education relieves the sponsor of any other damages a school may suffer as a result of the sponsor's failure to timely distribute funds. Moreover, CAA and the State Department of Education disagree with the SCPCSD on whether the SCPCSD had the right to withhold CAA's funding under the Act, and CAA has requested declaratory relief from this Court on this unresolved legal issue. The SCPCSD explicitly disagrees with the State Department of Education's position on this issue, and the State Department of Education does not have the authority to offer CAA a declaratory judgment on this legal issue. Since this Order was issued, the SCPCSD has written the State Department of Education to reaffirm its alleged right to withhold CAA's funding. Further, while imposing a fine is intended to discourage the SCPCSD from acting in a such a way that violates the statute, it fails to offer CAA protection from the SCPCSD withholding its funding again in the future. Accordingly, while the State Department of Education

may fine the SCPCSD after it unlawfully withholds CAA's proportionate share of funding, without Court action, CAA does not have an adequate remedy at law (a) to receive a declaration of the law on this issue, (b) to prevent the SCPCSD from withholding funds from the School again in the future, or (c) to recover consequential damages for funds that are withheld in violation of the law.

3. CAA Acted Within Its Statutory and Contractual Authority As A Charter School, and Therefore, CAA Does Not Have Unclean Hands.

CAA does not have unclean hands. The charter application and charter contract between CAA and the SCPCSD explicitly allowed CAA to terminate the agreement with Acceleration Academies ("AA"), as described in paragraphs 14, 30(b), and 30(c) of the Amended Complaint. Specifically, CAA's approved charter application with the SCPCSD, which under the Act constitutes an agreement between CAA and the SCPCSD, states that "CAA's Board of Directors will be able to terminate any management agreement if the Board of Directors determines that academic or operational performance in inadequate," and that "CAA's Board of Directors will have final oversight of the school, and may release CAA's principal or terminate the agreement with AA if the Board deems it necessary." Further, Section 4.6(O) of the charter contract between CAA and the SCPCSD required CAA's contract with AA to include a clause that would allow CAA to terminate the contract with AA. This provision in the charter contract further stated that CAA was not required to provide AA notice prior to termination "where the health and safety of students is a concern." Including a contract provision that allows CAA to terminate its contract with AA without notice where the health and safety of students is a concern while simultaneously requiring CAA to undergo the process to amend its charter before terminating its contract with AA is illogical and defeats the purpose of allowing CAA to expeditiously terminate its contract with AA when student safety is a concern. CAA's Board of Directors voted to terminate its contract with AA immediately after receiving information of some two dozen safety incidents that occurred on its campus under AA's management and that were not reported to the CAA Board. CAA acted within its contractual and statutory rights by terminating its contract with AA immediately, without

prior notice, and without first amending its charter because CAA's charter with the SCPCSD explicitly allowed CAA to terminate its agreement with AA.

Additionally, CAA acted in accordance with its understanding of the meaning of "the status quo" at all times, as set forth in paragraphs 30(a) through 30(j) of the Amended Complaint. In particular, CAA understood "the status quo" to mean that the School and its Board of Directors would retain control of CAA's contractual, personnel, and facility matters. CAA relied on language in its charter application, which constitutes an agreement between the School and the SCPCSD pursuant to Section 59-40-60(A) of the Act, that states, "CAA's Board of Directors will be ultimately responsible for the academic and operational performance of CAA." By that understanding, CAA did not have unclean hands because it acted within the bounds of its authority under the Act and its charter application and charter contract with the SCPCSD.

Finally, although CAA's charter amendment request is unrelated to the matters involved in this litigation, CAA has consistently responded to the various requests for information from the SCPCSD, as the SCPCSD's counsel conceded at the hearing after this Court questioned CAA's counsel about this point during SCPCSD's oral argument. For these reasons, CAA asks this Court to alter or amend its Order to remove the finding that CAA has unclean hands.

For all of the foregoing reasons, CAA respectfully requests that this Court alter or amend its February 26, 2020 Order Denying Plaintiff's Motion for TRO and Preliminary Injunction.

Respectfully submitted,

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March 5, 2020

Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	))))))))))	C.A. No. 2019-CP-10-06592 **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

Plaintiff Charleston Advancement Academy High School ("CAA"), by and through its undersigned counsel, hereby submits this Memorandum of Law in Opposition to Defendant's Motion to Dismiss pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

I. INTRODUCTION

The South Carolina Public Charter School District's ("SCPCSD" or "District") Motion to Dismiss fails because: 1) this Court has jurisdiction as the South Carolina Charter Schools Act of 1996 (the "Act") does not require CAA to challenge the SCPCSD's unlawful sanctions before the Administrative Law Court ("ALC") and the SCPCSD's decision does not qualify as a "final decision" under the Administrative Procedures Act; 2) the SCPCSD is not immune from CAA's claims; 3) CAA has pled viable breach of contract and violation of due process claims against the SCPCSD; 4) CAA did not breach its contract with the SCPCSD; and 5) CAA's Declaratory Judgment requests involve an actual case or controversy.

II. PROCEDURAL HISTORY

On December 20, 2019, CAA, a South Carolina public charter school and nonprofit corporation, filed a Motion seeking a Temporary Restraining Order and Preliminary Injunction contemporaneously with a Complaint against the SCPCSD, its sponsor and Local Education

Agency, for attempting to usurp CAA's statutory and contractual authority to govern the school. CAA filed an Amended Complaint and Amended Motion for Temporary Restraining Order and Preliminary Injunction on January 23, 2020. CAA's Motion was heard on February 12, 2020, and the next day, Defendant filed its Motion to Dismiss. On February 26, 2020, the Honorable Bentley D. Price issued an order denying CAA's Motion for Temporary Restraining Order and Preliminary Injunction. For the reasons set forth below, CAA respectfully requests this Honorable Court to deny Defendant's Motion to Dismiss.

III. STATEMENT OF FACTS

CAA is a public charter school and a nonprofit corporation organized under the South Carolina Charter Schools Act of 1996 (the "Act") and the South Carolina Nonprofit Corporation Act (the "Nonprofit Act"), which is governed by an independent and autonomous Board of Directors. (Am. Compl. ¶¶ 1, 4.) CAA aims to provide a comprehensive high school education to at-risk students so that each student may attain a high school diploma and pursue a college education or career while making a positive impact in his or her community. (Am. Compl. ¶ 5.) CAA believes that all students, regardless of past academic performance or personal obstacles are capable of graduating from high school so that they may succeed in the job market or in post-secondary education. (Am. Compl. ¶ 1.)

In May 2017, the SCPCSD approved CAA's charter application pursuant to the Act, which constituted an agreement between CAA and the SCPCSD under Section 59-40-60(A) of the Act. (Am. Compl. Ex. A CAA Charter Application.) Subsequently, CAA and the SCPCSD entered into a charter contract on or around April 11, 2018, which defined the rights and responsibilities of the school and the SCPCSD. (Am. Compl. Ex. A CAA Charter School Contract.)

CAA also entered into an agreement with Acceleration Academies, LLC ("AA"), in April 2018, in which AA agreed to provide certain educational and operational services to CAA, including developing and implementing a security plan to ensure the safety of all students and

personnel. (Am. Compl. ¶ 9.) The agreement between CAA and AA stated that "[i]n the event that a danger to student health, safety, or welfare exists, *at the sole discretion of [CAA], this Agreement may be terminated immediately*." (Am. Compl. ¶ 9 (emphasis added).)

In or around October 2019, CAA's Board learned that AA failed to appropriately address and disclose to the CAA Board two dozen safety violations on CAA's campus, which CAA leased from Trident Technical College. (Am. Compl. ¶ 10.) CAA's Board was extremely upset to learn about these safety violations, which led to AA preemptively giving 180-day notice of termination of its contract with CAA. (Am. Compl. ¶ 11.) As a result of AA's failure to appropriately address these safety violations, CAA received a letter from the President of Trident Technical College, CAA's landlord, notifying CAA that if the safety issues were not corrected within two months, CAA's lease would be terminated. (Am. Compl. Ex. B Letter from Mary Thornley dated October 30, 2019.) If CAA's lease with Trident Technical College was terminated mid-year, CAA would likely be forced to close. (Am. Compl. ¶ 13.) With these issues in mind, CAA's Board met on October 31, 2019, and unanimously voted to accept the termination submitted by AA and to immediately terminate CAA's contract with AA for just cause based on student welfare and safety concerns pursuant to Section 4.6(O) of its charter contract. (Am. Compl. ¶ 14.)

Immediately thereafter, CAA began developing a plan to replace the services provided by AA with the goal of minimizing disruption to students. (Am. Compl. ¶ 16.) For instance, CAA retained Dr. Robert E. Bohnstengel, an experienced South Carolina charter school leader, as its Principal. (Am. Compl. ¶ 17.) On November 11, 2019, CAA submitted a Charter Amendment Request to the SCPCSD removing AA from CAA's Charter. (Am. Compl. ¶ 17.)

On November 14, 2019, CAA presented the proposed Charter Amendment Request to the SCPCSD Board of Trustees and outlined the steps the CAA Board had taken to replace the services previously provided by AA. (Am. Compl. ¶ 18.) Several representatives from AA also attended the meeting. (Am. Compl. ¶ 19.) CAA's then-Director disregarded a directive from Dr.

Bohnstengel and abandoned CAA's campus during the school day to attend the SCPCSD meeting. (Am. Compl. ¶ 19.) The SCPCSD Board gave AA and CAA's then-director an opportunity to present statements, and both AA and CAA's then-director made derogatory statements about the CAA Board and its decision to immediately terminate the agreement between AA and CAA. (Am. Compl. ¶ 19.) At the conclusion of the presentations, the SCPCSD Board voted to "[d]eny amendment and to maintain status quo until CAA presents a plan showing [its] ability to immediately implement all activities in the charter with SCPCSD contract and EMO." (Am. Compl. ¶ 20.) Specifically, the SCPCSD Board demanded that AA continue operating at CAA despite the CAA Board's vote to terminate its contractual agreement with AA immediately for safety reasons. (Am. Compl. ¶ 20.)

The following day, Dr. Bohnstengel terminated CAA's then-Director for insubordination and for failing to report student safety and welfare concerns. (Am. Compl. ¶ 21; Boehnstengel Aff. ¶ 5.) Thereafter, AA employed or otherwise retained the services of CAA's former Director and assigned her to work at CAA. (Am. Compl. ¶ 24.)

CAA's Board began receiving threatening letters from the SCPCSD Superintendent and SCPCSD Board Chair almost immediately following its decision to terminate AA's contract and CAA's former Director's employment. (Am. Compl. ¶ 25.) Specifically, CAA received three perplexing letters from the SCPCSD Superintendent and the SCPCSD Board Chair between November 21, 2019, and December 5, 2019, attempting to impose sanctions short of revocation on CAA. (Am. Compl. ¶ 26.) Notably, the sanctions included the SCPCSD (a) withholding CAA's state and federal funding, (b) restricting CAA's ability to spend funds, (c) managing CAA's contract with AA, (d) having authority over and controlling the day-to-day operations of CAA, (e) having final authority over all employment and personnel matters at CAA, (f) reinstating CAA's former Director and requiring CAA to pay her pursuant to the previously-terminated contract between CAA and AA, (g) mandating AA's ability to be on CAA's property against CAA's

wishes, and (h) additional measures which effectively stripped the CAA Board and Principal of their authority to govern and administer CAA consistent with state law and CAA's charter with the SCPCSD. (Am. Compl. ¶ 26.)

CAA responded to these letters by letter dated December 6, 2019, in which it stated its confusion over the SCPCSD's actions and requested a special-called meeting to discuss the governance and operations of CAA moving forward. (Am. Compl. ¶ 28.) The SCPCSD held a special-called meeting at CAA's request on December 13, 2019. (Am. Compl. ¶ 29.) At the meeting, the CAA Board requested the SCPCSD Board to support the CAA Board's authority to exercise its statutory, contractual, and fiduciary responsibilities to govern the operation of CAA, avoid substantial disruption, ensure the safety and welfare of CAA's at-risk student population, and comply with the State of South Carolina's Safe Schools Climate Act. (Am. Compl. ¶ 30, Ex. C CAA Statement dated December 13, 2019.) Additionally, CAA asked the SCPCSD Board to affirm several statements regarding CAA's rights and responsibilities as a public charter school. (Am. Compl. ¶ 30, Ex. C.) Not only did the SCPCSD decline to affirm any of the CAA Board's statutory and contractual rights, but it mandated that AA continue providing services at CAA's campus, affirmed the SCPCSD's purported authority over CAA's employment and contractual matters, and restated the SCPCSD's intent to withhold federal and state funding from CAA. (Am. Compl. ¶ 32, Ex. D SCPCSD Statement.)

The SCPCSD withheld CAA's proportional share of funding for November 2019 and December 2019, and CAA relied on its own reserve funds in its operating account to cover its expenses. (*See* Am. Compl. ¶ 34.) The SCPCSD finally released the funds owed to CAA from the months of November 2019 and December 2019 on December 31, 2019, after CAA filed its Complaint and accompanying Motion in this matter and after representatives from the South Carolina Department of Education indicated that the SCPCSD might be fined pursuant to Section 59-40-140(D) of the Act if it failed to release the funds. (Am. Compl. ¶ 34.) Contrary to the

language of Section 59-40-140(D), counsel for the SCPCSD indicated that the SCPCSD acted reasonably within its authority to withhold CAA's funds as a sanction short of revocation. (*See* Am. Compl. ¶ 34.)

Further, the SCPCSD's letters imposing sanctions on CAA were provided to an out-of-state arbitrator by AA and used by AA to seek injunctive relief against CAA in the arbitration. (Am. Compl. ¶ 35.) In granting AA's request for injunctive relief, the arbitrator relied on the SCPCSD's letters and the alleged legal authority implied by the SCPCSD's letters to issue the sanctions stated therein. (Am. Compl. ¶ 36.) The arbitrator's decision repeated the SCPCSD's "status quo" language, required CAA to continue working with AA, and required CAA Board Members to provide AA with 24 hours' notice before visiting CAA's school sites. (Am. Compl. ¶ 36.) In essence, the SCPCSD's actions, and the arbitrator's decision, which was made in reliance on the SCPCSD's actions, stripped the CAA Board of its authority under the Act, the Nonprofit Act, and its charter to govern and manage CAA and gave that authority to the SCPCSD itself and a Chicago-based for-profit contractor, AA. (Am. Compl. ¶ 36.) Later, in partial reliance on statements and actions made by the SCPCSD, the arbitrator imposed a $859,000.00 judgment against CAA, a decision that CAA has appealed. (Arbitration Award by Judge Hunter attached as Exhibit A.)

The SCPCSD has failed to recognize the CAA Board's statutory and contractual authority to govern and manage CAA. (Am. Compl. ¶ 38.) The SCPCSD has acted against the interests of CAA, a school that it sponsors, and has supported AA, which is now planning to operate a new and competing charter school in the Charleston area under the sponsorship of the SCPCSD. (Am. Compl. ¶ 38.) The SCPCSD acted wholly outside the scope of its responsibilities under the Act, the charter application, and the charter contract between CAA and the SCPCSD. Further, the SCPCSD's actions are not supportive of CAA and are adverse to CAA's interests.

IV. LEGAL STANDARD

A. Subject Matter Jurisdiction.

"Subject matter jurisdiction refers to the court's 'power to hear and determine cases of the general class to which the proceedings in question belong.'" *Simmons v. Simmons*, 370 S.C. 109, 113, 634 S.E.2d 1, 3 (Ct. App. 2006) (quoting *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995)). "The question of subject matter jurisdiction is a question of law for the court." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (quoting *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993)).

B. Personal Jurisdiction.

At the pre-trial stage, the plaintiff must "make a prima facie showing [of personal jurisdiction] by pleadings and affidavits." *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 332, 426 S.E.2d 777, 779 (1993) (quoting *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 462, 388 S.E.2d 796, 798 (1990)). "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) (citing *Graham v. Lloyd's of London*, 296 S.C. 249, 251 n.1, 371 S.E.2d 801, 802 n.1 (Ct. App. 1988)).

A court's exercise of personal jurisdiction must "comport with due process" and "not offend traditional notions of fair play and substantial justice." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). To comport with due process, the defendant must "purposefully avail[] itself of the privilege of conducting activities within the forum state." *Hanson v. Deckla*, 357 U.S. 235, 255 (1958) (citing *Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 319 (1945)).

C. Standard Of Review.

A motion to dismiss must be denied if the facts and inferences alleged in the complaint would entitle plaintiff to relief on any theory. *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must view all facts and inferences alleged in the complaint in the light most favorable to the plaintiff and base its ruling "solely upon the allegations set forth on the face of the complaint." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002) (quoting *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987)); *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009) (citing *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

V. ARGUMENT

A. The Circuit Court Has Subject Matter Jurisdiction Over Plaintiff's Claims Because The Charter Schools Act Does Not Require Actions Against The Defendant to Be Brought Before The Administrative Law Court And Plaintiff's Claims Involve An Actual Case Or Controversy That Is Not What The Administrative Law Court Was Created To Hear.

The circuit courts in South Carolina "are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts." *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 274–75, 802 S.E.2d 794, 799 (2017) (quoting *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009)). A court must look to the relevant statute to determine if the Legislature has given another entity exclusive jurisdiction over a case. *Id.* at 275, 802 S.E.2d at 799 (quoting *Dema*, 383 S.C. at 121, 678 S.E.2d at 433) (rejecting defendant's concerns that circuit court could not make rulings on the TimeShare Act because such concerns were directly contradicted by "the plain language of [the] statute.").

1. Plaintiff Was Not Required To Assert Its Claims Before The

Administrative Law Court Under The Act And The SCPCSD's Decision Did Not Qualify As A "Final Decision."

SCPCSD incorrectly claims that CAA was required to challenge the District's decision before the Administrative Law Court ("ALC") pursuant to the Act. However, Plaintiff properly brought its claims in the Charleston County Court of Common Pleas because: 1) Plaintiff is not required to bring its claims before the ALC, and 2) Plaintiff's claims are not based upon a final decision of the SCPCSD.

Section 59-40-90 of the Act states, "A final decision of the school district or a public or independent institution of higher learning sponsor may be appealed by any party to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D)." S.C. Code Ann. § 59-40-90 (1996, as amended) (emphasis added). The Administrative Procedures Act ("APA'), referenced in § 59-40-90, states that "[a] final decision . . . in a contested case shall be in writing or stated in the record" and "shall include findings of fact and conclusions of law, separately stated." *Id.* § 1-23-350. The APA also requires the administrative body to follow certain procedures in a contested case, including the opportunity for hearing after at least thirty days' notice that includes the particular sections of laws or regulations involved and a short and plain statement of the matters asserted. *Id.* § 1-23-320. Importantly, Section 1-23-380 of the South Carolina Code states, "This section does not limit utilization of the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law." *Id.* § 1-23-380 (emphasis added).

The statute in the Act cited by Defendant permits, but does not require, a party to appeal a final decision by a sponsor, including the SCPCSD, to the ALC. The statute's plain language clearly indicates the Legislature's intent not to limit a party's options to seek remedy through the courts by 1) using the term "may" rather than "must," and 2) referring to Section 1-23-380, which specifically states it does not limit judicial review available through other means. Had the Legislature intended to require all final decisions issued by a charter school sponsor be appealed

to the ALC, the Legislature would have chosen to explicitly state that requirement within the statute.

Moreover, the SCPCSD did not issue a final decision in accordance with the APA that the Plaintiff could have appealed to the ALC. Under the APA, a final decision is issued after a contested case. *See* S.C. Code Ann. § 1-23-380 (1976, as amended). A contested case requires notice of the hearing, the underlying issues, and the applicable laws, rules, and regulations. *Id.* § 1-23-320(A)–(B). Further, the record in a contested case must include all evidence presented and considered, matters officially noted, proposed findings, and any opinion or decision issued at the hearing. *Id.* § 1-23-320(G). A final decision in a contested case must be in writing or stated in the record and include findings of fact and conclusions of law. *Id.* § 1-23-350.

The SCPCSD did not abide by the requirements stated in Section 1-23-320 for a contested case and did not issue a final decision that comports with the requirements listed in Section 1-23-350. The SCPCSD did not provide notice to CAA prior to imposing sanctions against it that limited CAA's rights as a public charter school. (*See* Am. Compl. ¶ 26.) Additionally, no record was created for an ALC judge to review and assess. Because the SCPCSD failed to abide by these methods, SCPCSD did not issue a final decision as considered by the Act and the APA that could have been appealed to the ALC. Plaintiff's claims for breach of contract and violation of due process are simply not claims that the ALC was created to hear and adjudge. Because the SCPCSD's actions did not comprise a final decision that could be appealed to the ALC, the Plaintiff appropriately filed its claims in the Charleston County Court of Common Pleas, which has general subject matter jurisdiction to adjudicate such matters.

2. Plaintiff's Claims Sufficiently Allege A Justiciable Controversy Warranting A Declaratory Judgment.

To state a claim under the Declaratory Judgment Act, a party must demonstrate that a justiciable controversy exists. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970)).

"A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical, or abstract character." *Id.* Under the Declaratory Judgment Act, "any person interested under a . . . written contract . . . whose rights, status, or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the . . . contract . . . and obtain a declaration of rights, status, or other legal relations thereunder." S.C. Code Ann. § 15-53-30. "A contract may be construed either before or after there has been a breach thereof." *Id.* § 15-53-40. "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Id.* § 15-53-20.

CAA has sufficiently asserted a "real and substantial controversy" concerning its rights under its charter contract with the SCPCSD such that a declaratory judgment may be issued. The SCPCSD has taken unlawful actions, which have resulted in injury to CAA, and the SCPCSD asserts that it may freely take similar actions in the future should it deem such actions to be necessary. (*See* Am. Compl. ¶ 34.) The rights Plaintiff has asked to be declared by this Honorable Court pertain to the Plaintiff's rights under its contract with the SCPCSD and must be determined in order to decide the breach of contract action asserted by the Plaintiff against the SCPCSD. A declaratory judgment will inform the parties of the rights each party holds under the contract and will remove uncertainty as to any actions that can or cannot be taken by one or the other. Resolving this uncertainty serves to prevent potential rights violations in the future that may result in subsequent litigation on similar issues. *See* S.C. Code Ann. § 15-53-60 ("The enumeration in §§ 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in § 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.")

B. Defendant Is Subject To General Personal Jurisdiction In This Honorable Court.

Personal jurisdiction may be exercised as either general jurisdiction or specific jurisdiction. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. General jurisdiction is a state's right to exercise jurisdiction over "a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action." S.C. Code Ann. § 36-2-802 (1976, as amended); *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. Specific jurisdiction is the state's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum. *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478; *see* S.C. Code Ann. § 36-2-803 (1976, as amended).

Plaintiff asserts, and Defendant cannot deny, that Defendant is a charter school sponsor with offices in Charleston, South Carolina, and regularly conducting business in Charleston, South Carolina. (Am. Compl. ¶ 2.) The SCPCSD was created pursuant to Section 59-40-220 of the South Carolina Charter Schools Act of 1996. S.C. Code Ann. § 59-40-220(A). The Act states that the geographical boundaries of the SCPCSD "are the same as the boundaries of South Carolina." *Id.* § 59-40-220(B). Defendant, as a creation of the state legislature, is "organized under the laws of" this state, and therefore, may be sued in this state "as to any cause of action." Further, Defendant is undoubtedly subject to general personal jurisdiction in the circuit court of Charleston County because it has offices in Charleston County, sponsors schools in Charleston County, and regularly conducts business in Charleston County. Based on these numerous ties to the state and this circuit, particularly, Defendant's claim that this Honorable Court lacks personal jurisdiction over it is absurd, and Plaintiff respectfully asks this Court to deny Defendant's Motion to Dismiss on this ground.

C. The SCPCSD Is Not Immune From Liability For Its Own Unlawful Actions That Constitute Causes Of Action For Breach Of Contract And Violation Of Due Process, Which Plaintiff Sufficiently Alleged In Its Amended Complaint.

Defendant improperly claims that the SCPCSD is immune from the claims asserted. The Act does not hold a charter school sponsor immune from liability for its own wrongs. Moreover, Plaintiff has included facts in its Amended Complaint that plausibly plead actions for breach of contract and violation of due process against the SCPCSD.

1. The Act Does Not Grant The SCPCSD, As CAA's Sponsor, Immunity From Liability For Plaintiff's Claims.

Section 59-40-190(C) of the Act states that "[a] . . . sponsor . . . acting in their official capacity are immune from civil or criminal liability with respect to all activities related to a charter school they sponsor. The governing body of a charter school shall obtain at least the amount of and types of insurance required for this purpose." S.C. Code Ann. § 59-40-190(C). The rational interpretation of this statute is that a charter school sponsor cannot be held liable for the wrongs of a charter school it sponsors. Indeed, this interpretation is signaled by the requirement that the charter school obtain certain types of insurance to settle judgments against it that exceed the school's financial means. Defendant's creative interpretation that the SCPCSD, or any sponsor, is immune from any liability–even its own unlawful acts–because it relates in some way to a charter school is manifestly unjust. To allow such an interpretation would permit the SCPCSD, or any charter school sponsor, to take unjust actions unilaterally to serve the sponsor's own interests and with complete disregard for the effect on the charter schools it sponsors without any threat of legal repercussions. Indeed, it would be inequitable for the SCPCSD, or any sponsor, not to be held responsible for its own unlawful acts that result in damages to a charter school it sponsors. Assuredly, the Legislature did not intend such a preposterous result in drafting this statute. Because permitting Defendant's interpretation of Section 59-40-190(C) would create precedent in which the SCPCSD, or any other charter school sponsor, could commit no wrong–or at least not be held accountable for the wrongs they did commit, Defendant's motion to dismiss should be denied on this ground.

2. Plaintiff Has Stated Facts Sufficient To Plausibly State Claims

For Breach Of Contract And Violation Of Due Process.

a. Plaintiff's Breach Of Contract Claim Against SCPCSD.

Plaintiff stated a viable breach of contract claim against SCPCSD in its Amended Complaint. To recover on a breach of contract claim, a plaintiff must prove the existence of a contract, breach of the contract, and damages caused by the breach. *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

It is undisputed that a valid and enforceable contract existed between Plaintiff and the SCPCSD. Pursuant to § 59-40-60(A) of the Act, CAA's approved charter application constituted an agreement with the SCPCSD. (Am. Compl. ¶ 8.) The SCPCSD and CAA also entered into a charter contract on or around April 11, 2018, which by its terms, remains effective until June 30, 2027. (Am. Compl. ¶ 8; Am. Compl, Ex. A Charter School Contract § 2.1.)

Plaintiff described in its Amended Complaint numerous actions by the SCPCSD that materially breached the terms of the contract between Plaintiff and the SCPCSD. Section 3.2 of the charter contract directly incorporates the powers of a charter school set forth in Section 59-40-50(B) of the South Carolina Code. (Am. Compl. Ex. A, Charter School Contract § 3.2.) In Section 59-40-50(B), a charter school is granted the authority to hire teachers and administrative staff in the school's discretion. S.C. Code Ann. § 59-40-50(B)(5)–(6); Am. Compl. ¶ 6. Despite being granted the clear authority to control employment decisions of its own teachers and administrators, the SCPCSD forced CAA to reinstate an administrator who not only directly defied an order to supervise the school and left the premises, but who also failed to report safety violations to the CAA Board. (Am. Compl. ¶¶ 19, 21, 26.)

In addition, the SCPCSD imposed sanctions against CAA that usurped fundamental rights and responsibilities of the CAA Board, as stated in the Act and incorporated into the charter contract. (*See* Am. Compl. ¶ 26.) In particular, the SCPCSD: 1) withheld CAA's state and federal

funding; 2) restricted CAA's ability to spend funds; 3) assumed control of managing CAA's contract with AA, which CAA had terminated in accordance with Section 4.6(O) of the charter contract; 4) assumed control of CAA's employment decisions; and 5) mandated that AA representatives be allowed on property leased by CAA against CAA's wishes. (Am. Compl. ¶ 26.) The SCPCSD's actions are in direct contravention of the provisions of its charter contract with Plaintiff and statutory provisions of the Act. Additionally, the SCPCSD directly interfered with the CAA Board's duty to govern the school, as stated in Section 4.6(A) of the charter contract, (Am. Compl. ¶¶ 26–27, 32); removed CAA's statutorily defined powers to make employment and contractual decisions as defined in Section 59-40-50(B) and incorporated into Section 3.2 of the charter contract, (Am. Compl. ¶ 26); withheld the proportional share of state and federal funds owed to CAA for nearly two months in violation of Section 59-40-140(D) and incorporated into Section 8.4(C) of the charter contract, (Am. Compl. ¶¶ 33–34); and imposed sanctions short of revocation that unduly inhibited the autonomy granted to CAA as a charter school in violation of Section 59-40-55(B)(5) and incorporated into Section 3.1(A) of the charter contract, (Am. Comp. ¶ 26). (Am. Compl. ¶ 45).

The SCPCSD's breaches of the charter contract resulted in significant damages against Plaintiff. The out-of-state arbitrator relied on the SCPCSD's actions and statements to grant AA injunctive relief and ultimately issue an award against CAA in the amount of $859,000.00. (Arbitration Award by Judge Hunter attached as Exhibit A.)

b. Plaintiff Did Not Breach Its Contract With SCPCSD.

Despite Defendant's assertions to the contrary, CAA acted wholly within its rights afforded by the charter contract to terminate its relationship with AA. Section 4.6(O) of the charter contract states that "[t]he EMO/CMO Contract must contain a provision permitting the School to terminate the contract due to unsatisfactory performance by the EMO/CMO." (Am. Comp. Ex. A Charter Contract § 4.6(O).) This section further waives a notice requirement for termination

"where the health and safety of students is a concern." (Am. Compl. Ex. A Charter Contract § 4.6(O).) Additionally, CAA's charter application, which constitutes an agreement with the SCPCSD, provides that "CAA's Board of Directors will be able to terminate any management agreement if the Board of Directors determines that academic or operations performance is inadequate" and that "CAA's Board of Directors . . . may . . . terminate the agreement with AA if the Board deems it necessary." (Am. Compl. ¶ 14.)

Sometime in October 2019, CAA's Board learned that AA failed to appropriately address two dozen student safety violations on CAA's campus, which it leased from Trident Technical College, or to otherwise disclose these incidents to the CAA Board. (Am. Compl. ¶ 11.) After receiving a letter from the president of Trident Technical College threatening to terminate CAA's lease if the safety violations were not addressed appropriately, CAA's Board exercised its power under Section 4.6(O) of the charter contract to terminate its contract with AA immediately due to concerns for its students' safety. (Am. Compl. ¶¶ 12–14.) CAA's decision to immediately terminate AA as a result of safety concerns for its students was well-within CAA's rights under the charter contract and application, did not require prior approval from the SCPCSD, and therefore, did not constitute a breach of its charter contract.

As Plaintiff has pleaded facts that plausibly show that the SCPCSD materially breached its charter contract with CAA and that these breaches damaged CAA, Defendant's motion to dismiss Plaintiff's breach of contract claim should be denied.

c. Plaintiff's Violation of Due Process Claim Against SCPCSD.

Likewise, Plaintiff has alleged sufficient facts to show that SCPCSD failed to afford CAA a fair and impartial adjudication before it imposed sanctions affecting CAA's liberty and property interests as a charter school in violation of the due process rights guaranteed to it by Article I, Section 22 of the South Carolina Constitution. Article I, Section 22 of the South Carolina Constitution states:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly . . . .

S.C. Const. art. I, § 23. The South Carolina Supreme Court has held that "the contours of Article I, § 22 trace those of our general state due process clause, Article I, § 3, and federal due process." *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 448, 823 S.E.22d 193, 197 (Ct. App. 2018) (citing *S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 391, 699 S.E.2d 146, 152 (2010)). "In determining the due process due, [a court] must consider: (1) the private interest affected by the proceeding; (2) the risk of erroneous deprivation of that interest as a result of the procedures used and the probable value of additional or substitute procedural safeguards; and (3) the State's interest, including the burden of additional or substitute procedural requirements." *Id.*

Plaintiff's property and liberty interests affected by the SCPCSD's actions are significant. While liberty interests protected by procedural due process have not been explicitly defined, they undoubtedly include "the right of the individual to contract" and "to engage in any of the common occupations of life." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972) (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). Likewise, to have property interests protected by procedural due process, one must "have a legitimate claim of entitlement to it." *Id.* at 577.

Plaintiff has both liberty and property interests in operating as a public charter school. These interests include the ability to enter into and manage contracts with vendors and employees, to obtain and spend funds to achieve the school's mission and goals, and to exercise control over its leased property. (Am. Compl. ¶ 50.) These fundamental liberty and property interests are described both in statutory provisions under the Act and within CAA's charter contract with SCPCSD. *See* references cited *supra* Section C.2.a. Because CAA's liberty and property interests

are authorized by statute and incorporated into its contract with the SCPCSD, CAA has "more than an abstract need or desire for [them];" rather, CAA has "a legitimate claim of entitlement" to these liberty and property interests as a charter school. *See Bd. of Regents*, 408 U.S. at 572.

Because CAA has fundamental liberty and property interests in operating as a public charter school, the SCPCSD was required to provide CAA with procedural due process before stripping CAA of these significant liberty and property interests. Despite this requirement, the SCPCSD failed to implement procedures and safeguards that would ensure CAA received a fair and impartial consideration by the SCPCSD Board. SCPCSD failed to notify CAA that it was considering imposing sanctions against the school before unilaterally imposing them without a hearing. (*See* Am. Compl. ¶ 26.) When the SCPCSD held a meeting–after imposing sanctions on the school and only after CAA requested a meeting from the SCPCSD–the SCPCSD allowed representatives of AA to express their discontent with the CAA Board. (Am. Compl. ¶ 31.) Upon information and belief, the SCPCSD received information related to CAA outside of any formal hearing, the particulars of which it did not disclose to CAA. (*See* Am. Compl. ¶ 51.)

Further, the SCPCSD refused to allow CAA's legal counsel to speak at the December 13, 2019 meeting, during which the SCPCSD affirmed the sanctions it previously issued against CAA, which stripped CAA of its liberty and property interests. (Am. Compl. ¶¶ 32, 51.) The SCPCSD would not have been burdened by providing notice to CAA and an opportunity to be heard prior to imposing sanctions against CAA. Similarly, allowing CAA's legal counsel to speak on CAA's behalf and providing CAA with the evidence received from AA in order to afford CAA a reasonable opportunity to respond would have placed little to no hardship on the SCPCSD. As a result of the SCPCSD's failure to provide procedural due process safeguards, CAA was deprived of a fair and impartial adjudication of sanctions against it and was denied the procedural due process it was guaranteed under the South Carolina Constitution. For these reasons, Plaintiff has alleged a plausible claim that SCPCSD violated its procedural due process rights, and Defendant's

motion to dismiss this claim should be denied.

VI. CONCLUSION

For the reasons stated above, Plaintiff prays that this Honorable Court deny Defendant's Motion to Dismiss.

Respectfully submitted,

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June 12, 2020

EXHIBIT “A”

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-19-0003-5142

Acceleration Academies, LLC
-vs-
Charleston Acceleration Academy, Inc. aka
Charleston Advancement Academy High School

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 2, 2018, and after having been duly sworn, AWARDS as follows:

In this case, Charleston Acceleration Academy, Inc., aka Charleston Advancement Academy High School (hereinafter "Respondent") received a Charter School Contract from the South Carolina Public School District (hereinafter "SCPSD") on April 1, 2018. This contract allowed the Respondent to contract with an Education Management Organization or Charter Management Organization (hereinafter "EMO") to provide certain services for the Respondent. On April 2, 2018, pursuant to the express authority granted to it by its Charter, Respondent signed a written agreement (the "EMO contract") with Acceleration Academies, LLC (hereinafter the "Claimant") to become the EMO for the Respondent.

The purpose of this agreement was to create a school to "reengage and educate students who remain eligible to receive School services but who have dropped out of or are at risk of dropping out of school." Claimant was to manage the project and the Respondent was to oversee its management.

Three clauses in the contract are relevant to this dispute: the compensation clause, the audit clause and the termination clause. The compensation clause requires Respondent to pay for Claimant's services, upon receipt of monthly invoices containing proper documentation, an amount equal to 85% of the weighted per pupil funding available for each Acceleration Academy student for the regular school year (minus deductions for School employee costs paid directly by the School"). The termination agreements within both the EMO and Charter are similar. The EMO contract: (1) expressly incorporates language of the limitations of termination into the EMO contact; (2) provides either party may terminate at will after 180 day notice; and (3) provides the Respondent can terminate in its sole discretion without any notice for public health and safety threats. The contracts provide any exercise of the termination clauses by any party terminating the agreement do so in a manner so as to cause the "least" disruption to the students. The audit clause provides the Claimant "shall maintain all financial records of each educational service Acceleration Academies provides under this agreement" The agreement also provides the Respondent to audit Claimant's financial records at its "own expense."

The school opened on July 1, 2018. The Respondent regularly paid invoices submitted to it with little or minimal documentation from the beginning of the contract until September 2019. On July 29, 2019, the Board of Directors of the Respondent were notified $133,708.12 in grant funds previously awarded to the School had reverted to the State because they had not been claimed by June 15, 2019. About the same time, the Board became concerned the invoices submitted might be inadequate to meet their responsibilities under statutes for financial reporting. To examine this matter, the Board hired an outside accountant to investigate the accounting practices which had been used previously and make remedial recommendations.

Following conversations between the accountants for both parties, Claimant presented a proposed contract amendment to the Respondent's Board allowing the new accountant the ability to remedy, at the Board's expense, the accounting issues pursuant to the auditing clause of the EMO contract. It was rejected. The dispute escalated. As a result, the Respondent refused to pay the Claimant's September invoice until such time as it provided additional documentation. Although additional documentation was subsequently provided it failed to satisfy the Board. Respondent then provided a counteroffer to the Claimant containing new contract terms but reducing its compensation from 85% of the monthly payments from the State to 20% of 85%. This dispute was not resolved through negotiation.

On October 23, 2019, the Claimant then gave the Respondent notice it was terminating the contract under provisions of the agreement which provided the parties with a 180 day period in which the management by the Claimant would end and the Board would have time to make suitable arrangements to manage the school. Subsequent to the Claimant's notice of termination, the Board met and, based on incident reports of student misconduct, decided the Claimant's continued management of the school raised "public health and safety concerns" and terminated the contract in its "sole discretion" on November 1, 2019. The Respondent then refused to pay the Claimant's October invoice.

On November 4, 2019, the Claimant filed this arbitration. Claimant asserts Respondent breached the EMO Contract by failing to pay its monthly invoices for the months of September and October 2019 and by early wrongful termination of the contract. In addition, Claimant asserts entitlement to payments for November 2019 thru April 22, 2020, for breach of its contract based on theories of anticipatory repudiation of contract or breach of contract and violation of federal trademark laws. In addition, the Claimant sought sanctions for violation of a preliminary injunction order entered in this case as well as discovery violations.

Respondents through counterclaims and defenses assert Claimant breached the EMO Contract by not providing invoices with sufficient supporting documents to enable them to comply with South Carolina laws. In addition, Respondent asserts counterclaims for tortious interference with contract, breach of contract, breach of fiduciary duty, an accounting, unjust enrichment, and misrepresentation. Respondent also makes affirmative defenses and asks for monetary damages.

On January 4, 2020, the arbitrator awarded Claimant's motion for preliminary injunction ordering the parties to return to the *status quo ante.* On January 6, 2020, the Respondent made a partial payment to the Claimant of $57,875.91 on its September invoice.

Hearings were held on February 20 and 21, 2020. At the hearing, evidence showed that the Claimant, who was in charge of the management of the School during the July 2018 to July

2019 period, failed to claim $133,708.12 in grant funds available to the School. This failure was not justified under the Claimant's duties under the contract nor was a credible explanation tendered to explain this event. I find the Respondent is due a credit in this total amount for Claimant's breach of duties under the contract. In addition, because the contract language entitles the Respondent for an accounting at its own expense, I find the Respondent is entitled to the remedy of an accounting as ordered below.

At the hearing, evidence showed Claimant's invoices were regularly paid from the beginning of the contract until September 2019. I find this pattern was an accepted course of dealing by both parties in carrying out the contract performance. The failure of the Respondent to pay the September 2019 invoice was contrary to the established course of dealing between the parties and justifies the Claimant's termination of the contract. I find the failure to pay the September 2019 invoice and the presentation of a proposed contract amendment reducing the amount of compensation due to the Claimant to be evidence of anticipatory repudiation of the contract on the part of the Respondent entitling the Claimant to damages for anticipated profits.

Based in part upon the damage calculation prepared by the Claimant which I find credible, Claimant is entitled to damages in the gross amount of $992,850.53 (which already deducted the prior payment made in January 6, 2020), less $133,708.12 credit for Claimant's breach of contract or a total net amount of $859,142.41.

The language of the contract involving termination imposes an affirmative duty of the party terminating the contract to terminate the contract in a "manner least disruptive to the students." I find the manner in which the Claimant terminated the contract met this obligation. I find the manner in which the Respondent terminated the contract failed to meet this obligation. Further, I find there is no credible evidence of a threat to public health and safety which was proximately caused by the Claimant to justify immediate termination of the contract, given the affirmative obligation of the parties to terminate the contract in a manner least disruptive to the students.

Both parties have requested attorneys' fees be awarded in their claims for relief or for sanctions. I find no party forwarded a statutory basis for fees or credible evidence for an award of a specific amount of attorneys' fees. The requests for attorney fees are denied.

For the foregoing reasons, I award as follows:

1. Parties' mutual motions for summary judgment are DENIED.

2. Claimant's amended claim for violation of federal trademark laws was not arbitrable under the language of the contract and is dismissed without prejudice.

3. Claimant's claim for breach of contract from the Respondent is ALLOWED in part and DENIED in part.

4. Claimant's request for sanctions against the Respondent is DENIED.

5. Claimant's claim for breach of contract, breach of fiduciary duty and an accounting by the Claimant is ALLOWED in part and DENIED in part.

6. Respondent's claim for unjust enrichment and misrepresentation is DENIED.

7. The Claimant shall have and recover as damages for breach of contract the sum of $859,142.41.

8. The Respondent is entitled to an accounting from the Claimant as provided in the contract. Claimant is to provide Respondent's accountant with copies and reasonable access to all books and records of Acceleration Academies: to the extent such books and records relate to expenses made by Claimant on behalf of the Respondent from April 2, 2018 until April 22, 2020. Access to such books and records shall begin within 20 days of the payment of the above-said damages by the Respondent to the Claimant. The Respondent shall pay the costs of this accounting. The time and manner the accounting shall be conducted will be as provided for in the contract.

9. The administrative fees of the American Arbitration Association totaling $24,650.00 and the compensation and expenses of the arbitrator totaling $22,158.58 shall be borne equally by the parties.

10. The above sums for damages are to be paid on or before April 22, 2020.

11. This award is in full settlement of all claims and counterclaims submitted to this Arbitration, excepting the Federal Trademark claim by the Claimants. All claims and counterclaims not expressly granted herein are hereby denied.

March 16, 2020
Date

Hon. Robert N. Hunter, Jr., Arbitrator

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	C.A. No. 2019-CP-10-6592 **DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendant South Carolina Public Charter School District ("District") respectfully submits this memorandum in support of its Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(6). As explained below, the grounds for the motion are substantially the same grounds upon which this Court already denied Plaintiff's motion for injunctive relief ("Order Denying Injunctive Relief", attached as Exhibit A). The District incorporates by reference its arguments in opposition to the motion for injunctive relief and findings and conclusions of law stated by this Court in the Order Denying Injunctive Relief. A lengthy hearing previously was held on these issues, and no further hearing should be required.

ARGUMENT

CAA is a public charter school that applied for and received a charter to operate from the District. In accordance with The South Carolina Public Charter School Act of 1996 (the "Act"), the District monitors and oversees the operations of CAA. The District has the authority and obligation to notify CAA of noncompliance and, in statutorily prescribed circumstances, issue

sanctions or revoke the charter of CAA if it fails to comply with the Act, its charter or the statutorily required contract executed by CAA and the District. The Act prescribes certain processes for compliance actions by the District.

CAA's Amended Complaint asserts three causes of action against the District: (1) Breach of Contract; (2) Violation of Due Process; and (3) Declaratory Judgment. CAA asked for injunctive relief, declaratory relief, and monetary damages. This Court has previously denied the request for injunctive relief. The remaining claims and requests for relief should be denied for five separate and independent reasons.

I. Lack of Jurisdiction

Each of CAA's claims should be dismissed because CAA failed to assert them in the proper Court. The Act requires any challenge to a final decision by the District to be filed by a charter school like CAA in the Administrative Law Court rather than the Court of Common Pleas. This Court previously ruled that the Act divests this Court of jurisdiction over these issues when ruling on the motion for injunctive relief. Specifically, in Paragraph 20 of the Order Denying Injunctive Relief, this Court ruled:

> 20. Therefore, the Act divests this Court of jurisdiction to decide this motion.

Plaintiff's claims for breach of contract, lack of due process and declaratory judgment all arise from the same events complained of in the motion for injunctive relief. Further, Plaintiff's claims all arise from decisions of the District that must be challenged in the Administrative Law Court as final actions of the District or before the Department of Education if subject to its administrative processes. *See* S.C. Code Ann. § 59-40-140 (authority of Department to fine related to withheld funds); S.C. Code Ann. § 59-40-90 (requiring charter school to challenge final decision of District in the Administrative Law Court).

This Court correctly ruled it did not have jurisdiction over the request for injunctive relief, and it similarly does not have jurisdiction over any of the remaining claims. The motion to dismiss therefore must be granted as to all causes of action and all relief sought.

II. Immunity of the District

Even if this Court had jurisdiction, the Act provides that the District is immune from liability "with respect to all activities related to the charter school they sponsor." Section 59-40-190(C) states:

> (C) A local school district, sponsor, members of the board or area commission of a sponsor, and employees of a sponsor acting in their official capacity are immune from civil or criminal liability with respect to all activities related to a charter school they sponsor.

Simply put, the District cannot be liable for activities related to the activities of CAA. As a result, CAA's claims for monetary damages should be dismissed.

III. First to Breach

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). CAA was the first to breach the contract between it and the District as a matter of law in two different ways. Each of the alleged breaches CAA set forth in the Amended Complaint at ¶ 45 occurred on or after November 1, 2019. CAA's own breaches established to have occurred in the Injunction Order and in the Arbitration Order both occurred in September and October 2019.

The Order Denying Injunctive Relief at Paragraph 28 finds that CAA "violated the Act and its charter by failing to obtain an approved charter amendment and approved replacement services prior to termination of the management agreement." CAA terminated the management agreement on or about October 31, 2019, prior to any breach alleged by CAA in its Amended

Complaint. *See* Order Denying Injunctive Relief, ¶ 4.

The Arbitration Order at page 3 found that CAA wrongfully terminated the management company and "failed to do so in a manner least disruptive to students." The contract between the District and CAA also requires CAA to terminate the contract in a manner least disruptive to students. *See* Exhibit B at § 4.6(O). Therefore, CAA breached its contract with the District in two different ways before the alleged dates of the breaches in the Complaint.

CAA is estopped from denying the breaches of contract established in the prior Court Orders, including one by this Court. Because those breaches occurred earlier in time than any breach alleged in the Complaint, CAA's breach of contract claim must be dismissed.

IV. No Hearing Request/No Due Process Right

Even if this Court had jurisdiction, all of CAA's claims based on an alleged lack of due process should be dismissed because this Court already has found that CAA was provided notice and an opportunity to be heard at public hearings on November 14, 2019 and December 13, 2019. *See* Ex. A, ¶ 31.

Further, CAA, funded solely by millions of dollars of taxpayer funds annually for the significant duty of serving at-risk youth, is not just any private corporation. Its due process rights, and its duties, are prescribed in the Act. CAA is a very specific kind of nonprofit corporation defined in the Act as a "charter school." *See* S.C. Code Ann. § 59-40-40(1). The Act provides that, "for purposes of state law and the state constitution," charter schools are considered "a public school and part of the South Carolina Public Charter School District [or other entity that sponsors it." *See* S.C. Code Ann. § 59-40-40(2).

In short, CAA is afforded the rights provided to it in the Act, which dictates when and on the particular terms due process should be afforded to CAA. As set forth above, CAA declined to

exercise its statutory rights to challenge the District decisions through the administrative process. It was provided more due process than the Act requires, and the Complaint alleges no violation of any procedural requirement of the Act. CAA's due process claims must be dismissed.

V. Mootness/No Damages/No Claim or Controversy

The Complaint does not allege that CAA ever ceased operations or was not provided any funds to which it was entitled by the District. In fact, CAA continues to operate and will hold its second graduation on Saturday, June 12, 2020. The management company is no longer affiliated with the school. CAA and the management company arbitrated their claims, the federal district court affirmed the award, and CAA is pursuing an appeal of that decision in the Fourth Circuit. None of the arbitration findings include damages that plausibly could have been caused by the District. *See* Exhibit C, Arbitration Order.

Indeed, it is a matter of the record in federal court that CAA had over $1,000,000 in the bank when the United States Marshalls seized the judgment amount from CAA. *See* Exhibit D, Screenshot of Seized CAA Bank Account filed in federal court). If CAA is successful on appeal, they will have shown a significant overage for the past six months. If CAA is not successful on appeal, then they will have paid damages to their management company based on their own wrongdoing identified in the Arbitration Award. Either way, CAA's claims against the District must be dismissed as a matter of law.

CONCLUSION

For the reasons set forth above, the District's Motion to Dismiss the Amended Complaint should be granted, and all claims of the Plaintiff dismissed with prejudice.

HARRELL MARTIN & PEACE, P.A.

/s/ Erik T. Norton

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ATTORNEYS FOR SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Chapin, South Carolina
June 12, 2020.

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	)	C.A. No. 2019-CP-10-6592 **[Proposed] ORDER DENYING PLAINTIFF'S MOTION FOR TRO AND PRELIMINARY INJUNCTION**

This matter is before the Court on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. A hearing was held on this motion on February 12, 2020 at the Charleston County Courthouse. Both Plaintiff and Defendant were represented by counsel at the hearing. After considering the written submissions of the parties and the arguments of counsel, Plaintiff's motion is **DENIED** for the reasons set forth below.

LEGAL STANDARD

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Resources v. Bcs Life Ins. Co.*, 627 S.E.2d 687, 367 S.C. 540 (S.C. 2006). The remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* A plaintiff must prove three elements to receive the drastic remedy of a preliminary injunction: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law.") *Compton v. S.C. Dep't of Corr.,* 392 S.C. 361, 365-67, 709 S.E.2d 639, 642 (2011).

FINDINGS OF FACT

1. Plaintiff Charleston Advancement Academy f/k/a Charleston Acceleration Academy ("School") is a charter school authorized by Defendant South Carolina Public Charter School District ("District") pursuant to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. § 15-40-10 to -240 (the "Act").

2. School's Board voted to terminate the contract with its management company effective immediately on or about October 31, 2019.

3. School's charter required the management company to provide specified educational and operational services in order to educate students attending School.

4. School did not notify District or seek District approval for an amendment to the charter to replace the services provided by management company prior to the School Board's vote to immediately terminate the management company on or about October 31, 2019.

5. On the District's November 14, 2019 regularly scheduled meeting of the District Board of Trustees, School appeared before the District Board of Trustees to seek a charter amendment.

6. The School presented statements to the Board of Trustees in public session and answered questions posed by the District Board of Trustees. However, the School did not present a complete amended charter removing the management company.

7. The District Board of Trustees voted to deny the amendment until a complete charter was presented and required the School to maintain the status quo as it existed as of November 14, 2019 until the District Board of Trustees could consider a complete amendment request.

8. Following the November 14, 2019 District board meeting, the School made several changes, including implementation of a new administrative structure, policies and procedures, school name, by-laws and other changes to the operations of the school.

9. The District sent three letters to the School between November 21, 2019 and December 5, 2019 notifying the School that the changes it was making violated the District Board's requirement that the School maintain the status quo – compliance with the existing charter – and imposed certain sanctions to bring the School into compliance.

10. By letter dated December 6, 2019, the School asked for a meeting with the District Board to discuss these letters, and the District Board granted the School's request.

11. During a special-called public meeting on December 13, 2019, the District Board heard from the School and affirmed its decision to maintain the status quo until a charter amendment was submitted by the School and approved by the District Board.

12. Simultaneous with the proceedings between the School and District, the management company filed arbitration against the School on or about November 3, 2019.

13. The School voluntarily appeared in the arbitration.

14. The arbitrator ruled on January 6, 2020 that the Parties should maintain the status quo, but that the status quo should be maintained as of October 23, 2019, prior to the School's vote to terminate the management contract.

15. The School filed this action seeking a TRO and Preliminary Injunction seeking to enjoin the District from exercising sanctions short of revocation by (1) withholding money from the School and (2) exercising control over the School's contracts and property.

16. The School held a graduation on December 18, 2019 and continues uninterrupted operations at this time.

CONCLUSIONS OF LAW

17. Section 59-40-90 of the Act requires any challenge to a final decision of the District be made to the Administrative Law Court.

18. The Legislature amended the Act in 2006 to remove jurisdiction of appeals from sponsor decisions from the Circuit Court to the Administrative Law Court. *See* 2006 Act No. 274.

19. School's requests for injunction challenge decisions made by the District.

20. Therefore, the Act divests this Court of jurisdiction to decide this motion.

21. Further, Section 59-40-140 of the Act grants the South Carolina Department of Education ("Department") the authority, through its administrative processes, to determine if the District improperly withholds funds from a charter school and fine the District if necessary to obtain improperly withheld funds on behalf of a charter school. The Department did not take any administrative action against the District in this case, even though School reported the issue to the Department and the Department exercised jurisdiction over the issue.

22. Even if this Court did have jurisdiction, School failed to meet its burden of proof to support its motion. The School has not shown the lack of an adequate remedy at law, that it is likely to succeed on the merits or that it is suffering immediate, irreparable harm. *Strategic Resources*, 627 S.E.2d at 687, 367 S.C. at 540 (movant for injunctive relief has burden of proving stated elements).

23. First, the School does not allege that the District is withholding any funding at this time or is in violation of any Department ruling, instead pointing to the threat that the District might do so in the future. However, as noted above, Section 59-40-140 of the Act specifies a statutory remedy for the School if it were to claim the District is withholding funds in violation of the Act in the future.

24. Moreover, the Act requires the District to "supply" or "provide" funds to the School for operations within a specified time, not physically transfer the funds with no oversight or restriction. *See* S.C. Code Ann. § 59-40-55, -140.

25. Therefore, because the Department has authority to enforce the Act's funding requirements and the Act does not state funds must be physically transferred by a certain time, the School has an adequate remedy at law, is unlikely to succeed on the merits and is not suffering irreparable harm.

26. Second, the Act permits the District to issue sanctions short of revocation for violations of the charter or the Act by School. *See* S.C. Code Ann. § 59-40-55(B)(8).

27. The Act requires a charter school to identify management company responsibilities in the charter, and therefore requires the charter school to seek a charter amendment if it terminates the management company to identify how and by whom those responsibilities previously assigned to the management company will be provided. *See* S.C. Code Ann. § 59-40-60(F)(8).

28. The School violated the Act and its charter by failing to obtain an approved charter amendment and approved replacement services prior to termination of the management agreement.

29. By requiring the School to maintain the status quo as of November 14, 2019, the District Board required only that the School comply with the existing, unamended charter until an amended charter with appropriate replacement services for students was approved.

30. The District acted within its statutory authority by issuing sanctions short of revocation when the School made changes altering the status quo without identifying approved replacement services after November 14, 2019.

31. The District provided the School notice and the opportunity to be heard at public hearings on November 14, 2019 and December 13, 2019, consistent with the requests made by the School to amend its charter and for clarification regarding the sanctions issued.

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.

33. Therefore, because the Act allows the District to issue sanctions short of revocation through a specified administrative process including the right to appeal by the School, the School is not without an adequate remedy at law, is not likely to succeed on the merits, and is not suffering irreparable harm.

34. Finally, because an injunction is issued at equity, the School must have clean hands to obtain injunctive relief. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). The School does not have clean hands in this case. The School violated the terms of the Act and its charter by terminating the management company without an approved amended charter. The School also did not maintain the status quo as required by the District Board and delayed submitting a complete request for an amended charter to the District Board of Trustees for at least three months after voting to terminate the management company.

CONCLUSION

For all of the foregoing reasons and all reasons stated on the record at the hearing on this motion, the School's motion is denied.

IT IS SO ORDERED.

_____
Bentley Price
Circuit Court Judge

February ___, 2020
Charleston, South Carolina.

Charleston Common Pleas

Case Caption: Charleston Advancement Academy High School VS South Carolina Public Charter School District

Case Number: 2019CP1006592

Type: Order/Temporary Injunction

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

EXHIBIT B

Charter School Contract

Section One: Introduction and Recitals

This Contract is made and entered into between ***Charleston Acceleration Academy*** *(the "School"), a public charter school organized as a nonprofit corporate entity, and the* ***South Carolina Public Charter School District*** *(the "Sponsor"), from which the School requested its Charter and which granted approval for the School's Charter. School and Sponsor may be collectively referred to as the "Parties."*

1.1 **Reference to the South Carolina Charter Schools Act.** *WHEREAS, the South Carolina General Assembly has enacted the South Carolina Charter Schools Act, S.C. Code Ann. §§59-40-10, and following, for certain purposes as enumerated in S.C. Code Ann. §59-40-20.*

1.2 **Reference to the submission date of the charter application.** *WHEREAS, on February 1, 2017, an Application was submitted by the planning committee of the School for formation of a public charter school as a school of the Sponsor.*

1.3 **Reference to approval date.** *WHEREAS, on May 20, 2017, the Sponsor approved the School's charter application and granted the School a charter ("Charter") for an initial term of ten years; NOW THEREFORE, in consideration of the foregoing recitals and the mutual understandings and covenants contained herein, the Parties agree as set forth below.*

1.4 **Reference to previous agreement(s).** *The Charter and the Charter application along with all attachments and exhibits thereto, as may be amended by written agreement of the Parties, are incorporated into this agreement by reference.*

Section Two: Establishment of School

2.1 **Term.** *In accordance with S.C. Code Ann. §59-40-110(A), the term of the Charter is ten years, beginning on July 1, 2017. This Contract is effective as of the date of execution and shall terminate on June 30, 2027, unless terminated sooner pursuant to Section 12.3, 12.4, or 12.5 of this Contract.*

2.2 **Legal status.** *The School is incorporated as a South Carolina non-profit corporation. The School shall continue to operate as a South Carolina non-profit corporation during the term of this contract and shall assure that its operation is in accordance with its articles of incorporation and by-laws. The School shall notify the Sponsor promptly of any change in its corporate status.*

The School is organized and maintained as a separate legal entity from the Sponsor for all purposes of this Contract. Pursuant to S.C. Code Ann. §59-40-40 (4), the Sponsor is the School's Local Education Agency (LEA) and the School is a school within that LEA. As such, unless otherwise provided in the Charter School Act, the School is exempt from all provisions of state law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations. Notwithstanding the above, the School must comply with all Sponsor policies and procedures,

as amended from time to time consistent with state law, the Charter and this Agreement, as well as all federal statutes and regulations applicable to public schools.

2.3 **Pre-opening conditions.** *In order to operate during the 2018-2019 school year, the School must satisfy all of the Pre-Opening Conditions within the timelines set forth in the attached Pre-Opening Conditions Checklist, which is incorporated herein by reference. In addition, the School must participate in a pre-opening/preparedness visit by SCPCSD staff to assist with determination of the School's readiness to open. These timelines may be modified only by written agreement of the Parties.*

The Parties agree that failure to comply with the conditions and timelines outlined in the Pre-Opening Conditions Checklist or failure to participate in the pre-opening visit constitutes a material breach of the Agreement and is grounds for revocation of the Charter.

Section Three: Sponsor/School Relationship

3.1 Sponsor responsibilities, roles, powers, and performance expectations.

Pursuant to S.C. Code Ann. §59-40-40 (4), the Sponsor is the School's Local Education Agency (LEA) and the School is a school within that LEA, in accordance with the South Carolina Charter School Act of 1996.

A. Oversight and monitoring. *In accordance with S.C. Code Ann. § 59-40-55, the Sponsor shall:*

i. adopt national industry standards of quality charter schools and shall authorize and implement practices consistent with those standards;

ii. monitor, in accordance with the terms of the Contract, the performance and legal/ fiscal compliance of the School to include collecting and analyzing data to support ongoing evaluation according to the Contract;

iii. conduct or require oversight activities that enable the Sponsor to fulfill its responsibilities outlined in the law, including conducting appropriate inquiries and investigations, only if those activities are consistent with the law, adhere to the terms of the contract, and do not unduly inhibit the autonomy granted to public charter schools;

iv. collect in accordance with S.C. Code Ann. 59-40-140(H), an annual report from the School and submit the report to the South Carolina Department of Education (SCDE) by the date set forth by the SCDE;

v. notify the School of perceived problems when its performance or legal/fiscal compliance is unsatisfactory and provide a reasonable opportunity for the school to remedy the problem, unless the problem warrants immediate revocation and revocation timelines apply;

vi. take appropriate actions and exercise sanctions short of revocation in response to deficiencies in School performance or legal/fiscal compliance. These actions or sanctions may include requiring the School to develop and execute a corrective action plan within a specified timeframe;

vii. determine whether the School's Charter merits renewal, non-renewal, or

revocation; and

viii. permanently close the School at the conclusion of the school year should the School receive the lowest performance level rating as defined by the federal accountability system for three consecutive years in accordance with 59-40-110(E).

B. **Access to records and right to review and inspect.** *The Sponsor has the right to inspect and review all School records established and maintained in accordance with the provisions of this Contract, State Board of Education (SBE) policies and regulations, and federal and state statutes, laws and regulations. The School has a duty to cooperate in making such School records and other information available in a timely manner upon request from the Sponsor. School records shall be open to inspection and review at no cost to the Sponsor and notwithstanding whether the School paid for the records or data included in the records. No formal request, including but not limited to requests pursuant to the Freedom of Information Act (FOIA) or the Family Educational Rights and Privacy Act (FERPA), shall be required. Sponsor is an authorized user of all student records, including but not limited to all documents covered by FERPA. Information that must be made available for review and inspection includes, but is not limited to, the following:*

i. School records including but not limited to student cumulative files, policies, and files related to special education and related services;

ii. Financial records;

iii. Records related to School's educational program including but not limited to curriculum, testing, discipline, special education, student life, extracurricular activities and the like;

iv. Personnel records, including but not limited to evidence of credentials and qualifications;

v. Evidence that criminal background checks of all school personnel have been conducted prior to hiring;

vi. School's operations, including, but not limited to, health, safety and occupancy requirements; and

vii. The Sponsor may make announced or unannounced visits to inspect the facility, interview personnel, or otherwise fulfill its oversight responsibilities.

viii. Sponsor shall ensure the privacy and protection of all the records and information made available pursuant to this section, including but not limited to, private student information protected under FERPA. School acknowledges that Sponsor has a legitimate educational interest in the records and information of students enrolled at School.

C. **Access to data and information**. *The Sponsor shall timely provide the School with access to any data and information pertaining to the School that it receives from the State or other sources, including but not limited to test scores, federal and state accountability data, special education data, student enrollment data, and funding information.*

3.2 School responsibilities, roles, powers, and performance expectations

The School must fulfill all duties and may exercise all powers as set forth in S.C. Code Ann. §59-40-50(B), which is incorporated herein by reference. As part of fulfilling its duties and in order to enable the Sponsor to carry out its oversight and monitoring responsibilities, the School agrees to the following:

A. **Records.** *The School agrees to comply with all federal, state, and Sponsor record-keeping requirements including those pertaining to students, governance, and finance. This includes maintaining up-to-date information about enrolled students in the Sponsor's student information system (SIS). In addition, the School shall ensure that records for students enrolling in other schools are transferred in a timely manner. Financial records shall be posted in accordance with the South Carolina Accounting Handbook, the Funding Manual, and the South Carolina Audit Guide published by the SCDE and reconciled at least monthly.*

B. **Access to records.** *The School shall maintain all records, including but not limited to those referenced in this Section and Section 3.1(B) of this Contract, at the School. School records shall be open to inspection, audit and review upon request by Sponsor and at no cost to Sponsor (except for the reasonable cost of copying if required by Sponsor), and except as may be limited by applicable state and federal laws, statutes and regulations.*

C. **Notification provided to the Sponsor.** *The School shall as soon as reasonably practical, and in no event longer than ten days, provide written notice to the Sponsor (and other appropriate authorities) in the following situations:*

i. *The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law;*

ii. *Any complaints filed against the School by or with any governmental agency or in any court of law;*

iii. *Conditions that may cause it to vary from the terms of this Contract, applicable Sponsor requirements, federal, and/or state laws, statutes, and regulations;*

iv. *Any circumstance requiring the lockdown of the School or the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the School facility;*

v. *The arrest of any members of the board of the School or School employees for a crime punishable as a felony or any crime related to the misappropriation or theft of funds;*

vi. *Misappropriation of funds;*

vii. *An alleged default on any obligation, which shall include debts for which payments are past due by sixty (60) days or more;*

viii. *Any change in its corporate status with the South Carolina Secretary of State's Office as a non-profit corporation;*

ix. *Any material change in insurance coverage;*

x. *Any change to the membership of the board or any changes to officers and*

directors;

xi. *Any change to school administration; and*

xii. *Any changes in the by-laws of the nonprofit corporation.*

D. **Academic achievement.** *In accordance with S.C. Code Ann. §59-40-111(F), the School, as an Alternative Education Campus (AEC), shall be held to all applicable state and federal accountability standards along with the performance standards and expectations as defined in the Charter and Contract, as measured by performance frameworks or similar models as may be adopted by the Sponsor which take in to account the School's specialized mission and student population with comparisons to any nationally normed data with similar subsets of students and is included in the School's annual report, and school report card as compiled by the Education Oversight Committee. In accordance with SBE Regulation 43-601, as may be amended from time to time, the school also shall demonstrate pupil achievement and progress towards the accomplishments of the School's achievement standards.*

E. **Indemnification.** *Pursuant to S.C. Code Ann. §59-40-60(F)(15) and SBE Regulation 43-601, the School shall assume the liability for the activities of the School and agrees to indemnify and hold harmless the Sponsor, its servants, agents, and employees from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property or otherwise that arises out of the act, failure to act, or negligence of the School, its agents and employees, in connection with or arising out of the activity of the School.*

F. **Insurance.** *The School must maintain liability insurance in accordance with S.C. Code Ann. §59-40-60(F)(16) and SBE Regulation 43-601. A current Certificate of Insurance shall be provided upon request by Sponsor.*

G. **Compliance reporting.** *As set forth in S.C. Code Ann. §59-40-50(B), the School shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all statewide public schools. Accordingly, the School shall timely provide to the Sponsor any reports necessary and reasonably required for the Sponsor to meet its oversight and reporting obligations. Required reports include, but are not limited to, those listed below and must be in the form required by Sponsor.*

i. *The School shall annually provide the District with an Annual Report by December 31. In accordance with S.C. Code Ann. §59-40-140(H), the report shall include all information required by the Sponsor and/or the SCDE and shall include, at a minimum: 1) the number of students enrolled in the School from year to year; 2) the success of students in achieving the specific educational goals for which the School was established; 3) an analysis of achievement gaps among major groupings of students in both proficiency and growth; 4) the identity and certification status of the teaching staff; 5) the financial performance and sustainability of the School; and 6) School board performance and stewardship, including compliance with applicable laws.*

ii. *The School shall provide the District with a copy of its annual independent audit by the due date as determined by the Sponsor.*

iii. *The School shall maintain accurate and up-to-date student records in the SIS as determined by the Sponsor. Data supplied to the Sponsor shall fulfill all federal and state reporting requirements and deadlines. Data and documents submitted to the Sponsor shall be in formats compatible with those used by the Sponsor*

and approved by the Sponsor. The School shall employ or contract for appropriately qualified staff to maintain student records in the SIS. Said staff shall participate in data management training provided by the Sponsor and demonstrate competencies in data management as prescribed by the Sponsor.

iv. *By June 15th of the first calendar year of operation and each subsequent calendar year, the School shall provide the Sponsor with a school calendar setting forth the days the School will be in session.*

v. *By July 1st each calendar year, the School shall provide the Sponsor with its emergency/safety plan and submit the report required by the Department of Health and Environmental Control (DHEC) at the same time it is submitted to DHEC and in accordance with DHEC timelines.*

H. **Electronic communications and data management systems.** *The School shall adhere to the Sponsor's acceptable use policy to access Sponsor network resources.*

Section Four: Governance

4.1 **Governance.** *The School's articles of incorporation and by-laws shall not conflict with the School's obligation to operate in a manner consistent with this Contract and the Charter. Similarly, the policies of the School's governing board shall provide for governance of the operation of the School in a manner consistent with this Contract and the Charter.*

4.2 **Governing board.** *The School's governing board shall operate in accordance with the School's articles of incorporation and by-laws. The School shall ensure that the governing board membership is consistent with the requirements outlined in S.C. Code Ann. §59-40-50(B)(9). Additionally, the School, in accordance with S.C. Code Ann. §59-40-155(A), shall ensure that within one year of taking office, all persons elected or appointed as members of its board shall successfully complete an orientation program in the powers, duties, and responsibilities of a board member including, but not limited to, topics on policy development, personnel, instructional programs, school finance, school law, ethics, and community relations.*

4.3 **Transparency.** *In accordance with S.C. Code Ann. §59-40-50(B)(10), both the School and its governing board shall be subject to the Freedom of Information Act. In addition, the governing board of the School shall notify the Sponsor in writing of any regular meeting of the board at least forty-eight (48) hours prior to the date on which such meeting is to occur and shall conduct all meetings consistent with the Freedom of Information Act. The School shall also ensure that its governing board adopts and strictly enforces a conflict of interest policy and that all board policies, meeting agendas, minutes, and related documents are readily available for public inspection.*

4.4 **Conflict of interest.** *The School's governing board shall be required to adopt a conflict of interest policy and a code of ethics consistent with South Carolina Code of Laws, Chapter 13, Title 8. The conflict of interest policy and the code of ethics must provide that an individual is prohibited from serving as a member of the charter school board of directors if: (i) the individual, an immediate family member, or the individual's*
partner is a full or part owner or principal with, or employee of, a for-profit or non-profit entity or independent contractor with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities; or (ii) an immediate family member is an employee of the School.

4.5 **Parental, educator, and community involvement.** *The School shall ensure parental, educator, and community involvement in accordance with the Charter. The School shall also ensure that its governing board consists of at least 50% of its members elected by parents and*

employees of the school as required by S.C. Code Ann. §59-40-50(B)(9).

4.6 Contracting with an Education Management Organization (EMO) or Charter Management Organization (CMO). *The School may contract with an EMO or CMO approved by the District board of trustees to provide certain services to the School. The School may do so provided that the Contract between the School and the EMO/CMO must be approved in advance by Sponsor and must comply with the following requirements*:

A. *No provision of the EMO/CMO contract shall interfere with the charter school board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the School;*

B. *No provision of the EMO/CMO contract shall conflict with the School's Charter, this Contract, Sponsor policy at the time the EMO/CMO contract was entered into, or state and federal statutes, laws and regulations;*

C. *The EMO/CMO contract shall not restrict the charter school board from waiving its governmental immunity or require a charter school board to assert, waive or not waive its governmental immunity;*

D. *The EMO/CMO Contract must provide that all funds received by the school belong to the school and not the EMO/CMO;*

E. *The EMO/CMO contract must provide that the financial, personnel, educational and student records pertaining to the School are the School's property, must be maintained or readily available in a timely manner (physically or virtually) at the School's physical location, and are subject to disclosure pursuant to the provisions of South Carolina's Freedom of Information Act;*

F. *The EMO/CMO Contract must provide that any equipment, materials and supplies purchased by the EMO/CMO for use by School (excluding EMO/CMO equipment, materials, and supplies) are property of the School, and the EMO/CMO shall not charge any added fees or other costs related to procurement of such equipment, materials or supplies; provided however, that the School may lease equipment from the EMO/CMO or purchase equipment from the EMO/CMO on credit as long as any lease or credit arrangement is recorded as a liability in the School's accounting records.*

G. *The EMO/CMO Contract must identify any curriculum or educational materials for which the EMO/CMO claims ownership or proprietary rights;*

H. *The EMO/CMO Contract must include a provision identifying any deficit credits or other expenditure of funds that may be required to be repaid by the School as indebtedness by School to the EMO/CMO and that such deficit credits or funds to be repaid represent indebtedness by the School to the EMO/CMO and are not income to the School or to Sponsor;*

I. *The EMO/CMO contract must not require the repayment of deficit credits as a condition of renewal, or promise to forgive deficit credits as a condition of renewal, and must provide that the issuance of deficit credits require the agreement of the School;*

J. *The EMO/CMO Contract must state that the CMO is not a third party beneficiary of the Charter or the School's contract with Sponsor;*

K. *The EMO/CMO Contract must provide that School's board will select and retain an independent accounting firm to perform an annual financial audit.*

L. *The EMO/CMO Contract must require that all EMO/CMO records related to School be available to School's independent auditor and must require the EMO/CMO to cooperate with School's independent auditor.*

M. *The EMO/CMO Contract must contain insurance and indemnification provisions outlining the coverage the EMO/CMO will obtain, which shall be separate from and in addition to the insurance purchased by School as set forth in the Charter Application and as required by S.C. Code Ann. § 59-40-190.*

N. *The EMO/CMO Contract shall provide that the marketing plan provided by the EMO/CMO is approved by the Governing Board.*

O. *The maximum term of the EMO/CMO Contract must not exceed the term of the Charter, and must provide that the EMO/CMO Contract automatically terminates upon revocation or termination of the Charter. The EMO/CMO Contract must contain a provision permitting the School to terminate the contract due to unsatisfactory performance by the EMO/CMO. The EMO/CMO Contract must also contain a provision permitting the School to terminate the contract on the grounds that School's governing board has determined that a superior curriculum-EMO/CMO alternative is available and such curriculum-EMO/CMO alternative has been approved by a proper amendment to the Charter and this Charter School Contract. The EMO/CMO Contract must provide that termination be made 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. The EMO/CMO Contract shall not require advance notice of termination or non-renewal that exceeds 180 days' notice.*

P. *The EMO/CMO must provide information to the Board regarding any loan or other financial arrangement, including the issuance of deficit credits, before the School incurs any financial obligation to the EMO/CMO, and the Board must present this information to the Sponsor for review.*

Q. *The Governing Board must develop and implement an annual evaluation process by which School evaluates the EMO/CMO using specific academic performance measures aligned with the Charter, Sponsor policy and federal and state performance standards. The process must include methods for addressing unsatisfactory performance.*

R. *The EMO/CMO Contract must include a provision requiring the School to maintain sufficient funds in its budget for at least the following: independent legal counsel, an independent auditor, and sufficient funds to hire staff or other consultants necessary to oversee the performance of the School.*

S. *If the EMO/CMO is related by common ownership to an entity that owns or controls the facilities, the EMO/CMO Contract mush include a provision that (1) provides a procedure to ensure that that the amount paid for rent or to financing a facilities purchase is a fair market price throughout the life of the EMO/CMO Contract; (2) provides that any lease will include an option to purchase on terms that are competitive and fiscally advantageous to the School; (3) provides that the lease or purchase of the facilities may continue, at the School's option, beyond termination of the EMO's/CMO's services; and (4) provides for an appropriately competitive procedure for procuring any design or construction services related to the facilities.*

Section Five: Operation of School and Waivers

5.1 Operational powers. *The School must limit operations to activities within the scope of the*

mission set forth in its articles of incorporation and the Charter.

5.2 Transportation. *If providing or contracting for transportation, the School will comply with all state safety requirements for buses and all state safety and training requirements for drivers.*

5.3 Food services. *If providing or contracting for food services, the school will comply will comply with all applicable state health and safety requirements.*

5.4 Rehabilitation and Related Services. *[Not Applicable]*

5.5 Waivers. [Reserved]

Section Six: School Enrollment and Demographics

6.1 School grade levels. *In accordance with its Charter, which is expressly incorporated by reference, the School will serve students in grades 9-12 for its first year of operation and for the remainder of its charter. The School shall not be permitted to modify the grade levels it serves without prior written approval of the Sponsor.*

6.2 Student demographics. *School demographics are expected to be similar to that of the local school district in which the* School *is located or of the targeted student population as set forth in the Charter, differing by no more than twenty percent.*

6.3 Maximum and minimum enrollment. *The School may not exceed the projected enrollment as set forth in the Charter without express written permission of Sponsor. The Sponsor may limit enrollment to less than the projected enrollment amount based on available funding or school performance.*

6.4 Eligibility for enrollment. *The School has been granted the status of AEC pursuant to S.C. Code Ann. §59-40-111(A0(2). As an AEC, the School may limit enrollment to only those students it intends to serve, namely students with very specific educational and/or medical criteria covered by an individual education program. The School shall admit students in accordance with S.C. Code Ann. §59-40-111 and as permitted or required by state and federal statutes, laws and regulations.*

6.5 Enrollment procedures, priority enrollment, and dates of the enrollment period. *The School shall follow enrollment procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws and regulations. In accordance with S.C. Code Ann. §59-40-55(A)(10), the School shall notify the Sponsor of its enrollment procedures and dates of its enrollment period no less than sixty (60) days prior to the first day of each enrollment period.*

6.6 Admission policies and procedures, including lottery procedures. *The School shall follow the admission and lottery procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws, regulations, and Sponsor policy. Any decision to deny admission to a student may be appealed to the Sponsor, as set forth in §59-40-50(C)(1).*

6.7 Discipline and expulsion procedures. *The School shall follow discipline and expulsion procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws, regulations, and Sponsor policy.*

Section Seven: Educational Program

7.1 Mission. *The School's mission, as set forth in the Charter, is "to provide a comprehensive education to 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 positive impact in their community." The School's governing board shall operate the School in a manner consistent with the mission statement. Revisions to the mission statement or general implementation thereof shall be considered a material change to the Charter and Contract and shall require prior written approval of the Sponsor.*

7.2 Goals, objectives, and pupil achievement standards. *The School shall meet the academic performance standards and expectations as defined in the Charter and Contract. Whether the School has met its goals, objectives, and pupil achievement standards, will be determined by the Sponsor's annual evaluation/review of the School, and the implementation of any performance frameworks implemented by the Sponsor and provided to School. The specific form, terms, indicators, metrics, measures, and targets, used in the performance framework and the Sponsor's annual evaluation/review of the School, which shall be disseminated by the Sponsor and will be binding on the School. In addition, components and requirements of the performance framework and annual evaluation/review may be modified or amended from time to time by the Sponsor as long as it is consistent with state law, federal law, the Charter and this Agreement. The Sponsor will solicit input from the School on the performance framework and its components.*

7.3 Description of the school's educational program. *The School shall implement the educational program as outlined in the Charter.*

7.4 Curriculum. *The School shall implement the curriculum outlined in the Charter. The School's curriculum shall meet or exceed any content standards adopted by the SBE and the Sponsor and shall be designed to enable each student to achieve these standards.*

7.5 Plan for evaluating pupil achievement and progress. *The School shall evaluate pupil achievement and progress as outlined in the Charter. Pupil achievement and progress shall be evaluated by the Sponsor in accordance with the Sponsor's annual evaluation/review of the School, the implementation of any performance frameworks implemented by the Sponsor, and industry standards and practices.*

7.6 Graduation requirements. *The School shall comply with state laws and regulations in order to meet requirements for students to earn a State-issued high school diploma.*

7.7 Education of students with disabilities. *The School shall serve students with disabilities as required by state and federal statutes, laws, regulations, and Sponsor policies. The Sponsor is responsible for serving as the Local Education Agency ("LEA") as defined by state and federal statutes, laws and regulations. If, for any reason, it is determined by any competent authority (including but not limited to a duly constituted IEP Team as defined by the Individuals with Disabilities Education Improvement Act ("IDEA")), that the School is not capable of serving a student with disability as required by law, the Sponsor may enter into agreements with third parties, including other school districts, to provide services to the student at the School's expense; provided however, that in no event shall the School's expense exceed the amount of state and federal funds allocated to the school for the student being served by the third party.*

7.8 English language learners. *The School shall provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to progress academically. The School shall adhere to the Sponsor's procedures for identifying, assessing, and exiting English language learners.*

7.9 **Homeless, Migrant and Foster Care Students.** *The School shall provide staff, resources and support to homeless, migrant and foster care students as required by Sponsor policy, state law and federal law.*

7.10 **State Mandated Testing.** *The School shall ensure that all requirements for testing mandated by state or federal governments are met for each enrolled student.*

Section Eight: Financial Matters

8.1 **Budget**. *The School must use the same budget codes as are required of school districts in the State. The budget shall be based on documented SCDE estimated revenues in accordance with the allocations in S.C. Code Ann. § 59-40-140(A)-(C). The School shall establish and maintain a positive ending net asset balance at the end of each fiscal year as evidenced in its audited financial statements as well as adequate operating reserves in order to avoid possible financial hardships. For purposes of calculating the net asset balance, deficit credits shall be included as a liability on the balance sheet of the School. When determining the reserve amount, the School shall take into account such factors as the School's mission and long-term strategy, current and future commitments and day-to-day operating costs. On or before April 30th of each year, the School shall submit to the Sponsor the School's proposed budget for the upcoming school year, with the School's final budget submitted to the Sponsor by July 31st.*

8.2 **Audits.** *Pursuant to S.C. Code Ann. §59-40-50(B)(3), the School shall adhere to the same financial audits, audit procedures, and audit requirements as are applied to all other public schools. Sponsor may audit School records at any time. In addition, the School shall obtain at its expense and submit to the Sponsor an independent annual audit from a qualified auditing or accounting firm of all financial records. The audit and its findings shall be submitted in hard and electronic copy to the Sponsor by November 1 of each year for inclusion in the Sponsor's report to the SCDE. The School shall provide the Sponsor with contact information of the School's auditor (i.e. name, address, phone numbers and email address).*

8.3 **Revenues.** *The School shall record revenues in accordance with the South Carolina Department of Education's Accounting Handbook and Funding Manual.*

8.4 **Disbursement of per pupil revenue.** *The Sponsor shall provide 100 percent of the per pupil state revenues to the School minus the following: no more than two percent of the total state appropriations to cover the costs of overseeing the charter school, as provided by law, and deductions for purchased services and/or expenditures of the charter school that are paid at the Sponsor level.*

A. *Pursuant to S.C. Code Ann. §59-40-140(B), the District shall receive and distribute state funds to the School as provided by the General Assembly on a monthly basis beginning in July of the School's fiscal year of operations.*

B. *Pursuant to S.C. Code Ann. §59-40-140(C), the Sponsor shall during the School's fiscal year of operation, as received, and to the extent allowed by federal law, distribute to the School federal funds which are allocated to the Sponsor on the basis of the number of special characteristics of the students attending the School. These amounts must be verified by the SCDE before the first disbursement of funds.*

C. *Pursuant to S.C.Code Ann. §59-40-140(D), the Sponsor shall distribute within 10 business days after receipt of federal or state categorical aid funds, the proportional share of each categorical fund for which the School qualifies unless the Board of Trustees has voted to revoke or non-renew the School or in any circumstance in which the District has been directed not to distribute the funds by another legislative, administrative or judicial body.*

8.5 **Enrollment projections.** *Material changes in the School's enrollment shall be reported to the Sponsor. Any adjustments to enrollment, other than those outlined in the Charter must be presented to the Sponsor for review and approval.*

8.6 **Liability.** *Pursuant to S.C. Code Ann. §59-40-190, the Sponsor is not liable for any of the debts of the School.*

8.7 **Monthly and quarterly reporting.** *The School shall be responsible for entering a monthly upload of all financial transactions in the format prescribed by the Sponsor by the 10th day of the subsequent month and a yearly upload of the audited adjustments by November 15th. In addition, the School shall be responsible for submitting a quarterly financial statement in the format prescribed by the Sponsor by the 15th day of the month following the end of each quarter. The Parties agree that it is the responsibility of the Sponsor to use any financial information it obtains, including reports and audits, to monitor the fiscal condition and compliance of the school.*

8.8 **Non-commingling**. *Assets, funds, liabilities, and financial records of the School shall be kept separate from assets, funds, liabilities, and financial records of any other person, entity or organization.*

8.9 **Accountability.** *Financial Resources are to be allocated, expended, and accounted for in accordance with accounting practices specified in the Financial Accounting Handbook, Funding Manual, the Audit Guide, and the Pupil and Staff Accountability Manual.*

8.10 **Contracting, encumbrances and borrowing.** *Any contracts and/or leases entered into by the School, entered into after the date this contract is signed shall contain the following sentence: "No indebtedness of any kind incurred or created by the School shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the School shall involve or be secured by the faith, credit or taxing power of the State or its political subdivisions." The School shall not extend the faith and credit of the Sponsor to any third person or entity. The School acknowledges that it has no authority to enter into a Contract that would bind the Sponsor, and the School's authority to contract is limited by the same provisions of law that apply to the Sponsor. Unless otherwise agreed in writing by the Sponsor, each contract or legal relationship entered into by the School will include the following provisions: a) The contractor acknowledges that the School is not an agent of the Sponsor, and accordingly contractor expressly releases the Sponsor from any and all liability under this agreement. b) Any financial obligations of the School arising out of the agreement are subject to annual appropriation by the Sponsor.*

8.11 **Loans.** *No loans may be made by the School to any person or entity for any purpose.*

8.12 **Gifts and donations.** *Awards, grants or gifts may be accepted by the School and its governing body to the extent allowed by S.C. Code Ann. §59-40-140(F) and (G). The School shall report to the Sponsor in its annual audit report all gifts, donations, or grants it receives in accordance with S.C. Code Ann. § 59-40-50(B)(3) and §59-40-140(G).*

8.13 **Non-appropriation of funds.** *The Sponsor's funding obligations under this Contract will be from year-to-year only and will not constitute a multiple fiscal year direct obligation of the Sponsor. The Sponsor's obligation to fund the School will terminate upon non-appropriation of funds for that purpose by the General Assembly for any fiscal year, any provision of this Contract to the contrary notwithstanding. The Parties further agree that the Sponsor has not irrevocably pledged and held for payment sufficient cash reserves for funding the School at or*

above the current year per pupil allocation or for providing services described herein for the entire term of the Contract.

8.14 **Inventory of fixed assets.** *The School shall arrange for an inventory of fixed assets, including furniture and equipment utilized by the school in its operations and including the identity of the owner of the furniture and equipment. The inventory shall include the purchase price and serial number of all fixed assets. The inventory shall occur annually. The School shall ensure that its lead administrator maintains the inventory on file is his/her office. The School shall provide a copy of the furniture and equipment inventory to the Sponsor's Finance Office for accounting purposes.*

8.15 **Expenditure of Federal Program Funds.** *The School shall follow District, state and federal policies regarding the expenditure of federal program funds. The School shall operate its federal programs as required by the Office of Management and Budget (OMB) for federal award programs entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Super Circular) codified at 2 CRF 200.*

Section Nine: Personnel

9.1 **Employee and contractor status.** *The School shall adopt and implement personnel policies to address, among other topics, the hiring, evaluation, and termination of employees, terms of employment and compensation consistent with the provisions of the Charter. All employees will be employees of the School, and not the Sponsor. All employees will be employees at will, subject to SBE Reg 43-601(III)(M). All employee discipline decisions will be made by the School. Other terms of the employment relationship shall be described in an Employee Handbook, as set forth in the Charter.*

9.2 **Background checks.** *The School shall establish and implement procedures for conducting background checks (including a check for a criminal record) of all employees and contractors to the extent required by applicable law, rules, and regulations. No teacher or administrator with a criminal record that would ordinarily preclude such individuals from obtaining a teacher license or from public school employment will be employed at the School or contracted with to provide services at the School.*

9.3 **Staff evaluation procedures.** *The School shall employ procedures for the evaluation of staff as outlined by the Charter and required by state and federal statutes, laws and regulations.*

9.4 **Grievance and termination procedures.** *The School shall adopt the procedures for employment and dismissal of teachers set forth in its Charter application and consistent with the requirements set forth in SBE Regulation 43-601(III)(M). The School shall include language in any employee handbooks and teacher contracts providing that the provisions of Article 5, Chapter 25, Title 59 of the South Carolina Code (Teacher Employment and Dismissal Act) do not apply to the employment and dismissal of teachers at the School.*

9.5 **Certification.** *In accordance with S.C. Code Ann. §59-40-50 (B)(6), the School shall hire or contract for at least one administrative staff member certified or experienced in the field of school administration. Pursuant to S.C. Code Ann. §59-40-50 (B)(5) and SBE Reg 43-601 II (H), the School's teachers of core academic areas shall be certified in their respective areas or hold a bachelor's or graduate degree in those areas.*

9.6 **Non-discrimination.** *It shall be the policy of the School to make all decisions regarding recruitment, hiring, promotion, and all other terms and conditions of employment without regard to race, color, creed, religion, sex, national origin, age, disability, or other factors which cannot lawfully be the basis for an employment decision. The School shall follow all federal and state statutes, laws, and regulations regarding non-discrimination and enact specific policies and*

procedures consistent with those statutes, laws, and regulations. The School shall post on its website and any document it publishes for public consumption the name of the School employee to whom inquiries regarding the non-discrimination policies shall be made and the following notice: "The (name of the School) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups." For further information on federal non-discrimination regulations, including Title IX, individuals may contact the Assistant secretary for Civil Rights at OCR.DC@ed.gov or call 1-800-421-3481.

Section Ten: Service Contracts with the Sponsor

10.1 Direct costs. *Not applicable.*

10.2 Sponsor services. *Not applicable.*

Section Eleven: Facilities

11.1 Facility. *The School shall ensure that it maintains facilities in compliance with all applicable local, state, and federal laws and regulations, including but not limited to those relating to accessibility and student safety. The School shall satisfy all permit, life, safety, and inspection requirements of the SCDE/Office of School Facilities (OSF).*

11.2 Construction, renovation, and maintenance of facilities. *The School shall be responsible for the construction, renovation, and maintenance of the facilities in accordance with the latest edition of the South Carolina School Facilities Planning and Construction Guide. The School shall obtain prior approval of the OSF for all work to facilities. The School shall also obtain an inspection and the approval of the OSF before occupancy and use.*

Section Twelve: Charter Renewal, Revocation, Automatic Closure, and School-Initiated Closure

12.1 Renewal timeline and process. *Pursuant to S.C. Code Ann. §59-40-110 (B), the School shall submit a charter renewal application to its sponsor one hundred and twenty calendar days before the end of the school year for term of the charter contract. The Parties agree that this language in the statute regarding the timing of submissions of renewal applications is ambiguous and is insufficient for the Parties to determine when the Legislature intended for the application to be submitted. Therefore, the School agrees to submit its Renewal Application by January 1, 2027. Sponsor will provide written notice of its decision to revoke or not renew on or before March 1, 2027. The School may request a hearing with regard to a decision not to renew the Charter within fourteen (14) days of receipt of the notice of non- renewal. After receipt of a timely request for a hearing, the Sponsor shall schedule a hearing before taking final action. The Sponsor shall take final action to renew or not renew a Charter by the last day of classes in the last school year for which the charter school is authorized. If the School fails to submit the renewal application by January 1, 2027, then the School agrees that the Charter will expire on June 30, 2027, and the School will dissolve in accordance with Section 59-40-120 upon expiration of the Charter on June 30, 2027. The dates outlined in this section are subject to amendment to comply with any future statutory changes to the South Carolina Charter School Act of 1996.*

12.2 Renewal application content. *The renewal application must contain (1) a report on the progress of the School in achieving the goals, objectives, pupil achievement standards, and other terms of the initially approved charter application; (2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the School that is understandable to the general public and that allows for comparison of these costs to other*

schools or other comparable organizations, in a format required by the SBE; and 3) any proposed material changes to the Charter or Contract to be implemented in the next ten year charter term. The format of the renewal application shall be provided to the School by the Sponsor at least one year before the renewal application is due or by the date prescribed by the Sponsor of the year in which the application is due. The Sponsor may modify this format, but shall not do so prior to seeking input from the School. Failure to submit a renewal application is deemed to be conclusive evidence that the School has agreed to closure.

12.3 **Criteria for renewal, nonrenewal, and revocation.** *The Sponsor must revoke or not renew the School's Charter for any of the grounds provided by S.C. Code Ann. §59-40-110 (C), as they exist now, or may be amended. In accordance with S.C. Code Ann. §59-40-110(D), the Sponsor may summarily revoke the School's Charter if it determines that the School poses an imminent threat of harm to the health or safety of students, or both, based on documented and clear and convincing data.*

12.4 **Criteria for automatic closure.** *S.C. Code Ann. §59-40-110(E) is not applicable to the School, as an AEC, so long as it serves fifty percent or more students with disabilities or is otherwise designated as an AEC. If the School is no longer an AEC, in accordance with S.C. Code Ann. §59-40-110(E), the School shall automatically and permanently close at the conclusion of the school year in which the School first becomes subject to automatic closure for receiving the lowest performance level rating as defined by the federal accountability system for three consecutive years. The determination of closure is final and the School does not have the right to a notice or a hearing if the criteria for automatic closure is met.*

12.5 **Revocation/nonrenewal and hearing procedures.** *In accordance with S.C. Code Ann. §59-40-110(F), at least sixty days before not renewing or terminating a charter school, the Sponsor shall notify in writing the School board of the proposed action. The notification shall specify the grounds for the proposed action in reasonable detail. Pursuant to S.C. Code Ann. §59-40-110(H), the School board may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or revocation of the Charter. Failure of the School board to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the School board of the hearing date. The Sponsor shall conduct a hearing before taking final action. The Sponsor shall take final action to renew or to revoke a Charter by the last day of classes in the last school year for which the charter school is authorized.*

12.6 **School-initiated dissolution.** *Pursuant to S.C. Code Ann. §59-40-115, the School may terminate its contract with the Sponsor before the ten-year term of contract if both Parties agree to the dissolution. Should the School choose to terminate this Contract before the end of the Contract term, it may do so in consultation with the Sponsor at the close of any school year and upon written notice to the Sponsor given at least ninety days before the end of the school year. The School shall make every effort to provide notice of ten months to the Sponsor to allow families to take advantage of any available school choice enrollment dates.*

12.7 **Return of property.** *Pursuant to S.C. Code Ann. §59-40-120, upon dissolution of the School, the School assets may not inure to the benefit of any private person. Any assets obtained through restricted agreements with a donor through awards, grants, or gifts must be returned to that entity. All other assets shall become the property of the Sponsor. Dissolution shall be deemed to occur as of the effective date of revocation or non-renewal as determined by the vote of the District Board, without regard to any appeal that may follow the District Board's vote.*

Section Thirteen: General Provisions

13.1 Entire agreement/amendments. *This Agreement constitutes the entire agreement between the Parties and all prior representations, understandings, and discussions are merged herein and superseded and cancelled by this Contract. Pursuant to S.C. Code Ann. §59-40-60(C), a material revision of the terms of the contract between the School and the Sponsor may be made only with the approval of both Parties and must be documented in a writing signed by both Parties.*

13.2 Non-assignment. *Neither party to this Contract shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment.*

13.3 Governing law and enforceability. *This Contract shall be governed and construed according to the laws and regulations of the State of South Carolina, as amended from time to time. If any provision of this Contract or any application of this Contract to the School is found contrary to law, such provision or application shall have effect only to the extent permitted by law.*

13.4 No waiver. *The Parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.*

13.5 No third-party beneficiary. *The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Sponsor and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.*

13.6 Notice. *Any notice required or permitted under this Contract shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three days after mailing when sent by certified mail, postage prepaid to the respective addresses set forth below. Either party may change the address for notice by giving written notice to the other party.*

Notice to the Sponsor shall be sent to: Superintendent, South Carolina Public Charter School District, 3710 Landmark Drive, Suite 201, Columbia, SC 29204.

Notice to the School shall be sent to: Ms. Nadine Deif, Chair, Next Step, {insert mailing address}

13.7 Severability. *The terms of this Contract are severable. In the event that any of the provisions are determined to be unenforceable or invalid for any reason, the remainder of the agreement shall remain in effect, unless mutually agreed otherwise by the Sponsor and the School.*

13.8 Authority to enter into contract. *The School expressly affirms that the signatories on its behalf who sign below have the authority to enter into this Contract on behalf of the School and that the board of directors of the School has duly approved this Contract. The School shall provide a copy of its written resolution to the Sponsor authorizing the School to enter into this Contract.*

13.9 Delegation. *The School shall not delegate any of its rights, obligations, or responsibilities to any third party.*

Intending to be legally bound hereby, the parties hereby execute the foregoing Charter School Contract this _____12__ day of ___February__, 2018, with an effective date of _____,

Signed April 11, 2018 CW

2018.

SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT	CHARLESTON ACCELERATION ACADEMY
By: _____	By: _____ Nadine Deif
Its: Superintendent	Its: Nadine Deif/ Chairperson

Attachment

Pre-Opening Conditions

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:20-cv-00062-MOC-DSC

ACCELERATION ACADEMIES, LLC, **Claimant/Plaintiff,** **v.** **CHARLESTON ACCELERATION ACADEMY, INC.,** **Respondent/Defendant/Counterclaimant.**	**ORDER**

This matter comes before the Court on the Motion of Claimant/Plaintiff Acceleration Academies, LLC ("AA") for the entry of an order confirming the arbitration award ("Award") entered against Respondent/Defendant/Counterclaimant Charleston Acceleration Academy, Inc. ("CAA") on March 16, 2020. (Doc. No. 18). Having reviewed the application and the matters of record and acknowledging that its ability to review the Award is severely circumscribed, see Bowers v. N. Two Cayes Co. Ltd., No. 1:15-CV-00029-MR-DLH, 2016 WL 3647339, at *2 (W.D.N.C. July 7, 2016), the Court finds that grounds do not exist under 9 U.S.C. § 10 for vacating or modifying the Award, and the Award will be confirmed.

IT IS THEREFORE ORDERED that AA's Motion (Doc. No. 18), is **GRANTED**, and the Award, incorporated herein, is **CONFIRMED**. JUDGMENT is therefore rendered as follows:

1. AA shall have and recover damages from CAA for breach of contract in the amount of $859,142.41;

2. Within twenty days of payment of the aforesaid sum to AA, CAA shall have and recover from AA an accounting as provided in the Award; and

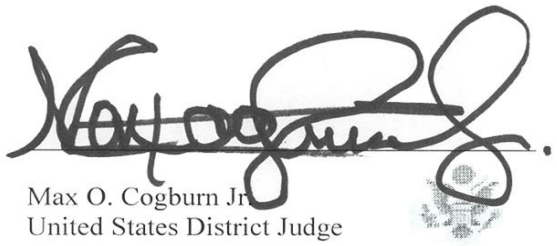
3. The administrative fees of the American Arbitration Association totaling $24,650 and the compensation and expenses of the arbitrator totaling $22,158.57 shall be split equally between the parties.

4. To the extent that the Court is granting the motion to affirm the arbitration award, the pending Motion to Vacate or, in the Alternative, Modify the Arbitration Award, filed by CAA, (Doc. No. 19), is **DENIED**.

5. The Motion to Expedite, filed by CAA, (Doc. No. 6), is **DENIED** as moot.

This Order fully resolves all matters that were submitted by the parties in the arbitration, with the exception of AA's federal trademark claim, which was dismissed without prejudice.

Signed: April 23, 2020



Max O. Cogburn Jr
United States District Judge

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-19-0003-5142

Acceleration Academies, LLC
-vs-
Charleston Acceleration Academy, Inc. aka
Charleston Advancement Academy High School

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 2, 2018, and after having been duly sworn, AWARDS as follows:

In this case, Charleston Acceleration Academy, Inc., aka Charleston Advancement Academy High School (hereinafter "Respondent") received a Charter School Contract from the South Carolina Public School District (hereinafter "SCPSD") on April 1, 2018. This contract allowed the Respondent to contract with an Education Management Organization or Charter Management Organization (hereinafter "EMO") to provide certain services for the Respondent. On April 2, 2018, pursuant to the express authority granted to it by its Charter, Respondent signed a written agreement (the "EMO contract") with Acceleration Academies, LLC (hereinafter the "Claimant") to become the EMO for the Respondent.

The purpose of this agreement was to create a school to "reengage and educate students who remain eligible to receive School services but who have dropped out of or are at risk of dropping out of school." Claimant was to manage the project and the Respondent was to oversee its management.

Three clauses in the contract are relevant to this dispute: the compensation clause, the audit clause and the termination clause. The compensation clause requires Respondent to pay for Claimant's services, upon receipt of monthly invoices containing proper documentation, an amount equal to 85% of the weighted per pupil funding available for each Acceleration Academy student for the regular school year (minus deductions for School employee costs paid directly by the School"). The termination agreements within both the EMO and Charter are similar. The EMO contract: (1) expressly incorporates language of the limitations of termination into the EMO contact; (2) provides either party may terminate at will after 180 day notice; and (3) provides the Respondent can terminate in its sole discretion without any notice for public health and safety threats. The contracts provide any exercise of the termination clauses by any party terminating the agreement do so in a manner so as to cause the "least" disruption to the students. The audit clause provides the Claimant "shall maintain all financial records of each educational service Acceleration Academies provides under this agreement" The agreement also provides the Respondent to audit Claimant's financial records at its "own expense."

The school opened on July 1, 2018. The Respondent regularly paid invoices submitted to it with little or minimal documentation from the beginning of the contract until September 2019. On July 29, 2019, the Board of Directors of the Respondent were notified $133,708.12 in grant funds previously awarded to the School had reverted to the State because they had not been claimed by June 15, 2019. About the same time, the Board became concerned the invoices submitted might be inadequate to meet their responsibilities under statutes for financial reporting. To examine this matter, the Board hired an outside accountant to investigate the accounting practices which had been used previously and make remedial recommendations.

Following conversations between the accountants for both parties, Claimant presented a proposed contract amendment to the Respondent's Board allowing the new accountant the ability to remedy, at the Board's expense, the accounting issues pursuant to the auditing clause of the EMO contract. It was rejected. The dispute escalated. As a result, the Respondent refused to pay the Claimant's September invoice until such time as it provided additional documentation. Although additional documentation was subsequently provided it failed to satisfy the Board. Respondent then provided a counteroffer to the Claimant containing new contract terms but reducing its compensation from 85% of the monthly payments from the State to 20% of 85%. This dispute was not resolved through negotiation.

On October 23, 2019, the Claimant then gave the Respondent notice it was terminating the contract under provisions of the agreement which provided the parties with a 180 day period in which the management by the Claimant would end and the Board would have time to make suitable arrangements to manage the school. Subsequent to the Claimant's notice of termination, the Board met and, based on incident reports of student misconduct, decided the Claimant's continued management of the school raised "public health and safety concerns" and terminated the contract in its "sole discretion" on November 1, 2019. The Respondent then refused to pay the Claimant's October invoice.

On November 4, 2019, the Claimant filed this arbitration. Claimant asserts Respondent breached the EMO Contract by failing to pay its monthly invoices for the months of September and October 2019 and by early wrongful termination of the contract. In addition, Claimant asserts entitlement to payments for November 2019 thru April 22, 2020, for breach of its contract based on theories of anticipatory repudiation of contract or breach of contract and violation of federal trademark laws. In addition, the Claimant sought sanctions for violation of a preliminary injunction order entered in this case as well as discovery violations.

Respondents through counterclaims and defenses assert Claimant breached the EMO Contract by not providing invoices with sufficient supporting documents to enable them to comply with South Carolina laws. In addition, Respondent asserts counterclaims for tortious interference with contract, breach of contract, breach of fiduciary duty, an accounting, unjust enrichment, and misrepresentation. Respondent also makes affirmative defenses and asks for monetary damages.

On January 4, 2020, the arbitrator awarded Claimant's motion for preliminary injunction ordering the parties to return to the *status quo ante.* On January 6, 2020, the Respondent made a partial payment to the Claimant of $57,875.91 on its September invoice.

Hearings were held on February 20 and 21, 2020. At the hearing, evidence showed that the Claimant, who was in charge of the management of the School during the July 2018 to July

2019 period, failed to claim $133,708.12 in grant funds available to the School. This failure was not justified under the Claimant's duties under the contract nor was a credible explanation tendered to explain this event. I find the Respondent is due a credit in this total amount for Claimant's breach of duties under the contract. In addition, because the contract language entitles the Respondent for an accounting at its own expense, I find the Respondent is entitled to the remedy of an accounting as ordered below.

At the hearing, evidence showed Claimant's invoices were regularly paid from the beginning of the contract until September 2019. I find this pattern was an accepted course of dealing by both parties in carrying out the contract performance. The failure of the Respondent to pay the September 2019 invoice was contrary to the established course of dealing between the parties and justifies the Claimant's termination of the contract. I find the failure to pay the September 2019 invoice and the presentation of a proposed contract amendment reducing the amount of compensation due to the Claimant to be evidence of anticipatory repudiation of the contract on the part of the Respondent entitling the Claimant to damages for anticipated profits.

Based in part upon the damage calculation prepared by the Claimant which I find credible, Claimant is entitled to damages in the gross amount of $992,850.53 (which already deducted the prior payment made in January 6, 2020), less $133,708.12 credit for Claimant's breach of contract or a total net amount of $859,142.41.

The language of the contract involving termination imposes an affirmative duty of the party terminating the contract to terminate the contract in a "manner least disruptive to the students." I find the manner in which the Claimant terminated the contract met this obligation. I find the manner in which the Respondent terminated the contract failed to meet this obligation. Further, I find there is no credible evidence of a threat to public health and safety which was proximately caused by the Claimant to justify immediate termination of the contract, given the affirmative obligation of the parties to terminate the contract in a manner least disruptive to the students.

Both parties have requested attorneys' fees be awarded in their claims for relief or for sanctions. I find no party forwarded a statutory basis for fees or credible evidence for an award of a specific amount of attorneys' fees. The requests for attorney fees are denied.

For the foregoing reasons, I award as follows:

1. Parties' mutual motions for summary judgment are DENIED.

2. Claimant's amended claim for violation of federal trademark laws was not arbitrable under the language of the contract and is dismissed without prejudice.

3. Claimant's claim for breach of contract from the Respondent is ALLOWED in part and DENIED in part.

4. Claimant's request for sanctions against the Respondent is DENIED.

5. Claimant's claim for breach of contract, breach of fiduciary duty and an accounting by the Claimant is ALLOWED in part and DENIED in part.

6. Respondent's claim for unjust enrichment and misrepresentation is DENIED.

7. The Claimant shall have and recover as damages for breach of contract the sum of $859,142.41.

8. The Respondent is entitled to an accounting from the Claimant as provided in the contract. Claimant is to provide Respondent's accountant with copies and reasonable access to all books and records of Acceleration Academies: to the extent such books and records relate to expenses made by Claimant on behalf of the Respondent from April 2, 2018 until April 22, 2020. Access to such books and records shall begin within 20 days of the payment of the above-said damages by the Respondent to the Claimant. The Respondent shall pay the costs of this accounting. The time and manner the accounting shall be conducted will be as provided for in the contract.

9. The administrative fees of the American Arbitration Association totaling $24,650.00 and the compensation and expenses of the arbitrator totaling $22,158.58 shall be borne equally by the parties.

10. The above sums for damages are to be paid on or before April 22, 2020.

11. This award is in full settlement of all claims and counterclaims submitted to this Arbitration, excepting the Federal Trademark claim by the Claimants. All claims and counterclaims not expressly granted herein are hereby denied.

March 16, 2020
Date

Hon. Robert N. Hunter, Jr., Arbitrator

EXHIBIT D

Charleston Advancement Academy
Statement of Revenues and Expenses
FY20 Working Budget

	Year To Date 5/31/2020 Actual YTD	6/30/2020 Current Budget	FY21 Projected Budget
REVENUE			
Revenue from Local Sources			
Earnings on Investments			
1510 - Interest Income	$ 0.00	$ 0.00	$ 0.00
Total Earnings on Investments	**$ 0.00**	**$ 0.00**	**$ 0.00**
Food Services			
1610 - Lunch Sales to Students	$ 0.00	$ 0.00	$ 0.00
Total Food Services	**$ 0.00**	**$ 0.00**	**$ 0.00**
Pupil Activities			
1740 - Student Fees	$ 0.00	$ 0.00	$ 0.00
1790 - Other Pupil Income	0.00	0.00	0.00
Total Pupil Activities	**$ 0.00**	**$ 0.00**	**$ 0.00**
Other Revenue from Local Sources			
1920 - Contibutions and Donations	$ 0.00	$ 0.00	$ 0.00
1990 - Miscellaneous Local Revenue	707.02	0.00	0.00
Total Other Revenue from Local Sources	**$ 707.02**	**$ 0.00**	**$ 0.00**
Total Revenue from Local Sources	**$ 707.02**	**$ 0.00**	**$ 0.00**
Intergovernmental Revenue			
Payments from Public Charter Schools			
2100 - Fund Balance Mini Grant	15,000.00	0.00	0.00
Total Payments from Public Charter Schools	**15,000.00**	**0.00**	**0.00**
Total Intergovernmental Revenue	**15,000.00**	**0.00**	**0.00**
Revenue from State Sources			
Restricted State Funding			

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Charleston Advancement Academy
Statement of Revenues and Expenses
FY20 Working Budget

	Year To Date 5/31/2020 Actual YTD	6/30/2020 Current Budget	FY21 Projected Budget	
3127 - Student Health and Fitness PE Teacher	$ (825.00)	0.00	0.00	
3180 - Fringe Benefit Employers Contributions	287,797.61	250,000.00	250,000.00	
3186 - State Aid Classroom T/S	27,931.94	30,000.00	0.00	
3187 - Teacher Supply	1,650.00	1,650.00	1,650.00	
Total Restricted State Funding	**$ 316,554.55**	**$ 281,650.00**	**$ 251,650.00**	
Education Finance Act (EFA)				
3314-3383 - EFA Revenue	$ 2,343,061.27	$ 2,872,406.60	$ 2,947,760.17	Based on 380 Kids
Total Education Finance Act (EFA)	**$ 2,343,061.27**	**$ 2,872,406.60**	**$ 2,947,760.17**	
Education Improvement Act				
3538 - EIA Revenue - Students at Risk of School Failure	16,312.60	17,943.85	17,943.85	
3550 - EIA Revenue - Teacher Salary Increase	19,274.98	20,621.82	39,356.36	
3555 - EIA Revenue - Teacher Salary Fringe	4,257.62	4,569.29	8,720.43	
3595 - EIA Revenue - EEDA Supplies and Materials	576.42	576.42	576.42	
3597 - EIA Revenue - Aid to Districts	8,197.20	9,697.60	9,697.60	
Total Education Improvement Act	**$ 48,618.82**	**$ 53,408.98**	**$ 76,294.66**	
Total Revenue from State Sources	**$ 2,708,234.64**	**$ 3,207,465.58**	**$ 3,275,704.83**	
Revenue from Federal Sources				
Elementary and Secondary Education Act (ESEA)				
4310 - Title I, Basic State Grant Programs Revenue	$ 0.00	$ 92,950.00	$ 90,000.00	
420 - Planning and Implementation Grant	0.00	238,645.00	0.00	
Total Elementary and Secondary Education Act (ESEA)	**$ 0.00**	**$ 331,595.00**	**$ 90,000.00**	
Programs for Children with Disabilities				
4510 - IDEA Revenue	$ 0.00	$ 23,389.45	$ 23,389.45	
Total Programs for Children with Disabilities	**$ 0.00**	**$ 23,389.45**	**$ 23,389.45**	
Total Revenue from Federal Sources	**$ 0.00**	**$ 354,984.45**	**$ 113,389.45**	

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Charleston Advancement Academy
Statement of Revenues and Expenses
FY20 Working Budget

	Year To Date 5/31/2020 Actual YTD	6/30/2020 Current Budget	FY21 Projected Budget
TOTAL REVENUE	**$ 2,723,941.66**	**$ 3,562,450.03**	**$ 3,389,094.28**
EXPENSE			
High School Programs - 114			
6110 - Regular Salary	$ 420,557.87	$ 460,600.00	$ 589,234.72
6115 - Teacher Assistant/Clerical Salary	30,589.37	33,530.74	0.00
6210 - Group Health & Life Insurance	1,150.83	8,469.95	63,222.88
6220 - Employee Retirement	969.54	7,563.59	122,728.27
6230 - Social Security	34,397.89	35,095.66	45,076.46
6260 - Unemployment Compensation Tax	3,072.46	3,150.00	5,919.20
6270 - Worker's Compensation Tax	2,861.00	5,672.00	0.00
6311 - Instructional Services	35,096.50	35,096.50	50,000.00
6410 - Supplies	18,180.04	21,420.00	30,000.00
6445 - Technology and Software Supplies	9,103.92	10,000.00	10,000.00
6540 - Instructional Equipment	0.00	20,087.00	15,000.00
6545 - Technology Equipement and Software - Capitalized	8,345.85	38,700.00	15,000.00
Total High School Programs	**$ 564,325.27**	**$ 679,385.44**	**$ 946,181.53**
Vocational Programs - 115			
6110 - Regular Salary	$ 34,053.82	$ 34,053.82	$ 0.00
6210 - Group Health & Life Insurance	501.78	501.78	0.00
6220 - Employee Retirement	252.62	252.62	0.00
6230 - Social Security	2,422.22	2,422.22	0.00
6260 - Unemployment Compensation Tax	126.94	126.94	0.00
Total Vocational Programs	**$ 37,357.38**	**$ 37,357.38**	**$ 0.00**
Learning Disabilities - 127			

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Charleston Advancement Academy

Statement of Revenues and Expenses

FY20 Working Budget

	Year To Date 5/31/2020 Actual YTD	6/30/2020 Current Budget	FY21 Projected Budget
6110 - Regular Salary	$ 48,135.00	$ 53,285.00	$ 63,036.00
6115 - Teacher Assistant/Clerical Salary	3,174.59	3,174.59	0.00
6210 - Group Health & Life Insurance	0.00	0.00	5,268.57
6220 - Employee Retirement	358.73	1,671.98	14,378.51
6230 - Social Security	3,417.94	3,746.70	4,822.25
6260 - Unemployment Compensation Tax	206.66	225.00	422.80
6311 - Instructional Services	3,170.00	28,389.45	15,000.00
6410 - Supplies	275.74	275.74	500.00
Total Learning Disabilities	**$ 58,738.66**	**$ 90,768.46**	**$ 103,428.14**
Gifted and Talented - 141			
6110 - Regular Salary	10,300.00	10,300.00	0.00
6210 - Group Health & Life Insurance	1,146.89	1,146.89	0.00
6220 - Employee Retirement	309.00	309.00	0.00
6230 - Social Security	658.15	658.15	0.00
6260 - Unemployment Compensation Tax	0.00	0.00	0.00
Total Gifted and Talented	**12,414.04**	**12,414.04**	**0.00**
Attendance and Social Work - 211			
6110 - Regular Salary	$ 35,451.22	$ 46,350.00	$ 0.00
6210 - Group Health & Life Insurance	532.56	532.56	0.00
6220 - Employee Retirement	540.69	1,853.88	0.00
6230 - Social Security	2,551.07	3,331.20	0.00
6260 - Unemployment Compensation Tax	126.19	150.00	0.00
Total Attendance and Social Work	**$ 39,201.73**	**$ 52,217.64**	**$ 0.00**
Guidance Services - 212			
6110 - Regular Salary	$ 56,231.18	$ 60,564.52	$ 53,040.00
6210 - Group Health & Life Insurance	504.36	504.36	5,268.57

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Charleston Advancement Academy

Statement of Revenues and Expenses

FY20 Working Budget

	Year To Date 5/31/2020 Actual YTD	6/30/2020 Current Budget	FY21 Projected Budget
6220 - Employee Retirement	0.00	0.00	12,098.42
6230 - Social Security	3,279.43	3,591.97	4,057.56
6260 - Unemployment Compensation Tax	201.96	300.00	422.80
Total Guidance Services	**$ 60,216.93**	**$ 64,960.85**	**$ 74,887.36**
Psychological Servcies - 214			
6313 - Student Services	$ 3,206.25	$ 6,000.00	$ 6,000.00
Total Psychological Services	**$ 3,206.25**	**$ 6,000.00**	**$ 6,000.00**
Career Services - 217			
6110 - Regular Salary	$ 101,921.92	$ 111,224.42	$ 110,925.00
6115 - Teacher Assistant/Clerical Salary	25,853.31	37,480.00	48,911.04
6210 - Group Health & Life Insurance	532.56	532.56	15,805.72
6220 - Employee Retirement	10.48	1,000.00	36,458.60
6230 - Social Security	9,284.37	10,631.97	12,227.46
6260 - Unemployment Compensation Tax	686.47	1,000.00	1,268.40
Total Career Services	**$ 138,289.11**	**$ 161,868.95**	**$ 225,596.22**
Staff Training - 224			
6312 - Instructional Programs Improvement Services	$ 20,328.59	$ 20,328.59	$ 20,000.00
Total Staff Training	**$ 20,328.59**	**$ 20,328.59**	**$ 20,000.00**
Board of Directors - 231			
6260 - Unemployment Compensation Tax	8,820.14	8,820.14	0.00
6312 - Instructional Programs Improvement Services	$ 4,000.00	$ 4,000.00	$ 5,000.00
6318 - Audit Services	$ 21,955.00	$ 21,955.00	$ 20,700.00
6319 - Legal Services	349,440.99	349,440.99	50,000.00
6332 - Travel	5,586.22	6,000.00	6,000.00
6410 - Supplies	836.31	1,000.00	1,000.00

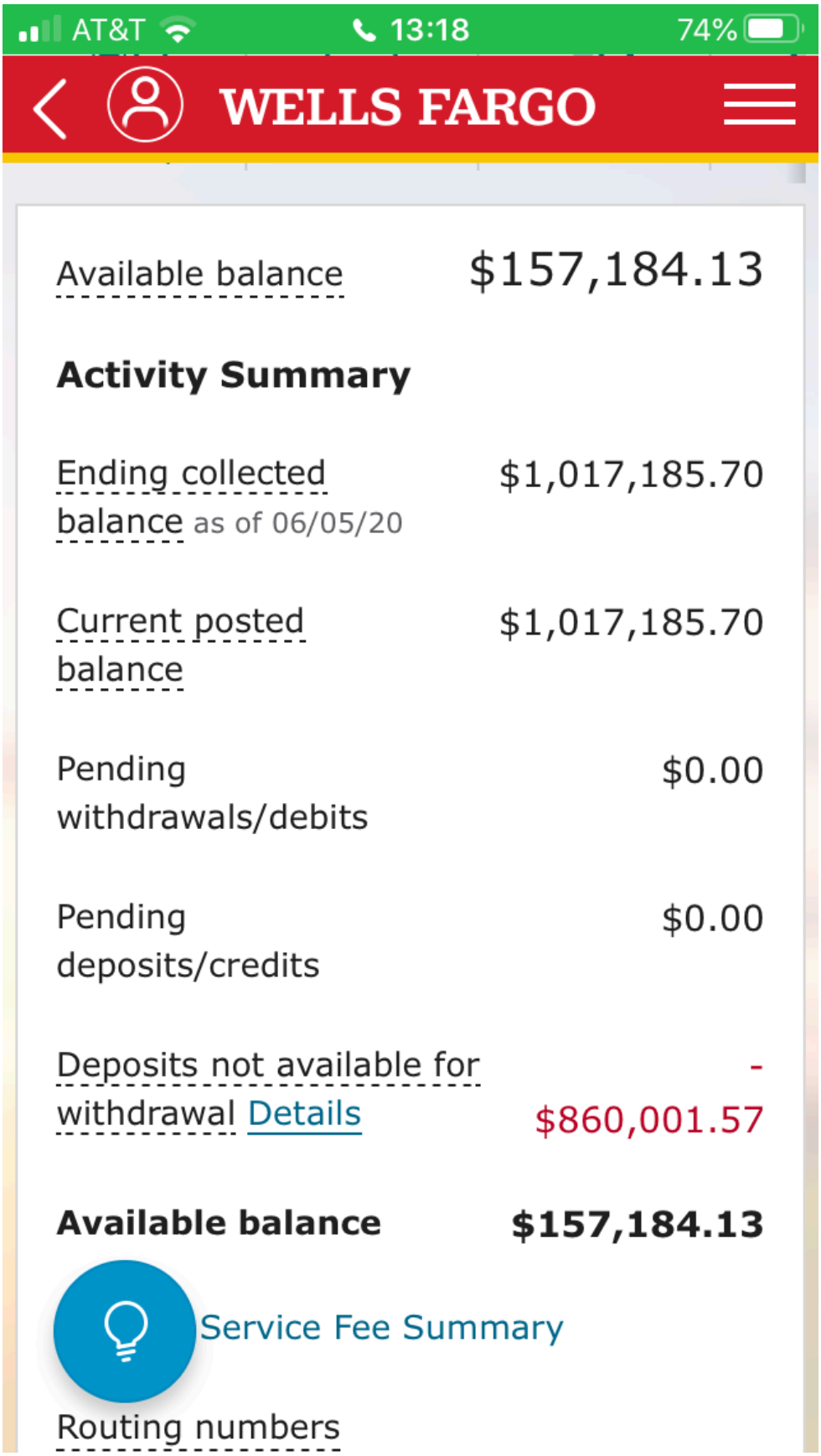
Internally Prepared

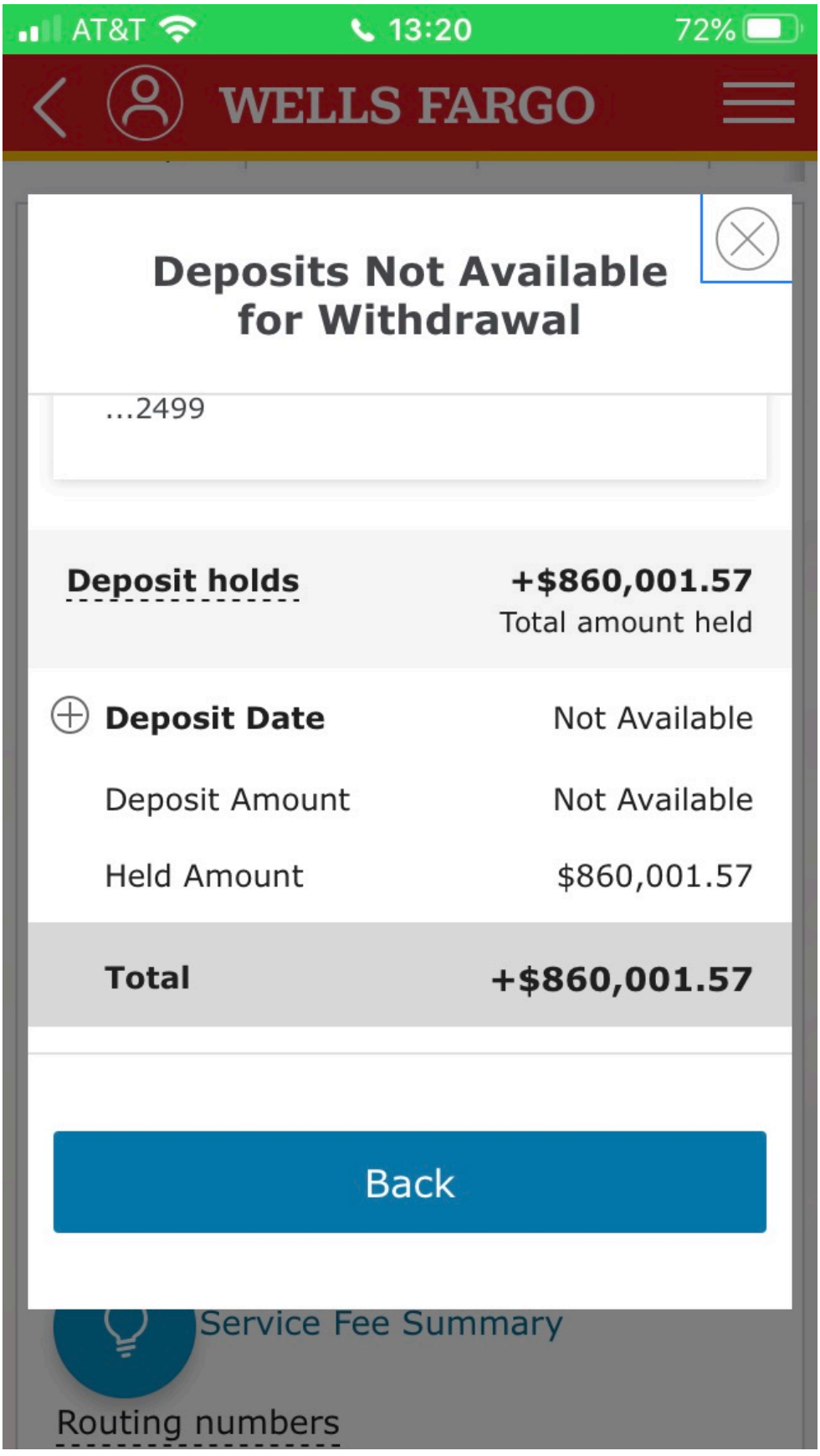
UNAUDITED

For Management Use Only

EXHIBIT E

EXHIBIT 2





STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Inc., Plaintiff, vs. South Carolina Public Charter School District, Defendant.	)	Civil Action No. 2019-CP-10-6592 **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendant South Carolina Public Charter School District ("District") respectfully submits this supplemental memorandum in support of its Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(6) in advance of the hearing scheduled for October 26, 2021 at 11:30 am. Plaintiff's Complaint should be dismissed because the issues are properly decided, or already have been decided, by this Court, the South Carolina Department of Education, the Administrative Law Court, in arbitration or in federal court. The District incorporates by reference its prior arguments in the motions and pleadings before this Court.

Introduction

Charleston Advancement Academy ("CAA") is a public charter school sponsored by the District. It exists because the District approved its application to become a charter school, and the District exists because the Legislature created it by statute in 2006. *See* S.C. Code Ann. § 59-40-220. The District is governed by a board of trustees, seven of whom are appointed by the Governor subject to advice and consent of the Senate, one of whom is appointed by the Speaker of the House of Representatives, and one of whom is appointed by the President of the Senate. *See* S.C. Code Ann. § 59-40-230. CAA is a public school governed by a board of directors elected by the parents and teachers of the school and is part of the District. *See* S.C. Code Ann. § 59-40-40(2)(a). The

South Carolina Public Charter School Act of 1996, S.C. Code Ann. § 59-40-10 to -230, governs the relationship between a charter school and its sponsor.

In this case, CAA alleges the District somehow should be responsible for damages because CAA wrongfully terminated the private management company with whom it contracted. Even construing the allegations in a light most favorable to CAA, the Complaint should be dismissed for the reasons set forth in the District's Memorandum in Support. The District submits the following as a supplement to the prior Memorandum.

I. Lack of Jurisdiction

As explained in the District's Memorandum at pp. 2-3, the Act requires CAA to challenge any final decision by the District in the Administrative Law Court. Of course, if the decision is not a final decision, it cannot be challenged in any court. The responsibility then lies with the District's own processes or the South Carolina Department of Education ("Department") to address the issue. *See, e.g.*, S.C. Code Ann. § 59-40-140(D)(providing right of Department to fine sponsor in specified circumstances); 59-40-230(B)(District Board "has the same powers, rights and responsibilities with respect to charter schools as other school district boards of trustees of this State…); 59-40-40(4)(defining "sponsor" to be a "local education agency" under the authority of the "state education agency," which is the Department). Therefore, this Court does not have jurisdiction over the dispute between the District and the school it sponsors, CAA.

II. Mootness

Based on communications between counsel, there does not seem to be any dispute that CAA's claims for declaratory relief, injunctive relief or lack of due process are now moot. Therefore, even if there is jurisdiction, the only claim by CAA that remains would be breach of contract, which should be dismissed for the reasons set forth below.

III. Immunity of the District

The Legislature clearly and unambiguously expressed its intent to limit the liability of the District, which is also limited in terms of the revenues it can collect by statute. *See* S.C. Code Ann. § 59-40-55(C). Pursuant to Section 59-40-190(C), the District and all sponsors acting in their official capacity are immune from "civil or criminal liability with respect to all activities related to a charter school they sponsor." The Legislature provided remedies for alleged misconduct by sponsors in the Act by making sponsors subject to the authority of the Department and the ALC, but expressly limited the liability of sponsors by making them immune from civil claims for monetary damages related to their oversight of charter schools. Because the only claim by CAA remaining is for monetary damages specifically related to decisions made by the SCPCSD Board and its administration, the immunity provision bars CAA's breach of contract claim.

IV. First to Breach

The District's Memorandum in Support at pp. 3-4 explains that the Order denying Injunctive Relief in this case as well as the Arbitration Order in the arbitration between CAA and its management company establish that CAA was the first to breach the contract and charter between it and the District. Specifically, the Order found CAA "violated the Act and its charter by failing to obtain an approved charter amendment and approved replacement services prior to termination of the management agreement." The Arbitration Order found CAA failed to terminate the management agreement "in a manner least disruptive to students," as required by the contract between the District and CAA. Subsequently, CAA challenged the Arbitration Order in federal district court and then on appeal to the 4th Circuit.

The decisions of both the district court and appellate court affirmed the arbitration award against CAA, which precludes CAA from taking any position contrary in this litigation. The Per Curiam Opinion by the Fourth Circuit Court of Appeals is attached here as *Exhibit 1* because it was not available at the time the District's Memorandum was filed.

Both the breach identified in the Order and breach identified in the Award necessarily occurred before any of the acts alleged by the District Board. This is because the District Board's actions all allegedly were taken in response to the wrongful termination of the management company by CAA. Therefore, CAA was the first to breach as a matter of law.

South Carolina law is well-established that the first to breach may not 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). CAA's breach of contract claim therefore must be dismissed.

Conclusion

For the reasons set forth above, the Complaint in this matter should be dismissed.

HARRELL MARTIN & PEACE, P.A.

/s Erik T. Norton

Erik T. Norton
135 Columbia Avenue
Chapin, SC 29036
Phone: (803) 345-3353
Email: erik@hmp-law.com

Attorneys for South Carolina
Public Charter School District

Chapin, South Carolina
October 15, 2021.

EXHIBIT 1

Finally, we are satisfied that CAA has not established any ground for modifying the Award under 9 U.S.C. § 11. *See Del Webb Cmtys., Inc. v. Carlson*, 817 F.3d 867, 875 (4th Cir. 2016) (explaining that § 11 "cabin[s]" court's authority to modify arbitration award).

Accordingly, we affirm the district court's denial of CAA's motion to vacate or modify the Award. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

EXHIBIT 1

FILED: May 28, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1621
(3:20-cv-00062-MOC-DSC)

ACCELERATION ACADEMIES, LLC

Plaintiff - Appellee

v.

CHARLESTON ACCELERATION ACADEMY, INC.

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School,	)	
	)	C.A. No. 2019-CP-10-06592
Plaintiff,	)	
	)	**AFFIDAVIT OF NADINE DEIF**
vs.	)	
South Carolina Public Charter School District	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, Nadine Deif, who being first duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth in this affidavit. I have personal knowledge of the matters stated herein.

2. I am the Chairperson of the Board of Directors of Charleston Advancement Academy High School ("CAA") from August 2017 to the present.

3. CAA had previously contracted with Acceleration Academies, LLC ("AA"), an education management organization, to provide certain educational services to CAA.

4. In October 2019, the CAA Board of Directors learned that AA and former CAA Director, Erin Franey, failed to appropriately handle some two dozen student safety incidents, and further, failed to disclose these incidents to the CAA Board. The CAA Board was extremely upset with AA's and Ms. Franey's shortcomings where our students' safety was concerned.

5. In October 2019, AA gave 180-day-notice to terminate the contract with CAA given the CAA Board's extreme displeasure with AA's handling of some two dozen student safety incidents over the past nine months, including several level 3 infractions that were never reported to the CAA Board, the SCPCSD, or the Department of Education, as mandated by federal law.

6. CAA leases space on the Trident Technical College campus, which serves as CAA's landlord.

7. On October 30, 2019, I received a letter from Dr. Mary Thornley, President of Trident Technical College requesting an updated security plan to address the numerous student safety

incidents that had occurred involving CAA students. These incidents resulted in seven arrests and included such crimes as assault and battery, breaking and entering vehicles, terrorist threats, and sexual assault. Dr. Thornley stated she would evict CAA if significant changes to the safety plan were not made within two months.

8. At the October 31, 2019 CAA Board Meeting, the CAA Board unanimously voted to **immediately** terminate CAA's contract with AA for student safety concerns, pursuant to CAA's charter contract.

9. The CAA Board immediately took steps to transition away from AA's services, including hiring Dr. Robert Bohnstengel as CAA's Principal. The CAA Board had previously contracted with Prestige School Solutions on September 20, 2019, to provide the school with financial management services, as a means to ensure financial transparency and compliance.

10. On November 4, 2019, AA submitted a Demand for Arbitration to the American Arbitration Association to resolve financial issues between CAA and AA.

11. Thereafter, the CAA Board, its legal counsel, and other CAA leadership presented a Request for Charter Amendment before the SCPCSD Board of Trustees at its meeting on November 14, 2019. The Amendment Request was solely for the removal of the for-profit Chicago-based management company from the school and its charter. The SCPCSD Board allowed statements from AA representatives and its legal counsel at this meeting despite AA **not** being a party or **third-party beneficiary** to CAA's charter contract with the SCPCSD.

12. The SCPCSD denied CAA's charter amendment request and further declared that CAA must "maintain the status quo until CAA presents a plan showing ability to immediately implement all activities in the charter with SCPCSD contract and EMO." **The SCPCSD Board clarified that this meant CAA must continue to allow AA to operate on CAA's campus, despite CAA Board's unanimous vote to immediately terminate its contract with AA.**

13. Since the November 14, 2019 SCPCSD Board of Trustees Meeting, AA employees have caused severe disruptions on the CAA campus, including falsely directing CAA employees to report to AA directly and refusing to leave CAA's leased property.

14. At the November 21, 2019 CAA Board Meeting and through several other email correspondences, the CAA Board

Nadine Deif

SWORN TO BEFORE ME THIS 7TH
DAY OF FEBRUARY, 2020
13

Sarah E. Schwerkert
NOTARY PUBLIC FOR SOUTH CAROLINA
COMM. EXP. 6 MAY 2029

directed Mr. Dan Miller, CAA's Assistant Director, **not** to schedule the December CAA graduation ceremony on the same evening and at the same time as the CAA Board's regularly scheduled and approved December board meeting. In direct contravention of this directive, Mr. Miller worked together with former CAA Director Ms. Franey and several AA Chicago-based employees to plan CAA's graduation on the same night and time as the CAA Board's December meeting and to have it in an off campus location that was not disclosed to the CAA Board. Upon information and belief, AA instructed CAA employees not to share any information with the CAA Board if asked about the graduation that AA was planning. AA refused to allow the CAA Principal or CAA Board members access to the list of graduates in an attempt to sabotage the graduation.

15. On Sunday, December 15, 2019, I worked together with Dr. Bohnstengle to ensure continuity of transportation services for CAA students after we learned that Ms. Franey halted transportation services Sunday afternoon without prior notice. While Dr. Bohnstengle and I were able to rectify the transportation issue by Monday evening, the situation caused undue confusion and intentional disruption for our students and their families.

16. Over the winter holiday break, many of our CAA employees were blocked from accessing their email addresses. I was informed by the CAA IT person that these changes were made by those persons with administrative access who have installed spyware and other software controls on all CAA federally funded and purchased school computers. Currently, only AA representatives and Ms. Franey have administrative access to CAA email accounts, software, and programs despite repeated requests to provide CAA employees with these access codes. Access was restored after I contacted our legal counsel regarding this situation, who, upon information and belief, instructed AA to remove the block they placed on these accounts, software, and programs.

17. Recently, I learned that AA is seeking to open a competing charter school in the Charleston area under the sponsorship of the SCPCSD and has promised current CAA employees employment with AA in the future. Upon information and belief, CAA employees were told that they must sign new employment contracts directly with AA if they wished to continue working at the school. AA's actions are against CAA's charter and CAA's contracts with both the SCPCSD and AA.

AFFIANT FURTHER SAYETH NAUGHT.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	)	C.A. No. 2019-CP-10-06592 **AFFIDAVIT OF DR. ROBERT E BOHNSTENGEL**

PERSONALLY APPEARED BEFORE ME, Dr. Robert Bohnstengel, who being first duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth in this affidavit. I have personal knowledge of the matters stated herein.

2. I am the Principal of Charleston Advancement Academy High School ("CAA") from November 6, 2019, to the present.

3. On November 14, 2019, a team of CAA leaders traveled to Columbia, South Carolina to present a Charter Amendment Request to the South Carolina Public Charter School District Board of Trustees ("SCPCSD Board").

4. I specifically instructed Erin Franey, CAA's Director at the time, to remain on the CAA campus and not to travel to Columbia to attend the meeting of the SCPCSD Board on November 14, 2019 due to recent safety incidents on campus. Despite my instructions, Ms. Franey abandoned the CAA campus on November 14, 2019, to attend the SCPCSD Board meeting in Columbia.

5. On November 15, 2019, I terminated Ms. Franey for insubordination and for failing

to report student safety and welfare concerns.

6. Since November 15, 2019, numerous Acceleration Academies, LLC ("AA") employees have come onto the CAA campus despite the contract between CAA and AA having been terminated immediately for cause on October 31, 2019, by unanimous vote of the CAA Board of Directors.

7. Specifically, AA employees have directly communicated false information to CAA employees, refused to leave school grounds after me repeatedly asking them to leave, and interfered with my ability to manage the school efficiently.

8. After the SCPCSD Board issued its letter dated November 21, 2019, which was sent to all CAA staff, I was met with resistance from Dan Miller, CAA's Assistant Director, while attempting to perform my duties as Principal. Mr. Miller directly referred to the SCPCSD Board's November 21 Letter as his authority for resisting my directives.

9. On Sunday, December 15, 2019, a CAA student contacted me distraught and explained to me that **AA** had notified the student that all transportation to CAA had been cancelled and no further services would be provided.

10. After looking into this matter further, I discovered that Ms. Franey privately notified CAA drivers on Friday, December 13, 2019, that school transportation services were cancelled permanently but never notified the CAA Board or myself. On Sunday December 15, 2019, Erin went and picked up the vans form the two drivers houses. CAA drivers were told by Erin Franey, the terminated director and rehired AA employee, to mass group text all students and parents to advise them that the school had no transportation services as of the next day. She also instructed the drivers to alert students to keep calling and texting me as much as possible. Ms. Frayne's actions resulted in severe confusion and disruption for our students and parents. My phone rang numerous times that Sunday.

11. It is my understanding that AA has actively recruited and signed employment

contracts with all current CAA employees and that AA has submitted a Charter Application with the SCPCSD to open a school for at risk high school students in Charleston that will directly compete with CAA.

12. The letters from the SCPCSD Superintendent and SCPCSD Board Chair issued between November 21, 2019, and December 13, 2019, and who were sent to all our employees, have had a devastating effect on school morale and have caused great confusion for our staff and students. The letter stated that I was not to act in any authority as the principal. Several employees referenced that letter and refused to provide me with information and access to data, files, and anything I requested citing the letters they received from the District.

AFFIANT FURTHER SAYETH NAUGHT.

Dr. Robert E Bohnstengel

SWORN TO BEFORE ME THIS 7
DAY OF February 2020, ~~2/7/20~~ RW

Sworn to and Subscribed Before Me
This 7 Day of 2, 2020

Signed, _____
Robert Wright
Notary Public of South Carolina
My Commission Expires: 11/04/2026

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-19-0003-5142

Acceleration Academies, LLC
-vs-
Charleston Acceleration Academy, Inc. aka
Charleston Advancement Academy High School

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 2, 2018, and after having been duly sworn, AWARDS as follows:

In this case, Charleston Acceleration Academy, Inc., aka Charleston Advancement Academy High School (hereinafter "Respondent") received a Charter School Contract from the South Carolina Public School District (hereinafter "SCPSD") on April 1, 2018. This contract allowed the Respondent to contract with an Education Management Organization or Charter Management Organization (hereinafter "EMO") to provide certain services for the Respondent. On April 2, 2018, pursuant to the express authority granted to it by its Charter, Respondent signed a written agreement (the "EMO contract") with Acceleration Academies, LLC (hereinafter the "Claimant") to become the EMO for the Respondent.

The purpose of this agreement was to create a school to "reengage and educate students who remain eligible to receive School services but who have dropped out of or are at risk of dropping out of school." Claimant was to manage the project and the Respondent was to oversee its management.

Three clauses in the contract are relevant to this dispute: the compensation clause, the audit clause and the termination clause. The compensation clause requires Respondent to pay for Claimant's services, upon receipt of monthly invoices containing proper documentation, an amount equal to 85% of the weighted per pupil funding available for each Acceleration Academy student for the regular school year (minus deductions for School employee costs paid directly by the School"). The termination agreements within both the EMO and Charter are similar. The EMO contract: (1) expressly incorporates language of the limitations of termination into the EMO contact; (2) provides either party may terminate at will after 180 day notice; and (3) provides the Respondent can terminate in its sole discretion without any notice for public health and safety threats. The contracts provide any exercise of the termination clauses by any party terminating the agreement do so in a manner so as to cause the "least" disruption to the students. The audit clause provides the Claimant "shall maintain all financial records of each educational service Acceleration Academies provides under this agreement" The agreement also provides the Respondent to audit Claimant's financial records at its "own expense."

The school opened on July 1, 2018. The Respondent regularly paid invoices submitted to it with little or minimal documentation from the beginning of the contract until September 2019. On July 29, 2019, the Board of Directors of the Respondent were notified $133,708.12 in grant funds previously awarded to the School had reverted to the State because they had not been claimed by June 15, 2019. About the same time, the Board became concerned the invoices submitted might be inadequate to meet their responsibilities under statutes for financial reporting. To examine this matter, the Board hired an outside accountant to investigate the accounting practices which had been used previously and make remedial recommendations.

Following conversations between the accountants for both parties, Claimant presented a proposed contract amendment to the Respondent's Board allowing the new accountant the ability to remedy, at the Board's expense, the accounting issues pursuant to the auditing clause of the EMO contract. It was rejected. The dispute escalated. As a result, the Respondent refused to pay the Claimant's September invoice until such time as it provided additional documentation. Although additional documentation was subsequently provided it failed to satisfy the Board. Respondent then provided a counteroffer to the Claimant containing new contract terms but reducing its compensation from 85% of the monthly payments from the State to 20% of 85%. This dispute was not resolved through negotiation.

On October 23, 2019, the Claimant then gave the Respondent notice it was terminating the contract under provisions of the agreement which provided the parties with a 180 day period in which the management by the Claimant would end and the Board would have time to make suitable arrangements to manage the school. Subsequent to the Claimant's notice of termination, the Board met and, based on incident reports of student misconduct, decided the Claimant's continued management of the school raised "public health and safety concerns" and terminated the contract in its "sole discretion" on November 1, 2019. The Respondent then refused to pay the Claimant's October invoice.

On November 4, 2019, the Claimant filed this arbitration. Claimant asserts Respondent breached the EMO Contract by failing to pay its monthly invoices for the months of September and October 2019 and by early wrongful termination of the contract. In addition, Claimant asserts entitlement to payments for November 2019 thru April 22, 2020, for breach of its contract based on theories of anticipatory repudiation of contract or breach of contract and violation of federal trademark laws. In addition, the Claimant sought sanctions for violation of a preliminary injunction order entered in this case as well as discovery violations.

Respondents through counterclaims and defenses assert Claimant breached the EMO Contract by not providing invoices with sufficient supporting documents to enable them to comply with South Carolina laws. In addition, Respondent asserts counterclaims for tortious interference with contract, breach of contract, breach of fiduciary duty, an accounting, unjust enrichment, and misrepresentation. Respondent also makes affirmative defenses and asks for monetary damages.

On January 4, 2020, the arbitrator awarded Claimant's motion for preliminary injunction ordering the parties to return to the *status quo ante.* On January 6, 2020, the Respondent made a partial payment to the Claimant of $57,875.91 on its September invoice.

Hearings were held on February 20 and 21, 2020. At the hearing, evidence showed that the Claimant, who was in charge of the management of the School during the July 2018 to July

2019 period, failed to claim $133,708.12 in grant funds available to the School. This failure was not justified under the Claimant's duties under the contract nor was a credible explanation tendered to explain this event. I find the Respondent is due a credit in this total amount for Claimant's breach of duties under the contract. In addition, because the contract language entitles the Respondent for an accounting at its own expense, I find the Respondent is entitled to the remedy of an accounting as ordered below.

At the hearing, evidence showed Claimant's invoices were regularly paid from the beginning of the contract until September 2019. I find this pattern was an accepted course of dealing by both parties in carrying out the contract performance. The failure of the Respondent to pay the September 2019 invoice was contrary to the established course of dealing between the parties and justifies the Claimant's termination of the contract. I find the failure to pay the September 2019 invoice and the presentation of a proposed contract amendment reducing the amount of compensation due to the Claimant to be evidence of anticipatory repudiation of the contract on the part of the Respondent entitling the Claimant to damages for anticipated profits.

Based in part upon the damage calculation prepared by the Claimant which I find credible, Claimant is entitled to damages in the gross amount of $992,850.53 (which already deducted the prior payment made in January 6, 2020), less $133,708.12 credit for Claimant's breach of contract or a total net amount of $859,142.41.

The language of the contract involving termination imposes an affirmative duty of the party terminating the contract to terminate the contract in a "manner least disruptive to the students." I find the manner in which the Claimant terminated the contract met this obligation. I find the manner in which the Respondent terminated the contract failed to meet this obligation. Further, I find there is no credible evidence of a threat to public health and safety which was proximately caused by the Claimant to justify immediate termination of the contract, given the affirmative obligation of the parties to terminate the contract in a manner least disruptive to the students.

Both parties have requested attorneys' fees be awarded in their claims for relief or for sanctions. I find no party forwarded a statutory basis for fees or credible evidence for an award of a specific amount of attorneys' fees. The requests for attorney fees are denied.

For the foregoing reasons, I award as follows:

1. Parties' mutual motions for summary judgment are DENIED.

2. Claimant's amended claim for violation of federal trademark laws was not arbitrable under the language of the contract and is dismissed without prejudice.

3. Claimant's claim for breach of contract from the Respondent is ALLOWED in part and DENIED in part.

4. Claimant's request for sanctions against the Respondent is DENIED.

5. Claimant's claim for breach of contract, breach of fiduciary duty and an accounting by the Claimant is ALLOWED in part and DENIED in part.

6. Respondent's claim for unjust enrichment and misrepresentation is DENIED.

7. The Claimant shall have and recover as damages for breach of contract the sum of $859,142.41.

8. The Respondent is entitled to an accounting from the Claimant as provided in the contract. Claimant is to provide Respondent's accountant with copies and reasonable access to all books and records of Acceleration Academies: to the extent such books and records relate to expenses made by Claimant on behalf of the Respondent from April 2, 2018 until April 22, 2020. Access to such books and records shall begin within 20 days of the payment of the above-said damages by the Respondent to the Claimant. The Respondent shall pay the costs of this accounting. The time and manner the accounting shall be conducted will be as provided for in the contract.

9. The administrative fees of the American Arbitration Association totaling $24,650.00 and the compensation and expenses of the arbitrator totaling $22,158.58 shall be borne equally by the parties.

10. The above sums for damages are to be paid on or before April 22, 2020.

11. This award is in full settlement of all claims and counterclaims submitted to this Arbitration, excepting the Federal Trademark claim by the Claimants. All claims and counterclaims not expressly granted herein are hereby denied.

March 16, 2020
Date

Hon. Robert N. Hunter, Jr., Arbitrator

AMERICAN ARBITRATION ASSOCIATION

ACCELERATION ACADEMIES, LLC, Claimant, v. CHARLESTON ACCELERATION ACADEMY, INC. a/k/a CHARLESTON ADVANCEMENT ACADEMY HIGH SCHOOL, Respondent.	CASE NO. 01-20-0010-1030

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated pursuant to the arbitration agreement entered into by and between the above-named parties and dated April 2, 2018, and after having been duly sworn, AWARDS as follows:

Respondent, Charleston Acceleration Academy, a/k/a Charleston Acceleration Academy High School (hereafter, "CAA" or "Respondent"), is a public charter school sponsored by the South Carolina Public Charter School District (hereafter, the "District"), and which provides a high school education to primarily at-risk youths in the Charleston, South Carolina area. Claimant, Acceleration Academies, LLC (hereafter "AA" or "Claimant"), is an education management organization ("EMO") and provides education and management services to school districts and public charter schools that serve at-risk students.

On April 2, 2018, CAA and AA entered into a written agreement (the "Agreement") whose purpose was to create a school to "reengage and educate students who remain eligible to receive School services but who have dropped out of or at risk of dropping out of school." Under the Agreement, Claimant AA was responsible for managing and operating the school, and Respondent CAA was to oversee AA's management and operation of the school.

The First Arbitration

The relationship between AA and CAA has not been a happy one. This is the second arbitration between these parties. [1] The first arbitration (AAA Case No. 01-19-0003-5142) involved numerous claims against CAA for breach and repudiation of the Agreement, and sought to recover payments for the period from September 2019 through April 22, 2020. CAA asserted counterclaims against AA for breach of contract, tortious interference with contract, breach of fiduciary duty, an accounting, unjust enrichment, and misrepresentation.

On March 16, 2020, the Honorable Robert N. Hunter, Jr., the Arbitrator in this first arbitration between these parties, issued his award. The Arbitrator found as follows:

(a) Respondent CAA had made a partial payment to AA on its invoice for the month of September 2019 in the amount of $57,875.91;

(b) Claimant AA had failed to claim grant funds available to the School in the amount of $133,708.12, which the Arbitrator found was a breach of the Agreement by AA;

(c) Claimant AA was entitled to damages for CAA's breach of the Agreement in the amount of $992,850.53, less the $133,708.12 credit for AA's breach of the Agreement, for a total net amount of $859,142.41;

(d) Respondent CAA was entitled to an accounting from AA relating to AA's expenses incurred on CAA's behalf for the period from April 2, 2018 to April 22, 2020, said accounting to begin within 20 days after payment of the above-described damages from CAA to AA; and

(e) The damages amount awarded in favor of AA and against CAA was to be paid on or before April 22, 2020. [2]

CAA ultimately paid Judge Hunter's Award after it exhausted its appeals therefrom, and thereafter AA provided to CAA the accounting ordered in Judge Hunter's Award.

The Second Arbitration

In this arbitration (AAA Case No. 01-20-0010-1030), conducted before the undersigned Arbitrator, Claimant AA asserts claims against Respondent CAA (i) for tortious interference with an alleged EMO contract between AA and Acceleration Education, Inc. a/k/a Low Country

[1] These parties have also engaged in numerous litigation proceedings against each other, in the South Carolina State and Federal courts, a North Carolina Federal District Court, and the Fourth Circuit Court of Appeals.
[2] CAA appealed Judge Hunter's Award to the U.S. District Court for the Western District of North Carolina, and then to the Fourth Circuit Court of Appeals. Both of those Courts confirmed Judge Hunter's Award.

Acceleration Academy; and (ii) for defamation; and Respondent CAA asserts claims against Claimant AA (i) for breach of the Agreement, and (ii) for unjust enrichment.[3] Evidentiary hearings were held before the undersigned Arbitrator on March 7-11, 2022, and March 29, 2022.

Claimant AA's Interference with Contract Claim

AA essentially claims that CAA tortuously interfered with its alleged EMO contract with Acceleration Education, Inc. (hereafter "AEA"), another public charter school to be established in the Charleston, South Carolina area. AA claims that the tortious interference occurred when Nadine Deif, CAA's board chairperson, sent letters, dated April 14, 2020 and April 24, 2020 respectively (hereafter the "Deif Letters") to officials of the District, and to the South Carolina Department of Education ("SCDE") and others, allegedly publishing false and defamatory information about AA. AA claims that the information published in the Deif Letters lead the SCDE to delay the opening of the AEA public charter school from August 2020 until August 2021, which resulted in loss of income to AA because its EMO Contract with AEA was delayed for one year.

Under South Carolina law, the elements of a claim for tortious interference with contractual relations are: (1) the existence of a valid and enforceable contract; (2) knowledge of the contract; (3) intentional procurement of its beach; (4) the absence of justification; and (5) resulting damages. Eldeco, Inc. v. Charleston City School District, 642 S.E.2d 726,731 (S.C. 2007).

The evidence presented at the hearing was equivocal as to whether there was an existing enforceable contract between AA and AEA at the time of the alleged tortious interference. The Deif Letters were dated April 14, 2020 and April 24, 2020. The EMO contract between AA and AEA was dated May 1, 2020, which came after the SCDE had already decided to push the start date for AEA's public charter school from August 2020 to August 2021. (It should also be noted that AEA was not even chartered by the District as a public charter school until July 1, 2020.) Moreover, in Article 12 of the EMO contract between AA and AEA, the commencement date for monthly payments to be made to AA was left blank. Accordingly, I find that AA failed to meet its burden of establishing the existence of a legally enforceable contract between AA and AEA.

Regardless of the above-described contract issue, the greater weight of the evidence

[3] CAA also asserted a claim against AA for alleged tortious interference with CAA's Charter School Contract with the District. That claim was dismissed by Interim Order entered by the undersigned on January 15, 2021.

showed that the Deif Letters were not the proximate cause of the SCDE's decision to postpone the start date for AEA's public charter school from August 2020 until August 2021. The evidence presented at the arbitration hearing showed that the SCDE made its postponement decision because it was relatively unprecedented for a public charter school to be allowed to open without first having a "planning year." And there was evidence that SCDE's superintendent had not even read the Deif Letters prior to making the postponement decision. Accordingly, I find and conclude that neither of the Deif Letters tortiously interfered with the EMO contract between AA and AEA and therefore AA's claim for tortious interference with contract should be dismissed.

Claimant AA's Defamation Claim

AA's defamation claim is also based on the Deif Letters. AA claims those letters made false and defamatory statements about AA that resulted in damages to AA.

Under South Carolina law, the elements of a defamation claim are: (1) a false and defamatory statement was made; (2) the statement was published to a third party; (3) the publisher was at fault; and (4) resulting damages. Garrard v. Charleston City School District, 429 S.C. 170, 190, 838 S.E.2d 698,709 (Ct.App. 2019).

I find that the statements made about AA in the Deif Letters, while possibly defamatory, were not false statements. Moreover, as indicated above, the evidence showed that the Deif Letters were not the proximate cause of the SCDE decision to postpone the opening of AEA's public charter school. Finally, AA's claim for $200,000.00 in damages for defamation was unsupported by the evidence presented at the arbitration hearing. Accordingly, I conclude that Clamant AA's defamation claim should be dismissed.

Respondent CAA's Breach of Contract Claim

CAA claims that AA breached the Agreement between them when on March 31, 2020 it abruptly shut down the information and technology services it was providing to CAA pursuant to the Agreement. CAA claims that AA was obligated to continue furnishing those services until the April 22, 2020 termination date of the Agreement. CAA also claims it suffered damages because it allegedly paid for services that AA was obligated to provide under the Agreement.

Under South Carolina law, the elements of a claim for breach of contract are: (1) the existence of a contract; (2) breach; and (3) resulting damages. S. Glass & Plastics Co. v. Kemper,

399 S.C.483, 491-92 732 S.E.2d 205, 209 (Ct.App. 2012).

AA's March 31, 2020 shutdown of the subject information and technology services it had previously provided to CAA pursuant to the Agreement was clearly premature and likely was a breach of the Agreement. However, CAA failed to offer probative evidence to establish the fact or amount of its damages proximately caused by AA's premature system shutdown.

As to CAA's claim that it allegedly paid for services throughout the term of the Agreement that AA was obligated to provide and pay for under the Agreement, I find and conclude that the doctrine of res judicata bars this claim. Under South Carolina law, "a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. V. City of Conway, 334 S.C. 30,34,512 S.E.2d 106,109 (1999).

Here, I find that CAA's claim seeks to revisit matters that were addressed or could have been addressed in the previous arbitration between these parties. Essentially, CAA is claiming that it overpaid AA when it paid Judge Hunter's Award, allegedly because CAA paid for services that AA was obligated to pay for under the Agreement. Any such claim could have been raised in the prior arbitration conducted before Judge Hunter. This conclusion is buttressed by the fact that CAA's accountant's summary of CAA's claimed overpayment damages was based entirely upon CAA's own internal records, and not on any of the accounting records that AA subsequently provided pursuant to Judge Hunter's Award. Accordingly, I find that CAA's "overpayment" claim could have been raised in the previous arbitration before Judge Hunter, and I conclude that CAA's claim is barred by res judicata.

For the foregoing reasons, I find and conclude that Respondent CAA's breach of contract claim should be dismissed.

Respondent CAA's Unjust Enrichment Claim

Respondent CAA's alternative claim for unjust enrichment is based on the same facts and evidence introduced by CAA in support of the "overpayment" portion of its breach of contract claim. For the reasons already set forth above, I find and conclude that CAA's unjust enrichment claim is likewise barred by res judicata and therefore should be dismissed.

For the foregoing reasons, I award as follows:

1. Claimant AA's claims against Respondent CAA are DENIED;

3. Neither party shall have and recover any amount from the other party;

4. Any and all requests for attorneys' fees are DENIED, and each party shall bear its own attorneys' fees;

5. The administrative filing fees of the American Arbitration Association in the total amount of $13,350.00, and the compensation and expenses of the Arbitrator in the total amount of $31,105.87, shall be born equally by the parties. Therefore, Respondent shall reimburse Claimant the sum of $1,575.00 for that portion of its share of the administrative filing fees previously incurred by Claimant; and

6. This Award is in full and final settlement of all claims and counterclaims submitted in this Arbitration. Any claim not granted herein is hereby denied.

SO ORDERED this 13th day of June 2022.

James C. Smith
Arbitrator

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Case No.: 2019-CP-10-6592

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

v.

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

NOTICE OF APPEAL

Charleston Advancement Academy High School, by and through its undersigned counsel, hereby appeals the Order of the Honorable Roger M. Young, Sr., dated November 3, 2021. Appellant received written notice of entry of this order on November 3, 2021. A copy of the Order on Appeal is provided herewith. A copy of this Notice is being provided to the Clerk of Court of Charleston County Court of Common Pleas and all counsel of record.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: _____

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December 3, 2021

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Charleston Advancement Academy High School, Plaintiff, vs. South Carolina Public Charter School District Defendant.	C.A. No. 2019-CP-10-6592 **ORDER**

This matter is before the Court on Defendant's Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6). A hearing was held on this motion on October 2, 2021 via WebEx. Both Plaintiff and Defendant were represented by counsel at the hearing. After considering the written submissions of the parties and the arguments of counsel, Defendant's Motion is **GRANTED** for the reasons set forth below.

LEGAL STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* at 395, 645 S.E.2d at 247–48 (quoting Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

The proper procedure for raising lack of jurisdiction is to file a motion to dismiss. Woodard v. Westvaco Corp., 319 S.C. 240, 450 S.E.2d 392 (1995). In some circumstances, affidavits and

other evidence outside the pleadings may be considered in support of a motion to dismiss based on lack of jurisdiction. Swicegood v. Thompson, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020). However, in the present case, no affidavits or evidence outside the pleadings is needed.

DISCUSSION

Plaintiff Charleston Advancement Academy ("CAA") is a public charter school. Defendant South Carolina Public Charter School District ("District") is a sponsor of public charter schools. As a sponsor, the District granted a charter to CAA to operate as a charter school in South Carolina. The operations of CAA and District, and the relationship between them, is governed by the South Carolina Public Charter School Act of 1996, S.C. Code Ann. § 59-40-10 to -240 (the "Act").

The Act requires the District to monitor and oversee operations of CAA for compliance with the Act and other state and federal laws. The Act requires the District to notify CAA of noncompliance, require corrective actions, issue sanctions short or revocation or revoke the CAA's charter in certain situations.

CAA's Amended Complaint asserts three causes of action against the District: (1) Breach of Contract; (2) Violation of Due Process; and (3) Declaratory Judgment. CAA alleges it incurred damages because the District made rulings against it that infringed on its authority to terminate a private management company with whom it contracted. The District asserts that the Act does not provide this Court jurisdiction over Plaintiff's claims. By prior Order, this Court denied Plaintiff's Motion for Temporary Restraining Order based on lack of jurisdiction. While the Order denying the Motion for Temporary Restraining Order is not binding in this circumstance, at least part of the reasoning in the Order is persuasive and equally applicable at the motion to dismiss stage.

Four sections of the Act bear directly upon District's argument. First, Section 59-40-90 provides that a charter school may challenge any final decision of the District in the Administrative

Law Court. Second, Section 59-40-40(4) defines sponsors like the District as "Local Education Agencies" or "LEAs," which are subject to oversight and authority of the State Educational Agency, the South Carolina Department of Education. See, generally, 34 CFR 76; 34 CFR 81. Third, Section 59-40-140 provides authority for the South Carolina Department of Education to fine District in certain circumstances if it withholds funds from a charter school. Fourth, Section 59-40-190(C) states that the District is immune from civil liability "with respect to all activities related to the charter school they sponsor."

The four sections of the Act cited above preclude any possibility of jurisdiction in this Court. Section 59-40-90 provides exclusive jurisdiction to the Administrative Law Court for any challenge to a sponsor's final decision by a charter school. Further, actions by the sponsor that are subject to federal grants or administrative processes of the State Department of Education are subject to the State Department of Education adjudicative processes, which would not be subject to challenge in this Court. Finally, the Act's provisions immunizing sponsors from civil liability further indicate the Legislature's intent to prevent sponsors like the District from being sued in civil court.

Therefore, I find that this Court lacks jurisdiction over the subject matter at issue in Plaintiff's complaint. Because I find the Court does not have jurisdiction, the Court does not need to address the remaining grounds asserted in the Motion to Dismiss.

CONCLUSION

For all of the foregoing reasons and all reasons stated on the record at the hearing on this motion, the District's motion is **GRANTED**, and Plaintiff's Amended Complaint is **DISMISSED.**

IT IS SO ORDERED.

Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

November ___, 2021.
Charleston, South Carolina.

Charleston Common Pleas

Case Caption: Charleston Advancement Academy High School VS South Carolina Public Charter School District

Case Number: 2019CP1006592

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Sheri Smithson

From: Tyler Turner
Sent: Friday, December 3, 2021 11:20 AM
To: Erik Norton, Esq.
Subject: Charleston Advancement Academy High School v. SCPCSD
Attachments: Notice of Appeal - SC Court of Appeals.pdf

Good morning, Erik,

Attached and served on you as counsel for the South Carolina Public Charter School District (the "SCPCSD"), please find the Notice of Appeal that will filed with the Court of Appeals of South Carolina appealing The Honorable Roger Young's Order granting the SCPCSD's Motion to Dismiss in the above-referenced matter. Please let me know if you would like to discuss.

Thank you and have a good weekend,

Tyler

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Columbia, SC 29201
(803) 828-9708

State of South Carolina	)	
	)	In the Circuit Court
County of Charleston	)	
	)	
	)	
Charleston Advancement Academy High School,	)	
	)	
	)	2019-CP-10-6592
Plaintiff,	)	
	)	
versus	)	
	)	
South Carolina Public Charter School District,	)	
	)	
Defendant.	)	
_____	)	

Charleston County Courthouse
October 26, 2021

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Roger M. Young, Sr.

A P P E A R A N C E S:

Carolyn Flynn, Esquire
Tyler R. Turner, Esquire
Attorney for Plaintiff

Erik T. Norton, Esquire
Attorney for Defendant, SC Public Charter School District

PROVIDED FOR: Tyler R. Turner, Esquire
tturner@turnercaudell.com

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

I N D E X

E X H I B I T S

(There were no exhibits marked during this hearing)

Note: This hearing was taken down by digital monitoring. Some words/sentences were not clear

THE COURT: Okay. Who wants to go first?

MR. NORTON: Your Honor, this is Erik Norton for South Carolina Public Charter School District. It's my motion so I'd be glad to go first, if you'd like for me too.

THE COURT: Go right ahead.

MR. NORTON: Thank you, Your Honor. This a motion to dismiss the pleadings which I very rarely file. This is a jurisdiction motion so I don't think I have much choice but to address it right up front and it is straight on some statutory law so we need to deal with it right up front in my view. This is a little bit different so if you will indulge me just a second, I'll give you a little bit of an introduction about who the parties are and how the statutory scheme works.

The Charter School District that I represent is a statewide school district. It doesn't receive any local money, it receives only statewide money. It's run by the Board of Trustees. It's appointed by the Governor and the Legislature and it sponsors Charter Schools across the state. Those Charter Schools are public schools by statute and they are governed by a non profit corporation. The Charter School District is what's known as a local education agency or LEA in education jargan which means it oversees and monitors the Charter Schools. The State

Department of Education is the State Education Agency or SEA, which means it oversees and monitors the Charter School District itself. There is a Charter School Act, which is entitled 59, Chapter 40 that governs the relationship between the State Department of Education, the Charter School District and other sponsors and the Charter Schools. So all this is laid out in statute.

In the statute, in the Charter Act, Title 59, chapter 40, section 55(b)(8) requires the Charter School District and all other sponsors to impose sanctions in a response to apparent deficiencies in charter school performance or legal compliance. Then the way that works is that 59-40-90 allows the charter school to appeal any final decision of the sponsor including the Charter School District to the administrative law court. It's all sort of laid out in statute. It's all supposed to be dealt with through this administrative process whereby it goes through the charter school to the Charter School Board of trustees, through the State Department of Education if it falls under one of their areas of statutory control or Federal Law it goes through the administrative law court if it gets to a place of a final decision. In no case does it come to the court of common pleas for an action for damages and we know that because the legislature in section 59-40-190(c) provided that the District is immune from civil or criminal

liability for any of the activities of the school.

Despite all that, in this particularly case, Charleston Advancement Academy, which is a charter school that is sponsored by the Charter School District filed it's complaint after the Charter School District imposed sanctions when the school terminated a management contract that was part of its charter. Each charter school has a charter that outlines how it is supposed to operate, what it is suppose to do and how it is suppose to educate the children. In this particular case the charter said that the school was going to use a management company to provide quite a few of these functions. The school and the management company ended up in a dispute and the school terminated the management company, all of which would be fine except that the school did not get the amendment passed before it terminated the management company and did not have a replacement plan in place before it terminated the management company, which was a breach of it's charter. Because it was a breach of its charter, that required the District to impose sanctions.

None of that matters for you today. All that matters, Your Honor, is that this court doesn't have jurisdiction over whether that action was right or wrong by the District. This was the same issue that Judge Price confronted when CAA filed a motion for a temporary

restraining order and injunction seeking to restrain the District from imposing those sanctions and it was denied by Judge Price based on lack of jurisdiction of the court of common pleas. The school moved to reconsider that and that was denied by Judge Price as of yesterday. Well, of course, an Order on a temporary restraining Order is not law of the case in most circumstances. You know, when a court doesn't have jurisdiction it doesn't have jurisdiction. Right is right. Where it has already been found that the court doesn't have jurisdiction, it would be putting the parties in an awkward position to proceed in a case where it's already been determined by one judge that there's no jurisdiction and another judge comes back and says that there is, even though you're not obligated to, I think, under the law of the case doctrine.

In any event, there are other grounds as well that would apply even if you believe that there is jurisdiction in this case. For one thing, much of the complaint is already moot. It seems like everybody agrees that the actions for declaratory relief, injunctive relief and lack of due process are not right for adjudication any longer, those have been resolved by time and circumstance which just leaves the breach of contract claim.

As I said before even if there was jurisdiction in the court that should be dismissed because of the

immunity provided by section 59-40-190(c), which provides that there cannot be any civil or criminal liability with respect to all activities related to a charter school sponsor or its sponsors. So, there's just no civil or criminal liability for the District related to the charter school but that would be a basis for denial as well.

Then finally, of course, you've got first the breach doctrine, which is set forth in the Order and has now been established as a matter of law all the way to the Fourth Circuit. This case is before you because the plaintiff is looking for a second or third bite at the apple. They have already litigated the issue of whether the breach of the or the termination of the contract with the management company was wrongful all the way to the Fourth Circuit. They have lost that matter. They've got a second arbitration pending with the management company already as well and now they are looking for a third option to try to litigate that issue in this court. It's simply not proper to litigate against the District in this court and the case should be dismissed.

I'll be glad to answer any questions you might have.

THE COURT: All right. Who's opposing?

MS. FLYNN: I am, Your Honor. Carolyn Flynn on behalf of the Charleston Advancement Academy.

THE COURT: All right. Go ahead.

MS. FLYNN: I understand that Mr. Norton has explained a little bit about the Districts role but it's important to also know about the charter schools role in its economy and authority under the Charter School Act but also under the Non-Profit Act. Charleston Advancement Academy which is formerly Charleston Acceleration Academy is governed by --- board of directors. This Board of Directors in light of it's authority not only found the Charter School Act but also found the charter that it had been entered into with it's sponsor which is the District that is represented by Mr. Norton, the defendant in this case. CAA is Charleston Advancement Academy and it provides high school education to generally a dropout population in the Charleston area. It's funded as a public school by tax payers and under the Act, the Board has the authority to make a number of decisions on its own about the school. That includes decisions related to the contract, termination and hiring decisions and also managing its on property.

The CAA in this case is sponsored by the District, the defendant, and it's our argument that a number of actions taken by the defendant, primarily in November and December of 2019, which were violations of not only the Charter School Act but also violations of the

contract and in this case the contract is the charter application but also the charter itself.

Under the Charter School of law, the District does not have the authority, while it does have some oversight authority, it does not have the authority to make employment decisions for CAA. It does not have the authority to make decisions related to contracts and who CAA is contracting under the law and specifically I'm just going to read portions that I think are very relevant from a charter. The charter here specifically says, CAA's Board of Directors will be able to terminate any management agreement if the Board of Directors determines that academic or operation of performance is inadequate. That's in the contract that it has in the District. It also states that CAA's Board of Directors will have final oversight of this school. And they released CAA's principal for terminating the agreement with CAA, AA, excuse me, if the board deems it necessary.

Now, under it's contract with AA there are a number of termination provisions, as well. When I say AA, as it is referenced here, it's Acceleration Academy. Acceleration Academy is a property management company that has no contractual relations to the District. This company was --- a contract was entered into between CAA and Acceleration Academy to provide educational and operational

services to CAA. In their contract, it stated that in the event that a danger to student health, safety or welfare exist at the sole discretion of the school this agreement may be terminated immediately.

In October of 2019, the CAA Board became aware of twenty-four safety violations involving its students, again these students were being managed and the school was being operated at that time by Acceleration Academy. They were not made aware of this by Acceleration Academy but by the landlord who thereafter threatened to end their lease unless the safety issues were addressed. The Board was concerned about the safety of it's students that the allegations involved not only thefts or drug use but also a sexual molestation claim and that is part of what the Board was taking into consideration in October when it decided to invoke the safety provision and terminate Acceleration Academy's agreement immediately. That occurred on or about October 31st, 2019.

Now, afterwards, after that happens, the District ignored the language of its agreement that I just informed you of and instead of allowing CAA to terminate it's agreement with Acceleration Academy, which it expressly provided for in the Charter and allowed under the South Carolina Charter School of law, the District imposed sanctions. It denied CAA's amended charter and the amended

charter was a request that no longer had Acceleration Academy's listed as the managing company. It imposed sanctions such as withholding funds from the school, which is contrary to the Charter School law. It also restricted Charleston Academy's ability to operate it's own school. It imposed a sanction that said that Acceleration Academy was to remain at the school and continue its operations against the Board's will.

Now, CAA is not aware of any investigation done by the District. There were no findings of wrongdoing by CAA as it relates to its termination prior to the District imposing extensions. There was no hearing or an opportunity for CAA to present evidence on its behalf. So it was only after CAA filed this complaint and also the Department of Education threatened to fine the District if it did not pay the school what it was suppose to pay, the funds that it had been withholding did the District change any of it's actions and only at that time did it start paying CAA as it was required under the law.

What happened after this is that Acceleration Academy challenged the termination. They were making --- that led to arbitration and all of references to prior litigation that Mr. Norton made were not litigation where the District was an actual party. So they do not involve the same parties. They do not involve disputes related

even to the same contracts. Prior litigations did not find any findings specific to CAA's contract or charter with the District, it was related to disputes under the contract between CAA and Acceleration Academy. So while Mr. Norton may be arguing that the school was estopped from proceeding with his matter, those prior litigations did not involve the same issues, they didn't involve the same parties and there are not findings that would bind this court and prevent this litigation from going forward because this litigation has not been litigated before.

After this occurred Acceleration Academy, there are a number of letters that the District sent. There were threatening sanctions. They imposed these sanctions. They issued orders on the school saying that Acceleration Academy must continue. They issued an Order to reinstate an employee that had been terminated, again, not within their authority under the law but their District did it anyway. So Acceleration Academy took all these letters, all these Orders, went to arbitration and then requested that the arbitrator in the breach of contract matter between CAA and Acceleration Academy also issue an Order stating that Acceleration Academy must maintain the status quo and continue to provide services.

The total amount that Charleston Acceleration Academy later had to pay as a result of Acceleration

Academy being told in order to stay their by their District and then later by the arbitrator is $850,000.00. So, it's not a small amount of change and it is certainly a dispute that goes on because CAA's position that it would not have had to pay that amount had the District allowed the school to rightfully in it's authority terminate AA and have them leave. The District requiring them to stay CAA ultimately was not able to make the decision with whom it could pay that money. It was forced to pay that money to AA against its will. And, so, I should say, because AA had to remain and provide services against the District. So based upon these facts there is more than sufficient evidence to succeed in a breach of contract claim. There is also a due process claim based upon the schools property and interest and --- interest in operating it's own charter school and we are still seeking a declaratory judgment. Your Honor, I understand that the District --- jurisdiction and the standard that's referenced in Judge Price's prior Order is a different standard then the motion to dismiss standard but also the decision related to jurisdiction doesn't take into consideration the specific law that relates to the schools authority under the Charter Schools Act.

The Charter Schools Act states that an appeal of the District's decision "may" be appealed by any party to the Administrative Law Court. It specifically uses the

term "may". It does not say shall be appealed which would indicate a requirement, it says "may" which is an option. Because there is an option provided for Charleston Acceleration Academy to seek a remedy in another jurisdiction and because this is a contract that was between two parties and was based in South Carolina then this court has jurisdiction. Also, even under the Administrative Procedures Act the legislature included a provision that specifically stated that the section does not limit utilization scope of judicial review available under other means ... address relief or trial de novo provided by the law seeking a remedy within this court is allowed not only under the Charters School Act, the school has the option under this specific law but also under the Administrative Procedures Act because it says you are not limited what you file within the ALC, in Administrative Law Court.

The defendant doesn't cite any law that contradicts or requires CAA to bring its claims against the District. But in the --- Department of Education there's no specific remedy of the --- by proceeding with a hearing by the District going forward with the Department of Education under the law.

Also, this court has jurisdiction because the provision cited by the defendant related to jurisdiction

only apply to a final decision and a final decision did not occur. Prior to the decision being imposed, what a final decision requires, as you know, is that it requires a hearing. It requires a notice of what the underlying issues are and the ability to present evidence. It requires a record. In the end findings of fact and conclusions of law. Those are what are required under the Administrative Procedures Act and a final decision to be issued. That did not occur here. There was no notice provided for the sanction of the District against CAA. There was no hearing. There was no ability to present evidence and there are no findings of fact. Not even an investigation by the District prior to imposing sanctions. Therefore, under the law, CAA's argument no final decision exits and the provision cited by the defense in support of its jurisdiction argument didn't apply.

The District also argues that the District's conduct which again on the face of the complaint and because all inferences are at this level in favor of Charleston Acceleration Academy the District's conduct in their argument is based on not knowing the law and also breaching the contract, the result was that this school lost $850,000.00 because it was forced to keep Acceleration Academy at its school against its will. So, but for the actions of the District AA wouldn't have left and

Charleston Advancement Academy would have been able to continue on operating --- continued on making decisions ... that did not occur.

The issues are now moot because of the amount that Charleston Advancement Academy had to pay out to Acceleration Academy but also because declaratory judgment is an issue here. This relationship continues. The contract currently exists and under South Carolina law if there is an issue that relates to the interpretation of the contract or relates to a question of the validity of the contract or the scope of it, a declaratory judgment may be decided and it is right under these circumstances. Specifically, a declaratory judgment is required to make sure that the District adhere to the contract. We have presented evidence that they have not adhered to the contract and we are requesting judgment saying that they have to adhere to it in the future. So that we, Charleston Advancement Academy is not threatened with sanctions without due process, is not put in a position where it has lost all its timing authority under it's contract under the law.

Also, the District, the law states and I understand that there's perhaps a difference in interruption here but again at motion to dismiss level, the inferences are the plaintiff and so when you read the law

itself that says a sponsor acting in their official capacity are immune from civil, criminal liability responsibility to respect to all activities related to a charter school with a sponsor. An interpretation which is logically and makes sense is presented by the school is that the law was meant to provide immunity to the sponsor for any wrong doing by the charter school not to take away or make them pay for any similar liability --- the District but specifically to create an immunity for this sponsor so that it's not held responsible for any wrongdoing by a charter school. Again, that motion to dismiss level, it's not clear in this state and there's no law interpreting it to be in the District's favor. Therefore, the motion to dismiss should be denied. Again, all are in favor of the plaintiff in this matter.

Your Honor, that brings us to the District's first breach argument. No breach has been decided as it relates to the charter school, CAA's contract with the District. Counsel references decisions that were related to a separate contract between two different parties. There has been no decision as it relates to the charter schools contract with the District. Also, on the face of the complaint and it's our argument it doesn't exist the charter school did not breach the contract ... without a finding or without something on it's face that indicates

the breach. There is no basis for which the court decides a motion to dismiss. The District has to approve it and at the motion to dismiss level ...

So because there is no finding regarding the charter school contract, the decisions referenced by counsel do not apply to the Districts contract, they are not estopped from proceeding in this matter. So for those reasons we are requesting that the motion to dismiss is denied and I'm happy to answer any questions that anyone has.

THE COURT: All right. Thank you. Do you have anything, briefly?

MR. NORTON: Yes, Your Honor, very briefly. With regard to why there is no case law on point on this that is because the Charter Act has been around since 1996 and there are --- the decision is replete and the Administrative Law Court and Charter Schools versus sponsors and there are not cases in common pleas for the appellant courts of Charter Schools versus sponsors. Everybody knows what it means by the plain language, everybody knows that all activities means all activities and that sponsors are immune from civil liability. Everybody understands that the "may" appeal language means that no one is every obligated to file an appeal but if you are going to file one you file it in the administrative law

court. However, if you to say so and so shall file an appeal it would mean everybody files an appeal. It's just how it is written.

The fact is that when you combine it with the immunity statute with the administrative law court it is very clear that the legislature intended for all the fights between the Charter Schools and sponsors that sponsor them to be addressed through the administrative processes. Some of them go through the Department of Education. There's a specific statue that allows the State Department of Education to assign sponsors and some are assigned to go through Administrative Law Court but it is very clear that it's intended for this court to get into the details of what is a very nuance and administrative process. With due respect this should be dismissed and the administrative process should be allowed to take its course.

I'd also like to point out to, Your Honor, one last thing just to make sure that we are clear. There were very clear findings in the record about the breach. The arbitration award which is a part of the record has been attached. In this matter, the arbitrator found that the school failed to meet its obligation to terminate the contractor from ... the arbitrator also found that there was no credible evidence of a risk of public health or safety, which justified immediate termination of the

contract. If the contract was wrongfully terminated with the management company, that in and of itself is a breach of the Charter and the contractor because that is improper exercise of the school governs duties. The main point here, Your Honor, is that this court should not get into second guessing what the Board of Trustees that's been appointed by the Legislature and the Governor have already looked at which is being looked at again by the Department of Education, and looked at again by the Administrative Law Court, which has been looked at again by the U.S. Department of Education, which has always been looked at in this particularly case by an arbitrator.

The finding of what Ms. Flynn has said, she would not be permitted to say if we were really to get into the substance. I'm not here to re-litigate the matter because that's kind of the point is that we are not re-litigating here and we shouldn't be permitted to be re-litigated. The court simply doesn't have jurisdiction and the facts already in the record establish that the case should be dismissed.

MS. FLYNN: May I respond.

THE COURT: Briefly.

MS. FLYNN: He doesn't address the fact that there wasn't a final decision. So even if, even if the court believed that he made interpretation it is as if the

District is arguing they still have a final decision to allow us to go to the Administrative Law Court here. And the way that it's played out there is really no effective remedy except for the option of school to proceed to the court of common pleas. Also, in response, counsel references, if you believe that these other decisions are correct and interpreted that there was a trust of breach based upon these decisions then first breach applies but again we have to prove that. We have to prove that it was a first to break District contract not a first to breach and again there's a time line that would based upon that hasn't been presented because we are at a motion to dismiss. The motion to dismiss is supposed to be based upon the complaint itself. So that requires discovery. It requires a defense by the District in order to be able to succeed and succeed the argument. You have the evidence here that has been raised in the complaint for the purposes of this matter. So I just wanted to --- I appreciate the opportunity to respond.

MR. NORTON: Your Honor, I address the final decision issue?

THE COURT: I don't really think it's necessary.

MR. NORTON: Okay.

THE COURT: I'm really in your favor so.

MR. NORTON: Okay.

THE COURT: I think the exclusive jurisdiction is with the Administrative Law Courts so I want you to prepare an Order and submit it.

MR. NORTON: Yes, sir.

THE COURT: So, that's all for y'all then?

MR. NORTON: Yes, sir.

MS. FLYNN: Yes, sir.

(END OF HEARING)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

Be it known that I, the undersigned Melissa R. Singletary, Certified Verbatim Reporter, for the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of the testimony and evidence introduced in during this testimony of the captioned case, taken down by a digital monitor, before the Family Court for Charleston County, South Carolina, so given on October 26, 2021, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand this 10th day of March, 2022.

Melissa R. Singletary

Melissa R. Singletary, CVR
Certified Verbatim Reporter