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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Administrative Law Court Judge

23-ALJ-30-0163-AP

Appellate Case No. 2023-001047

Charleston Advancement Academy High SchoolAppellant,

v.

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

RESPONDENT’S MOTION TO LIFT TEMPORARY STAY

Respondent South Carolina Public Charter School District (“District”) hereby moves to lift the temporary stay issued by this Court on June 30, 2023 (“Stay”). The Stay applies to the Administrative Law Court Order entered on June 29, 2023 (“ALC Order”), attached as *Exhibit 1*. The Stay has allowed Appellant Charleston Advancement Academy (“CAA”) to continue operating past June 30, 2023, while the Administrative Law Court considers CAA’s appeal of the District’s decision to revoke CAA’s charter to operate a public charter school. The grounds for this motion are as follows:

1. The Stay was erroneously granted because CAA did not make the required showing of an undue hardship as required by the South Carolina Charter Schools Act. (S.C. Code Ann. §§ 59-40-10 to -240).

2. CAA is not maintaining the status quo as required by the Stay by attempting to change its school policies and procedures without amending its charter, among other things.

3. CAA is causing immediate and irreparable harm to students. In addition to those actions outlined in the Memorandum on Appealability, CAA has issued diplomas and Final Transcripts without required verification to students that have not met criteria for high school graduation. The Stay issued in this case permits CAA to inflict additional irreparable harm to students.

PROCEDURAL BACKGROUND

CAA is a charter school serving at-risk students in grades 9-12, designated as an Alternative Education Campus under section 59-40-111 of the Charter Schools Act. The District is governed by a Board of Trustees with nine members appointed by the Governor and the Legislature. *See* S.C. Code Ann. § 59-40-230. The District granted CAA's request to operate as a charter school in 2017 based on a charter application submitted by CAA, and CAA began operating in 2018 under sponsorship of the District. *See* S.C. Code Ann. § 59-40-40(1). Charters are valid for ten years unless the charter is revoked or not renewed pursuant to S.C. Code Ann. § 59-40-110.

On January 11, 2023, the District Board of Trustees voted in a public meeting to revoke CAA's charter effective June 30, 2023. On January 23, 2023, the District Board provided written notice of revocation to CAA. By letter dated January 23, 2023, CAA exercised its right under the Charter Schools Act to request a public hearing regarding whether its charter should be revoked. Prior to the hearing, the District requested injunctive relief from the Administrative Law Court

(“ALC”) to prepare for a possible school closure and protect public assets. The public hearing challenging the vote to revoke CAA’s charter was held on May 11, 2023. *See* S.C. Code Ann. §59-40-110(H). At the conclusion of the hearing, the District Board voted to proceed with the revocation as of June 30, 2023. The District Board issued a Final Decision, attached here as *Exhibit 2*, setting forth Findings of Facts and Conclusions of Law that formed the basis for its vote.

The Final Decision outlined the failures of CAA to meet the academic performance standards and expectations in its charter and contract. *See* S.C. Code Ann. §59-40-110(C)(1) & (2). For example, CAA’s goals in its charter required a minimum graduation rate of 65 percent of students, but CAA’s graduation rate was 8.8 percent in 2021-2022. (Ex. 2 ¶¶ 17, 32, 37). Further, CAA’s charter required at least 40 percent of its students earn at least six credits per academic year, but CAA’s 6-credit attainment rate was only 2.23 percent in 2021-2022. (*Id.* ¶¶ 17, 32). CAA also had not even developed benchmarks for other academic measures as required by its charter goals. (*Id.* ¶ 33). The Final Decision at paragraphs 60-62 stated the District Board’s conclusion of law that the evidence showed CAA failed to meet the academic performance standards and expectations set forth in its charter.

In addition, the Final Decision stated at paragraph 63 that CAA failed to maintain and transmit accurate data in PowerSchool, the State’s official Student Information System for student records. At the May 11 hearing, CAA’s own data consultant and employees testified that the School’s data in PowerSchool had “tremendous deficiencies.” The Final Decision at paragraph 64-66 also found the CAA Board failed to meet governance performance standards by failing to maintain consistent and effective leadership, failing to allocate funding to improve student learning instead of attempting to buy property that was not an immediate need, and failing to exercise proper internal controls over public money by allowing the School Board Chair to access school bank

accounts through mobile banking apps on her mobile phone. The Final Decision demonstrates that each of the grounds included in the Conclusions of Law provided a separate and independent basis to revoke CAA's charter. (*Id.* ¶ 67).

CAA appealed the District Board's decision to the ALC on June 2, 2023, and also moved to stay the revocation pursuant to section 59-40-110(J) of the South Carolina Code, which states:

(J) A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59-40-90. Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or nonrenewal on the grounds that an unusual hardship to the charter school will result from the execution of the sponsor's decision.

CAA requested that the ALC hear the motion to stay on an expedited basis, to which the District consented, and the ALC agreed. The parties submitted hundreds of pages of briefing and exhibits, and a hearing on the motion, which lasted over three hours, was held on June 21, 2023. After carefully considering all the information before it and the particular standard applicable to a stay of charter school revocation appeals, the ALC denied CAA's motion to stay by written order dated June 29, 2023 at 3:37 PM. (*See Ex. 1*).

Shortly after receiving the ALC's Order denying their Motion to Stay, CAA served its Notice of Appeal of the ALC Order as well as an "Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay" on the District. The next day, June 30, 2023, prior to the District filing a response, this Court issued an Order granting a temporary stay "to maintain the status quo until the merits of Appellants appeal can be decided." This Court also requested the parties brief appealability of the interlocutory ALC Order by July 10, 2023. Both parties timely submitted the briefing, and the District requested in the briefing that this Court dismiss the appeal

and lift the temporary stay. To date, the Court has not issued a ruling on the question of appealability.

After this Court issued the Stay, CAA refused to comply with any District requests for information or prior injunction orders issued by the ALC in the case of *South Carolina Public Charter School District vs. Charleston Advancement Academy*, No. 23-ALJ-30-0027-IJ (filed January 24, 2023)(“Injunction Case”).¹ Due to the failure of CAA to comply with the prior injunction orders, the District filed a Motion to Enforce seeking an order from the ALC enforcing its prior orders so that it could carry out the statutorily-required closure protocol and its oversight responsibilities. CAA responded by filing a Motion to Strike the District’s Petition for Injunction and seeking to sanction only one of the District’s lawyers for filing the original petition in January 2023. The ALC granted the District’s Motion to Enforce by Order dated July 28, 2023 (“ALC Enforcement Order”), requiring CAA to comply with its prior orders by August 4, 2023, under possible penalty of contempt. The ALC also extended the previously ordered injunctive relief so that CAA must comply with requirements of the ALC to protect students, student records, and state funds. The ALC dismissed CAA’s Motion to Strike and for sanctions. *See* ALC orders, *Exhibit 3* (Enforcement Order) and *Exhibit 4* (order denying CAA motion to strike).

Following the entry of the Stay, CAA held a board meeting where it voted to make, or attempt to make, substantial changes to its school. *See* July 19, 2023 CAA Board Meeting Agenda, *Exhibit 5*. For example, CAA unilaterally closed its school without notice or permission from the District or the South Carolina Department of Education (“SCDE”) on July 19, 2023, CAA unilaterally, without notice or permission, changed its school calendar, and CAA unilaterally voted

¹ None of the Orders in the Injunction Case have been appealed. To be sure, the case number that CAA appealed to this Court is 23-ALJ-30-0163-AP, which appears on this case caption.

to seek permission from the SCDE to give high school credits based on proficiency without seeking an amendment to its charter. (*Id.*)

CAA also announced to its employees that it would begin a marketing campaign to solicit new students to begin attending CAA's new school term on August 23, 2023. Indeed, CAA's website includes a banner with a link to enroll with no notice to students or parents that the school is in revocation proceedings that could result in its closure. Further, CAA is systematically contacting former students that have chosen to enroll in other schools to convince them to disenroll from those schools and return to CAA seemingly without informing those students that CAA is still subject to revocation. *See* CAA Email, *Exhibit 6*. According to Exhibit 6, CAA employees consider convincing a student to return even after that student found another school to attend for next year a "win" even though CAA's charter has been revoked. (*Id.*)

These are just some examples of the behaviors that CAA has engaged in during and prior to the revocation process, which has led the parties to appear before this Court.

DISCUSSION

Based on CAA's failure to demonstrate an unusual hardship, which is statutorily required by the Charter School Act in order for a stay of the revocation to be imposed, the Stay of revocation must be lifted. *See* S.C. Code Ann. § 59-40-110(J). In addition to the Stay being non-complaint with the statute, the ALC Order that CAA appealed to this Court was unappealable because it was an interlocutory order. However, even if the ALC's interlocutory order were appealable, the Stay still should be lifted under the express requirements of the Charter Schools Act. First, the Stay prematurely and improperly issues a stay without requiring CAA to make the requisite showing of undue hardship. Second, CAA is not maintaining the status quo as intended by the Stay. Third, CAA would not be operating but for the Stay, and allowing CAA to continue operating is causing

irreparable harm to students and putting millions of dollars in public funds unnecessarily at risk for waste and/or fraud.

I. The Stay misapplies the standard for a stay under the Charter Schools Act by staying the revocation before considering whether CAA showed undue hardship.

According to section 59-40-110(J) of the Charter Schools Act :

A decision to revoke or not renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59-40-90. Upon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or nonrenewal on the grounds that an unusual hardship to the charter school will result from execution of the sponsor's decision.

Here, the Stay does not address CAA's burden of showing that an unusual hardship exists. The ALC Order, on the other hand, painstakingly explains why unusual hardship is the applicable standard and why the hardships resulting from CAA's revocation are not unusual. *See* Ex. 3, pp. 5-9. The ALC Order is based on findings of fact from an extensive record including reference to testimony under oath by witnesses subject to cross-examination, affidavits, public records, and other evidence submitted by the parties. *Id.* Moreover, the ALC Order is based on application of the unusual hardship standard in other charter revocation cases decided by the ALC.

As explained by the ALC, an unusual hardship in the context of a revocation under the Charter Schools Act means "a hardship that is distinct from the hardship generally or usually faced by a school that closes due to revocation of its charter." *Id.* at 7. The ALC Order goes on to explain:

Indeed, the closing of a school will always produce a hardship on students, parents, faculty, administrators and the district because of the logistics of moving students, organizing transportation, finding new jobs, and ending contracts and other business-related obligations of the school. CAA thus must show a hardship above and beyond these usual, reasonably expected hardships.

Id.

The ALC rightly determined, after reviewing the substantial evidence before it, that CAA failed to show any unusual hardship in its case. Specifically, the ALC noted that CAA argued its unusual hardship was mainly for one reason—that CAA serves an at-risk population that might not re-enroll if CAA closes. *Id.* The ALC rejected this argument for multiple reasons, including:

- “The challenge of student re-enrollment following revocation is not unusual;”
- “The evidence showed CAA students had multiple options to continue their education, including their resident public schools and multiple other alternative learning high schools; and
- “CAA provided no data to support its argument that its students *might* drop out instead of attending another readily available school option if CAA closed.”

Id.

The ALC denied CAA’s motion to stay the revocation and concluded as follows:

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

Id. p. 9. Evidence available subsequent to the ALC Order further supports the ALC Order as well.

For example, the CAA email to all staff brags that CAA staff is encouraging students to *disenroll* from other schools and re-enroll at CAA. *See* Ex. 6. Therefore, to the extent CAA’s interlocutory appeal may be properly before the Court, the Stay should be lifted based on the standard for a stay required by the Charter Schools Act. The General Assembly expressly included a provision in section 59-40-110(J) of the Charter Schools Act that rejected an automatic stay pending appeal of

a charter school revocation. Section 59-40-110(J) requires the charter school subject to revocation to show undue hardship *before* a stay is entered. However, in this case, the Stay does not make any finding regarding the undue hardship standard prior to staying the revocation. In fact, this Court only had access to CAA’s brief and nothing else from the record, much less any opposition from the District, prior to issuing the Stay. The ALC correctly determined based on a full record before it that a stay was not warranted, and this Court should lift the temporary stay and refer to the ruling of the ALC.

II. CAA is not maintaining the status quo as required by the Stay.

Notwithstanding that the Stay was entered in contravention of the Act, the Stay expressly states its intent for the parties to maintain the status quo. However, CAA has a history of refusing to comply with orders, including those to maintain the status quo. *See Charleston Advancement Academy vs. South Carolina Public Charter School District*, Civ. No. 2019-CP-10-6592 (S.C. Ct. Comm. Pleas, Feb. 26, 2020) (denying CAA Motion for TRO and Preliminary Injunction and finding CAA “did not maintain the status quo as required by the District Board”) (attached as *Exhibit 7*). CAA has continued its pattern of testing the bounds of authority or outright refusing to comply with its governing authorities from 2019 until the present, including its recent refusal to comply with the June 12 ALC Order. *See ALC Enforcement Order* (“[T]he Court finds that CAA has violated the Orders of May 9, 2023 and June 12, 2023[.]”) (attached as *Exhibit 3*). It is no surprise, then, that CAA also has failed to comply with this Court’s Order to maintain the status quo.

As of June 30, 2023, the status quo included the following:

- CAA was operating pursuant to the ALC’s Order dated June 12, 2023 (“June 12 ALC Order”) requiring it to provide certain information to the District by June 30, 2023;

- The June 12 ALC Order also required CAA to remove access to school bank accounts, which held in excess of \$3 million, from the personal mobile banking applications on the CAA board chair’s mobile phone that allowed her to unilaterally disburse and transfer school funds;

- CAA was not advertising for or soliciting new students on its web site for the 2023-2024 school year; and

- CAA was not seeking to award credits on a proficiency-based system only instead of also requiring students to meet state instructional time requirements as well as showing proficiency.

Since July 1, 2023, CAA has done the following that changes or seeks to change the status quo in material ways:

- Refused to comply with the ALC June 12 Order (Ex. 3);
- Closed its campus to students on July 19 without notice or permission from the District or State Department of Education (Ex. 5, “Due to both campuses being closed”);
- Voted to change its school calendar without notice or permission from the District or State Department of Education (Ex. 5, Item IX, Calendar Changes);
- Attempted to change school’s grading policy to give credit based on proficiency only without amending its charter (Ex. 5, Item XI, Proficiency-Based Waiver).
- Solicited new students on its website and otherwise to enroll at CAA beginning on August 23, 2023 without informing students that the CAA charter had been revoked and the decision was under appeal (*Exhibit 8*); and
- Solicited former students that had enrolled in other schools to return to CAA for the term beginning on August 23, 2023 without informing the students that the CAA charter had been revoked and the decision was under appeal (Ex. 6).

This Court was clear that the intent for entering the Stay was to maintain the status quo. CAA’s actions while remaining open are defeating the intent of the Stay and reflect the inherent risk that exists when allowing a charter school to operate while it appeals a decision to revoke its charter. CAA represented to this Court in its Emergency Motion that students would drop out of

school if CAA were closed. In fact, CAA's actions since July 1, 2023, demonstrate that the most significant risk is not that students will drop out, but that students with better and readily available school options will be coerced and duped into coming back to CAA without knowing the status of the charter. This reality is demonstrated by the email circulated to all current CAA staff calling the sales job by the CAA staff member to convince an unwitting student to return to CAA a "win" even though the student already had enrolled in another school for next year. (Ex. 5).

The Charter Schools Act impliedly recognizes the risks to students and taxpayers for a school operating during a revocation appeal. The General Assembly expressly stated its intent for charter schools to close during revocation appeals absent an undue hardship, which does not exist here. The Stay therefore should be lifted immediately and CAA be required to close during the pendency of its appeal in compliance with the statute.

III. CAA is causing irreparable harm to students while open.

The Stay is negatively impacting students. As explained above, Students are only earning two credits per year while at CAA and less than 10 percent are graduating (Ex. 2 ¶¶ 17, 32, 37), but that is not the worst of it. Because the CAA Board and administration is mismanaging the school operations so poorly, the validity of all CAA diplomas for 2023 is in question.

For example, the Final Decision CAA student records showed passing grades for students with more absences than allowed by law, including some students with more than fifty absences in one course. (Ex. 2 ¶ 48). CAA has continued this practice of allowing students to participate in graduation despite not meeting eligibility requirements based on excessive absences. In fact, CAA records even show one of the students was demoted after participating in the graduation. (*Exhibit 9, PowerSchool Record*).

The uncertainty and lack of success for CAA students only get worse the longer CAA is allowed to operate. It is of utmost urgency for CAA students, most of whom are at-risk, that the Stay be lifted before CAA deploys its marketing scheme to encourage not only CAA students, but other students, to disenroll from other schools that are not subject to revocation. It is of paramount importance that CAA be prevented from starting a new school term on August 23, 2023, in contravention of the Charter School Act, putting both students and taxpayer dollars at risk. Therefore, the Stay should be lifted immediately, and CAA should be ordered to comply with the ALC's decision to deny its motion for a stay pending resolution of its appeal on the merits.

CONCLUSION

Based on the foregoing, the District respectfully requests this Court lift the Stay and allow the revocation proceeding to continue in accordance with the statute.

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August 4, 2023

EXHIBIT 1

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston Advancement Academy High School,
Appellant,
v.
South Carolina Public Charter School District Board of Trustees,
Respondent.

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

ORDER DENYING MOTION

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a notice of appeal filed by the Charleston Advancement Academy High School (CAA or Appellant) on June 2, 2023, after the South Carolina Public Charter School District Board of Trustees (Respondent) revoked CAA’s charter, effective June 30, 2023.¹ The Court has jurisdiction over this appeal pursuant to section 59-40-90 of the South Carolina Code (2020); section 59-40-110(J) of the South Carolina Code (2020), and section 1-23-600(D) of the South Carolina Code (Supp. 2022). On June 15, 2023, Appellant filed a Motion for a Stay (Motion) along with a memorandum in support of the Motion. A hearing was held on the Motion on June 21, 2023, at the ALC. At the hearing, Respondent filed a memorandum in opposition to the Motion and Appellant filed an Amended Motion for a Temporary Injunction and/or Preliminary Injunction and/or a Stay (Amended Motion) along with a memorandum in support of the Amended Motion.

BACKGROUND

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

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

During the time it has been open, CAA has been involved in multiple contractual disputes, arbitrations, and litigations with the District and CAA's former Education Management Organization (EMO) company, Acceleration Academies. Acceleration Academies (AA) is a private for-profit organization, whose job was, in part, to develop and implement a security plan to ensure the safety of all students and personnel at CAA. In October 2019, it was brought to the attention of CAA by the landlord of one of its campuses, Trident Technical Collage (TTC), that there had been numerous criminal incidents on CAA's TTC campus during the immediately preceding weeks. CAA believed that AA was not implementing proper security on its campus; thus, CAA confronted AA over the situation. Consequently, CAA terminated the EMO contract between AA and CAA which resulted in an arbitration action in which CAA paid AA an additional \$859,142.41.²

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

statutory construction, I decline to evaluate Appellant's Motion under subsection 1-23-380(2) and Rule 65.³

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

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

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

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

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

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

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

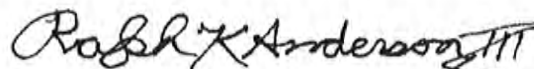
CONCLUSION

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

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

ORDER

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



Ralph King Anderson, III
Chief Administrative Law Judge

June 29, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Stephanie Perez
Judicial Law Clerk

June 29, 2023
Columbia, South Carolina

EXHIBIT 2

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

IN RE: CHARLESTON ADVANCEMENT)
ACADEMY)
)
)
_____)

FINAL DECISION

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

FINDINGS OF FACT

1. School is a charter school with campuses in North Charleston, South Carolina, and James Island, South Carolina. The School serves grades 9 through 12.
2. The School was granted a Charter by the Board on May 20, 2017, and began operating in August 2018, pursuant to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act").
3. The School is designated as an Alternative Education Campus ("AEC") under the Act because it serves students that have dropped out of high school or are at-risk for dropping out

of high school based on specific statutory criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. “a target graduation rate of 65% or a goal of 80% or greater;” and
- b. “a target of 40% of the School’s students earning at least 6.0 credits per academic year to be on track to achieve graduation within 4 years.”

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

identifies as “goals.”

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

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

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

22. On June 14, 2022, the District formally responded to the Annual Report submitted on or about December 31, 2021 by stating, in relevant part: “The school did not provide data for its goals in 2020-2021 Annual Report. The only summative academic data available to the District from the school is graduation rate. It does not appear the graduation rate is increasing or near levels required by the charter based on the available data.”

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

2024.

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

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

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

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

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

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

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

appropriate after considering the information available to it.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44. At the hearing, Deputy Superintendent John R. Payne² testified to verify that the information in the Transfer Request Report remained valid.

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

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

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

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

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

50. The School’s data consultant, Curtis Askew of DataNgin, testified at the hearing

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

60. South Carolina Code section 59-40-110(C) requires a sponsoring school district to revoke the charter of a school that “(1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both; (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both; (3) failed to maintain its books and records according to generally accepted accounting principles or failed to create an appropriate system of internal control, or both; or (4) violated any provision of law from which the charter school was not specifically exempted.”

61. The evidence at the hearing shows that the School (1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both; and (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both.

³ Prestige School Solutions, according to Martin, “provides comprehensive financial and back-office support” to the School.

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

AND IT IS SO DECIDED.



John S. Payne, Chairman

Columbia, South Carolina
May 25, 2023

EXHIBIT 3

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

This matter is before the Court on a Motion to Enforce Order and For Sanctions (Motion) filed by the South Carolina Public Charter School District’s (District) on July 10, 2023. This is another effort by the District to seek Charleston Advancement Academy High School’s (CAA) compliance with an agreement reached by the parties on April 24, 2023 and resulting orders of this Court. The matter originally came before the Court pursuant to a Petition for Injunctive Relief and Appointment of a Receiver (Petition) filed by the South Carolina Public Charter School District (District) on January 24, 2023, against Charleston Advancement Academy High School (CAA). Thereafter, on April 20, 2023, the District filed an Amended Petition for Injunctive Relief, Appointment of Receiver, and Writ of Mandamus (Amended Petition). The Petition and Amended Petition sought to address the District’s concerns that certain funds and assets in CAA’s possession would be mishandled while the District went through the process of revoking CAA’s charter. An Agreement and Orders were entered by the Court in response to the Verified Petition filed by the District.

PROCEDURAL HISTORY

The District filed a Petition seeking injunctive relief, appointment of a receiver, and writ of mandamus against CAA on January 24, 2023. A hearing was held on April 24, 2023. During the hearing, the parties conferred and reached an agreement on resolution of the Petition. The Court directed the parties to prepare an Order documenting the agreement. Initially, the parties were unable to finalize an agreement as to the terms of the Order, and the District filed a Motion to Enforce the Agreement. Following a hearing on May 5, 2023, this Court entered an Order on May 9, 2023 (Injunction Order) memorializing the terms of the amended agreement between the

parties in which the parties agreed to the District's Petition for Injunction and CAA also agreed to review and respond to any proposed closure protocol sent by the District within 48 hours. Furthermore, the Injunction Order required CAA's counsel to return \$600,000.00 of the \$1,000,000.00 they received from CAA after the District filed this action.¹

However, CAA had failed to fully comply with the May 9, 2023 Injunction Order because it had not complied with the closure protocol. As a result, on May 25, 2023, the District filed a second motion to enforce the agreement made on the record before this Court and pursuant to the Court's Order. While the motion was pending, CAA's Closure Protocol team and the District's Closure Protocol team met virtually on June 7, 2023. The District staff compiled a list of tasks for CAA to complete during the month of June in the event the school was required to close on June 30, 2023. CAA did not object to performing any of the revocation and closure protocol process tasks requested by the District. Therefore, by Order dated June 12, 2023 (Second Injunction Order), the Court granted the District's Second Motion to Enforce the Agreement subject to the following terms:

1. CAA is ordered to complete the tasks described in Exhibit A.
2. CAA is ordered to provide the District direct access to all student records through CAA student information systems, including but not limited to PowerSchool and Edgenuity; and
3. CAA is ordered to allow the District access to CAA campuses for purposes of monitoring student welfare, conducting equipment inventory, and inspecting on-site student and financial records.

Then, on July 10, 2023, the District filed this third Motion to Enforce Order and for Sanctions (Motion), seeking to enforce this Court's June 12, 2023 Order and extend or reissue the terms of this Court's Order dated May 9, 2023. The Motion was supported by an affidavit by District Deputy Superintendent John R. Payne (Payne) including a list of the information CAA had failed to provide. A hearing was held on July 19, 2023 at the ALC. CAA did not submit any memoranda or affidavit in opposition to the District's Motion but instead filed a Motion to Strike and Dismiss Contested Case under Rule 11 and for Sanctions (Motion to Strike) on July 17, 2023, which the Court will address in a separate order.

Importantly, the Second Injunction Order included Exhibit A; a list of "Priority Tasks" for CAA to complete on or before June 30, 2023, which CAA agreed to comply with. The Priority

¹ The Court made no findings regarding whether any transfer from CAA to the IOLTA account of its attorneys was appropriate.

Tasks were based on the statutorily required closure protocol required by the South Carolina Charter School Act of 1996, section 59-40-110(K) of the South Carolina Code (2020). The Priority Tasks set forth in Exhibit A and adopted by this Court’s previous Order required CAA to comply with following specific tasks associated with Closure Protocol:

EXHIBIT A
CAA Closure Protocol Priority Tasks – June 2023

Deadline	Closure Protocol Task	Status
Through June 30th	Line 17: CAA will maintain instructional models per Charter. <ul style="list-style-type: none"> • Alert the PCSD via email to Dep. Supt. John Payne prior to making changes to instructional models. • Alert the PCSD via email to Dep. Supt. John Payne within 24 hours if changes to staffing impact implementation of the current instructional model. 	
Through June 30th	Line 18: CAA will record student schedules and attendance in Power School <ul style="list-style-type: none"> • Record current student to teacher ratio • Record maximum student to teacher ratio • Alert PCSD via email immediately if any changes to any student schedule is made. 	
Through June 30th	Line 23: CAA will record data in PowerSchool consistent with District and State requirements	
By June 16	Line 23: CAA will provide by email to Dep. Supt. John Payne a list of students that <u>may</u> reach the number of credits required to graduate before June 30.	
Through June 30th	Line 24: CAA will submit all required documentation to EpiCenter for state, federal, and accountability reporting.	
By June 16th	Line 31: CAA will provide PCSD via email to Dep. Supt. John Payne a complete list of students who are scheduled to receive ESY services for the summer of 2023.	
By June 30th	Line 37: CAA will provide PCSD via email a complete list of students who are confirmed Foster Care/Homeless	
By June 30th	Line 47: CAA will provide copies to the SCPCSD of all corporate records related to Loans, bonds, mortgages and other financing, Contracts, Leases, Assets and asset distribution, Grants, Governance minutes, bylaws, policies), Employees (background checks, personnel files), Accounting/Audit, taxes and tax status, Personnel, Employee benefit programs and benefits	

By June 16	Line 57: CAA will protect school assets from theft, misappropriate and fraud; CAA will provide copies of May bank statements and IOLTA account statements; CAA will remove access to school bank accounts on any personal devices of board members/administrators and change mailing address for all bank statements to school address.	
Through June 30	Line 58: CAA will maintain all existing insurance coverage and renew any coverage expiring on or before August 1, 2023.	
Through June 30th	Line 89, 90, 91: CAA will maintain student records in accordance with state law and regulation. CAA will Provide hard copy student records to PCSD by June 30th.CAA will provide PCSD via email to Dep. Supt. John Payne a record of the locked cabinet in which these records are kept.	

DISCUSSION

The only evidence submitted in the record regarding the District’s present Motion as to CAA’s compliance with the parties’ prior agreement and this Court’s prior Orders is the affidavit by District Deputy Superintendent John R. Payne filed July 10, 2023. CAA did not refute the facts in the Payne affidavit. Rather, it submitted for the first time in this case that the Petition for Injunction was not properly before the Court. Specifically, CAA filed a Motion to Strike contending the Petition for Injunction should be dismissed because the District Board of Trustees did not take a vote in public session to authorize the filing of the Petition. Nevertheless, as addressed in a separate order, CAA previously consented to the Injunction Order, participated in hearings, and filed extensive legal briefing without raising this issue and as such has waived any such objection to this matter proceeding.

Furthermore, CAA argued that compliance with the Orders was no longer necessary because the school is operating at this time. Yet, CAA’s appeal on the merits of the charter revocation remains pending,² just as it was when CAA originally agreed and consented to the Injunction Order and just as it was when the Second Injunction Order was issued. Nonetheless,

² On May 12, 2023, CAA filed a Notice of Appeal in 23-ALJ-30-0163-AP contesting the revocation of its charter, along with a Motion for an Expedited Hearing for a Stay. CAA then filed a Motion for a Stay and Petition and Memorandum of Law in Support of Its Motion for a Stay on June 15, 2023. Prior to the hearing on CAA’s motion, CAA filed an Amended Motion for a Temporary and/or Preliminary Injunction and/or a Stay and Memorandum of Law in Support of its Motion. This Court held a hearing on CAA’s motion on June 21, 2023. On June 29, 2023, this Court issued an Order denying CAA’s motion. CAA filed an interlocutory appeal of this Court’s Order the same day with the South Carolina Court of Appeals, along with an Emergency Motion for a Temporary Restraining Order, Preliminary Injunction, and/or Stay. On June 30, 2023, the Court of Appeals issued an Order granting a temporary stay and ordering the parties to provide memoranda addressing the issue of appealability within ten days.

CAA argued that because the Court of Appeals' Order granted a temporary stay of the revocation, the closure protocol issued under the revocation statute should not be enforced as of June 30, 2023. However, this Court's Injunctive Orders and the District's present motion that have been filed in this case were initiated prior to CAA's administrative appeal to the ALC. The Orders were entered to ensure CAA's compliance with closure protocol prior to the school's potential closing. Indeed, compliance with the Orders is necessary to fulfill the purpose of the Charter Act to "ensure a smooth and orderly closure and transition for students and parents," should that be the outcome of the pending revocation proceedings. *See* S.C. Code Ann. § 59-40-110(K). Additionally, the plain language of the Charter Act makes clear the need for the closure protocol to be in place "prior to" the closure, and the nature of the tasks included in the protocol require that the protocol be started before the closure actually occurs. In fact, it would be short sighted to revoke a school's charter and close its doors without some initial planning on the part of the district.

Notably, CAA did not contest the implementation of the protocol prior to actual closure in April when CAA agreed to participate in the protocol and when it consented to the Injunction Order. Moreover, the revocation proceedings remain pending—CAA may still be required to close, depending on the outcome of its appeal, and thus the Orders requiring compliance with the closure protocol remain both important and legally necessary to protect students and taxpayers. Thus, the Court does not interpret the Court of Appeals' June 30 Order as foreclosing the institution of the closure protocol.

Counsel for CAA also represented to the Court that had they been made aware of the deficiencies sooner and in more detail, this proceeding likely could have been avoided. However, the District's Motion and Payne's supporting affidavit filed with the Court outlines with specificity the requirements CAA has failed to fulfill. The Motion and affidavit point out at least four Priority Tasks which CAA made no apparent attempt to comply with as required by the Second Injunction Order. Moreover, counsel for the District contacted CAA's counsel on July 5, 2023, five days prior to filing the motion, to confer regarding CAA's lack of compliance. CAA's counsel objected to compliance entirely and did not ask for clarification or any more detail regarding what was needed to comply with the remaining Priority Tasks.³ CAA also made no attempt to comply between receiving the affidavit on July 10 and the hearing on July 19. Indeed, the record before this Court

³ The July 5, 2023 correspondence was filed with the Court as Petitioner's Notice of Filing and submitted at hearing without objection.

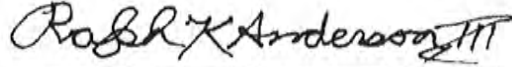
is devoid of any evidence that CAA attempted to seek clarification or comply with the Court's Order between the time CAA's counsel received the email conferring about the potential motion on July 5 and the hearing on July 19, 2023.

Therefore, the Court finds that CAA has violated the Orders of May 9, 2023 and June 12, 2023, and hereby **GRANTS** the District's Motion to Enforce Order and For Sanctions and **ORDERS** as follows:

1. CAA is ordered to provide a complete response to all of the information requested in the District's Motion by August 4, 2023. This includes all responsive information related to CAA operations in June and July 2023, including but not limited to all documentation related to any diplomas, transcripts or other student records of CAA students that may no longer be enrolled. Further, CAA must provide documentation from CAA's banks that no CAA bank account may be accessed through mobile banking by its board chair or anyone else at the school.
2. CAA is ordered to supplement its responses to all Priority Tasks in the Second Injunction Order by providing a complete response to all the information requested by the 1st day of every month in an electronic folder specified and maintained by the District until this matter is dismissed by the Court.
3. CAA is ordered to provide the District direct, unrestricted and unlimited access to Edgenuity. For the avoidance of doubt, CAA may not prevent the District from accessing any Edgenuity records, reports or functions that is available to CAA; and
4. CAA is ordered to allow the District access to CAA campuses for purposes of monitoring student welfare, conducting equipment inventory, and inspecting on-site student and financial records. The District is not required to visit the campus pursuant to this Order.
5. If CAA fails to provide any item required by this Order on or before August 4 or the first of any succeeding month, the District must notify CAA and its counsel of record in this case by email on record in the AIS system of the deficiency with specificity and allow CAA three (3) business days from receipt of the email to correct the deficiency. If CAA fails to correct the deficiency within three days, the District or its counsel may submit an Affidavit to the Court identifying CAA's failure to correct the deficiency and CAA and its counsel of record may be deemed in contempt of court, which is punishable by imprisonment, a fine, or both.
6. Counsel for CAA is ordered to provide a copy of this Order to all CAA certified educators and all CAA board members on or before August 4, 2023. Counsel for CAA must provide an affidavit to the Court verifying it has complied with this requirement by August 7, 2023.
7. This Court's Order dated May 9, 2023 is hereby extended and reissued until proceedings involving the merits of CAA's appeal of the revocation have been concluded, including all appeals from any order issued by this Court on the merits of the appeal. If CAA has taken any action after June 30, 2023 that would result in noncompliance with the May 9 Order, it must take any action necessary to correct the noncompliance by August 4, 2023. CAA, its counsel, its board members, and/or

its administration may be sanctioned and/or held in contempt if CAA is not in compliance with the May 9, 2023 Order as of August 4, 2023. Penalties for contempt may include imprisonment, a fine, or both.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

July 28, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Stephanie Perez
Judicial Law Clerk

July 28, 2023
Columbia, South Carolina

EXHIBIT 4

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Public Charter School District,)	Docket No. 23-ALJ-30-0027-IJ
)	
Petitioner,)	
)	
v.)	ORDER DENYING MOTION
)	
Charleston Advancement Academy High School,)	
)	
Respondent.)	
)	

This matter is before the Court on a “Motion to Strike and Dismiss Contested Case Under Rule 11 and for Sanctions” (Motion) filed on July 17, 2023 by Charleston Advancement Academy (CAA). At the request of CAA and without objection from the South Carolina Public Charter School District (District), a hearing was held on the Motion on July 19, 2023, with both parties.¹ For the reasons set forth below and after careful consideration of the Motion, supporting documentation, arguments of counsel, and the record before the Court in this matter, the Motion is **DENIED**.

BACKGROUND

This matter originally came before the Court pursuant to a Petition seeking injunctive relief, appointment of a receiver, and writ of mandamus against CAA by the District on January 24, 2023. Now, in its Motion, CAA asserts that this “contested case” was filed “without any notice, proposal, discussion, decision, vote or action by the South Carolina Charter School District Board of Trustees” and therefore, the “contested case” must be dismissed.² Specifically, CAA asserts that the District Board of Trustees met on January 19, 2023, and the meeting minutes indicate that the District Board of Trustees “did not notice, propose, discuss, decide, vote, or act to initiate this Contested Case against CAA on January 19, 2023.” CAA thus asserts that Petitioner’s attorney,

¹ The Court also heard the District’s Motion to Enforce Order and for Sanctions which was filed on July 10, 2023. Because CAA’s Motion was filed two days before the scheduled hearing, the Court did not issue a separate Notice of Hearing but nonetheless, intended to hear both the District and CAA’s Motions.

² The case in which CAA references and files its Motion to Strike is the above-captioned case and as already stated, was heard as an injunction before this Court. Thus, the case was never designated a contested case.

Erik T. Norton, violated Rule 11 of the South Carolina Rules of Civil Procedure when he filed this case with the ALC.

Furthermore, at the hearing on July 19, 2023, CAA argued the “contested case” was not authorized by the District Board of Trustees because it was not discussed nor voted on in the public meeting on January 19, 2023. CAA contended that pursuant to the South Carolina Charter School Act (the Act), section 59-40-230(F) of the South Carolina Code (2020) provides that the District Board of Trustees is authorized to initiate legal action and the District Board of Trustees failed to initiate the legal action for the “contested case.” Specifically, CAA relied on the meeting minutes from the January 19, 2023 public meeting and the absence of a vote or mention of a “contested case” by the District Board of Trustees in the meeting minutes. CAA asserted that as a public body, the District is subject to the South Carolina Freedom of Information Act (“FOIA”) and therefore, the “substance of all matters proposed, discussed, and decided by the District Board of Trustees must be included in its meeting minutes” pursuant to section 30-4-90(a)(3) of the South Carolina Code (2007). In addition, CAA argued that the District Board of Trustees “may act in executive session only to adjourn or return to public session” in accordance with section 30-4-70(b) of the South Carolina Code (2007). CAA contended that by filing the “contested case” without approval of the District Board of Trustees in the January 19, 2023, as indicated by the meeting minutes, the filing of the case was in violation of Rule 11 of the South Carolina Rules of Civil Procedure and requested this Court to strike the “contested case,” issue sanctions, and award costs.

In opposition to the Motion, the District argued that its Petition for Injunctive Relief and Appointment of Receiver (Petition for Injunction) that was filed on January 24, 2023, was appropriately verified by the Deputy Superintendent of the South Carolina Public Charter School District, John R. Payne who had the authority to verify the truthfulness of the contents of the Petition for Injunction. Moreover, the District argued CAA’s Motion to Strike the Petition for Injunction, which was filed in January, was untimely and CAA waived the arguments made in its Motion by participating in prior hearings regarding the injunction and consenting to the Court’s June 12 second Injunction Order. The District further noted that CAA failed to raise the issues outlined in the Motion prior to the June 12 Injunction Order, did not seek to reconsider the June 12 Injunction Order, and did not avail itself of an appeal of the June 12 Injunction Order.

DISCUSSION

Section 1-23-630 of the South Carolina Code (Supp. 2022) provides that: “[e]ach administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.” Additionally, Rule 16 of the Rules of Procedure for the South Carolina Administrative Law Court (SCALC Rules) provides, “[r]equests for preliminary or injunctive relief other than in a pending case shall be governed according to the procedures set forth in this section (II) for contested cases. The administrative law judge may issue remedial writs as are necessary to give effect to its jurisdiction and with respect to injunctions shall follow the procedure in Rule 65, SCRPC.” CAA, through counsel, participated in hearings on this injunction matter before the Court on April 24, 2023, and, on May 5, 2023. CAA also consented to this Court’s May 9, 2023 Order granting the District’s Petition for Injunction. In each instance, CAA did not challenge the District’s authority to bring an injunctive action or argue that the Petition for Injunction was a violation of Rule 11, SCRPC. Rather, almost six months after the Petition for Injunctive was filed and after the District moved to enforce the consent Injunction Order, CAA now contends that the Petition for Injunction was improperly filed.

CAA’s Motion of July 17, 2023, is in essence a motion to reconsider the Court’s June 12, 2023 Injunction Order. Rule 59(e), SCRPC provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” *See Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment). Accordingly, not only did CAA consent to the terms of this Court’s May 9 and June 12 Injunction Orders, but it also failed to timely seek relief from those Orders. Though styled as a Motion to Strike and for Sanctions, the Motion seeks to set aside, or reconsider, the parties’ agreement and previously entered Orders.

Therefore, having reviewed the consent agreements and orders entered into by the parties, presided over the hearings for the injunction, and the motions filed with the Court, I find CAA consented to the Order granting the injunction and entered into an agreement with the District regarding the District’s Petition for Injunction before this Court. Furthermore, I find CAA’s Motion is untimely, and the arguments raised in the Motion were waived. *See* Rule 12(b)(7), SCRPC, (“Upon motion pointing out the defects complained of, and made by a party before

responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.”); *Hook v. S.C. Dep’t of Health & Env’t Control*, 439 S.C. 52, 73, 885 S.E.2d 442, 453 Ct. App. 2023, (“[A] consent order is an agreement of the parties, *under the sanction of the court*, and is to be interpreted as an agreement.”)(quoting *Johnson v. Johnson*, 310 S.C. 44, 46 425 S.E.2d 46, 48 (Ct. App. 1992)(emphasis added)); *Id.* (“In South Carolina jurisprudence, settlement agreements are viewed as contracts.”) (quoting *Abel v. S.C. Dep’t of Health & Env’t Control*, 419 S.C. 434, 438, 798 S.E.2d 445, 447 (Ct. App. 2017)); *Id.* at 73-74, 855 S.E.2d at 453-54 (“The court’s duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.”); *Id.* (“Courts have no more important function to perform in the administration of justice than to ensure their orders are obeyed. The appellate courts of this state have zealously defended the right of trial courts to vindicate their authority by way of contempt.”) (quoting *State v. Bevilacqua*, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct. App. 1994)).

Based on the foregoing,

IT IS HEREBY ORDERED that CAA’s Motion to Strike and Dismiss Contested Case Under Rule 11 and for Sanctions is **DENIED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

July 31, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Stephanie Perez
Judicial Law Clerk

July 31, 2023
Columbia, South Carolina

EXHIBIT 5



AGENDA

CHARLESTON ADVANCEMENT ACADEMY BOARD MEETING

Due to both campuses being closed

ZOOM ONLY VIDEO Meeting ID: 633 566 6247

Wednesday July 19, 2023

6:00 pm

I. Call to Order

Note: This meeting will proceed with the use of unanimous consent when voting unless objection is noted. Chair to appoint a secretary to take minutes.

II. Roll Call- Excusal of Absences

III. Pledge of Allegiance and/or moment of silence

IV. Mission Statement

The mission of Charleston Advancement Academy High School 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 a positive impact in their community.

V. Public Comment on Agenda Items. Public may address the board on agenda items only. Comments by individual members of the public will be limited to two minutes each comment period. All statements shall be presented to the presiding officer and not to individuals. Public comment is a time for comments and not a time for board members to respond.

VI. Adoption of Agenda – July 19, 2023 Board Meeting **ACTION**

Without objection, any concerns of Notice of Meetings are waived as per section 15 of the Bylaws

VII. Approval of Minutes **ACTION**

VIII. Budget Reports and Financials **DISCUSSION**

IX. Calendar Changes **ACTION**

X. LBA Course for Leadership and Career Readiness Course **DISCUSSION AND ACTION**

XI. Proficiency-Based Waiver for Submission to SCDOE. **DISCUSSION AND ACTION**

- | | | |
|--------------|--|-------------------|
| XII. | Administrative Reports. | DISCUSSION |
| XIII. | Executive Session | ACTION |
| | <ul style="list-style-type: none"> a. Personnel Matters b. Receipt of legal advice pertaining to pending litigation and relating to matters covered by attorney-client privilege c. Contractual Arrangements; Classroom Smart, Insurance Renewal | |
| XIV. | Reconvene Open Session | ACTION- |
| | The chair will reconvene the open session. If required, the Board members will vote on the matters considered in Executive Session. The chair will announce if no action is required. | |
| XV. | Vote on executive session matters | ACTION |
| XVI. | BOARD REPORTS | DISCUSSION |

Upcoming Meeting and Events

The chair will announce the next meeting date as per the set calendar and other important information to the Board members. Additional Information Requests from the Board.

- | | | |
|--------------|------------------------|---------------|
| XVII. | Adjourn Meeting | ACTION |
|--------------|------------------------|---------------|

There being no further business to come before the board, the chair will note the time and adjourn the meeting.

ALL DOCUMENTS WILL BE EMAILED TO BOARD MEMBERS FOR REVIEW

***ATTACHMENTS**

CREATING A NO DROP-OUT COMMUNITY

EXHIBIT 6



Reaching Out to Students Inbox



Linda Honigford 1:46 PM
to CAAHS ▾



Good afternoon everyone,

Please continue to reach out to students that are on your caseloads. Since things are super slow right now with students on campus I have been working through the spreadsheet that Dr. Tucker sent out when we thought we were closing. I have received responses from at least five students today that did not know we were open and were very happy to be able to come back. I even got a student to cancel the orientation he was going to attend at the other school up the road. He thought he had been dropped by CAA. I am going to take that as a major win for the day!!

Link to the spreadsheet is below:

<https://docs.google.com/spreadsheets/d/10JQijJEK0LAsW-V39wAbhU3UBE23IDJXasqvTbXcZbg/edit#gid=976213012>

Thank you!!

Linda



Linda Honigford
Social Studies
Teacher, Charleston
Advancement Academy High
School

📞 843-259-2032

🌐 caahighschool.org



EXHIBIT 7

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Charleston Advancement Academy High)
School,)

Plaintiff,)

C.A. No. 2019-CP-10-6592

vs.)

South Carolina Public Charter School)
District)

Defendant.)

**[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 8

THE 2023/2024 SCHOOL YEAR! ENROLL TODAY!

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Charleston Advancement Academy High School Academic Calendar 2023-2024

July 2023							August 2023							September 2023						
Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa
						1			1	2	3	4	5						1	2
2	3	4	5	6	7	8	6	7	8	9	10	11	12	3	4	5	6	7	8	9
9	10	11	12	13	14	15	13	14	15	16	17	18	19	10	11	12	13	14	15	16
16	17	18	19	20	21	22	20	21	22	23	24	25	26	17	18	19	20	21	22	23
23	24	25	26	27	28	29	27	28	29	30	31	24	25	26	27	28	29	30		
30	31					S: 21						S: 23 A: 7							S/A: 20	

October 2023							November 2023							December 2023						
Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7				1	2	3	4						1	2
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23
29	30	31				S/A: 22	26	27	28	29	30	24	25	26	27	28	29	30		
													31						S/A: 13	

January 2024							February 2024							March 2024						
Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa
											1	2	3						1	2
7	8	9	10	11	12	13	4	5	6	7	8	9	10	3	4	5	6	7	8	9
14	15	16	17	18	19	20	11	12	13	14	15	16	17	10	11	12	13	14	15	16
21	22	23	24	25	26	27	18	19	20	21	22	23	24	17	18	19	20	21	22	23
28	29	30	31			S/A: 21	25	26	27	28	29	24	25	26	27	28	29	30		
													31						S/A: 21	

April 2024							May 2024							June 2024							
Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa	
											1	2	3	4						1	
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	
28	29	30				S/A: 17	26	27	28	29	30	31	23	24	25	26	27	28	29		
																			S: 20		

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

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

Phone: (843) 494-5521 Website: www.caahighschool.org

July 10th, 2023: Start of Summer Session
 August 17th, 2023: End of Summer Session
 August 23rd, 2023: Start of Academic Year
 May 31st, 2024: End of Academic Year
 June 3rd, 2024: Start of Summer Session One
 Q1 dates: 8/23/23 - 10/25/23
 Q2 dates: 10/26/23 - 01/18/24
 Q3 dates: 1/19/24 - 3/22/24
 Q4 dates: 3/25/24 - 5/31/24

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

EXHIBIT 9

Transfer Information

FERPA Protected Student Records 11 862064 StateID: 8097873818 Entry Date: 08/23/2023 CAA DOB: FERPA Protected Student Records

Current Enrollment

Entry Date / Code	Exit Date / Code	Grade	Entry Comment	Exit Comment	School
08/23/2023 E	06/01/2024	11	Demoted		Charleston Advancement Academy High School

Previous Enrollments

Entry Date / Code	Exit Date / Code	Grade	Entry Comment	Exit Comment	School
08/17/2022 E	07/01/2023 R	12	Retained	Demoted	Charleston Advancement Academy High School
09/13/2021 E	07/01/2022 R	11		Retained	Charleston Advancement Academy High School

Note: This screen may not be used to transfer a student in or out of school. Click on Functions to find links to those operations.

South Carolina Student Information

FERPA Protected Student Records 11 862064 StateID: 8097873818 Entry Date: 08/23/2023 CAA DOB: FERPA Protected Student Records

- Contacts
- Chronic Absenteeism
- Truancy
- CTE
- Early Childhood
- SC Student Information
- MLP
- Read To Succeed
- Precode
- Students Not Tested
- Transport
- Work-Based Learning
- Privacy and Security

English Proficiency Levels (PL) Waiver

English Language Proficiency (ELP) Initial Assessment

Birth Country

District Enrollment Date

U. S. School Entry Date

ELP Assessment

ELP Score

Language First Acquired

Language Spoken Most Often

Primary Home Language

Oral Communication Language

Written Communication Language

Qualifying Family Move

Qualifying Occupation

Housing Status

Instructional Setting True Grade CEIS

Universal Screener

Date Updated

504 Plan

504 Eligible (Without a Plan)

Medicaid No

Medicaid Consent Date

Medicaid Eligible Date

Ninth Grade Code

The Ninth Grade Code section is for the year in which the student first enrolled in grade nine.

Ninth Grade Code

Academic Goals

The Academic Goals section is for recognition that the student is seeking.

Seeking Diploma Type (for Transcript) Seeking Employability Credential (for Transcript)

Earned

The Earned section is for recognition that the student has earned.

Diploma Earned Graduation Date Graduated School Number and Name 0 -

Employability Credential Earned Employability Credential Date

Award Earned

J - Academic Honors
Bronze - South Carolina Seal of Biliteracy
Silver - South Carolina Seal of Biliteracy