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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**

Appellate Case No. 2023-001047

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

v.

South Carolina Public Charter School District Board of Trustees Respondents.

BRIEF IN OPPOSITION TO THE MOTION TO LIFT STAY

STATEMENT OF THE CASE

The Statement of the Case is set forth in full in the *Memorandum of Appealability* filed in this Court by Appellant on July 10, 2023, reference to which is hereby craved, and will therefore, not be repeated. The only material update is that Administrative Law Court has issued an Order granting the motion of the South Carolina Public Charter School District (hereinafter referred to as the "District") to expedite the briefing and hearing schedule of appeal of the District's attempted revocation of the charter of Charleston Advancement Academy High School (hereinafter referred to as "CAA") to which CAA consented, a copy of which is filed herewith as Exhibit A and made a part hereof. The Administrative Law Court's August 7, 2023, Order granting the motion to expedite sets forth the following schedule:

1. CAA's brief was due August 11, 2023, which was filed timely;
2. District's brief is due August 31, 2023;

3. CAA's reply brief is due September 5, 2023; and,
4. The oral argument on the merits of the appeal is scheduled for September 13, 2023.

Exhibit A.

FACTS

Like the Statement of the Case, the relevant facts too are set forth in full in the *Memorandum of Appealability* filed in this Court by Appellant on July 10, 2023, reference to which is hereby craved, and will therefore, not be repeated. Any additional germane facts will be discussed in the Argument section of this Brief where necessary.

ARGUMENT

The District raises three arguments in support of its motion to lift the stay. Though the District's motion is not properly before this Court, all three shall be addressed herein in seriatim in the order in which they were raised by the District. Because all three of the District's positions are patently meritless, the motion to lift the stay must be denied.

RESPONDENT'S MOTION TO LIFT TEMPORARY STAY IS NOT PROPERLY BEFORE THIS COURT

Though styled as *Respondent's Motion to Lift Temporary Stay*, the substance of the District's brief makes clear that what the District really seeks is to have this Court reconsider its June 30, 2023, order granting the stay. *See, e.g., Davis v. Satterfield Const. Co., Inc.*, 263 S.C. 356, 362, 210 S.E.2d 596, 599 (1974) ("the law regards substance and not form"); *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 189, 801 S.E.2d 401, 404 (Ct. App. 2017) (reversing the Administrative Law Court because its "factual finding timely notice was not provided—elevates form over substance."). "Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the . . . order . . . or decree of the court." Rule 221(a), S.C.A.C.R. If a petition for rehearing is not actually received by this Court within fifteen days of the issuance of an order or decree it is not timely and, therefore, not properly before the Court for consideration. *See Sun v. Town of Bluffton*, Op. No. 2020-UP-123 (Ct. App. April 29,

2020).

This Court issued its order granting the temporary stay on June 30, 2023, a petition for rehearing/reconsideration. Consequently, the District's petition for rehearing/reconsideration of this court's June 30, 2023, Order was due no later than July 17, 2023. *See* Rule 263(a), SCACR. The instant motion was filed August 4, 2023, nineteen days late. The District's motion to lift temporary stay is, thus, not properly before this Court and should not be considered.

Moreover, this Court does "not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Rules 221(c) and 240(i), S.C.A.C.R.; *See also, State v. Rucker*, 321 S.C. 552, 471 S.E.2d 145 (1996). That is not the case here. The June 30, 2023, Order in no way has the effect of dismissing or finally deciding the District's appeal. Thus, for this reason too, the District's motion is not properly before this Court for consideration.

THIS COURT APPLIED THE PROPER STANDARD WHEN GRANTING THE STAY.

In inaccurately arguing that CAA has failed to meet its burden of showing that an unusual hardship exists under Section 59-40-110(J), CODE OF LAWS OF SOUTH CAROLINA, 1976, the District completely ignores, in fact hardly mentions¹, that CAA raised as one of the grounds in support of its motion for stay and/or injunction in both the Administrative Law Court and this Court is that it is entitled to a temporary restraining order and/or injunction staying the revocation of its charter². Apparently, as seems to be a habit, the District believes that if it glosses over a

¹ The only mention the District makes of this is found on Page 4 of *Respondent's Motion To Lift Temporary Stay*: "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." This is the sum total of the District's mention – to the extent it can be characterized as such - of the fact that CAA raised and argued that the Administrative Law Court erred in failing to grant it an injunction.

² The only other mention of injunction made of injunctions are specious mentions of unrelated motions and injunctions which the District for no apparent reason, points out "[n]one of the Orders in the Injunction Case have been appealed." Surely the District is not maintaining that because those orders have not yet been appealed they are final and the law of the case. Surely it knows that those orders or not required to be appealed

glaring weakness in its position through a juridical sleight of hand, everyone else will too. CAA has not and neither should this Court.

Beginning page 46 of Exhibit A to its *Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay*, CAA establishes clear entitlement to a Temporary Restraining Order and a Preliminary Injunction. The District basically acknowledges this by noting the caption of the motion is styled “Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay.” Yet the District fails to address this in any way. Having failed to argue that the issuance of a temporary restraining order and a preliminary injunction was erroneous, the District has abandoned this argument.

If a party fails to argue an issue, the argument is not preserved. *See Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000)(an issue not argued is deemed abandoned and precludes consideration); *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992)(an issue not argued is deemed abandoned). Having waived and abandoned any argument that this Court’s issuance of a stay applying the standards for temporary restraining order and preliminary injunction was erroneous, The District has waived the same. Accordingly, since two of the grounds on which this Court issued its Order staying this matter is CAA’s entitlement to a temporary restraining order and/or an injunction has not been challenged, the motion to lift the stay must be denied.

Moreover, as an alternate ground for denial of the motion, CAA has clearly established, and this Court has found, that CAA has met its burden of showing that an unusual hardship exists under Section 59-40-110(J). CAA has argued this extensively beginning on page 46 of Exhibit A to its *Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay*, reference to which is hereby craved, so there is no reason to restate it herein.

at this stage of the proceedings. Further, even if they were appealable interlocutory orders, CAA has the option of waiting until all matters re concluded and appeal them following final judgment. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004). Rest assured, if need be, those orders will be appealed when the time is right at some point in the future.

The crux of the District's argument is that since the Administrative Law Court found that the CAA had not met the hardship burden, this Court should too. Of course, this Court, by virtue of its June 30, 2023, Order has already repudiated the Administrative Law Court's finding. This Court did so for the obvious reason that the Administrative Law Court's finding was in error. Nothing has changed. Unquestionably, the District's contention that since the Administrative Law Court made this finding, this Court should too, lacks merit.

The District claims that subsequently developed evidence requires this Court to revisit its June 30, 2023, Order. That said, the only "evidence" the District points to is Exhibit 6 to its *Respondent's Motion to Lift Temporary Stay*. Aside from the District's reliance on Exhibit 6 being a complete non sequitur, in characteristic form, the District completely mischaracterizes Exhibit 6 as "bragging" "that CAA staff is encouraging students to disenroll from other schools and re-enroll at CAA." *Respondent's Motion to Lift Temporary Stay*, p.8. It does nothing of the sort.

Exhibit 6 is an e-mail from Linda Honigford, a CAA Social Studies teacher, which begins by asking members of the staff to reach out to students to basically let the students know that CAA is still open. It next notes that she has been in communication with five students that day who were unaware that CAA is open and were happy that they were able to remain enrolled at CAA. She further explained that one of the students had apparently believed that he had been dropped by CAA and upon learning that CAA was open, cancelled his orientation at another school upon learning that CAA remained an educational option for him. Nothing in Exhibit 6 can even be remotely construed as "bragging" "that CAA staff is encouraging students to disenroll from other schools and re-enroll at CAA." The District's characterization of Ms. Honigford's email is irreconcilable with its actual language.

In no way does the District make any valid argument that CAA has failed to meet its burden of showing that an unusual hardship exists under Section 59-40-110(J). More importantly, however, since has utterly failed to make any argument that the Court erred in applying the

standard for granting motion for TRO or preliminary injunction. Accordingly, the District's Motion to Lift Temporary Stay must be dismissed out of hand.

CAA IS MAINTAINING THE STATUS QUO

Applying a unique definition of "status quo" the District strains all bounds of credibility in arguing that CA has failed to maintain it. This is simply not the case.

LegalDictionary.net defines status quo as: "[t]he existing state or condition of a situation or circumstance." "The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation" *County Council of Charleston v. Felkel*, 244 S.C. 480, 483-484, 137 S.E.2d 577, 578 (1964); accord *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973) ("[T]he sole purpose of a temporary injunction is to preserve the status quo, and thus avoid possible irreparable injury to plaintiff, pending the litigation."). Status quo in the context of an ongoing enterprise means that the enterprise continues operating normally until the issues can be fully litigated and resolved. See *County of Richland v. Simpkins*, 348 S.C. 664, 671, 560 S.E.2d 902, ___ (Ct. App. 2002) (Forcing the business to close "without first adjudicating the merits of the citations would not preserve the parties' positions pending the final hearing on the underlying merits of the actions.").

The District catalogs a litany of things in scattered fashion which it contends CAA is now doing differently than it did prior to the issuance of the Order. None of the matters listed by the District in any way demonstrates that CAA is "maintaining the status quo."

CAA is a school. That is not in dispute. As such it was operating on June 30, 2023, and continues to operate to this day in a fashion typical of and expected of the operation of a school. Everything the District complains about is simply matters with which the District pretextually disagrees which are either in dispute or which are activities ordinarily expected of a school.

For instance, the District claims great deviation from the status quo by CAA in soliciting

and enrolling students. This is a quintessential school related activity. How can this possibly be construed as anything but maintaining the status quo?

The District points out that in soliciting and enrolling students, CAA is not disclosing that its charter had been revoked – which, of course, is still very much in issue - and that the District’s illegal efforts to revoke CAA’s charter is under appeal. This, of course, has nothing whatsoever to do with whether CAA is maintaining the status quo.

The District fails to disclose that on the very same day that it filed its motion to lift the stay that it received a letter from CAA, a copy of which is filed herewith as Exhibit B³ and made a part hereof, in which many of the matters the District contends constitute evidence of CAA’s failure to maintain the status quo are challenged.

In short, the District has completely failed to demonstrate that CAA has failed to maintain the status quo. This position, therefore, provides no basis for lifting the motion to stay.

CAA IS IN NO WAY CAUSING IRREPARABLE HARM TO STUDENTS WHILE OPEN.

In cursory fashion, The District - again without mentioning that all of this is in dispute⁴ - claims, in typical hyperbolic fashion, that allowing CAA to remain open for one more minute will result in calamitous and irreparable harm to its students⁵. As demonstrated in Exhibit B, this is in no way the case.

Reading between the lines, the reason why shutting CAA down prior to Wednesday is of “utmost urgency” is that CAA’s continued operation is a continued impediment to the furtherance

³ Only the letter itself is attached as Exhibit B. Filing many of the attachments to CAA’s letter in current form and not under seal would violate the *Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings Appellate*, Case No. 2013-002681, Supreme Court Order 2014-04-15-02 (April 15, 2014). CAA will follow up this Memorandum in Opposition seeking to file the attachments to CAA’s letter under seal with proper redactions.

⁴ See Exhibit B.

⁵ While acknowledging that CAA serves at risk students, the District of course nowhere mentions that CAA is the only alternative education campus charter school of its type in South Carolina that has led more than 200 at-risk students to the attainment of a high school diploma.

of the nefarious conspiratorial scheme of Joseph Wise, David Sundstrom, the District's former Superintendent, Elliot Smalley and the District's General Counsel, Erik T. Norton, Esq., to shut CAA down and divert its students to a nearby underperforming Acceleration Academy managed school to the financial windfall of Joseph Wise and David Sundstrom. *See* Exhibit A to CAA's *Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay*, dated June 29, 2023, beginning at page 3 for a detailed discussion of their conspiratorial scheme. Every day CAA remains open it thwarts the furtherance of their scheme.

As noted above, the oral argument on the merits of CAA's appeal pending before the Administrative law Court is scheduled for September 13, 2023, twenty-three days from now. A decision will likely be rendered shortly thereafter. The Administrative Law Court contemplated this Court's Order staying the revocation of CAA's charter in establishing the briefing schedule set forth in its Order granting the motion to expedite the briefing schedule. *See* Exhibit A, footnote 1.

Lifting the stay the day before the current school term opens or shortly thereafter will cause irreparable harm to CAA and its students, faculty and staff and will generally result in chaos. If the stay is lifted and the Administrative Law Court overturns the District's illegal revocation of CAA's charter, it will be a hollow victory, as once CAA is closed, it will be difficult to revive it, the exact result Joseph Wise, David Sundstrom, Elliot Smalley and Erik T. Norton, Esq., seek in furtherance of their scheme. If the stay is left in place and the Administrative Law Court overturns the District's illegal revocation of CAA's charter, then CAA can continue in its useful purpose of assisting at-risk students pursue a high school education. If the Administrative Law Court fails to overturn the District's illegal revocation of CAA's charter, it is highly likely this Court will have the opportunity in the near future to review the Administrative Law Court's decision. Simply stated, there is simply no reason to consider lifting the stay at this point in time.

CONCLUSION

For the reasons stated above, the District's motion to lift the stay is neither timely nor

properly before this Court for consideration, and should, therefore, be dismissed. In the alternative, as the District's motion lacks merit, the District's motion to lift the stay should be denied.

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August 21, 2023

North Charleston, South Carolina

EXHIBIT A

IT IS ORDERED that the Motion is **GRANTED**.


IT IS FURTHER ORDERED that Appellant shall file its brief by August 11, 2023

IT IS FURTHER ORDERED that Respondent shall file its brief by August 31, 2023.

IT IS FURTHER ORDERED that Appellant shall have until September 5, 2023 to file its reply brief.

IT IS FURTHER ORDERED that oral argument on the merits of the appeal will be held on September 13, 2023 at 10:00 a.m.²

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

August 7, 2023
Columbia, South Carolina

² The Court will issue a separate notice of oral argument detailing the procedures.

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

August 7, 2023
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston Advancement Academy High School,)

Petitioner,)

v.)

South Carolina Public Charter School District Board of Trustees,)

Respondent.)

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

NOTICE OF ORAL ARGUMENT

This matter comes before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Charleston Advancement Academy High School (CAA or Appellant) South Carolina Public Charter School District Board of Trustees (Respondent) revoked its charter, effective June 30, 2023. The parties requested the Court hear oral arguments on merits of the appeal. The Court typically does not find oral argument is necessary in appellate cases before the ALC. *See* SCALC Rules Rule 39 (“[i]n the discretion of the administrative law judge, oral argument may not be required.”) Nevertheless, given the expedited nature of this appeal, the Court is provisionally scheduling this matter for oral argument. If after reviewing the parties’ briefs the Court determines oral argument is unnecessary, the argument will be cancelled. Thus,

IT IS HEREBY ORDERED that oral argument is scheduled to begin before the undersigned Judge at **10:00 a.m. on Thursday, September 13, 2023**, at the ALC, located at 1205 Pendleton Street, Edgar A. Brown Building, Second Floor, Suite 224, Columbia, South Carolina.

1. This oral argument will be conducted in accordance with the Rules of Procedure for the Administrative Law Court (SCALC Rules), a copy of which is available from the Clerk of Court or on the Court’s website, www.scalc.net.
2. Unless otherwise determined by the undersigned judge, argument will proceed as follows:
 - a. Oral argument by the appealing party, not to exceed twenty (20) minutes;
 - b. Oral argument by the responding party, not to exceed twenty (20) minutes;
 - c. Oral reply argument by appealing party, not to exceed five (5) minutes.



3. The proceeding is appellate in nature, and thus, arguments will be confined to the record before the Court.
4. For good cause shown, the parties may request a continuance no later than 24 hours prior to the scheduled hearing date. Failure to timely request a continuance may result in the imposition of court costs and court reporter fees.



Ralph King Anderson, III
Chief Administrative Law Judge

August 7, 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

August 7, 2023
Columbia, South Carolina

EXHIBIT B



**Charleston
Advancement
Academy
High School**

August 4, 2023

VIA E-MAIL

Mr. Chris Neeley, Superintendent
South Carolina Public Charter School District
1824 Barnwell St.
Columbia, SC 29201

Dear Superintendent Neeley:

I must state at the outset that Charleston Advancement Academy ("CAA") is not in material breach of any provisions of its charter or charter contract. Below please find the responses, including corrections to inaccurate information, contained in your July 28, 2023, letter.

1. Freedom of Information Act ("FOIA") violations:

As you have previously acknowledged, items such as FOIA requirements for agenda items are not within my authority or job responsibilities. My focus remains on overseeing and attaining the highest level of operational efficacy and compliance of CAA to support the success of our students. I appreciate that the Board of Directors of CAA ("CAA Board") embraces that shared priority as well. However, CAA is committed to ongoing good faith compliance with the South Carolina Freedom of Information Act.

2. Title IX: Acknowledged as Compliant.

3. Fiscal Compliance:

Please see the attached letter from Martin Smith & Company CPAs, the school's independent auditor with broad experience encompassing numerous charter schools, to CAA Board Chair, Ms. Nadine Deif concluding as follows: "As described above, the auditor reviewed each of your identified items and determined none raised fiscal compliance issues." Martin Smith & Company CPA's letter is attached as Attachment A. Although as you have previously acknowledged, the CAA Board "fiscal compliance" does not come under my purview or authority; given that the CAA auditors have concluded the CAA banking and accounting practices are within generally accepted auditing standards, GAAP, and South Carolina Department of Education standards, particularly given the control exercised by Prestige School Solutions as a third-party external monitor, there is no material breach or non-compliance. However, my understanding is that the bank accounts have been changed for the bank statements to be sent to the school's address. Wells Fargo Confirmation of Change of Address is attached as Attachment B.

4. School Calendar:

To clarify, both campuses of CAA were open on July 19, 2023. I am unaware of any future changes to the calendar at this time.

5. Student Attendance:

I must take issue with your inaccurate assertion that “CAA has provided no evidence of truancy intervention plans or other preventive measures to intervene.” We responded promptly and in detail to your “prior correspondence,” including the following information regarding CAA’s student attendance:

To that end, student engagement, including accurate tracking of attendance, is of the highest priority. Prior to your letter, the CAA team had been indefatigably identifying any students that we were in fear of losing engagement as identified through excessive absences. Through the last six weeks, CAA administration and staff have been focused on motivating re-engagement through actions including home visits, the hiring of a Student Retention Coach, and the utilization of “attendance contracts” to encourage and support our students to remain on the path toward a diploma. Despite this immense effort to re-engage all students, fifty-seven students remained non-responsive. On April 17, 2023, CAA mailed truancy letters to all fifty-seven and will continue with the appropriate process including ongoing attempts at intervention, accurate documentation of absences, and entries into Power School.

As an update, Notice of Withdrawal Letters were sent to the students who remained truant. These letters were sent after extensive efforts by our teams in reaching out and seeking re-engagement through various measures, including home visits and ongoing communications through Sideline. These efforts were logged into Power School to which the South Carolina Public Charter School District (“District”) has access. As discussed below, CAA reached out to our sponsor, the District, for assistance with Power School training but was denied. An integral part of the training sought included the truancy functionality. As described below, the school has arranged its own Power School training, and upon completion expects to be able to fully utilize the truancy functionality to help with further tracking.

Quite concerning is our Sponsor’s refusal to acknowledge, much less support, our mission specific students and the unique learning environment and opportunity we provide students who despite many life obstacles such as parenthood, full-time employment, failure in previous academic environments, are pursuing a high school diploma. Specifically, CAA’s mission is to provide a path to diploma and to create opportunities for students who have dropped out or at risk of dropping out of high school.

As we explained as recently as April 2023, given CAA’s unique student population, **we estimate approximately 90% of our students are above the age of 18; thus, not subject to mandatory attendance.** Further, as you are aware, to accommodate flexibility and ongoing support for our students persevering in their education despite non-traditional obstacles, CAA provides a 240-day academic year not the traditional 180 days. These are obvious and integral characteristics of our population. In light of charter schools’ purposes, as identified in the South Carolina Charter Schools Act, to close the education gap and bring innovation to public education, we are confused regarding the District’s obstinance in refusing recognition of the unique needs of our student population and the overarching mandate of our school, and you as the sponsor of our charter, to meet these students where they are in accordance with our model rather than insisting on enforcing a traditional model that does no justice to either recognizing or contributing to their success and even sabotages their progress and CAA’s mission.

For our students, ongoing and meaningful engagement is critical to their success. Therefore, we utilize student advocates who seek out engagement and contact with students not only throughout the school week but on weekends; we utilize attendance contracts to encourage commitment when life gets too hard; we provide multiple contact and educational points including on-campus, off-campus, and Edgenuity on-line access. CAA has hired a Director of Enrollment who spearheads student engagement

and motivation beginning with the enrollment process and overseeing enrollment interviews, attendance contracts, and expectations and commitment of the student that is bookended with watching for warning indicators signaling a lack of attendance and follow-through necessitating a concerted effort of re-engagement.

Interestingly, rather than seeking to provide additional support and scaffolding to our students who were particularly vulnerable to giving up on their education in the aftermath of the pandemic (as documented in many news outlets such as the Wall Street Journal's February 9, 2023, article, *Schools Lost Track of Thousands of Students Who Left During Pandemic, Study Shows*), you choose to heavy hand a suspect statistic to show an increase in absenteeism as a blanket condemnation of the school rather than the increase need of students, especially our at-risk students, in the wake of the tragedy of global pandemic.

As for your request for documentation, please see attached Attachment C containing representative attendance and truancy documents. This documentation includes the above-referenced Notice of Withdrawal letter template, Power School Screenshot, Attendance Contract template, Sample Tracking Spreadsheet, and the Student Success Plan checklist the school utilizes for each student. Representative Documentation of Attendance and Truancy Documentation attached as Attachment B. Pursuant to your request as to the location of documentation, in addition to the attached, the hard copy of replies the school received to its notices are located at the school's administrative office. CAA continues to enter attendance and upon completion of Power School training will be better able to track within that system; however, as you know, Power School capability for this has been unavailable since the commencement of the new school year, July 1, 2023, therefore, we will continue to update as the system allows.

6. Power School:

Again, as previously communicated to you, the CAA team has been and is working indefatigably on continuously updating Power School and has made substantial progress. Unfortunately, the District has not been constructive in this endeavor. In my April 21, 2023 letter, I advised that "onsite assistance to integrate our unique model with the Power School system would be more meaningful towards addressing the underlying incongruity between the system requirements and CAA's unique student population." Nuances of such incongruities were detailed including that given CAA's model and mission of serving students at-risk of not graduating means *approximately 90% of students are over 18 years of age, yet in Power School these students are flagged as not matching grade level. Another instance demonstrative of our unique population of students not on a traditional track of graduation in accordance with CAA's mission and commitment of re-engagement to the path of diploma means we have students who dis-engage from the school and then re-engage through re-enrollment. These student re-enrollments are flagged as Duplicative State ID's in Power School.*

However, when we reached out to the District for training assistance, we were rebuffed by Deputy Superintendent Payne informing us that "the District staff is unable to offer individualized training to CAA at this time." Deputy Superintendent Payne email is attached as Attachment D.

The school on its own initiative has therefore arranged onsite Power School training. We believe this training will help tremendously in efficient Power School entry, functionality, and Data Validation. Unfortunately, rather than being supported or encouraged in this process, the District's attorney in court accused my administrators of "changing records," painting their ongoing good faith attempts to comply

with your requirements as nefarious activity. Such catch 22 behavior by our Sponsor obviously makes serving our students much harder and not conducive to the sponsor responsibilities to either the school or South Carolina students.

7. Diplomas:

As recently as July 17, 2023, CAA again provided the District via Deputy Superintendent John R. Payne, the evidence supporting all students on the Graduate List in DOTS met eligibility requirements. Further as previously explained by Dr. Tucker:

As I am sure you are aware, Edgenuity is an online state approved course delivery program. Completing the course in itself demonstrates proficiency in the content. Edgenuity, Edmentum and Apex are all digital curricula utilized by almost every high school in the state. All utilized in the same fashion, upon completion of the course, the student demonstrates proficiency in the content to earn course credit. I, myself have worked with these programs in several traditional districts along with charter schools. Our charter is developed around this system. While our PowerSchool and attendance records show absences on the normal school day students often work on weekends, after hours and holidays to ensure they complete their coursework. It should also be noted that being absent means the student didn't work in Edgenuity therefore they didn't miss any content. What you are asking for is an unprecedented request that has no validity based on the charter SCPCSD approved and has had no problem with the system set forth for the last 4 years. This is why I stated, the district access you have been provided is all that is needed which will verify the students completed the courses necessary to receive their diploma. As far as missing coursework, we have already provided the evidence for those you have on the below spreadsheet clearing up any other questions that aren't related to attendance. Please let us know when you will finally get these students in DOTS so we can get our students their earned diplomas.

The school's use of Edgenuity in awarding course credit is in accordance with the specific approval of the role of Edgenuity in CAA's charter integral to its mission of competency based education for students at risk of dropping out. As stated in the attached IESD Foundations Paper, *How Edgenuity Courses Align with Research on Effective Instruction*, "Flexible scheduling enables students who are accelerated, have health issues, or may be at risk to drop out to take classes at times that fit their own unique circumstances. Online and/or blended learning can increase accessibility of content for a variety of learners—including students with disabilities and English language learners (Lacina, 2004/2005, p. 113; Meyer & Rose, 2005). Online instruction also provides an alternative setting for students who do not thrive in traditional classrooms." P. 4 IESD Foundations Paper is attached as Attachment E.

As further explained, "The second principle of UDL encourages curriculum designers to vary the ways in which students can communicate their understanding of a topic or demonstrate the mastery of a task. When students can express themselves in a medium that plays to their strengths, they can more broadly demonstrate content knowledge, and educators can more accurately evaluate learning." p. 46, Attachment E.

The awarding of course credit through Edgenuity was approved through the school in accordance with the adoption of the Edgenuity platform and with the District's approval of the charter that specifically

identifies the utilization of the Edgenuity system. For example, under Key Educational Features, the charter specifically states the following:

Charleston Advancement Academy will provide new, innovative and a more flexible way to educate students by implementing the blended learning education program, creating flexible schedules to accommodate students, provide experiential learning opportunities, offer college credit courses and career technical programs to its students. Students may enroll in Direct Instruction courses, learn through Guided Independent Study or take advantage of computer based courses through Edgenuity. P.18

The Edgenuity online learning programs are as diverse as our students' needs; providing effective educational options for every learner. The programs are grounded in a tradition of solid research, sound pedagogy, and applied innovation. They are designed by educators, for educators, and provide flexibility to support our model of instruction for students. The structures of Edgenuity scaffold learning over courses, ensuring that students achieve important skills as they advance in curricular rigor. P. 19.

Edgenuity provide robust flexibility allowing customization of coursework so as to ensure that the mission and purpose of the school is fulfilled. P. 19.

Therefore, the District 1) approved the Edgenuity and competency-based program in CAA's charter; 2) had full knowledge of the implementation of Edgenuity and its integration into the purpose and structure of the model and charter; and 3) fully supported the use of Edgenuity to assist CAA in meeting its purpose. CAA has acted in good faith on this fundamental structure of its approved charter, mission, and model for years. All of the graduates listed in DOTS have successfully completed and earned credits in the Edgenuity courses in accordance with our approved educational program and innovative model and have earned their diploma as reflected in their transcripts.

Given CAA has acted in accordance with its charter as approved by the District, there is no material non-compliance.

8. Proficiency Waiver:

A proficiency waiver is in alignment with the CAA Charter and is not and cannot in good faith be considered a material change. The District's approval of the charter necessarily approved a proficiency based program in accordance with its provisions and mission. Examples of charter language are set forth below:

...create new, innovative, and more flexible ways of educating children with the public system, with the goal of closing achievement gaps between low performing student groups and high performing student groups. P. 7.

The third learning environment, Online Learning, will allow each student to proceed at their own pace through a curriculum aligned with South Carolina's educational standards and designed by content specialists, p.22.

Students enrolled in OL [Online Learning] will be able to access the curriculum any time during the day or evening, p. 23.

A student's experience at CAA will be completely different from their experience at a traditional high school. Every student's schedule will be created around their individual academic needs and schedule restrictions. P. 24.

Edgenuity provide robust flexibility allowing customization of coursework so as to ensure that the mission and purpose of the school is fulfilled.

An assertion that CAA acting in furtherance to the core of its mission as identified and supported by its charter constitutes a material change is unsupported, to say the least.

9. EOC Violations:

As approved and authorized through the South Carolina Department of Education ("SCDE"), CAA provided its students the opportunity to take the required End of Course exams including English 2. Failing to allow the students to take these EOC's as authorized by the SCDE would have been a failure to these students who completed the course and earned the right and opportunity to attain course credit. By refusing to allow for the authorized testing, these students would have been unnecessarily, and in my opinion unduly, penalized to re-take the entire course again, in direct contravention of our mission of graduating South Carolina students that have dropped out of high school or are at risk of dropping out of high school thereby providing these at-risk students with future educational and career opportunities they would not otherwise have while meeting the requirements of the law.

The EOCs were administered properly, and appropriate documentation has been provided or is attached. EOC Documentation is attached as Attachment F.

10. Documentation Requests:

CAA is in the process of complying with the documentation requests.

Superintendent Neeley, I reiterate my standing invitation to visit CAA. As detailed above, our school has acted in good faith and consistently with its mission despite mischaracterizations. We would like for you to come see what we are doing and talk to our students. As you know, CAA is dedicated to serving students who are often marginalized and expected not to succeed in society. Our above age and other non-traditional graduates should be recognized and celebrated for their tenacity, in accordance with the District's approval of our charter and acknowledgement of our innovate competency based approach to educating them. Neither the sponsor or the school should be placing unprecedented or fabricated obstacles in their path. Working together with the clarity of information provided and joint commitment to our AEC school mission and model, our students can continue to succeed.

Please advise if I can provide any additional information.

Sincerely,



Dr. Gary Burgess
Executive Director

Enclosures

c: CAA Board of Directors

RECEIVED

Aug 21 2023

SC Court of Appeals

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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

Appellate Case No. 2023-001047

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

v.

South Carolina Public Charter School District Board of Trustees Respondents.

PROOF OF SERVICE

We hereby certify that we have served Appellant, Charleston Advancement Academy High School's, *Brief in Opposition to the Motion to Lift Stay* in the above-captioned matter by electronic mail on August 21, 2023, to the below named parties at their e-mail addresses of record:

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Respectfully submitted,

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Aug 21 2023

SC Court of Appeals

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Certified Mediator

August 21, 2023

VIA E-MAIL CTAPPFILINGS@SCCOURTS.ORG

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047*

Dear Ms. Kitchings:

Enclosed herewith for filing please find the *Brief in Opposition to the Motion to Lift Stay*, in connection with the above matter. By copy of this letter, I am serving counsel for Respondent with a copy of the same via e-mail.

With warmest personal regards, I am

Yours very truly,


Edward K. Pritchard, III
Attorney for Appellant, Charleston Advancement Academy High School

enclosures

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