

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 REPLY IN SUPPORT OF MOTION TO LIFT TEMPORARY STAY

Respondent South Carolina Public Charter School District (“District”) hereby submits its reply in support of its motion to lift the temporary stay issued by this Court on June 30, 2023 (“Temporary Stay”). Contrary to the express language and the legislative intent apparent from the South Carolina Public Charter School Act, the Temporary Stay has allowed Appellant Charleston Advancement Academy (“CAA”) to continue operating past June 30, 2023. The Temporary Stay was put into place after the Administrative Law Court (“ALC”) denied CAA’s request for a stay just two days prior. The order granting the Temporary Stay provides that the temporary stay should last while CAA’s appeal of its charter revocation to the ALC is pending. CAA would be closed today but for the Temporary Stay. Instead, CAA continues opening its doors to vulnerable students while even its own parents and teachers accuse the CAA board and administration of

mismanagement, racism, fraud and failing to report the arrest of a CAA teacher for endangering children. The stay should be lifted and CAA closed before more harm is done.

DISCUSSION

CAA callously argued to this Court on August 21, 2023, after seeking and obtaining an extension to file its brief in opposition, that “there is no reason to consider lifting the stay at this point in time” because the ALC has scheduled a hearing on the merits of the appeal for September 13, 2023, “only twenty-three days from now.” (Opp. 8). Under CAA’s timeline, even if the ALC issues a ruling by the first week in October, approximately the first nine weeks of school will be completed before this Court’s “Temporary Stay” expires. However, the time for this Court to act has not passed. If the Court lifts the Temporary Stay tomorrow or soon thereafter,¹ CAA students will have missed very little or none of this school year, depending on where else they might choose to enroll. By lifting the stay immediately, this Court can guarantee that every student at CAA would go to a school this year where the credits earned will unquestionably count, diplomas will be undoubtedly valid, records will be correct, and the graduation rate will be far higher than 8%. *See* Mot. pp. 11-12; Ex. A ¶¶ 62-63. However, if this Court leaves the Temporary Stay in place, it becomes the sole reason students attend CAA and taxpayer funds are transmitted to CAA in school year 2023-2024.

CAA raises four fatally flawed arguments in opposition to the District’s motion, addressed below in the order raised by CAA in its opposition brief.

¹ The Court granted the Temporary Stay on the day after CAA filed its motion asking for a stay and prior to the District filing a response.

I. The Motion to Lift the Temporary Stay is Properly Before the Court.

CAA argues that the District's Motion to Lift the Stay is not properly before the Court because it was not filed within fifteen days under Rule 221(a), SCACR. (Opp. Br. 2). CAA's argument is incorrect because Rule 221(a) does not apply, and the District requested that this Court lift the stay in less than fifteen days regardless.

The timeline applicable in Rule 221(a) does not apply in this situation. Rule 221(c) provides, "the appellate court will 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." The order granting the temporary stay does not dismiss or finally decide CAA's appeal, and therefore the timelines in Rule 221(a) do not apply.

Furthermore, the District asked this Court to lift the temporary stay within ten days. In the order dated June 30, 2023, both parties were instructed to submit a memorandum addressing the question of appealability within ten days, or by July 10, 2023. The District's submission in response to the order on July 10 was titled "Respondent's Response in Opposition to the Stay and to the Appealability of the Issue Raised by Appellant in Their Emergency Motion." The heading for Section II of the District's memorandum was, "The Temporary Stay Should Be Lifted." Therefore, to the extent a request to lift the stay was required to be filed within ten days, the District met that timing obligation.

The District has utilized the correct procedural mechanism for a party to obtain relief from a stay prior to the time established for the stay to expire. *See Edwards v Suncom*, 369 S.C. 91, 95 631 S.E2d 529, 531 n.4 (2006) (holding order granting stay is not immediately appealable and stating appellant "is free to move the circuit court for a lift of the stay, or such other relief as may be necessary, if the matter pending before the FCC is unduly delayed.") Like the appellant in

Edwards, the District should be free to seek relief from the Temporary Stay based on the delay that has occurred in addressing the appealability of the matter and events that have transpired since the Temporary Stay was ordered.

II. This Court Granted A Temporary Stay, Not An Injunction Or A TRO.

CAA complains that the District’s motion gives short shrift to CAA’s request for an injunction or a TRO. This is because this Court did not grant injunctive relief. While CAA indeed requested an injunction and TRO for the third time since these revocation proceedings began, this Court only granted a “temporary stay” in the order. Injunctive relief would have been entirely improper for several reasons. In fact, the United States District Court for the District of South Carolina already ruled that CAA does not meet the standard for injunctive relief regarding the revocation proceedings. *See Charleston Advancement Academy v. South Carolina Public Charter School District*, Civ. No. 2:23-cv-009640-BHH (D.S.C) (Text Order Denying Injunctive Relief filed April 26, 2023) (attached as *Exhibit A*).

The reasons CAA does not meet the standard for injunctive relief are both voluminous and well-established in the record of proceedings between these parties. CAA’s harm would not be irreparable since it could restart the school in the event of a successful appeal just as it did in the first instance and as charter schools do on an annual basis. Further, the ALC allowed CAA to set aside \$400,000 to prosecute the appeal by placing the funds in the IOLTA accounts of Turner Caudell, LLC and Pritchard Law Group, LLC. Further, CAA plainly has an adequate remedy at law – the very statutory appeal process it is exercising in the Charter School Act. Finally, CAA is not likely to succeed on the merits of its appeal since even its own expert admitted at the revocation hearing that CAA did not meet its charter goals and CAA’s data had “tremendous deficiencies” leaving its student records in a “Gordian knot” that could not be untangled. *See Mot. Ex. 2 ¶¶ 17,*

32, 37, 51. The Final Decision, attached as Exhibit 1 to the District’s Motion, as well as the ALC orders documenting CAA’s failure to comply with court orders regarding the injunction granted to the District to protect students and taxpayers during revocation, also demonstrates CAA has unclean hands that would preclude it from obtaining injunctive relief. *See ALC Order Granting Motion to Enforce*, attached as *Exhibit B*.

Nevertheless, an injunction or TRO can be modified, vacated, or dissolved by the issuing Court if it was wrongly issued or circumstances change, the same as a stay. *See Brayd v. Anders*, 294 S.C. 342, 364 S.E.2d 467 (1988) (Injunction may be dissolved at discretion of court); *see also Solley v. Navy Fed. Cred. Union*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012) (“attorney’s fees are a necessary expense incurred in relieving the plaintiff of the wrongful attachment or temporary injunction, and are recoverable.”). Therefore, CAA’s arguments related to injunctive relief are, at best, a red herring and, at worst, a basis to award attorney’s fees and costs to the District.

III. CAA Is Not Maintaining The Status Quo.

CAA’s opposition brief only directly addresses one example of CAA violating the status quo – soliciting new students. The District certainly does not concede that CAA should be permitted to solicit students other than those it already had been serving under the Temporary Stay. It seems unlikely the Court anticipated CAA would solicit and enroll new students to attend the school while operating under the Temporary Stay, much less engage in an aggressive marketing campaign focused on direct contact with students. *See Exhibit C*.

However, that is beside the point because CAA’s other violations of the status quo are so egregious. For example, CAA’s board voted after June 30, 2023 to change its model for awarding high school course credits from a model based on standard class time attendance regulations and grades to a proficiency-based model. CAA’s principal argued in a letter to the District, which is

attached as Exhibit B to CAA's opposition brief, that this is not a change from the status quo. However, even CAA acknowledges this change is significant enough to have its board seek a waiver from the Department of Education. The claim that this vote to seek a waiver does not violate the status quo is particularly disingenuous because CAA knows it does not qualify for the waiver under its charter. The State Department of Education already denied CAA's request for a seat-time waiver at the time its charter was approved. *See Exhibit D.*

Absent these pending motions, the District believes the number and significance of the changes attempted by CAA likely would be much greater. The Temporary Stay should be lifted because CAA is violating it, and in doing so defeats the purpose of the Court's intentions and leaves the District unable to fulfill its statutory duties to monitor the legal, fiscal, and academic performance of the school. *See S.C. Code Ann. § 59-40-55(B)(4).*

IV. CAA Is Causing Harm To Students And Staff.

In its Opposition, CAA did not refute the occurrence of any events harming students alleged by the District to have occurred after the Temporary Stay was issued, such as violations of the ALC Order, attempted changes to the school calendar, and attempts to change the grading system at CAA to avoid state statutory requirements. (Mot. 5-6). CAA also did not refute that it began a marketing campaign to enroll students without notice of the revocation proceedings and to encourage students to disenroll from other schools to come to CAA. (*Id.*). In fact, the written script CAA administration required teachers and staff to follow when talking to students made absolutely no mention of the risk that CAA could be required to close. *See Exhibit E.*

CAA's only defense to this ill-conceived scheme was that it was not "bragging" when it was successful, it was simply "proud" of its behavior. However, this does not make CAA's activities any less objectionable. CAA's own employees knew what CAA's administration and

board were asking them to do was unethical – at least some of them even objected to it in writing and were terminated for refusing to comply. *See Exhibit F, Exhibit G, and Exhibit H.*

Matters have only gotten worse since the District’s Motion was filed. CAA continues to refuse to provide the District information required by the ALC Court Order. The District also continues to receive additional troubling information regarding the operations at CAA. For example, the District recently received information from a CAA staff member that a special education teacher still listed as a staff member on the CAA website, Jacqueline Lee Keily, has been criminally charged with unlawfully placing a child at risk of harm or willful abandoning a child. *See Exhibit I.* While Keily has not been convicted of a crime and the District’s information is that the events alleged leading to this criminal charge did not occur at CAA, CAA’s administration still has an obligation to report her arrest related to crimes against children to the District pursuant to its charter and contract, which has not happened.

Moreover, the District received reports that CAA has been actively concealing student information and restricting the District’s access to student academic information despite the ALC orders requiring the School to provide direct and complete access to the District. *See Exhibit J.* This is consistent with the allegation in employee grievances asserting that CAA administration has been “asking employees to falsify and withhold data.” *See Exhibit J.* Meanwhile, CAA official student information records continue to include egregious errors, the vast majority of which have the impact of wrongfully improving CAA funding *and* making CAA’s performance look better. For example, CAA’s primary source of funding is based on student enrollment, and its primary measurement of academic achievement is graduation rate. CAA currently lists 24 students on its active enrollment list for funding that it also lists as June 2023 graduates. *See Exhibit K.* The District cannot determine how many students enrolled as active are actually attending CAA this

school year because CAA is not currently taking attendance in PowerSchool in direct contravention of truancy laws and South Carolina Department of Education regulations.

The District already has revoked CAA's charter, the most significant enforcement action it can take, and therefore does not have any further enforcement mechanisms remaining to utilize with the Temporary Stay in place. As evidenced by the presumption against a stay during revocation proceedings in the Charter Act, the General Assembly simply did not contemplate charter schools operating for lengthy periods of time pending revocation under the authority of a Temporary Stay issued by an appellate court. The situation created by the Temporary Stay is placing students, teachers, and taxpayers unnecessarily in harm's way. Moreover, CAA has proven through its marketing campaign that it is perfectly capable of restarting its chicanery if, for some reason, the revocation is not affirmed. The Temporary Stay should be lifted immediately for the good of South Carolina students and taxpayers.

CONCLUSION

Based on the foregoing and the grounds set forth in the District's motion, the temporary stay should be lifted immediately and the school closed so students, staff, and taxpayers are adequately protected as required by the statutory revocation proceeding.

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August 28, 2023.

EXHIBIT A

04/26/2023	23 TEXT ORDER granting 18 Motion to Set Aside Default and denying 9 Motion for TRO. For the specific reasons set forth on the record during the hearing, the Court hereby grants Defendants' motion to set aside the Clerk's entry of default, and the Court denies Plaintiffs' emergency motion for a temporary restraining order and preliminary injunction, as the Court finds that Plaintiffs have failed to make the requisite clear showing of any of the factors necessary to obtain such extraordinary relief. IT IS SO ORDERED. Signed by Honorable Bruce Howe Hendricks on 4/26/2023. (nsw) (Entered: 04/26/2023)
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EXHIBIT B

**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 C



Charleston
Advancement
Academy
High School

Takiya Mack <tmack@caahighschool.org>

Termination for Cause

Dr. Gary Burgess <gburgess@caahighschool.org>

Thu, Aug 3, 2023 at 7:42 AM

To: CAHS Staff <caahs-staff@caahighschool.org>

Cc: Nadine Deif <ndeif@caahighschool.org>, Nadine Deif <ndeif@icloud.com>, Kenneth Battle

<kbattle@caahighschool.org>, Ken Battle <kennethbattle@hotmail.com>, tcombs332@gmail.com, Elizabeth Moffly <emoffly@aol.com>

Good morning,

Prior to CAA receiving the stay by the South Carolina Court of Appeals on June 30, 2023, we were preparing to close and the proper action on our part was to refer students to other educational entities and to stop enrollment. After the stay was issued our Board, via the Board's legal team, instructed us to move forward as we would normally operate. We, the administration, was clear during our Professional Development in-service on July 19, 2023, that we would be operating as normal, refining the operation of CAA and focusing on efforts to recruit and retain students. Please be aware that action by any employee that impedes the proper functioning of CAA is cause for dismissal, specifically encouraging students to withdraw from CAA and/or directing students, the demographic that we serve, to other educational entities is willfully harming the effectiveness of CAA.

I want to be crystal clear- I will not hesitate to seek any employee's termination for such behavior: willfully harming the effectiveness of CAA as an organization.

Prior to June 30, 2023, our actions were to ensure that students would be able to continue their education elsewhere. However, after June 30, 2023, with the issuance of the stay, we were given the greenlight to continue our operations. I repeat what I stated in my email on yesterday, August 2, 2023- *"If for some reason you cannot do what's expected of you we, you and I, need to have a conversation about other opportunities outside of CAA."*

Respectfully,



D

Dr. Gary L. Burgess, Sr.
Director, Charleston Advancement Academy High School

📞 843-972-5352

🌐 caahighschool.org

✉️ gburgess@caahighschool.org

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EXHIBIT D



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

May 15, 2018

Elliott Smalley
District Superintendent
SC Public Charter School District
3710 Landmark Drive, Suite 201
Columbia, SC 29201

Dear Dr. Smalley:

The Office of Federal and State Accountability, along with Office of General Counsel, has reviewed your waiver request for the Charleston Acceleration Academy to waive the seat-time requirement of State Board of Education (SBE) Regulation 43-234(II)(B). Both offices have concluded the SBE will not be able to grant this request without violating state statute on mandatory instruction time.

S.C. Code Ann. §59-1-425 requires all secondary schools to have six hours of instruction time per day, excluding lunch. The SBE does not have the legal authority to allow a district or school to forgo compliance from this statute unless the statute explicitly gives the SBE that right. It is not so in this case.

The submitted waiver request outlined a plan where instruction consisted of twelve hours per week at school and twelve hours per week off-site. Assuming the twelve hours off-site can be properly documented, this schedule is well below the mandated six-hour instructional day. For this reason, the SC Department of Education cannot present a favorable recommendation to the SBE on your behalf.

I will be glad to answer any questions or concerns you may have regarding this issue. I can be reached at dprevatt@ed.sc.gov or at 803-734-3477.

Sincerely,

A handwritten signature in blue ink that reads "Darlene Prevatt".

Darlene Prevatt, Team Leader
Office of Federal and State Accountability

EXHIBIT E

CAA Admin <administration@caahighschool.org>

To: Titilola Bligen <tbligen@caahighschool.org>, Cory Boyd <cboyd@caahighschool.org>, Courtney Davis <cdavis@caahighschool.org>, Adrian Ford <aford@caahighschool.org>, Nikki Gayle <sgayle@caahighschool.org>, Jenae Haynes <jhaynes@caahighschool.org>, Christina Johnson <cjohnson@caahighschool.org>, Takiya Mack <tmack@caahighschool.org>, Timothy Smith <tsmith@caahighschool.org>, "Ankeshia (Keshia) Williams" <awilliams@caahighschool.org>, Jamel Gregory <jgregory@caahighschool.org>

Good morning all,

As we are in our reset mode, we are needing your assistance in student contact. Please reach out to each of the students on your roster by Friday either by phone or home visit (submit your mileage for reimbursement) to get a status update. Mrs. Johnson has created the tracking spreadsheet that she will be using with you all as we develop our MTSS model. Please utilize the spreadsheet as you make contact with all of your students and document each one's status. We know everyone has asked, "what are we supposed to say?" So to make sure we are all on the same page, here is the script that we all will use.

"Hi _____,

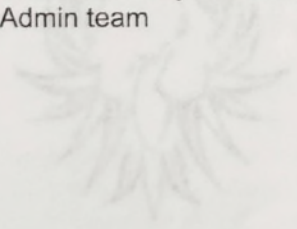
I just wanted to reach out to let you know that CAA is still standing! We would love to see you back on campus, what day do you think you can get in?"

If they ask about the status of the school, all you need to say is "our legal team is still fighting the good fight and we have confidence that our school is doing great things and we will prevail."

The administrative team will also be making student calls ourselves to check in and make sure every student has been contacted and knows who their point person is. You can also send out the enrollment intent form to send via text for students to complete.

Please let us know if you have any questions.

Thanks for all you are doing,
Admin team



Dr. Cory L. Burgess, Sr.
Principal, Charleston Advancement Academy High School
1111 1472-6302
caahighschool.org
cburgess@caahighschool.org

CAAA Admin
The contents of this email and any attachments are confidential. They are intended for the individual(s) named only. If you have received this email by mistake, please notify the sender immediately and do not disclose the contents to anyone or make copies thereof.

000

You received this message because you are subscribed to the Google Groups "CAAHS Staff" group.
To unsubscribe from this group and stop receiving emails from it, send an email to caahs-staff+unsubscribe@caahighschool.org.

EXHIBIT F

Good Afternoon

I am requesting a hearing regarding the grievance I have filed. On Saturday August 12th at 8:43am I received an email from Dr Gary Burgess, informing me that I have been written up for not completing the contact log. I responded to the email expressing my concerns regarding the verbiage in the canned statement the administrative staff sent out to say to the kids. I expressed that I felt it was misleading and unethical and was taking some time to figure out how I would contact our students and parents as I wanted to be truthful. I never advised that the list wouldn't be completed but that I needed clarity on what was proper to say. I was so upset by this write up that I could not get any sleep Saturday or Sunday night. I received a response to my email on Monday August 14th advising me that if I felt I couldn't follow the directives given by administration then I would need to put in writing that I would not and for me to resign. I was thoroughly shocked and visibly upset that this administration would try to force me to resign and to write an untrue statement in that potential resignation letter. I expressed this to the admin team in an email on August 15th. I received a response that day to have a meeting with Dr Burgess and Mr. Brinckman. After the meeting on August 16th I was left filled with anxiety so much so that I went to see my doctor to refer me to counseling. . The meeting was filled with Dr Burgess trying to coerce me into saying what he wanted me to say. There was no regard for how I felt regarding being fully transparent with our students and parents. The unfair treatment displayed by administration is typical as other employees did not receive the same aggressive email I received regarding the contact list. After I left the meeting, I returned to my computer and found that my email account was disabled by the administration. I went to ask them why this was done, since I was not fired during this meeting as they did with my co-worker, Dr. Burgess informed me he has no knowledge of this. This is just one incident of how the administration targets and retaliates against employees who speak their mind. I can only surmise from my email being deactivated , is that they assumed a conflict and pre-judged me and were wanting to fire me. The unprofessionalism of this administration team has been ongoing. I have had administration divulge proprietary conversations they have had with staff members with me and others. I have spoken to the administration regarding this unprofessionalism and although they agreed, nothing was done about it. The constant threatening emails from Dr Burgess, informing us we will be fired, if this or that is not done. I have been with CAA for 4 years and I'm fully aware of my job duties and I have never had a problem with doing what is expected of me. This administration has created an extremely toxic environment for all employees. They allowed racism to exist and not address the issues. The employee handbook states "We deeply value the contributions of our staff, and recognize that the work we do is wholly dependent upon mutual respect and professionalism. Unfortunately this has not been the case with this current administration.

EXHIBIT G

Good morning,

I am writing to you to formally request a Grievance Hearing with the CAA Board of Directors. I have proudly served in and created several positions at Charleston Advancement Academy since October 2018. On Saturday, August 12, 2023 at 8:49am I received an email stating that I did not complete the student log that was sent out on August 2nd and needed to meet with Mr. Brinkman to discuss why the task had not been done. I was confused as to why I was receiving this email because Mr. Brinkman knew I was out on PTO the previous week and the upcoming week I was scheduled for work-related training. I am filing a grievance because this last email and the chains of emails sent out to staff continuously from Dr. Burgess and the administration have been very threatening. One of the most recent emails stated that if you do not comply they will help you seek employment elsewhere. We continuously receive subtle threats regarding termination that have caused a major increase in my anxiety. I am anxious about returning to work knowing that this work environment has reached a level of toxicity that I can no longer keep quiet out of fear of retaliation. Since my time here at CAA, I have worked under 12 different administrators in the last 5 years. The continuous turnover and lack of support from leadership has caused the toxicity in the workplace to reach an all time high. This is the worst I have seen our staff divided due to the racist behaviors. I have witnessed so many racial comments, with lack of intervention or support from the Administration despite being repeatedly notified of these behaviors. This administration continues to refuse to answer staff questions and seeks to punish those who ask them. There has been a complete and utter lack of leadership by this administration as they do not provide us with the tools necessary to

be successful in our positions. The near-constant threats of termination, complete lack of leadership, allowance of racist behaviors to continue, complete disregard and lack of empathy for employees, abusing their authority over employees, and creation of a hostile and volatile work environment have led me to file this grievance against the CAA Administration. The CAA handbook claims that “We deeply value the contributions of our staff, and recognize that the work we do is wholly dependent upon mutual respect and professionalism.” This administration has blatantly violated this and has not shown any respect or professionalism to staff. Additionally, the handbook claims that CAA maintains “a scrupulous regard for the highest standards of conduct and personal integrity.” Recent actions by this administration, including asking employees to falsify and withhold data, directly violates this. This administration has proven to be retaliatory should an employee disagree with them. According to the handbook, “Charleston Advancement Academy prohibits any form of retaliation against individuals who report alleged violations of this policy or who cooperate in the investigation of such reports. Retaliation is unacceptable, and any form of retaliation in violation of this policy will result in disciplinary action, up to and including discharge.”

Thank you,

Ankeshia Williams, Advancement Counselor

EXHIBIT H



August 21, 2023

VIA E-MAIL

Ms. Sheneka Gayle
(sngayle@yahoo.com)

Dear Ms. Gayle:

I am writing in follow up to our conference on Wednesday, August 16, 2023, in which I informed you that your employment at Charleston Advancement Academy (“CAA”) has been terminated effective August 16, 2023.

By way of background, as an employee in the position of advocacy and engagement coach, your essential job duties included daily and ongoing contact with students. In your email to me on Augst 15, 2023, you write that my directive to advancement coaches and engagement coaches to contact students inviting them back to school was unethical and you state you refuse to follow the directive. As explained, you cannot remain employed, and the school cannot continue to employ you, in a position you refuse to perform. Furthermore, you indicate that you will not follow future directives if you deem them to be inappropriate. While attempting to address this issue, with advancement counselors and engagement coaches as a group, and communicate with each of you regarding expectations, you engaged in unprofessional and insubordinate behavior, including but not limited to, inappropriate use of school wide communications, insubordination, and ongoing neglect of duty as written in your email causing dissension in the workplace

Due to your failure to “*faithfully discharge the duties and requirements imposed on [you] by the Director and by federal and South Carolina laws and regulations,*” pursuant to your contract, your employment has been terminated for reasons that include but are not limited to neglect of duty, incompetency, failure to meet the accepted standards of conduct for the position, disruption of the school environment, and unprofessional behavior.

As previously communicated, you have the ability to appeal this decision to the CAA Board of Directors which I understand you have already done. Please communicate with CAA Board Chairperson Ms. Dief at ndeif@caahighschool.org if you have any questions about the process and/or the options available to you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gary Burgess', is written over a horizontal line.

Dr. Gary Burgess
Executive Director

EXHIBIT I



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

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The State of South Carolina VS Jacqueline Lee Keily

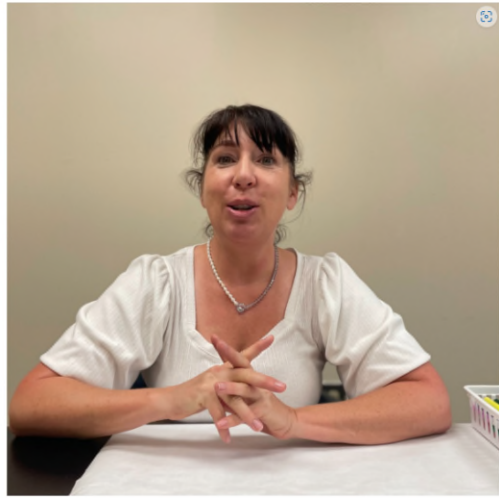
Case Number:	2023A1010204355	Court Agency:	General Sessions	Filed Date:	08/01/2023
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	08/08/2023	Arrest Date:	08/01/2023
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:		Waiver Date:	
Probation Case:					

[Case Parties](#) [Charges](#) [Sentencing](#) [Associated Cases](#) [Actions](#) [Financials](#) [Bonds](#)

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Keily, Jacqueline Lee	2481-Children / Unlawfully place a child at risk of or cause harm or willfully abandon the child	2481-Children / Unlawfully place a child at risk of or cause harm or willfully abandon the child	

08421 770-2315

Redacted



Jacqueline Kelly
SPED Teacher-JI
jkelly@caahighschool.org
08421 621-3675

Redacted

EXHIBIT J

From: Takiya Mack <takiyamack@gmail.com>
Sent: Friday, August 18, 2023 9:39 AM
To: Marlene Sellars <msellars@sccharter.org>
Subject: Documentation

You don't often get email from takiyamack@gmail.com. [Learn why this is important](#)

Good Morning

I wanted to detail the events that happened on June 14th. Assistant Director Mr. Kenny Brinckman asked me at the request of the admin team to pull up my Edgenuity account on my computer because he was trying to figure out how to restrict the district's access to functions of Edgenuity. He and the admin team were scheduled to have a meeting that day to go over access to Edgenuity among other things. He stated the district didn't need full access to everything we had. He wanted to see if he changed access on my account from his computer and for me to tell him what I was able to access on mine. I wanted to make sure that this was ok, even though I wasn't making any of these changes, because I do not have the authority to do so. He stated that this was fine because they didn't need all of this access. There were 2 other witnesses present when he came into my classroom to ask me to help him. This is just another example of the many things the administration and the board has tried to make us do. Not until I read the court orders did I know that this was a requirement and the district needed full access to these things.

EXHIBIT K

21	Grad Date	Student ID	Active Enrollment
22	06/22/2023	639963	Yes
23	06/23/2023	580936	Yes
24	06/24/2023	662726	Yes
25	06/25/2023	656365	Yes
26	06/26/2023	640488	Yes
27	06/27/2023	669449	Yes
28	06/21/2023	662064	Yes
29	06/21/2023	655534	Yes
30	06/21/2023	661546	Yes
31	06/21/2023	656696	Yes
32	06/21/2023	655111	Yes
33	06/21/2023	645042	Yes
34	06/21/2023	668992	Yes
35	06/21/2023	668652	Yes
36	06/21/2023	662558	Yes
37	06/21/2023	649996	Yes
38	06/21/2023	662602	Yes
39	06/21/2023	664279	Yes
40	06/21/2023	640001	Yes
41	06/21/2023	661630	Yes
42	06/21/2023	642989	Yes
43	06/21/2023	663586	Yes
44	06/21/2023	641605	Yes
45	06/21/2023	668725	Yes
46	06/21/2023	661615	Yes

RECEIVED

Aug 28 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

23-ALJ-30-0163-AP

Appellate Case No. 2023-001047

Charleston Advancement Academy High SchoolAppellant,

v.

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

PROOF OF SERVICE

I certify that a true copy of the Respondent’s Reply in Support of Motion to Lift Temporary Stay in this case has been served on the following, this 28th day of August, 2023, by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2020-000447).

- Tyler R. Tunrer - tturner@turnercaudell.com
- Edward K. Pritchard, III - epritchard@pritchardlawgroup.com
- Luke A. Rankin - luke@rankinandrakin.com
- Mary Allison Caudell – macaudell@turnercaudell.com
- Marvin R. Pendarvis - marvin@pendarvislawfirm.com

SMITH ROBINSON, LLC

s/Rachel E. Lee
Rachel E. Lee, Esquire