

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 School ..... Appellant,

v.

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

**RESPONDENT’S EMERGENCY MOTION FOR RULE TO SHOW CAUSE**

Respondent South Carolina Public Charter School District (“District”) hereby moves for an Order requiring Appellant Charleston Advancement Academy High School (“School”) to show cause why it should not be held in contempt for continuing to operate in willful disobedience of this Court’s Order dismissing the appeal and lifting the stay dated August 31, 2023 (“Order”). The grounds for the motion are set forth below.

On May 11, 2023, the District voted to revoke the School’s charter effective June 20, 2023 and issued a final decision on revocation on May 25, 2023. On May 12, 2023 prior to issuance of the Final Decision, the School filed a Notice of Appeal, Motion to Stay and Motion for Expedited Assignment with the Administrative Law Court (“ALC”) pursuant to section 59-40-110(J) of the Charter School Act (“the Charter School Act”). On June 2, 2023, CAA filed an Amended Notice

of Appeal following the District's Final Decision. On June 12, 2023, the ALC granted the Motion for Expedited hearing and set the hearing for the Motion for Stay on June 21, 2023. CAA filed a (second) Motion to Stay and Memorandum in Support on June 15, 2023 and an "Amended Motion for a Temporary and/or a Preliminary Injunction, and/or a Stay and Memorandum of Law in Support of its Motion" on June 21, 2023. On June 29, 2023, the ALC denied the School's request for a stay of the revocation pursuant to Section 59-40-110(j).

The School appealed the ALC's decision to deny the request for a stay to this Court and filed an Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay. On June 30, 2023, this Court issued a temporary stay and requested briefing on the appealability of the Order. The parties submitted briefs as ordered, and the District moved to lift the stay. The School filed a return to the motion to lift the stay, and the District filed a reply. On August 31, 2023, this Court issued the Order dismissing the appeal as interlocutory and lifting the temporary stay. The Order states: "Thus, we lift the temporary stay and dismiss the notice of appeal." However, the School refuses to comply with the Court's Order. According to counsel for the School, the School's position is that the stay remains in place because the School filed a Petition for Rehearing of the Order on September 5, 2023.<sup>1</sup> Despite the plain language of the Order and the South Carolina Appellate Court Rules, the School is now operating in violation of the Act and applicable court orders. The School currently is operating without authority to do so.

Rule 241(i), SCACR, does not allow rehearing of 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

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<sup>1</sup> Counsel for the School asserts "Nowhere does the Court state or even suggest that it is granting the District's motion to lift the stay and absolutely no reading of the order, strained or otherwise, can support any contention that it did so". Counsel for the District has consulted with counsel for the School requesting it comply with the Court's order, but the School has declined to do so. (See correspondence attached as Ex. A)

appeal.” Here, this Court (1) lifted the stay which would not have been in place absent an order granting the stay and (2) dismissed the interlocutory appeal. The Court’s action of lifting the temporary stay does not have the effect of dismissing or finally deciding a party’s appeal. In fact, the Petition for Rehearing filed by the School rightly omits a request for rehearing of the Court’s decision to lift the stay. The Petition for Rehearing only seeks rehearing of the decision to dismiss the appeal. Appellants are keenly aware that their appeal and motion for rehearing the dismissal of the appeal does not automatically stay the revocation and closure as evidenced by their prior filing of an Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and/or Stay with the original Notice of Appeal. Incredulously, Appellants take the position, that in the case of their *Petition for Rehearing of the Order* dismissing the appeal, an order staying the proceeding (as was sought with the original appeal) is no longer required but rather an automatic stay is now in place. This position is untenable and illogical.

As explained in the District’s Motion to Lift Stay and Reply to the motion, the School is causing harm to students and placing students and taxpayer funds at risk of continuing and new harm. Now the School continues to operate without any authority at all. These circumstances persist as long as the School continues operating, which makes addressing this motion of utmost urgency.

### **Conclusion**

Therefore, the District requests that this Court (1) address the motion on an expedited basis due to the exigent circumstances that exist and (2) order the School to immediately close and cease all operations because the temporary stay is no longer in place.

SMITH ROBINSON, LLC

*s/Jonathan M. Robinson*

G. Murrell Smith, Jr.

**Jonathan M. Robinson**

Rachel E. Lee

2530 Devine Street, 3rd Floor

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803-254-5445

AND

HARRELL MARTIN & PEACE, P.A.

Erik T. Norton

135 Columbia Avenue

Chapin, SC 29036

803-345-3353

Attorneys for Respondent South

Carolina Public Charter School District

Columbia, South Carolina  
September 6, 2023.

# EXHIBIT A

**From:** Edward Pritchard <epritchard@pritchardlawgroup.com>

**Sent:** Wednesday, September 6, 2023 5:47 AM

**To:** Erik Norton <Erik@hmp-law.com>

**Cc:** 'Mr. Tyler R. Turner (Co-counsel)' <tturner@turnercaudell.com>; Mary Allison Allison Caudel - Turner & Caudel (macaudell@turnercaudell.com) <macaudell@turnercaudell.com>; Jon Robinson <jon@smithrobinsonlaw.com>; Rachel Lee <Rachel.lee@smithrobinsonlaw.com>

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

Good morning Erik,

Sorry to have taken so long to respond. When your e-mail came in I was in a medical deposition which was followed by a lengthy zoning board meeting.

In response to your e-mail, I do not agree with your reading of the order or your assessment of the procedural posture of the matter.

To begin with, I do not agree that “Judge Williams Order also granted the District’s motion to lift the stay.” The order did no such thing. The plain language of the order makes this clear.

Specifically, the order states that: “Having carefully considered the parties’ pleadings, including the appealability memoranda, we conclude the order is interlocutory and not subject to immediate review. ***Thus***, we lift the temporary stay and ***dismiss*** the notice of appeal.” (emphasis added). The word “thus” is an adverb meaning as a result or consequence of this; therefore. In other words the stay was lifted as a result of the Court’s determination that Judge Anderson’s order denying the stay and injunction requests is “interlocutory and not subject to immediate review.” Nowhere does the Court state or even suggest that it is granting the District’s motion to lift the stay and absolutely no reading of the order, strained or otherwise, can support any contention that it did so.

Further, there can be no dispute that the order dismisses the appeal. The order, therefore, irrefutably has “the effect of dismissing or finally deciding” CAA’s appeal. Accordingly, the Court of Appeals will entertain the petition for rehearing of the order. *See* Rules 221(c) and 240(i), S.C.A.C.R. The petition goes directly to the basis for the dismissal, the appealability of the order.

I would call your attention to Rule 221(b), S.C.A.C.R. which provides in relevant part:

unless otherwise ordered by the court [the remittitur] shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If

a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

At this point remittitur has not been issued, so jurisdiction of the matter rests in the Court of Appeals until such time as it issues remittitur. Until remittitur is issued, the Administrative Law Court has no jurisdiction over this issue. Further, until the petition for rehearing is acted upon by the Court of Appeals, the August 31, 2023 order is not yet a judgment of the Court, so the stay remains in effect until the petition is disposed of.

On a related matter, no return to the petition will be entertained unless the Court requests it. Rule 221(a), S.C.A.C.R. In other words, if the Court wants to hear from you on the issue they will let you know.

Please let me know if you wish to discuss further.

Edward

**From:** Erik Norton <[Erik@hmp-law.com](mailto:Erik@hmp-law.com)>

**Sent:** Tuesday, September 5, 2023 2:50 PM

**To:** Edward Pritchard <[epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)>

**Cc:** 'Mr. Tyler R. Turner (Co-counsel)' <[tturner@turnercaudell.com](mailto:tturner@turnercaudell.com)>; Mary Allison Allison Caudel - Turner & Caudel (<[macaudell@turnercaudell.com](mailto:macaudell@turnercaudell.com)> <[macaudell@turnercaudell.com](mailto:macaudell@turnercaudell.com)>); Jon Robinson <[jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com)>; Rachel Lee <[Rachel.lee@smithrobinsonlaw.com](mailto:Rachel.lee@smithrobinsonlaw.com)>

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

Edward,

Sorry for leaving you off. I was on my phone and thought everyone was copied.

Respectfully, will you look at this again? Rule 240(i) states

**(i) Rehearing.** The 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.

As I read it, Rule 240 allows for CAA to request a rehearing of the dismissal. Judge Williams Order also granted the District's motion to lift the stay, for which a rehearing cannot be requested under Rule 240. Therefore, it appears that no stay is currently in place and the school is required to cease operations immediately. Please advise whether the school plans to continue operations tomorrow. Thank you.

Erik T. Norton  
Harrell Martin & Peace, PA  
803.298.2103

**From:** Edward Pritchard <[epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)>  
**Sent:** Tuesday, September 5, 2023 12:27 PM  
**To:** Erik Norton <[Erik@hmp-law.com](mailto:Erik@hmp-law.com)>  
**Cc:** 'Mr. Tyler R. Turner (Co-counsel)' <[tturner@turnercaudell.com](mailto:tturner@turnercaudell.com)>  
**Subject:** FW: Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047

The short answer to your question is it suspends the order dismissing the appeal until the petition for rehearing is addressed, so for the moment the stay order is still in place.

**From:** Tyler Turner <[tturner@turnercaudell.com](mailto:tturner@turnercaudell.com)>  
**Sent:** Tuesday, September 5, 2023 12:16 PM  
**To:** Edward Pritchard <[epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)>  
**Subject:** FW: Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047

FYI below. Not sure why it wasn't sent to us.

Tyler



Tyler R. Turner, Esq.  
Turner & Caudell, LLC  
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**From:** Sheri Wainscott <[swainscott@turnercaudell.com](mailto:swainscott@turnercaudell.com)>  
**Sent:** Tuesday, September 5, 2023 12:15 PM  
**To:** Tyler Turner <[tturner@turnercaudell.com](mailto:tturner@turnercaudell.com)>  
**Subject:** FW: Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047



Sheri Wainscott, Legal Assistant  
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**From:** Erik Norton <[Erik@hmp-law.com](mailto:Erik@hmp-law.com)>  
**Sent:** Tuesday, September 5, 2023 11:44 AM  
**To:** Jon Robinson <[jon@smithrobinsonlaw.com](mailto:jon@smithrobinsonlaw.com)>; Mary Allison Caudell <[macaudell@turnercaudell.com](mailto:macaudell@turnercaudell.com)>  
**Subject:** FW: Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047

They are still operating. Does the Motion for Rehearing does excuse them from complying with Judge Williams Order lifting the stay?

Erik T. Norton  
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803.298.2103

**From:** Edward Pritchard <[epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)>  
**Sent:** Tuesday, September 5, 2023 11:26 AM  
**To:** 'South Carolina Court of Appeals (Appellate Court)' <[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)>  
**Cc:** 'Mr. Tyler R. Turner (Co-counsel)' <[tturner@turnercaudell.com](mailto:tturner@turnercaudell.com)>; [macaudell@turnercaudell.com](mailto:macaudell@turnercaudell.com);  
Luke Rankin <[luke@rankinandrkin.com](mailto:luke@rankinandrkin.com)>; Marvin R. Pendarvis, Esq. ([marvin@pendarvislawfirm.com](mailto:marvin@pendarvislawfirm.com))  
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[shanonp@smithrobinsonlaw.com](mailto:shanonp@smithrobinsonlaw.com)  
**Subject:** Charleston Advancement Academy High School v. South Carolina Public Charter School District Board of Trustees, Appellate Case No. 2023-001047

Good evening Ms. Kitchings,

Please see attached a Correspondence from me to you together with enclosure as therein stated.

*Sincerely,*

*Edward K. Pritchard, III, Esq.*



PRITCHARD  
LAW GROUP

*8 Cumberland Street, Suite 200  
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**Sep 06 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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

23-ALJ-30-0163-AP

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Appellate Case No. 2023-001047

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

v.

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**PROOF OF SERVICE**

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I certify that a true copy of the Respondent’s Emergency Motion for Rule to Show Cause in this case has been served on the following, this 6th day of September, 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](mailto:tturner@turnercaudell.com)
- Edward K. Pritchard, III - [epritchard@pritchardlawgroup.com](mailto:epritchard@pritchardlawgroup.com)
- Luke A. Rankin - [luke@rankinandrankin.com](mailto:luke@rankinandrankin.com)
- Mary Allison Caudell – [macaudell@turnercaudell.com](mailto:macaudell@turnercaudell.com)
- Marvin R. Pendarvis - [marvin@pendarvislawfirm.com](mailto:marvin@pendarvislawfirm.com)

**SMITH ROBINSON, LLC**

s/Dot Faulkenberry  
Dot Faulkenberry, Paralegal