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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Palmetto Youth Academy Charter School,
and Palmetto Youth Services, Inc.,

Docket No. 23-ALJ-30-0239-AP

Appellants,

ORDER GRANTING RESPONDENT'S
REQUEST FOR PRELIMINARY RELIEF

v.

Florence County School District One,

Respondent.

STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to a notice of appeal filed on June 16, 2023, by Yvonne Brown-Burgess on behalf of Palmetto Youth Academy Charter School (Appellant or PYA).¹ The Appellant challenges the decision of the Florence County School District One (Respondent or District) to deny PYA's charter renewal application and not renew its current charter, which terminated on June 30, 2023. The court has jurisdiction over this appeal pursuant to South Carolina Code sections 59-40-90 (2020), 59-40-110(J) (2020), and 1-23-600(D) (Supp. 2022).

On August 8, 2023, the District filed a Verified Petition for Preliminary Relief, requesting injunctive relief, appointment of a receiver, and a writ of mandamus, along with a Motion for Expedited Hearing. The basis for the petition, generally, is to recover assets that were and are purportedly being inappropriately and improperly used by PYA in violation of state law. The Appellant did not file a response to the District's petition.

An expedited hearing on the District's petition was held on September 11, 2023, at the ALC in Columbia, South Carolina. After careful consideration of the parties' arguments and the

¹ There is some dispute as to PYA's corporate structure and whether PYA and Palmetto Youth Services (PYS) are a single entity, or whether PYA is a subsidiary of PYS, or if there is some affiliation between the two entities. The District filed documentation indicating that the entity PYA was dissolved and merged into a separate corporate entity, Palmetto Youth Services, in 2003. However, it appears that the original charter in 2004, its 2014 charter amendment requests, as well as the 2023 denial of its charter renewal application at issue in this case, all named PYA as the party. Irrespective of its corporate structure, however, the Appellant has asserted alternate explanations of the relationship between PYA and PYS, contending they are "one and the same," but then stating they are two separate entities. For clarity and consistency, the court issued an order adding PYS as an Appellant to the case.

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applicable law, the court grants the District's request for injunctive relief to the extent set forth herein.

BACKGROUND

PYA is a public charter school for at-risk students sponsored by the District. Its charter application was initially approved by the District's Board of Trustees (District Board) in 2004. PYA opened in August 2005 with 75 students in grades 3-6. A charter amendment request was subsequently approved by the District Board in 2014.

On January 31, 2023, PYA submitted its charter renewal application for approval. On March 6, 2023, following a series of discussions and information requests between the Appellant and the District, the superintendent sent PYA a Charter Non-renewal letter. PYA requested a hearing before the District Board on the decision.

A hearing was held on April 27, 2023, during which PYA's and the District presented information and evidence for the record. Thereafter, on May 8, 2023, the District's Board voted to not renew PYA's charter. The grounds for the non-renewal were that PYA had less than 75% certified teachers, and that PYA did not meet its academic performance goals for 2022.

In its Non-Renewal Order dated May 18, 2023, the District Board added the following reasons as grounds for non-renewal: (1) PYA did not have a performing arts curriculum; (2) PYA did not enter student information into PowerSchool; (3) PYA did not issue report cards and interim reports to parents; and (4) PYA persistently committed material violations of its charter and the law from which the school was not exempted.

On August 18, 2023, following a motion hearing, the court issued an order denying the Appellant's request for a stay of the District's decision not to renew its charter, which expired on June 30, 2023, pending a decision on the merits of its appeal. Stated differently, the court denied PYA's request to continue operating as a charter school after June 30, 2023.

Thereafter, on August 8, 2023, the District filed the instant petition for preliminary relief on the grounds that PYA is purportedly still operating as a school and using accumulated funds obtained from the District. The District contends that, despite the non-renewal of PYA's charter and the denial of a stay by this court, PYA is currently operating its school without a sponsor, without a school number from the South Carolina Department of Education, and without authority from any accrediting or school support body. Furthermore, the District alleges that Ms. Brown-

Burgess continues to exercise control over the school's property and monetary assets in the amount of approximately \$1,200,000, that are in PYA's possession but which belong to the District.²

Accordingly, the District asks for an order enjoining PYA, PYS, Yvonne Brown-Burgess, any officers, directors, administrators, consultants, accountants or other professionals acting on behalf of those entities or individuals from engaging in any of the following acts:

- a. transferring any funds to or from PYA's and/or PYS's balance accounts;
- b. opening or closing any bank accounts;
- c. expending any funds from any bank account or other account holding funds that are part of PYA's balance and/or PYS's accounts;
- d. adding, removing, or modifying signatories to any bank accounts;
- e. purchasing any real property;
- f. encumbering or transferring any real or personal property in any way;
- g. incurring any expense not authorized by the District for the closure protocol;
- h. buying, selling, paying, transferring, moving, or taking any action with regard to any asset in the fund balance;
- i. engaging in any transaction that is unnecessary for any activity except for the closure process as mandated by state law and District closure protocol;

It further asks for this court to appoint a receiver to protect PYA's property and funds, particularly state assets, during the closure process, which, it argues, are in danger of being lost or materially injured or impaired. Finally, the District requested a writ of mandamus directing PYA to perform its ministerial duty to comply with the Closure Protocol, beginning immediately and continuing through the statutory closure process until the non-renewal decision is stayed, reversed, or the assets are transferred to the District as part of the school closure process.

At the hearing, the District argued that the Appellant's decision to continuing to operate after losing its charter, failing to follow the District's closure protocol, and avoiding meeting with District auditors seeking to account for any funds still held by the Appellant demonstrate that there is a substantial risk that the funds in PYA's fund balance will be wasted, misallocated, misappropriated, or expended unnecessarily.³

² There is some discrepancy in the record regarding the amount of PYA's accrued District funds. According to PYA's most recent audit report, PYA's balance was more than \$1,200,000.00, though Ms. Brown-Burgess testified during the hearing before the District Board that the school had more than \$800,000.00. At the hearing, PYA asserted that it had no funds and that the District owed PYA in excess of \$2,500,000.

³ At the hearing, the Appellant, for the first time, raised the issues of racial discrimination at the charter school hearing and unconstitutionality of South Carolina's charter school statutes. Because these issues were not raised at its hearing or in any subsequent pleadings, including those filed by the Appellant on Friday, September 8, 2023,

DISCUSSION

The District requests preliminary relief to preserve and protect the public assets in the possession and/or under the control of PYA, Palmetto Youth Services, Ms. Brown-Burgess, and anyone acting on their behalf. Specifically, it requested: (1) an injunction, (2) appointment of a receiver, and (3) a writ of mandamus. The District's requests are addressed in turn below.

Temporary Restraining Order and Permanent Injunction

Rule 16 of the Rules of Procedure for the ALC (SCALC Rules) provides that:

Requests for preliminary or injunctive relief other than in a pending case shall be governed according to the procedures set forth in this section (II) for contested cases. The administrative law judge may issue remedial writs as are necessary to give effect to its jurisdiction and with respect to injunctions shall follow the procedure in Rule 65 [of the South Carolina Rules of Civil Procedure].

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (citation omitted). To obtain injunctive relief, the plaintiff must allege facts sufficient to constitute a cause of action for an injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002) (citation omitted). To establish a cause of action for injunction, the plaintiff must show “(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.” *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908 (citation omitted).

Irreparable Harm

before the Monday, September 11, 2023 hearing, and because the issues are irrelevant to the Petition for Injunctive Relief filed by the District, the court will not consider them. Additionally, as to the question of the constitutionality of South Carolina's charter school statute, the Administrative Law Court does not have the jurisdiction to rule on this issue. While this court can adjudicate allegations that an otherwise constitutional statute is being interpreted or applied in an unconstitutional manner, it has no authority to adjudicate the constitutionality of a statute. *Travelscape, LLC v. S.C. Department of Revenue*, 391 S.C. 89, 108-09, 705 S.E.2d 28, 38-39 (2011).

Whether “a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.” *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005) (citation omitted). “Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.” *Id.* at 455, 626 S.E.2d at 36-37 (citations omitted). “The only purpose of an injunction is to preserve the status quo to avoid possible irreparable injury to a party pending litigation.” *Id.* at 455, 626 S.E.2d at 37 (citations omitted).

Here, the Appellant does not dispute that its assets were obtained from public sources to include the District, that it still maintains possession and control over said assets despite losing its authority to do so (i.e., its charter), that it remains open and operational as a school, and is using its public assets to do so. Rather, PYA asserts, without authority, that it may continue to operate using public funds because it has ample reserves to do so. Essentially, PYA’s argument is that it may use the assets because it has possession of them. The court finds this argument untenable.

PYA lost its charter yet continues to unlawfully operate using public funds it obtained pursuant to its charter. According to § 59-40-120 of the South Carolina Code, PYA’s assets, including unexpended funds, become the property of the District upon the expiration of its charter and dissolution of the charter school. *See* S.C. Code Ann. § 59-40-120 (2020) (stating that, upon dissolution of a charter school, its assets revert back to the property of the sponsor or entity that provided the assets). Because PYA continues to expend public funds to operate its now defunct charter school without any authority to do either, the court finds that an injunction is appropriate and necessary to preserve the status quo pending a resolution on the merits of this case, and that the District would likely suffer irreparable harm if the injunction was not granted.

Likelihood of Success on the Merits

“When seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present ‘a fair question to raise as to the existence of such a right.’” *Peek*, 367 S.C. at 456, 626 S.E.2d at 37 (citation omitted). “The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made.” *Id.* (citation omitted). “Once a prima facie showing has been made entitling the plaintiff to injunctive

relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Id.* (citation omitted).

As stated above, the District contends that PYA is operating and continuing to expend public funds without authority. PYA lost its charter and, pursuant section 59-40-110, must participate in the closure protocol established by the District. *See* S.C. Code Ann. § 59-40-110(K) (2020) (“In the event of a public charter school closure for any reason, the sponsor shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.”). PYA has, thus far, failed to offer any adequate explanation for its noncompliance, or evidence of any alternative authority to continue operating using District funding. Accordingly, the court finds that the District demonstrated a likelihood of success on the merits and has, therefore, made a prima facie showing entitlement to injunctive relief.

Adequacy Remedy at Law

Here, the District asserts that the only available remedies at law do not adequately to prevent PYA from wasting, misallocating, misspending, or misappropriating funds, or provide the District with a means of recovery in the event waste, misallocation, misspending, or misappropriation occurs. PYA did not offer any adequate, alternative remedy available to the District under the circumstances of this case. The court, therefore, finds that the District lacks an adequate remedy at law. Having met all three requirements, the District has shown that an injunction is appropriate in this matter.

Appointment of a Receiver

South Carolina Code section 15-65-10 sets forth the circumstances under which the appointment of a receiver is appropriate. Before judgment is rendered,

A receiver may be appointed by a judge of the circuit court . . . on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired

S.C. Code Ann. § 15-65-10 (2005); *see also* S.C. Code Ann. § 1-23-630(A) (2005) (providing that administrative law judges have “the same power at chambers or in open hearing as do circuit court

judges”). Thus, for a receiver to be appointed on application before judgment is rendered, the party requesting the receiver must show that: 1) it has an apparent right to property; 2) the property is in the possession of an adverse party; and 3) the property is “in danger of being lost or materially injured or impaired.” S.C. Code Ann. § 15-65-10.

“[T]he appointment of a receiver is within the discretion of the circuit judge.” *Midlands Util., Inc. v. S.C. Dep’t of Health & Env’t Control*, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989) (citation omitted). “The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” *Id.* (citation omitted). “[A]s a rule, a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Richland Cnty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (citation omitted).

Here, the District has demonstrated that all, or a substantial portion of, PYA’s assets, including its balance fund and real property, came from public sources relating to its charter. By law, because PYA’s charter was not renewed, and no stay of that decision was issued by this court, those assets must be returned to the District and/or other entities that provided them upon dissolution of its charter. *See* S.C. Code Ann. § 59-40-120 (stating that, upon dissolution of a charter school, its assets revert back to the property of the sponsor or entity that provided the assets). Thus, the District has established that it has an apparent right to the property in PYA’s possession.

It is further undisputed that, despite losing its charter, PYA currently retains possession of and control over the aforementioned assets.⁴ PYA failed to engage in the District’s closure protocol, a process which includes relinquishing possession of its public assets. In fact, PYA and Ms. Brown-Burgess have, thus far, declined to recognize or acknowledge that PYA no longer has its charter, and purports to still be actively operating as a charter school and providing services to

⁴ The court recognizes that the injunction issued by the court in this order will strip PYA of its legal authority to exercise control over the assets. As discussed above, however, given the pattern of noncompliance displayed by the Appellant in this case, the court has concerns regarding the Appellant’s willingness to obey the terms of the injunction. However, even assuming it complies with the injunction and ceases to exercise control over the assets, PYA still retains possession over them, including the substantial fund balance.

students, using its public assets to do so. Accordingly, the District has established that the funds and property are in the possession of PYA, an adverse party.

Finally, in light the Appellant's conduct in this case, this court finds substantial evidence to support a finding that the assets are in danger of being misused, misappropriated, and/or squandered. First, as stated above, the Appellant has failed to acknowledge that it has no legal authority to operate as a charter school following the nonrenewal of its charter, failed to follow the District's closure protocol, and is purportedly still operating and serving students using District funds without any legal authority to do so. Crucially, PYA has somehow amassed a balance of as much as \$1,200,000 in funds that were provided in whole or in substantial part by the District and intended to be used for the education of its students over the years PYA held a charter. PYA claimed at the hearing on the Motion for a Stay that it had adequate funding to continue operating and serving students with or without additional District funding, and is continuing to do so despite having no public educational authority and no apparent source of private funding. It is, therefore, reasonable to conclude that District funds are improperly being used to maintain operations at the school.

In light of this pattern of conduct and lack of assurances from the Appellant, the court has serious concerns regarding PYA's willingness to comply with the court's injunction, and lacks confidence in PYA's willingness to participate in and ability to responsibly handle its substantial assets during the closure process. As such, the court finds that PYA's assets are presently in danger of being lost or materially injured or impaired under its control. Accordingly, the court finds that the statutory criteria to appoint a receiver are satisfied in this case. It is both reasonable and necessary to place PYA's assets under the care of a receiver until the merits of the school's charter nonrenewal are heard.

Writ of Mandamus

Pursuant to section 1-23-630 of the South Carolina Code, this court has the authority to issue remedial writs as necessary to give effect to its jurisdiction. S.C. Code Ann. § 1-23-630(A) (2005); *see* S.C. Const. art. V, § 20; SCALC Rule 16. To that end,

The writ of mandamus is the highest judicial writ known to the law. The primary purpose or function of a writ of mandamus is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. It is designed

to promote justice, subject to certain well-defined qualifications. Its principal function is to command and execute, and not to inquire and adjudicate.

Charleston Cnty. Sch. Dist. v. Charleston Cnty. Election Comm'n, 336 S.C. 174, 182, 519 S.E.2d 567, 571-72 (1999) (citation omitted). Accordingly,

[T]o obtain a writ of mandamus requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.

Id. at 182, 519 S.E.2d at 572 (citation omitted). "The duty to perform an act must be indisputable and plainly defined." *Id.* at 182-83, 519 S.E.2d at 572 (citation omitted).

Here, because PYA's charter was not renewed, and no stay of that decision was issued by this court, PYA has no legal authority to operate as a charter school and must, therefore, close. To that end, section 59-40-110 provides that:

Prior to any public charter school closure, *the sponsor shall develop a public charter school closure protocol* to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and net assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the sponsor. *In the event of a public charter school closure for any reason, the sponsor shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.*

S.C. Code Ann. § 59-40-110(K) (2020) (emphasis added). Thus, it is incumbent on a charter school subject to closure for any reason, including nonrenewal of its charter, to work with its sponsor to ensure a smooth and orderly closure in accordance with the sponsor's closure protocol. In this case, PYA is subject to closure because of the nonrenewal of its charter. PYA's sponsor is the District, which has developed a charter school closure protocol. Pursuant to the clear and unambiguous terms of the statute, PYA, therefore, has a duty to comply with the District's closure protocol. Accordingly, the first requirement for a writ of mandamus is satisfied.

With regard to the second requirement,

[A] duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts. It is ministerial if it is defined by law with such precision as to leave nothing to the

exercise of discretion. In contrast, a quasi-judicial duty requires the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued.

Redmond v. Lexington Cnty. Sch. Dist. No. Four, 314 S.C. 431, 437-38, 445 S.E.2d 441, 445, (1994) (citations omitted); *see also Godwin v. Carrigan*, 227 S.C. 216, 87 S.E.2d 471 (1955) (citation omitted) (stating that a ministerial duty is “one which a person performs in obedience to a mandate of legal authority without regard to the exercise of his own judgment upon the propriety of the act to be done”). “The duties of public officials are generally classified as ministerial and discretionary (or quasi-judicial).” *Redmond*, 314 S.C. at 437, 445 S.E.2d at 445 (citations omitted).

Here, following the nonrenewal of its charter, PYA had a specific duty to close and comply with the District’s closure protocol; it has no discretion to continue operating or disregard the closure protocol. In accordance with the statute, the District’s closure protocol specifies the “tasks, timelines, and responsible parties, including delineating the respective duties of the school and the sponsor” during the closure process. *See* S.C. Code Ann. § 59-40-110(K). PYA, and its administrators, must participate in the closure process and comply with the District’s closure protocol irrespective of whether they agree with the reason for closure or the closure protocol. Thus, there is nothing left for PYA to exercise discretion over. As such, the court finds that participation in the District’s closure protocol is ministerial in nature. Thus, the second element is satisfied.

Moreover, as discussed above, the District, as sponsor of PYA’s charter, has a specific legal right to have PYA participate in and follow its closure protocol in accordance with section 59-40-110(K) and, pursuant to section 59-40-120, a specific legal right to its assets upon closure. *See* S.C. Code Ann. § 59-40-110(K); *see* S.C. Code Ann. § 59-40-120. Consequently, the third element is also satisfied.

Finally, the District asserts that it has no other legal remedy available to it to compel PYA to participate in the closure protocol. Absent a prior order to comply from this court that it could enforce using its powers of contempt, the court is similarly unaware of any other legal remedy available to the District to force PYA to comply with its statutory duty to participate in the closure process. Accordingly, the court finds cause to grant the extraordinary relief of issuing a writ of mandamus in this case.

CONCLUSION

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Having carefully reviewed the parties' filings and arguments, the court finds that the District has demonstrated that the preliminary relief requested in this matter is both appropriate and necessary under the unusual circumstances present in this case. PYA has shown, and continues to display, a pattern of disregard for authority and noncompliance with statutory procedure. While the court continues to be mindful of the impact on students still enrolled in PYA, the Appellant's pattern of disregard for authority and procedure has left the court with no other option. The court, therefore, finds that the District has shown that it is entitled to preliminary relief in this matter as set forth herein.

ORDER

Based on the foregoing, the District has met its burden of showing that preliminary relief is appropriate and necessary in this matter.

THEREFORE, IT IS HEREBY ORDERED that:

- (1) Palmetto Youth Academy (PYA), Palmetto Youth Services (PYS), Yvonne Brown-Burgess, and anyone acting on it or their behalf, including any officers, directors, administrators, board members, consultants, accountants or other professionals, **SHALL CEASE AND DESIST** from operating Palmetto Youth Academy Charter School as a charter school or holding Palmetto Youth Academy out as a charter school;
- (2) PYA, PYS, Yvonne Brown-Burgess, and anyone acting on it or their behalf, including any officers, directors, administrators, board members, consultants, accountants or other professionals, **SHALL BE ENJOINED** from engaging in any of the following acts:
 - a. transferring any funds to or from Palmetto Youth Academy's and/or Palmetto Youth Services' balance accounts;
 - b. opening or closing any bank accounts;
 - c. expending any funds from any bank account or other account holding funds that are part of PYA's and/or PYS's balance accounts;
 - d. adding, removing, or modifying signatories to any bank accounts;
 - e. purchasing any real property;
 - f. encumbering or transferring any real or personal property in any way;

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- g. incurring any expense not authorized by the District for the closure protocol;
- h. buying, selling, paying, transferring, moving, or taking any action with regard to any asset in the fund balance;
- i. engaging in any transaction that is unnecessary for any activity except for the closure process as mandated by state law and District closure protocol.

(3) John Edward Haas, of 12 AshWorth Lane, Columbia, South Carolina 29206, **SHALL BE APPOINTED AS RECEIVER⁵** to manage and operate any property, funds, and other assets held or controlled by the PYA, PYS, and any affiliated entities, including but not limited to the balance in excess of \$1,200,000 in Palmetto Youth Academy's fund account. The scope of the receivership, and the powers and limitations thereof, are set forth below:

- a. To take custody, control and possession of all records, assets, funds, personal property, vehicles, bank accounts, brokerage accounts, real property premises and other materials of any kind in the possession or under the direct or indirect control of PYA and/or PYS, until further order of this court;
- b. To manage, control, and maintain PYA and PYS while undergoing the District's closure protocol, and to use income, earnings, rents and profits of PYA and/or PYS, with full power to sue for, collect, recover, receive and take into possession all goods, chattels, rights, credits, monies, effects, lands, books and records of accounts and other documents, data and materials;
- c. To conduct the business operations of PYA and PYS while undergoing the District's closure protocol, including the termination of any contracts, employment arrangements and all other aspects of PYA's and/or PYS's operations;

⁵ At the hearing on the motion, the court requested the parties provide names of individuals or entities they found acceptable to serve as Receivers, should the court determine to appoint one. At that time, counsel for both parties assured the court they would confer and provide the court with a list of acceptable candidates. Subsequently, the District provided the court with two individuals. PYA never proposed any candidates, nor did it offer an opinion on the names provided by the District. Upon reviewing the resumes of the two candidates, the court found both names to be well-qualified. The selection of Mr. Haas was based upon his extensive experience serving as a receiver in other matters, as well as his service as a Bankruptcy Trustee on numerous occasions.

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- d. To make such ordinary and necessary payments, distributions, and disbursements as the Receiver deems advisable or proper for the marshaling, maintenance or preservation of the assets of PYA and PYS;
- e. To have control of, receive and collect any and all sums of money due or owing PYA and/or PYS whether the same are now due or shall hereafter become due and payable, and incur such expenses and make such disbursements as are necessary and proper for the collection, preservation, maintenance, administration of PYA and/or PYS while undergoing the District's closure protocol;
- f. To locate and report any assets of PYA and/or PYS held by third parties;
- g. To open bank accounts or other depository accounts, in the name of the Receiver on behalf of PYA and/or PYS;
- h. To take any action which could be taken by the officers, directors, managers, members, partners, board members, trustees or other principals of PYA and/or PYS;
- i. To abandon any asset that, in the exercise of the Receiver's reasonable business judgment, will not provide benefit or value to the PYA and/or PYS;
- j. And to take such other action as may be approved by this court.

(4) **IT IS FURTHER ORDERED** that PYA and PYS are restrained from disposing of, transferring, conveying, or otherwise encumbering any assets, property, books, files, records and accounts, and any of PYA's and/or PYS/s officers, directors, administrators, board members, consultants, accountants or other professionals having property in their possession or under their control belonging to PYA and/or PYS are hereby directed to deliver the same to the Receiver.

(5) **IT IS FURTHER ORDERED** that with respect to the asset freeze set forth in this Order, the Receiver shall be authorized, but not required, to administer, manage, and direct the marshaling, disbursement and/or transfer of monies or other assets held by third parties that are subject to the freeze. The Receiver may, in the reasonable

exercise of his discretion, authorize the release, use or segregation of proceeds held by third parties.

(6) **IT IS FURTHER ORDERED** that the Receiver shall perform an accounting of the operations of PYA and PYS since August 2005 (when PYA opened as a charter school), and of all inventories, assets, and things of value in the possession, custody, or control of PYA and/or PYS, and their officers, directors, administrators, board members, consultants, accountants or other professionals, that were acquired with funds or proceeds received from the District.

(7) **IT IS FURTHER ORDERED** that Palmetto Youth Academy, Palmetto Youth Services, Yvonne Brown-Burgess, and anyone acting on it or their behalf, including any officers, directors, board members, administrators, consultants, accountants or other professionals, **SHALL COOPERATE AND COMPLY** immediately with the Receiver and with the District's closure protocol. Full cooperation and compliance with the Receiver and with the District's closure protocol shall include, but is not limited to, providing all information and documentation in their possession or under their control relating to PYA and PYS to the Receiver within five (5) days. This includes, but is not limited to:

- a. All assets and other materials related to PYA and/or PYS in the possession in their possession or under their control, as well as the name and contact information of any person who has knowledge of the nature or location of assets or other materials belonging to the PYA and/or PYS;
- b. Business records of any kind (including legal files), whether in hard copy or electronic format, including electronic mail (e-mail) files and accounts, customer files, accounting and financial records, bank records, brokerage records, and other depository records;
- c. Computers and computer files, including e-mail files, along with all passwords for such files, that belong to or are under the control of PYA and/or PYS or Yvonne Brown-Burgess, that in any way relate to the assets or the operation

of PYA and/or PYS;

- d. Passwords and other identifying information regarding all computer or on-line files, banking or brokerage accounts and/or any other assets of PYA and/or PYS or under their direct or indirect control, specifically including but not limited to, passwords for internet or electronic access banking, brokerage, and other on-line accounts;
- e. Keys, security cards, parking cards, and other access codes for premises, vehicles, safety deposit boxes or accounts or assets under the direct or indirect control of PYA and/or PYS;
- f. Title documents for vehicles owned by or in the possession or control of PYA and/or PYS; and
- g. Such other information related to PYA and/or PYS and those working for them.

(8) **IT IS FURTHER ORDERED** that any bank or other financial institution or any other person, partnership, corporation or other entity maintaining or having custody or control of any depository, brokerage, or other accounts or assets of PYA and/or PYS, into which funds received directly or indirectly from the District have been deposited, or accounts or assets under the direct or indirect control of PYA and/or PYS, who receive actual notice of this Order, shall:

- (i) Freeze accounts, funds or assets;
- (ii) Turn over to the Receiver control of all such accounts, funds, assets (to include cash and securities);
- (iii) Promptly cooperate with the Receiver to determine whether and to what extent any accounts, funds or other assets are actually assets or proceeds of assets of PYA and/or PYS.

To the extent that there are assets or accounts related to the activities of PYA and/or PYS about which a determination of ownership cannot be made, they shall be turned over to the Receiver to be held in escrow pending a determination of the ownership of such assets. The Receiver is

authorized to provide notice of the entry of this Order to any governmental agency, person or other entity he deems appropriate. Actual notice may be accomplished by delivery of a copy of this Order by hand, U.S. mail, courier service, facsimile, by e-mail or by any other reasonable means of delivery.

- (9) **IT IS FURTHER ORDERED** that the Receiver is hereby authorized to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to PYA and/or PYS, to any Post Office box or other mail depository, or to himself. Further, the Receiver is hereby authorized to open and inspect all such mail, to determine the location or identity of assets or the existence and amounts of claims.
- (10) **IT IS FURTHER ORDERED** that the Receiver may investigate any matters he deems appropriate in connection with discovering additional information as it relates to the activities of PYA and/or PYS as they involve, directly or indirectly, the operation of Palmetto Youth Academy Charter School or the expenditure of District funds provided to PYA and/or PYS for such purpose. In connection with this investigation, the Receiver is authorized to compel all persons to produce originals of any records and materials, of any sort whatsoever, within the possession, custody or control of any person.
- (11) **IT IS FURTHER ORDERED** that the Receiver is hereby directed to file with this Court and serve upon the parties, within 60 days of this Order unless an extension is granted by this court, a report setting forth the identity, location and value of the assets of PYA and/or PYS, and any liabilities pertaining thereto.
- (12) **IT IS FURTHER ORDERED** that the Receiver is authorized to communicate with all such persons as he deems appropriate to inform them of the status of this matter and the financial condition PYA and/or PYS. All costs incurred by the Receiver shall be paid from the assets of PYA and/or PYS.
- (13) **IT IS FURTHER ORDERED** that the Receiver shall keep the Court, counsel for the District, and counsel for PYA and/or PYS apprised of developments concerning the operation of the receivership.

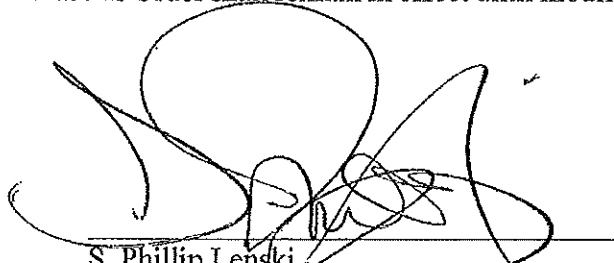
- (14) **IT IS FURTHER ORDERED** that the Receiver shall notify the Court of any failure or apparent failure of any person or entity to comply in any way with the terms of this Order.
- (15) **IT IS FURTHER ORDERED** that except for an act of gross negligence or intentional misconduct, the Receiver and all persons engaged by or employed by him shall not be liable for any loss or damage incurred by any person or entity by reason of any act performed or omitted to be performed by the Receiver or those engaged or employed by him in connection with the discharge of their duties and responsibilities in connection with the receivership.
- (16) **IT IS FURTHER ORDERED** that the assets of PYA and/or PYS be, and hereby are, frozen. The freeze shall include but not be limited to those funds located in any bank accounts of PYA and/or PYS, including any offshore or overseas bank accounts. Until further order of this court, PYA and/or PYS, their officers, agents, board members, employees, attorneys, and all persons in active concert or participation with them are restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of or withdrawing any assets and property owned by, controlled by, or in the possession of PYA and/or PYS. This court further enjoins any disbursement of funds by PYA and/or PYS, their agents, representatives, board members, employees and officers and all persons acting in concert or participating with them. This asset freeze shall not extend to unearned funds currently held on retainer by PYA and/or PYS's counsel in this proceeding.
- (17) **IT IS FURTHER ORDERED** that this court shall retain jurisdiction of this action. The Receiver is hereby authorized, empowered and directed to apply to this court, with notice to the District and counsel for PYA and/or PYS, for issuance of such orders as may be necessary and appropriate in order to carry out the mandate of this court.
- (18) **IT IS FURTHER ORDERED** that PYA and/or PYS shall pay the costs, fees, and expenses of the Receiver in connection with the performance of his duties described

in this Order, including the costs and expenses of those persons who may be engaged by or employed by the Receiver to assist him in carrying out his duties and obligations. All application for costs, fees, and expenses for services rendered in connection with this receivership other than routine and necessary business expenses in conducting the receivership shall be made by application setting forth.

(19) **IT IS FURTHER ORDERED** that this Order shall remain in effect until modified by further order of this court.

AND IT IS SO ORDERED.

September 22, 2023
Columbia, South Carolina



S. Phillip Lenski
S.C. Administrative Law Judge