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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Ralph King Anderson, III
Administrative Law Court Judge

Appellate Case No. 2022-00289

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

V.

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

MOTION TO DISMISS APPEAL

Respondent respectfully moves to dismiss this appeal because it is now moot. Appellant Charleston Advancement Academy ("CAA") has been ordered to cease operations by the South Carolina Administrative Law Court, all CAA directors have resigned, and no students are any longer enrolled in or attending CAA. *See Exhibit A*, Order of South Carolina Administrative Law Court dated September 26, 2023 ("Closure Order"). All assets of CAA became property of Respondent pursuant to the Closure Order. CAA did not appeal the Closure Order. The ALC subsequently affirmed the revocation of the CAA charter in an order dated October 16, 2023. *See Exhibit B*, Order of Administrative Law Court dated October 16, 2023 ("Revocation Order"). The Revocation Order has not been appealed.

Therefore, Appellant's claims are moot, and this Court no longer has subject matter jurisdiction over the appeal. *See Croft as Tr. of James A. Croft Tr. v. Town of Summerville,* 433 S.C. 473, 480, 860 S.E.2d 352, 356 (2021)(dismissing moot claims). The appeal therefore must be dismissed.

CONCLUSION

For the reasons set forth above, Appellant's appeal should be dismissed.

Respectfully submitted,

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By:_____

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December 5, 2023.

EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High School, Petitioner, v. South Carolina Public Charter School District Board of Trustees, Respondent.	)	Docket No. 23-ALJ-30-0163-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or the Court) pursuant to an Emergency Motion for Rule to Show Cause (Motion) filed by the South Carolina Public Charter School District Board of Trustees (Board or Respondent) asking the Court to require Charleston Advancement Academy High School (CAA or Petitioner) to show cause why it continues to operate in defiance of this Court's Order denying CAA's request for a stay dated June 29, 2023. The Court held a hearing on the Rule to Show Cause on September 25, 2023.

BACKGROUND

This matter is originally before the Court pursuant to a Notice of Appeal filed by CAA on June 2, 2023, after the District Board revoked its charter, effective June 30, 2023. Along with the Notice of Appeal, CAA also filed a Motion to Stay the Revocation pursuant to Section 59-40-110(J) of the South Carolina Charter School Act of 1996 (the Charter School Act). The Court held a hearing on the Motion on June 21, 2023. On June 29, 2023, the Court denied CAA's request for a stay of the revocation. Thus, the June 30, 2023 revocation remained in effect.

CAA then appealed this Court's decision to deny its request for a stay to the South Carolina Court of Appeals. CAA also filed a motion for a temporary restraining order and/or a preliminary injunction and/or stay of the revocation with the Court of Appeals "to maintain the status quo until the merits of Appellant's appeal can be decided." On June 30, 2023, the Court of Appeals issued a temporary stay and requested briefing on the issue of appealability of the matters. Following the parties' submission of briefs, the Court of Appeals issued an order dismissing the appeal as interlocutory and lifting the temporary stay on August 31, 2023. The order specifically states:

"Thus, we lift the temporary stay and dismiss the notice of appeal." As a result of the Court of Appeal's August 31 order, the Board's June 30, 2023 revocation was in place, and CAA, in accordance with this Court's Order, was supposed to close its operations.[1]

Despite the plain language of the Court of Appeals' Order and the Order of this Court, CAA has continued to operate. In its proposed order to this Court, CAA's counsel argued the stay remained in place because CAA filed a Petition for Rehearing. However, on September 7, 2023, the Court of Appeals denied the Petition for Rehearing and the order included a footnote that stated, "[i]n light of our decision to deny the Petition for rehearing, we take no action on the emergency motion for rule to show cause." Afterwards, on September 8, 2023, the South Carolina Department of Education sent a letter to CAA advising it that it was operating illegally and thus, must cease operations immediately.

DISCUSSION

This Court has jurisdiction over this matter pursuant to section 59-40-90 of the South Carolina Code (2020); section 1-23-600(F) of the South Carolina Code (Supp. 2022), and section 1-23-630(A) of the South Carolina Code (2005). Additionally, "[t]he power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice." *Miller v. Miller*, 375 S.C. 443, 453, 652 S.E.2d 754, 759 (Ct. App. 2007).[2]

In its Motion, Respondent asserted that CAA has continued to operate even though this Court had denied CAA's request for a stay and the Court of Appeals had lifted the temporary stay. At the hearing in this matter, CAA, however, argued that the revocation is stayed because the case has not yet been remitted to the Administrative Law Court. However, Respondent asserts "this argument is frivolous and interposed solely to delay the closing of CAA. Simply put, no stay exists."[3] Appellant however argues that since the Court has yet to rule upon the validity of CAA's

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[1] On September 5, 2023, CAA filed a Petition for Rehearing in the Court of Appeals. That Petition was denied.

[2] The Administrative Law Court is a court of record. *See* S.C. Code Ann. § 1-23-500 (Supp. 2022).

[3] Under Rule 72, SCALC, this Court may impose "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require" if it determines an appeal, motion, or defense is frivolous or taken solely for purposes of delay. Indeed, this is not the first time in this case or in the related injunction case the Court has considered whether CAA's arguments are frivolous or whether CAA has complied with its orders. However, the Court declines to impose sanctions at this time. Nonetheless, if CAA fails to comply with this Order, CAA shall be held in contempt.

appeal of the Board's revocation of CAA's Charter, this Court is not in a position to determine whether CAA should be closed. Appellant's argument however is misapplied.

Although the final disposition of an appeal occurs when remittitur is sent by the appellate court to the lower court, the implications of the remittitur apply only to the jurisdictional issues before the appellate court. Clearly, the Court of Appeals acquired exclusive jurisdiction of the **issue** of whether the ALC's decision to deny the stay the Board's revocation was proper. *See* Rule 225, SCACR. However, simply because the Court of Appeals acquired jurisdiction over that issue does not mean that Board's determination was stayed. Indeed, the appellate court rules set forth that appeals of Administrative Law Court decisions are generally not automatically stayed upon appeal. *See* Rule 241, SCACR. That principle is even more significant in this case because subsection 59-40-110(J) specifically provides that "[u]pon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision." S.C. Code Ann. § 59-40-110(J) (2020). Although the charter school can move for a stay of a sponsor's decision, the school must establish "undue hardship" for a stay to be granted.

Here, when CAA appealed the Board's decision to revoke its Charter to the ALC, CAA's Charter was revoked effective June 30th, unless the Court stayed that revocation. CAA then filed a Motion for a Stay of Revocation. However, the Court factually determined that CAA failed to establish that hardship and thus denied CAA's motion on June 29, 2023. As a result, the revocation was effective June 30, 2023 and CAA no longer had a Charter permitting it to operate. Furthermore, this case involves an appeal of the decision by the District Board, which is an administrative tribunal. Rule 241(a) provides that appeals from administrative tribunals are not automatically stayed. Rather, the "lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Rule 241(a), SCACR. Similarly, rule 225 explains that though the appellate court has exclusive jurisdiction over the appeal, "[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal." Rule 225, SCACR.

It is in that light that the Court of Appeals issued a temporary stay. Nevertheless, although the Court of Appeals issued a temporary stay, upon its lifting of that stay, this case returned to the status quo. And that status quo is that the revocation of CAA's Charter remains in effect. Specifically, the Court of Appeals in clear and unambiguous language determined on August 31,

2023, "Thus we lift the temporary stay and dismiss the notice of appeal." Therefore, the revocation was effective as of August 31, 2023. Since that revocation is in effect, CAA no longer has authority to operate as a school in South Carolina.

The issue before this Court thus is not the validity of the appeal but whether the Board's Final Decision should be enforced pending the Court's decision regarding this appeal. To that end, Appellant argues the district Final Decision has no authority until the Court issued an order requiring the enforcement of the decision. I do not find that reasoning to be sound. *See Gateway Enterprises, Inc. v. S.C. Dep't of Revenue*, 341 S.C. 103, 106–07, 533 S.E.2d 896, 898 (2000) ("Since there is not an automatic 10–day stay, once Judge Maring dissolved the stay he had previously granted, DOR was entitled to immediately enforce the ALJ's order revoking the licenses."). Moreover, if Appellant was correct and the District's Final Decision did not require the school to cease operations, there would be no statutory purpose in subsection 59-40-110(J) providing that "[u]pon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision." S.C. Code Ann. § 59-40-110(J) (2020). Clearly, "[t]he Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act." *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008)

In sum, despite both the express language of the Court of Appeals' Order dismissing the appeal as interlocutory, lifting the temporary stay, and the subsequent order denying the rehearing request, CAA continues to operate without a valid charter. Importantly, both the District and the South Carolina Department of Education have advised CAA that it is operating illegally and must cease all operations immediately.

Therefore, in accordance with the Court's June 29, 2023 Order, CAA must cease all operations.[4]

ORDER

IT IS THEREFORE ORDERED that CAA shall immediately cease and desist all operations as a public charter school except as required to comply with this order. CAA's website shall announce that it is closed and post a copy of this order on its home page. CAA, its board and administration are prohibited from spending any further public money, whether state or federal, directly or indirectly except as required to comply with this order.

[4] Notably, in addition to violating this Court's Order, it appears that CAA is also violating the Court of Appeals order lifting the stay issued on August 31, 2023.

IT IS FURTHER ORDERED that CAA take all steps necessary to assist CAA students with enrollment at a new school as soon as possible.

IT IS FURTHER ORDERED that CAA's board, administration, and its attorneys shall preserve all records in any format (electronic or hard copy) related in any way to the operation, governance, management, or finances of CAA. All records shall be transferred to the District on or before October 2, 2023 for secure storage.

IT IS FURTHER ORDERED that on or before October 2, 2023, CAA shall transfer to the District all furniture, fixtures, and equipment as well as an amount equal to all state and federal funds on deposit as of August 31, 2023 in any bank account or other location where it has deposited or transferred state or federal funds received from the District or any state or federal entity, including but not limited to accounts at Bank of South Carolina, Pinnacle Bank, and Wells Fargo Bank.

IT IS FURTHER ORDERED that CAA shall provide a copy of this order to all CAA board members, administrators, faculty, staff and students on September 27, 2023.

IT IS FURTHER ORDERED that if CAA[5] fails to comply with the above directives, CAA shall be in contempt of this Court.[6]

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

September 26, 2023
Columbia, South Carolina

[5] CAA's counsel should make every effort within the proper parameters of representing their client to ensure that CAA complies with this order.

[6] The Court's finding of contempt may result in the imposition of a fine, imprisonment or both.

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

September 26, 2023
Columbia, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High School, Appellant, v. South Carolina Public Charter School District Board of Trustees, Respondent.	)	Docket No. 23-ALJ-30-0163-AP **ORDER**

This matter is before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to a notice of appeal filed by the Charleston Advancement Academy High School (CAA or School or Appellant) on June 2, 2023. CAA appeals the decision of the South Carolina Public Charter School District Board of Trustees (Respondent or Board) to revoke CAA's Charter effective June 30, 2023.[1] The Court has jurisdiction over this appeal pursuant to section 59-40-90 of the South Carolina Code (2020); section 59-40-110(J) of the South Carolina Code (2020), and section 1-23-600(D) of the South Carolina Code (Supp. 2023). Oral arguments were held on September 13, 2023, at the ALC. Upon consideration of the briefs, the Record, and arguments made by counsel, the Board's decision is affirmed.

BACKGROUND

CAA received a charter from the South Carolina Public Charter School District (the District) in 2017 and began operating in the 2018-2019 school year. CAA is designated as an

[1] Along with its notice of appeal, CAA filed a Motion for an Expedited Hearing for a Stay (Motion). The Court held a conference call on June 9, 2023, and during the call, the parties consented to expediting the hearing on a Motion to Stay and established the Motion hearing date of June 21, 2023. Thereafter, 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. On August 31, 2023, the Court of Appeals lifted the temporary stay. Then, on September 5, 2023, CAA filed a Motion for Rehearing which was denied by the Court of Appeals on September 7, 2023. The next day, on September 8, 2023, the South Carolina Department of Education sent a letter to CAA advising it that it was operating illegally, and, thus, must cease operations immediately. On September 15, 2023, Respondent filed an Emergency Motion for a Rule to Show Cause, on which the Court held a hearing on September 25, 2023. Thereafter, the Court ordered CAA to cease all operations.

Alternative Education Campus (AEC) under the South Carolina Public Charter Schools Act of 1996 (the Act), S.C. Code Ann. §§ 59-40-10 to -240 (2020 & Supp. 2023), because it primarily serves a unique group of at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school.

When CAA opened, CAA contracted with Acceleration Academies (AA) to serve as CAA's Educational Management Organization (EMO). AA is a private, for-profit organization whose job was, in part, to develop and implement a security plan to ensure the safety of all students and personnel at CAA. AA charged CAA 85% of CAA's revenue. In October 2019, CAA's landlord, Trident Technical Collage (TTC), informed the school that there had been more than two dozen safety violations, including numerous criminal incidents, on CAA's TTC campus during the immediately preceding weeks. CAA concluded that AA was not implementing proper security on its campus; thus, it terminated its EMO contract with AA.[2] Following CAA's termination of AA, the District sanctioned CAA and required it to amend its Charter to reflect the changes in its management status. Also, as a result of an arbitration action involving the contract termination, CAA was required to pay AA an additional $859,142.41.[3]

In November 2020, CAA and the District reached an agreement to amend its Charter based on academic goals and performance standards submitted by CAA and approved by both CAA's Board and the District Board. Specifically, the amended Charter identified two critical goals and objectives to "help monitor and measure CAA's success towards achieving its mission." The two critical goals were (1) "a target graduation rate of 65% or a goal of 80% or greater" and (2) "a

[2] In its brief, CAA argued that while CAA was in the process of terminating AA, AA's principals, the District's Superintendent, Elliot Smalley (Smalley), and the District's legal counsel, Erik T. Norton (Norton), were secretly formulating a plan to destroy CAA to enrich AA and the District by creating a new AA-administered charter school. If true, this allegation would present grave concerns for the Court. However, CAA's basis for this assertion is one email dated November 12, 2019, sent by AA's principal, Joseph Wise (Wise), to another AA principal, David Sundstrom (Sundstrom), and to Smalley and Norton. In the email, which Wise asserted should be protected from disclosure to others under Attorney-Client privilege, he stated that Trident never sent AA a letter regarding its security incidents and that he was going to discuss a proposal "to help the CAA Board begin to self-manage this school." He also said "[w]e will get well-prepared to present a proposal to be considered for a fast-track charter approval consideration so we can get ready to receive kids and staff when the CAA plan implodes." CAA argues that this sentence proves that Wise, Sundstrom, Smalley, and Norton were secretly planning to open a new AA charter school under the District's sponsorship and steal CAA's students and staff. Nevertheless, neither this email nor anything in the Record supports this assertion. Importantly, CAA did not explain how this alleged scheme absolved the school from meeting its charter goals and objectives. In fact, CAA does not even assert the Board's Final Decision lacked substantial evidence, which is the standard of review in this case.

[3] Because CAA is a public charter school, the money paid out in the arbitration agreement constituted public funds. Moreover, during the time it has been open, CAA has been involved in multiple contractual disputes, arbitrations, and litigations with the District and AA.

target of 40% of the School's students earning at least 6.0 credits per academic year to be on track to achieve graduation within 4 years." The amended Charter established methods to achieve these goals which consisted of achievement indicators: Measures 1-4; growth indicators: Measures 5-7; college and career readiness indicators: Measures 8-9; graduation rate indicators: Measures 10-12 and student engagement indicators: Measures 13-14. The Charter also set forth, in bold letters, that CAA would use the PowerSchool student information system to "enable the smooth transfer of student information between [the School], [the District], and South Carolina's Department of Education and ensure that all three entities are working from a common data source." The Charter further stated, "CAA's director will be responsible for the efficient and accurate distribution of student assessment and progress information to parents or guardians, CAA's Board of Directors, the authorizer and the South Carolina Department of Education."

In late 2021, CAA requested to transfer its Charter from the District to the Limestone Charter Association (Limestone) for the 2022-2023 school year. It based its request on the alleged conspiracy between the District and AA to destroy CAA and steal CAA's students for enrollment at a competing school managed by AA. However, the request was determined to be untimely. On December 31, 2021, CAA submitted its annual report, but the data submitted in the report did not include any data responsive to the revised goals in the amended Charter. Then, in June 2022, the District's new Superintendent, Mr. Neeley, completed an annual evaluation of CAA. In that evaluation, Neeley concluded CAA had met some of its goals but specifically found, "[t]he school did not provide data for its goals in its 2020-21 Annual Report. The only summative academic data available to the District from the school is graduation rate. It does not appear the graduation rate is increasing or near levels required by the Charter based on the available data." On August 22, 2022, CAA responded to Superintendent Neeley's evaluation.

In September 2022, CAA requested to transfer its Charter to Limestone for the 2023-2024 school year. On November 4, 2023, the Board provided notice to CAA's Board that its request to transfer its Charter to Limestone would be placed on the agenda for an upcoming regularly scheduled Board meeting on December 15th, January 19th, or February 9th. The letter also provided a copy of the District's Transfer Policy, as approved by the District Board. Thereafter, towards the end of 2022, CAA held elections for CAA's Board. As a result of the election, two of CAA's board members were removed; nevertheless, two days later, CAA's Board reappointed them. As

a result, the school leader resigned and half of CAA's staff walked out in protest on December 14, 2022.

On January 4, 2023, the Board notified CAA that it would consider the transfer request at its January 19, 2023 meeting. The notice also set forth that the Board could take "any action" related to CAA's Charter that it deemed appropriate after considering the information available to it. On January 12, 2023, the District provided CAA with the Transfer Request Report, which summarized information the Board could consider when evaluating the transfer request. The Transfer Request Report noted there were concerns with the validity of the data provided by CAA and also stated that CAA was not meeting the academic performance standards in its Charter, including the two "critical goals" identified by CAA.[4]

On January 18, 2023, CAA provided the Board with its rebuttal to the Transfer Request Report. The rebuttal did not provide any information to refute CAA had failed to meet the goals reflected in Measures 1-14. Instead, CAA contended that the graduation rate should have been 12.64% instead of 8.8%, which still fell significantly short of the target graduation rate of 65% or a goal of 80% or greater. CAA's rebuttal also included data related to the number of courses completed in a software program called Edgenuity rather than the PowerSchool data reflecting courses taken for credit toward graduation. Importantly, PowerSchool is the records system required by CAA's Charter, the State Department of Education, and the District for official records. CAA also did not rebut the End-of-Course Examination Program (EOCEP) assessments.

The District Board held the meeting on January 19, 2023. The Board's agenda included requests from other charter schools as well as "action on Charleston Advancement Academy's Charter." At the hearing, District staff presented the Transfer Request Report to the District Board, and CAA presented additional information in support of its request to transfer its Charter. Both the District and CAA were represented by counsel at the Board meeting. After considering the information provided at the meeting, the Board voted 6 to 1 to deny the transfer request and issue a notice of revocation. The Board found that CAA had not met any of its amended Charter goals (Critical Goals 1 and 2; Measures 1-4) that the parties agreed to in 2020 and also, CAA had not established benchmarks for Measures 5-14, which was required in the amended Charter. Notably, Board Chairman Payne stated, "This just didn't start yesterday, this didn't start last year, it didn't

[4] The Charter required CAA to set benchmarks for Measures 5-14, but CAA never set the benchmarks as required.

start the year before, it didn't start the year before that, it started 4 years ago, so this has been coming." On January 23, 2023, the Board issued a Notice of Charter Revocation to CAA, effective June 30, 2023, subject to CAA's right to request a hearing before the Board pursuant to section 59-40-110(H) of the South Carolina Code. CAA timely requested a hearing on January 30, 2023.[5]

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

At the hearing, Deputy Superintendent John R. Payne[6] verified that ***zero*** students who were enrolled in CAA as seniors in the 2020-2021 academic year earned a diploma from CAA within twelve months. Dep. Supt. Payne further testified CAA's graduation rate was lower than the graduation rates of other AECs, including charter AECs, based on nationally reported data. Dep. Supt. Payne used the diploma tracking system (DOTS) through the South Carolina Department of Education to verify graduates, which was the most reliable way to determine if a student actually graduated. Dep. Supt. Payne also explained that his review of individual student data revealed multiple students who CAA claimed had class credit towards high school graduation, in fact, had too many absences to earn the credit. In some cases, CAA's records showed students with more than fifty absences from one course. Also, Dep. Supt. Payne's review of individual student data revealed CAA failed to have adequate contact with students. For example, a student had passed away without CAA knowing for several months.

In addition, CAA's own data consultant, Curtis Askew of DataNgine, testified that CAA's data in PowerSchool had "tremendous deficiencies"; specifically, there were duplicate records in PowerSchool and the records were a "Gordian knot" and very "problematic." Askew further

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[5] Notably, following the Notice of Charter Revocation, the District petitioned this Court for an injunction seeking to preserve CAA's assets and require participation in the statutorily mandated Closure Protocol while revocation was pending. A hearing was held on the request for injunction on April 24, 2023, at which time the parties reached an agreement to be later submitted to the Court. However, the parties could not agree on verbiage for the consent order, and a second hearing was held on May 5, 2023, at which time the parties reached an amended agreement which was memorialized in this Court's Order dated May 8, 2023 (Injunction Order). Pursuant to the Injunction Order, CAA was enjoined from expending funds from certain accounts during the revocation hearing process. In addition, CAA's lawyers were required to return $600,000 that had been transferred from CAA's bank accounts to the lawyer's IOLTA accounts.

[6] Deputy Supt. Payne is not related to District Board Chairman John S. Payne.

explained that he only evaluated graduation rates, and not any other academic performance standards in CAA's Charter. His review was also limited to PowerSchool because he did not have access to DOTS. He further testified that since he was not an expert with PowerSchool, he had to rely on CAA's staff to provide him with exports. In the end, Askew could not determine whether the graduation rates in the Transfer Report were done correctly. Although Askew believed CAA was being treated differently than another charter school sponsored by the District, NEXT High School, Askew was not aware that the District had already closed NEXT.

CAA also called Dr. Carrie Tucker, CAA's Assistant Director, as a witness.[7] Like Askew, Tucker testified that CAA's data was deficient— specifically admitting that CAA's PowerSchool data was "deficient in many ways." She also testified CAA's graduation rates were better than the District reported because the 2021-2022 graduation rate should be 21.86% by counting students outside of cohort.[8] Nevertheless, Ms. Tucker agreed the graduation rates were still well under the 65% critical goal stated in the Charter. Moreover, the benchmark goals contained in CAA's Charter had never been set and were not measurable, including for the 5-year cohort graduation goal.

The District also offered testimony from Michael Thom, Deputy Superintendent for Finance and Chief Financial Officer of the District. Thom explained that CAA spent the least amount of money per student of any school in the District based on a South Carolina State Department of Education reporting tool he developed while at the South Carolina Department of Education. Importantly, the banking information submitted by CAA to the District showed CAA had almost $4 million of State funds in its accounts.

After hearing the testimony and reviewing the evidence, the Board voted to revoke CAA's Charter effective June 30, 2023. In its Final Decision dated May 25, 2023, the Board found the evidence showed CAA failed to meet any of the goals in its Charter, especially the two critical goals related to graduation rate and credit attainment. Importantly, the Board found that no calculation for graduation rates met the 65% graduation rate goal as stated in CAA's Charter. In

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[7] Notably, Dr. Tucker began working at CAA on February 28, 2023, more than a month after the Board voted for revocation and only ten weeks prior to the May 11 hearing. Thus, her knowledge of CAA's data and what occurred prior to revocation was limited. In fact, Dr. Tucker was asked if "to the best of [her] knowledge, did the District require CAA to develop and execute a corrective action plan at any time prior to January 19, 2023" to which she responded, "No, sir." However, as already stated, Dr. Tucker was not employed by CAA prior to January 19, 2023.

[8] A cohort is a group of students that start school together akin to a class year.

fact, even the most favorable graduation rates—12.86% by CAA, and 21% by CAA's data analyst—were far short of the school's stated goal of what is acceptable.

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

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

Appellant appealed the Board's Final Decision to this Court on June 2, 2023.

STANDARD OF REVIEW

Pursuant to section 1-23-600(E) of the South Carolina Code (Supp. 2023), when the ALC sits in its appellate capacity, the ALC's review "must be in the same manner as prescribed in section 1-23-380." Section 1-23-380(5) of the South Carolina Code (Supp. 2023) provides the standard used by appellate bodies to review agency decisions under the Administrative Procedures Act. That section states:

> The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). In fact, substantial evidence exist to support an administrative agency's decision "unless there is no reasonable probability the facts could be as related by the witness upon whose testimony the finding was based." *Tims v. J.D. Kitts Const.*, 393 S.C. 496, 503, 713 S.E.2d 340, 343 (Ct. App. 2011). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUES ON APPEAL

1. Did the South Carolina Public Charter School District Board of Trustees violate Charleston Advancement Academy High School's due process rights in voting to revoke the school's Charter?

2. Did the South Carolina Public Charter School District Board of Trustees violate the South Carolina Charter Schools Act of 1996, as amended, in voting to revoke Charleston Advancement Academy High School's Charter?

DISCUSSION

Due Process

CAA argues the Board denied it procedural due process in violation of Article I, Section 22 of the South Carolina Constitution. On the other hand, Respondent argues CAA failed to preserve its due process objection; but, even if the issue is preserved, Respondent did not violate CAA's due process rights.

"Issues not raised to and ruled on by the agency are not preserved for judicial consideration." *Brown v. S.C. Dep't of Health & Env''t Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002). Although Appellant did not cite to the Record where it objected on the ground of procedural due process, it appears Appellant raised this issue during opening and closing arguments at the May 11th hearing before the Board. Thus, the Court finds the argument is preserved.

Because I find the issue is preserved, the Court will address CAA's due process arguments. The South Carolina Constitution states:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due **notice** and an **opportunity to be heard**; **nor shall he be subject to the same person for both prosecution and adjudication**; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the **right to judicial review**.

S.C. Const. Art I, § 22 (emphasis added). "Article I, [section] 22 requires an administrative agency provide notice and an opportunity to be heard, but does not require notice and an opportunity to be heard at each level of the administrative process." *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997). "[Section 22] mandates notice and opportunity to be heard at some point before the agency makes its final decision." *Id.* (citation omitted). Moreover, "[w]here important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329 (1990).[9] In sum,

[9] CAA argues that Chairman Payne denied CAA the opportunity to call Board members as witnesses. However, the Record does not substantiate this assertion. In fact, CAA's citation to the Record is only to Chairman Payne's statement that "while we may ask questions, we will not be questioned. If you have questions, please direct them to the chair." Payne's statement does not indicate that CAA called the Board members as witnesses and CAA failed to show otherwise. Furthermore, questioning the Board members is akin to questioning the jury after a verdict has been entered, which only occurs in exceptional circumstances and must not be based on speculation. *See* SCRE 606; *see also Lynch v. Carolina Self Storage Centers, Inc*., 409 S.C. 146, 760 S.E.2d 116 (Ct. App. 2014).

procedural due process has four requirements: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007).

Furthermore, "[t]o prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process." *Leventis v. S.C. Dep't of Health & Envt'l Control*, 340 S. C. 1 18, l3 I -32, 530 S.E.2d 643, 650 (Ct. App. 2000) (citation omitted). Additionally, an adequate de novo review renders harmless a procedural due process violation based on the insufficiency of the lower administrative body. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 174, 551 S.E.2d 263, 272 (2001).

Prosecution and Adjudication

CAA first argues its due process rights were violated because the Board prosecuted and adjudicated the revocation of CAA's Charter in violation of Article I, section 22. It contends the Board acted as a prosecutor in three ways. First, the Board moved to revoke CAA's Charter without a recommendation from the District Superintendent or staff on January 19, 2023. Second, at the January 19th and May 11th meetings, the Board improperly received *ex parte* communication. Third, CAA argues the Board engaged in prosecution because it had a "will to win." Finally, CAA argues the Board adjudicated its own prosecution at the May 11th meeting.

Respondent argues it did not serve as a prosecutor at either meeting. With regard to the January meeting, Respondent argues the District staff presented CAA's transfer request and the Board used the information presented to it to make a decision to revoke CAA's Charter. Respondent thus asserts that "[a]t all times, the Board acted in its capacity as board members or adjudicators, and not investigators or staff members as referenced in *Ross*." The Court agrees with Respondent.

Motion to Revoke Charter

The Record shows that during the January 19th meeting, District staff presented the transfer request made by CAA to the Board, which included the Transfer Request Report and CAA's rebuttal to that Report. This information led the Board to conclude that problems within the school warranted revocation. CAA argues the procedure by which the Board revoked the Charter reflects an intent to prosecute this case. When questioned during oral argument about what exactly

constituted prosecution in this case, CAA argued the Board engaged in prosecution when it moved to revoke, then held a four-minute discussion solely among Board members, and then voted to revoke the Charter. CAA further argued that because the motion to revoke did not come from staff or CAA or anyone else, it was the Board prosecuting the case. CAA emphasized that "usually" the process for revocation begins with District staff recommending revocation, and then the Board makes a motion based on that revocation.

At the outset, CAA failed to support its contention that the Board's allegedly unusual revocation procedure in this case constituted prosecution. Even if it is unusual for the Board to act without a staff recommendation, simply because the process "usually" begins with a staff recommendation does not mean that process is the only acceptable means by which to properly institute an action to revoke a charter. In fact, CAA did not explain how it was improper for the Board to make a *sua sponte* motion to revoke at a board meeting if the information presented to them warranted it. Indeed, during oral argument, CAA conceded that it would be appropriate in some circumstances for the Board to *sua sponte* make a motion for revocation and that the act of making the motion itself was not prosecuting. Moreover, although CAA claims the motion to revoke was made without recommendation from District staff or anyone else, CAA did not cross-examine all District staff members to support this conclusion. Thus, it is merely speculation that the Board's procedure was unusual from actions it has taken in the past.

Furthermore, the Board's revocation procedure in this case complied with the applicable law. Section 59-40-110, subsection (F) requires that "the sponsor shall notify in writing the charter school's governing body of the proposed action." In this instance, the "sponsor" was the Board. *See* S.C. Code Ann. § 59-40-110(F). Additionally, before the Board can properly notify a school of its intent to revoke, it must formally vote to take that action. That is exactly what the Board did in this case.

Next, following a notification of revocation, subsection 59-40-110(H) provides: "The charter school's governing body may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or termination of the charter." The sponsor must "conduct a hearing before taking final action." *Id.* Again, there is no dispute that the Board conducted a hearing in compliance with subsection 59-40-110(H).

Because the Record shows that District staff presented information to the Board, via the Transfer Request Report, and then the Board evaluated that information and found it warranted a

revocation of CAA's Charter, the Court finds the Board did not act as a prosecutor at the January 19th meeting. Therefore, the Board did not violate Art. I, section 22 of the South Carolina Constitution in this regard.

Ex Parte Communication

CAA next asserts the Board was partial like a prosecutor because it received *ex parte* information from Norton. Specifically, CAA contends the "Board received *ex parte* information from Norton in executive session on January 19, 2023, prior to voting on January 19, 2023, and May 11, 2023, to revoke CAA's Charter."

"Partiality exists where, among others, an adjudicator either has *ex parte* information as a result of prior investigation or has developed, by prior involvement with the case, a 'will to win.'" *Ross,* 328 S.C. 51, 69, 492 S.E.2d 62, 72.

Here, CAA did not point to any evidence in the Record to show Norton gave the Board any *ex parte* information in the January 19, 2023 executive session. Furthermore, the Board asserts Norton had no role in presenting CAA's transfer request to the Board and nothing in the Record shows otherwise. In fact, it is uncontested that Norton is counsel for both the District Board and the District staff; therefore, it was appropriate for him to be invited to an executive session at a regularly scheduled Board meeting to legally advise the Board. Indeed, simply because a lawyer may be present in executive session does not mean a due process violation exists. *See Garris v. Governing Bd. of S.C. Reinsurance Facility,* 333 S .C. 432, 443, 511 S.E.2d 48, 54 (1998) ("The fact that investigative, prosecutorial, and adjudicative functions are performed within the same agency, or even performed by the same persons within an agency, does not, without more, constitute a violation of due process."); *Babcock Ctr., Inc. v. Office of Audits,* 286 S.C. 398, 402, 334 S.E.2d 112, 114 (1985) (stating due process does not "prohibit a single agency . . . from combining investigative and adjudicative functions, one group or individuals passing upon facts developed by others within the same organization" (citation omitted)).

But even more importantly, once the Board revoked CAA's Charter at the January 19th meeting, the Board retained independent counsel, and, from that point on, Norton only represented the District staff. Therefore, it is undisputed that even if there was evidence of *ex parte* communication to the Board, that communication would not have occurred following the Board's meeting on January 19, 2023; in particular, relating to the evidentiary hearing on May 11, 2023.

Will to Win

CAA also asserts that because the District is a defendant in two lawsuits filed by CAA and the District would receive CAA's assets if it revoked the Charter, the Board had an additional "will to win" akin to a prosecutor. *See Ross,* 328 S.C. 51, 69, 492 S.E.2d 62, 72 ("Partiality exists where, among others, an adjudicator either has *ex parte* information as a result of prior investigation or has developed, by prior involvement with the case, a 'will to win.'").

As to CAA's contentions that the Board developed a "will to win" because CAA filed two lawsuits against the District, the evidence in the Record simply does not support CAA's claim. Notably, the first lawsuit between CAA and the District was filed in 2019, four years prior to the revocation and, in fact, the Board granted CAA's request to amend its Charter so that it could remove AA as its EMO after this lawsuit was filed. Thus, if the Board had a "will to win" because it was a defendant in a lawsuit with CAA, one would assume it would deny any request made by CAA. Furthermore, the second lawsuit between CAA and the District was filed in March 2023, which was after the Board voted to revoke CAA's Charter on January 19, 2023. Moreover, if this Court were to generally find such contentions meritorious, it would create endless turmoil. Indeed, if a school could file a lawsuit against a governing body and then claim the governing body could not oversee the school because of the governing body's decision to file a claim against the school, the school would have the ability to thwart the supervision by its sponsor. And what body would the courts then find to be the overseer of a charter school?

Likewise, CAA's argument that the Board has a "will to win" because it stands to receive the school's assets upon the revocation of its Charter is also not supported by the Record. Section 59-40-120 of the South Carolina Code provides that "[u]pon dissolution of a charter school, its asserts may not inure to the benefit of any private person. Any assets obtained through restricted agreements with a donor through awards, grants, or gifts must be returned to that entity. All other assets become property of the sponsor." *See* S.C. Code Ann. § 59-40-120 (2020). Thus, the Board will legally receive assets after a school's dissolution, as it does in every dissolution. CAA also has presented no evidence to show the amount of assets at issue in this case rendered the Board impartial and specifically motivated the Board to close CAA to seize the assets. *See id.* Moreover, if CAA is suggesting the statute's provision returning assets to the sponsor *de facto* inures prosecutorial bias to the Board in favor of dissolving schools to reclaims assets, then CAA's argument is ultimately a facial challenge to the constitutionality of the Act, and this Court cannot

address facial attacks to the constitutionality of statutes. *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 108, 705 S.E.2d 28, 38 (2011) ("It is well settled in this State that ALCs, as part of the executive branch, are without power to pass on the constitutional validity of a statute or regulation.").

Adjudication

CAA argues the Board violated Article 1, Section 22 because it was both the prosecutor and adjudicator of CAA's revocation. In particular, CAA argues the Board prosecuted CAA at the January 19th hearing, and then adjudicated its own decision at the May 11th hearing. As addressed above, the Board did not prosecute CAA's revocation; it merely evaluated information supplied to it by the District Staff and determined that information was concerning enough that revocation was warranted. Because the District Board did not prosecute CAA's revocation, I do not find they are in violation of Article 1, Section 22 because they adjudicated their decision to pursue revocation. S.C. Const. Art I, § 22 (providing "[n]o person . . . shall he be subject to the same person for both prosecution and adjudication"). Moreover, multiple functions can be performed in the same agency by different actors. *See Garris,* 333 S .C. at 443, 511 S.E.2d at 54 ("The fact that investigative, prosecutorial, and adjudicative functions are performed within the same agency, or even performed by the same persons within an agency, does not, without more, constitute a violation of due process."); *Babcock Ctr., Inc.,* 286 S.C. at 402, 334 S.E.2d at 114 (stating due process does not "prohibit a single agency . . . from combining investigative and adjudicative functions, one group or individuals passing upon facts developed by others within the same organization" (citation omitted)).

Freedom of Information Act

Finally, CAA argues the Board violated its due process rights because its decision to revoke CAA's Charter was not in compliance with the South Carolina Freedom of Information Act (FOIA). CAA argues the Board's decision to revoke its Charter violated FOIA because the "revocation" of its Charter was not on the Board's original January 19th meeting agenda. As this Court has previously found in this case, this Court does not have jurisdiction over FOIA claims. *See* S.C. Code Ann. § 30-4-100 (providing relief for FOIA violations in Circuit Court). Consequently, any assertions that FOIA was violated must be made in the context of a due process violation for the Court to consider them. Here, CAA does not allege any FOIA violation occurred

during the May 11th hearing, which is when the Board made the final decision to revoke. Instead, CAA argues the Board failed to comply with FOIA during the January 19th meeting.

Conclusion

Overall, I conclude the Board complied with due process requirements. As discussed above, CAA failed to supply competent evidence that the Board acted as an adjudicator and prosecutor in violation of Article 1, Section 22. More broadly, the Board's actions ultimately complied with Article 1, Section 22 as well. S.C. Const. Art I, § 22; *see Clear Channel Outdoor*, 372 S.C. at 235, 642 S.E.2d at 567 (holding procedural due process has four requirements: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.). Specifically, on January 4, 2023, the District sent a letter to CAA advising it that the Board would consider CAA's transfer request at the regularly scheduled January 19th Board meeting. But the letter did not limit the Board's consideration to only the narrow issue of whether CAA's request to transfer its Charter should be approved. Rather, the letter stated, "The District Board reserves the right to **take any action** related to CAA's Charter that it deems appropriate after considering the information available to it." (emphasis added). Consistent with this correspondence, the Board agenda for the January 19th meeting was posted more than twenty-four hours in advance of the meeting and included an action item for "Action on Charleston Advancement Academy's Charter." Thus, based on the description of the action, CAA was on notice that the Board could take any action regarding its Charter, including granting its request to transfer, or, as it chose to do, revoking CAA's Charter. Accordingly, CAA was on notice of the action taken by the Board at the January 19th meeting.

More importantly, after the Board voted to revoke CAA's Charter during the January 19th meeting, the Board issued a Notice of Revocation, in writing, on January 23, 2023. CAA then timely requested a hearing pursuant to subsection 59-40-110(H) of the South Carolina Code (2020), and thereafter the Board held a hearing on May 11, 2023. CAA was granted its full panoply of due process at the May 11th hearing: for instance, it presented evidence and called and cross-examined witnesses. The Board then issued a written final decision on May 12, 2023, revoking CAA's Charter. As a result, the Board complied with section 59-40-110 regarding procedural due process requirements.

Therefore, while the January 19th Board meeting did not have all of the requisites of a due process determination, any due process deficiencies were corrected by the hearing held on May

11th. *See James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 299, 657 S.E.2d 469, 472 (2008) (*citing* Ross, 328 S.C. 51, 492 S.E.2d 62 (holding a state may cure procedural deprivation of due process rights by later procedural remedy)). As a result, the Record contains substantial evidence that CAA received due process in the form of notice, an opportunity for hearing, and judicial review. *See Ross*, 328 S.C. at 68, 492 S.E.2d at 71. For instance, CAA was given the opportunity to confront and cross-examine witnesses under oath and allowed to present numerous exhibits in support of its claims at the May 11th hearing. *See Brown,* 301 S.C. at 329. In addition, CAA has not explained how it suffered substantial prejudice from any alleged due process violations resulting from the May 11th hearing. *Leventis*, 340 S. C. at 132, 530 S.E.2d at 650 (Ct. App. 2000) (substantial prejudice required for due process violation).

Revocation

CAA also argues the Board erred in voting to revoke its Charter because it failed to comply with the Act's requirements. Specifically, it argues the Board was required to evaluate CAA pursuant to section 59-40-111(F) of the South Carolina Code (2020) and that Superintendent Neeley's annual evaluation[10] of CAA "must be used in making a determination for nonrenewal or revocation." S.C. Code Ann. § 59-40-110(A). CAA also argues the "Board voted to revoke CAA's charter based on metrics not aligned with CAA's mission, without reference to goals included in CAA's charter, and without comparison to AECs established to serve high school students that have dropped out of school or are at risk of dropping out of school."

Conversely, Respondent asserts that "subsection 111(F) does not add additional evaluation requirements to the statutory revocation standard in subsection 110(c), and only provides guidance regarding how the academic performance standards should be written. In any event, the District met the requirements of Subsection 111(F)."

Section 59-40-111(F) provides:

> Charter schools receiving an AEC designation either before or after opening, **shall** be held to **applicable state and federal accountability standards along with the academic performance standards and expectations established by written agreement between the sponsor and the school that takes into account the school's specialized mission** and student population with **comparisons to any available nationally normed data** with similar subsets of students and is included

[10] It is undisputed that the process of the annual evaluation is as follows: the charter school fills out and submits a report to its sponsor, the District, for review. *See* S.C. Code Ann. § 59-40-140(H). Thus, it was CAA's responsibility to include all relevant and important data evaluated based on the standards in the amended Charter.

> in their annual report in accordance with Section 59-40-140(H) and is included in the school report card compiled by the Education Oversight Committee.

S.C. Code Ann. § 59-40-111(F) (2020) (emphasis added). Section 59-40-110 further provides:

> (A) A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section. The sponsor annually shall evaluate the conditions outlined in subsection (C). **The annual evaluation results must be used in making a determination for nonrenewal or revocation.**
>
> * * *
>
> (C) A charter must be revoked or not renewed by the sponsor if it determines that the charter school:
>
> > (1) committed a material violation of the conditions, standards, performance expectations, or procedures **provided for in the charter application or charter school contract**, or both;
> >
> > (2) failed to meet the academic performance standards and expectations as **defined in the charter application or charter school contract**, or both;

S.C. Code Ann. § 59-40-110 (2020) (emphasis added).

Therefore, under subsections 110(C)(1) and (2), a charter school **must** be revoked based on poor academic performance if it does not meet the academic performance standards "provided for in the charter application **or** charter school contract, **or** both." *Id*. (emphasis added). Notably, Respondent revoked CAA's charter pursuant to subsections 110(C)(1) and (2). Subsection 110(C) does not make any exception for AECs, and, in fact, it does not mention AECs at all. On the other hand, subsection 111(F) does not mention revocation; it simply provides requirements for how academic standards should be written in the charter and contract. Nonetheless, subsection 111(F) also requires the sponsor to take "into account the school's specialized mission and student population with comparisons to any available nationally normed data with similar subsets of students." § 59-40-111(F).

In this case, the Board relied upon CAA's failure to meet the academic performance standards set forth in CAA's Charter to determine CAA violated subsections 110(C)(1) and (2). For instance, CAA's Charter stated that benchmarks would be set for its "Achievement Indicators" using Momentum Strategy and Research "norming outcomes," including for subsets of at-risk students like most students at CAA. As a result, CAA's Charter included the kind of academic achievement standards expressly contemplated by subsection 111(F) for the school's "specialized mission and student population." CAA nevertheless argues that these standards, specifically the 4-year cohort graduation rate, do not align with its mission, and thus, should not have been used

in deciding revocation. However, this specific goal was included in its amended Charter and, if it did not align with its mission, CAA should not have agreed to its inclusion. Importantly, although CAA contended during oral argument that it was forced to include the 4-year cohort graduation rate, that contention, even if this Court were to somehow find that the Board was required to ignore the standards CAA agreed to in its Charter, was not supported by the Record. To the contrary, CAA conceded in its brief that the parties, the District, and CAA, "each . . . participated in writing the charter as stated by Chairman Payne." Accordingly, the Board properly evaluated CAA's academic performance under the metrics stated in CAA's Charter.

CAA also asserts the Board's Final Decision omitted any analysis of Measures 10 and 11, which it asserts more closely aligned with its mission and were included in its Charter. CAA further asserts the Final Decision omitted any comparison of CAA to other AECs serving similar students as required by subsection 59-40-111(F).[11] Nonetheless, the data CAA is suggesting the Board should have evaluated, but did not evaluate, does not exist because CAA did not collect it as required by its Charter. Indeed, CAA's own witnesses admitted that many of its suggested achievement indicators did not include valid benchmarks against which to measure academic progress. Furthermore, the Record shows the Board evaluated all academic performance data available to them, including the comparison of CAA's graduation rates to other AECs and the data included in CAA's annual evaluation. Therefore, the Record contains substantial evidence that Respondent complied with the evaluation requirements of subsection 59-40-111(F) and section 59-40-110.

CAA further argues "the District was required by section 59-40-55(B)(8) of the South Carolina Code (2020), and the charter contract to take corrective actions or exercise sanctions short of revocation, which District and CAA witnesses testified never happened prior to January 19,

[11] CAA asserted the Transfer Request Report also omitted an analysis of Measures 10 and 11 and a comparison of CAA to other AECs serving similar students. However, the Final Decision is the subject of this appeal, not the January 12, 2023 Report. In addition, CAA argued that the Transfer Request Report was edited by Norton and purposely omitted relevant information and contained inaccurate data. However, even if this contention was a relevant consideration, CAA was given the opportunity to provide a rebuttal to this report or to make any corrections it deemed necessary and failed to make these contentions. In fact, CAA provided a rebuttal to the Board, and in that rebuttal, provided a 12.64% graduation rate, which is still way below its two critical goals of "a target graduation rate of 65% or a goal of 80% or greater," and "a target of 40% of the School's students earning at least 6.0 credits per academic year to be on track to achieve graduation within 4 years." Furthermore, during oral arguments, CAA conceded that the transfer request is not before the Court; thus, any arguments surrounding the Transfer Request Report are irrelevant.

2023." Respondent, on the other hand, asserts the Act does not require corrective action prior to revocation.

Subsection 59-40-55(B) provides:

(B) A charter school sponsor **shall:**

> (7) notify the charter school of perceived problems if its performance or legal compliance appears to be unsatisfactory and provide reasonable opportunity for the school to remedy the problem, **unless the problem warrants revocation** and revocation timeframes apply;
>
> (8) take **appropriate** corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance. These actions or sanctions **may** include requiring a school to develop and execute a **corrective action plan** within a specified timeframe;

S.C. Code Ann. § 59-40-55(B)(7), (8) (2020) (emphasis added). While subsection 59-40-55(B)(8) of the Act gives the District the option to issue sanctions short of revocation, including requiring a school to complete a corrective action plan within a specified timeframe, it does not require the District to do so. Rather, subsection 59-40-55(B)(8) limits the requirement of the sponsor to take corrective action or exercise sanctions to those instances in which it is "appropriate." Merriam Webster defines "appropriate" as "especially suitable or compatible." *See* https://www.merriam-webster.com/dictionary/appropriate (last visited on September 22, 2023). Consequently, subsection 59-40-55(B)(8) indicates the District can determine what action is suitable based on the circumstances, which may result in a corrective action plan that addresses the school's performance issues, or, if the situation warrants it, revocation.

Furthermore, CAA's argument omits reference to the immediately preceding subsection, which allows the District to find revocation is warranted, without providing notice to the school of the perceived problems, if the performance issues are unsatisfactory. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Reading the Act as suggested by CAA not only requires the Court to ignore the discretion granted in subsections 59-40-55(B)(7) and (8), but it would require a sponsor to take corrective actions or exercise sanctions no matter how grievous a school's violations. That interpretation is not consonant with the purpose and design of these statutes. *See id.*

Additionally, despite CAA's assertions to the contrary, CAA has had opportunities to remedy its problems. After the Notice of Revocation was issued and before the hearing on May

11th took place, CAA had the opportunity to remedy its performance issues or, at least, provide data that shows it complied with the standards and goals included in its Charter. However, Appellant's Brief includes no reference to any effort to remedy the academic performance problem during that time, and the Record shows that at the time of the hearing, CAA continued not to meet academic performance requirements. Moreover, the District allowed CAA to amend its charter goals so that it could correct some of its performance problems, yet CAA continued to have poor academic performance. CAA witnesses also admitted to "tremendous deficiencies" in its data, which even its own data consultant could not untie. And, again, the graduation rates for 2022 were found to be 8% by the District, 12.86% by CAA, and 21% by CAA's data analyst hired for the hearing. Accordingly, even the most favorable graduation rate was far short of the school's stated goal of what is acceptable. The substantial evidence thus supported the Board's determination that CAA's poor academic performance was a continued problem that warranted revocation, and, as a result, the Board was not required to issue a corrective action plan prior to revoking CAA's Charter. *See* §§ 59-40-55(B)(7) & (8).

Lastly, CAA contends the District failed to comply with its own policy and offer CAA a revocation review process in violation of subsection 59-40-60(B) of the South Carolina Code. Subsection 59-40-60(B) states that any and "all agreements regarding the release of the charter school from school district policies must be contained in the [charter] contract." S.C. Code Ann. § 59-40-60(B). Furthermore, the District's Transfer Policy provides that "[s]chools under revocation review or occupying the lowest performance level rating as defined by the [District's] performance framework are not eligible to request a transfer out of the District." Therefore, CAA asserts the District was required to offer it a revocation review process because the charter contract did not release CAA from the transfer policy.

However, the Act does not require the District to engage in a "revocation review" with the school. In fact, nowhere in the Act is there a mention of a "revocation review." As stated above, subsection 59-40-55(B)(7) allows notice and opportunity to remedy the problem to be waived if the performance is so unsatisfactory it warrants revocation. Thus, if there was a requirement of a revocation review process, then it would render subsection 59-40-55(B)(7) meaningless. *Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) ("This Court will not construe a statute in a way which . . . renders it meaningless."); *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 310,

649 S.E.2d 28, 30 ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."). Also, Dep. Supt. Payne explained that if the District used a revocation review process with CAA, then it would have collected, reviewed, and analyzed the same information it did for a transfer request. Accordingly, because during the fall of 2022 and early 2023 the District was already engaged in a comprehensive review of CAA's academic performance when CAA requested the transfer, it would have been unnecessary and duplicative to conduct a revocation review as well. As a result, the District was not required to offer or perform a revocation review process with CAA, and even if it had conducted a revocation review, the conclusion would not have changed: CAA's academic performance was poor and was not meeting the performance requirements of its Charter.

In sum, there is substantial evidence in the Record that the Board did not violate the Act in voting to revoke CAA's Charter. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

CONCLUSION

The Record shows the Board followed the statutory revocation process as prescribed by the Act. It initially evaluated all of CAA's performance data that was available to it in accordance with the Act, which included all information presented by CAA in its rebuttal to the Transfer Request Report. Based on the information presented to it at the January meeting, the Board found revocation was warranted under on subsection 59-40-110(C)(1)(2). Indeed, the Act provides that a charter **must** be revoked if the school's academic performance is poor and does not meet the standards and expectations as defined in its charter. *See* § 59-40-110(C)(1)(2). Ater the Board voted to revoke CAA's Charter during the January 19th meeting, the Board issued a Notice of Revocation, in writing, on January 23, 2023. CAA then timely requested a hearing and the Board held that hearing, at which CAA participated, on May 11, 2023. The next day, on May 12, 2023, the Board issued a written final decision, revoking CAA's Charter. The Record also contains substantial evidence that CAA received due process at the January 19th meeting and the May 11th hearing. Finally, CAA has not, and cannot, refute the substantial evidence that it failed to meet the performance expectations in its Charter and contract.

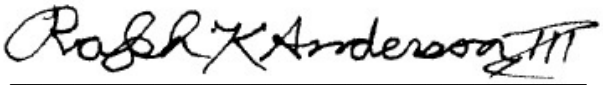
Accordingly, substantial evidence exists to support the Board's finding that revocation of CAA's Charter was warranted. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913

(holding a decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

ORDER

IT IS THEREFORE ORDERED that the Board's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

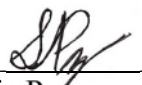


Ralph King Anderson, III
Chief Administrative Law Judge

October 16, 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

October 16, 2023
Columbia, South Carolina

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2022-00289

Charleston Advancement Academy, Inc.……. Appellant,

v.

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

PROOF OF SERVICE

I, Erik T. Norton, an attorney with the firm of Harrell, Martin & Peace, P.A., do hereby certify that on December 5, 2023, I served a copy of the Respondent's Motion to Dismiss in the above captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

Edward K. Pritchard, III, Esquire PRITCHARD LAW GROUP, LLC 8 Cumberland Street, Suite 200 Charleston, South Carolina 29401 epritchard@pritchardlawgroup.com	Tyler R. Turner, Esq. TURNER& CAUDELL, LLC 914 Richland Street, Suite A-101 Columbia, SC 29201 tturner@turnercaudell.com

By: /s Erik T. Norton
Erik T. Norton

Chapin, South Carolina
December 5, 2023