

IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Judge

Case No.: 2013-000525

RECEIVED

DEC 27 2013

SC Court of Appeals

Mary L. Dinkins Higher Learning Academy (MLD) APPELLANT

v.

South Carolina Public Charter School District (District)..... RESPONDENT

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENTS IN REPLY

I. The Respondent fails to rebut Appellant's argument that South Carolina Charter Act is not constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

While the Respondent derides MLD's failure to cite **any** authority for the proposition that the trier of fact should be neutral and unbiased the Respondent does not cite any authority for a contrary point of view. The concept of judicial neutrality is so fundamental to the American scheme of justice that there has been a paucity of cases directly addressing the matter as the Wikipedia article pointed out.

There was no baseless attack on the District Board's Chairmen. His prejudice in his rulings were however called out. Rec. _____. How could the chairman and the board be neutral when he sat in a judicial capacity and was taking breaks to be advised by the prosecutor in the case outside the presence of the attorney for MLD. Rec. _____.

MLD was given procedural due process but was denied substantive due process. How else could you explain the Respondent's failure to refute the fact that every witness from the public testified on MLD's behalf yet their opinions were totally disregarded? REC _____.

The Respondent did not refute MLD's assertion that the case was prosecuted by Mr. Karl "Butch" Bowers and his associates as attorneys for the South Carolina Charter School District representing the superintendent Mr. Wayne Brazzle.

The case was presided over by the chairman of the board of the South Carolina Public Charter School District, Mr. Don McLaurin, who was represented by Mr. Karl "Butch" Bowers and his associates.

That during breaks in the proceedings the Board, the superintendent and Mr. Karl “Butch” Bowers and his associates conferred in ex parte fashion without including the attorney for the Appellant. Rec ____.

II. The Respondent fails to rebut Appellant's argument that the revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

On March 27, 2012 The Superintendent of the SCPCSD, Dr. Wayne Brazzell, wrote a letter to the Executive Director of the MLD Academy informing her of the SCPCSD Board's Decision to **revoke** the MLD Charter with a copy of the letter to the Chairman of the MLD Board, Mr. George Williams.

On April 19, 2012 the revocation hearing was held.

That is clearly less than the 60 days which the statute requires before taking action to revoke the charter of a charter school. Rec 895. The very act of holding a revocation hearing is an action against the charter school because it takes many of the school administrators out of their normal duties.

This is a clear violation of the statute. The revocation should therefore be denied.

III. The Respondent fails to rebut Appellant's argument that the Charter of the Mary L. Dinkins Higher Learning Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

The Respondent did not refute that the only unlawful act alleged by the Respondent was totally rebuked by the Administrative law Judge when she showed the allegation of graduating a single student without enough credits to be false. (Order of ALJ, page ____.)

The Respondent's assertion that MLD failed to make reasonable academic progress based upon the criteria set forth in the **charter agreement** is also false.

Judge Robinson cited MLD's students performance in the following areas as proof that MLD violated a provision of its charter:

- a. Adequate Yearly Progress**
- b. HSAP (High School Assessment Program)**
- c. High School EOC Examinations**
- d. PASS/PACT (Palmetto Assessment of State Standards)**

Thoses are all the result of student testing assessments. Test scores alone cannot be the measure of the success of a school like MLD. Also, at least one of these test has been dicredited and the state is seeking relief from its requirements. REC ____.

MLD's students test scores will vary widely from time to time as new students are admitted. The Respondent did not refute the fact that nearly all of the students admitted to MLD come from free or reduced price households. Rec ____.

The Respondent did not refute the fact that in a prior order involving MLD and LEE County and student test scores Judge Kitrell of the Administrative Law Court wrote about this same issue and the same Appellant in a prior revocation attempt by Lee County that and found that assertion without merit.

The Respondent did nor refute the Appellants assertion that the SCPCSD has been comparing apples and oranges and wondering why they are not the same; Rec 920-930, that by any measure MLD students are light years ahead of where they were when they came to MLD and that for the most part they would comprise the dropouts if they were in a regular failed school system such as the public school system of Lee County.

To look at raw test scores of the students of MLD as the sole measure of the value of the school is wrong. Failure of this court to strike down the testing along requirement as a basis for revocation would be to prohibit the future existence of any school which caters to those most in need who are at the bottom of the economic and social rung because they will need time to test well.

The Respondent did not refute the fact that Ms. Benita Dinkins-Roninson was a counsellor at the Department of juvenile justice where she noticed young men and women being incarcerated because they committed crimes as their only way of economic survival. She formed and managed MLD to rescue these young men and women and saw 7 of them graduate from her school and go on to college and other productive work.

Rec ____.

IV. The Respondent fails to rebut Appellant's argument that the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

The South Carolina Legislature, in its wisdom, required that new charter schools be granted charters of ten years. That is about the amount of time a new school needs to mature and show its worth or fail.

The respondent has not refuted the fact that the Charter School Act requires a sponsor to grant a charter school a full 10 year charter. That there is no provision in the law for any charter of lesser duration and that the SCPCSD violated the provisions of the law when it purported to grant the Mary L. Dinkins Academy a provisional charter. Rec 844, 845. The Respondent has failed to brief this issue and thereby has admitted the same.

The Respondent also did not dispute that Section 59-40-110 states, "... The sponsor **annually shall evaluate** the conditions outlined in subsection (C). The evaluation results **must** be used in making a determination for nonrenewal or revocation."

This is another part of the Charter School Act where the law is clear. It clearly states that "The evaluation results **must** be used in making a determination for nonrenewal or revocation."

Judge Robinson wrote that "... § 59-40-110(A) only requires that a sponsor **annually evaluate the conditions set forth in § 59-40-110(C) before using those evaluation results.** This seems to be double talk. There was no annual evaluation on which the district based its revocation decision. The Respondent did not refute MLD's assertion that MLD was never told of the test score comparisons stated in the district's revocation letter before the revocation hearing and was not evaluated in any way.

CONCLUSION

Based on the foregoing, the Administrative Law Judge's Decision revoking the charter of the Mary L. Dinkins Academy should be reversed since

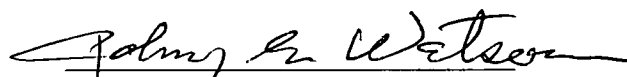
The district's own compliance director, to wit: Ms. Dana Reed, testified under oath that the "goals were vague and not measurable". REC 1007.

Also, the district and MLD agreed that the students would show reasonable academic progress but **MLD specified the growth of individual students not growth as compared to other schools.** No one disputes that the students have in fact been showing amazing individual growth even if that growth is still below the norm for some other schools such as the governor's school and other schools where the students come from a more affluent background.

None of the reasons put forth for the revocation meet the requirements of the Charter School Act.

The Mary L. Dinkins Academy therefore requests that the revocation of its charter by the District be overturned as violating the South Carolina Charter School Act and that the SCPCSD Board be ordered to grant MLD a full 10 year charter as required under the Charter School Act.

Respectfully submitted on behalf of the Appellant,


Johnny E. Watson,

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Higher Learning Academy

December 27, 2013
Columbia, South Carolina