

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Lake City College Preparatory Academy (LCCPA),	)	Docket No. 14-ALJ-30-0256-AP
	)	
Appellant,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
South Carolina Public Charter School District,	)	
	)	
Respondent.	)	
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**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to S.C. Code Ann. §§ 59-40-10 to 240, the South Carolina Charter Schools Act of 1996 ("Act"). Appellant Lake City College Preparatory Academy ("LCCPA" or "School") filed an appeal with the ALC on May 15, 2014, as amended on June 16, 2014, seeking review of the May 23, 2014 Final Decision of Respondent South Carolina Public Charter School District's ("District's") Board of Trustees ("Board") to revoke Appellant's Charter pursuant to Section 59-40-110 of the Act. Oral argument was held on September 4, 2014 with counsel for both District and LCCPA in attendance.

Upon careful review and consideration of the entire Record, submissions, and arguments from both parties, this Court finds substantial evidence to uphold the findings of the Board. Therefore, for the reasons set forth below, this Court **AFFIRMS** the Final Decision of the Board to revoke LCCPA's Charter.

**BACKGROUND**

LCCPA is a charter school located in Lake City, South Carolina and serves approximately 200 students in grades Kindergarten through Twelfth Grade pursuant to an arts and music-based curriculum patterned after the Harlem School of Arts. The stated mission of the School is "to create[ ] a high quality college preparatory instructional environment where a strong commitment to the creative arts is manifested which will lead to high levels of academic achievement."

The District is a statewide school district created by the Act and charged with approving, revoking, or non-renewing charters in accord with the Act. S.C. Code Ann. § 59-40-220 (Supp. 2013). The District is also responsible for monitoring the academic, governance, legal and fiscal operations of charter schools. S.C. Code Ann. § 59-4-55(A).

LCCPA was granted a charter (the "Charter") by the Board and began operating in August 2009. The Record contains a lengthy history of correspondence from the District to the School documenting various failures of LCCPA to meet its obligations under its Charter and the Act, beginning approximately two years after the Charter was approved and culminating in a Notice of Default issued on December 4, 2013. The Board voted to revoke the Charter of LCCPA at its regularly scheduled Board meeting held on March 13, 2014.

By letter dated March 26, 2014, LCCPA requested a hearing pursuant to S.C. Code Ann. § 59-40-110(F). A hearing was scheduled by mutual consent for 1:00 PM on May 8, 2014 and was noticed by letter from the District's counsel dated April 3, 2014 to counsel for LCCPA.

At the May 8, 2014 hearing, the Board voted unanimously to affirm its prior decision to revoke the Charter of LCCPA. On May 14, 2014, LCCPA filed its Notice of Appeal of the Board's decision with the ALC. On May 23, 2014, the Board issued its Final Decision revoking LCCPA's Charter. LCCPA subsequently filed an amended Notice of Appeal on June 16, 2014 with the ALC, seeking review of the May 23, 2014 Final Decision.

#### **JURISDICTION AND STANDARD OF REVIEW**

A school may appeal the final decision of the sponsor to revoke a charter to this Court pursuant to Section 59-40-90. Appellate review by the ALC of a final decision of the Board is governed by the standards set forth in Section 1-23-380 of the South Carolina Code. *See* S.C. Code Ann. § 59-40-90 (providing that appellate review of decisions of the District be consistent with the standards provided in §§ 1-23-380(B) and 1-23-600(D)); S.C. Code Ann. § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in § 1-23-380 for judicial review of a final agency decision). Section 1-23-380 provides that this Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." *Id.* at § 1-23-380(5).

However, pursuant to Section 1-23-380(5), this Court:

may reverse or modify the decision 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.

*Id.*

Under this standard of review, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Hull v. Spartanburg County Assessor*, 372 S.C. 420, 424, 341 S.E.2d 909, 911 (Ct. App. 2007) (citations omitted). "The 'possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'" *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (citations omitted). "'Substantial evidence' is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Law v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)).

#### ISSUES ON APPEAL

1. Whether the Charter of the Lake City College Preparatory Academy was lawfully revoked under S.C. Code Ann. Section 59-40-110 (1976).
2. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor to be both the accuser and finder of fact in a charter revocation hearing under S.C. Code Ann. Section 59-40-110(C) (1976).
3. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act, S.C. Code Ann. Section 59-40-110(D) (1976).

4. Was the District's decision to revoke LCCPA's Charter arbitrary and capricious, and characterized by abuse of discretion or a clearly unwarranted exercise of discretion?
5. Whether the decision to revoke the LCCPA's Charter was made by a legally constituted Board, and whether the SCPCSD's board was legally constituted at the Revocation Hearing.
6. Whether the revocation hearing was a sham by a biased school board when the hearing officer refused to allow the attorney for LCCPA to completely examine witnesses and directed the attorney to put the proffered testimony in the record and when the revocation vote was taken immediately after the hearing with no review of the documents placed in the record.
7. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act in its decision to revoke the Charter of LCCPA.
8. Whether the South Carolina Charter School District violated the provisions of the South Carolina Charter School Act by the sponsor failing to retain responsibility for special education and ensuring that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state, and local law.
9. Whether LCCPA was granted a meaningful opportunity to remedy its problem in a way which would not unduly inhibit the autonomy granted to public charter schools.

## **DISCUSSION**

Following careful review of the Record and arguments of counsel, this Court finds that the Final Decision of the Board is supported by substantial evidence establishing multiple independent grounds requiring revocation of LCCPA's Charter, as set forth in more detail below.

### **I. LCCPA's Charter Was Lawfully Revoked Under Section 59-40-110.**

Section 59-40-110(C) provides that a sponsor must revoke a school's charter if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedures provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or

- (4) violated any provision of law from which the charter school was not specifically exempted.

S.C. Code Ann. § 59-40-110(C). In reviewing the Record, this Court finds substantial evidence in the Record to support the Board's conclusion in the Final Decision that at least one of the criteria requiring revocation of LCCPA's charter exists in this case.

**A. Violations of the Conditions, Standards or Procedures in the Charter Application.**

The Final Decision contains a detailed description of how LCCPA failed to meet the obligations it agreed to in its Charter and Contract with regard to (i) compliance with special education laws; (ii) compliance with other laws; and (iii) failure to provide required financial documentation. The Record contains substantial evidence supporting the Board's decision with regard to each of these areas.

**i. Failure to Comply with Special Education Laws.**

In the Charter and Contract with the District, LCCPA expressly agreed to provide special education services and comply with special education laws. However, substantial evidence in the Record indicates it failed to do so.

The Record contains findings by the State Department of Education that LCCPA did not meet special education requirements. This prompted a review of all LCCPA special education files by District Special Education Coordinator Rebecca Davis, who testified at length about LCCPA's failure to comply with special education laws for more than forty LCCPA students and provided documentary evidence supporting her testimony. Further, LCCPA's special education consultant, Albertha Bannister, acknowledged that LCCPA was not compliant with special education law under questioning by LCCPA's own attorneys. The documentary evidence and testimony provides substantial evidence that LCCPA's failure to comply with special education laws was not merely ministerial or overly technical, as LCCPA argues, but was substantial and systemic.

Therefore, the Record contains substantial evidence that LCCPA failed to provide special education services and comply with special education laws as required by the Charter and its contract with the District.

Moreover, LCCPA did not comply with corrective actions or sanctions required by the District in accord with the Act because of LCCPA's failure to correct identified deficiencies in its

special education program. Indeed, LCCPA failed to correct the deficiencies with its special education program within one year after receiving notice of them, in violation of federal law.

These many failures by LCCPA related to its special education program constitute material breaches of the Charter, the Contract and the Act, which provides an independent basis supporting the Board's decision to revoke. Therefore, the Final Decision of the Board must be affirmed.

**ii. LCCPA Failed to Comply with Other Laws and Regulations.**

The Record also contains substantial evidence that LCCPA failed to comply with other laws and regulations, such as the requirement to utilize highly qualified teachers<sup>1</sup> and perform required teacher evaluations. LCCPA promised to abide by these laws and regulations in its Charter and Contract, and is required to follow them a matter of law. *See* S.C. Code Ann. § 59-40-50(B)(1). The Record contains information from the State Department of Education regarding these failures, and insufficient information from LCCPA to counter this information. These failures by LCCPA constitute material breaches of the Charter, the Contract and the Act, and provide a further independent ground for revocation of the Charter.

**iii. LCCPA Breached the Charter, Contract, and Act by Failing to Substantiate Financial Expenditures and Background Checks of Tutors.**

The Act requires the District to provide oversight and monitoring of LCCPA's activities, including its finances and compliance with legal requirements. *See* S.C. Code Ann. § 59-40-55. LCCPA agreed in its Charter and Contract to comply with financial standards required by the District and applicable to all recipients of public money, as is required by the Charter School Act. *See* S.C. Code Ann. § 59-40-50(B)(3). The Contract expressly provides that LCCPA will "respond to all requests for documentation of compliance as required by application and this Agreement in a timely manner." The Contract also provides that the District will have access to Charter School financial records. Moreover, all of LCCPA's financial and accounting records are subject to public inspection, just like all other public schools.

The Record contains substantial evidence that LCCPA failed to maintain financial and other records as required, and further failed to provide documentation of financial expenditures requested by the District. Examples of missing documentation included documentation of

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<sup>1</sup> "Highly qualified" is a defined term in federal and state education law.

expenditures related to Saturday School services, tutoring services in excess of \$80,000 by a company called Have Faith, LLC, and background checks of Have Faith tutors.

These failures by LCCPA to maintain and provide documentation of financial and other school records constitute material breaches of the Charter, Contract, and the Act, providing further independent grounds for revocation of the Charter.

**B. LCCPA Failed to Meet or Make Reasonable Progress Towards its Academic Goals and Objectives, as Defined in its Charter.**

The Act provides that a charter school's academic progress is to be defined by the goals in its charter, and failure to meet those goals is grounds for revocation. *See* S.C. Code Ann. § 59-40-110(C)(2). In its Charter, LCCPA promised to provide "academic excellence," and obligated itself to meet certain goals. The objective data in the Record shows that LCCPA failed to deliver on these promises.

The Record therefore contains substantial evidence demonstrating that LCCPA was not meeting the academic goals it set for itself in its Charter, thereby creating a further independent ground for revocation.

**C. LCCPA Failed to Meet Generally Accepted Fiscal Management Practices.**

Failure to use generally accepted fiscal management practices is a ground for revocation. *See* S.C. Code Ann. § 59-40-110(C)(3). As noted above in Section I(A)(iii), the Record contains substantial evidence regarding the failure of LCCPA to provide the required documentation for the expenditure of public funds. As such, this failure provides a further independent ground for revocation because it is both a material breach of the Charter, Contract and the Act, and because it demonstrates failure to utilize generally accepted fiscal management practices.

**D. LCCPA Failed to Comply with State and Federal Laws and Regulations.**

Failure to comply with federal and state laws and regulations is a fourth ground for revocation. *See* S.C. Code Ann. § 59-40-110(C)(4). LCCPA's failure to comply with laws and regulations related to special education, teacher quality and teacher evaluations is outlined in Section I(A)(i) and (ii) above. Appellant's Brief does not address the other failures by LCCPA, as outlined in Paragraph 66 of the Final Decision. These failures provide further independent grounds for revocation.

## **II. This Court Cannot Adjudicate the Constitutionality of the Charter School Act.**

LCCPA's second issue on appeal attacks the constitutionality of the Charter School Act. However, this Court does not have authority to determine the constitutionality of the Act, as the South Carolina Supreme Court decided in *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). Further, LCCPA's additional arguments that the hearing was held in an unfair or predetermined and biased manner are unsupported by the Record. The Act utilizes an administrative review scheme that has been previously approved by this Court when addressing this same argument. See *Mary L. Dinkins Higher Learning Academy v. South Carolina Public Charter School District*, 12-ALJ-30-0281-AP (S.C. Admin. Law Ct. March 1, 2013) at 6-7. The Record demonstrates that the hearing was conducted in accord with the requirements of the Act and due process. Therefore, LCCPA's arguments based on constitutional grounds do not provide a basis for reversing the Final Decision.

## **III. The Revocation Hearing was Timely Held under Section 59-40-110(D).**

In its third issue on appeal, LCCPA asserts the District failed to comply with Section 59-40-110(D) of the Act, which provides that "[a]t least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action." S.C. Code Ann. § 59-40-110(D) (2004 & Supp. 2013). Specifically, LCCPA argues that because the District voted on May 8, 2014 to revoke LCCPA's Charter—fifty days after the District provided LCCPA its March 19, 2014 Notice of Revocation—the District was ten days short of complying with the sixty day notice requirement of Section 59-40-110(D).

However, as this Court has held in reading Section 59-40-110(D) together with Section 59-40-110(F), the sixty day time period does not end until the effective date of the revocation, or the closing of the school. *Dinkins* at 8-9 ("The 60-day time period in § 59-40-110(D) refers to the actual revocation of the charter — i.e., the closing of the school—and not the time period before the hearing is scheduled once the charter school receives notice of the proposed revocation.").

The Final Decision specifically notes that LCCPA may continue serving students until the end of its academic year ending on May 30, 2014, seventy-three days after the Notice of Revocation was issued. Therefore, LCCPA received well more than sixty days notice prior to the

effective date of the revocation.

**IV. The Revocation of LCCPA's Charter was not Arbitrary, Capricious, Characterized by Abuse of Discretion, or a Clearly Unwarranted Exercise of Discretion.**

In its fourth issue on appeal, LCCPA argues the District's decision was arbitrary and capricious because "LCCPA did everything it was supposed to do[.]" The Record does not support this argument, even if it were the legal standard for determining whether an action is arbitrary and capricious, which it is not. *See Deese v. S. Carolina State Bd. of Dentistry*, 286 S.C. 182, 184-185, 332 S.E.2d 539, 541 (Ct. App. 1985) ("A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards."). LCCPA does not cite to the Record in support of this argument. As set forth in Sections I and III above, substantial evidence exists to support the Final Decision on multiple grounds, and the findings of the Board were regularly made in accord with the Act.

This Court also rejects LCCPA's additional argument that the revocation of LCCPA's Charter was arbitrary or capricious because charters of "schools similarly situated" were not revoked. The Record does not support this argument because every charter school has different academic goals and is measured differently because, by statute, every charter school is measured against the goals it sets for itself in its charter. S.C. Code Ann. § 59-40-60(F)(2) (2004 & Supp. 2013). The Record contains insufficient evidence to show that any other charter school had similar charter goals, data or circumstances as LCCPA, or that any other charter school was treated differently. Further, the Record contains insufficient evidence to support a comparison between LCCPA and other charter schools with regard to special education compliance, financial management or any of the other areas relied on by the Board to support the decision to revoke.

Therefore, the Record does not support LCCPA's argument that the Board acted arbitrarily or capriciously.

**V. The Decision to revoke LCCPA's Charter was Made by a Legally Constituted Board Authorized by Statute.**

LCCPA argues that the Board did not have a quorum at either the March 13, 2014 Board meeting when the initial vote to revoke the Charter was made or at the May 8, 2014 hearing. Both of these arguments lack support in the Record.

As to the March 13, 2014 meeting, the Record demonstrates that four of six Board

members were present. Section 59-40-230(A) states that the District "must be governed by a board of trustees consisting of **not more than nine members,**" but sets no minimum number of members. (Emphasis added.) Section 30-4-20(d) of the Freedom of Information Act defines a quorum as "a simple majority of the constituent membership of a public body." This is consistent with the general law that a quorum is "A majority of the entire body: ...In the absence of any law or rule fixing the quorum, it consists of a majority of those entitled to act." Black's Law Dictionary, Sixth Edition, 1256. In this case, four out of six members plainly constitutes a quorum as more than fifty percent of the board members were present.

As to the May 8, 2014 meeting, three out of five members were present, again constituting a quorum. LCCPA incorrectly argues that the resignation of Reese Boyd, Esq., was invalid because "there is no indication that the resignation has been accepted by the Governor." The Charter School Act contains no such requirement, and no other authority supports such a requirement for a member of the District's Board to resign. Further, the information in the Record demonstrates that Mr. Boyd's resignation prior to the hearing on May 8 was properly made.

**VI. The Act's Hearing Procedure is Not a "Kangaroo Court."**

LCCPA argues that the hearing prescribed by the Legislature in the Charter School Act is a "Kangaroo Court," and that the hearing in this case was a "sham with a predetermined outcome." As noted in Section IV above, the Record again does not support LCCPA's argument. Instead, the Record demonstrates that the hearing proceeded as required by the Act, and that each of the Board members participated in reaching a unanimous decision.

**VII. The District Acted in Accord with the Act when Making the Decision to Revoke the Charter.**

LCCPA argues that the District violated "other provisions" of the Act, but the pages of this section are out of order and not numbered, with this section seemingly incomplete. The only reference to the Act is to the use of annual evaluation results in making a determination for nonrenewal or revocation. Here, LCCPA's Annual Reports are in the Record and were considered by the District's Board in making the revocation decision. Therefore, the Record does not support LCCPA's arguments related to this issue.

**VIII. LCCPA's Failure to Comply with Special Education Law is a Valid, Independent Basis for Revocation.**

LCCPA argues incorrectly that it complied with special education laws, without reference to the Record. As set forth in Section I(A)(i) above, the Record contains substantial evidence supporting the Board's determination that LCCPA violated special education laws. Further, even if LCCPA had complied with special education laws, multiple other grounds for revocation exist. Therefore, the Record does not support LCCPA's arguments related to this issue.

**IX. LCCPA was Granted a Meaningful Opportunity to Remedy its Many Problems.**

As set forth in the Background section above, the Record contains a litany of correspondence from the District to LCCPA providing it notice and an opportunity to correct its array of problems in all facets of its operations. Further, LCCPA was given the opportunity, and did, develop corrective and remedial action plans in an effort to address the problems. LCCPA was given more than a year to implement these plans.

The Record shows, however, that LCCPA did not implement its corrective action plan—or otherwise pursue comprehensive remedial actions—effectively, such as by failing to correct special education noncompliance, failing to provide required information to the District, and failing to implement student testing programs. LCCPA also failed to comply with interim sanctions short of revocation, as set forth in Section I above.

Therefore, the Record supports the Board's determination that revocation was appropriate after LCCPA failed to remedy its many problems.

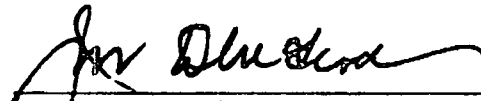
**CONCLUSION**

Having reviewed the entire Record and all submissions by the Parties, and having carefully considered each argument and issue presented by the Parties, the Court concludes that there is substantial evidence in the Record to support the Board's final determination in this matter.

For the foregoing reasons, it is hereby **ORDERED** that the Board of Trustee's decision dated May 23, 2014, is **AFFIRMED**.

**AND IT IS SO ORDERED.**

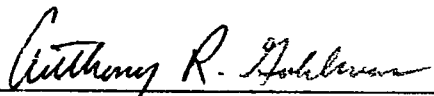
October 9, 2014  
Columbia, S.C.

  
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John D. McLeod, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

I, Anthony R. Goldman, 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, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

October 9, 2014  
Columbia, S.C.

  
\_\_\_\_\_  
Anthony R. Goldman  
Judicial Law Clerk