

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Court Judge

Case No. 14-ALJ-30-256-AP

Lake City College Preparatory Academy,..... Appellant,

v.

South Carolina Public Charter School District, Respondent.

RESPONDENT'S RETURN TO MOTION TO EXPEDITE HEARING
AND REINSTATE FUNDS

Respondent South Carolina Public Charter School District ("SCPCSD") hereby files its Return to Appellant Lake City College Preparatory Academy's ("LCCPA's") Motion to Expedite Hearing and Reinstatement Funds. SCPCSD takes no position on the motion as it relates to the request to expedite.

With regard to the request to reinstate funds, SCPCSD requests that this motion be denied because (1) the issue is not properly before this Court because LCCPA has not made this request to the lower court or tribunal following the final determination of the Administrative Law Court; (2) all assets of LCCPA now belong to SCPCSD pursuant to S.C. Code Ann. § 59-40-120, the effect of which is not stayed pursuant to S.C. Code Ann. § 59-40-110(J); and (3) even if the assets have not inured to the benefit

of SCPCSD at this time, LCCPA has not provided financial documentation to demonstrate that SCPCSD owes LCCPA any money.

PROCEDURAL HISTORY

This matter involves the revocation of a charter school pursuant to the South Carolina Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act"). Specifically, the SCPCSD Board revoked the charter of LCCPA effective May 30, 2014. *See* Final Decision, attached here as *Exhibit A*. LCCPA appealed the Final Decision to the Administrative Law Court pursuant to S.C. Code Ann. § 59-40-110. The Administrative Law Court affirmed the SCPCSD Board's decision to revoke the charter of LCCPA by Order dated October 9, 2014 ("Order"). LCCPA filed the instant appeal challenging this Order.

I. The Request to Reinstate Funds Is Not Properly Before This Court Because LCCPA Has Not Asked The Lower Court To Lift The Automatic Stay.

SCPCSD interprets LCCPA's request to reinstate funds to be a request to impose a stay on appeal from a ruling of the Administrative Law Court. However, LCCPA's request should be denied because it has not made this request to the Administrative Law Court prior to seeking the stay from this Court.

S.C. Code Ann. § 1-23-600(G)(5) states that "[a] final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals." In addition, "[t]he lower court has jurisdiction to determine a party's motion for a stay in the first instance." *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 166 (2003) (citing S.C. App. Ct. R. 205).

In this case, LCCPA has not requested the Administrative Law Court to impose a stay. Therefore, the Motion should be dismissed.

II. LCCPA Has Not Suffered An Undue Hardship.

Even if this Court could consider the request to impose a stay, the motion should be denied. The Act does permit a school whose charter has been revoked to ask this Court to lift the stay unless an "undue hardship" exists. *See* S.C. Code Ann. § 59-40-110(J). The Amended Act does not define "undue hardship." In other contexts, courts have noted that the ordinary meaning of undue, which is "unwarranted" or "excessive," must be more than the usual hardship that would accompany a particular situation. For example, the Fourth Circuit analyzed a bankruptcy statute requiring a showing of undue hardship as follows:

[n]onetheless, the ordinary meaning of “undue” gives us clear guidance. “Undue” generally means “unwarranted” or “excessive.” Because Congress selected the word “undue,” the required hardship under § 523(a)(8) must be more than the usual hardship that accompanies bankruptcy. Inability to pay one's debts by itself cannot be sufficient; otherwise all bankruptcy litigants would have undue hardship.

In re Frushour, 433 F.3d 393, 399 (4th Cir. 2005).

Similarly, in this case, the Legislature has not provided a specific definition of undue hardship sufficient to warrant staying the case while on appeal, but the ordinary meaning of the term means that LCCPA must show some excessive or unwarranted hardship beyond the circumstances ordinarily associated with revocation or non-renewal of a school's charter. LCCPA's Return fails to make any such showing.

The circumstances described by LCCPA in its Return would apply to almost any school who appeals a decision to revoke or not renew its charter. LCCPA has cited nothing unusual about its circumstances that would warrant treating it different than a typical revocation. Without such evidence, no stay should be granted. *See* S.C. Code Ann. § 59-40-110(J).

III. LCCPA Is Not Entitled To Any Further Public Funds Because The Assets of LCCPA Are Now Property Of SCPCSD Pursuant To § 59-40-120.

If no stay is in place, LCCPA is not entitled to reinstatement of public funding or reimbursement of any prior public funding. All assets of the Charter School are now considered property of SCPCSD under the express language of the Act. Section 59-40-120 provides:

Upon dissolution of a charter school, its assets 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.

In other words, all assets of a charter school, other than those obtained through restricted agreements with a donor, become property of the sponsor upon dissolution. A charter school may be dissolved by expiration, revocation or termination. *See* S.C. Code Ann. § 59-40-100.

In this case, SCPCSD is the "sponsor" of LCCPA. *See* S.C. Code Ann. § 59-40-40(4) (defining sponsor as the institution granting a charter). Pursuant to S.C. Code Ann. § 59-40-110(C), the charter of LCCPA was revoked by Final Decision of the SCPCSD Board, effective May 30, 2014. *See Ex. A.* The Charter School Act provides that the decision to revoke a charter is not automatically stayed pending appeal

to the Administrative Law Court. *See* S.C. Code Ann. § 59-40-110(J). SCPCSD asked the Administrative Law Court to enforce the Final Decision to confirm that no further public funding was due to LCCPA pending appeal to the Administrative Law Court. The Administrative Law Court agreed that the Final Decision should be enforced, which means that all assets of LCCPA are now property of SCPCSD and no further financing is due to LCCPA. *See* Order Granting Motion to Enforce Final Decision and For Expedited Schedule dated August 6, 2014, attached here as *Exhibit B*.

As such, all assets of LCCPA, other than those that might be returned as a result of restricted agreements with a donor, are now assets of SCPCSD. LCCPA therefore has no right to any further public funding and should be required to return all assets to SCPCSD immediately in order to ensure the value of public assets are preserved during the pendency of this appeal, consistent with the express language and clear purpose of the Charter School Act.

IV. LCCPA Has Not Provided Financial Documentation To Prove That It Is Entitled To Reimbursement of Title One or IDEA Funding.

Even if LCCPA did have the right to any Title One or IDEA reimbursement, they should be required to provide a full accounting of all expenditures. The Petition does not contain any evidence to substantiate the claim that LCCPA is due any specific amount of money. This is not surprising. To date, LCCPA has refused to provide a full accounting of its expenditures of public funds, with documentation related to at least \$80,000 of public fund expenditures missing. *See* Order of John D. McLeod, Administrative Law Court Judge, dated October 9, 2014 at pp. 6-7. The District has

request a full accounting of all expenditures by LCCPA while operating as a public charter school, but has not received such an accounting to date.

Therefore, given the missing documentation, it seems entirely unlikely that LCCPA is owed any reimbursement even if its assets did not already belong to SCPCSD. However, at minimum, LCCPA should be required to provide a full accounting so that SCPCSD, and this Court, if necessary, can determine the appropriate amount of reimbursement due.

CONCLUSION

For the reasons set forth above, Appellants' Motion to the extent it relates to the request to reinstate public funding should be denied.

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NOV. 21st, 2014.

STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF TRUSTEES FOR THE
SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

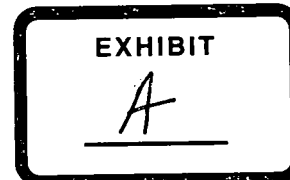
IN RE: LAKE CITY COLLEGE)
PREPATORY ACADEMY)
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FINAL DECISION

This matter is before Board of Trustees of the South Carolina Public Charter School District ("Board") upon request for a hearing by Lake City College Preparatory Academy ("School" or "LCCPA") pursuant to S.C. Code Ann. § 59-40-110(F). After considering the testimony, arguments of counsel, exhibits and all other materials and information submitted by the School and the staff of the South Carolina Public Charter School District ("District"), the Board hereby finally decides that the Charter of LCCPA is revoked pursuant to Section 59-40-110, for the reasons set forth below.

FINDINGS OF FACT

1. LCCPA is located in Lake City, South Carolina and serves approximately 200 students in grades Kindergarten through Twelfth Grade.
2. The School was granted a Charter by the Board and began operating in August 2009, pursuant to South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. §§ 59-40-10 to -240 ("the Act").
3. The 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."



4. The Charter identifies the following academic goals¹ for LCCPA students:

- 100% of LCCPA students will receive research-based, innovative, student-centered learning opportunities that will help them to meet and/or exceed South Carolina state standards.
- LCCPA will assist South Carolina in achieving academic excellence and promoting life-long learning, which will be revealed in the rating on the South Carolina Education Oversight Committee School Report Card.

5. Each of the above goals included measurable objectives.

6. LCCPA submitted, and the District reviewed, annual reports that provided data related to whether LCCPA was meeting the goals and objectives set forth in its Charter.

7. By letter dated July 27, 2011, the District informed LCCPA that it had been placed on probation based on poor academic performance on state standardized testing and concerns related to the School's finances, including lower than expected student enrollment and compliance with the United States Department of Agriculture's food and nutrition program for 2011-2012.²

8. As a result of being placed on probation, and pursuant to the District's *Procedures for Addressing Charter School Issues of Non-Compliance*, LCCPA was required to, and did, submit a Corrective Action Plan. As part of the Corrective Action Plan, LCCPA stated that it would provide data from an academic testing system known as Measures of

¹ LCCPA also included goals related to its arts program which are not at issue here.

² LCCPA did not dispute the academic results in this letter or the student enrollment issue, but disputed whether it was out of compliance with the USDA's food and nutrition program. Insufficient evidence was presented by either the School or District for the Board to determine whether LCCPA was in fact out of compliance with the USDA program. Therefore, this issue does not form a basis for the Board's Final Decision.

Academic Progress ("MAP"), which it also indicated would be used as a strategy to identify academic growth in its Charter, to show average individual student growth of at least three points in order to inform student instructional needs.

9. By letter dated October 8, 2012, the District informed LCCPA that it would remain on probation because it received an "F" under the Federal Accountability System and the South Carolina State Department of Education identified LCCPA as a "Priority School," one of the lowest performing Title I schools in the State.

10. The District conducted an on-site visit on November 9, 2012 in which it reviewed documents, visited classrooms and interviewed faculty and staff, among other activities.

11. By letter dated December 18, 2012, the District provided fourteen bullet points outlining areas of concern for the School, including continued poor academic performance, non-compliance with special education laws, problems with school record keeping, apparent lack of oversight by the LCCPA board, and continued concerns about the finances of the School based on only 40% of the School's budget being used for instruction and instructional budgets being cut in order to cover budget deficits created by administrative and facility overages.

12. District Special Education Coordinator Rebecca C. Davis testified that she inspected all thirty-eight special education files of LCCPA and, as of December 18, 2012, none of them were compliant. Examples of non-compliance cited by Mrs. Davis included, but are not limited to, failure to conduct required evaluations, failure to conduct required re-evaluations, failure to hold meetings as required, failure to include measurable goals and objectives, failure to provide proper documentation and failure to provide progress reports

documenting student progress towards special education goals and objectives.

13. In the December 18, 2012 letter, the District required LCCPA to submit a comprehensive remedial action plan.

14. By letter dated April 22, 2013, the District informed LCCPA that substantive and systemic issues of noncompliance with special education laws remained uncorrected. As a sanction short of revocation pursuant to S.C. Code Ann. § 59-40-55(A)(8), the District barred LCCPA from accepting new students until it corrected all issues of special education non-compliance and required LCCPA to hire a special education consultant to assist the School in correcting the issues of special education non-compliance. The consultant was required to send bi-weekly progress updates to the District.

15. Mrs. Davis, District Director of Special Education, testified that as of April 22, 2013, she had reviewed the special education files of all 43 special education students at LCCPA at the time, and none of the files complied with special education laws. Examples of non-compliance cited by Mrs. Davis included, but are not limited to, failure to conduct required evaluations, failure to conduct required re-evaluations, failure to hold meetings as required, failure to include measurable goals and objectives, failure to provide proper documentation and failure to provide progress reports documenting student progress towards special education goals and objectives.

16. By letter dated May 14, 2013, the District informed LCCPA that it could not fully evaluate LCCPA's required remedial action plan because of LCCPA's lack of cooperation in providing requested information.

17. On May 22, 2013, the District conducted an on-site visit in which it reviewed documents, visited classrooms and interviewed faculty and staff, among other activities.

18. By letter dated August 27, 2013, the District informed LCCPA that it remained out of compliance with its Charter, Contract, and/or federal and state laws and regulations in seven different areas involving academic performance, special education and other laws and regulations, school finance and school governance.

19. By letter dated September 27, 2013, the District informed LCCPA that it had failed to adhere to the sanctions issued by the District by letter dated April 22, 2013. Specifically, LCCPA continued enrolling students even though it had not corrected its systemic violations of special education law. Further, both Mrs. Davis and the school's special education consultant testified that no updates had ever been sent to the District as to the progress toward correction of the identified special education noncompliance.

20. Further, in the letter dated September 27, 2013, the District informed LCCPA of several concerns involving its teaching staff, including failure to comply with laws regarding the employment of "highly qualified" teachers, the lack of a curriculum or lesson plans by the special education teacher and other concerns about the quality of instruction observed by District staff.

21. Courtney Mills, the District's Director of Accountability, testified that she observed one teacher who had his math and computer science classes doing Soduku throughout the day without any connection to a lesson plan correlated to any state standard. Mrs. Mills further testified that she observed a sixth grade class being taught cursive writing, which is a third grade standard.

22. By letter dated December 4, 2013, the District informed LCCPA that it was in default of its Charter and its contract with the District and further outlined continued areas of non-compliance, including but not limited to poor academic performance, continued failure to

comply with special education laws, continued failure to utilize sound financial and governance practices, failure to comply with District sanctions and failure to provide information requested by the District.

23. Mrs. Davis, Special Education Coordinator, testified that all special education files except two remained out of compliance as of this date, and that many issues of noncompliance had remained uncorrected for over one year.

24. By letter dated January 16, 2014, counsel for LCCPA responded in part to the District's December 4, 2013 letter. The letter provides a contract for a tutoring company, Have Faith Services, LLC, which received in excess of \$80,000 for tutoring services in one year and shares a physical address with what appears to be a janitorial service. However, the letter from the School's counsel fails to provide requested information as to the qualifications for the tutors employed by Have Faith or evidence that the School performed required background checks on the tutors. The letter further fails to provide time sheets or other substantiation for payroll records reflecting that school administrators and other employees were paid exorbitant amounts for Saturday tutoring services. For example, LCCPA payroll records reflect that the school principal, Dr. Delores Brown, was paid \$195.00 an hour for Saturday tutoring services. Finally, the letter refuses to provide financial records requested by the District in light of the above and other transactions lacking sufficient documentation.

25. Dr. Brown, LCCPA's principal, testified that she could provide copies of the background checks and/or timesheets for Have Faith tutors, but did not submit them prior to or at the hearing despite knowing of this issue since at least the District's letter to the School dated August 27, 2014.

26. Dr. Brown, LCCPA's principal, further testified that her pay for Saturday

tutoring services was \$195.00 per day rather than per hour based on an eight hour day, but did not submit any time sheets or other substantiation establishing the time she worked for Saturday tutoring sessions either for herself or others.

27. For the regular meeting of the Board dated February 6, 2014, the agenda include an action item for LCCPA discussion and report listing both Dr. Brazell and Dr. Brown as participants. Upon request from LCCPA, this item was continued over until the March 13, 2014 meeting of the Board.

28. The March 13, 2014 Agenda also included this same action item, and Dr. Brown appeared before the board to participate in the discussion along with various members of District staff. Dr. Brown provided a PowerPoint presentation to share with the Board.

29. Upon proper motion at the March 13, 2014 meeting, the Board voted to revoke the Charter of LCCPA.

30. By letter dated March 19, 2014, the District provided Notice of Revocation to LCCPA.

31. By letter dated March 26, 2014, LCCPA requested a hearing pursuant to S.C. Code Ann. § 59-40-110(F).

32. A hearing was scheduled by mutual consent at 1:00 PM on May 8, 2014 and was noticed by letter of counsel for the District to counsel for LCCPA dated April 3, 2014.

33. By letter dated April 29, 2014, counsel for LCCPA requested that the hearing be rescheduled to permit the attendance of Dana Reed, Director of Compliance for the District. Counsel for the District responded by email dated April 30, 2014 opposing the request for continuance because (1) Mrs. Reed was not a necessary witness and (2) counsel for LCCPA had known since prior to the hearing being scheduled that Mrs. Reed would not be available on

May 8. Further, the District had offered to make Mrs. Reed available for a deposition *de benne esse* and the School had failed to make any effort to schedule the deposition. Based on the information provided, as well as the schedule of the Board, the request for rescheduling the hearing was denied by the Board.

34. At the hearing, counsel for LCCPA asked to continue the hearing because no quorum was present. However, a quorum was present because three of five current members of the Board were present. Therefore, the Motion was denied.

35. At the hearing, counsel for LCCPA moved to have the Record left open for the deposition of Mrs. Reed and Dr. Wayne Brazell, District Superintendent. The request for the deposition of Mrs. Reed was denied because LCCPA had the opportunity to depose her prior to May 8, but declined to do so. Further, Dr. Brazell was present until approximately 5:30 P.M. prior to having to leave to attend to other District business. Counsel for LCCPA was informed earlier in the day that they needed to call Dr. Brazell prior to 5:30 if they wished to question him, but they failed to do so despite having sufficient opportunity. Therefore, the Motion was denied.

36. At the May 8 hearing, the Board voted unanimously to affirm its prior decision to revoke the Charter of LCCPA.

CONCLUSIONS OF LAW

37. S.C. Code Ann. § 59-40-110(C) authorizes a sponsoring school district to revoke the charter of a school that (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, towards 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.

38. In this case, the evidence shows that, even though only one of the four criteria for revocation in Section 59-40-110 need be met in order for the Board to revoke a Charter, all four criteria are met in this case.

39. First, LCCPA committed multiple material violations of the conditions, standards, or procedures provided for in the charter application.

40. Several material violations involve special education students, which comprise approximately 25% of LCCPA's student population.

41. In the Statement of Assurances signed by LCCPA as part of its Charter Application, LCCPA agreed to comply with all special education laws. Further, LCCPA agreed to comply with the special education laws as part of its contract with the District that is required by the Act and LCCPA's own Articles of Incorporation. Further, Section 59-40-40 of the Act expressly states that all charter schools are subject to state and federal special education laws. S.C. Regs. 23-243 provides that all issues of non-compliance with special education laws must be corrected as soon as possible, but in no case later than one year after receiving notice of the issue of non-compliance.

42. Mrs. Davis, District Special Education Coordinator, testified that all of LCCPA's special education files remained out of compliance, the majority of which remained out of compliance for more than one year. In fact, even as of the date of the hearing, LCCPA had not corrected all issues of noncompliance and new issues of noncompliance continued to accrue as the School failed to hold annual meetings as required.

43. LCCPA presented its special education consultant to testify with regard to its

efforts to correct issues of non-compliance. Even though Dr. Brown testified that the School had corrected all areas of non-compliance, the consultant confirmed that all areas of special education compliance had **not** been corrected as of the date of the hearing. Further, despite Dr. Brown's testimony and arguments of counsel that the School had been providing required bi-weekly updates to the District, the Special Education consultant verified that she had never communicated with District staff outside of one in-person meeting that did not occur until March 2014.

44. The systematic and widespread failure of LCCPA to comply with special education law, and further failure to correct issues of noncompliance for more than one year after informed of these issues, is a material breach of the Charter, its contract with the District and the Act. This alone would merit revocation of the Charter.

45. Further, Section 59-40-45(8) of the Act requires the District to "take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance. These sanctions may include requiring a school to develop and execute a corrective action plan within a specified time frame."

46. In this case, by letter dated December 18, 2012, the District required LCCPA to correct all areas of non-compliance by February 28, 2013. Upon review of LCCPA's special education files at that time, the District determined continuing substantive and systemic issues leaving virtually all of LCCPA's special education files out of compliance with federal and state law.

47. By letter dated April 22, 2013, the District informed LCCPA of its continued non-compliance with special education law, barred it from enrolling further students and required it to hire a special education consultant that would provide bi-weekly reports on

LCCPA's efforts to remedy all issues of special education non-compliance.

48. LCCPA brazenly disregarded these sanctions short of revocation, continuing to enroll students while remaining grossly out of compliance with special education laws, and further failed to have its consultant submit the required bi-weekly reports.

49. LCCPA provided expert testimony that the District should operate the School's special education department in lieu of revocation. However, the Board concludes that this would be contrary to the autonomy requested by the School and intended by the Act. Further, the Board concludes that the District could not logistically carry out such a function given funding limitations in the Act consistent with the autonomy offered to charter schools. Certainly, nothing in the Act requires the District to take such an extraordinary and logistically unfeasible step prior to revocation.

50. LCCPA remains out of compliance with special education laws and is continuing to add additional violations after more than a year of being on notice of these systemic violations. It has ignored and refused to comply with sanctions short of revocation issued by the District. Therefore, the Board is compelled to revoke LCCPA's Charter.

51. In addition, LCCPA has committed material violations related to other education laws, including federal laws requiring the use of highly qualified teachers.

52. LCCPA's Charter, its Contract, and the Act require LCCPA to employ at least 75% of its teachers that meet the definition of "highly qualified" under federal and state laws. In fact, LCCPA's Statement of Assurances in its Charter specifically provide that it will do so.

53. Dr. Brown testified that "100%" of the School's teachers meet the definition of highly qualified. However, according to the most recent data provided by the State Department of Education prior to August 27, 2013, only 57.47% of the School's teachers were

highly qualified. This situation has not been remedied, or at least sufficient documentation had not been provided to verify it had been remedied, by December 4, 2013. No further evidence was provided at the hearing. Therefore, failure by LCCPA to provide evidence of a sufficient number of highly qualified teachers is a material breach of the Charter, the Contract and the Act justifying revocation.

54. Similarly, LCCPA's Charter, its Contract and the Act require LCCPA to comply with teacher evaluation standards known as ADEPT. Dr. Brown maintains that LCCPA complied with these standards, but offered no evidence to refute the District's position that the "ET3 Report" utilized by the State Department of Education to verify compliance with ADEPT did not contain sufficient information to evidence compliance with ADEPT. Given Dr. Brown's prior inaccurate testimony with regard to special education and highly qualified teachers, the Board finds the information submitted by the District based on State Department of Education data to be convincing. Therefore, failure by LCCPA to provide evidence of a compliance with ADEPT is a material breach of the Charter, the Contract and the Act justifying revocation.

55. Finally, LCCPA breached its Charter, its Contract and the Act by refusing to provide evidence to substantiate financial expenditures. LCCPA's contract provides that it will permit inspection of the School's financial records. Moreover, the Act requires the District to provide oversight and monitoring of LCCPA's expenditures of public money. The District must have access to a School's financial records to fulfill this function.

56. In this case, the District identified multiple transactions without sufficient documentation, including but not limited to those involving the tutoring services the School claims were provided by Have Faith, LLC and payments for seemingly exorbitant hourly rates

for Saturday tutoring provided by salaried school employees. Moreover, in LCCPA's contract it signed with the District, LCCPA agrees that it will perform background checks of all subcontractors like Have Faith who will work with its students, consistent with state law. However, LCCPA has never provided evidence of these background checks even though Dr. Brown testified that she could produce them. Failure to provide background checks of people working with LCCPA students is in itself a ground for revocation.

57. Further, in the context of this Record, the District was well within its authority to ask for additional financial reporting from the School in an effort to verify the validity of the expenditures at issue and determine whether further issues of noncompliance with generally accepted fiscal management practices existed. The School refused to provide this information, which violates material conditions of its Charter, its Contract and the Act, thereby justifying revocation.

58. Second, LCCPA has failed to meet or make reasonable progress towards its academic goals and objectives, as defined in its Charter, which promised academic excellence.

59. LCCPA's Charter says it will receive an Improvement Rating of "Average or higher" in its first five years. However, after five years, LCCPA has scored average or better growth on state and federal accountability standards only one time. In 2013, LCCPA's elementary grades earned an "A" on the Federal Accountability System, based largely on growth, and an "Excellent" State Growth Rating.³ Its Elementary Absolute Rating, however, remained "Below Average" and its Middle School Absolute Rating remained "At-Risk" for the

³ The Board notes that the Excellent Growth Rating for LCCPA's elementary grades earned LCCPA the Palmetto Gold Award for this year. The Board further takes note of the press release from State Superintendent Dr. Mick Zais noting that 53% of South Carolina schools received these awards for one reason or another.

third consecutive year.⁴ Moreover, according to the testimony of Courtney Mills, the District's Director of Accountability, the evidence shows that the positive State Growth Rating for Elementary School in 2013 was most likely precipitated by a substantial decline for those grades in 2012.

60. LCCPA provided testimony, including expert testimony, and argument that the School's academic performance was not only good, but commendable, particularly in context of the traditionally underserved student population attending LCCPA over the last three years. However, Mrs. Mills testified that she compared LCCPA's accountability data with the state accountability data of schools LCCPA identified as its neighboring schools serving similar student populations. This data analysis showed that, for all grades and subject areas tested, LCCPA generally scored worse than all neighboring schools.

61. Further, LCCPA's Charter required it to use MAP data to measure individual student progress to inform instruction to its students. Mrs. Mills provided testimony and documentary evidence showing that (1) LCCPA was not administering the test as required by its Charter; (2) LCCPA did not seem to understand how to use the MAP system and data; and (3) based on the limited data provided by the School, the only reasonable conclusion is that LCCPA students were not progressing as expected while at LCCPA.

62. Based on the above, the Board concludes that LCCPA is not meeting or making reasonable progress towards the academic goals set forth in its Charter, thereby providing another independent ground for revocation of LCCPA's Charter.

63. Third, LCCPA failed to meet generally accepted standards of fiscal

⁴ High School ratings were not available because LCCPA is graduating its first class this year. Similarly, though LCCPA provided testimony that the expected graduation rate of the School was anticipated to be 100% and 100% of graduating students have been accepted to college, the School did not provide documentary evidence to support this testimony.

management. As noted above, the District came forward with at least three instances in which LCCPA failed to provide sufficient documentation to substantiate expenditures of public money. First, the District identified accounting records with no receipts in the memo column from January 2012 to April 2013. Second, LCCPA has never provided a list of instructors, time sheets, background checks or other evidence to verify the credentials of Have Faith, LLC instructors and that the services were performed as contracted for. Third, LCCPA has not provided evidence to clarify its payroll records reflecting exorbitant hourly rates to LCCPA administrators and teachers for Saturday School services.

64. When asked for additional information to clarify these matters and establish no further systemic financial management issues existed, LCCPA refused to provide it. LCCPA did note that it has provided annual audits, albeit with some minor deficiencies noted. Further, LCCPA provided testimony from its third-party accountant, but he offered no testimony to clarify the circumstances of the transactions at issue and acknowledged he could not verify the quality of a particular vendor or whether any particular service was provided.

65. Therefore, the Board finds that LCCPA has failed to use generally accepted fiscal management practices by failing to provide sufficient documentation to substantiate its transactions utilizing government funds. This provides another independent ground for revocation.

66. Fourth, LCCPA has violated state and federal laws and regulations, as set forth above. It has failed to comply with special education laws and requirements to employ highly qualified teachers. Moreover, LCCPA did not provide testimony or evidence to refute evidence that board meetings occurred in violation of the South Carolina Freedom of Information act, as set forth in the Notice of Default. LCCPA further did not provide evidence

or testimony to refute evidence provided that LCCPA's conflict policy permits board members to be hired by the School in violation of S.C. Code Ann. § 59-40-90, which prohibits such activities. LCCPA also permitted a board member to take a "leave of absence" so that the board member could be paid \$4,000 for providing printing supplies to the School, in violation of Section 59-40-90.

67. Each of the violations of state and federal laws and regulations listed above constitutes a separate and independent ground for revocation.

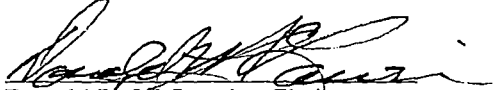
CONCLUSION

After careful consideration of the entire Record before it, the Board's final decision is that the Charter of LCCPA shall be revoked. The School may continue serving students only until the end of LCCPA's current academic year ending on May 30, 2014. The School must take reasonable steps to inform all current students and parents as well as potential enrollees of this Final Decision within ten (10) days of this Final Decision.

Pursuant to S.C. Code Ann. § 59-40-120, all assets of the School, other than assets obtained through restricted agreements with a donor through awards, grants, or gifts, become property of the sponsor upon dissolution of the School. Therefore, the School is required to cooperate with the District in performing the previously scheduled fixed asset inventory on June 9, 2014 to facilitate an orderly winding down of the School's operations.

The School may appeal this decision to the Administrative Law Court pursuant to S.C. Code Ann. § 59-40-110(H) and 59-40-90 within thirty (30) days of this Decision.

AND IT IS SO DECIDED.



Donald L. McLaurin, Chairman
South Carolina Public Charter
School District Board of Trustees

Charleston, South Carolina

May 23, 2014.

AND IT IS SO DECIDED

CONCLUSIONS OF LAW

6. The Amended Act applies to this appeal because the amendment to Section 59-40-110 stating that no automatic stay applies is remedial or procedural in nature. *See State v. Davis*, 309 S.C. 326, 334, 422 S.E.2d 133, 139 (1992), *overruled by Brightman v. State* on other grounds, 336 S.C. 348, 520 S.E.2d 614 (1999); *see also Graham v. Dorchester Cnty. Sch. Dist.*, 339 S.C. 121, 124, 528 S.E.2d 80, 82 (S.C. Ct. App. 2000) (stating the rule that "remedial or procedural statutes are generally held to operate retrospectively" and finding addition of Rule 40(j) to Rules of Civil Procedure applied to pending case).

7. In this case, like in *Graham*, no right of the school to proceed on appeal before this Court has been taken away or even limited. The amendment instead only specifically addresses whether the decision of the District's Board to revoke or not renew the charter is stayed pending appeal. The Act previously was silent as to this issue.

8. Further, Section 110(J) permits this Court to implement a stay only if the School shows "unusual hardship will result from the execution of the sponsor's decision."

9. Section 110(J) does not define "unusual hardship," but the ordinary meaning of the term unusual means that the hardship must be something that is excessive, unwarranted, atypical or unusual under the situation being addressed in the statute. *See, e.g., In re Frushour*, 433 F.3d 393, 399 (4th Cir. 2005) (defining the term "undue hardship").

10. School argues that its students will be left without a school for the coming school year if the case is not stayed. However, charter schools are schools of choice in South Carolina, and all of School's students would have multiple options for other schools to attend. For example, School's students could attend their local public school for which they are zoned or other charter schools.

11. School also mentioned other potential hardships such as fulfillment of faculty and staff contracts, payment of third party vendors, the cost of school uniforms already paid by School families, and other expenses associated with the anticipated opening of school. However, all of the circumstances described by School are typical and ordinary challenges faced by a school when a charter is revoked or not renewed. There is nothing excessive, unwarranted, unusual or atypical about the circumstances described by School.

12. The Legislature amended the Act to provide for no automatic stay while leaving in the requirement that a final decision to revoke or not renew a charter must be taken by the last

day of classes in the last school year for which the charter school is authorized. *See* S.C. Code Ann. § 59-40-110(H). Therefore, the Legislature has indicated its belief and intent that final decisions to revoke or not renew issued prior to the end of the school year, as the Final Decision was in this case, provide ample time for the school to make arrangements to comply with the Final Decision during appeal.

13. Further, any burden on School can be eliminated or mitigated by the expedited briefing schedule requested by District that will not significantly alter the School's time for briefing. District proposed that the School file its brief on August 4, 2014, the date it is due under Administrative Law Court Rule 37. The District has agreed to file its brief on August 12, 2014, and serve it by hand delivery. The District further proposes that School's reply brief be submitted by August 22, 2014, the date it would be due under Administrative Law Court Rule 37, without mailing days added. Oral argument would occur on September 4, 2014, with a decision rendered as soon thereafter as possible.

14. School objected to the expedited schedule, requesting until August 11, 2014 to file its brief. District agreed that if School filed its brief on August 11, 2014, it would file its brief by August 22, 2014. School's reply brief would then be due on August 29, 2014. Oral argument would occur on September 4, 2014, with a decision rendered as soon thereafter as possible.

15. This Court finds that School's proposed briefing schedule will reduce or eliminate any hardship to the School.

16. Therefore, no unusual hardship exists in this case and the case should not be stayed during pendency of this appeal in accordance with Section 59-40-110(J) of the Act, as amended on June 12, 2014.

17. Alternatively, even if the Amended Act did not apply, good cause exists to lift the stay. See S.C. Admin. Law Ct. R. 34 (allowing any party to move for a determination of the effect of a final decision upon appeal).

18. Under S.C. Code Ann. § 59-40-55(A)(4), District is responsible for monitoring the performance and legal/fiscal compliance of School, and is authorized to conduct oversight activities, investigations and make inquiries pursuant to S.C. Code Ann. § 59-40-55(A)(5) in order to fulfill this responsibility.

19. The Record contains ample evidence that the School has not provided financial information to the District to support expenditures of state funds (indeed, School argued at hearing that it could find no basis in law to require it to answer all the requests for financial data by the District). This alone is sufficient to provide the good cause necessary to lift the stay.

20. The failure of School to provide information leaves the District unable to fulfill its statutorily required role of monitoring and supervising the activities of the School, thereby increasing the risk of fraud, misuse of state funds or other possible misconduct during the appeal period.

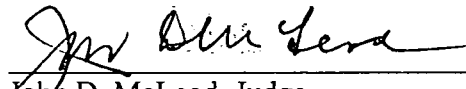
21. Therefore, even if the Amended Act did not apply, good cause exists to lift the stay that would apply in the absence of the Amended Act.

22. For the reasons set forth above, District's Motion is hereby **GRANTED**. Further, the following schedule is set in this matter, with all briefs required to be served by hand delivery and/or email as well as by United States Mail:

- a. School brief due on August 11, 2014;
- b. District brief due on August 22, 2014;
- c. School reply brief due on August 29, 2014; and
- d. Oral argument set for September 4, 2014 at 10:00 a.m.

AND IT IS SO ORDERED.

August 6, 2014
Columbia, S.C.

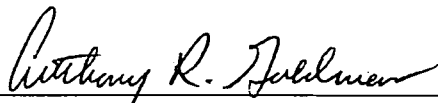


John D. McLeod, Judge
South Carolina Administrative Law Court

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).

August 6, 2014
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ADMINISTRATIVE LAW COURT

Case No. 12-ALJ-30-0256-AP

Lake City College Preparatory Academy (LCCPA)	Appellant,
v.	
South Carolina Public Charter School District (SCPCSD)	Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for South Carolina Public Charter School District, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified.

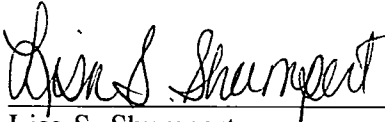
Document(s):

**Respondent's Return to Motion to Expedite
Hearing and Reinstate Funds**

Counsel Served:

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P. O. Box 1909
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Lisa S. Shumpert

November 21, 2014

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November 21, 2014

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
1015 Sumter Street
Columbia, SC 29201

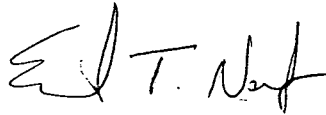
Re: Lake City College Preparatory Academy v. South Carolina Public Charter
School District
Civil Action No. 14-ALJ-30-0256
Our File No. 41106/01503

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Respondent's Return to Motion to Expedite Hearing and Reinstate Funds in the above-referenced matter. We would appreciate your filing the original and six copies in your office and returning a file-stamped copy via our courier.

By copy of this letter, we have served counsel with a copy of same.

Very truly yours,



Erik T. Norton

ETN:ls
Enclosures

cc: Johnny Watson, Esquire
Mark W. Buyck, III, Esquire