

IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

RECEIVED

APR 27 2015

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable John D. McLeod, Judge

Appellate Case No.: 2014-002372
Civil Action No. 12-ALJ-30-0256-AP

Lake City College Preparatory Academy (LCCPA) Appellant,

v.

South Carolina Public Charter School District (SCPCSD) Respondent.

INITIAL REPLY BRIEF OF APPELLANT

Johnny E. Watson, Sr., Esquire
Watson Law Firm
Post Office Box 2305
2715 Edgewood Drive
Columbia, S. C. 29201
(803) 400-1600
Co-Counsel for Appellant

Erik T. Norton
Nelson, Mullins, Riley & Scarborough, LLP
1320 Main Street, Meridian Building
Post Office Box 11070 (29211)
Columbia, S. C. 29201
(803) 799-2000
Counsel for Respondent

Willcox, Buyck and Williams
Mark Buyck, III
248 West Evans St.
Florence SC 29501
P.O. Box 1909 –
Florence SC 29503
843 664-3362 |Direct
843 664-3372 |Fax
Main Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

ARGUMENTS IN REPLY 1

Reply to Respondent’s Counter-Statement of the Case 1

Reply to the Respondent’s opening Argument 1

I. The School did not brief every possible issue on appeal due to the time constraints of the appeal process however those un-briefed issues are not abandoned and provide no basis for the decision of the Administrative Law Court ‘s decision. 1

II. The Administrative Law Court incorrectly determined the School's Charter was lawfully revoked under S. C. Code Ann. 59-40-110. 2

A. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with special education laws. 2

B. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with other laws and regulations. 3

C. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked because the Administrative Law Judge was bound by the findings of a non-neutral body. 3

D. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to make reasonable progress toward its academic goals. 4

E. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to meet general accepted fiscal management practices. 4

F. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with state and federal laws and regulations. 4

III. The School did not fail to preserve its argument that Section 59-40-110(C) is unconstitutional; and, in any event, the hearing conducted pursuant to that statute did not satisfy the constitutional requirements of due process. 5

A. The School's argument is preserved for appellate review. 5

B. The hearing procedure outline in the Act and applied to the School violated the state or federal constitution. 5

IV. The Administrative Law Court did not correctly conclude the revocation hearing conducted by the district was timely held pursuant to Section 54-10-110 (D). 6

V. The Administrative Law Court erred in finding the District's decision to revoke the School's charter was not arbitrary, capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion. 5

VI. The Administrative Law Court incorrectly held the decision to revoke the School's charter was made by a legally constituted board authorized by statute. 6

VII. The Administrative Law Court incorrectly determined the Act's hearing procedure as not a "Kangaroo Court" and the revocation hearing proceeded as required by the Act. 6

VIII. The School properly preserved its arguments that the District violated "other provisions" of the Act and the argument is supported by the Record. 7

IX. The Administrative Law Court incorrectly concluded the School's failure to comply with special education law is valid, Independent Basis for Revocation. 7

X. The Administrative Law Court incorrectly held the School was granted a meaningful opportunity to remedy its many problems. 7

XI. The Administrative Law Court wrongly concluded the School was not entitled to a stay pending appeal under either the amended or pre-amendment version of Section 59-40-110(J). 8

XII. Section 59-40-110(J) of the Act is unconstitutional.8

CONCLUSION 8

TABLE OF AUTHORITIES

CASES

No new cases cited.

STATUTES

1. S. C. Code Ann. 59-40-110	2
2. 59-40-110(C)	5
3. 54-10-110 (D)	6
4. 59-40-110(J)	1, 8

ARGUMENTS IN REPLY

Reply to Respondent's Counter-Statement of the Case

In reaching his decision to not stay the cutting of the Appellant's funds, the Administrative Law Judge wrongfully applied the new statute in, 59-40-110(J), which removed the automatic stay prohibiting the cutting of the Appellant's funds, to the instant case when this case was filed prior to the implementation of the new statute. Rec ____.

Reply to the Respondent's opening Argument

The Appellant stands by its arguments which provide a basis to overturn the revocation of the Appellant's charter based on the unfairness of the procedure as implemented in this case. The unfairness resulted in depriving the Appellant of property without due process of law. It deprived the students and their parents to access of the school of their choice, it deprived the teachers and staff of their livelihood and deprived the Appellant of due process of law. These things are fundamental to the American scheme of justice and need no cite of authority.

Further, as previously stated, LCCPA did everything the Respondent asked it to do to correct any deficiencies in special education and made every effort to correct and shortcomings. Rec. _____. No school gets everything right in its first three years of operation if ever.

LCCPA provided all accounting called for by its charter of by state law.

I. The School did not brief every possible issue on appeal due to the time constraints of the appeal process however those un-briefed issues are not abandoned and provide no basis for the decision of the Administrative Law Court 's decision.

The Appellant would assert that its remarks are fact based and not conclusory remarks. The facts on which the remarks are base are supported by the record as cited in the Appellant's brief. Rec _____. -1-

II. The Administrative Law Court incorrectly determined the School's Charter was lawfully revoked under S. C. Code Ann. 59-40-110 .

The Administrative Law Court failed to address the inherent unfairness of the process and accepted as fact the findings of the Respondent board as the law dictated that he do. The conclusions of that Court are therefore flawed because they are based on a fundamentally unfair procedure in arriving at its conclusions before the prejudiced finder of fact as the Respondent was in this case.

A. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with special education laws.

The Respondent complains of the lack of authority in the Appellant's arguments while failing to cite a single authority in this argument.

As indicated previously, no school is perfect. That is especially true of schools operating within the first five years of its existence. The legislature recognized this fact is Section 59-40-_____ of the new code.

The question is how a school is treated when a violation of procedures or disagreement as to proper procedure occurs as in this case. The accuser, the Respondent in this case, is allowed to vote for revocation of the Appellant's charter, preside over the hearing to contest the revocation decision and determine what the outcome of the hearing will be. The predetermined outcome cannot be other than to uphold the Respondent's initial revocation decision. The outcome of which binds the Administrative Law Court Judge to uphold the unfair decision in the lower tribunal.

B. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with other laws and regulations.

The Respondent complains of the lack of authority in the Appellant's arguments while failing to cite a single authority in this argument.

The Appellant stands by its previous assertion that its teachers were qualified. The Respondent cites a statistic with no evidence of unqualified teachers. They bear the burden of proof on this issue as the accuser but provided no evidence to support its assertions.

C. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked because the Administrative Law Judge was bound by the findings of a non-neutral body.

The Respondent complains of the lack of authority in the Appellant's arguments while failing to cite a single authority in this argument.

Again the Respondent provides no evidence in the record in support of its allegations about background checks or overpayment of \$80,000.00 to the Have Faith group. They simply make allegations and deem them to be true as both the prosecutors and judges in this matter.

The Appellant stands by its assertion that it has given the Respondent all financial data that it is required to give under the laws of this state and the Charter Agreement between the parties which were not over burdensome. Rec ____.

The Respondent bears the burden of proof on this issue as the accuser but provided no evidence to support its assertions.

D. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to make reasonable progress toward its academic goals.

The Respondent complains of the lack of any achievements of the MLD students in Appellant's brief then goes on to name some of those achievements noted in Appellant's brief before attempting to belittle them. This is further evidence of why an independent finder of fact is needed where each party can make its case before a neutral authority.

As to Respondent's protestations about seemingly unorthodox practices at LCCPA, such practices are encouraged by the Charter School Act. The charter schools are charged with finding new and innovative ways to teach the students. That may entail partnering a seventh grader with a second grader, etc. Rec ____.

E. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to meet general accepted fiscal management practices.

The Respondent complains of the lack of authority in the Appellant's arguments while failing to cite a single authority in this argument.

The accounting for LCCPA was done by Kelly-Moser Accounting firm. That is the same firm that does the accounting for virtually every charter school in South Carolina. No school provides the Respondent with every receipt but rather provide summaries through various reports produced for the required audits. Rec _____. The Kelly-Moser firm clearly employs generally accepted fiscal standards. Rec _____.

F. Substantial evidence in the Record does not support the Administrative Law Court's finding that the School's Charter was lawfully revoked based on its failure to comply with state and federal laws and regulations.

The Respondent complains of the lack of authority in the Appellant's arguments while failing to cite a single authority in this argument.

The Respondent again makes bold assertions with no proof. It produced no proof of prosecution of any board member for any illegal acts. It did not show that the printing done by a former board member or a board member on leave was worth every cent of the fees charged or was illegal in any way. Charter schools are granted great autonomy and not subject to the same procurement rules as public schools. Rec ____.

This is further evidence of why an independent finder of fact is needed where each party can make its case before a neutral authority.

III. The School did not fail to preserve its argument that Section 59-40-110(C) is unconstitutional; and, in any event, the hearing conducted pursuant to that statute did not satisfy the constitutional requirements of due process.

Counsel for the Appellant went to great length at every opportunity to preserve this issue for appeal at every opportunity. Rec ____.

A. The School's argument is preserved for appellate review.

As indicated above, Counsel for the Appellant went to great length at every opportunity to preserve this issue for appeal at every opportunity. Rec ____.

The Administrative Law Judge did in fact address the issue when he indicated that he did not have authority to rule on the constitutionality of the statute. Rec ____.

B. The hearing procedure outline in the Act and applied to the School violated the state or federal constitution.

The Respondent correctly states the case law in this area, i. e., that "The fundamental requirements of due process include notice, an opportunity to be heard in a

meaningful way ...”. Clearly the hearing opportunity given LCCPA before the revoking authority did not meet the requirement of the law for a neutral finder of fact and the hearing given LCCPA was thus not meaningful and did not meet the requirements of due process by ether state of federal law.

IV. The Administrative Law Court did not correctly conclude the revocation hearing conducted by the district was timely held pursuant to Section 54-10-110 (D).

The Appellant stands by its argument in its brief.

V. The Administrative Law Court erred in finding the District's decision to revoke the School's charter was not arbitrary, capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion.

By being bound by the decision of a school board which was arbitrary and capricious the Administrative Law Court inherited the position of the Respondent Board making its actions arbitrary and capricious as well.

VI. The Administrative Law Court incorrectly held the decision to revoke the School's charter was made by a legally constituted board authorized by statue.

As indicated in its brief the Respondent indicates that “Generally, a quorum is [a] majority of the entire body...”. As indicated in the Appellant’s brief only one member was present for both the initial revocation decision of the board and the final hearing making the final vote a sham which reflected the wishes of the board chairman alone.

VII. The Administrative Law Court incorrectly determined the Act's hearing procedure as not a “Kangaroo Court” and the revocation hearing proceeded as required by the Act.

The Appellant stands by the arguments in its brief. The Appellant protested that a hearing scheduled during the course of a regular board meeting did not provide adequate

time for a full presentation of the Appellant's case but was denied a continuance for the board chairman to get to his pre-determined outcome. Rec _____. The board chairman is measured by the success of the charter schools relative to the traditional schools. He felt that the test scores of the lower performing, 90 plus percent free meals students were making the charter schools look bad relative to the brick and mortar schools so he conducted sham hearings to get rid of such schools. REC _____.

VIII. The School properly preserved its arguments that the District violated "other provisions" of the Act and the argument is supported by the Record.

The Appellant stands by its arguments in this area.

IX. The Administrative Law Court incorrectly concluded the School's failure to comply with special education law is valid, Independent Basis for Revocation.

As previously noted, LCCPA applied a lot of resources to this area by hiring two very qualified persons to address the concerns. These individuals were not allowed to do their jobs before the Respondent revoked its charter. Rec _____. Nevertheless, the prejudiced board merely found a reason to justify its pre-determined outcome when the real reasons were that the poverty based schools were preventing the district from achieving the test scores they wanted for more favorable comparison with the brick and mortar schools. This, despite the fact that the school was making enormous strides with the children. Rec _____.

X. The Administrative Law Court incorrectly held the School was granted a meaningful opportunity to remedy its many problems.

The Appellant school was only allowed to complete three years of operation. Even the new statute provides for at least 5 years to allow the school a reasonable time to work out the kinks. Rec _____. Further, the district repeatedly made allegations about payments to the Have Faith organization with no proof of the allegations and assume them to be true. Rec _____.

XI. The Administrative Law Court wrongly concluded the School was not entitled to a stay pending appeal under either the amended or pre-amendment version of Section 59-40-110(J).

Once the Administrative Law Court decided to uphold the revocation of the charter of the Appellant based on the Court's reading of the law which required him to uphold that decision, the Court wrongly applied portions of the new law and portions of the old law to reach its desired outcome of closing the Appellant school down.

The Court wrongly refused to impose the automatic stay of the old law under which this case was fled but instead applied the new law to cut off the school's funds.

Rec _____.

XII. Section 59-40-110(J) of the Act is unconstitutional.

The Appellant stands by its argument. There is no case law which address most of the issues in this case so there is no case law to cited. The Respondent cited some case law from the Administrative Law Court which one Administrative Law Judge had said is not even binding on them. MLD v. SCPCSD.

It is fundamental to the American Scheme of Justice that the Judge is a neutral finder of fact and not the accuser as in this case.

CONCLUSION

Based on the foregoing, the Administrative Law Judge's Decision revoking the charter of the Lake City College Preparatory Academy should be reversed and the charter of the school reinstated.


Also, the district and LCCPA agreed that the students would show reasonable academic progress but **LCCPA 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 Lake City College Preparatory 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 Lake City College Preparatory Academy a full 10 year charter as required under the Charter School Act.

Respectfully submitted on behalf of the Appellant,



Johnny E. Watson,
Attorney for Lake City College Preparatory

April 27, 2013
Columbia, South Carolina

**LAW OFFICE OF JOHNNY E. WATSON
ATTORNEY AND COUNSELOR AT LAW**

2715 Edgewood Avenue
Columbia, South Carolina 29204

April 27, 2015

Honorable Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
1545 Sumter Street, 5th Floor
Columbia, South Carolina 29201

Mail Address:
Post Office Box 2305
Columbia, South Carolina 29202
Phone: 803-400-1600
Fax: 803-400-1200

RECEIVED

APR 27 2015

SC Court of Appeals

Re: Lale City College Preparatory Academy v. South Carolina Public Charter School District
Civil Action Number: 2014-ALJ-30-0256
Appellate Case Number: 2014-002372

Dear Ms. Kitchings:

I hope this letter finds you in good health and spirits. Please file the attached Reply Brief of the Appellant and Designation of Matter to be Included in the Record on Appeal.

There seems to be a misunderstanding as to when the Record on Appeal is due. The due date for the attached Reply Brief of the Appellant and Designation of Matter to be Included in the Record on Appeal were continued due to the three weeks long trial in federal Court involving Ms. Benita Dinkins-Robinson. Those documents are included in this filing.

Therefore, according to the attached Appeals Chart, the Record on Appeal will be due 30 days from today. Please advise.

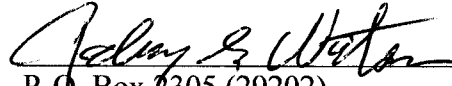
Thank you for your kind consideration in this matter.

If you have any questions and/or comments I can always be reached by cell phone at 1-803-467-6212 or at my office.

With kind regards, I am

Respectfully yours:
Johnny E. Watson, Attorney at Law
SC Bar #: 5967

BY:



P. O. Box 2305 (29202)

2715 Edgewood Avenue

Columbia, South Carolina 29204

Bar#: 5967

803-400-1600 phone

803-400-1200 fax

cc: Erik T. Norton
Nelson, Mullins, Riley & Scarborough
Attorney for the SCPCSD
1320 Main Street, 17th Fl
Columbia, South Carolina 29201