

IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

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SC Court of Appeals

FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Appellate Case No: 2014-002372
Civil Action No: 14-ALJ-30-1256-AP

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

v.

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

RECORD ON APPEAL
VOLUME VIII

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lake City College Preparatory Academy
(LCCPA),

Appellant,

vs.

South Carolina Public Charter School
District,

Respondent.

Civil Action No. 14-ALJ-30-0256-AP

**ORDER GRANTING MOTION TO
ENFORCE FINAL DECISION AND
FOR EXPEDITED SCHEDULE**

This matter is before the Court on Respondent South Carolina Public Charter School District's ("District's") Motion to Enforce Final Decision of District During Pendency of Proceeding and For Expedited Schedule ("Motion"). A hearing was held on July 29, 2014 with counsel for both District and Lake City College Preparatory Academy ("School") in attendance. This Court has considered all submissions, the arguments from both parties, and the Record before it. District's Motion is hereby **GRANTED** for the reasons set forth below.

FINDINGS OF FACT

1. School is a public charter school operated pursuant to a charter issued to it by District in accordance with South Carolina Charter Schools Act of 1996, S.C. Code Ann. § 59-40-10 to -240 ("Act").
2. In accordance with Section 59-40-110 of the Act, District's Board of Trustees ("Board") voted to revoke School's charter on May 8, 2014, and issued a Final Decision to that effect on May 23, 2014.

1. The South Carolina Legislature recently amended the Act to provide that "[U]pon appeal to the Administrative Law Court, there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, the charter school also may move before the Administrative Law Court for imposition of a stay of the revocation or renewal on the grounds that an unusual hardship to the charter school will result from the execution of the sponsor's decision." S.C. Code Ann. § 59-40-110(J).

2. The Amended Act was effective as of June 12, 2014.

3. School filed its Notice of Appeal on May 14, 2014.

CONCLUSIONS OF LAW

4. 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).

5. 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.

6. 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."

7. 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").

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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).

16. 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.

17. The Record contains ample evidence that the School has not provided financial information to the District to support expenditures of state funds, has not provided evidence of required criminal background checks for at least one third party vendor providing tutoring services, and has refused to comply with corrective actions and sanctions short of revocation imposed by the District issued in accordance with S.C. Code Ann. § 59-40-55(A)(8).

18. The failure of School to provide information and comply with District sanctions 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, harm to students or other possible misconduct during the appeal period.

19. 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.

20. 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.

John D. McLeod, Judge
S.C. Administrative Law Court

Columbia, South Carolina

August ____, 2014.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lake City College Preparatory Academy,	)	Docket No. 14-ALJ-30-0256-AP
	)	
Appellant,	)	
	)	
vs	)	
	)	
South Carolina Public School District,	)	ORDER
	)	
Respondent.	)	
	)	

Before the Court is an appeal from a Final Decision of the South Carolina Public Charter School District Board of Trustees, revoking the charter of Appellant, charter school Lake City College Preparatory Academy (LCCPA).

Respondent South Carolina Public Charter School District filed a motion seeking a declaration that the automatic stay provided by SCALC Rule 34 did not apply because of S.C. Code Ann. § 59-40-110(J), which prevents the operation of the automatic stay in charter school revocation and non-renewal cases. Act of Jun 12, 2014, section 6, 2014 S.C. Laws Act 288.

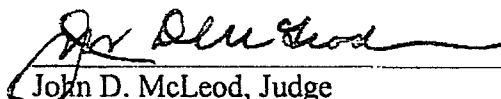
The Court granted the motion by order and LCCPA moved for reconsideration.

The only provision for reconsideration by the Administrative Law Court is found in SCALC Rule 29(D) and that rule applies to **final decisions in contested cases only**. The matter at hand is an appeal, not a contested case, and thus no reconsideration is available. Moreover, the order is interlocutory and not a final decision.

SCALC Rule 29(D) provides that if the administrative law judge fails to act on the motion for reconsideration within 30 days after its filing, it is deemed denied. However, because of the expedited briefing schedule previously ordered in this appeal, the Court will deny the motion by this order for the reason stated, i.e., by doing what it could have otherwise done by failing to act.

THEREFORE, IT IS ORDERED, that the motion for reconsideration is **DENIED**.

August 13, 2014
Columbia, S.C.

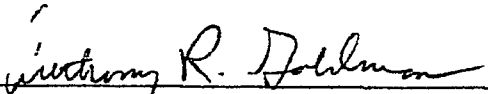


John D. McLeod, Judge
S.C. Administrative Law Court

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 13, 2014
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lake City College Preparatory Academy,	)	Docket No. 14-ALJ-30-0256-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Public School District,	)	ORDER DENYING RESPONDENT'S
	)	MOTION TO DISMISS OR IN THE
	)	ALTERNATIVE, REQUIRE A
Respondent.	)	CORRECTED BRIEF
	)	

On August 13, 2014, South Carolina Public School District ("District") filed a Motion to Dismiss Appeal or in the Alternative, Require a Corrected Brief By Appellant. Lake City filed a return to the motion on August 18, 2014. A motion hearing was held be telephone conference call at 1:00 p.m. on August 19, 2014.

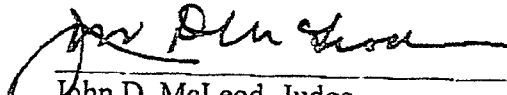
During the motion hearing, the District contended that the appellate brief of Lake City College Preparatory Academy ("Lake City") did not conform to the Court rules as well as the Court's request for citation of facts to the line and page number within the record on appeal. The District asserts that Lake City's noncompliance was prejudicial to its ability to respond and moved for dismissal of the appeal or in the alternative for Lake City to re-file a corrected brief.

Lake City argued that the inadequacies of the record limited its ability to fully perform to the requests of the Court. Lake City emphasized that a great deal of time went into adhering to the Court rules as well as the request regarding factual citations Lake City filed an amended index with its return to the District's motion.

After listening to the parties and reviewing the documents, the Court finds that Lake City's brief is adequate and that neither dismissal of the appeal nor filing of a corrected brief is warranted.

THEREFORE, IT IS ORDERED, that the District's motion is **DENIED**.

August 21, 2014
Columbia, S.C.



John D. McLeod, Judge
S.C. Administrative Law Court

FILED

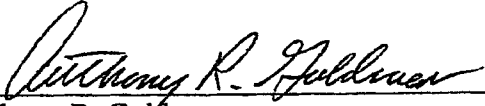
AUG 2014

SC ADMIN. LAW C ROA 2815

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 21, 2014
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

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 teachers¹ 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

¹ "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.

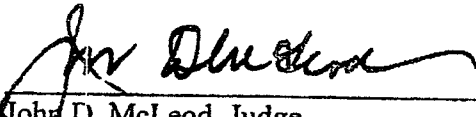
CONCLUSION

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.



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

IN THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

FROM THE SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No.: Revocation Decision of May 8, 2014

Lake City College Preparatory Academy (LCCPA), ... APPELLANT

v.

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

NOTICE ON APPEAL

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Florence SC 29503
843 664-3362 |Direct
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CONTESTED ISSUES

1. Whether the Charter of the Lake City College Preparatory Academy was lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
2. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
3. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
4. Was District's decision to revoke LCCPA's charter arbitrary and capricious, characterizes by abuse of discretion or a clearly unwarranted exercise of discretion;
5. Whether the decision to revoke by the LCCPA's charter by the SCPCSD's board was by a legally constituted board. (South Carolina Code of Laws Annotated 1976);
6. Whether the SCPCSD's board was legally constituted at the Revocation Hearing;
7. Whether the SCPCSD and its Board forced a board member to resign in an effort to ensure a specific voting outcome from thus, excluding the only member from the region in which the school is located from participating;

8. Whether the board chair/ hearing officer did not follow proper proceeding when instructing the attorney to ask questions that only require a "yes" or "no" answer, also instructing the witness to answer "yes" or "no".
9. Whether the resignation of the board member prior to the hearing was planned to minimize the number required for a quorum and create this charade and was this resignation legal and binding and accepted by the appointing agency;
10. Whether the court proceeding delay (1PM but didn't start until 2PM) cause the attorneys the inability to question key witness – Wayne Brazell;
11. Whether the revocation hearing was sham 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 recorded;
12. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy and
13. Whether the hearing officer provide LCCPA adequate time to present all of its evidence and witnesses.

Respectfully submitted,
BY: Johnny E. Watson
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Columbia, South Carolina
Dated: May 14, 2014

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairperson

Case No. 14-ALJ-30-0256-AP

Lake City College Preparatory Academy, ... Appellant,

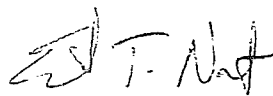
v.

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

CERTIFICATE OF SERVICE

I certify that I have served the Notice of Motion Hearing by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2014, addressed to the Appellant's attorney, Johnny E. Watson Sr., 2715 Edgewood Avenue, Columbia, South Carolina 29204.

July 21, 2014



Erik T. Norton
Nelson Mullins Riley & Scarborough, LLP
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(803) 799-2000

Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

FROM THE SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No.: Revocation Decision of May 8, 2014

Lake City College Preparatory Academy (LCCPA), ... APPELLANT

v.

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

AMENDED NOTICE ON APPEAL

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FILED

JUN 16 2014

SC ADMIN. LAW COURT

ROA 2836

CONTESTED ISSUES

1. Whether the Charter of the Lake City College Preparatory Academy was lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
2. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
3. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
4. Was District's decision to revoke LCCPA's charter arbitrary and capricious, characterizes by abuse of discretion or a clearly unwarranted exercise of discretion;
5. Whether the decision to revoke by the LCCPA's charter by the SCPCSD's board was made by a legally constituted board. (South Carolina Code of Laws Annotated 1976);
6. Whether the SCPCSD's board was legally constituted at the Revocation Hearing;
7. Whether the resignation of the board member prior to the hearing was planned to minimize the number required for a quorum and create this charade and was this resignation legal and binding and accepted by the appointing agency;
8. Whether adequate time was allowed to LCCPA to present its case against revocation;

9. Whether the revocation hearing was a sham 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 when the revocation vote was taken immediately after the hearing with no review of the documents placed in the record;
10. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy;
11. Whether the hearing officer provided LCCPA adequate time to present all of its evidence and witnesses in light of its refusal to keep the record open for additional submission by LCCPA;
12. Whether the hearing officer/board of directors could provide an unbiased ruling;
13. Whether the South Carolina Public Charter School's District violated provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) 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;
14. Whether LCCPA was granted a meaningful opportunity to remedy its problem and;
15. Whether the South Carolina Public Charter School District's oversight was harassment and unduly inhibited the autonomy granted to public charter schools.

CERTIFICATE OF SERVICE

I, Johnny E. Watson, of 2715 Edgewood Avenue (29204), P. O. Box 2305,
Columbia, South Carolina 29202, hereby certify that I have served the individuals named
below with a copy of the document described herein by depositing the document in the
United States mail, postage prepaid and sent the same to them at the address listed herein
below:

PERSON SERVED:

Erik Norton
Nelson, Mullins, Riley & Scarborough
Attorney for the Appellee
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(803) 256-7500 Fax

Clerk of Court
SC Administrative Law Court
1205 Pendleton St Ste 224
Columbia, SC 29201
(803) 734-0550

DOCUMENT: NOTICE OF APPEAL



JOHNNY E. WATSON

Columbia, South Carolina
Date: June 15, 2014

FILED

JUN 16 2014

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Lake City College Preparatory Academy	)	Civil Action No. 14-ALJ-30-0256-AP
(LCCPA),	)	
	)	
Appellant,	)	
	)	
vs.	)	<u>MOTION TO ENFORCE FINAL</u>
	)	<u>DECISION OF DISTRICT DURING</u>
South Carolina Public Charter School	)	<u>PENDENCY OF PROCEEDING AND</u>
District,	)	<u>FOR EXPEDITED SCHEDULE</u>
	)	
Respondent.	)	

Respondent South Carolina Public Charter School District ("District") hereby moves for an Order enforcing the Final Decision ("Decision") revoking the Charter of Lake City College Preparatory Academy ("LCCPA") during the pendency of these proceedings. As of June 14, 2014, the Charter School Act was amended to provide that appeals from final decisions to revoke or not renew a charter school does **not** stay the revocation or nonrenewal decision unless the charter school moves for a stay on grounds that "unusual hardship" to the charter school will result from the execution of the sponsor's decision. *See* S.C. Code Ann. § 59-40-110(J). LCCPA has not made such a motion, and no unusual hardship exists in this case beyond the ordinary circumstances involving revocation of a school's charter. In addition, any potential hardship can be eliminated or substantially mitigated by an expedited briefing and hearing schedule allowing for a decision on the instant appeal in time for LCCPA to open as scheduled in late August in the event the Decision is reversed.

Moreover, even if the pre-amendment version of the statute still applied such that the case were automatically stayed at the time the appeal was filed, this matter should **not**

be stayed because the Record as explained above contains abundant evidence that the health, safety and general well-being of LCCPA students are at risk, along with federal and state tax money, while LCCPA's appeal is pending. The Record, which has been filed contemporaneously with this Motion, contains unrefuted evidence that LCCPA has refused to provide sufficient substantiation for expenditures of state and federal funds, including some \$80,000 for tutors that has not been properly documented. *See* ROA 2398-2403; 198: 4-13 (noting no time sheets were kept and background checks were not provided even though allegedly available). At the hearing conducted before the District Board of Trustees, LCCPA and its counsel was assisted by Benita Dinkins-Robinson, a former charter school director who was recently indicted on federal charges related to misappropriation of state and federal money and who also is represented by LCCPA's counsel in her criminal trial. *See* <http://www.wistv.com/story/25466356/former-charter-school-director-indicted-for-stealing-govt-funds>; *see also* Indictment, attached as **Exhibit A**. These circumstances create, at minimum, a valid concern that taxpayer funds may not be spent appropriately during the pendency of the appeal, a circumstance which includes inherent risks for wasteful or wrongful expenditures of government funds as a matter of course. Combined with the specific circumstances in this case, an Order should be issued finding that no further taxpayer money should be distributed to LCCPA while the appeal process is pending.

The Record further contains unrefuted evidence that LCCPA has refused to provide documentation of background checks conducted on those allegedly providing the tutoring service to students. *See* ROA 2398-2403. In addition, the Record contains unrefuted evidence that LCCPA remains out of compliance with federal special education laws for over 40 students after having more than one year to correct these areas of non-compliance. *See*

ROA 101:5 - 104:22; ROA 2544. The failure of LCCPA to correct areas of noncompliance for more than one year risks a loss of federal funding or other sources of funding for both the State of South Carolina and other district schools. *See* Trans. 81:18 - 82:16. Based on these facts, LCCPA should not be permitted to serve students while the appeal is pending, as the Legislature intended by amending the Charter School Act to provide that revocation decisions ordinarily should not be stayed during appeal.

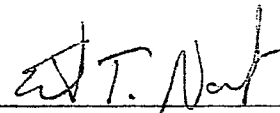
In sum, the District will be handicapped in its ability fulfill its statutory obligation to monitor the welfare of students attending LCCCPA and the expenditure of state money by LCCPA without adequate protections in place during the pendency of this appeal. LCCPA already has refused to comply with statutorily mandated sanctions short of revocation and has refused to provide financial information needed for the District to ascertain whether government money is being properly spent. *See* ROA 2398-2403. The Legislature spoke clearly by amending the statute to provide that charter schools should not be allowed to operate during a pending appeal of a revocation order absent the showing of an undue hardship. No such hardship exists in this case.

Therefore, the District requests an Order finding that the Decision shall be enforced during the term of the appeal such that LCCPA may not receive any further state or federal funds or provide any services to students in any way during the appeal. Alternatively, the District seeks an Order requiring LCCPA to (1) post a bond using non-governmental funds and (2) provide information requested by the District related to any expenditure of government funds or academic services provided to LCCPA students. In either case, the District requests that the Court set the following briefing and hearing schedule:

1. LCCPA's initial brief will be due on July 18;

2. District's response brief will be due on July 25;
3. LCCPA's reply brief (if any) will be due on August 1; and
4. Hearing date as soon after August 1 as the Court's schedule will allow.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Erik T. Norton
SC Bar No. 73860
E-Mail: erik.norton@nelsonmullins.com
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Post Office Box 11070 (29211-1070)
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(803) 799-2000

Attorneys for South Carolina Public Charter School District

Columbia, South Carolina
June 30, 2014.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA	)	CRIM. NO. <u>3:14cr300</u>
	)	18 U.S.C. § 641
v.	)	18 U.S.C. § 981(a)(1)(C)
	)	28 U.S.C. § 2461(c)
BENITA DINKINS-ROBINSON	)	
		INDICTMENT

COUNT 1

THE GRAND JURY CHARGES:

From in or about 2007, through in or about 2012, the Defendant, BENITA DINKINS-ROBINSON, willfully and knowingly did embezzle, steal, purloin, and knowingly convert to her use and to the use of another, and without authority did sell, convey, and dispose of money, that is, funding from the United States Department of Agriculture for various school food and nutrition programs, of the value in excess of \$1,000, which was property of the United States,

In violation of Title 18, United States Code, Section 641.

COUNT 2

THE GRAND JURY FURTHER CHARGES:

From in or about 2010, through in or about 2013, the Defendant, BENITA DINKINS-ROBINSON, willfully and knowingly did embezzle, steal, purloin, and knowingly convert to her use and to the use of another, and without authority did sell, convey, and dispose money, that is, Title I, Title II, IDEA, and other funding from the United States Department of Education, of the value in excess of \$1,000, which was property of the United States;

In violation of Title 18, United States Code, Section 641.

FORFEITURE

1. SPECIFIED UNLAWFUL ACTIVITIES:

A. Upon conviction for one or more violations of Title 18, United States Code, Section 641 as charged in this Indictment, the Defendant, BENITA DINKINS- ROBINSON, shall forfeit to the United States any property, real or personal, which constitutes or is derived from any proceeds the Defendant obtained, directly or indirectly, as the result of such violations and any property traceable to such property.

2. PROPERTY:

A. Pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c), the property which is subject to forfeiture upon conviction of the Defendant, BENITA DINKINS-ROBINSON, for the violations charged in this Indictment includes, but is not limited to, the following:

(1) Cash Proceeds / Personal Money Judgment:

- a. A sum of money equal to all proceeds the Defendant obtained directly or indirectly as the result of the offenses charged in Counts 1 and 2 of this Indictment, or traceable to such property, that is, a minimum of \$ 1,436,717 in United States currency;
- b. Allianz Policies xxxx1356 and xxxx5400 issued to Harry Dinkins by Allianz Insurance Company of North America, with cash value for both policies equaling \$312,856.11, asset # 14-FBI-002201;
- c. Allianz Policies xxxx9794, xxxx5679 and xxxx7419 issued to Benita Dinkins-Robinson by Allianz Insurance Company of North America, with cash value for the three policies equaling \$456,661.85, asset # 14-FBI-002178;

(2) Real Property:

- a. 482 Pine Crest Street
Camden, SC 29020
Kershaw County
273-02-0B-010-S81
Titled in the name of: Harry Dinkins

(3) Vehicles:

- a. 2006 Cadillac STS-V8
1G6DC67A360142042
Titled to: Benita Dinkins- Robinson
- b. 2010 Chevrolet Impala-V6
2G1WA5EK6A1114890
Titled to: Benita Dinkins-Robinson
- c. 2012 Land Rover
770380252199134A
Titled to: Harry Dinkins, III

3. SUBSTITUTE ASSETS:

A. If any of the property described above as being subject to forfeiture to the United States, as a result of any act or omission of the Defendant,

- (1) Cannot be located upon the exercise of due diligence;
- (2) Has been transferred or sold to, or deposited with a third party;
- (3) Has been placed beyond the jurisdiction of the Court;
- (4) Has been substantially diminished in value; or
- (5) Has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Sections 982(b)(1), [incorporating Title 21, United States Code, Section 853(p)], to seek forfeiture of any other property of the said Defendant up to the value of the above forfeitable property.

Pursuant to Title 18, United States Code, Sections 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

A True BILL

Redacted

FOREPERSON

William N. Nettles
WILLIAM N. NETTLES (WDHjr)
UNITED STATES ATTORNEY

RECORD OF GRAND JURY BALLOT

C/ 3:14cr300

THE UNITED STATES OF AMERICA v. BENITA DINKINS-ROBINSON
(SEALED UNTIL FURTHER ORDER OF THE COURT)

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairperson

Case No. 14-ALJ-30-0256-AP

Lake City College Preparatory Academy, ... Appellant,

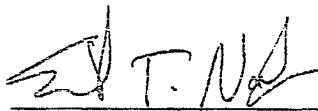
v.

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

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Motion to Enforce Final Decision by District During Pendency of Proceeding and for Expedited Schedule by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2014, addressed to the Appellant's attorney, Johnny E. Watson Sr., 2715 Edgewood Avenue, Columbia, South Carolina 29204.

June 30, 2014



Erik T. Norton
Nelson Mullins Riley & Scarborough, LLP
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(803) 799-2000

Attorneys for Respondent

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

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

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

V.

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

**RETURN TO RESPONDENT'S MOTION TO LIFTSTAY
AND FOR EXPEDITED CONSIDERATION**

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843 664-3362 |Direct
843 664-3372 |Fax

Main Counsel for Appellant

FILED

JUL 18 2014

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

The Lake City College Preparatory Academy (LCCPA) respectfully request that this Court deny Respondent's Motion to lift the automatic stay that is in place in accordance with the Rules of this Court during the pendency of this appeal. As stated that amended Charter School Act was made after the revocation decision and the filing of this Appeal. Therefore, we respectfully request that this court allow this school to go through the legal procedures as outline in law so that this schools constitutional rights are protected and to avoid putting a hardship upon the school, students and their families.

Allowing this motion would cause undue hardship or the school, its students and their families. The families of the students have already spent hundreds of dollars purchasing school specific uniforms that are embroidered with LCCPA logo and name. Rising seniors have already selected senior regalia, and have made senior plans. The school has also already provided teacher contracts for new and returning staff; renewed its lease; hired new staff, and began in-service training. This motion is another attempt by the Respondent to shortcut the Court's procedures and should be denied.

PROCEDURAL HISTORY

This case is pending before this Court in its appellate capacity as indicated by the Respondent. The issues before the Court are:

STATEMENTS OF ISSUES ON APPEAL

1. Whether the Charter of the Lake City College Preparatory Academy was lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

2. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
3. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
4. Was District's decision to revoke LCCPA's charter arbitrary and capricious, characterizes by abuse of discretion or a clearly unwarranted exercise of discretion;
5. Whether the decision to revoke by the LCCPA's charter by the SCPCSD's board was made by a legally constituted board. (South Carolina Code of Laws Annotated 1976);
6. Whether the SCPCSD's board was legally constituted at the Revocation Hearing;
7. Whether the resignation of the board member prior to the hearing was planned to minimize the number required for a quorum and create this charade and was this resignation legal and binding and accepted by the appointing agency;
8. Whether adequate time was allowed to LCCPA to present its case against revocation;
9. Whether the revocation hearing was a sham 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 when the revocation vote was taken immediately after the hearing with no review of the documents placed in the recorded;
10. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy;

11. Whether the hearing officer provided LCCPA adequate time to present all of its evidence and witnesses in light of its refusal to keep the record open for additional submission by LCCPA;
12. Whether the hearing officer/board of directors could provide an unbiased ruling;
13. Whether the South Carolina Public Charter School's District violated provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) 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;
14. Whether LCCPA was granted a meaningful opportunity to remedy its problem and;
15. Whether the South Carolina Public Charter School District's oversight was harassment and unduly inhibited the autonomy granted to public charter schools.

There is no doubt the Court will rule in this matter as expeditiously as possible. The SCPCSD has shown in its biases in its treatment of LCCPA. The SCPCSD chairman himself issued press releases dooming LCCPA even before the revocation hearing was held. He also stated that he would have to fire his whole staff if he took what LCCPA said into consideration.

STANDARD OF REVIEW

The District Board correctly stated the standard of review of the charter school act as being that:

ARGUMENTS AND AUTHORITY

LCCPA is currently still in session offering summer courses to students, offering intervention

services and providing parent academies so there be emotional harm and undue distress to by denying the parents the right to exercise their right to choice. LCCPA was one of the highest scoring school in the South Carolina Public Charter School District and local Districts in the surrounding area. The school scored a "B" on their official School Report Card and graduates its first high school class yielding a 100% graduation rate for the senior class of 2014. These outstanding results earned the school two of the highest honors that a school can receive from the SC Department of Education for academic achievement; a Palmetto Gold and Silver Award. So parents and the community are excited. Parents and the community at large jointly support the school. This is evident by the large amount of parent and community involvement at school events. This is evident by the large amount of parent and community involvement at school events. For example more than 800 individuals attended the 2014 graduation ceremony at the school; and during the school year of the four seasonal school productions yield a crowd of 400-500 parents and community members.

Again, the parents have already bought non refundable LCCPA embroidered uniforms with the school logo on them in anticipation of the 2014-15. School will begin in less than one month. Parents have also been well informed of the due process procedures in regards to the legal proceedings as ordered in board's final notice. School opens in less than one month.

In regards to the counsel, Lake City College Preparatory Academy's main counsel is Mark Buyck, III with Willcox, Buyck and Williams, PA. Watson Law Firm was only brought in by Willcox, Buyck and Williams, PA as a consultant and co-counsel because this firm was more experience in dealing with the revocation process and this hostile district. For the record, all legal fees go directly through Willcox, Buyck and Williams, PA. In regards to Benita Dinkins-Robinson her case has no bearing on this case in and she does not handle any monies of the

school. The media blitz was orchestrated by Wayne Brazell as evidenced by the link the their motion. They delayed this proceeding for over an hour to set up this media blitz. The Superintendent, Wayne Brazell showed no respect or concern for the current LCCPA Court and more than 200 students and then families at stake. The Director of LCCPA even testified that she was intimidated by Superintendent Wayne Brazell and could not understand the hostile nature of the actions against her and the Lake City College Preparatory Academy. ROA_0143 and ROA_0148. Due to the questionable disparate treatment applied to certain schools and their leaders, there is an active investigation being conducted of the District (SCPCSD) by the Office of Civil Rights (OCR). It is important to note that since its inception, the District (SCPCSD) has only voted to revoke three charter schools. All of these cases have affected schools and communities with a majority African American student population and whose leadership were African American females. However, these schools are providing services for a largely minority population of student and leaders which make up much less than 15% of the SCPCSD's total overall (population/leadership). Yet, they have been unfairly targeted, resulting in 100% of the District's revocation cases. For the record we believe that this school and the other two schools' civil and constitutional rights have been violated. **Exhibit A** outlines the chart of schools revoked.

In regards to public money all LCCPA audits came back clear ROA_0695 to ROA_0745 and the School has an experienced Financial Consultant firm "Kelly-Moser Financial Consulting Firm" that handles LCCPA finances and along with about another 20 other schools in the state of South Carolina. Additionally, this firm has represented previously numerous schools in North Carolina.

LCCPA was only in operation for three (3) complete years and has been harassed by this sponsor the entire time. The school has never received a letter of recognition or congratulation for its

accomplishments the entire time that the school has been in the SC Public Charter School District. The school has made significant academic progress; earning a "B" on its official school report card exceeding the state's expectations; is the recipient of both a 2013-14 Palmetto Gold and Silver award; has a 100% high school graduation rate; and is the winner of the SC National History Day Competition in Maryland; and not to mention the fact that its high school students won second place at the Sandhills Regional Science Fair. Yet, as of the writing of this appeal, the school has yet to receive a letter of commendation from the superintendent, or the District's board. Yet, other schools winning lesser awards are documented in SCPCSD Board Minutes as being commended for their accomplishments.

In their own final notice, the district acknowledges Dr. David Church statement regarding responsibility for the schools special education which states "LCCPA provide expert testimony that the District (SCPCSD) 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 required the District to take such an extraordinary and logistically unfeasible step prior to revocation." So in other words, the district is refusing to obey the law which requires the District to be responsible for special education. This would cause them too much inconvenience to have to work to ensure that these children receive the required services, so they opted to displace over 200 children. We believe that this district has lost its focus in that it should not be focused on dictating and closing schools that have made enormous academic progress among other achievements, but it should be concerned with providing school choice to all children, black or white, impoverished or not.

Dr. Wayne Brazell
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- Multiple images were missing alternative text attributes.
- Assessments were inaccessible because the user cannot use a keyboard to select answers.
- Tables containing grades did not have proper labeling to be read by a screen reader.

Outside Software and Content

- External supplemental materials for some of the demo courses lacked alternative text attributes.

Palmetto State E-academy (Palmetto)

Background: Palmetto is a public virtual charter school founded in 2008 to serve students in grades nine to twelve. Prior to the fall of 2013, Palmetto developed its own content; however, in the fall of 2013, Palmetto began a partnership with Accelerate Education for its course offerings. OCR was provided access to multiple courses and reviewed the public website used mainly for recruiting. Of note, Palmetto informed OCR that accessibility was not a major focus of its initial web development process and acknowledged that the website had several accessibility concerns.² Accelerate Education's accessibility statement references Section 504 and Section 508 and notes that it constantly adapts its systems to meet regulations and policies so that all students can use its curriculum.

Testing Results:

- Several images lacked alternative text attributes to enable screen reader software to describe the images and were repeated throughout the site.
- Images on several bar graphs intended to allow the students and parents to see academic progress were not tagged for screen reader software and therefore inaccessible.
- Several form fields were not properly labeled.
- The calendar did not provide any instruction on how to input date format and the calendar that opened to select a date was not tagged to be accessible.
- Tool bars on the homepage could not be activated and the dropdown menus could not be accessed by using the keyboard.
- When taking a test or a quiz, a keyboard user could not select an answer because of unlabeled buttons.
- The buttons on the right of the "Course Objectives" panel were not labeled.
- The website required users to submit the majority of assignments through a text editor located within the assignment webpage or through an uploading process; both of these options were not tagged appropriately to be compatible with assistive technology.
- Video recordings of classes did not have captioning and keyboard control buttons available.
- The course management system had multiple buttons that were not tagged and thus were not accessible.
- The public website lacked keyboard control buttons for multiple tabs, captioning on videos, and alternative text for images.

² However, Palmetto stated it is committed to ensuring that its website content and design is compliant with current accessibility standards as outlined by the W3C Web Accessibility Initiative.

South Carolina Whitmore School (Whitmore)

Background: Whitmore, which serves grades nine through twelve, has been operating in South Carolina since the 2011-2012 school year. It receives its entire curriculum from CompuHigh, LLC, which has been in operation since 1994. OCR was provided access to multiple courses. OCR also reviewed the public website used mainly for recruiting and outside supplementary materials used by the school. Although Whitmore's site does not have an accessibility statement beyond a general non-discrimination statement, CompuHigh has an accessibility statement on its site, which states: "All course content developed by CompuHigh abides by the web-related technical standards for implementing Section 508 of the Rehabilitation Act of 1973."

Testing Results:

- Several form fields lacked labels and thus could not be completed by an assistive technology user.
- Buttons for the rich text box were not properly labeled.
- In several instances where multimedia was used, there were no synchronized captions and the buttons were not properly labeled.
- A number of images on the site lacked alternative text attributes.
- Video recordings of lectures did not have synchronized captions or the video control buttons were not keyboard accessible.
- The fillable fields in the enrollment form were not labeled and were not accessible to a screenreader.
- Colors used in the calendar to show important information could not be seen by a screen reader.

Conclusion

Based upon the above analysis, there are number of concerns about the accessibility of the websites used by each of these schools. The most frequent concerns were lack of alternative text attributes on buttons, especially on video controls, lack of synchronized captioning, inaccessible PDFs, and animations that were not fully labeled. Additionally, materials provided by third party vendors (at times, the same materials used by different schools) are consistently inaccessible. Based on this information, the virtual schools are not in compliance with Section 504 or Title II. Specifically, the virtual schools' websites do not permit a person with disabilities, particularly those with visual, hearing, or manual impairments or who otherwise require the use of assistive technology to access educational programs at the schools in an equally effective or integrated manner as compared to someone without a disability. Accordingly, there is not a "substantially equivalent ease of use" for students or parents with disabilities. Because these schools offer complete on-line instruction, there are no possible alternatives to the websites, and requiring a student to attend a different school would not afford a student with a disability the same choices as students without disabilities.

Pursuant to the terms of the voluntary resolution agreement, the District has agreed to ensure that the seven schools' websites are accessible to students, prospective students, employees, guests, and visitors with disabilities. The District will create a web accessibility committee to direct resources and provide technical assistance as schools work to ensure web-accessibility. The District will develop and implement a web Accessibility Policy that requires all schools that

provide instruction to be readily accessible and useable and will require each school to develop and implement a detailed accessibility plan setting forth the steps to be taken in order to ensure that all programs and activities at the school meet the standards set forth in the Accessibility Policy, including recruiting materials and public websites, direct instructional materials, supplemental materials, on-line textbooks, mobile applications, testing, resources for parents/guardians, and audio and video recording recasts. Each school will regularly complete an accessibility report that measures the school's compliance with the Accessibility Policy and will submit audit reports annually that describe steps taken to maintain the website's accessibility, as well as steps taken to ensure that new programs and content are accessible. The District will develop and provide training on how to ensure accessibility in web design and implementation and will certify to OCR that the District meets the requirements of the Accessibility Policy.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other Section 504 or Title II issues not investigated at this time. Letters of finding are fact-specific dispositions of individual cases. They are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The District has agreed to provide data and other information to demonstrate implementation of the Agreement, in a timely manner and in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory manner. OCR may conduct additional visits and may request additional information as necessary to determine whether the district has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Section 504 and Title II.

OCR would like to thank Robert Compton, and the District staff, for their cooperation during the course of this compliance review. From the inception of our review, the District has been extremely cooperative and welcoming. We look forward to working with you in the future and continuing to work productively with you and your staff as we monitor the District's implementation of the enclosed agreement.

If you have any questions, please feel free to contact Judith Risch, Civil Rights Attorney, at (202) 453-5925 or email: judith.risch@ed.gov. You may also contact her at (202) 453- 6020.

Sincerely,

/s/

Alice B. Wender
Regional Director



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

March 20, 2014

Dr. Wayne Brazell
Superintendent
South Carolina Public Charter School District
3710 Landmark Drive, Suite 201
Columbia, South Carolina 29204

Re: Compliance Review No. 11-13-5001

Dear Dr. Brazell:

This letter is to advise you of the resolution of the above-referenced compliance review conducted by the U.S. Department of Education, Office for Civil Rights (OCR). OCR initiated this compliance review to assess whether the South Carolina Public School District's (District) communications with persons with disabilities were as effective as communications with persons who are not disabled. This review investigated all seven of the District's virtual charter schools operated in the 2013-2014 school year, examining the accessibility of the schools' websites to persons with disabilities, especially those requiring the use of assistive technology to access the sites. The schools included in the investigation were: Palmetto State e-Cademy; Provost Academy South Carolina; South Carolina Virtual Charter School; South Carolina Calvert Academy; South Carolina Connections Academy; South Carolina Whitmore School; and Cyber Academy of South Carolina.

OCR initiated this compliance review pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public elementary and secondary education systems, regardless of whether they receive Federal financial assistance from the Department. The District is a public education system that receives Federal financial assistance from the Department and is, therefore, subject to the provisions of these statutes and regulations.

OCR conducted a review of over 100 websites, including all seven schools' external websites and each school's online learning environment. Based on this review, OCR identified compliance concerns with the websites operated in each of the seven virtual charter schools operated by the District. The public websites and online learning environments were not readily

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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accessible to persons who require assistive technology and, therefore, not in compliance with Section 504 and Title II. The District has voluntarily agreed to remedy these concerns as set forth in the enclosed agreement. OCR will monitor the District's completion of the steps outlined in the agreement to ensure that it has fully implemented the provisions of the agreement and is in compliance with the above-referenced regulations. The concerns identified by OCR are outlined further below.

Legal Standards

The Section 504 implementing regulation found at 34 C.F.R. § 104.4 provides:

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

The Title II regulations have similar requirements to Section 504. The regulations include a general prohibition against discrimination at 28 C.F.R. §35.130:

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b) (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

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(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

Additionally the Title II regulations have specific requirements for communications, which in pertinent part require at 28 C.F.R. § 35.160:

(a) (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

On June 29, 2010, OCR and the U.S. Department of Justice Civil Rights Division jointly issued a Dear Colleague Letter to all college and university presidents that addressed the use of emerging technologies. The letter noted that several universities agreed not to purchase, require or recommend use of any dedicated electronic book reader “unless or until the device is fully accessible to individuals who are blind or have low vision” or the universities “provide reasonable accommodation or modification so that a student can acquire the same information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.”

On May 26, 2011, OCR issued a Dear Colleague Letter, including Frequently Asked Questions (FAQ), to provide further clarification. The FAQ makes clear that the Dear Colleague Letter also applies to elementary and secondary institutions, and further clarifies that students with disabilities, especially students with visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The Dear Colleague Letter explains that the educational institution must ensure that students with disabilities can access the educational opportunities and benefits with “substantially equivalent ease of use” as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide “accommodations or modifications that permit [students with disabilities] to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” The FAQ also makes clear that an accommodation or modification that is available only at certain times or under certain conditions (such as when an aide is available to read to the student) will not be

considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other on-line content. Additionally, the FAQ states that on-line programs are covered under the June 29, 2010, and May 26, 2011 Dear Colleague Letters and stresses the importance of planning to ensure accessibility from the initial design. The policies set forth in these documents apply to all forms of information technology. OCR relied on these general principles for accessibility and effective communication.

The District served as the local educational agency (LEA) for six on-line charter schools during the 2012-2013 school year and seven on-line charter schools for the 2013-2014 school year. For the 2013-2014 school year, the seven virtual schools serve approximately 8,700 students with 10.5% qualifying for special education.

OCR notes there is no District policy that specifically addresses web accessibility beyond general Section 504 policies. OCR assessed the accessibility of the on-line content at each of the seven virtual schools, including the schools' public recruiting websites and instructional materials (e.g., on-line lessons, books, tests, and supplemental materials). All of the seven schools OCR assessed were operated as separate entities (except for two schools that were operated by the same entity) and had different websites; however, there was some overlap in the supplemental materials provided by third parties used among the schools. OCR's assessment of each school follows.

Background: Virtual, which is managed by K12 Inc., serves students in Kindergarten through twelfth grade and has been operating in South Carolina since the 2008-2009 school year. OCR was provided access to a large number of courses and looked at a sampling of information from different classes, including classes at both elementary and high school levels. Additionally, OCR assessed sample textbooks and worksheets for accessibility. OCR noted that for supplemental materials the school used Noodleverse, a supplemental enrichment program created by K12 Inc. OCR also reviewed the public website that is mainly used for recruiting new students.

- Images lacked alternative text attributes which enable screen reader software to describe the images on the school's home page.
- Color contrast issues were present throughout the site.
- A number of items were not available to users of assistive technology, including PDF documents and textbooks, the main navigation bar and the academic navigation bars for the site.
- Multiple buttons were not labeled, including those to operate videos and, therefore, were not inaccessible to assistive technology users.

- Multimedia videos lacked closed captions.
- Pop-up windows were not read by screen readers, and keyboard users could not interact with the radial buttons or text boxes. Additionally, pop-up windows could not be closed with the keyboard.
- Assistive technology users could not interact with the links in certain navigation frames.
- Supplemental materials such as Noodleverse and other animated instructional materials lacked captioning and full keyboard control to access the information (a mouse is required).

Cyber Academy of South Carolina (Cyber)

Background: Cyber, which is also managed by K12 Inc., launched in August 2013 and serves students in kindergarten through ninth grade. OCR was provided access to sample classes from kindergarten through eighth grade. Additionally, OCR looked at supplemental materials on publicly available websites. OCR also reviewed the public website used mainly for recruiting.

Testing Results:

- Images lacked alternative text attributes to enable screen reader software to describe the images.
- Pop-up windows could not be read by assistive technology and navigated or closed by keyboard users.
- The buttons to operate videos were not labeled and, therefore, inaccessible to assistive technology users.
- The videos lacked closed captions.
- The Cyber website links to supplemental materials that were not accessible, did not have captioning, and were not fully usable by only the keyboard.

South Carolina Connections Academy (Connections)

Background: Connections has been operating in South Carolina since the 2008-2009 school year and serves students in kindergarten through twelfth grade. The educational management company for the school is Connections, which was purchased by Pearson in 2011. OCR was provided access to courses at various grade levels and reviewed a sampling of web pages at both the elementary and high school levels. Also, OCR reviewed sample on-line textbooks and worksheets. OCR also looked at the public website used mainly for recruiting and supplemental materials provided by Connections. Of note, Connections has a document called "Accessibility Approach."¹ According to this document, the school asserts that it provides comparable access to students with disabilities as to those without disabilities. According to the "Accessibility Approach" Document, the school is using Section 508 Technical Standards and Web Content Accessibility Guidelines Version 2.0 (WCAG2) (created by the World Wide Web Consortium, an international organization that develops Web standards).

¹ Unless otherwise indicated, the schools did not provide a statement of accessibility or a policy specifically addressing web accessibility.

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Testing Results:

Connections-created content/pages

- Images on the Homepage lacked alternative text attributes to enable screen reader software to describe the images.
- A pop-up window could not be closed with keyboard control. A mouse had to be used to make a selection and close the window making it inaccessible to assistive technology users.
- Animation control toolbar worked only with a mouse, the control buttons were not labeled, and the “text” button that needed to be activated for synchronized captions required a mouse.
- Buttons did not always work from the keyboard and required the use of a mouse.
- PDFs were not fully accessible because there were no table tags or the tags did not match the information on the page and alternative text for images is missing.
- The Flashcards lacked keyboard control.
- Audio recordings of lectures opened an audio file with no captions or transcript.
- A textbook contained inaccessible and unlabeled buttons. The content of the textbook was not available to assistive technology tools.
- The calendar did not permit a user to enter an appointment without using a mouse.

Outside software

- Supplemental instructional materials’ buttons were not keyboard accessible and were not labeled.
- Videos on external websites did not have keyboard controls or captions.

South Carolina Calvert Academy (Calvert)

Background: Calvert is an online public virtual charter high school serving South Carolina students in Kindergarten through eighth grade since the 2009-2010 school year. The educational management company serving the school is Calvert Education Services. OCR was provided access to the Calvert’s Grade 1 through Grade 8 curriculum, including e-Textbooks, lesson manuals, and assessments. Calvert uses multiple outside supplementary materials, some of which were reviewed by OCR. Additionally, OCR reviewed the public website used mainly for recruiting.

Testing Results:

Calvert-created content/pages

- A number of images throughout the Calvert’s website, including on the Homepage and the links to the lessons within each grade, lacked alternative text attributes to enable screenreader software to describe the images.
- The list of lessons used expandable lists which did not have the appropriate alternative text attributes and therefore could not be read by a screen reader and could not be accessed through the keyboard.
- The website lacked a method for users of assistive technology to navigate past repetitive navigation links.
- The PDF lesson manuals were not properly tagged to be fully read by a screen reader.

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- Multimedia presentation buttons, including pause, play, and mute, did not have alternative text and there was no closed captioning for videos on the website.
- The assessments were not available to users of assistive technology because there was no captioning for images nor could answers be fully entered without using a mouse.
- Lessons within the Calvert courses lacked proper alternative text attributes for images, including those required to understand questions and access essential information.

Outside Software

- A number of buttons in the e-Textbooks were not labeled and the books were not properly tagged for users of assistive technology.
- Relevant external websites did not have alternative text attributes for images, captioning for audio or usable keyboard controls. Additionally, external videos lacked equivalent alternatives that are synchronized with the presentation. In one case, the closed captioning for a video spoken in English was in Spanish. Also, users of assistive technology could not access the multimedia controls.
- Supplemental instructional materials buttons were not keyboard accessible and were not labeled.

Provost Academy South Carolina (Provost)

Background: Provost is an online public charter high school serving South Carolina students in grades nine through twelve since the 2010-2011 school year. The educational management company serving Provost is Edison Learning. OCR was provided access to six “demo” courses from the 2011-2012 school year. OCR reviewed a sampling of web pages in the different courses and the sample textbooks for the courses. Provost did not provide the names of supplementary materials used, but OCR identified the supplemental materials while reviewing the site. OCR also reviewed the public website used mainly for recruiting. Of note, Provost provided a statement that “[t]he eSchoolware student and parent portal roles have been enhanced to allow them to be 508 compliant.”

Testing Results:

Provost-created content

- Links on main page were not accessible to a keyboard-only user because the links did not highlight the area of focus.
- The indication of the number of announcements was not tagged properly for a screen reader to access.
- Color contrast issues were present throughout the site.
- A link for providing answers was not tagged completely to permit assistive technology to identify it.
- The “Notepad” feature in each of the courses did not allow users of assistive technology to access the “Save,” “Cancel,” or “X” button to exit out of the Notepad.
- The buttons on the “Calculator” (which is used in several of the courses) were not properly marked, so the screen reader read only “button” and not the number each button represented.
- Instructional video dropdown menus and video controls buttons were not keyboard-accessible nor did they contain alternative text attributes.

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- Multiple images were missing alternative text attributes.
- Assessments were inaccessible because the user cannot use a keyboard to select answers.
- Tables containing grades did not have proper labeling to be read by a screen reader.

Outside Software and Content

- External supplemental materials for some of the demo courses lacked alternative text attributes.

Palmetto State E-cademy (Palmetto)

Background: Palmetto is a public virtual charter school founded in 2008 to serve students in grades nine to twelve. Prior to the fall of 2013, Palmetto developed its own content; however, in the fall of 2013, Palmetto began a partnership with Accelerate Education for its course offerings. OCR was provided access to multiple courses and reviewed the public website used mainly for recruiting. Of note, Palmetto informed OCR that accessibility was not a major focus of its initial web development process and acknowledged that the website had several accessibility concerns.² Accelerate Education's accessibility statement references Section 504 and Section 508 and notes that it constantly adapts its systems to meet regulations and policies so that all students can use its curriculum.

Testing Results:

- Several images lacked alternative text attributes to enable screen reader software to describe the images and were repeated throughout the site.
- Images on several bar graphs intended to allow the students and parents to see academic progress were not tagged for screen reader software and therefore inaccessible.
- Several form fields were not properly labeled.
- The calendar did not provide any instruction on how to input date format and the calendar that opened to select a date was not tagged to be accessible.
- Tool bars on the homepage could not be activated and the dropdown menus could not be accessed by using the keyboard.
- When taking a test or a quiz, a keyboard user could not select an answer because of unlabeled buttons.
- The buttons on the right of the "Course Objectives" panel were not labeled.
- The website required users to submit the majority of assignments through a text editor located within the assignment webpage or through an uploading process; both of these options were not tagged appropriately to be compatible with assistive technology.
- Video recordings of classes did not have captioning and keyboard control buttons available.
- The course management system had multiple buttons that were not tagged and thus were not accessible.
- The public website lacked keyboard control buttons for multiple tabs, captioning on videos, and alternative text for images.

² However, Palmetto stated it is committed to ensuring that its website content and design is compliant with current accessibility standards as outlined by the W3C Web Accessibility Initiative.

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South Carolina Whitmore School (Whitmore)

Background: Whitmore, which serves grades nine through twelve, has been operating in South Carolina since the 2011-2012 school year. It receives its entire curriculum from CompuHigh, LLC, which has been in operation since 1994. OCR was provided access to multiple courses. OCR also reviewed the public website used mainly for recruiting and outside supplementary materials used by the school. Although Whitmore's site does not have an accessibility statement beyond a general non-discrimination statement, CompuHigh has an accessibility statement on its site, which states: "All course content developed by CompuHigh abides by the web-related technical standards for implementing Section 508 of the Rehabilitation Act of 1973."

Testing Results:

- Several form fields lacked labels and thus could not be completed by an assistive technology user.
- Buttons for the rich text box were not properly labeled.
- In several instances where multimedia was used, there were no synchronized captions and the buttons were not properly labeled.
- A number of images on the site lacked alternative text attributes.
- Video recordings of lectures did not have synchronized captions or the video control buttons were not keyboard accessible.
- The fillable fields in the enrollment form were not labeled and were not accessible to a screenreader.
- Colors used in the calendar to show important information could not be seen by a screen reader.

Conclusion

Based upon the above analysis, there are number of concerns about the accessibility of the websites used by each of these schools. The most frequent concerns were lack of alternative text attributes on buttons, especially on video controls, lack of synchronized captioning, inaccessible PDFs, and animations that were not fully labeled. Additionally, materials provided by third party vendors (at times, the same materials used by different schools) are consistently inaccessible. Based on this information, the virtual schools are not in compliance with Section 504 or Title II. Specifically, the virtual schools' websites do not permit a person with disabilities, particularly those with visual, hearing, or manual impairments or who otherwise require the use of assistive technology to access educational programs at the schools in an equally effective or integrated manner as compared to someone without a disability. Accordingly, there is not a "substantially equivalent ease of use" for students or parents with disabilities. Because these schools offer complete on-line instruction, there are no possible alternatives to the websites, and requiring a student to attend a different school would not afford a student with a disability the same choices as students without disabilities.

Pursuant to the terms of the voluntary resolution agreement, the District has agreed to ensure that the seven schools' websites are accessible to students, prospective students, employees, guests, and visitors with disabilities. The District will create a web accessibility committee to direct resources and provide technical assistance as schools work to ensure web-accessibility. The District will develop and implement a web Accessibility Policy that requires all schools that

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provide instruction to be readily accessible and useable and will require each school to develop and implement a detailed accessibility plan setting forth the steps to be taken in order to ensure that all programs and activities at the school meet the standards set forth in the Accessibility Policy, including recruiting materials and public websites, direct instructional materials, supplemental materials, on-line textbooks, mobile applications, testing, resources for parents/guardians, and audio and video recording recasts. Each school will regularly complete an accessibility report that measures the school's compliance with the Accessibility Policy and will submit audit reports annually that describe steps taken to maintain the website's accessibility, as well as steps taken to ensure that new programs and content are accessible. The District will develop and provide training on how to ensure accessibility in web design and implementation and will certify to OCR that the District meets the requirements of the Accessibility Policy.

Please be advised that this letter and the enclosed agreement cover only the issues investigated as part of this compliance review and should not be construed to address any other Section 504 or Title II issues not investigated at this time. Letters of finding are fact-specific dispositions of individual cases. They are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The District has agreed to provide data and other information to demonstrate implementation of the Agreement, in a timely manner and in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory manner. OCR may conduct additional visits and may request additional information as necessary to determine whether the district has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues in the review. OCR will not close the monitoring of this Agreement until it has determined that the District has complied with the terms of the Agreement and is in compliance with Section 504 and Title II.

OCR would like to thank Robert Compton, and the District staff, for their cooperation during the course of this compliance review. From the inception of our review, the District has been extremely cooperative and welcoming. We look forward to working with you in the future and continuing to work productively with you and your staff as we monitor the District's implementation of the enclosed agreement.

If you have any questions, please feel free to contact Judith Risch, Civil Rights Attorney, at (202) 453-5925 or email: judith.risch@ed.gov. You may also contact her at (202) 453- 6020.

Sincerely,

/s/

Alice B. Wender
Regional Director

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

IN RE: LAKE CITY COLLEGE
PREPATORY ACADEMY

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.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

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

Lake City College Preparatory Academy (LCCPA) Appellant,

V.

South Carolina Public Charter School District (SCPCSD) Respondent.

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The South Carolina Public Charter School District (SCPCSD) was created through the South Carolina Charter School Act (the Act) passed by the General Assembly entitled the South Carolina Charter School Act of 1996 in Section 59-40-220. The Lake City College Preparatory Academy (LCCPA) is a charter school created under that act in August 2009. The 2009-2010 school year was the planning year for the new school which admitted its first student in the 2010-2011 school year. The Act gave the SCPCSD Board authority to grant charters to applying schools and to revoke the charter of charter schools established under the Act under certain specified conditions. The LCCPA's school charter was revoked by the South Carolina Public Charter School District (SCPCSD or the District) in its decision issued May 8, 2014. The Act provided for the appeal of final decisions of the SCPCSD to the South Carolina Administrative Law Court (ALC). S. C. Code of Laws (1996), Section 59-40-90.

STATEMENTS OF ISSUES ON APPEAL

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

4. Was 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 by the LCCPA's charter by the SCPCSD's board was made by a legally constituted board. (South Carolina Code of Laws Annotated 1976) 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 when the revocation vote was taken immediately after the hearing with no review of the documents placed in the recorded?
7. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy?
8. Whether the South Carolina Public Charter School's District violated provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) 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; and
9. Whether LCCPA was granted a meaningful opportunity to remedy its problem in a way which would not unduly inhibited the autonomy granted to public charter schools?

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to S. C. Code Ann. §§ 59-40-10 et seq., the South Carolina Charter Schools Act of 1996 (“Act”).

a. The date of commencement of this action in this Court is May 15, 2014. This appeal was initiated under that act by the Lake City College Preparatory Academy by the filing of Notice of Appeal on that date. The appellant later filed an amended notice of appeal on June 16, 2014.

Rec ____.

b. The nature of this action is a request by the appellant for this court to review the actions of the appellee in revoking its charter.

c. The nature of the defense to the revocation is that the appellee had no valid statutory reason to revoke the charter of the appellant.

d. The date of the appellee’s decision to revoke the appellant’s charter is May 8, 2014 when the appellee voted to revoke the charter of LCCPA at the revocation hearing Rec. pg 0254, lns14-18.

e. The date of service of the Notice of Appeal on the appellee was May 15, 2014, Rec 0020, but at the urging of the appellee’s attorney an Amended Notice of Appeal was filed on May 27, 2014. Rec pg ____.

f. Prior to issuing its revocation order the appellee held a sham revocation hearing on May 8, 2014 where the appellee was not allowed sufficient time to present its case against revocation. The appellee’s chairman directed the appellant’s attorneys to not call witnesses but to put documents in the record for their review. However, the revocation vote was taken immediately closing arguments by the attorneys with no review of the documents put in the record. Rec pg 0254 lns 14-17.

FACTUAL AND PROCEDURAL BACKGROUND

Lake City College Prep Academy (LCCPA) was nearing its third year of teaching its students and making preparations to start its fourth school year on August 14, 2014 as a charter school in South Carolina under the auspices of the South Carolina Public Charter School District (District) at the time its charter was revoked. LCCPA first opened its doors to students on August 16, 2010 with the appellee as its sponsor.

Dr. Deloris Brown has been LCCPA headmaster since its inception. Dr. Deloris W. Brown, is married to Jerry Brown. She recently returned to Lake City, after traveling and reviewing teaching methodologies worldwide, to be closer to her parents, Henry and Queen Wallace. She is an Educational Consultant and Founder of Lake City College Preparatory Academy Incorporated, a public charter school. She holds a Doctorate degree from Fordham University in Education and Administration, a Master of Public Administration from Nova Southeastern University, a Master of Science in Education also from Fordham University, and a Bachelor of Arts in English Literature from the University of Miami.

Dr. Brown has over 20 years of experience in public and college level educational instruction. She has worked as a principal at the Elementary, Middle, and High School level for school districts in New York and South Carolina. Additionally, she has worked as a District level Director of Instructional Programs overseeing curriculum, instructional staff and managing a multi-million dollar federal grant program. She has been named the first female principals at several high profile public schools, including the internationally acclaimed Boys Choir Academy of Harlem.

Dr. Brown was the selected to be the first female principal of the renowned Boys Choir of Harlem School. LCCPA is patterned after that school which blends student's love of the arts to enhance the educational process. This school is unique in South Carolina.

However, after only one year following its opening the principal of LCCPA received a letter that the board of the SCPCSD had placed LCCPA on probation, Rec pg 2559, with conditions to improve its academic performance which was based upon the results of the state's standardized test under the NCLB Act and allegedly for the school's finances. Rec. pg 766 and 2559.

That probationary status was later changed to a revocation status based on 36 “factual allegations”, Rec 0003, of the appellee to which the appellant responds as follows:

1. The Appellant admits the allegations of paragraph 1 through 6.
2. As to the allegations of paragraph 7, the appellant admits that it received the July 27, 2011 letter after only its first year of operation. Rec pg 2559. However, there is no indication in that July 27, 2011 letter from the Superintendent of the SCPCSD, Dr. Wayne Brazzell, that the SCPCSD board had given the school any notice that it was considering such, as listed on any board agenda, of this probationary consideration.

LCCPA was only in operation for one year so there is no previous data to show whether or not the students had improved from the previous years they spent in the traditional public failing schools of Florence County. LCCPA was not even given a chance to succeed before this district so inappropriately labeled them a failure.

Also, there were no financial issues in reality. The lower than expected student enrollment was due to the normal start up associated with new schools and did not affect the financial status of the school. Rec pg 0146, lns 5-20.

Further, in regards to finances, Dr. Brown has made numerous communications with the district staff with regards to the erroneous information which initially lead to the finding of financial Probation. Rec pgs 2598 -2599, pgs 2602-2605, pg 2213.

Also, in the District’s letter dated on July 27, 2011, the district staff indicated that they had concerns that LCCPA was disqualified from the USDA school lunch program . That was simply inaccurate. LCCPA was never disqualified from the USDA school lunch program Rec pgs 2773 and 2598 lns 8 -17.

2. As to the allegations of paragraph 8, the appellant would show that LCCPA did in fact provide data from MAPs. MAPS was to be used as only one tool to assist the teachers in

Calhoun Falls Charter	Not Met	Not Met	Not Met	A	A
Provost Academy			Not Met	F	C
Fox Creek Charter High					D
Palmetto E Academy	Not Met	Not Met	Not Met	F	F

- Lake City also has a 100% graduation rate in comparison to the district's current 28% graduation rate.
- LCCPA feels that this data shows the discriminatory, arbitrary and capricious acts of the appellee district. How can schools with a 1.2% graduation rate or an 8% graduation rate remain open and another school serving noted at-risk students who outscored them not be given a chance to continue to improve.

**South Carolina Public Charter School District
Graduation Rate**

Name of School	2009	2010	2011	2012	2013	2014
District	16.60%	25.40%	15.50%	19.20%	28.10%	
SC Connections Academy	43.30%	31.60%	38.10%	34.50%	30.90%	
SC Virtual Charter School	1.20%	23.20%	7.40%	17.80%	24.00%	
Calhoun Falls Charter	80.00%	75.60%	79.20%	77.30%	84.00%	
Provost Academy	N/A	38.60%	8.10%	13.20%	23.30%	
Fox Creek Charter High	N/A	N/A	N/A	N/A	76.00%	
Palmetto E Academy	N/A	8.30%	18.80%	16.60%	16.60%	
SC Whitmore	N/A	N/A	N/A	10.90%	24.40%	
Insight School of SC	6.70%	N/A	N/A	N/A	N/A	N/A

5. As to the allegations of paragraph 10, the appellant admits that the district visited the

LCCPA campus.

6. As to the allegations of paragraph 11, the appellant would show that in regards to academics, LCCPA has welcomed, at the District's request, a consultant to assist them in enhancing the academic performance at the school. The District, asked that LCCPA get a consultant which LCCPA has been solely paying for the last three years as the appellee directed. In addition, LCCPA has hired a variety of consultants to assist the school by providing professional development in core content areas, and strategies on working with children in poverty. Additionally, we provide tutorial services, Saturday academies, and summer school. These programs are intended to improve academic excellence across the curriculum for our general population. This population includes 90% of students, who come from impoverish backgrounds. In most cases, they are many grade levels behind their peers when they enter the program as indicated by the following charter than again shows that the schools within Florence 3 are academically struggling. Additionally, the majority of our students come from ethnic groups that have been historically under served by the traditional public school system.

As a result of the steps taken by LCCPA the school was able to show marked improvement when compared to other district schools as demonstrated by the following district rating for the 2013-2014 school year.

Historically, the federal and state department of education has acknowledged the fact that children in poverty are in need of more funding than those who are not. For example, recently our Governor Nikkie Haley and the President of the United States have both indicated the impact of poverty on students. This reality of the impact of poverty on education has surfaced as a critical issue that the governor has personally decided to undertake. Additionally, state lawmakers have agreed with the governor by voting to approve her poverty legislation which

will give additional funding to assist children in poverty. This is a clear indication that the work undertaken by LCCPA has yielded exceptional results without having the funding that is needed for children in poverty. LCCPA has steadily improved from its 2010 start date to yield exceptional results this past year. The new charter school law would also classify our program as an Alternative Education Campus because most of our children hold the required qualification. **In the new law a school would not be closed unless the school failed three years in a row.**

Additionally, LCCPA has hired two expert Special Education consultants. One headed the Special Education Department for Sumter County School District and the other headed the Special Education Department in Williamsburg County. Those consultants believe that there is simple a misunderstanding not a noncompliance issue. Rec pg 0233, lns 15-18. LCCPA's experts feel that the IEP's were written correctly according to the child(ren) team. I again think we are looking at the district's preference and different writing styles not noncompliance issues. Special Education is Federal and State program. LCCPA has never received a citation from the US Department of Education or the State Department of Education stating that they were out of compliance. In addition to complying a plan LCCPA has contracted with a company recommended by the district to review each IEP to ensure that all IEP's are written according to the district's standards and preferences. This company has experience in the district's preferential writing style as it pertains to IEP's.

Further, in regards to special needs the law is clear the sponsor is responsible for special education. By their own testimony the District was out of compliance with the state and federal program in regards to special education and all of their schools were out of compliance. This demonstrates a systematic program. Our staff was not provided any technical assistance to the

sponsors expectation and were provided misleading and confessing information. Dr. Church, an expert in the charter school arena in South Carolina, reiterated that the sponsor is responsible to Special Education Services. Rec pg 0225, Ins1-2. However, Lake City has jumped over hoops to work with the sponsor. LCCPA hired an on-site special education coordinator and a distance special education coordinator to review IEPs. Rec pgs 0215, 0231.

Finally, the law does not provide for additional transportation or facilities for food preparation. However, during the second year the school received double the amount of funds it received the first year. Therefore, instructional staff actual received an increase not a decrease. Rec pg 0165, ln 7-14.

7. As to the allegations of paragraph 12, the appellant would show that as noted above, the district has been so inconsistent and non-supportive that school has had to make adjustments. However, the director of current on site special education coordinator and the director has made every attempt to make all correction. However, the law is clear the sponsor is responsible for special education services. Not one time did the district any indication of how it would assist the school in making any modification. Mrs. Davis also did not indicate whether or not the district/sponsor would provide the required training after the district's own non-compliance with the state/federal in regards to special education.

8. As to the allegations of paragraph 13, the appellant would show that LCCPA did submit a plan and they hired two additional staff members.

9. As to the allegations of paragraph 14, the appellant would show that the clear problem is that the district and the school have been on two different pages in regards to special education. The district is continually citing and mandating sanctions. But never once have they provided any technical assistance or guidance.

10. As to the allegations of paragraph 15, the appellant would show that this is again inaccurate. The two required consultants corrected and continued to correct the files based on limited feedback from the sponsor. The on-site consultant state that all files have been updated. The law again states that this is the only area that the sponsor is responsible for.

11. As to the allegations of paragraph 16, the appellant would show that LCCPA denies that it failed to cooperate with the appellee and would show that it cooperated with the district staff at every turn.

12. As to the allegations of paragraph 17, the appellant admits the same.

13. As to the allegations of paragraph 18, the appellant admits that it received the non-compliance letter but denies that it was out of compliance as the letter indicated.

14. As to the allegations of paragraph 19, the appellant would show that the sanctions were improper as they were contrary to the goals of the LCCPA. How could the district say that the lack of projected enrollment caused LCCPA financial problems while they sought to sanction LCCPA for remedying the shortfall by enrolling additional students.

12. As to the allegations of paragraph 20, the appellant would show that the qualifications of their teachers exceed the requirements of the South Carolina Charter School Act.

15. As to the allegations of paragraph 21, the appellant would show that the children were being taught skills they lacked to be able to bring them up to a level where they could be taught the course material.

16. As to the allegations of paragraph 22, the appellant would show that they complied with or attempted to comply with every requirement of the appellee. However, LCCPA would show that the district sent this letter as a part of a plan to restate the same false accusations to build its

case for revocation. The allegations being a repetition of its prior allegations which were already being addressed by LCCPA.

17. As to the allegations of paragraph 23, the appellant would show that all of the schools are out of compliance and that the special education requirements are district functions which the district wrongfully forces the schools to perform when they generally lack the staff to do so. Rec pg 0224, lns14-19.

18. As to the allegations of paragraph 24, the appellant would show that by letter dated September 30, 2013 the school principal, Dr. Deloris Brown addressed these issues. In this letter she stated that the vendor Have Faith Community Development came highly qualified and recommended by the district. She also states in this same letter that information regarding tutors receiving \$195.00 an hour for services are assumptions not facts. She states that the rates that are indicated above are based upon daily rates not hourly. The tutors worked 8 hours or more on Saturdays and teachers work 6-7 hours because they receive 1 hour for prep time. When the tutor's daily rate of \$195.00 is calculated, the hourly wage becomes \$24.37. Rec pg. 2604.

Further, the School's counsel, Mark Buyck, followed up, again with a letter on January 16, 2014. In his letter he states the following "The contract between Have Faith Community Development Corporation and Lake City College Preparatory Academy appears to be a normal contract. "There does not appear to be anything abnormal about the contract or the services rendered. **Background checks were performed and reviewed by LCCPA.** The letter further reiterates the following "In a previous report from the school on September 30, 2013, it was specifically noted that Have Faith Community Development has previously been approved to provide tutorial services and was recommended by the South Carolina Department of Education; due to the success of the tutorial services that were provided for Clarendon District Two. The

results were reported as being highly successful; *“having the greatest number of students with positive (academic) change*; and documented in the Findings on p. 48 of the SDE/21st CCLC Final Evaluation Report. Additionally the contract was submitted to our accountants as part of our annual audit.

The letter also stated that this same board who is questioning whether this group is now a janitorial services also approved this group for a charter to be operated as “Geneva's Star Preparatory Academy” and superintendent Wayne Brazel wrote and signed a letter welcoming the group to the district.

The other important fact is that the district is continually over stepping the LCCPA's board of director's autonomy to make decision. In both cases the board approved SATURDAY school and the daily rate of the principal and staff and they approved the use of Have Faith Community Development Corporation. The district is clearly trying to micromanage this program causing extreme harm and damage to the program.

In regards to refusing to provide financial records the letter from the School's counsel was clear and never refused anything but clearly asked the district to be more specific in what they wanted. Rec 2613.

17. As to the allegations of paragraph 25, the appellant would show that information is totally inaccurate. She stated that she was not their bookkeeper but hired them to do a service in which they went above and beyond what they were called on to do. The school reviewed all background checks of the tutors before they began services. However, because they were technically not school employees the school did not maintain personnel files on these subcontractors. They were employees of Have Faith. Again, this sponsor is overstepping it grounds and not allowing for the autonomy of the school.

19. As to the allegations of paragraph 26, the appellant would show that again, this sponsor overstepping its authority. It LCCPA's board duty to approve or question the principal's time sheet and it principal's duty to monitor the staff. The financial consultant Bill Moser states that all of LCCPA financial are in tactic and that they follow their financial plan as approved by LCCPA board of Director's.

20. As to the allegations of paragraph 27 through 32, the appellant would show that it admits the same.

21. As to the allegations of paragraph 33, the appellant would show that after careful consideration the school counsel felt that it was imperative that the person making the allegations, Dana Reed, the compliance director, be present at the revocation hearing for examination before the board as to her qualifications and to ascertain why her opinion on the IEPs were more valid than those experts hired by LCCPA. A deposition would not have allowed the school's counsel to properly cross examine her after all the other witness testified. We also feel that we could not effectively defend the school because of the absence of this key witness.

Further, Dr. Brazzle left the hearing early and could not be examined as to the qualifications of his compliance director. Rec.0228.

22. As to the allegations of paragraph 34 through 36 the appellant admits the same.

SUMMARY OF ARGUMENTS

The Appellant respectfully requests that this Court take judicial notice of the fact that a prior motion in this case has been heard by this Court and of the appellant's argument on the record in this case.

1. The Charter of the Lake City College Preparatory Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

2. The South Carolina Charter Act is unconstitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

3. The revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

4. The decision to revoke LCCPA's charter was arbitrary and capricious or characterizes by an abuse of discretion or a clearly unwarranted exercise of discretion;

5. The decision to revoke by the LCCPA's charter by the SCPCSD's board was not made by a legally constituted board (South Carolina Code of Laws Annotated 1976) and the SCPCSD board was not legally constituted at the Revocation Hearing;

6. The revocation hearing was a sham by a biased school board because the hearing officer refused to allow the attorneys for LCCPA to completely examine witnesses and directed the attorneys to put the proffered testimony in the record when the revocation vote was taken immediately after the hearing with no review of the documents placed in the record;

7. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy;

8. The South Carolina Public Charter School's District violated provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) 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. The LCCPA was not granted a meaningful opportunity to remedy its problem in a way which would not unduly inhibited the autonomy granted to public charter schools?

ARGUMENTS

I. The Charter of the Lake City College Preparatory Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) .

A. **Standard of Review.**

“S.C. Code Ann. § 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 procedure 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 specifically exempted.

In applying this scope of review, the reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005). This Court reviews the findings of the School Board to determine if its findings of fact or conclusions of law are based on substantial evidence contained in the whole record. The South Carolina Supreme Court in Porter v. South Carolina Public Service Commission, 333 S.C. 12, 20-21, 507 S.E.2d 328, 332 (1998) defined the substantial evidence standard of review:

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency’s action. Substantial evidence exists when, if the case were presented to a jury, the court

would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding.

The Supreme Court found "[t]his deferential standard of review does not mean, however, the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." *Id.* at 21, 507 S.E.2d at 332. Further, the agency "must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record." *Id.* "An administrative body must make findings, which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Id.* And if "material facts are in dispute, the administrative body must make specific, express findings of fact." *Id.*"

A final order by the State Board may be appealed to the ALC as provided in § 1-23-600(D) and (E) (as amended 2008). See § 59-40-90(D). The ALC has authority to review the final order of the State Board as an appeal under § 1-23-380(5), which provides for reversal only if its findings 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) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise or discretion.

B. Discussion of the Issue.

a. In items 37, 38 and 39 of its revocation order the appellee alleges that LCCPA violated all four prongs of S.C. Code Ann. § 59-40-110(C) which the district alleges in item 40 to be a material violation of the conditions, standards, or procedures provided for in the charter application.

As proof of the charter violation the appellee outlines in items 41 through 44

problems with the way LCCPA handled its obligations under the special education laws.

The district maintains that LCCPA has failed to properly handled the IEPs and other documents surrounding its special education students which number approximately 25% of the LCCPA student body. Further the district maintains that it has given LCCPA numerous opportunities to rectify the problem and LCCPA cannot or will not remedy the problem.

To those allegations LCCPA asserts that it has done the following:

- LCCPA has hired two expert Special Education consultants. One was over the Special Education Department for Sumter County School District and the other was over Special Education Department in Williamsburg County. Those individuals believe this is a simple misunderstand not a matter of noncompliance issue. LCCPA's experts feel that the IEP's were written correctly according to the child(ren) team. Special Education is Federal and State program. LCCPA has never received a sanction from the US Department of Education or the State Department of Education stating that they were out of compliance.
- In addition to compiling a corrective action, plan LCCPA has contracted with a company recommended by the DISTRICT to review each IEP to ensure that all IEP's are written according to the district's standards and preferences. This company has experience in the DISTRICT's preferential writing style as it pertains to IEP's.
- In regards to special needs students, the law is clear that the sponsor is responsible for special education students. By their own testimony the District was out of compliance with the state and federal program in regards to special education and all of their schools were out of compliance. Rec _____. This demonstrates a systematic problem. LCCPA 's staff was not provided any technical assistance by the sponsor appellee as to exactly what its reporting

expectations were. This resulted in the confusing state of affairs that LCCPA is now equipped and committed to rectify.

- Dr. Church, an expert in the charter school arena in South Carolina and the state's first chairman of the appellee district, reiterated that the sponsor is responsible to Special Education Services. Rec pg 0225, ln 1-2. However, Lake City has jumped over hoops to work with the sponsor. This is evidenced by LCCPA's hiring of an on-site special education coordinator and a distance special education coordinator to review IEPs. The current on site special education coordinator and the director have made every attempt to make all correction.

b. Further, in item 47 of its revocation order, the appellee asserts that due to LCCPA's non-compliance with special education laws, it barred LCCPA from enrolling further students.

However, the appellee previously cited LCCPA for financial issues arising from its failure to enroll as many students at it projected for its initial classes. Such a sanction would doom LCCPA to continued financial difficulties if LCCPA were to stop enrolling students while it was still has a short in its projected enrollment. This sanction placed LCCPA in a catch 22 situation. Further, not accepting all student that applied would violate the law.

c. In item 51 through 54 of its revocation order, the appellee asserts that LCCPA committed material violations related to education laws, including federal laws, requiring the use of highly qualified teachers.

However, the qualifications of the LCCPA teachers are in the record, Rec 0667, and clearly show that the faculty more than meets the qualification requirement required of them by the South Carolina Charter School Act, REC ____ and that of its charter. Rec

267-639.

d. In item 55 through 57 of its revocation order, the appellee asserts that LCCPA committed material violations by refusing to provide evidence to substantiate financial expenditures.

However, charter schools operate autonomously. Thus, the level of reporting between a charter school and its sponsor are only as agreed to by the parties in their charter agreement. Dr. Brazzle, the Superintendent of the appellee, has testified under oath that that is the case. (SCPCSD v. MLD ACADEMY, 2012-CP-__-____.).

Moreover, the appellant has not refused to give the appellee any information but protested the onerous nature of the request and request be more detailed and limited so the appellant could reply to the specific requests. Rec. pg 2402-pg 2404.

e. In item 58 through 62 of its revocation order, the appellee asserts that LCCPA committed material violations by failing to make reasonable progress towards its academic goals and objectives.

However, LCCPA is the only charter school that received a B grade on the latest AYP.

f. In item 63 through 65 of its revocation order, the appellee asserts that LCCPA committed material violations by failing to meet generally accepted fiscal management practices.

However, LCCPA's records are maintained by an outside accounting firm who reports their findings to the appellee. Rec pgs 204-214.

g. In item 66 through 67 of its revocation order, the appellee asserts that LCCPA

committed material violations by virtue of its conflicts policy involving its board members.

However, was faced with a situation where it needed to have graduation booklets printed for promptly. LCCPA knew that it was a conflict of interest for an active board member to provide the brochures on a paid basis so the board agreed to allow the board member to take a leave of absence to fulfill the school's needs. She only bought material.

LCCPA believed that it was acting in accordance with the requirements of the state's ethics law but apologizes for the error if what it did violates the state's ethics law and pledges to avoid such mistakes in the future.

Further, there is no doubt that LCCPA received great benefit for the amount of money paid for the work performed.

Summary of Argument

The seven (7) reasons the district proffered for revoking LCCPA's charter are that:

a. LCCPA did not handle its obligations under the special education laws correctly but LCCPA hired two of the best qualified people it could find in South Carolina to rectify the situation and those people assert that there is just a misunderstanding about the way the data was presented and not that LCCPA did properly maintain the IEP on the special education students; It is ironic that the district is seeking to revoke the charter of LCCPA when it has direct responsibility for the special education students of the virtual charter schools and all of the virtual schools are out of compliance with the special education requirements; Further, even if the IEPs were incorrectly done that is not a violation of the law as the appellee asserts. If submitting incorrect IEPs subjects one to

prosecution the district would be guilty of a crime as well,

b. it barred LCCPA from enrolling further students as a sanction short of revocation but LCCPA continued to enroll students because not continuing to enroll students would be a violation of its projected enrollment in its charter application and a violation of the law;

c. LCCPA committed material violations related to education laws, including federal laws and its charter, requiring the use of highly qualified teachers but the credentials of LCCPA's teachers are a matter of record, Rec 0667, and they are in fact highly qualified;

d. LCCPA committed material violations by refusing to provide evidence to substantiate financial expenditures when LCCPA did not refuse to provide the requested data but objected to the level of detail required in the request which would be unduly burdensome on personnel and so LCCPA requested that the data request be more specific;

e. LCCPA failed to make reasonable progress towards its academic goals and objectives when LCCPA in only its third year of operation outscored all of the schools in the surrounding school districts and LCCPA graduated 100 % of its senior class when no other district school did so;

f. LCCPA failed to meet generally accepted fiscal management practices when LCCPA's books are audited by the same outside accounting firm which audits many charter schools and who asserts that LCCPA is maintaining its books using generally accepted fiscal management practices;

g. LCCPA committed material violations by virtue of its conflicts policy involving its board members when LCCPA received full value for the monies it paid the board

member who took a leave of absence from the school board to avoid and conflict of interest in providing the service LCCPA so desperately needed.

h. The district targeted LCCPA for revocation after only one year of operation and provided LCCPA a hearing with the appearance of due process but not the reality of due process. The chairman of the district, Mr. McLaurin, and his superintendent, Dr. Wayne Brazzle, run the district in a dictatorial manner. Rec pg 143, lns 24-25, pg 0148, lns 9-10, pg 0170 lns 16-17. No matter what explanation or justification is given when disputes arise they are ignored. The chairman's attitude is that he has made up his mind and no justification suffices no matter how valid the justification.

II. The South Carolina Charter Act is unconstitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

A. Standard of Review.

A fundamental constitutional guarantee is that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard by a neutral and detached fact finder before the government acts to take away one's life, liberty or property.

The constitutional guarantees due process of law, found in the Fourteenth and Fifteenth to the U. S. Constitution, and corresponding parts of the South Carolina constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property without due process of law.

In the criminal context the right to a fair trial by an impartial jury is guaranteed in the Sixth Amendment of the U. S. Constitution.

It is fundamental to the American Scheme of Justice that conflicts are presided over and decided by **impartial judges and juries**. The law is rife with cases involving the right to trial of a criminal defendant by an impartial judge and jury. However, there is a distinct absence of case involving impartial judges and juries in a civil context. Yet, one would be hard pressed to find anyone who does not feel that all proceedings should be before an impartial judge and jury. Please see two articles addressing the issue for your review. The first article is a Wikipedia article on Judicial disqualification and the other is a Valparaiso University Law Review Article, Volume 28 Number 2, pp 543-561.

B. Discussion of the Issue.

The LCCPA was not afforded due process of law when the Respondent decided to revoke its charter. If the act creating charter schools in South Carolina is deemed constitutional or the Administrative Law Judge does not have the power to declare a statute unconstitutional this case should be reversed on the unfair application of that law in this case which resulted in the Appellant being afforded procedural due process in a sham proceeding. The judge in this case was Mr. Don McLaurin, the chairman of the board of the Respondent, South Carolina Public Charter School District and boss of the Superintendent of the school district, Mr. Wayne Brazzle. LCCPA was given procedural due process but was substantive due process.

The chairman of the Respondent, South Carolina Public Charter School District, to wit: Mr. Don McLaurin, orchestrated a campaign with the assistance of the district superintendent, Wayne Brazzle, to discredit LCCPA. Mr. McLaurin then presided over an unfair revocation hearing with a predetermined outcome where the board he chairs voted to revoke LCCPA's charter.

The South Carolina Public Charter School District was created by the General Assembly

in § 59-40-220 (A) of the South Carolina Code of Laws (1976).

That act provided:

That The South Carolina Public Charter School District must be governed by a board of trustees consisting of not more than eleven members, § 59-40-230 (A),

That The South Carolina Public Charter School District must be housed in the State Department of Education, § 59-40-220 (C),

That The South Carolina Public Charter School District Board of Trustees shall annually elect a chairman and other officers, as it considers necessary from among its membership. § 59-40-230 (C). That chairman, Mr. Don McLaurin, who has served as chairman since the 2008-2009 school year.

That The South Carolina Public Charter School District Board of Trustees shall have the power to hire and fire the superintendent of the district who may have staff as needed. § 59-40-230 (E)(12). The superintendent is now Dr. Wayne Brazzle. He was hired by and reports to superintendent Don McLaurin and/or the board he chairs. They are housed, when Mr. McLaurin is in Columbia, in the same building and work closely together on a regular basis.

That to become a charter school an applicant must successfully apply for charter school status with the Charter School Advisory Committee whose members are appointed by the State Board of Education, § 59-40-70.

That a charter must be revoked or not renewed by the **sponsor** if it determines that the charter school:

(1) committed a material violation of the conditions, standards, or procedure 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 specifically exempted. § 59-40-110 (C).MLD LCCPA

That the charter school may request a hearing on the revocation decision and the sponsor shall conduct a hearing before taking final action. § 59-40-110 (F).

The SCPCSD gave LCCPA a sham hearing and revoked LCCPA's charter on May 8, 2014 allegedly using all four (4) prongs for revocation above.

In this case, the close working relationship of the superintendent, Mr. Wayne Brazzle and his boss resulted in a collaborative effort to revoke the charter of the Appellant. The resulting effect in this case is that the sponsor of the Appellant, the South Carolina Public Charter School District (the District aka SCPCSD), the appellee herein, determined that it would not renew LCCPA's charter and the appellee served as both the prosecutor, and trier of fact at the revocation hearing on May 8, 2014. Rec 0025.

The case was prosecuted by Mr. Erik Norton and his associates as attorneys for the South Carolina Charter School District representing the superintendent Mr. Wayne Brazzle.

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

During breaks in the proceedings the Board, the superintendent and Mr. Erik Norton and his associates conferred in ex parte fashion without including the attorneys for the Appellant.

Rec _____. Case law provides that "To the extent LCCPA challenges the constitutionality of

the Act, an administrative law judge does not have the authority to declare a statute unconstitutional. Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) ("ALJs are an agency of the executive branch of government and must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation."). LCCPA challenges the constitutionality of the hearing procedures as applied to LCCPA's hearing and respectfully request that this issue be preserved for appeal.

The SCPCSD Board, lead by its chairman, Mr. Don McLaurin, is charged with conducting a hearing on the revocation issue and making a finding for or against revocation. However, that board, under the leadership of its chairman, Don McLaurin, are the very ones who are seeking to revoke the charter of LCCPA. The outcome of the hearing is predetermined. No matter what information was presented at the hearing they had had already made a decision and did not consider matters placed in the record. Rec 0254.

LCCPA is a school that has been under the auspices of the Respondent sponsor for only two and one half (2 /12) years at the time the revocation proceedings began. It has approximately 225 students and along with its faculty and staff. The administrators, staff, and parents are very enthusiastic in their support for the school. **The school was founded to take those students most at risk for dropout and change their direction so that they may graduate and become good productive citizens.** LCCPA's recent group of student graduates proves that they are accomplishing their goals.

However, Mr. McLaurin and the board measure their success heavily on the outcome of certain tests. LCCPA students come from such deprived home backgrounds that they are expected to test poorly in their initial years at the school. Rec pg 0222, ln 12-14.

Unlike so many other schools whose charter were under threat of non-renewal by the Respondent, LCCPA was on sound financial footing and paid all of its bills in a timely manner.

LCCPA has been in litigation for several months. That has taken valuable resources away from the school yet the school continues to thrive with the unqualified support of the parents whose children attend the school.

To discredit LCCPA with the community School District personnel published news releases continuously announcing their intent to revoke the charter of the school.

In order for there to be a fair hearing the judge has to be neutral. There was no pretense of neutrality by the chairman of the SCPCSD Board, Mr. Don McLaurin. During the breaks Mr. McLaurin consulted with the attorneys for the Appellee without the attorney for the Appellant being present. That is clearly prejudicial if not unethical.

It is so important that the record in the case be made before a neutral official because of the high threshold needed to overcome the decision below. We know that the law admonishes the reviewer that "In applying this scope of review, the reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." When the trier of fact is clearly biased as is the case here the process becomes inherently unfair.

This Court should therefore be able to hear the case anew with the full capability to determine the facts and not rely on the record below. This is especially true when the trier of fact constantly rushed the presentation of evidence in the making of the record and allowed only a few hours for defending accusations of such gravity.

Justice requires that this appeal not be limited to the record made below but a hearing De novo should be held before the Administrative Law Judge.

Mr. McLaurin, through his attorney, was involved at every stage and helped orchestrate the campaign against LCCPA. Mr. McLaurin was intimately involved in the revocation effort before the hearing before him.

III. The revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);

A. Standard of Review.

Section 59-40-110 (D) states, "At least sixty days before not reviewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action."

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature." ... "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning." Eagle Container v. County of Newberry, 336 S. C. 611, 622 S. E. 2d 733 (S. C. App. 2005).

A. Discussion of the Issue.

On March 19, 2014 the district informed the Board chairwoman of LCCPA that the district board voted to revoke the appellant's charter. Rec 1.

Thereafter, on March 26, 2014, the attorney for the appellant requested a revocation hearing. Rec 9.

The revocation hearing was held on May 8, 2014 and the district board voted immediately after the hearing, without reviewing any of the documents placed in the record by the appellant, to revoke the appellant's charter.

That final revocation decision, made that was made on May 8, 2014 and

communicated to the attendees at the hearing at that time, Rec 254, was followed up by a formal order of revocation on May 23, 2014. Rec 3.

Therefore, a total of 43 days elapsed between the Notice of Revocation letter on March 26, 2014 and the final vote to revoke which was taken on May 8, 2014. The revocation order clearly violates the letter and spirit of the law.

However, in an attempt to feign compliance with the charter school act, the appellee issued its formal revocation letter on May 23, 2014, Rec 3, which is still less than the 60 days mandated by the charter school act.

IV. The decision to revoke LCCPA 's charter was arbitrary and capricious or characterizes by an abuse of discretion or a clearly unwarranted exercise of discretion;

A. Standard of Review.

A final order by the State Board may be appealed to the ALC as provided in § 1-23-600(D) and (E) (as amended 2008). See § 59-40-90(D). The ALC has authority to review the final order of the State Board as an appeal under § 1-23-380(5), which provides for reversal only if its findings 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) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise or discretion.

The South Carolina Court of Appeals defined as arbitrary and capricious the act of officer Dyar Archibald when he designated the defendant's unsuccessful attempts to have the breathalyzer machine register her blood alcohol level after she blew in the machine for one minute and 53 seconds and the machine all the while issued a steady tone which normally

indicates that it was operating properly. Chisolm v. South Carolina Department of Motor Vehicles (Appellate case No. 2011-196890, filed March 27, 2013).

B. Discussion of the Issue.

In this case LCCPA did everything it was supposed to do in response to the district's letters of warning as outlined in the facts above. As a result of its efforts LCCPA went from two consecutive years of failing to being the only school to achieve a B rating in its third year of operation.

The new charter school act passed on June 14, 2014 states that a school's charter should not be revoked unless the school fails for three consecutive years. S. C. Code Annotated section 59-40-110 (c)

LCCPA has only been in existence for 3 years so it has not failed for three consecutive years.

LCCPA added additional highly qualified staff in the area of special education and IEP preparation. They ran the special education departments for Williamsburg County and Sumter County and were recommended by district staff.

The decision to revoke the charter of LCCPA was arbitrary and capricious because LCCPA, like the defendant in the Chisolm, case did everything it was supposed to do and its charter was still revoked.

Further, other schools similarly situated with worst performance records were not revoked. LCCPA's B average surpassed the test scores of other schools in the surrounding districts and those other schools sponsored by the appellee that were not revoked.

Section 59-40-20 provides that this chapter is enacted to:

- (1) improve student learning;
- (2) increase learning opportunities for students;

- (3) encourage the use of a variety of productive teaching methods;
- (4) establish new forms of accountability for schools;
- (5) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; and
- (6) assist South Carolina in reaching academic excellence.

Further, Section 59-40-30 provides that: (A) In authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system. The General Assembly seeks to create an atmosphere in South Carolina's public school systems where research and development in producing different learning opportunities are actively pursued and where classroom teachers are given the flexibility to innovate and the responsibility to be accountable. As such, **the provisions of this chapter should be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.**

(B) It is the intent of the General Assembly that creation of this chapter encourages cultural diversity, educational improvement, and academic excellence.

LCCPA has a highly educated and experienced principal who brought a vision to the education of students not generally available to South Carolina Students. It is patterned after the highly successful and renowned Harlem School of Arts. Its students and parents welcomed the opportunity for the students to explore their talents while learning core subjects common to all students in South Carolina.

The legislature was clear when it said that **the provisions of this chapter should be interpreted liberally to support the findings and goals of this chapter and to advance a re-**

newed commitment by the State of South Carolina to the mission, goals, and diversity of public education.

However, the appellee ignored this provision in its haste to revoke the charter of LCCPA. The appellee sought to hamper LCCPA at every turn instead of providing technical assistance when problems arose.

The decision the revoke LCCPA's charter was clearly a capricious act.

V. The decision to revoke by the LCCPA's charter by the SCPCSD's board was not made by a legally constituted board. (South Carolina Code of Laws Annotated 1976) and the SCPCSD board was not legally constituted at the Revocation Hearing;

A. Standard of Review.

The South Carolina Public Charter School District was created by the General Assembly in § 59-40-220 (A) of the South Carolina Code of Laws (1976).

That act provided:

That The South Carolina Public Charter School District must be governed by a board of trustees consisting of not more than nine members, § 59-40-230 (A), who are appointed as follows:

- (1) Two appointed by the Governor;
- (2) One appointed by the Speaker of the House of Representatives
- (3) appointed by the President Pro Tempore of the Senate; and
- (4) five appointed by the Governor upon the recommendation of the:
 - (a) South Carolina Association of School Administrators;
 - (b) South Carolina Chamber of Commerce;
 - (c) South Carolina Education Oversight Committee;

(d) South Carolina School Boards Association; and

(e) South Carolina Alliance of Black Educators.

A. Discussion of the Issue.

At the board meeting on March 13, 2014, when the decision was made to revoke the charter of LCCPA, there were only four board members of the six active members on the board present and the nine authorized by statute. Rec 2437. They were Linze Staley, Terrye Seckingen, Kathleen Bounds and Ron Epps. Thus, there were only less than 50% of the authorized member of the board present for the revocation vote. That did not constitute a quorum.

Likewise, at the board meeting and revocation hearing on May 8, 2012, when the final decision was made to revoke the charter of LCCPA, there were only three (3) board members present for the vote, Rec pg 0035 ln 25. They were Don McLaurin, Ms. Linze Staley and Ms. Betty Bagley. This constituted only 33 1/3 % of the authorized members of the board.

Of the three board members present at the revocation hearing only of the board members was present for both votes so only one of the board members heard the full story so the revocation decision was a sham.

Further, of the board had six active board members one, Reese Boyd, resigned the day before the revocation hearing so the district could claim that a majority of the board was present. There is no indication that that resignation has been accepted by the governor.

VI. The revocation hearing was a sham by a biased school board because the hearing officer refused to allow the attorneys for LCCPA to completely examine witnesses and directed the

attorneys to put the proffered testimony in the record when the revocation vote was taken immediately after the hearing with no review of the documents placed in the record;

A. **Standard of Review.**

Wikipedia, the free encyclopedia, defines Kangaroo Court as ‘a judicial tribunal or assembly that blatantly disregards recognized standards of law or justice, and often carries little or no standing in the territory in which it resides. Merriam-Webster defines it as “a mock court in which the principles of law and justice are disregarded or perverted”.’ It went on to state that “A kangaroo court is often held by a group or a community to **give the appearance of a fair and just trial, even though the verdict has in reality already been decided before the trial has begun.** Such *courts* typically take place in rural areas where legitimate law enforcement may be limited. **The term may also apply to a court held by a legitimate judicial authority who intentionally disregards the court’s legal or ethical obligations.**

B. **Discussion of the Issue.**

Here, there is no doubt that the appellee board is a legitimate judicial authority. However, a reading of the record as a whole reveals that the SCPCSD's Board is dominated by its chairman, to wit: Superintendent Don McLaurin. He rushed every speaker through their presentation, Rec pg 0181 ln 1-2, pg 0191 ln 14, pg 0216 ln22-23. Pg0218 ln 21-22, as if the hearing was a nuisance to him. It was a mere formality that would allow him to get to his predetermined outcome of revoking the LCCPA school charter. Rec pg 0027, lns 16-18. The entire hearing was a sham to reach Mr. McLaurin's predetermined outcome. The other board member other than Mr. McLaurin, participated in a limited manner at revocation hearing.

On March 26, 2014 the Superintendent of the SCPCSD, Dr. Don McLaurin, wrote a letter to the Executive Director of the LCCPA Academy informing her of the SCPCSD Board's

Decision to revoke the LCCPA Charter with a copy of the letter to the Chairman of the LCCPA Board, Ms. Queen Wallace. The letter gave less than 60 days' notice' of the revocation hearing which was held on May 8, 2014 and the board voted to revoke the charter of LCCPA. Rec pg 0025.

The attorney for the appellee wrote the attorney for the appellant that he would not be allowed to grant any continuances because his client would not allow him to because they wanted to fast tract the revocation.

The hearing was presided over by Mr. Don McLaurin who previously issued press notices of the pending closure of the appellant school.

At the start of the hearing the attorneys asked that the hearing be continued to allow the appellant adequate time to present its case but that request was denied. Rec pg 0034 lns 11-21.

The revocation hearing was held as an agenda item during a regular meeting of the appellee's board. Only about 3 hours were allowed for the appellant to refute all of the accusations of the appellee. Rec pg 0037 lns 11-12.

The presiding officer, Mr. Don McLaurin, acted as if the hearing was a distraction that had to be endured. Rec pg 0020 lns 16-18. / 190

2009-12 * Clearly, that was a sham hearing with a predetermined outcome. Mr. McLaurin even refused to hear from certain witnesses of the appellants. Rec ____ 190 ^{or rushed witness} line 22-25 191-1-10 226-22-28

VII. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Lake City College Preparatory Academy;

A1. Renewal of Charter - Standard of Review.

Section 59-40-110 of the Charter School Act states, "A charter must be approved or

renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section.”.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” ... “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Eagle Container v. County of Newberry, 336 S. C. 611, 622 S. E. 2d 733 (S. C. App. 2005).

A1. Renewal of Charter - Discussion of the Issue.

The Charter School Act requires a sponsor to grant a charter school a full 10 years charter. There is no provision in the law for any charter of lesser duration.

A2. Annual Evaluation - Standard of Review.

Section 59-40-110 states, “... The sponsor annually shall evaluate the conditions outlined in subsection (C). The evaluation results **must** be used in making a determination for nonrenewal or revocation.”.

A2. Annual Evaluation - Discussion of the Issue.

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

VIII. The South Carolina Public Charter School’s District violated provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) 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;

A. Standard of Review.

Under Section 59-40-40 (4) "Sponsor" means the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is located, as provided by law, a public institution of higher learning as defined in Section 59-103-5, or an independent institution of higher learning as defined in Section 59-113-50, from which the charter school applicant requested its charter and which granted approval for the charter school's existence. ... The sponsor of a charter school is the charter school's Local Education Agency (LEA) and a charter school is a charter school within that LEA. **The sponsor retains responsibility for special education and shall ensure that students enrolled in its charter schools are served in a manner consistent with LEA obligations under applicable federal, state and local law.**

B. Discussion of the Issue.

LCCPA disagrees with the assertion by the appellee that its IEPs on its special education students are non-compliant. The determination of non-compliance was made by the district's compliance director. Yet, her determination of non-compliance is at odds with the two special education experts LCCPA hired to correct the alleged non-compliance. Rec 2805-7806, 1807

The LCCPA hires have over 50 experience in preparing IEPs for their prior school districts. Rec 2805, line 6 | 1807

However, even if LCCPA's IEPs were non-compliant it is the role of the sponsor to help them overcome their difficulties. There is a reason that the term sponsor was chosen in South Carolina instead of such other terms as authorizer, etc. that were considered according to Dr. Church. Rec. pg 0224. Sponsor connotes a more helpful mentoring role.

The act further contemplates that the sponsor shall take direct responsibility for special

education. It is ironic that the district did retain responsibility for the special education students at the virtual charter school when those schools are all out of compliance and no one is seeking to revoke the appellee's charter or demanding the resignation of its director. Yet, the appellee seeks to shut down a highly achieving school largely best of the IEPs of the special educations.

IX. The LCCPA was not granted a meaningful opportunity to remedy its problem in a way which would not unduly inhibited the autonomy granted to public charter schools?

A. **Standard of Review.**

SECTION 59-40-55. Sponsor powers; states:

(A) A charter school sponsor shall:

(3) negotiate **and execute sound charter contracts** with each approved charter school;

(4) monitor, **in accordance with charter contract terms**, the performance and legal/fiscal compliance of charter schools to include collecting and analyzing data to support ongoing evaluation according to the charter contract;

(5) **conduct or require oversight activities** that enable the sponsor to fulfill its responsibilities outlined in this chapter, including conducting appropriate inquiries and investigations, only if those activities are **consistent with the intent of this chapter, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools**;

(7) notify the charter school of perceived problems if its performance or legal compliance appears to be unsatisfactory and **provide reasonable opportunity for the school to remedy the problem**, unless the problem warrants revocation and revocation timeframes apply;

(8) take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in charter school performance or legal compliance. These actions or

sanctions may include requiring a school to develop and execute a corrective action plan within a specified timeframe;

B. Discussion of the Issue.

The statute is clear that the district LCCPA must **provide reasonable opportunity for the school to remedy the problem**, unless the problem warrants revocation and revocation timeframes apply;

LCCPA was not given a reasonable opportunity to remedy its problems. LCCPA developed a corrective action plan. Rec 1738, Line 23. The plan called for the hiring of two highly qualified individuals to correct the shortcoming. Those individuals were hired and to this day maintain that the LCCPA IEPs for the special education students and all students were done correctly. The truth can be ascertained from the documents. However, the district categorically rejects LCCPA's request to sit down with district personnel and discuss the differences in the IEPs.

Section (5) above mandates that the district as the sponsor conduct or require oversight activities that enable the sponsor to fulfill its responsibilities outlined in this chapter, including conducting appropriate inquiries and investigations, **only if those activities are consistent with the intent of this chapter, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to public charter schools;**

The appellee clearly sought to inhibit the autonomy of LCCPA when it requested a level of reporting which LCCPA found to be oppressive and interfered with its ability to educate its students.

CONCLUSION

The appellant respectfully requests that this overturn the appellee's order revoking the charter of the appellant charter school. The Lake City College Preparatory Academy opened its doors on

August 10, 2014 and achieved a B on the AYP by the end of its third year of existence. It is succeeding in its mission of educating the children of Florence County. It is out performing the brick and mortar as well as the charter schools in its area. If there are problems with its IEPs for special education, which LCCPA denies, it can be corrected without destroying the school that is doing so well.

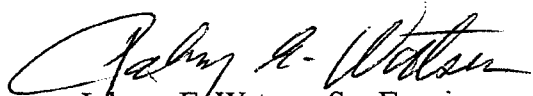
That LCCPA was founded to give at risk young men and young women a chance to succeed where the traditional school system has failed them.

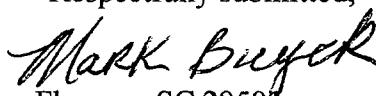
LCCPA has shown that it:

- (1) has committed a **no** material violation of the conditions, standards, or procedure provided for in the charter application;
- (2) **did not fail** to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) has always used an outside accounting firm to ensure that its accounting practices meet generally accepted standards of fiscal management; and
- (4) violated **no** provision of law from which the charter school was specifically exempted.

Also, this Court should reverse the District decision to revoke the charter of LCCPA's Academy because:

1. The District failed to hold the revocation hearing within the time frame outlined in the Charter School Act. LCCPA's was not given 60 days as the law requires before the district took action to revoke LCCPA's charter in contravention of the statute,
2. The revocation hearing was a sham proceeding with a predetermined outcome,
3. None of the reasons put forth for the revocation meet the requirements of the Charter School Act,
4. There was no neutral judge of the facts since the district acted as both the accused and the judge.


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Respectfully submitted,

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August 11, 2014
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

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

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

V.

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

CERTIFICATE OF SERVICE

I, Johnny E. Watson, Attorney for the Appellant, LCCPA charter school, hereby certify that I have served the individuals named below with a copy of the document described herein by delivering it to their respective offices by U. S. Mail postage prepaid or via hand delivery to their office addresses indicated below.

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DOCUMENTS: Brief of the Appellant and Volume VII of the Record on Appeal
DATE SERVED: August 11, 2014

Johnny, Document Server

Columbia, South Carolina
Date: August 11, 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

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

Lake City College Preparatory Academy (LCCPA) Appellant,

V.

South Carolina Public Charter School District (SCPCSD) Respondent.

REPLY BRIEF OF APPELLANT

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AUG 29 2014

SC ADMIN. LAW COURT

ROA 2956

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TABLE OF AUTHORITIES

No new authorities are cited.

REPLY TO ARGUMENTS OF THE APPELLEE

The Appellee makes unsubstantiated allegations as both the accuser and finder of fact and there is no amount of evidence to the contrary that would dissuade it. There is no independent and neutral fact finder of fact to hear the allegations, listen to the evidence from both sides and make an unbiased determination as to the reality of the situation. The biased appellee board chairman allowed only a few hours during a scheduled board meeting and made witnesses available as he pleased during the course of the hearing. He dictated when witnesses had to be called or did not allow those witnesses to be called at all. (ROA. pg .190-191 Lns.25, 1 thru 14, pgs. 216 Lns.18-25, pgs. 204 Lns. 1-22, 228, 7-22)

I. LCCPA's Charter was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

In this section the District merely states the law. LCCPA agrees with the law as stated but denies that the District met any of the requirements to revoke its charter.

A. LCCPA did not Commit any Material Violations of the Conditions, Standards or Procedures Provided in the Charter Application.

The allegations in the Final Decision are refuted in detail in the Appellant's Brief. Those responses fell on deaf ears. This Court needs to make its own findings of fact because the fact finder was not neutral and detached.

I(small i). LCCPA did not fail to comply with Special Education Laws.

The appellee cites its conclusions in paragraphs 39 – 50 of its Final Decision as if its conclusions were facts. However, the appellant has answered the factual allegations of the Final Decision on an item by item basis in the Appellant's Brief. All of the district's students had IEPs done. ROA pg 0104, lns 8-10. The district's expert further indicated that the State Board of Education has never sanctioned

LCCPA for noncompliance; ROA pg 0111 lns 4-7; nor has the U. S. Department of Education, ROA pg 0111 lns 8-11. Further, as indicated, LCCPA hired two highly qualified experts to address any shortcomings with its IEPs. ROA 1737-1740, 1807-1811, 2805-2806. Page 9 of appellee's brief is informative. When Mr. Norton questioned one of the experts, Ms. Albertha Banister, the testimony he quoted clearly demonstrate that LCCPA was successfully tackling the perceived IEP problem. Appellee's Brief pr. 9.

ii. LCCPA has not Failed to Comply with Other Laws and Regulations, as it Agreed to Do in its Charter.

The appellee cites (R. 493, ¶ 3(a); 635 ¶ C; and 641 ¶ 2.5) as other instances of other laws or regulations that LCCPA failed to comply with. Those sections assert that LCCPA did not employ highly qualified teachers. However, a complete list of LCCPA's teachers and teaching assistants are provided in the record. ROApg. 2765. The appellee provided no evidence in the record to refute Dr. Brown's assertion that those teachers are highly qualified. As the accusers it is incumbent on the district to put forth evidence that LCCPA teachers are not highly qualified. They have not done so. The act provides that LCCPA may," in its discretion, hire noncertified teaches in a ratio of up to twenty-five percent of its entire teacher staff". 59-40-50 (B) (5). LCCPA's teachers exceed those requirements.

Further, the qualifications of Albertha Banister, one of the special education hires in response to the appellee's deficiency claims, is documented in the record. ROA pgs 2768 – 2771.

iii. LCCPA did not Breach the Charter, the Contract or the Act and did Not Refuse to Provide Evidence to Substantiate Financial Expenditures and Background Checks of Tutors Working with LCCPA Students on a Daily Basis.

First, the district expressly agreed that LCCPA could put its hearing notebook in the record to save time at the revocation hearing. ROA 0189 5-10. That notebook is Volume VII of the Record on

Appeal. The appellee states that the background check information is contained therein in its brief. Further, the Have Faith group has been approved for its own charter by the appellee so they could go directly to the Have Faith organization to document its employees' background.

As to the alleged failure to provide financial information, LCCPA's attorney, Mark Buyck, addressed the allegation at the hearing, ROA pg 39 Lns 11-19; pg 41 Lns 1-23, and previously in a letter to the district in which he questioned the extraordinary level of detail requested of the school which no other school, charter or traditional, is required to provide. ROA 2612-2614,. LCCPA therefore **did respond** as agreed to do in the charter agreement. The agreement only required LCCPA to respond and it did. Rec 645. LCCPA's finances are audited by an outside accounting firm and those audits have been provided as required. Those records allow the district to comply with its oversight responsibilities set forth in the Charter School Act. ROA 0641, section 2.3.

B. LCCPA did not Fail to Meet or Make reasonable Progress Towards its Academic Goals and Objectives, as Defined in its Charter.

The achievements of LCCPA in taking its students from failing to achieving a "B", in the state's assessment tests in only its third year of operation, has been document. While serving 90% free and reduced lunch students, ROA 2789, LCCPA students:

1. Were National History contest winners, ROA 2790,
2. Had a 100% graduation rate, ROA 2780, and
3. Won Palmetto Gold and Silver awards for being in the top 5% of schools in the state, ROA 2782,

Those results demonstrates that LCCPA is achieving academic excellence during its short existence.

The appellee admits, in its brief, that LCCPA's the achievements LCCPA occurred in only 3 years. If left alone without taking valuable time from its staff due to this litigation LCCPA could achieve even more.

C. LCCPA did not Fail to Meet Generally Accepted Fiscal Management Practices.

The assertion that LCCPA did not meet generally accepted fiscal management practices is patently absurd. The only accountant at the revocation hearing, Moser-Kelly, who set up LCCPA's accounting system and serves as the chief financial manager for some 24 charter school demonstrates the absurdity of the assertion. To say that LCCPA would not give in to onerous demands for detail that no other school is required to give or that it did not provide background information on tutors has nothing to do with accepted fiscal management practices.

D. LCCPA did not Fail to Comply with State and Federal Laws and Regulations.

The appellee does not document and failure to comply with state or federal regulations but merely attempts to restate previous allegations which have been addressed, especially those related to the special education students. LCCPA had a higher ratio of special education than the other schools and therefore had more IEPs to do involving special education students than the other schools. Figures varied from 2 to 14 to 16 IEPs that were not done for some 200 plus students. No effort was made to determine when those students arrived at LCCPA or if they had IEPs done at their previous schools

II. The Issue of the Constitutionality of the Charter School Act Provision, Which Allows the Appellee to be Both the Accuser and Judge at the Revocation Hearing was Timely Preserved for Appeal Beyond This Court.

LCCPA properly raised this issue before this Court so it can be preserved as an issue for appeal at the next level where the Court addressing any appeal in this matter would have authority to rule on the issue. Further, LCCPA asserts that if the statute is constitutional in allowing the appellee to be both the accuser and trier of fact, its due process was violated in the application in this case where the actions of the SCPCSD board and the administrator are one and the same.

Further, LCCPA reserves the issue of the whether the new act which cut off its fund during the

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appeal is merely ministerial when to do so effectively closes the school.

III. The Revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act Section 59-40-110(D)(1976).

It is established law that statutes are to be strictly construed. LCCPA therefore stands by its argument in its brief. The final action of the district occurred at the revocation hearing on May 8, 2014 in violation of the statute.

IV. The District's Decision to Revoke LCCPA's Charter was Arbitrary, Capricious, and Characterizes by Abuse of Discretion or a Clearly Unwarranted Exercise of Discretion.

As noted in appellant's brief, there are some schools that have failed for at least three consecutive years which still have not been revoked. The decision to revoke LCCPA's charter after only two failing years was clearly without any "adequate determining principle". It was thus arbitrary and capricious at best or racist. All three of the charter schools that have been revoked by the district are predominantly black schools headed by black females. The district asserts that it did revoke one other school that was not predominately black. That school was the Palmetto E Academy. However, that school was not revoked but was instead it was not renewed after failing for five consecutive years. The Palmetto E Academy failed for five consecutive years. Seven other district schools and the district school failed for three or more years and they are still operating (ROA 2693).

Further, the statement by the district that "comparing schools based on just accountability data is almost entirely meaningless in the context of a revocation proceeding" is patently ridiculous when the whole the district prides itself on holding schools accountable. This Court should take judicial notice of the fact that the district has issued numerous press releases touting its duty to hold schools accountable.

V. The Decision to Revoke school LCCPA's Charter by the SCPCSD's Board was not Made by a Legally Constituted Board as Authorized by Statute and the SCPCSD's Board was Not Legally Constituted at the Revocation Hearing?

The Legislature, in its wisdom, specified where the members of the board must come from. Those sources assured that the black community had at least one representative on the board . At the revocation hearing there was no black representation on the board if a valid quorum existed. There is no doubt that the legislature sought to prevent the very situation that occurred here. Only black charter schools are revoked by an all white board with only three members in attendance and only one person heard all of the arguments. If there is no actual racism involved the appearance of racism is equally bad.

VI. The Act's Hearing Procedure is Not a "Kangaroo Court" but the District's Applied that Procedure in the Manner of a "Kangaroo Court".

LCCPA stands by its assertion that the hearing was a sham with a predetermined outcome. There is only one charter school district chaired by Mr. Don McLaurin with one superintendent, Dr. Wayne Brazzle. They sat together at the hearing so there was not even the pretence of neutrality by Mr. McLaurin. Their working relationship is extremely close. Mr. McLaurin sought to determine how LCCPA presented its case. In a matter of such importance as the revocation of a school's charter he could not make his employees available but allowed Dr. Brazzle to leave or not be present at all. Mr. McLaurin dictated that Dr. Brazzle had to be called out of the order in which LCCPA's attorneys sought to call him or not be called at all.

Likewise, the pereson who wrote all of the letters that drove the revocation process, Ms. Dana Reed, was not made available at the hearing.

VII. The District's District Acted in Accordance with the Letter of the Law but Not the Spirit of The Law in Making the Revocation Decision.

There was no annual evaluation done as required by the Charter School Act. The school year had not even ended. This is a blatant violation of the act which requires that the annual evaluation be used as a basis for any revocation. LCCPA's audits were clean so if the audits were used as a basis for the revocation the revocation was clearly wrongful.

VIII. LCCPA Took Extraordinary Steps to Comply with The Special Education Laws and a Valid Difference of Opinion Exist as to the Results of the Steps Taken to Comply with the Special Education Laws.

LCCPA was cited as having problems with the IEPs of some special education students. LCCPA made an extraordinary effort to resolve the problems. LCCPA's hired experts disagreed with the assertion the the IEPs were not done correctly. Even if they were not perfect LCCPA had personnel in place and was addressing the perceived prblems. This is the sole reason for the revocation in the opinion of one of the board members. However, even the district had problems with the IEPs of its virtual school students.

IX. LCCPA Made an Effective effort to Remedy its Problem but Those Efforts Were Ignored By the Appellee Because It Had Made up Its Mind To Revoke LCCPA's Charter.

When LCCPA was asked to develop a plan to correct the problems identified by the district. LCCPA devised a plan which was approved by the district. ROA 2633-2639. LCCPA was actively executing the plan. However, LCCPA was not given time for its efforts to come to fruition before being revoked.

CONCLUSION

Under the newly passed modifications to the Charter School Act no school is to be revoked until the school has had three consecutive years of failing. LCCPA in its first three years went from failing to a B on the annual report card That provision should be applied to LCCPA as the district applied the new provision regarding the cuttig off of funds to LCCPA.

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

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

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

V.

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

CERTIFICATE OF SERVICE

I, Johnny E. Watson, Attorney for the Appellant, LCCPA charter school, hereby certify that I have served the individuals named below with a copy of the document described herein by delivering it to their respective offices by U. S. Mail postage prepaid or via hand delivery to their office addresses indicated below.

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DOCUMENTS: Reply Brief of the Appellant

DATE SERVED: August 29, 2014


Johnny Watson, Esquire, Document Server

Columbia, South Carolina

Date: August 28, 2014

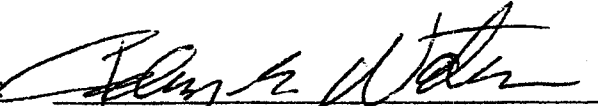
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AUG 29 2014

SC ADMIN. LAW COURT

ROA 2965

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Main Counsel for Respondent

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lake City College Preparatory Academy,	)	Docket No. 14-ALJ-30-0256-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	NOTICE OF MOTION HEARING
South Carolina Public School District,	)	(by Telephone Conference)
	)	
Respondent.	)	
	)	

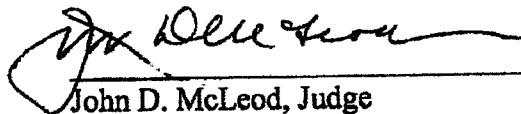
This appeal is proceeding on an expedited briefing schedule.

As a result of Appellant's failure to comply with the Court's verbal request to annotate Appellant's Brief, Respondent has filed a motion seeking dismissal or, in the alternative, a corrected brief and amended briefing schedule.¹

THEREFORE, IT IS ORDERED that the motion before the undersigned Administrative Law Judge is scheduled to begin at 1:00 p.m. on Tuesday, August 19, 2014, by telephone conference call. Any written reply to the motion shall be served and filed by 5:00 p.m. on Monday, August 18, 2014.

AND IT IS SO ORDERED.

August 14, 2014
Columbia, SC



John D. McLeod, Judge
S.C. Administrative Law Court

FILED

AUG 14 2014

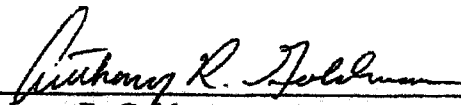
SC ADMIN. LAW COURT

¹ SCALC Rule 3(B) allows the Court to expand or shorten time for good cause, as is the case here.

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 14, 2014
Columbia, SC



Anthony R. Goldman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lake City College Preparatory Academy	)	Civil Action No. 14-ALJ-30-0256-AP
(LCCPA),	)	
	)	
	)	
Appellant,	)	
	)	
vs.	)	<u>MOTION TO DISMISS APPEAL OR,</u>
	)	<u>IN THE ALTERNATIVE, REQUIRE A</u>
	)	<u>CORRECTED BRIEF BY</u>
South Carolina Public Charter School	)	<u>APPELLANT</u>
District,	)	
	)	
Respondent.	)	

Pursuant to Administrative Law Court Rule 38, Respondent South Carolina Public Charter School District ("District" or "Respondent") hereby moves for an Order dismissing the appeal of Lake City College Preparatory Academy ("School" or "Appellant"). In the alternative, the District seeks an Order requiring School to file a corrected brief within a specified time, and adjust the District's briefing schedule accordingly. The basis for this Motion is set forth below.

By Order dated August 5, 2014, this Court established an expedited briefing schedule for this matter. The Order specifically required that all briefs be served by hand delivery, and required School's brief to be filed and served by August 11, 2014. Despite the clear language of the Order, the School's brief was not served by hand on August 11. Instead, it was received by the undersigned on August 12 by regular mail. The Certificate of Service is not signed at all. Even a cursory review of the School's brief reveals that it fails to meet the requirements of Administrative Law Court Rule 37 and the explicit instructions of this Court.

First, Administrative Law Court Rule 37(A) states that "principal briefs shall not exceed thirty (30) pages." The School's brief is 46 pages, far exceeding what is permitted by Rule 37(A).

Second, by email dated August 7, 2014, Judge McLeod requested that "any assertion of fact set forth in your briefs should be annotated with the page and line reference to the record on appeal." While the brief does contain some citations to the Record, it is replete with assertions of fact with no citation to the Record at all. For example, the first two bullet points on page 19 of School's brief contain absolutely no citation to the Record and, in fact, appears to contain information outside the Record. The last bullet point on page 19 contains a citation to the Record with no page number filled in. These are not isolated instances: the brief is filled with factual assertions with no citations to the Record. Without proper citations, the District is left guessing as to what School is referring to as support for its factual assertions and is severely prejudiced in its ability to respond.

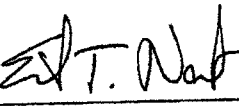
Third, the brief contains multiple citations to information that is clearly outside the Record. For example, on Page 21, the School cites to testimony of Dr. Wayne Brazzel, District Superintendent, from another case entirely and which was not included even in the School's supplement to the Record.¹ It further contains factual assertions that are patently untrue and unsupported by the Record. For example, School's brief asserts on page 27, without any citation to the Record or any other evidence, that the undersigned communicated *ex parte* with members of the District's board during breaks in the hearing. The undersigned represents to this Court that no such *ex parte* communication occurred, and the brief contains

¹ District reminds the Court that it agreed to allow School to submit this supplement to the Record, but maintains its position that large portions of this supplement were never properly introduced as evidence and the District cannot verify whether the information submitted by School was ever provided to the Court Reporter.

absolutely no support for this baseless allegation which was never even raised at the hearing or prior to School's brief.

Therefore, District requests that the Court dismiss School's brief for failure to comply with this Court's Rule and express instructions. In the alternative, District requests that this Court issue an Order requiring School to submit a corrected brief fully complying with this Court's Rules, Orders and other instructions within a specified time, and that the expedited schedule be adjusted accordingly.

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By: 

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Attorneys for South Carolina Public Charter School District

Columbia, South Carolina
August 13, 2014.

CERTIFICATE 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):

Motion to Dismiss Appeal or in the Alternative, Require a Corrected Brief by Appellant

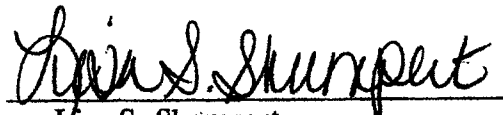
Counsel Served:

VIA EMAIL AND HAND DELIVERY

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Lisa S. Shumpert

August 13, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lake City College Preparatory Academy	)	Civil Action No. 14-ALJ-30-0256-AP
(LCCPA),	)	
	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Public Charter School	)	<u>DISTRICT'S REPLY TO LCCPA'S</u>
District,	)	<u>MEMO IN OPPOSITION TO MOTION</u>
	)	<u>TO ENFORCE FINAL DECISION AND</u>
	)	<u>FOR EXPEDITED SCHEDULE</u>
Respondent.	)	

Respondent South Carolina Public Charter School District ("District") hereby timely responds to Lake City College Preparatory Academy's ("LCCPA's") Return to District's Motion to Enforce Final Decision of District During Pendency of Proceeding and For Expedited Schedule. For the reasons set forth below, the District's Motion should be granted.

I. LCCPA's Return Was Untimely.

As an initial matter, LCCPA's Return should be stricken. The District's Motion was filed on June 30, 2014, and served on the same day. LCCPA's Return was filed on July 18, 2014, several days after it was due under Rule 37, even accounting for mailing days. As a result, this Court should not consider it and the Motion should be granted.

II. Procedural Amendments Such As The Amendment To The Charter School Act Eliminating The Automatic Stay Apply To Pending Actions.

Section 59-40-110(J) of the amended Charter School Act ("Amended Act") requires that the District implement the Final Decision while this appeal is pending unless LCCPA can show that enforcement of the Final Decision will create an undue hardship. LCCPA wrongly argues, without any citation to authority, that Section 59-40-110(J) of the Amended Act should

not apply because it was made effective after the Final Decision and LCCPA filed its Notice of Appeal. However, procedural amendments such as the one at issue apply to pending actions. "[W]hen a statute is procedural, it ordinarily will be accorded a retroactive application in the sense that it will be applied to pending actions and proceedings." *State v. Davis*, 309 S.C. 326, 334, 422 S.E.2d 133, 139 (1992) *overruled by Brightman v. State*, 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"). The Amended Act's provisions regarding whether an action is stayed pending appeal to this Court is procedural in nature. Therefore, it applies to this pending action under well-established precedent.

III. The Amended Act Governs Rather Than Rule 34 Of The Administrative Law Court Rules.

LCCPA also appears to argue, without expressly saying so, that Rule 34 of the Administrative Law Court supersedes the Legislature's specific enactment of the Amended Act. However, this argument is not correct because the rules of statutory construction mandate that specific statutes take precedence over more general statutes. *I'on LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 528 S.E.2d 716, 719 (2000). Further, more recent enactments take priority over previous enactments. *Id.* It is also well-established that the primary rule of construction is to give effect to the intent of the Legislature. *Howell v. United States Fidelity and Guar. Ins. Co.*, 370 S.C. 505, 636 S.E.2d 626 (S.C. 2006).

In this case, the Legislature generally provides this Court the authority to promulgate its own Rules. *See* S.C. Code Ann. § 1-23-650. However, the Legislature has now *specifically* provided in the Amended Act that the decision to revoke or not renew charter

schools are not to be automatically stayed upon appeal. *See* S.C. Code Ann. § 59-40-110(J).

Given that the Legislature passed this Amendment while these cases were pending and with the knowledge of this Court's Rules to the contrary, the Legislature unambiguously intends for this Court *not* to automatically stay decisions by the District's Board of Trustees to revoke charters. Therefore, the Amended Act rather than Rule 34 should govern whether a stay should apply in this case.

IV. LCCPA Has Offered No Evidence To Support A Claim That Enforcing The Final Decision Would Result In Undue Hardship.¹

The Amended Act does permit a school whose charter has been revoked to ask this Court to lift the stay if no "undue hardship" exists. *See* S.C. Code Ann. § 59-40-110(J). LCCPA essentially makes this request in its Return, though it does not offer anything but lawyer argument without any supporting evidence or citations to the Record. However, no undue hardship exists in this case.

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.

¹ To the extent the Court determines Rule 34 applies, the District contends that good cause exists to lift the stay for the reasons set forth in this section. *See Heath Hill v. SC DHEC*, 08-ALJ-07-0183-CC (defining good cause and lifting automatic stay).

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.² 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. Specifically, at page two of the Return, without offering any evidence to support the claims, LCCPA argues that students have purchased school uniforms and rising seniors have made "senior plans." Similarly, it also argues without any supporting evidence that the school has offered new teacher contracts, renewed its lease, hired new staff and begun in-service training. Any school who elects to appeal the District board's decision and seek a stay would almost certainly find itself in the same situation. The Legislature certainly is aware of the automatic stay provisions in the ALC Rules, and specifically chose to amend the Charter School Act to provide that staying the Final Decision should be the exception and not the rule.

Indeed, the Amended Act contemplates that the students, parents, faculty and staff of a school whose charter was revoked typically would have sufficient time to make arrangements for the upcoming year as long as a final decision is rendered by the end of the following school year. See S.C. Code Ann. § 59-40-110(B) (requiring submission of renewal application 120

² The merits of the underlying appeal should not affect the decision as to whether a stay applies. Further, while the decision as to the merits of the revocation should be limited to the Record in accordance with Rule 36(G), no such limitation should apply to the determination of whether the matter should be stayed upon appeal.

days prior to the end of the school year for the charter term; *see also* S.C. Code Ann. § 59-40-110(F)(Prior Version Effective May 2012) (requiring decision to not renew charter by end of school year in which the charter expires).

In this case, 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). Further, LCCPA has had a great deal of notice to prepare for this circumstance. On December 4, 2013, it was issued a Notice of Default informing it that it was in default under its charter and contract, issuing sanctions short of revocation and permitting LCCPA time to issue a plan to cure these defaults. (R. 798 – 804.) After tabling discussion of LCCPA's response to the Notice of Default for its February 6, 2014 board meeting, the District's board of trustees heard from District staff and LCCPA at its March 13, 2014 board meeting. (R. 839 – 850.) At that meeting, the District board of trustees voted unanimously to revoke the charter of LCCPA. (Id.) Therefore, LCCPA's parents, faculty and staff have had ample notice of the revocation to make alternative arrangements for next year and were aware of the possibility that LCCPA may not be allowed to operate.

V. Beyond LCCPA's Failure To Provide Evidence Of Undue Hardship, The Record Demonstrates That Allowing LCCPA To Remain Open During Appeal Risks The Safety And Well-Being of LCCPA Students And Puts Public Money At Risk.

The Record in this case is replete with undisputed or unrefuted evidence of good cause not to stay enforcement of the Final Decision, a few examples of which are provided in detail below. Consequently, the Final Decision should be given immediate effect.

First, it is undisputed that LCCPA has allowed thirty-eight students to attend its schools without correcting known deficiencies with their federally required individual education plans

for more than a year, and refused to cooperate with the District in trying to remedy these problems. (See Final Decision ¶ 19, 43 R. 7, 9.) In fact, LCCPA's own special education consultant under examination by LCCPA's own lawyers agreed that approximately half of LCCPA's approximately forty-four special education files were still noncompliant more than one year after the District told the school about these issues, and *at least eight of them were noncompliant because LCCPA had not even written the federally required education plan for these students:*

Q. Would you agree that half the files are still noncompliant?

A. To my knowledge, according to the special education coordinator, she has been sending IEPs up to the District. And supposedly, from the best of my information that I have, there are about eight IEPs that still need to be sent up to the District.

Q. What problems are there with the IEPs that --of those eight that you -- those eight that would make them noncompliant?

A. They haven't been written yet. I mean, they're working on them to send them for them to approve.

(Bannister Test. 210: 3- 15; R. 234.) As demonstrated by the testimony of LCCPA's own special education consultant, the special education issues of non-compliance were not minor issues related to wording as LCCPA disingenuously argues in its Return via an email from its special education coordinator that it did not even present for examination at the hearing. Instead, the issues involved failure to complete assessments and evaluations that form the very foundation of providing the legally required Free Appropriate Public Education to students with disabilities. (R. 2544 2548.) In other words, LCCPA just wasn't doing special education.

Second, despite testimony from LCCPA's principal to the contrary, state data shows that only a little more than half of LCCPA teachers are highly qualified, as required by law. (See R. 2390). Unrefuted testimony by District personnel established that, even on announced visits, teachers at LCCPA were teaching students material far below grade level or just letting students play games in class wholly unrelated to any standard for that particular class. (See Mills Test. 41:17 to 43:5; R. 65 - 67.) Perhaps most concerning from a student safety and well-being standpoint, LCCPA has still refused to provide required background checks for tutors spending substantial time working with students, even though LCCPA's principal claimed at the hearing she could produce the background checks. (See Brown Test. 173:1 - 174:13, Notice of Default; R. 197-198, 803.)

Third, LCCPA has refused to provide substantiation for its expenditures of state and federal money. For example, it was not able to provide documentation of tutoring services for which the school paid at least \$80,000 in government funds. Despite multiple requests, the District has never been provided the names of the individuals who provided these services, time sheets or any other evidence beyond a program summary seeking \$160,000 for 350 hours of tutoring services, or approximately \$457 an hour. (R. 828.) Because LCCPA has refused to share any additional information about the program, it is unclear how many, if any, students were served and how many, if any, tutors served those students. LCCPA has provided no evidence as to whether students actually attended the tutoring program, and whether those students met any of the objectives in the proposal. LCCPA did not call anyone from Have Faith to testify at the hearing. LCCPA did, on the other hand, have a former charter school principal that had just been indicted for theft of government funds appear to assist in its defense, as previously noted in the District's Motion. Refusal to provide sufficient

monitoring and oversight activities when LCCPA refuses to provide requested information every school and non-profit corporation receiving state and federal money is required to provide, and when LCCPA simply refuses to comply with sanctions and corrective action plans. At this point, the District cannot verify the safety and well-being of LCCPA students, and cannot verify state and federal money is being spent appropriately. Therefore, LCCPA should not be permitted to operate while the appeal is pending.

VI. LCCPA's Scurrilous And Immaterial Attacks On The District Should Be Disregarded and Stricken.

Rather than attempting to provide any evidence that it will be unduly harmed or that it would cooperate with the District during the pendency of these proceedings, LCCPA spends the bulk of its tardy Return attempting to disparage the District. For example, LCCPA attaches a letter from the Office for Civil Rights regarding compliance with technical regulations related to accessibility for students with disabilities attending virtual schools, which obviously has nothing to do with this case. See Exhibit C to Return. In addition, in an effort to argue that the District is discriminating against LCCPA's principal even though discrimination is not even a ground for appeal, LCCPA lists three charter schools with African American female principals that have been revoked under the premise that this is all charter schools that have been closed. See Exhibit A to Return. This is demonstrably false. In fact, on the very same day the District's board voted to revoke the charter of LCCPA, it voted to revoke or not renew the charter of Palmetto State E-cademy, whose principal at the time was a white female. Further, an email from an employee of LCCPA who was not even called as a witness at the hearing should not be considered under any number of evidentiary rules, including hearsay.

See Exhibit B to Return.

LCCPA's Return is late and filled with immaterial hearsay and other irrelevant evidence and legal argument. It should be stricken and the District's Motion granted.

VII. An Expedited Briefing Schedule Is In The Best Interests Of Both Parties And The Parents, Faculty and Staff of LCCPA.

As noted in the District's Motion, any hardship can be mitigated via an expedited briefing schedule. At this point, it does not appear likely that this Court can reach a decision prior to the beginning of the LCCPA academic year, but a decision soon thereafter would allow students to make appropriate arrangements, no matter how this Court rules on the merits, with a minimum amount of disruption. In fact, many District schools do not begin until August 25, and some schools have even opened after Labor Day in the past few years when exigent circumstances required it.

With the above in mind, the District requests an expedited briefing and hearing schedule in this matter. LCCPA's brief is due, at the latest, on August 4, 2014 under the ALC Rule 37, without any decrease in time and including mailing days. Assuming a timely filing by LCCPA, the District plans to file its Response Brief by August 12, 2014, and would request that LCCPA's reply brief be due by August 22. The District therefore requests that this Court schedule a hearing on the merits as soon after August 22 as possible.

CONCLUSION

Therefore, based on the above, this Court should grant the District's Motion and find that the Final Decision should be enforced during the pendency of this Appeal to ensure the health, safety and well-being of LCCPA students and adequately protect taxpayer money. Further, this Court should expedite determination of the merits to minimize any disruption to LCCPA students, faculty and staff.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairperson

Case No. 14-ALJ-30-0256-AP

Lake City College Preparatory Academy, ... Appellant,

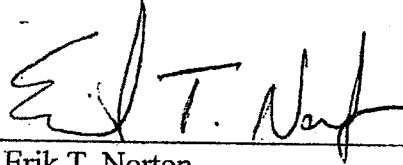
v.

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

CERTIFICATE OF SERVICE

I certify that I have served the District's Reply to LCCPA's Memo in Opposition to Motion to Enforce Final Decision and for Expedited Schedule by depositing a copy of it in the United States Mail, postage prepaid, on July 28, 2014, addressed to the Appellant's attorney, Johnny E. Watson Sr., 2715 Edgewood Avenue, Columbia, South Carolina 29204.

July 28, 2014

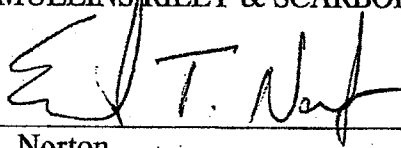


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Attorneys for South Carolina Public Charter School District

Columbia, South Carolina
July 28, 2014.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No. 2014-ALJ-30-0256-AP

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

V.

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

**RETURN TO RESPONDENT'S MOTION TO DISMISS
APPEAL OR IN THE ALTERNATIVE, REQUIRE A
CORRECTED BRIEF BY APPELLANT**

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843 664-3372 | Fax

Main Counsel for Appellant

FILED

AUG 18 2014

RESPONSE TO MOTION OF THE APPELLEE

The Lake City College Preparatory Academy (LCCPA) respectfully responds to Appellee's Motion to Dismiss Appeal or Alternatively to Require a Corrected Brief as Follows:

1. I, the undersigned attorney for the Appellant, respectfully submit that I know of no requirement in the South Carolina Rules of Civil Procedure or order of this court requiring the hand delivery of documents. Rule 4 specifically states that service shall be effective upon mailing. Further, the order written by the appellee clearly allows for service by mail.

2. Secondly, as pointed out in the Appellee's Motion "principal briefs shall not exceed 30 pages". Our brief is double spaced. It is a simple matter to reduce the spacing to come within 30 pages without changing a thing in the brief. However, to do so would make the brief harder to read by all parties.

3. In the email accompanying the Appellee's Motion he admits that the District is not prejudiced by the additional pages,

4. The Record on Appeal submitted by the Appellee is clearly inadequate. The index does not provide a guide to the documents in the various volumes. That fact inhibited my ability to make references under the expedited briefing schedule. I have attached an index to this response which clearly makes the reference to documents in the brief easier. That index was just completed this past weekend to allow us to make better references.

5. Finally, it was the appellee's motion for the expedited schedule which left little time to dot the I's and cross the t's.

Professor Nathan Crystal of the says the "If I had more time I would have made it

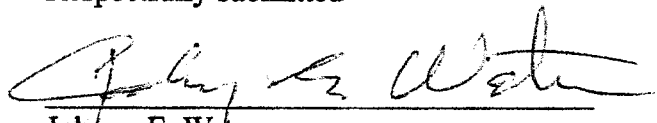
shorter". That applies here. I could take out some tables and find where they are in the record and make reference but time was of the essence so that could not be done.

CONCLUSION

The motion of the Appellee is without basis and should be denied especially in light of the fact that the appellee had time to divert his attention to this specious motion instead of applying the time to the briefing tasks at hand.

Respectfully submitted

By:



Johnny E. Watson

S. C. Bar 5967

E-mail:

2715 Edgewood Avenue (29204)

P. O. Box 2305

Columbia, South Carolina 29202

Columbia, South Carolina

Dated: August 18, 2014

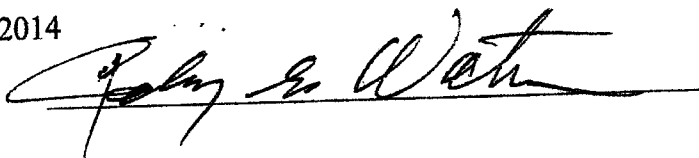
CERTIFICATE OF SERVICE

I, Johnny E. Watson, Attorney for the Lake City College Preparatory Academy (LCCPA), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below:

PERSON SERVED: Erik T. Norton
Attorney for the SCPCSD
1320 Main Street, Meridian Building
Columbia, South Carolina 29201

DOCUMENT: Return to Motion to Motion to Dismiss or Alternatively to Require a Corrected Brief.

DATE SERVED: August 18, 2014



Johnny E. Watson, Attorney for Appellant

Columbia, South Carolina
Date: August 18, 2014

FILED

AUG 18 2014

SC ADMIN. LAW COURT

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Nelson Mullins

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August 15, 2014

Via Electronic Mail

Mark W. Buyck, III, Esquire
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Florence, SC 29503

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 Mark:

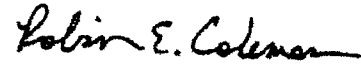
As you know, the South Carolina Public Charter School District ("District") issued the Final Decision revoking the charter of Lake City College Preparatory Academy ("LCCPA") on May 23, 2014. All assets of LCCPA become property of the District at the time of revocation, pursuant to Section 59-40-120 of the Charter School Act. By Order dated August 6, 2014, the Administrative Law Court ruled that the Final Decision is enforceable during the pendency of the appeal filed by LCCPA. As such, all assets of LCCPA held as of May 23, 2014 or obtained afterwards are property of the District at this time. To date, LCCPA has not returned any assets.

In accordance with the Court's August 6, Order, LCCPA continue to operate as a charter school during the appeal period, which means that it cannot offer instructional services to students at this time. The District informed all LCCPA parents of the Court's Order by letter dated August 8, 2014.

In our discussions, you have indicated that LCCPA is trying to determine how it will proceed during the appeal period. However, the District has been informed by LCCPA parents that they have been told that LCCPA intends to open on Monday, August 18, as a private school or in some other form other than a charter school authorized by the District. Nonetheless, LCCPA continues to hold itself out as charter school operating under the South Carolina Public

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

August 18, 2014
Columbia, South Carolina

FILED

August 18, 2014

SC ADMIN. LAW COURT

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.

Motion to Dismiss Appeal

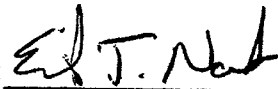
Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent South Carolina Public Charter School District ("SCPCSD") moves to dismiss the above-captioned appeal in its entirety, including the appeal on the merits and Appellants' Motion to Expedite and Return Funds. The basis for this motion is that Appellant Lake City College Preparatory Academy ("LCCPA") failed to timely file its Initial Appellant's Brief. As a result, this Court must dismiss the appeal.

The South Carolina Appellate Court rules require Appellant to serve the Initial Appellant's Brief "[w]ithin thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal" Rule 208(a)(1), SCACR. Appellant filed and served its notice of appeal on November 7, 2014. SCPCSD has not received any correspondence between Appellant and the Administrative Law Court in which Appellant attempts to make arrangements to obtain

a transcript of the proceedings before the Administrative Law Court. See Rule 207(b)(1), SCACR. Therefore, Appellant's Initial Brief was to be served on SCPCSD no later than December 8, 2014, pursuant to Rule 208(a)(1), SCACR.¹

Appellant failed to serve its Initial Appellant's Brief by the mandatory deadline. Therefore, this Court must dismiss the appeal. See Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 173, 642 S.E.2d 551, 551 (2007) (stating that "[w]henver it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued") (emphasis added).

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Respondent South Carolina Public
Charter School District

Columbia, South Carolina

December 12, 2014.

¹ Thirty (30) days from November 7, 2014 falls on Sunday, December 7, 2014. Pursuant to Rule 263(a), SCACR, the deadline would therefore fall on the following Monday, December 8, 2014.

**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.

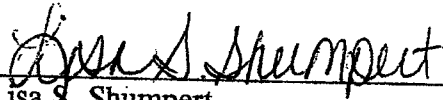
Document(s):

MOTION TO DISMISS APPEAL

Counsel Served:

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Lisa S. Shumpert

December 12, 2014

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June 30, 2014

Hand Delivered

Jana E. Shealy, Clerk of Court
Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

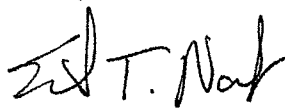
Re: Lake City College Preparatory Academy v. South Carolina Public Charter
School District
Civil Action No. 14-ALJ-30-0256
Our File No. 41106/01503

Dear Ms. Shealy:

Enclosed please find the original and one copy of the Respondent's Motion to Enforce Final Decision of District During Pendency of Proceeding and for Expedited Schedule. We would appreciate your filing the original 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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Lake City College Preparatory Academy (LCCPA),	)	Civil Action No. 14-ALJ-30-0256-AP
	)	
	)	
Appellant,	)	
	)	
vs.	)	
	)	
South Carolina Public Charter School District,	)	<u>MOTION TO ENFORCE FINAL</u>
	)	<u>DECISION OF DISTRICT DURING</u>
	)	<u>PENDENCY OF PROCEEDING AND</u>
	)	<u>FOR EXPEDITED SCHEDULE</u>
Respondent.	)	

Respondent South Carolina Public Charter School District ("District") hereby moves for an Order enforcing the Final Decision ("Decision") revoking the Charter of Lake City College Preparatory Academy ("LCCPA") during the pendency of these proceedings. As of June 14, 2014, the Charter School Act was amended to provide that appeals from final decisions to revoke or not renew a charter school does **not** stay the revocation or nonrenewal decision unless the charter school moves for a stay on grounds that "unusual hardship" to the charter school will result from the execution of the sponsor's decision. *See* S.C. Code Ann. § 59-40-110(J). LCCPA has not made such a motion, and no unusual hardship exists in this case beyond the ordinary circumstances involving revocation of a school's charter. In addition, any potential hardship can be eliminated or substantially mitigated by an expedited briefing and hearing schedule allowing for a decision on the instant appeal in time for LCCPA to open as scheduled in late August in the event the Decision is reversed.

Moreover, even if the pre-amendment version of the statute still applied such that the case were automatically stayed at the time the appeal was filed, this matter should **not**

be stayed because the Record as explained above contains abundant evidence that the health, safety and general well-being of LCCPA students are at risk, along with federal and state tax money, while LCCPA's appeal is pending. The Record, which has been filed contemporaneously with this Motion, contains unrefuted evidence that LCCPA has refused to provide sufficient substantiation for expenditures of state and federal funds, including some \$80,000 for tutors that has not been properly documented. *See* ROA 2398-2403; 198: 4-13 (noting no time sheets were kept and background checks were not provided even though allegedly available). At the hearing conducted before the District Board of Trustees, LCCPA and its counsel was assisted by Benita Dinkins-Robinson, a former charter school director who was recently indicted on federal charges related to misappropriation of state and federal money and who also is represented by LCCPA's counsel in her criminal trial. *See* <http://www.wistv.com/story/25466356/former-charter-school-director-indicted-for-stealing-govt-funds>; *see also* Indictment, attached as **Exhibit A**. These circumstances create, at minimum, a valid concern that taxpayer funds may not be spent appropriately during the pendency of the appeal, a circumstance which includes inherent risks for wasteful or wrongful expenditures of government funds as a matter of course. Combined with the specific circumstances in this case, an Order should be issued finding that no further taxpayer money should be distributed to LCCPA while the appeal process is pending.

The Record further contains unrefuted evidence that LCCPA has refused to provide documentation of background checks conducted on those allegedly providing the tutoring service to students. *See* ROA 2398-2403. In addition, the Record contains unrefuted evidence that LCCPA remains out of compliance with federal special education laws for over 40 students after having more than one year to correct these areas of non-compliance. *See*

ROA 101:5 – 104:22; ROA 2544. The failure of LCCPA to correct areas of noncompliance for more than one year risks a loss of federal funding or other sources of funding for both the State of South Carolina and other district schools. *See* Trans. 81:18 – 82:16. Based on these facts, LCCPA should not be permitted to serve students while the appeal is pending, as the Legislature intended by amending the Charter School Act to provide that revocation decisions ordinarily should not be stayed during appeal.

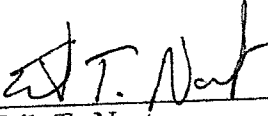
In sum, the District will be handicapped in its ability fulfill its statutory obligation to monitor the welfare of students attending LCCPA and the expenditure of state money by LCCPA without adequate protections in place during the pendency of this appeal. LCCPA already has refused to comply with statutorily mandated sanctions short of revocation and has refused to provide financial information needed for the District to ascertain whether government money is being properly spent. *See* ROA 2398-2403. The Legislature spoke clearly by amending the statute to provide that charter schools should not be allowed to operate during a pending appeal of a revocation order absent the showing of an undue hardship. No such hardship exists in this case.

Therefore, the District requests an Order finding that the Decision shall be enforced during the term of the appeal such that LCCPA may not receive any further state or federal funds or provide any services to students in any way during the appeal. Alternatively, the District seeks an Order requiring LCCPA to (1) post a bond using non-governmental funds and (2) provide information requested by the District related to any expenditure of government funds or academic services provided to LCCPA students. In either case, the District requests that the Court set the following briefing and hearing schedule:

1. LCCPA's initial brief will be due on July 18;

2. District's response brief will be due on July 25;
3. LCCPA's reply brief (if any) will be due on August 1; and
4. Hearing date as soon after August 1 as the Court's schedule will allow.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for South Carolina Public Charter School District

Columbia, South Carolina
June 30, 2014.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA

v.

BENITA DINKINS-ROBINSON

)
)
)
)
)

CRIM. NO. 3:14cr300
18 U.S.C. § 641
18 U.S.C. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

INDICTMENT

COUNT 1

THE GRAND JURY CHARGES:

From in or about 2007, through in or about 2012, the Defendant, BENITA DINKINS-ROBINSON, willfully and knowingly did embezzle, steal, purloin, and knowingly convert to her use and to the use of another, and without authority did sell, convey, and dispose of money, that is, funding from the United States Department of Agriculture for various school food and nutrition programs, of the value in excess of \$1,000, which was property of the United States,

In violation of Title 18, United States Code, Section 641.

COUNT 2

THE GRAND JURY FURTHER CHARGES:

From in or about 2010, through in or about 2013, the Defendant, BENITA DINKINS-ROBINSON, willfully and knowingly did embezzle, steal, purloin, and knowingly convert to her use and to the use of another, and without authority did sell, convey, and dispose money, that is, Title I, Title II, IDEA, and other funding from the United States Department of Education, of the value in excess of \$1,000, which was property of the United States;

In violation of Title 18, United States Code, Section 641.

FORFEITURE

1. SPECIFIED UNLAWFUL ACTIVITIES:

A. Upon conviction for one or more violations of Title 18, United States Code, Section 641 as charged in this Indictment, the Defendant, BENITA DINKINS- ROBINSON, shall forfeit to the United States any property, real or personal, which constitutes or is derived from any proceeds the Defendant obtained, directly or indirectly, as the result of such violations and any property traceable to such property.

2. PROPERTY:

A. Pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c), the property which is subject to forfeiture upon conviction of the Defendant, BENITA DINKINS-ROBINSON, for the violations charged in this Indictment includes, but is not limited to, the following:

(1) Cash Proceeds / Personal Money Judgment:

- a. A sum of money equal to all proceeds the Defendant obtained directly or indirectly as the result of the offenses charged in Counts 1 and 2 of this Indictment, or traceable to such property, that is, a minimum of \$ 1,436,717 in United States currency;
- b. Allianz Policies xxxx1356 and xxxx5400 issued to Harry Dinkins by Allianz Insurance Company of North America, with cash value for both policies equaling \$312,856.11, asset # 14-FBI-002201;
- c. Allianz Policies xxxx9794, xxxx5679 and xxxx7419 issued to Benita Dinkins-Robinson by Allianz Insurance Company of North America, with cash value for the three policies equaling \$456,661.85, asset # 14-FBI-002178;

(2) Real Property:

- a. 482 Pine Crest Street
Camden, SC 29020
Kershaw County
273-02-0B-010-S81
Titled in the name of: Harry Dinkins

(3) Vehicles:

- a. 2006 Cadillac STS-V8
1G6DC67A360142042
Titled to: Benita Dinkins- Robinson
- b. 2010 Chevrolet Impala-V6
2G1WA5EK6A1114890
Titled to: Benita Dinkins-Robinson
- c. 2012 Land Rover
770380252199134A
Titled to: Harry Dinkins, III

3. SUBSTITUTE ASSETS:

A. If any of the property described above as being subject to forfeiture to the United States, as a result of any act or omission of the Defendant,

- (1) Cannot be located upon the exercise of due diligence;
- (2) Has been transferred or sold to, or deposited with a third party;
- (3) Has been placed beyond the jurisdiction of the Court;
- (4) Has been substantially diminished in value; or
- (5) Has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Sections 982(b)(1), [incorporating Title 21, United States Code, Section 853(p)], to seek forfeiture of any other property of the said Defendant up to the value of the above forfeitable property.

Pursuant to Title 18, United States Code, Sections 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

RECORD OF GRAND JURY BALLOT

c/ 3:14cr300

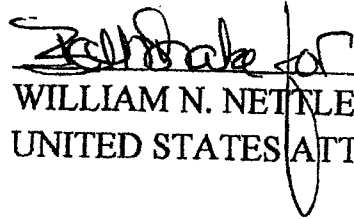
THE UNITED STATES OF AMERICA v. BENITA DINKINS-ROBINSON

(SEALED UNTIL FURTHER ORDER OF THE COURT)

A True BILL

Redacted

FOREPERSON


WILLIAM N. NETTLES (WDHjr)
UNITED STATES ATTORNEY

RECEIVED
MAY 13 2015
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairperson

Case No. 14-ALJ-30-0256-AP

Lake City College Preparatory Academy, ... Appellant,

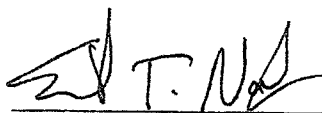
v.

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

CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Motion to Enforce Final Decision by District During Pendency of Proceeding and for Expedited Schedule by depositing a copy of it in the United States Mail, postage prepaid, on June 30, 2014, addressed to the Appellant's attorney, Johnny E. Watson Sr., 2715 Edgewood Avenue, Columbia, South Carolina 29204.

June 30, 2014



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