THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL 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.

FINAL BRIEF OF RESPONDENT

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Counter-Statement of Issues on Appeal

I. Must this Court affirm the Administrative Law Court's Order because Lake City College Preparatory Academy ("the School") has abandoned, failed to appeal, or failed to preserve for appeal numerous issues and arguments, any one of which is a valid, independent, and sufficient basis to sustain the Order?

II. Did the Administrative Law Court correctly conclude that the School's Charter was lawfully and properly revoked under Section 59–40–110 of the South Carolina Charter School Act due to the School's numerous failures and shortcomings?

III. Did the Administrative Law Court correctly conclude that Section 59–40–110(J) of the South Carolina Charter School Act is constitutional and that the School was not entitled to a stay pending appeal under either the amended or pre-amendment version of that statute?

Counter-Statement of the Case

Appellant Lake City College Preparatory Academy ("the School" or "LCCPA") is a charter school located in Lake City, South Carolina, which served approximately 200 students in Kindergarten through Twelfth Grade through an arts and music-based curriculum patterned after the Harlem School of Arts. (Final Decision dated May 23, 2014 ¶ 1, R. pp. 3-19; Charter Application, R. pp. 267-651.) The stated mission of the School is "to create[ ] a high quality college preparatory instructional environment where a strong commitment to the creative arts is manifested which will lead to high levels of academic achievement." (*Id.* at ¶ 3, R. p. 278; Charter Application, R. pp. 267-651.)

Respondent South Carolina Public Charter School District (the "District") is a statewide school district created by the Act and charged with approving, revoking, or non-renewing charters in accordance with the South Carolina Charter Schools Act of 1996, codified at S.C. Code Ann. §§ 59–40–10 to –240 (the "Act"). *See* S.C. Code Ann. § 59–40–220. The District is responsible for monitoring the academic, governance, legal, and fiscal operations of charter schools. *Id.* at § 59–4–55(A).

The School was granted a charter (the "Charter") by the Board and began operating in August 2009. (Charter Application, R. pp. 267-651; Contract, R. pp. 2255-2265; Board Update Delivered March 13, 2014, R. pp. 852-859.) The Record contains a lengthy history of correspondence documenting the School's failures 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 December 4, 2013. (Letters from District to School dated July 27, 2011, June 5, 2012, Oct. 8, 2012, Dec. 18, 2012, April 22, 2013, May 14, 2013, Aug. 27, 2013, and Sept. 27, 2013, R. pp. 766-769;

779-796.) The Board voted to revoke the School's Charter at its regularly scheduled Board meeting March 13, 2014. (Notice of Revocation Letter, R. pp. 1-2; Audio, Meeting Minutes, and Agenda for March 13, 2014 Board Meeting, R. pp. 839-850.)

By letter dated March 26, 2014, the School requested a hearing under S.C. Code Ann. § 59–40–110(F). (Letter Buyck to District, R. p. 869.) A hearing was scheduled by mutual consent for 1:00 p.m. on May 8, 2014, and the District's counsel sent the School's counsel written notice of the hearing. (April 3, 2014 Letter Norton to Buyck, R. p. 871.)

At the May 8, 2014 hearing, the Board voted unanimously to affirm its prior decision to revoke the School's Charter under Section 59–40–110 of the Act. (Notice of Revocation, R. pp. 1-2; Transcript of May 8, 2014 District Board Hearing ("Tr."), R. pp. 25-262.) On May 15, 2014, prior to receiving the Board's Final Decision, the School filed a Notice of Appeal with the Administrative Law Court. (Notice of Appeal, R. pp. 2829-2832.) On May 23, 2014, the Board issued its Final Decision revoking the School's Charter. (Final Decision, R. pp. 3-19.) The School filed its amended Notice of Appeal on June 16, 2014, seeking review of the Final Decision. (Amended Notice of Appeal, R. pp. 2836-2839.)

On June 30, 2014, the District moved to enforce the Final Decision during the pendency of the appeal. (Motion to Enforce, R. pp. 2840-2851.) On August 6, 2014, following a hearing with counsel, the Administrative Law Court granted the District's motion and implement an expedited briefing schedule. (Order at 1, R. pp. 2807-2812.) The court concluded that neither the pre- nor post-amendment version of Section 59–40–110(J), which had been amended shortly prior to the School's appeal before that court, entitled the School to a stay of the Final Decision pending the appeal. (*Id.* at ¶¶ 6–21, R.

pp. 2808-2811.) Accordingly, the Final Decision below has not been stayed.

On September 4, 2014, counsel for both parties attended and participated in a hearing before Judge McLeod regarding the School's appeal. On October 9, 2014, Judge McLeod issued an Order affirming the Final Decision of the Board on multiple grounds (the "Order"). (Order, R. pp. 2817-2828.) This appeal followed.

Standard of Review

The Administrative Procedures Act establishes this Court's standard of review for cases decided by the Administrative Law Court and is set forth in Section 1–23–610(B) of the South Carolina Code, which provides:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (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.

Risher v. S. Carolina Dep't of Health & Envtl. Control, 393 S.C. 198, 203–04, 712

S.E.2d 428, 431 (2011); S.C. Code Ann. § 1–23–610(B).[1] "'The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.'" *Be Mi, Inc. v. S. Carolina Dep't of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740-41 (Ct. App. 2014) (citations omitted). "'[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'" *Id.* at 297-98, 758 S.E.2d 741 (citing *Risher,* 393 S.C. at 210, 712 S.E.2d at 434).

Argument[2]

The Administrative Law Court's ruling should be upheld for a number of reasons appearing in the Record, any one of which provides a sufficient basis to affirm the Administrative Law Court's Order. As an initial matter, this Court need not consider or rule upon a number of the arguments the School raises in its appellate brief because those arguments are either not preserved for appellate review or have been abandoned as a result of the School's failure to provide any authority or coherent discussion of the issues in its initial brief. Any one of these unpreserved or abandoned issues provides an adequate basis for the Administrative Law Court's Order and for this Court's affirmance of that Order.

In addition to these procedural issues, the substantial evidence in the Record belies each of the School's many issues on appeal. The School's arguments on appeal are based largely on the contention that the May 8, 2014 revocation hearing was a "sham

[1] In contrast to the standard of review mandated by statute and set out above, the School's Brief incorrectly asserts that its good intentions and efforts to improve are all that is required to avoid revocation of its charter. (*See, e.g.*, App. Brief at 4–5, 8, 16–18, 26.)

[2] The order and presentation of the points in the School's brief make the issues before this Court needlessly lengthy and repetitive, which has caused this Response Brief to be longer than should be necessary.

proceeding" by a "Kangaroo Court" with a "predetermined outcome." The School argues if the Board had been impartial, it would have found that the School was doing the best it could given its student population, and excused the School's failures to comply with state and federal law and its violations of its Contract[3] and Charter. However, the Record provides no support for such assertions, and the School's best efforts fell short of the Act's requirements.

Instead, the Record shows that despite the District's repeated attempts to work with and facilitate the School's progress, the School failed to comply with special education laws and other education laws and regulations, failed to provide documentation to substantiate expenditures of public funds, failed to keep proper records of background checks, and failed to meet the academic standards it set for itself. The School was given the chance to develop and fulfill a corrective action plan over a period of more than one year, and it still failed to correct its noncompliance with the Charter, the Contract, and state laws and regulations. Further, the School brazenly refused to comply with statutorily-authorized sanctions. Therefore, the Administrative Law Court properly concluded that the Final Decision of the District's Board was supported by substantial evidence providing multiple independent grounds to revoke the School's Charter.

I. The School abandoned many of its issues on appeal, each of which provides an independent basis to affirm the Administrative Law Court's Order.

As an initial matter, this Court need not consider several of the School's issues on appeal because the School makes only conclusory, unsupported arguments concerning

[3] The Act requires the District and charter school to enter into a contract, based on a template approved by the State Department of Education, which "reflects all provisions outlined in the application as well as the roles, powers, responsibilities and performance expectations for each party to the contract." S.C. Code Ann. § 59–40–60(B).

the Administrative Law Court's rulings. For example, in its appellate brief, the School sets forth only cursory, conclusory arguments, generally without any citation to the Record or authority and devoid of any discussion of evidence or authority in support of its **first, eighth, ninth, tenth** and **eleventh** issues/arguments on appeal.[4] (*See* App. Br. at 6–9, 23–25, and 27–28.)

It is well-settled that when—as the School's brief does here—an appellant's brief treats an argument in a conclusory manner, that argument is effectively abandoned on appeal. *See Wilson v. Dallas*, 403 S.C. 411, 449, 743 S.E.2d 746, 767 (2013) (noting argument is effectively abandoned if appellant's brief treats it in a conclusory manner) (citing *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 620 S.E.2d 326 (2005)); *Broom v. Jennifer J.*, 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) ("Issues raised in a brief but not supported by authority may be deemed abandoned and not considered on appeal."); *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (holding issue is abandoned if argument is not supported by authority or is only conclusory).

In addition, the School failed to preserve its **second** and **seventh** issue for appellate review. It is well settled that an appellate court will not consider an issue unless

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[4] The School's eighth, ninth, tenth and eleventh argument sections are quite abbreviated, and the absence of supporting precedent or Record evidence is glaringly obvious. The School's first argument section of its Brief is lengthier but similarly devoid of authority or evidence. For example, the School argues—without a single citation to the Record or other authority in support—that the Administrative Law Court erred in finding the School's Charter was lawfully revoked because of the School's failure to comply with special education laws. (App. Brief at 6–7.) Instead of relying on evidence in the Record or other authority to support this argument, the School relies on vague references to unidentified "Special Education consultants" and a "company" the School has contracted with to review IEPs, and makes conclusory arguments that the District failed to help the School meet its special education obligations. (*Id.*) Similarly, in its Brief, the School does not address the Administrative Law Court's finding that the School failed to comply with the requirement to perform teacher evaluations. (*See* Order at 6, R. p. 2822.)

it was both raised to and ruled upon by the trial judge. *Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014). Here, the Administrative Law Court never ruled on the School's second issue (the constitutionality of the Act as applied to the School), and the School failed to ever raise its seventh issue (the alleged violations of "other provisions" of the Act) to the Administrative Law Court because its arguments on that issue were incoherent and incomplete. *See* Sections III and VIII, *infra*.

In sum, the School's first, second, seventh, eighth, ninth, tenth, and eleventh issues are unpreserved or abandoned. Each of these issues provided an independent basis to revoke the School's Charter, and each requires affirmance of the lower court's Order.

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

In its Order, the Administrative Law Court ruled the School's Charter was lawfully revoked under the Act. (*See* Order at 4–7, R. pp. 2820-2823.) On appeal, the School argues this was error. (App. Brief at 6–9.) The School's argument, however, is abandoned, *see* Section I, *supra*, and in any event, the Administrative Law Court's ruling was correct. Section 59–40–110(C) provides that a sponsor must revoke a school's charter if the charter school does any one of the following:

> (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). The Administrative Law Court properly concluded substantial evidence in the Record supports the Final Decision that at least one of the above criteria requiring revocation exists in this case. (Order at 4–7, R. pp. 2820-2823.) In fact, the School committed acts that met *all four* criteria, only one of which is required for revocation. As explained below, there is ample Record evidence warranting the Administrative Law Court's ruling.

A. Substantial evidence in the Record supports the Administrative Law Court's findings that the School's Charter was lawfully revoked based on its failure to comply with special education laws.

There is ample Record evidence to support the Administrative Law Court's ruling that the School's Charter was lawfully revoked for the School's failure to comply with special education laws. The School ignores in its brief—as it has throughout these proceedings—that it agreed to comply with special education laws in its Charter and Contract. (Charter at 176-79, R. pp. 439-442; *id.* at 220–21, R. pp. 483-484; *id.* at Statement of Assurances, R. p. 2250; Contract at ¶ 2.5, R. p. 2255.) However, testimony of both District personnel and the School's personnel, along with documentary evidence, demonstrates the School's abject failure to meet its special education obligations.

For example, the Record contains findings by the State Department of Education that the School did not meet special education requirements. (DOE Individual Student Corrections Aug. 8, 2012, R. pp. 1695-1696.) District Special Education Coordinator Rebecca Davis provided documentary evidence and testified at length about the School's failure to comply with special education laws for more than forty of its students. (Tr. 73:25-99:13, R. pp. 97-123; Dec. 18, 2012 Letter from District to School Regarding Noncompliance, R. pp. 2384-2386; Summary of Special Education Data, R. pp. 1690-

1693.)

The School's special education consultant,[5] Albertha Bannister, confirmed the School was *not* compliant with special education law under questioning by the School's attorneys.

> Q. In your opinion, has Lake City College Prep complied with the IEP requirements set out by the federal law?
>
> A. They are making every effort to become compliant, according to what the Charter School District asked them to do.
>
> * * *
>
> 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[6] 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.

(Tr. 208:25-210:15, R. pp. 232-234.) Further, Ms. Bannister testified she did not review the entire special education file of each student, but only the single IEPs submitted to her by the School. (Tr. 213:21-24, R. ____.)[7] [8]

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[5] The School elected not to call its special education coordinator, a full time employee who worked with the School's students every day, as a witness. Accordingly, the School's vague references in its brief to plural special education "consultants" or "experts" relates to Ms. Bannister's testimony only.

[6] "IEPs" are individual education plans required by federal law that, along with related documentation, form the foundation of special education law. (Tr. 75:6–77:1, R. pp. 99-101.)

[7] District witnesses were more credible than the School's witnesses concerning special education. For example, the School's Principal testified the School's consultant provided biweekly reports to the District. (Tr. 148:23–25, R. p. 172.) However, the consultant, Ms. Bannister, testified she had "no communication" with the District. (Tr. 209:6–8, R. p. 233.) There are also no biweekly reports in the Record.

Despite this testimony of the School's own special education consultant, the School argues in its brief that its special education noncompliance is a "simple misunderstanding." (App. Brief at 6.) However, the Record does not support the School's dismissive attitude and shows the School failed to provide the most fundamental services required by federal law. (Dec. 18, 2012 Letter from District to School Regarding Noncompliance, R. pp. 2384-2386; Summary of Special Education Data, R. pp. 1690-1693). For example, federal law requires schools to provide all special education students a progress report, which the School issued to only two of 44 students, and the School failed to provide required evaluations and reevaluations of special education students. (Tr. 80:15-18, R. p. 104.) The School's special education consultant testified that, as of the date of the hearing, eight federally required individual education plans were not compliant because they had not even been drafted yet. (Tr. 209:23-210:15, R. pp. 233-234.)

Therefore, the documentary evidence and testimony provides substantial evidence that the School's failure to comply with special education laws was not merely ministerial or technical, as the School argues, but was substantial and systemic. (*See, e.g.*, Tr. 80:15-18, R. p. 104; *id.* at 210:10-15; Dec. 18, 2012 Letter from District to School Regarding Noncompliance, R. pp. 2384-2386; Summary of Special Education Data, R. pp. 1690-1693; MAP Data, R. p. 957.) Accordingly, the Record contains substantial evidence that the School failed to provide special education services and comply with special education laws as required by its Charter and Contract.

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[8] The Record on Appeal served by Appellant failed to include the referenced page in the transcript.

B. Substantial evidence in the Record supports the Administrative Law Court's findings that the School's Charter was lawfully revoked for its failure to comply with other laws and regulations.

The School next argues that the Administrative Law Court erred in finding that the School failed to comply with other laws and regulations. (App. Brief at 7.) The Administrative Law Court concluded the Record contains substantial evidence that the School failed to comply with other laws and regulations, such as the requirement to utilize highly qualified teachers and perform required teacher evaluations. (Order at 6, R. pp. 2822.) The Administrative Law Court determined these failures constitute material breaches of the School's Charter, Contract, and the Act, and provide a further independent ground for revocation of the Charter. (*Id.*)

The two-sentence argument on this issue in the School's brief is flatly contradicted by the Record. The School simply states that its teacher qualifications are in the Record and, without any explanation, cites generally to its Charter to establish that its "faculty more than meets the qualification requirement required of them by the South Carolina Charter School Act, REC __ and that of its charter." (App. Brief at 7.[9]) The School, however, did not introduce *any* documentation to substantiate this bald claim. (*See* Tr. 162:24-164:12, R. pp. 186-188.) The South Carolina Department of Education reported to the District that only 57.47% of the School's teachers are highly qualified. (Notice of Default, R. pp. 798 - 804.) Although Dr. Brown testified that the School conducted the required teacher evaluations, she offered no supporting documentation or

[9] In its Charter and Contract, the School promised to abide by laws and regulations regarding utilizing highly qualified teachers and performing requisite teacher evaluations. (Charter at 229 ¶ 3(a), R. p. 492; *id.* at Statement of Assurances ¶ C, R. p. 2250; Contract ¶ 2.5, R. p. 2255; Final Decision ¶¶ 51–54, R. pp. 13-14.) The School is required to comply with these obligations as a matter of law. *See* S.C. Code Ann. § 59–40–50(B)(1).

other evidence. It remains unrefuted that the School did not provide the documentation to substantiate completion of the teacher evaluations, as required by the Charter and the Contract. (*Id.*[10]) Accordingly, the Order of the Administrative Law Court should be affirmed.

C. Substantial evidence in the Record supports the Administrative Law Court's finding that the School's Charter was lawfully revoked for its refusal to document financial expenditures and background checks.

The School next argues—relying solely on one citation to the Record—that the Administrative Law Court erred in finding substantial evidence in the Record to support the Board's determination that the School breached the Charter, Contract and Act by refusing to maintain records of or substantiate its financial expenditures. (App. Brief at 7–8.) The School argues it "has not refused to give the Respondent any information but protested the onerous nature of the request and asked that the request be more detailed and limited so the appellant could reply to the specific requests." (*Id.* at 8.) In support of this argument, the School cites only to a January 16, 2014 letter from its attorney to the District regarding the School's failure to provide documentation for the "Have Faith" tutors or general financial documentation such as the School's general ledger, payroll register, or financial reports. (*Id.* at 8 (citing Jan. 16, 2014 Letter, R. p. 2612.))

The School ignores the Act's requirement that the District provide oversight and monitoring of the School's activities, including its finances and compliance with legal requirements. *See* S.C. Code Ann. § 59–40–55. The School agreed in its Charter and Contract to comply with financial standards required by the District and applicable to all

[10] Further, Dr. Brown's testimony lacked credibility because of her statements inconsistent with other LCCPA witnesses regarding special education. (*See* p. 10 n.7, *supra*.)

recipients of public money. (*See* Charter, R. pp. 267-651; Contract at ¶¶ E, 45(b), and 5.2, R. pp. 2255 and 2264.) The Contract expressly provides that the School will "respond to all requests for documentation of compliance as required by application and this Agreement in a timely manner." (Contract at ¶ 4.1, R. p. 2257.) The Contract also states that the District will have access to Charter School financial records, and that all finance and accounting records are subject to public inspection, just like all other public schools. (*Id.* at ¶¶ 4.8, 5.2, R. p. 2261.)

The Record demonstrates that the School improperly and repeatedly refused the District's reasonable and necessary requests for financial documentation and substantiation of expenditures of public funds. The School refused to provide substantiation of its financial expenditures related to a tutoring service operated by a company called Have Faith, LLC. (Notice of Default, R. pp. 798-804; Jan. 16, 2014 Letter Buyck to District, R. pp. 2402-2404.) This reasonable request for financial records was specifically authorized by the Contract and the Act. Ample evidence in the Record demonstrates that, at minimum, the School failed to properly document expenditures related to Have Faith, LLC by providing time sheets or other records to substantiate expenditures of more than $80,000 for tutoring services. (*Id.*) The Record contains evidence of other unsubstantiated expenditures, such as Saturday School services presuming an eight-hour day for employees without any evidence. (*Id.*)

The School has repeatedly failed to provide evidence of required criminal background checks for the tutors working on a daily basis with the School's students. (Aug. 27, 2013 Letter District to School, R. pp. 2389-2392.) At the September 4, 2014 hearing before the Administrative Law Court, counsel for the School for the first time

submitted, over objection from the District, a notebook containing, among other things, redacted documents purporting to be the background checks. (Have Faith Background Checks, R. pp. 2799-2804.) The names in the background checks, however, are redacted and it is impossible to determine the person for whom the background check was run, or whether the person is even a tutor at Have Faith. (*Id.*) These direct, material breaches of the Charter, Contract, and Act warranted revocation and require affirmance.

D. Substantial evidence in the Record supports the Administrative Law Court's finding that the School's Charter was lawfully revoked for its failure to make reasonable progress toward its academic goals.

In section B of its first issue on appeal, the School argues—with no citation to the Record or other authority—that the Administrative Law Court erred in concluding the School failed to meet or make reasonable progress towards its academic goals and objectives as defined in its Charter. (App. Brief at 8.) The School points to no Record evidence to support its argument, likely because there is none. In contrast, substantial evidence in the Record supports the Administrative Law Court's finding that the School was not meeting the academic goals it set for itself in its Charter, creating a further independent ground for revocation of the School's Charter.

The Act provides that a charter school's academic progress is 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, the School promised to provide "academic excellence," and obligated itself to meet certain goals. (*See* Charter Objectives 1.3 and 4, R. pp. 290-291.) The objective data in the Record shows that the School failed to deliver on the academic goals and objectives it set for itself in its Charter. (Tr. 32:1-13, R. p. 56; Tr. 37:3-11, R. p. 61; Tr. 41:17-43:5, R. pp. 65-67; Tr. 67: 22-68:6, R. pp. 91-92; Tr.

85:1-11, R. p. 109; Tr. 168:19-170:1, R. pp. 192-194; Mick Zais April 8, 2014 Press Release, R. p. 2640; Comparison to Local Public Schools, R. p. 875; Charter Goals, R. p. 290; Analysis of MAP Data, R. p. 957; Purchase Order, R. p. 2466.)

The only evidence of academic achievement noted by the School is (1) an outdated B grade on its 2013 AYP, which dropped to a D in 2014;[11] (2) an "A" that it earned in one particular category of the state and federal accountability system; and (3) an alleged 100% graduation rate not supported by any documented evidence in the Record.[12] (App. Brief at 8.) Such arguments do not show reasonable progress in this case.

First, the Charter says the School students will receive particularized instruction to help them meet or exceed South Carolina standards, and 90% of the School's students would show an increase in academic strategies. (*See* Charter at Goal 1, R. p. 290.) The Charter further states that the School's students "will meet or exceed the goals identified in the South Carolina Board of Education State Standards." (Charter at 33, R. p. 299.) The School's students, however, overwhelmingly were *not* meeting state standards and the Record is devoid of evidence related to quality particularized instruction designed to meet this goal. (Tr. 37:3-11, R. p. 61.)

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[11] *See* S.C. Dept. of Ed. Annual Report Card Summary, https://ed.sc.gov/data/report-cards/2014/elem/s/e4701009.pdf, and Annual Report Card. https://ed.sc.gov/data/report-cards/2014/elem/c/e4701009.pdf. These reports are proper for this Court's consideration because they are public records relevant to this proceeding. *See Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) (taking judicial notice of facts available in public record); *see also* Rule 212(a), SCACR (permitting an appellate court to "require a report . . . of any matter relative [to the proceeding below]").

[12] Indeed, the graduation rate could not be documented because it was not calculated at that time. School graduation rates are not calculated until the year has been completed and all students, including those who may have dropped out or were graduating late, could be considered. (Tr. 49:14–50:10, R. pp. 73-74.)

Second, the Charter says that the School will receive an Improvement Rating of "Average or higher" in each of its first five years. (*See* Charter Objective 4.1, R. p. 291.) The School met this goal only one time in three years, and testimony showed this likely occurred only because of a steep decline in elementary performance the preceding year. (Charter Goals p. 4, R. p. 290; Accountability Data, R. pp. 873-874.) While the School earned an "A" in the federal accountability system for elementary grades 2013, the objective data showed this was likely the result of growth scores resulting in a precipitous decline in elementary scores during the preceding year, in which the School earned an "F" for elementary grades. (Tr. 32:1-13, R. p. 56; Accountability Data, R. pp. 873-874.) The School's "D" score for 2014 supports this conclusion.[13]

Third, data analysis showed the School generally scored worse on accountability tests than all neighboring schools. (Comparison to Local Public Schools, R. p. 875.) The Absolute Ratings for the School's middle and elementary grades remained "At-Risk" for the third consecutive year. (Accountability Data, R. pp. 873-874.) Further, the School's 2013 federal rating for its middle school was a "D." (*Id.*)

Fourth, the School agreed in its Charter to use an evaluation system known as "MAP" to measure individual student progress. (Charter at 26, R. p. 292.) The testimony and documentary evidence cited in the Final Decision shows the School was not even administering the MAP tests as required, and did not seem to understand how to use the MAP system. (Analysis of MAP Data, R. p. 957; Purchase Order, R. p. 2466.) Despite paying for 175 licenses, the School only tested 55 students for growth scores in 2011–2012 and 82 students for growth scores in 2012–2013. (Analysis of MAP Data, R.

[13] *See* page 16 n.10, *supra.*

p. 957; Purchase Order, R. p. 2466.) Further, the only testimony regarding analysis of the data showed the School's students were not progressing as expected. (Tr. 67:22-68:6, R. pp. 91-92.) The School's only witness on this point, Dr. Brown, did not dispute that the results were poor or that tests were not administered as required in the Charter, but blamed computer problems as an excuse for these failures. (Tr. 168:19-170:1, R. pp. 192-194.)

Beyond the testing data, unrefuted testimony by District personnel who observed the School's instruction supports the Final Decision as affirmed by the Administrative Law Court. Special Education Coordinator Becky Davis testified that, at an announced visit to one of the School's classroom, the teacher did not have lesson plans and did not have access to special education curriculum, and instead merely gave worksheets to the students. (Tr. 85:1-11, R. p. 109.) Director of Accountability Courtney Mills testified that on one announced visit, the teacher in the sixth grade classroom was teaching cursive writing—a second or third grade standard. (Tr. 41:17-42:1, R. pp. 65-66). On a subsequent visit, Ms. Mills testified that a high school computer science teacher was teaching students to play the game Sodoku, which he also was doing in all his math classes that day. (Tr. 42:2-25, R. p. 66.) Ms. Mills further noted there was not a single computer in this Computer Science classroom. (*Id.*)

To the extent the Court considers the School's failure to make reasonable progress, substantial evidence in the Record supports the Administrative Law Court's finding that the School failed to meet or make reasonable progress towards its academic goals and objectives as defined in its Charter. The Administrative Law Court's Order should therefore be affirmed.

E. Substantial evidence in the Record supports the Administrative Law Court's findings that the School's Charter was lawfully revoked for its failure to meet generally accepted fiscal management practices.

Failure to use generally accepted fiscal management practices is also a ground for revocation. *See* S.C. Code Ann. § 59–40–110(C)(3). In its Brief, the School argues—in a single conclusory sentence—it met generally accepted fiscal management practices because "LCCPA's records are maintained by an outside accounting firm that reports their findings to the Respondent." (App. Brief at 8–9 (citing R. 204-14).) As noted above in Section I, the School's failure to discuss or explain this argument renders it—along with the rest of the School's first issue and argument heading—abandoned.

To the extent the Court considers this argument, the single citation to the Record the School uses to support this argument is, in fact, *contrary* to its argument. The School's own accountant's acknowledged he did not provide the receipts and could not verify the proper expenditure of the School's funds. (Tr. 186:11-187:4, R. pp. 210-211; Tr. 190:4-7, R. p. 214.) Therefore, the failure of the School to comply with generally accepted fiscal management practices is a third independent basis for revocation of the Charter. As such, the Order of the Administrative Law Court should be affirmed.

F. Substantial evidence in the Record supports the Administrative Law Court's conclusion that the School failed to comply with state and federal laws and regulations.

In section D of its first issue on appeal, the School contends that the Administrative Law Court erred in finding the School failed to comply with state and federal laws and regulations. (App. Brief at 9.) The School's entire "argument" on this issue is that "[i]t is ironic that while the Respondent alleged that the School employed

unqualified personnel it hired many of those same people after it effectively closed LCCPA by cutting off its funds." (*Id.*) Such conclusory pontifications with no citation to the Record or other authority again constitute an abandonment of the School's argument on appeal. *See* Section I, *supra*.

Furthermore, the School fails to even mention—much less rebut—the independent grounds for revocation noted at Paragraph 66 of the Final Decision and affirmed by the Administrative Law Court.[14] Paragraph 66 finds evidence that (1) the School's board meetings occurred in violation of the South Carolina Freedom of Information act, as set forth in the Notice of Default; and (2) the School permitted a board member to take a "leave of absence" to be paid $4,000 for providing printing supplies to the School, in violation of Section 59–40–90. (Final Decision pp. 15-16 at ¶ 66, R. pp. 17-18; Notice of Default, R. pp. 798-804.) The School's Brief ignores these other shortcomings, which are supported by substantial evidence in the Record and which provide an additional basis to affirm the Administrative Law Court's Order. (*Id.*[15])

III. The School failed to preserve its argument that Section 59–40–110(C) is unconstitutional, and, in any event, the hearing conducted pursuant to that statute satisfied the constitutional requirements of due process.

The School's second issue on appeal attacks the constitutionality of the charter revocation procedure set out in the Charter School Act. (App. Brief at 9–14.) As explained below, this issue is not preserved for appellate review because the

[14] The rulings the School has failed to challenge on appeal are the law of the case and require affirmance. *See Ex parte Morris*, 367 S.C. 56, 65, 624 S.E.2d 649, 653–54 (2006) (finding an unappealed ruling required affirmance); *Video Gaming Consultants*, 342 S.C. 34, 42 n.7, 535 S.E.2d 642, 646 n.7 (2000) (concluding issue was abandoned).

[15] The School has not provided evidence or testimony to refute evidence provided that the School'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. (Notice of Default, R. pp. 798-804.)

Administrative Law Court did not rule on the issue and the School failed to file a Rule 59(e) motion on that issue. Furthermore, even if the issue were preserved, the hearing procedure about which the School complains satisfies due process requirements.

A. The School's argument is not preserved for appellate review.

The School's attack on the constitutionality of the Act's hearing procedure is not preserved because the Administrative Law Court never ruled on that issue. The South Carolina Supreme Court has clearly stated that an "as applied" constitutional challenge must be both raised to *and ruled upon* by the Administrative Law Court. *Travelscape, LLC v. South Carolina Dept. of Revenue*, 391 S.C. 89, 109, 705 S.E.2d 28, 38–39 (2011) ("[We] hold that ALCs are empowered to hear as applied challenges to statutes and regulations."). Where an "as applied" challenge is raised to but not ruled upon by the Administrative Law Court, the party who raised that issue must file a Rule 59(e) motion to preserve that issue for appellate review. *Id.* at 109–10, 705 S.E.2d at 39 ("The ALC did not rule on arguments relating to the final two elements . . . . As such, it was incumbent upon Travelscape to make a Rule 59(e) motion. [] Because Travelscape failed to do so, we find these issues are not preserved for appellate review.").

Here, the School's constitutional argument is undoubtedly an "as applied" constitutional challenge to the way in which the Charter School Act was applied in the School's charter revocation hearing. *See* App. Brief at 10 ("This case should be reversed on the unfair *application* of that law in this case . . . .") (emphasis added); *id.* at 12–13 ("LCCPA challenges the constitutionality of the hearing procedures *as applied* to LCCPA's hearing and respectfully requests that this issue be heard by this Court.") (emphasis added); *see also* LCCPA's Brief to ALC at 28 (same). Because this argument

was raised to but not ruled upon by the Administrative Law Court, it was incumbent upon the School to make a Rule 59(e) motion to preserve the issue for appeal. *Travelscape,* 391 S.C. at 110, 705 S.E.2d at 39. The School failed to do so, and thus the issue is not preserved for appellate review.

B. The hearing procedure outlined in the Act and applied to the School does not violate the state or federal constitution.

Even if the constitutional challenge to the Act were preserved for appellate review, this Court must nevertheless affirm the ruling of the Administrative Law Court because the hearing procedure outlined in the Act and applied to the School's charter revocation does not violate the state or federal constitution. The School argues that the hearing procedure violated the Due Process clauses of the Fourteenth and Fifteenth Amendments to the United States Constitution and Article I, § 3 of the South Carolina Constitution. (*See* App. Brief at 9.) The crux of the School's argument seems to be that the Charter School District (acting through its Board) was both the body that made the initial determination to revoke the School's charter and also the body that, after a hearing at which its employees and agents presented evidence justifying the termination decision, affirmed its prior decision to revoke the charter. This, according to the School, deprived it of due process of law.[16] As explained below, the School is incorrect.

The charter revocation hearing procedure did not violate procedural due process because each of the protections guaranteed by procedural due process are present in the Act and were present in the School's revocation hearing. "'Procedural due process

[16] In its brief, the School appears to confuse procedural and substantive due process. It argues that it was deprived of the latter, *see* App. Brief at 10, but relies almost entirely on alleged *procedural* defects in the hearing, *see id.* at 10–14. This confusion, however, is irrelevant because, as explained in the main text above, under *either* type of due process analysis, the charter revocation procedure did not violate the state or federal constitutions.

imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.'" *Seabrook v. Knox*, 369 S.C. 191, 198, 631 S.E.2d 907, 911 (2006) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). Accordingly, procedural due process imposes three fairly rudimentary and flexible safeguards:

> "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." [] Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. [] Rather, due process is flexible and calls for such procedural protections as the particular situation demands.

Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171–72, 656 S.E.2d 346, 350 (2008) (citations omitted). Here, each of these requirements is provided for in the Act and was present in the School's charter revocation proceeding: The School had notice of every step of the proceeding, had an opportunity to be heard, and had access to judicial review (of which it has been and still is availing itself). Accordingly, there has been no violation of procedural due process.

Similarly, there has been no violation of substantive due process because the revocation of a school's charter is not a property deprivation so egregious that it could never be permissible:

> Substantive due process protects a person from being deprived of life, liberty, or property for arbitrary reasons. [] To establish a substantive due process claim, a plaintiff must show he possessed a constitutionally protected property interest that was deprived by state action so far beyond the limits of legitimate governmental action, no process could cure the deficiency.

Seabrook, 369 S.C. at 198, 631 S.E.2d at 911 (citations omitted). Here, the School has

not—and cannot—claim that the revocation of a charter school's charter is a "state action so far beyond the limits of legitimate governmental action [that] no process could cure the deficiency." *Id.* The revocation of a school's charter pursuant to section 59–40–110 is not so far beyond the pale that it violates substantive due process.

In sum, even if the School's due process argument were preserved for this Court's review—which it clearly is not—the School has failed to establish any constitutional violation in the charter revocation hearing.

IV. The Administrative Law Court correctly concluded the revocation hearing conducted by the District was timely held pursuant to Section 59–40–110(D).

In the School's third issue on appeal, it asserts the Administrative Law Court erred in finding the District complied 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." (App. Brief at 14–16.) The evidence in the Record does not support this argument.

The School argues the District's May 8, 2014 vote to revoke the School's Charter came only 43 days after the Notice of Revocation letter, violating the Act's 60-day notice requirement. (*Id.* at 14–16.[17]) However, the 60-day time period does not end until the *effective date* of the revocation, or the closing of the school. *See Mary L. Dinkins Higher Learning Academy v. S.C. Pub. Charter Sch. Dist.*, Dkt. No. 12-ALJ-30-0281, Order 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

[17] The School misstates the date of the District's Notice of Revocation letter as March 26, 2014, when the letter is dated March 19, 2014. (*Compare* App. Brief at 15 *and* Notice of Revocation, Rec. R. pp 1-2.)

scheduled once the charter school receives notice of the proposed revocation.").

Here, the Final Decision specifically notes that the School may continue serving students until the end of its academic year ending on May 30, 2014, which is 73 days after the March 19, 2014 Notice of Revocation was issued. (Final Decision p. 16 at Conclusion, R. p. 18). The School continued to operate until August 6, 2014, when the Administrative Law Court ruled the Final Decision was enforceable during the pendency of the appeal. (Aug. 6, 2014 Order Enforcing Revocation Decision, R. pp. 2807-2812.) Therefore, the School received well over 60 days notice prior to the effective date of the revocation. Thus, the Order of the Administrative Law Court should be affirmed.

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

In its fourth issue on appeal, the School argues the District's decision was arbitrary and capricious because "the school did everything it was asked to do." (App. Brief at 16–19.) This is not the legal standard for arbitrary and capricious and, even if it was, the Record does not support this argument. *See Deese v. S. Carolina State Bd. of Dentistry*, 286 S.C. 182, 184–85, 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.")

Once again, the School does not cite to a single page of the Record to support its argument that the Board's decision was arbitrary or capricious. Instead, the School presents arguments that are either irrelevant or unsupported by the Record. First, the School argues its Charter was not yet possible to revoke under the Act as amended June

12, 2014 because the School had not failed for three consecutive years by the May 8, 2014 revocation hearing or the May 23, 2014 Final Decision. The Act's new three-year "grace period," however, does not apply here because the revocation occurred prior to the statute's effective date of June 12, 2014, and thus the School's argument is without merit.

Second, the School asserts it "added additional highly qualified staff in the area of special education and IEP preparation" who "ran the special education departments for Williamsburg County and Sumter County and were recommended by district staff." (App. Brief at 17.) The School attempts to then analogize this case to *Chisholm v. South Carolina Dept. of Motor Vehicles*, Opinion No. 5107 (S.C. Ct. App. 2013), arguing the School, "like the defendant in Chisholm, did everything it was supposed to do and its charter was still revoked." (*Id.*)

Chisholm, however, is quite inapposite to this case. *Chisholm* involved a lawsuit by a motorist whose license was suspended after she tried to take a breath test but the breach test machine was not working. Because she did not "refuse" to take the breath test under the statute, her license should not have been suspended. Here, instead of doing everything it was supposed to do, the School refused to comply with requests from the District authorized by the Charter, the Contract and the Act. The School refused to remedy its special education and other noncompliance over a period in excess of one year, failed to comply with statutorily-authorized sanctions short of revocation, and failed to provide the District information to support financial expenditures. *See* Section I, *supra*. This case is not *Chisholm*, and the School's reliance on that case is misplaced.

Third, the School argues the Final Decision as affirmed by the Administrative Law Court was arbitrary and capricious because "other schools similarly situated with

worst [sic] performance records were not revoked." (App. Brief at 17.) The School points to no evidence to support this argument and the Record does not support it. (*See, e.g.*, Tr. 6:4-9:24, R. pp. 30-33.) Critically, the School's Brief addresses no ground for revocation other than academic performance. The Record is clear that the School stands alone in its audacious refusal to provide financial and academic information, comply with state laws and regulations, and comply with statutorily authorized sanctions short of revocation. Indeed, Ms. Davis testified that no other charter schools failed to remedy issues of noncompliance related to special education within one year. (Tr. 97:16-98:2, R. pp. 121-122.)

Furthermore, comparing charter schools based only on accountability data is almost entirely meaningless in a revocation proceeding. 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). Every charter school has different goals and is measured differently. (Tr. 46:4-5, R. p. 70.) Here, for example, the School promised "academic excellence" and then defined that by providing objective, measurable goals. (Charter at 23-32, R. pp. 289-294.) As noted above in Section II(D), however, the School indisputably failed to meet these goals by underperforming on federal and state accountability data and by failing to show individual student progress on MAP testing. Revocation was warranted under the Act.

The School failed to (and cannot) show any other charter school is similarly situated to it. South Carolina charter schools are varied and diverse, ranging from statewide virtual schools to schools that only serve limited numbers of grades, all with differing missions, goals and models. *See* http://www.sccharter.org/?DivisionID=12726

(last visited February 22, 2015). The Record contains no evidence any other charter school had similar charter goals, data or circumstances as the School. Therefore, the Order of the Administrative Law Court should be affirmed.

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

In its fifth issue on appeal, the School wrongly argues that the District Board did not have 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 revocation hearing. (App. Brief at 19–20.) The School bases this argument on the proposition that quorum is only reached when a majority of the nine board members authorized by statute—as opposed to the active board members that actually sit on the board at any given time—are present for a vote. (*Id.*) These arguments are based on a misinterpretation of the statute and the meaning of the term "quorum," and the Record contains no evidence to support them.

As to the March 13, 2014 meeting, the School admits 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.) The Act does not define a quorum, but in other statutes, a quorum is determined *not* by reference to the maximum hypothetical number of members but by reference to the *actual* number of members. *See, e.g.*, S.C. Code Ann. § 30–4–20(d) (defining a quorum as "a simple majority of the constituent membership of a public body"). Generally, 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 over fifty percent of the board members were present.

As to the May 8, 2014 revocation hearing, three out of five members were present, again constituting a quorum. The School incorrectly argues that the resignation of Reese Boyd, Esq., was invalid because "[t]here is no indication that the resignation has been accepted by the Governor." (App. Br. at 20.) The Act contains no such requirement, and no other authority supports it. The School's related contention—with no citation to the Record—that Mr. Boyd resigned "so the district court claim that a majority of the active board was present" at the hearing is not supported by any evidence. Therefore, the Order of the Administrative Law Court should be affirmed.

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

In its sixth argument on appeal, the School argues the administrative law judge erred when he found the revocation hearing was not a sham. (App. Brief at 20–22.) Citing Wikipedia, the School argues that the hearing prescribed by the Legislature in the Charter School Act is a "Kangaroo Court." (*Id.* at 21.) The Record does not support the School's argument.

First, Mr. Don McLaurin, appointed by the Governor, did not rush the presentations, as the School alleges. Mr. McLaurin stated at the beginning of the hearing that he hoped to complete the hearing in three hours, "but if our discussions go beyond that, they will." (Tr. 13:11-15, R. p. 37.) The hearing lasted over six hours, until 7:40 p.m. (Tr. 237:10, R. p. 259.) Mr. McLaurin allowed **both** lawyers for the School to provide opening and closing arguments, question witnesses, and participate in the hearing.

In addition, every witness the School said it intended to call at the beginning of the hearing testified. (Tr. 13:20-24, R. p. 37.) At the end of its case, the School for the first time asked for the testimony of Wayne Brazell, District Superintendent, and Dana Reed, Director of Compliance for the District, both of whom the School knew were not present at the time. (Tr. 204:7-11, R. p. 228.) The Board's Chair rightly recognized this as a delay tactic and gamesmanship, and denied the request. The Board's Chair further noted that the District had offered for Dr. Brazell to testify earlier in the day because of a scheduling conflict, and the deposition of Ms. Reed had been offered prior to the hearing. (Tr. 204:7-207:4, R. pp. 228-231.)

Second, contrary to the School's argument in its Brief that "[t]he other board member[s] participated in a limited manner at the revocation hearing," (App. Brief at 21), the Record demonstrates that Board members other than Mr. McLaurin participated substantially in the decision. Linzie Staley, also appointed by the Governor, moved to affirm the decision to revoke. (Tr. 232:14-15, R. p. 254.) The motion was seconded by Betty Bagley, recommended by the South Carolina Association of School Administrators, seconded the motion. (Tr. 232:16, R. p.254.) The vote to revoke was unanimous. (*Id.*) Ms. Staley and Ms. Bagley then provided comments about their consideration of the testimony and evidence, revealing their vested interest in the success of all charter schools and the difficulty they have in closing schools the District's Board itself approved for a charter. (Tr. 232:19-233:8, R. pp. 254-255.)

Finally, the School complains it asked for a continuance on the date of the hearing, but it was not granted. (App. Brief at 22.) This is a disingenuous complaint since the School agreed on the date for the hearing. (March 26, 2014 Letter Buyck to

District, R. p. 2458; April 3, 2014 Letter Norton to Buyck, R. p. 2459.)

Therefore, substantial evidence in the Record supports the Administrative Law Court's finding that the revocation hearing was conducted in compliance with the Charter School Act and under the framework approved in this Court's prior decisions. The decision of the Administrative Law Court therefore should be affirmed.

VIII. The School failed to preserve its argument that the District violated "other provisions" of the Act and, in any event, this argument is not supported by the Record.

The School argues in its seventh issue on appeal that the District violated "other provisions" of the Act. (App. Brief at 22–23.) The School's argument to the Administrative Law Court on this issue consisted of out-of-order, unnumbered pages that generally noted various provisions of the Act but did not explain how the School contends the District violated them. (App. Br. at to ALC at 37–38, R. pp. 2948-2949.) Rather, the Administrative Law Court was left to guess at what the School's argument might be. (*See* Order at 10, R. p. 2826 (noting that this argument was "seemingly incomplete").) In its Brief to this Court, the School appears to have now finished writing out its arguments. The School now argues the District violated "other provisions" of the Act by (1) not giving the School a ten-year charter and (2) revoking the School's Charter prior to its next annual evaluation.

These arguments, however, were not coherently raised to the lower court and are thus unpreserved for appellate review. *See Buist v. Buist*, 410 S.C. 569, 574, 766 S.E.2d 381, 383 (2014); *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *Roche v. S.C. Alcoholic Beverage Control Comm'n*, 263 S.C. 451, 211 S.E.2d 243 (1975).

Furthermore, there is no support for the School's argument in the Record or the Act. First, contrary to the School's contention in its Brief that it was granted "only a probationary charter," (App. Brief at 23), the School was granted a ten-year charter consistent with Section 59–40–110(A) of the Act. (Contract at 10 § 6, R. p. 2264.) The Act permits a school's Charter to be revoked or not renewed under Section 59–40–110(C), which the District properly did based on the School's repeat, flagrant violations of state and federal law, its Charter, and the Contract. *See* Section, *supra*. To the extent the School may now argue for the first time its Charter was not of the ten-year duration required under Section 59–40–110(A), that argument is unsupported by the Record or the Act.

The School's argument that "[t]here was no annual evaluation done as the School's charter was revoked during the school year," (App. Brief at 23), was not only not properly preserved for review by this Court, but it is based on a misinterpretation of the Act. The Act does not require the District to conduct *another* annual review of the School before holding a revocation hearing; instead, it requires that annual evaluation results be used in determining nonrenewal or revocation. S.C. Code Ann. § 59–40–10(A). The School's additional requirement of endless annual reviews would leave sponsors in a perpetual holding pattern unable to consider revocations or nonrenewals where necessary pending yet another annual review. Regardless, the School's Annual Reports are in the Record and were considered by the District's Board in making the revocation decision. (Annual Reports, R. pp. 656-764; 2266-2353.) Accordingly, this Court should affirm the Order of the Administrative Law Court.

IX. The Administrative Law Court Correctly Concluded the School's Failure to Comply with Special Education Law is a Valid, Independent Basis for Revocation.

Without reference to the Record, the School argues in its eighth issue of appeal in its Brief that it complied with special education laws but, even if it did not, it is the District's fault. (App. Brief at 23–25.) As an initial matter, the School's failure once again to cite to evidence or other authority to support its argument renders its argument abandoned and this Court need not rule on it. *See* Section I, *supra*. However, to the extent this Court even considers the School's argument that it complied with special education laws, that argument finds no support in the Record or in law and the Administrative Law Court properly rejected it, as detailed above in Section II(A). Recognizing it did not comply with special education laws, the School further argues that any issues of non-compliance with special education law were the District's fault because the District is supposed to handle special education at the School. (App. Brief at 24–25.) The Record demonstrates that the District acted entirely as required, however.

The Charter and Contract executed between the District and the School, which is required by statute and approved in form by the State Department of Education, required the School (as it does all charter schools) to comply with special education laws. (Charter at 176-79, R. pp. 439-442; *id.* at 220–21, R. pp. 483-484; *id.* at Statement of Assurances, R. p. 637; Contract ¶ 2.5, R. p. 2255.) As set forth in Section II(A) above, the District notified the School of issues of noncompliance, required a corrective action plan and offered it training and other services to assist it to correct issues of noncompliance. When the School still did not correct issues of noncompliance, the District issued sanctions short of revocation. The School refused to comply with those

sanctions and proved incorrigible regarding its special education noncompliance. After more than a year without correcting the issues of special education noncompliance, the District's Board voted to revoke the Charter. Accordingly, the Administrative Law Court correctly found substantial Record evidence to support revocation of the School's charter, which provides an additional, independent basis for affirming that court's Order.

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

In its ninth issue on appeal, the School asserts it was not provided a reasonable, meaningful opportunity to remedy its problems because (1) the School's special education staff believes the School's IEPs are compliant; (2) "the district categorically rejects the School's request to sit down with district personnel and discuss the differences in the IEPS;" and (3) the District "clearly sought to inhibit the autonomy of the School when it requested a level of reporting which the School found to be oppressive and interfered with its ability to educate its students." (App. Brief at 25–27.) The School makes these arguments without any citation to the Record. They are accordingly abandoned on appeal. *See* Section I, *supra.*

Even if this Court considers such arguments, however, substantial evidence in the Record shows the School had numerous opportunities to correct its problems over a period of more than a year, but repeatedly failed and refused to do so despite the District's attempts to facilitate the School's compliance. First, the School's special education consultant, Ms. Bannister, admitted the School was out of compliance with special education laws, as set forth in Section II(A) above. Further, Ms. Bannister testified that she did not review each student's complete special education file, but only

the single IEPs submitted by the School. (Tr. 213:21-24, R. ____.) [18]

Second, as set forth in detail in Section II above, the District notified the School of issues of noncompliance, required a corrective action plan and offered it training and other services to assist it to correct issues of noncompliance. When the School still did not correct issues of noncompliance, the District issued sanctions short of revocation. After more than a year lapsed without correction to the issues of special education noncompliance, the District's Board voted to revoke the Charter.

Third, as detailed in Section II(C) above, the Record contains substantial evidence that the School failed to maintain or provide financial records and documentation as required by its Contract and the Act, particularly as related to the District's request for substantiation of financial expenditures and background checks for the Have Faith, LLC tutors or documents to substantiate Saturday School services that presumed an eight hour work day. (Aug. 27, 2013 Letter District to School, R. pp. 790-793; Notice of Default, R. pp. 798-804; Jan. 16, 2014 Letter Buyck to District, R. pp. 2402-2404; Have Faith Background Checks, R. pp. 2799-2804.) Accordingly, this Court should affirm the decision of the Administrative Law Court that the School was granted a meaningful opportunity to remedy its problems.

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

In its tenth issue on appeal, the School argues the Administrative Law Court erred in concluding that pursuant to Section 59–40–90 of the Act as amended June 12, 2014 the School was not entitled to an automatic stay pending its appeal. Thus, the School argues

[18] The Record on Appeal served by Appellant failed to include the referenced page in the transcript.

its funds should be reinstated retroactively. (App. Brief at 27.) In the half-page given in its Brief to this argument, again without citation to the Record, the School ignores half of the Administrative Law Court's order and disregards the evidence in the Record.

First, the School ignores in its Brief that the Administrative Law Court held in the alternative that even if the pre-amendment version of the Act applied, good cause existed to lift the stay. (Order Granting Motion to Enforce Dated Aug. 28, 2014 ¶¶ 17–22, R. pp. 2810-2811.) Because the School has failed to appeal this ruling, it is the law of the case and requires affirmance. *See Ex parte Morris*, 367 S.C. at 65, 624 S.E.2d at 653–654; *Video Gaming Consultants*, 342 S.C. at 42 n.7, 535 S.E.2d at 646 n.7; Rule 220(c), SCACR.

Should the Court find it necessary to consider this argument however, the Administrative Law Court's Order should nevertheless be affirmed for the additional reason that the School did not merit a stay under either the Act as amended or pre-amendment. The amendment to Section 59–40–110 stating that no automatic stay applies is remedial or procedural in nature. *See Graham v. Dorchester Cnty. Sch. Dist.*, 339 S.C. 121, 124, 528 S.E.2d 80, 82 (Ct. App. 2000) (finding the addition of Rule 40(j) to the Rules of Civil Procedure applied to pending case).

The Administrative Law Court correctly found that like the *Graham* case, the School's right to proceed on appeal was not taken away or even limited by the lack of an automatic stay. (Order Granting Motion to Enforce dated Aug. 28, 2014 at ¶ 7, R. p. 2808.) Moreover, the Administrative Law Court found that the School failed to establish any "undue hardship" from the lack of a stay under Section 110(J). (*Id.* at ¶¶ 9–16.) The court appropriately recognized that the School's arguments of "undue hardship"—*e.g.*,

students needing to find another school and having already paid for uniforms, expenditures in anticipation of school opening—were ordinary challenges when a charter is revoked or not renewed. (*Id.* at ¶¶ 10–11.) There was nothing excessive or unusual about the School's circumstances to warrant a stay, and any burden on the School could be eliminated or mitigated by the expedited briefing schedule. (*Id.* at ¶ 13.) Therefore, the Administrative Law Court's alternative ruling that good cause existed to lift the stay under the pre-amendment version of the Act is the law of the case and requires affirmance.

To the extent the Court deems it necessary to consider the School's arguments that it warranted a stay on the merits, substantial evidence in the Record exists to support the Administrative Law Court's finding that under either the amended or pre-amendment version of the Act a stay was not appropriate here. The Order of the Administrative Law Court should accordingly be affirmed.

XII. Section 59–40–110(J) of the Act is constitutional.

The School's final argument on appeal is that S.C. Code Ann. § 59–40–110(J) is unconstitutional because it provides only a discretionary stay—not an automatic stay—of a revocation decision while that decision is being appealed to the Administrative Law Court. (*See* App. Brief at 27–28.) The School fails to cite a single authority or even to explain in what way the statute is unconstitutional. In lieu of arguments and authority, the School simply asserts that the absence of an automatic stay is "Un-American" and is supposedly contrary to the principle "that no one is guilty until he is proved guilty." (*Id.*) Accordingly, this issue is abandoned. *See* Section I, *supra.*

Even if it were necessary for this Court to consider this issue, the statutory subsection at issue is within the authority of the legislature. The challenged statutory subsection states in its entirety:

> A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section 59–40–90. Upon 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 nonrenewal 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). The automatic appellate stay is a legislatively and judicially created doctrine, not a constitutional right, and section 59–40–110(J) (like the other exceptions found in statutes[19] and in Rule 241(b), SCACR) does no more than carve out a particular exception to the general rule. Neither this Court nor the Supreme Court has ever held that a Rule or a statute is unconstitutional because it does not provide an automatic appellate stay, and the School has provided no justification whatsoever for such a holding here. Furthermore, any potential prejudice to a charter school caused by the absence of an automatic stay is mitigated because the statute also provides an avenue to seek a discretionary stay to prevent any hardship.

In sum, the School has abandoned this issue by failing to offer any authority or even an explanation in support of its conclusory assertions and, even if the issue were properly before this Court, the School has offered no reasoning or basis to disregard the long-standing and well-settled authority of the legislature and the courts to create

[19] *See* S.C. Code Ann. §§ 1–23–380(A)(2), 1–23–600(G)(5), 18–9–130, 15–9–150, 18–9–160, 18–9–170, 18–9–220, 27–37–130, 27–40–800, 42–17–60, 63–3–530(A)(2), 63–3–630 (collectively illustrating some, but not all, of the exceptions to the automatic stay).

exceptions to the automatic stay.

Conclusion

The School has failed to meet its burden of showing that the Order of the Administrative Law Court is unsupported by the Record, or any other basis for reversal exists. Indeed, the Record contains overwhelming evidence that multiple grounds exist for revocation of the Charter. Therefore, based on all of the foregoing, this Court should affirm the Order of the Administrative Law Court dated October 9, 2014, affirming the Final Decision dated May 23, 2014, revoking the Charter of Lake City College Preparatory Academy.

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July 13, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Circuit Court Judge

Appellate Case No. 2014-002372
Case No. 14-ALJ-30-1256-AP

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

v.

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

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent South Carolina Public Charter School District, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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Final Brief of Respondent

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July 13, 2015

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SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

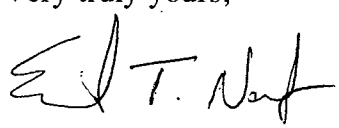
RE: Lake City College Preparatory Academy v. South Carolina Public Charter School District
Appellate Case No. 2014-002372
Our File No. 41106/01503

Dear Ms. Kitchings:

Enclosed please find the original and seventeen copies of the Final Brief of Respondent. We would appreciate your filing the original and appropriate copies and returning the remaining clocked-in copies to us.

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

Very truly yours,



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ETN:ls
Enclosures

cc: Johnny Watson, Esquire
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