IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable John D. McLeod, Judge

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

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

V.

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

U. S.CONSTITUTION

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 The LCCPA's school charter was revoked by the South Carolina Public Charter School District (SCPCSD or the District) in its decision issued May 8, 2014.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. Appeals from the South Carolina Administrative Law Court is to this Court pursuant to Rule 201, SCRAP.

STATEMENT OF ISSUES ON APPEAL

The issues before this Court are as follows:

1. Whether the Administrative Law Judge erred in finding that 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 Administrative Law Judge erred in finding that 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 Administrative Law Judge erred in finding that 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. Whether the Administrative Law Judge erred in finding that the District's decision to revoke LCCPA's charter was not arbitrary and capricious, and characterized by abuse of discretion or a clearly unwarranted exercise of discretion?

5. Whether the Administrative Law Judge erred in finding that the decision to revoke the LCCPA's charter by the SCPCSD's board was made by a legally constituted board. (South Carolina Code of Laws Annotated 1976) and that the SCPCSD's board was legally constituted at the Revocation Hearing?

6. Whether the Administrative Law Judge erred in finding that the revocation hearing was not a sham by a biased school board when 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. Whether the Administrative Law Judge erred in finding that the South Carolina Charter School District did not violate 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 Administrative Law Judge erred in finding that the South Carolina Public Charter School's District did not violate provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) by the district 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 the Administrative Law Judge erred in finding that 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?

10. Whether the Administrative Law Judge wrongly cut off the funds to LCCPA during the pendency of this appeal? And

11. Whether the statue which allows a charter school's funding to be cut off during the pendency of litigation is constitutional?

STATEMENT OF THE CASE

a. This case was commenced on March 19, 2014 when the Respondent issued its letter revoking the charter of the Appellant under the provisions of the South Carolina Public Charter School Act. (Rec. pg. 0001-0002).

The Appellant filed a timely request for a hearing on the revocation decision of the Respondent on March 26, 2014, so the Respondent scheduled a revocation hearing at its headquarters on May 8, 2014 with its chairman, Don McLaurin, presiding over the revocation proceeding and with the Respondent board acting as the finders of fact and the voters, along with chairman, Don McLaurin, on the question of final revocation at the end of the hearing. (Rec. pg. 0025).

The Respondent board conducted a revocation hearing on May 8, 2014 and at the close of arguments issued its oral decision upholding its previous revocation decision and followed that announcement with a written revocation order on May 23, 2014. (Rec. pg. 0003).

The Appellant thereafter filed a timely notice of Appeal to the South Carolina Administrative Law Court on May 15, 2014 based on the oral decision announced at the revocation hearing but at the urging of the Respondent's attorney an Amended Notice of Appeal was filed on June 16, 2014 after the written order was issued May 23, 2014. (Rec. pg. 0003).

The parties submitted brief s on the issues before the Administrative Law. (Rec. pg. 2908). That court thereafter heard oral arguments of the parties on September 4, 2014 and issued its order upholding the revocation decision of the Respondent on October 9, 2014. The

Appellant thereafter filed a Notice of appeal in this Court is November 7, 2014 and served a copy on the Respondent on that date.

b. The nature of this action is a request by the appellant for this court to review the actions of the Respondent in revoking its charter pursuant to the South Caroling Public Charter School Act and a review of the decision of the South Carolina Administrative Law Court in upholding the Respondent's revocation decision.

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

FACTUAL AND PROCEDURAL BACKGROUND

The factual and procedural background in this case is fully set out in the Brief of the Appellant before the Administrative Law Court that is part of this record. (Rec. pg. 2908).

The revocation is based on 36 allegations of fact by the Respondent and each allegation is fully addressed by the Appellant in its brief filed with the Administrative Law Court. (Rec. pg. 2908).

SUMMARY OF ARGUMENTS

The Administrative Law Judge essentially adopted the arguments in the brief of the Respondent as its order in this case. (Rec. pg. 2817-2828). Judge McLeod found that substantial evidence existed in the record as a whole to uphold the findings of the Board. He did not address the issue of the constitutionality of the statue as a whole or any of its subdivisions or on the fairness of the proceedings. (Rec. pg. 2817-2828).

The establishment of any school is fraught with hazards and mistakes will be made by the founders and administrators of any such new school. The legislature recognized that fact in the newest version of the law when it provided that no school's charter would be revoked in the first three years of the school's existence. S. C. Code of Laws (1996), section 59-40-110(E).

The founders and administrators of the Appellant school, LCCPA, made mistakes as well but those mistakes should not rise to the level which requires revocation of its charter. The

school was only in its third year of existence and had made laudable achievements. (Rec. pg. 2918-2919). It was successfully combining children's love of the arts (music, singing, dancing, etc.) with the academic curriculum that endeared both the students and their parents to the school. (Rec. pg. 1886). It was based on the renowned Harlem School of the Arts where its fonder Dr. Deloris Brown was once the principal. (Rec. pg. 2915).

The school was not given a fair chance when it became targeted for the revocation of its charter almost from the beginning of its existence. There is an emphasis by the Respondent school board, as embodied in the actions of the board chairman Don McLaurin, on the results of standardized tests without regard to the background of the students being tested. That is certainly understandable if all of the schools and students in attendance at those schools came from similar background but that is not the case.

The students of LCCPA were largely student who qualified for the free lunch program. In the education world that speaks volumes about the background and often about the home situation of the students. They are not as prepared as their counterparts in the normal public school and most of the successful charter schools.

However, such students and their parents are drawn to schools such as LCCPA in hope of getting the attention the students need in a smaller less hostile environment of the traditional public school.

LCCPA was successful in its efforts to help the students reach a high level of achievement as it indicated it would do in its charter agreement. To see where many of the students started and where they are now is no less than astonishing. However, to say that students would score as well as the public schools or charter school with less free lunch students is unrealistic and such was not promised by the school's founders and administrators.

To deny LCCPA and such schools the right to exist because of the underprivileged students they serve is not fair to the students, their teachers and the students' parents.

ARGUMENTS

I. The Administrative Law Judge erred when he found that 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) .

The Appellant's argument on this issue is fully set out in its brief filed in the Administrative law court which is part of this record. (Rec. pg. 2908-2955).

Judge McLeod found that "In reviewing the Record, the 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. He did not relate this finding to any particular allowable reason for revocation for the most part. He found the following in support of his decision:

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

i.Failure to comply with Special Education Laws.

The essence of the LCCPA's response to that assertion is that:

•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 misunderstanding and not a matter of noncompliance issue. LCCPA's experts feel that the IEP's were written correctly according to the "child(ren) team".

•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.

•LCCPA 's staff was not provided any technical assistance by the sponsor Respondent 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.

•Further the Respondent 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 shortage in its projected enrollment. This sanction placed LCCPA in a catch 22 situation. Further, not accepting all students that applied would violate the law as LCCPA's charter agreement requires it to accept every student who request admission. S. C. Code of Laws (1996), section 59-40-50(B)(7).

i.LCCPA failed to comply with other Laws and Regulations.

Here, the Respondent 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. Pg. 0667), and clearly show that the faculty more than meets the qualification requirement required of them by the South Carolina Charter School Act, S. C. Code of Laws (1996), section 59-40-50(B)(5), and that of its charter. (Rec. Pgs. 267-639).

iii. LCCPA breached the Charter, Contract and Act by failing to Substantiate Financial Expenditures and Background Checks of Tutors.

Respondent 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 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. Rec. pg 2402-pg 2404.

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

The Respondent 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.

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;

B. LCCPA Failed to Meet Generally Accepted Fiscal Management Practices.

The Respondent further asserts that LCCPA committed material violations by failing to meet generally accepted fiscal management practices. However, That is clearly not the case since LCCPA's records are maintained by an outside accounting firm that

reports their findings to the Respondent. (Rec. Pgs. 1741-1742 and 2302-2352).

C. LCCPA Failed to Comply with State and Federal Laws and Regulations.

Here, the Respondent merely repeats allegations that have been addressed above regarding special education, teacher qualification and teacher evaluations. It is ironic that while the Respondent alleged that LCCPA employed unqualified personnel it hired many of those same people after it effectively closed LCCPA by cutting off its funds.

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);

The Appellant's argument on this issue is fully set out in its brief filed in the Administrative law court which is part of this record. (Rec. Pgs. 2908-2955).

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. 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 denied 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).

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 noted 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 Respondent herein, determined that it would not renew LCCPA's charter and the Respondent served as both the prosecutor, and trier of fact at the revocation hearing on May 8, 2014. (Rec. Pg. 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, whose board allocates the funds to pay Mr. Erik Norton and his associates.

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 constitutionally 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 heard by this Court.

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 already made a decision and did not consider matters placed in the record. (Rec. Pg. 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 as 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 own 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., 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. (Rec. Pg. 2640).

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.

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 or some other tribunal.

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 Administrative Law Judge erred when he found that 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);

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. Pg. 1).

Thereafter, on March 26, 2014, the attorney for the appellant requested a revocation hearing. (Rec. Pg. 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, which was made on May 8, 2014 and communicated to the attendees at the hearing at that time, (Rec. Pg. 254), was followed up by a formal order of revocation on May 23, 2014. (Rec. Pg. 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. Pg. 3), which is still less than the 60 days mandated by the charter school act.

IV. The Administrative Law Judge erred when he found that the decision to revoke LCCPA 's charter was not 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 declared as an example of 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(E).

LCCPA was only in its third year of existence so it has not failed for three consecutive years.

LCCPA added additional highly qualified staff in the area of special education and IEP preparation. Those hires 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 renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.**

However, the Respondent ignored this provision in its haste to revoke the charter of LCCPA. The Respondent 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 Administrative Law Judge erred when he found that 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 that the SCPCSD board was 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) One 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.

B. 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 of the nine authorized by statute. (Rec. Pg. 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 six active board members one, Reese Boyd, resigned the day before the revocation hearing so the district could claim that a majority of the active board was present. There is no indication that that resignation had been properly accepted.

VI. The Administrative Law Judge erred when he found that the revocation hearing was not a sham by a biased school board when 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 Respondent 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 ln 22-23, Pg 0218 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 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 Respondent 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. 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 Respondent. (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. pg 0020 lns 16-18).

Clearly, that was a sham hearing with a predetermined outcome. Mr. McLaurin even refused to hear from certain witnesses of the appellants. Rec pg.228 line 8-10.

VII. The Administrative Law Judge erred when he found that the South Carolina Charter School District did not violate 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 yet the Respondent did not give LCCPA a ten year charter but only a probationary charter.

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." There was no annual evaluation done as LCCPA's charter was revoked during the course of the school year.

VIII. The Administrative Law Judge erred when he found that the South Carolina Public Charter School's District did not violate provisions of the South Carolina Charter School

Act (South Carolina Code of Laws Annotated 1976) by its failure 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;

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 209 line 3-5.

The LCCPA correctional hires have over 50 years experience in preparing IEPs for their prior school districts. Rec 2805-2806.

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 Respondent seeks to shut down a highly achieving school largely based on the IEPs of some of its special educations students when the Appellant is doing everything the Respondent asked it to do to come into compliance.

IX. The Administrative Law Judge erred when he found that the 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?

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 contact, 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. Pgs. 2616-2639). 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 contact, 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. (Rec. Pg. 2613).

X. The Administrative Law Judge erred when he wrongly cut off the funds to LCCPA during the pendency of this appeal?

This issue was addressed by the court below at a motion hearing on July 29, 2014. The new charter school law passed in June 4, 2014 states, "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.

Judge McLeod wrongly applied the new law in denying the automatic stay in effect prior to adoption of the new law. This appeal was perfected prior to the passage of the new law. Appellant, therefore, respectfully request that this court review that decision and reinstate the funds of the Appellant school retroactively.

XI. The statue which allows a charter school funding to be cut off during the pendency of litigation is unconstitutional?

This issue was not addressed by the court below because it involves the question of the constitutionality of a statute.

It is fundamental to the American Scheme of Justice that no one is guilty until he is proved guilty by a preponderance of the evidence in a civil matter.

The new law states that "there is no automatic stay of the revocation or nonrenewal decision. Pending resolution of the appeal, ... That is tantamount to saying that the mere

bringing of allegations by a sponsor domes a charter school such as LCCPA to extinction. When the funds are cut off the largely poor students who attend schools such as LCCPA can't afford to pay and the school ceases to exist without having its case heard. The sponsor becomes both judge and jury. That is both wrong and Un-American.

In a case such as this the sponsor makes allegations and the allegations are denied, however since every school has done something wrong, especially in the first 5 years of its development, the sponsor is able to document some wrongdoing in the record.

The Administrative will then be bound to hold the sponsor and the schools funds will be cut off no matter what the overall value of the school is to the community, parents and teachers and without regard to the lever of the wronging versus the good achieved because parental and community input are ignored by the sponsor.

CONCLUSION

The appellant respectfully requests that this overturn the order of the Administrative Law Judge's upholding the decision of the Respondent which revoked the charter of the Appellant charter school, reinstate the school's funding retroactively.

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 are so monumental that they cannot be fixed, they 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 and 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.*

LCCPA is by no means perfect but it is experiencing startup growing pains.

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.

Respectfully submitted,

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February 8, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod, Judge

Case No. 2014-002372

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

V.

South Carolina Public Charter School District (SCPCSD) .....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: Amended Final Brief of the Appellant, Amended Final Reply Brief of the Appellant and Volume IV redacted to the attorney for the Respondent Only

DATE SERVED: February 8, 2016

Johnny, Document Server