

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Palmetto Youth Academy Charter School,)
)
Respondent,)
)
)
vs.)
)
)
Florence County School District 1 Board of)
Trustees,)
)
Appellant.)
_____)

Appellate Case No. 2012-212001

**FIRST SUPPLEMENT TO
RECORD ON APPEAL**

**COPY OF BRIEFS FILED BY
THE PARTIES WITH THE
ADMINISTRATIVE LAW COURT**

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THE STATE OF SOUTH CAROLINA

Before the South Carolina Administrative Law Court

APPEAL FROM FLORENCE COUNTY DISTRICT ONE BOARD OF SCHOOL
COMMISSIONERS

Docket No.: 10-ALJ-30-0631-AP

Palmetto Youth Academy Charter School, Appellants,

v.

Florence County School District 1 Board of Commissioners,..... Respondents.

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The District's reasons for revocation do not constitute a material breach or violation of PYA's charter.
- II. The District's assertion that PYA has failed to meet generally accepted standards of fiscal management is erroneous and confusing in light of substantial evidence on the record
- III. The District's decision to revoke PYA's charter is arbitrary and capricious; characterized by an abuse of discretion; or clearly unwarranted exercise of discretion.

STATEMENT OF THE CASE

Palmetto Youth Services D/B/A Palmetto Youth Academy ("PYA") first opened its doors in 2005 for the 2005-2006 academic school year. After presenting its charter to the South Carolina Department of Education's Charter School Advisory Committee and the Florence Public School District One Board of Trustees ("District"), it was approved. As required by statute, during each school year PYA has prepared an annual report on the state of the school and present same to the District.¹

The Charter Schools Act of 1996 (the "Act") grants the District the right to approve or revoke the charter at that time.² At the end of each academic year of PYA's existence, the District has authorized PYA to continue operating. Pursuant to section 59-40-110(B)(2) of the South Carolina Code (Supp. 2009), PYA provided the District with financial statements that disclosed the costs of administration, instruction, and other spending categories for its charter. (R.69-73) As part of the District's financial management requirements, it is required to ensure performance of an independent audit each year. This audit process requires the District to compile financial records from all

¹ S.C. Code Ann. § 59-40-110(A) (Supp. 2009).

² S.C. Code Ann § 59-40-110 (Supp. 2009).

its component units, or District schools. During the initial years, PYA's financial submissions to the District, and from the District to the auditor, were met with general approval as indicated in the District's audits for the 2005-2006 and 2006-2007 academic years. (Appendix C) During those years the District received an unqualified or favorable review from its auditors. (Appendix C)

At the end of the 2007-2008 academic year, PYA submitted its Financial Statement in the preferred format to Mr. Luther Rabon, the District's financial manager, on December 9, 2008. Shortly thereafter, Rabon contacted PYA regarding concerns of District's auditor, Mr. Butch Whiddon of Baird & Company, CPA's, LLC. (R.43-44) This contact was the first time the District notified PYA that the documents they had submitted were inadequate. PYA explained to the District that they were under the impression that a complete audit was not required. PYA believed that an audit was not required because of information garnered from State Department of Education (SDE) regarding audits for schools that receive less than five hundred thousand (\$500,000) dollars in funding. (R.43-44) PYA sent the District the correspondence wherein SDE conveyed this information. (R.44) Upon receipt of the information, District confirmed that PYA had received said information; however, District indicated that information was sent out in error by the SDE. (R.44).

The District also indicated that the reason why PYA is now required to perform an independent audit was due to the fact that it is now being considered a component unit of the District and in the past it was not a component unit. Consequently, the District instructed PYA to have an independent audit completed.

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Due to time constraints and lack of resources caused by a tight budget and sporadic disbursement of funds by the District, PYA was unable to complete its financial statement by March 17, 2009. On March 17, 2009, Whiddon submitted a qualified (unfavorable) opinion as to the District audit. (Appendix A) As a result of the qualified opinion, the District decided to revoke PYA's charter because of the qualified opinion's affect on the District's ability to perform some of its functions. (R.4)

Subsequently, PYA retained Kelly-Moser Consulting, LLC (Kelley-Moser), a financial management firm, to assist in preparing its documents for an audit. (R.34) After retaining Kelley-Moser, the District, without consulting PYA, took a portion of PYA's allocation and retained Elliott Davis, LLC, (Elliot Davis) to perform an independent audit for fiscal year 2007-2008. (R.19) PYA provided Elliott Davis with all the necessary information to complete the audit. (R.34) Specifically, PYA provided Elliot Davis with boxes of documents and corroborating evidence prepared by Kelly-Moser in preparation of such an audit. (R.34) The boxes of materials were brought into the hearing as part of the record. PYA was surprised to receive a letter from Elliot Davis on or about January 25, 2010, indicating they were terminating their professional relationship with PYA due to lack of information from PYA and because they felt uncomfortable (R.5). However, Elliot Davis and the District never reallocated the funds that were taken from the school to perform said audit.

On March 18, 2010, FPSD1 Board of Trustees voted to revoke PYA's charter at the end of the school year on June 20, 2010. (R.4) FPSD1 cited PYA's failure to meet generally accepted standards of fiscal management as the reason for its revocation and cited to Elliott Davis's termination letter in support thereof. (R.4) On March 30, 2010,

PYA timely requested a hearing before final action was taken on the status of its charter. On May 20, 2010, the District confirmed its decision to revoke the charter of PYA. (R.9-48) PYA timely filed a notice of intent to appeal and on August 19, 2010, the Honorable Shirley C. Robinson was assigned to the case.

STANDARD OF REVIEW

The Administrative Law Court reviews the order of the District Board of Education under the Administrative Procedures Act (APA), 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) 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.

S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2009).

When reviewing decisions of administrative agencies, the applicable standard of review is the substantial evidence rule. *S.C. Coastal Conservation League v. S.C. Dept. of Health & Env'tl. Control*, 380 S.C. 349, 360-61, 669 S.E.2d 899, 905 (Ct. App. 2008). The reviewing court may reverse or modify the decision when an appellant's substantive rights have been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law. *SGM-Moonglo, Inc. v. S.C. Dept. of Revenue*, 378 S.C. 293, 295, 662 S.E.2d 487, 488 (Ct. App. 2008). Substantial evidence is evidence that, when viewing the record as a whole, would allow reasonable

minds to reach the same conclusion the ALC arrived at in justifying its decision. *Coastal Conservation League*, 380 S.C. at 362, 669 S.E.2d at 905.

BACKGROUND ON CHARTER SCHOOL ACT

The General Assembly enabled the creation of charter schools and provided its purpose in section 59-40-20 of the South Carolina Code (Supp. 2009). When compared with other statutory schemes, the Act, contains a rare expression of the General Assembly's intent in enacting this legislation:

(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 [the Act] 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.

S.C. Code Ann. § 59-40-30 (Supp. 2009) (emphasis added).

An application to start a charter school must be submitted to the school's proposed "sponsor." Sponsor is statutorily defined as either the South Carolina Public Charter School District Board of Trustees or "the local school board of trustees in which the charter school is to be located . . . from which the charter school applicant requested its charter and which granted approval for the charter school's existence." S.C. Code Ann. § 59-40-40(4) (Supp. 2009). If the application is approved, the approved application constitutes a contract between the charter school and its sponsor. S.C. Code

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Ann. § 59-40-60(A) (Supp. 2009). The Act is explicit in its use of contractual language to describe the relationship between a sponsor and a charter school. *See* § 59-40-60(A).

Accordingly, PYA highlights several common law contract principles that apply in South Carolina. First, a “contract” is an obligation that arises from actual agreement of the parties manifested by words, oral or written, or by conduct. *Sadighi v. Daghighfekr*, 66 F. Supp. 2d 752, 759 (D.S.C. 1999). Second, it has long been recognized in this state that every contract contains an implied obligation of good faith and fair dealing. *U.S. for Use & Benefit of Williams Elec. Co., v. Metric Constructors, Inc.*, 325 S.C. 129, 133, 480 S.E.2d 447, 448-49 (1997). In other words, each party to a contract has the obligation to act in good faith and to deal fairly with the other regarding all matters incident to the contract.

It is also universally held in the common law that:

Every breach of contract does not give a party the right to unilaterally terminate the contract, as long as the breaching party has substantially performed its duties under the contract. Rescission of a contract is not generally permitted for a casual, technical, or unimportant breach, but only for a breach so substantial, fundamental, and material as to defeat the very object of the contract.

17A Am. Jur. 2d *Contracts* § 557 (2004); *see also* Restatement (Second) of Contracts § 241 (1981). South Carolina common law falls in line with the above-quoted authorities. *See Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 276, 440 S.E.2d 364, 366-67 (1994) (adopting Restatement (Second) of Contracts § 241); *see also Gibbs v. G.K.H., Inc.*, 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993) (noting that in order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract).

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Once a charter school has been started, the Act empowers a charter school sponsor to revoke or not renew the school's charter only if the sponsor determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedures provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or
- (4) violated any provision of law from which the charter school was not specifically exempted.

S.C. Code Ann. § 59-40-110(C) (Supp. 2009). The Board's order indicates that it based PYA's revocation on subsection three of section 59-40-110(C) because PYA failed to meet generally accepted standards of fiscal management.

ARGUMENTS ON APPEAL

I. The District's reasons for revocation do not constitute a material breach or violation of PYA's Charter

The letter from the District dated March 18, 2010, stated that the board of directors voted to revoke the charter of PYA due to "material violations of conditions, standards and procedures in the management of [PYA's] finances and the operation of your school." (R.4) These alleged violations must be analyzed in light of the definition of a "material" breach of a contract which is defined as "a breach . . . so fundamental and substantial as to defeat the purpose of the contract." 17A Am. Jur. 2d *Contracts* § 557 (2004). The core purpose of the agreement between PYA and the District was to create

an educational environment where teachers, parents, and students can take reasonable risk that would allow the students to thrive and be successful. PYA has delivered in that regard. It is one of a few elementary schools in the District that have made Adequate Yearly Progress (AYP) two of last three years. Academically, few would dispute the strides made by the students at PYA. (R.19) Hence, the only ground the District has to revoke its charter is PYA's failure to meet generally accepted standards of fiscal management.

II. The District's assertion that PYA has failed to meet generally accepted standards of fiscal management is erroneous and confusing in light of substantial evidence in the record.

The District has determined that PYA failed to meet generally accepted standards of fiscal management. Neither the statute nor the regulations define what constitutes generally accepted standard of fiscal management. Further, there is no allegation that the funds appropriated to PYA were used for purposes other than those for which they were allocated. The District claims that a failure to perform an external audit would constitute failure to meet generally accepted standards of fiscal management.

It appears, from the audible portions of the transcript of the hearing, that the District is disconcerted because the District's auditors criticized the District in 2008, and 2009, for failing to include PYA's (component unit) finances with the District's finances for the audit. (R.10-24) Prior to 2008, the District was unconcerned with the financial analysis submitted by PYA, and PYA received favorable reviews from the District on the documents it submitted.

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To put the financial history into perspective, during its first two years of existence, PYA forwarded the District a breakdown of all its financial allocations and disbursements. (R.14;69-73) After receiving PYA's financial allocations and disbursements, the District included PYA's financials in their audit to SDE without any criticisms or consequences. (R.14) The District became concerned with PYA's submission of its financial analysis only after the District received an unfavorable review in its audit.

When PYA forwarded the District its financial allocations and disbursements 2009, the District refused to accept its submissions and claimed PYA was required to perform an independent audit. In response, PYA informed the District of its impression that it was not required to perform an independent audit because it receives less than five hundred thousand (\$500,000) dollars in funding. (R.43-44) PYA then forwarded a letter from the SDE wherein SDE communicated to PYA that it was not required to undergo an independent audit. (R.43-44) The District then contacted SDE, and SDE confirmed PYA's assertion by indicating that it sent the wrong information to PYA. (R.43-44) At that time it was too late for the PYA to complete an audit. Additionally, for a small school that functions on a stringent budget, generating fifteen to twenty thousand dollars to complete an audit in the middle of the year is a difficult mission.

The District then took it upon itself to perform the audit by cutting funds that were allocated to PYA and paid Elliot Davis, without consulting PYA, to perform the audit. As indicated above, Elliot Davis claims it did not receive enough information from PYA and felt uncomfortable performing the audit. However once the District gave PYA's funds to a firm of its choice, the onus was on the District to ensure that the audit

was performed. Accordingly, when Elliot Davis failed to perform an audit as required, it was the District's failure and not PYA's failure. In any event, the audit for PYA has now been completed by another firm, retained and paid for by PYA.

Therefore by failing to articulate what constitutes generally accepted standards of fiscal management and by assuming the responsibility to ensure the performance of the audit, the District cannot now criticize PYA for failing ensure that an independent audit be performed. Additionally, there is no indication that PYA has mismanaged the funds was allocated to be used for educational purposes.

III. The District's Decision to revoke PYA's charter is arbitrary and capricious, characterized by an abuse of discretion, and clearly an unwarranted exercise of discretion.

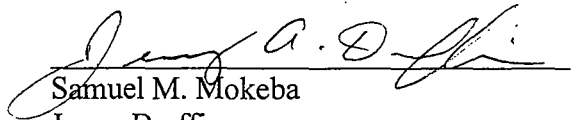
Over its first three years of operation, the District failed to object to PYA's disclosure of its financial allocations or auditing process. To make a claim regarding that procedure in PYA's fourth year of existence and to base the charter revocation on that claim is arbitrary and capricious. If the District objected to PYA's financial management, such a concern should have brought to PYA's attention sooner, rather than three years after PYA had been in operation.

Additionally, when the District deemed it was vital to retain an independent auditor, it used PYA's funds to retain a company of its choosing. Further, from the District's own admission, Elliott Davis only visited PYA to gather facts for the audit and without completing the audit kept ten thousand dollars in fees (PYA's funds) because it felt uncomfortable going forward with an audit. (R.33) Elliot Davis could have completed its task and given PYA a qualified audit; thus, the District's audit would have been unaffected. However, the District's retained auditor failed to complete the task that

has now been completed by another auditor using the same documents that were provided to Elliott Davis. Unfortunately, PYA has now paid two auditors for one audit. To blame the school for a failure that emanates from the District, is an abuse of discretion.

CONCLUSION

For the reasons set forth herein, PYA hereby respectfully requests that court reverses the District vote to revoke its charter.


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THE STATE OF SOUTH CAROLINA
Before the South Carolina Administrative Law Court

APPEAL FROM FLORENCE COUNTY SCHOOL DISTRICT ONE BOARD OF
TRUSTEES

Docket No.: 10-ALT-30-0631-AP

Palmetto Youth Academy Charter School, Appellant,

v.

Florence County School District One Board of Trustees, Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Was there substantial evidence to support the District's decision to revoke PYA's charter based on PYA's failure to meet generally acceptable standards of financial management?

STATEMENT OF THE CASE

By letter of March 18, 2010 Florence Public School District One ("District") informed the Palmetto Youth Academy Charter School ("PYA") it was revoking PYA's status as a charter school sponsored by the District effective at the end of the current school year on June 30, 2010. The reason for the action was the failure PYA to meet generally accepted standards of fiscal management. (R4). Attached to the District's letter was copy of a letter dated January 26, 2010 of Timothy A. Grow, CPA, of the firm of Elliott Davis. Grow stated in his letter that records of PYA were not in a condition such that the accountant could form an opinion. He stated that the funds of the charter school appeared to have been commingled with another entity. He stated activity of the school for periods prior to year of his audit appeared to be unrecorded. (R5).

The District's letter of notification to PYA also attached a copy of a letter of the District's auditors, Baird & Company, dated February 16, 2010. (R4). This letter of Baird & Company stated that the District was required in its financial statements to include financial information of all of its component units. PYA was a component unit of the District. Since the District's auditors did not have audited financial statements for the year ending June 30, 2009 for the PYA, the District's auditors had to issue a qualified opinion on the District's finances for the year ending June 30, 2009. The District's auditors noted that they had met with limited success over the past two years in getting adequate financial statements from PYA. (R6).

PYA requested a hearing before the school board on the administration's action to revoke its charter. A hearing was held before the school board of the District on May 20, 2010. (R10). At the conclusion of the hearing the board voted to uphold the administration's decision to revoke the charter of PYA. (R47). PYA was formally notified of that action by letter of the school superintendent of June 1, 2010. (R3).

PYA has appealed from that decision of the District.

STANDARD OF REVIEW

The Administrative Procedure Act provides in Section 1-23-380:

...

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of evidence on questions of fact. . . . The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

...

(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

CHARTER SCHOOL ACT PROVISIONS

The statutes establishing Charter Schools provides in Section 59-40-50:

(B) A charter school must:

...

- (3) adhere to the same financial audits, audit procedures, and audit requirements as are applied to public schools;

ARGUMENT

There was substantial evidence to support the District's decision to revoke PYA's charter based on PYA's failure to meet generally acceptable standards of financial management.

PYA is a charter school established under the statutory provisions the South Carolina Charter Schools Act of 1996. S.C. Code of Laws of 1976, Section 59-40-10 et. seq. The purpose of charter schools is to improve student learning, to encourage the use of a variety of productive teaching methods so as to assist South Carolina in reaching academic excellence as outlined in Section 59-40-20 of the Act. It was 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 children within the public school system as outlined in Section 59-40-30 of the Act.

A charter school is given flexibility in its approach to education. It is exempt from regulations pertaining to how educational programs shall be conducted under the provisions of Section 59-40-50(A). Having stated that, the following subsection (B) of Section 59-40-50 states that a charter school must "(3) adhere to the same financial audits, audit procedures and audit requirements as are applied to public schools." A charter school may be innovated in how it approaches educating children. It may not be innovative in how it handles its finances. Both charter schools and public schools are required to meet the same levels of following acceptable standards of financial management. Both charter schools and public schools are financed by taxpayers' money.

Once the taxpayers' money is disbursed by the public school over to the charter school, that money cannot be handle in some loose financial system that does not meet the criteria of acceptable financial management.

The South Carolina Charter School Act is not a complicated statute. It is not written with a lot of legalese as say, the Internal Revenue Code is. The Internal Revenue Code can require some skill to interpret with all of its provisions that say one provision is subject to the terms of another provision or excluded from the provisions of something else.

Anyone getting ready to establish a charter school could read through this statute at the outset and get a good understanding of its requirements. Anyone involved in the management of a charter school could read through the statute and have a good understanding of its requirements. When the reader came to the language that a charter school must "adhere to the same financial audits, audit procedures, and audit requirements as are applied to public schools," the reader would not have to pause and ask what does this language meant. Its meaning is quite clear.

What is alarming in this case is that PYA has been informed that it is not following acceptable accounting procedures. It is not only informed of that, it was informed of that in the letter Elliott Davis of January 26, 2010 stating that "the funds of the charter school appear to have been commingled with another entity." (R4). This leaves it open that the taxpayers' money going to PYA for the purpose of educating its student enrollment may have been diverted to some other purpose. The taxpayers are entitled to know whether that did or did not happen. A proper audit would provide an answer to that question.

Instead of answering that question, PYA has engaged counsel to pursue a theory that it does not have to meet audit requirements. With the effort expended to avoid an audit for period in question, PYA could have had an audit carried out to put these questions to rest. This avoidance of such an audit creates the suspicion that the results of such an audit would be unfavorable.

The problem that PYA has with these audit issues is that in the first two years of its existence it filed a compilation of financial information on its finances. (R14). A compilation compiles financial information but does not rise to the level of an audit. The compilation is prepared by the party without the oversight or independence of a disinterested party giving an opinion. In those first two years the auditors for the District accepted the compilation and did not give the District an unfavorable audit report. At the time of those audits, the District's auditors may have considered that PYA was not a component unit of the school district.

There was a question as to whether this reporting method on the finances of PYA was adequate. To deal with that question the District's superintendent asked for an opinion of the State Department of Education. The State Department of Education responded to the superintendent by letter of March 31, 2009. (R56-57). The letter states that PYA was required by state statute to submit an audit. The opinion letter of the State Department of Education goes on to comment that PYA stated in its charter application that it "will contract with a Licensed CPA with experience in school finance to provide financial accounting services and we will utilize a separate agency for auditing services." Its charter application also states: "It is anticipated that the annual audit will be completed by the due date imposed by State Statute." The letter further states that when

a charter application is approved, the application becomes a part of the contract between the charter school and the District that is sponsoring the school. The statement made that PYA would provide an audit is a part of the charter contract of the school.

The opinion letter of the State Department on the audit issue is quite clear. The appellant does not attach the opinion letter as a miss statement of the law. Instead the appellant embraces that the charter application constitutes a contract between the charter school and the District. This is also correct. The appellant attempts to say that the doctrine of substantial compliance with a contract applies to the issues in this case.

The respondent does not accept that a doctrine of substantial compliance is contract law has an appropriate application to the issues in this case. First of all, the compliance issue deals with a statutory requirement. The legislature made very clear what it was requiring. Moreover, the appellant cannot say it has substantially complied with audit requirement when it presents something less than an audit. A compilation of financial information prepared by PYA is not a substantial compliance of a requirement for an independent audit.

The audit problems of PYA present significant problems. Tim Grow, CPA with Elliott Davis Auditors in Myrtle Beach, testified that he was engaged to audit the books, records and financial statements of PYA. He has been with this company for thirteen years and has spent most of that time auditing schools. The last seven years he has worked with charter schools. He found that the activities of the charter school and Palmetto Youth Services were run out of the same cash account. As he got further into the situation, he found that the volume of transactions relating to Palmetto Youth Services were significant. He could not get to the opening balances with the two entities

being operated out of the same account. He did not know the nature of what Palmetto Youth Services was doing. He knew that it was not a charter school. (R31-32).

At the hearing before the school board no one from PYA testified. Had someone testified, questions about the nature of Palmetto Youth Services could have been asked. It may perform some good services for youth outside the field of education. The funding the state provides for charter school is restricted to providing education for children enrolled in the school. If those children or different group of children need other services, those services cannot be funded out of money put by the state into the education system. This constitutes a substantial reason for the District to question the financial management of PYA.

The failure of PYA to have an audit of its finances available for the District caused the District to receive a qualified opinion from its auditors. The District, as do most school districts, finances the construction of new schools by issuing bonds. In the sale of bonds the underwriters want to know whether the District has a qualified or unqualified audit report. A qualified audit report can cause the District to incur a higher interest rate on its bonds. (R21). The District keeps its own financial records in proper order so that it can get an unqualified opinion from its auditors. It has every right to require PYA as a component unit of the District to do the same.

CONCLUSION

There was ample evidence in the record of the case to support the District's decision that PYA had not complied with the audit requirements which was appropriate justification for the District to revoke the charter of PYA. The action of the District should be affirmed.

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December 30, 2010

THE STATE OF SOUTH CAROLINA

Before the South Carolina Administrative Law Court.

APPEAL FROM FLORENCE COUNTY DISTRICT ONE BOARD OF SCHOOL
COMMISSIONERS

Docket No.: 10-ALJ-30-0631-AP

Palmetto Youth Academy Charter School, Appellants,

v.

Florence County School District 1 Board of Commissioners, Respondents.

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES IN REPLY BRIEF

- I. The District's response is unfounded and not based on facts in the record.
- II. The District violated its duty to act in good faith and fair dealings
- III. PYA is not a component unit of the District as defined in the District's audit.

STATEMENT OF THE CASE

As more thoroughly discussed in PYA's initial brief, this appeal arises in response to the Florence County School Board's decision to revoke PYA's charter pursuant to section 59-40-110 of the South Carolina Code (Supp. 2009). Due to this appeal, PYA has remained open. PYA filed its initial brief, and the District filed its response brief, approximately ten days ago. PYA now submits the following arguments in reply to the District's response brief.

ARGUMENTS ON APPEAL

I. The District's response is unfounded and not based on facts in the record

The District claims in its brief (page 6) that PYA was informed that it was not following the acceptable accounting procedures. It claims PYA was informed of this in a letter from Elliot Davis dated January 26, 2010, indicating that funds of PYA *appear to* have been comingled with another entity. What the District fails to indicate is the fact that Elliot Davis did no work at PYA. Had Elliot Davis performed any inquiry, it would have realized that PYA and Palmetto Youth Services (PYS) are one and the same entity. PYS is doing business as PYA. The District's allegations about the misuse of taxpayers money are unfounded. Similar to Elliot Davis' "appears to" comment, the District's claims are without corroboration. Not only is the record devoid of substantial evidence as

required by statute, it is devoid of any evidence of the allegations being asserted by the District of misappropriation. S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2009).

The argument that PYA spent time retaining counsel instead of performing an audit flies in the face of the facts. PYA was willing to do an audit but could not afford one when it was brought to its attention that its belief that an audit was not required for schools with allocations under \$500,000 was inaccurate. The District then decided to seize its funds and force an audit on PYA. It was the District's auditor who failed to perform an audit, while retaining PYA's funds of over \$10,000.00.

II. The District violated its duty of good faith and fair dealing

The District, after overseeing PYA since its opening in 2006, alleges for the first time since the school's inception that it failed to perform an independent audit. As indicated previously, PYA was under the impression that the audit was not required as per information garnered from the State Department of Education (SDE). The record is devoid of any information or request from the District advising PYA of the need for an independent audit. At no time prior to the clarification regarding an audit from the SDE to the District and revocation process had anyone from the District informed the school of the need for such an audit. When the clarification was received, PYA indicated it had not allocated any funds for said audit. However, by acquiescing to PYA's submissions and failing to inform PYA of its need for an independent audit, the District violated and breached its implied duty of good faith and fair dealing which is inherent in every contract. U.S. for Use & Benefit of Williams Elec. Co., v. Metric Constructors, Inc., 325 S.C. 129, 133, 480 S.E.2d 447, 448-49 (1997).

III. PYA is not a component unit of the District as defined in the District's Audit.

The definition of Component Unit as defined in the audit does not describe PYA as the District claims, and therefore the District should not be affected by its audit as they are equally claiming. According to the audit report component units are:

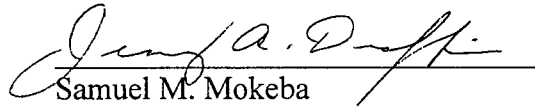
Legally separate organizations for which the District is financially accountable. The District is financially accountable for an organization if the District appoints a voting majority of the organization's governing board and (1) the District is able to significantly influence the programs or services performed or provided by the organization; or (2) the District is legally obligated or has otherwise assumed the responsibility to finance the deficits of, or provide financial support to the organization; or the District is obligated for the debt of the organization. Component units may also include organizations that are fiscally dependent on the District in that the District approves the budget, the issuance of debt or the levying of taxes. The District has determined it has no component units.

This definition clearly excludes PYA. Therefore, PYA's audit should not affect the District's audit and certainly was not the sole reason for a qualified opinion.

CONCLUSION

The intention of the legislature was not to allow the District to revoke a charter for fancy and unfounded reasons but only when material violations have occurred. Further, in determining whether a violation is material, the legislature instructs courts to interpret liberally and support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission for academic excellence, and diversity of public education. S.C. Code Ann. § 59-40-30(A) (Supp. 2009).

For the above argued reasons, PYA requests the ALC overturn the District's decision to revoke its charter.



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RIIS

CERTIFICATE OF SERVICE

I, the undersigned employee of McIntosh Law Office, do hereby certify that the foregoing First Supplement To Record On Appeal has this day been served by Federal Express to the following person, this 22nd day of August, 2012.

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