

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No.: 10-ALJ-30-0437-AP
Court of Appeals Tracking Number: 2012208467

Midlands Math and Business Academy Charter School, Appellants,

v.

Richland County School District 1 Board of Commissioners, Respondents.

APPELLANT'S FINAL REPLY BRIEF

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STATEMENT OF ISSUES IN REPLY BRIEF

I. MMBA did not breach its charter provisions

- a. MMBA's employ of one special education teacher is not an issue on appeal to the Court of Appeals*
- b. MMBA's special education teacher is "highly qualified" under the No Child Left Behind (NCLB) Act*
- c. The combined qualifications of MMBA's Director/Lead Teacher met charter qualification provisions*
- d. MMBA's curriculum has always been aligned with the most current state standards*
- e. MMBA at all times complied with state and federal IEP reporting*

II. MMBA did not materially breach its charter provisions

III. MMBA made reasonable progress toward its stated pupil goals

STATEMENT OF THE CASE

MMBA has already addressed the salient factual issues in its initial brief, but it highlights some additional details herein. This appeal arises in response to the Richland County School Board's decision to revoke MMBA's charter pursuant to section 59-40-110 of the South Carolina Code (Supp. 2009). After MMBA submitted its annual report to the District at the end of the 2008-2009 school year, in June of 2009, the Board decided to withhold renewing MMBA's charter pending the completion of an action plan. (ROA 1102-04). As part of the improvement plan, MMBA provided feedback to the District's requests. (ROA 372-412).

These responses were provided to the District in phases starting in August and culminating in November of 2009. In August of 2009, the District asked MMBA about its curriculum/staffing requirements, and MMBA responded by providing information on its use of Core Knowledge Curriculum, its professional development plan, its professional development plan from its prior five years, teacher qualifications, and school

leadership. (ROA. 372-383; 1125-1147). In September of 2009, MMBA again provided the District with information in two reports entitled Data to Drive Instruction Strategies and Facilities Strategies. (ROA. 384-87; 403-04).

It appears that the District requested MMBA provide it with information demonstrating how Core Knowledge is aligned to state standards and sequencing after MMBA provided its August and September reports.¹ MMBA expanded on the answers and information contained in the August and September reports with its final written submission to the District entitled Curriculum and Instruction Feedback Comprehensive Plan, as submitted on November 10, 2009. (ROA 1158). In making its decision to revoke MMBA's charter, the Board ignored the final work product submitted by MMBA and voted to revoke MMBA's charter on November 24, 2009. (ROA 228).

ARGUMENTS

As the Appellant, MMBA must demonstrate to this Court how the ALC erred. In that regard, MMBA points to the errors of its sponsor in revoking its charter. The Board based its decision to revoke MMBA's charter on reports that do not contain specific findings of charter violations but draw sweeping conclusions. On appeal, the ALC relied on these reports to affirm the Board's revocation. These general conclusions do not constitute "substantial" evidence needed to support the ALC's rulings. Additionally, several legal errors occurred in the appellate process, including the interpretation and application of the Charter School Act and NCLB. Therefore, MMBA respectfully asks this Court to carefully consider the language in the charter, and the lack of evidence in the Board's Order when reviewing this case.

¹ This document was originally due in late October; however, MMBA had requested and received an extension from the District to submit its final report on or before November 13, 2009. (ROA. 1156).

I. MMBA did not violate its charter provisions.

As a first argument on appeal in its initial brief, MMBA maintained that it complied with all of the provisions of its charter and did not breach any provision. Under this argument, it would be unnecessary for the Court to determine whether MMBA materially violated a charter provision because a basic violation did not occur. Herein, MMBA addresses the Board's breach arguments in turn.

A. MMBA's employ of one special education teacher is not an issue on appeal to the Court of Appeals

Though MMBA appealed the Board's finding that MMBA did not materially violate its charter by employing one special education teacher to the ALC, this specific argument was not made on appeal to the Court of Appeals. In its order, the ALC did not affirm the Board's holding that MMBA materially violated its charter by failing to employ more than one special education teacher. (ROA. 13-15). Instead, the ALC held that MMBA's decision to hire only one special education based on the actual student enrollment was "a plausible explanation." (ROA. 13).

The ALC accepted MMBA's explanation of its employ of one special education teacher. The Board did not appeal this finding and because the ALC was satisfied with MMBA's decision to employ one special education teacher based on the actual student population enrolled, it is now the law of the case, and not an issue on appeal. *See Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 169, 717 S.E.2d 603, 606 (2011).

To the extent this court finds it proper to consider this argument, MMBA did not materially breach its charter by hiring one special education teacher. Based on changed

circumstances, employing only one special education teacher was not a *material* breach. MMBA's decision to employ only one special education teacher is a result of MMBA's actual special education student enrollment and overall student enrollment rather than the projected student enrollment when MMBA applied for its charter. (ROA. 751; 1103). Specifically, MMBA projected it would enroll approximately 200 students, but only 115 were enrolled at the time of the revocation. (ROA. 751; 1103). Furthermore, MMBA agrees with the Board that the need for special education teachers should be based on the needs of the special education students. (ROA. 237). In that regard, the only evidence on this issue clearly demonstrates that MMBA is meeting the needs of its special education students as parents of special education students have submitted affidavits demonstrating that MMBA is meeting or surpassing student needs. (ROA. 1335; 1343-50).

The Board minimized the parents' affidavits regarding the needs of their children. However, the record contains evidence of a parent's complaint against the District for its failure to comply with its responsibilities to an MMBA student under IDEA. (ROA. 1336-42). Thus, the record clearly demonstrates the involvement of MMBA parents in their children's education and their knowledge of the law. This involvement should not be discounted by the Board.

B. MMBA's special education teacher is "highly qualified" under the No Child Left Behind (NCLB) Act

There is absolutely no evidence in the record demonstrating that Elsie White is not highly qualified as a special education teacher. The ALC's order correctly recognizes that there is a separate "highly qualified" standard for special education teachers under 34

C.F.R. § 300.18. (ROA. 14).² Section 300.18 provides separate standards for special education teachers who are teaching core academic subjects and those who do not teach core academic subjects. Special education teachers who are not teaching core academic subjects are “highly qualified” if the teacher is state certified as a special education teacher, has not had their certification requirements waived, and the teacher holds a bachelor’s degree. *See* 34 C.F.R. § 300.18(b). Elsie White is certified as a special education instructor and possesses a Master’s degree in Special Education. (ROA. 14; 1331-32). There is no evidence that her certification requirements have ever been waived. Therefore, Ms. White is clearly highly qualified as a special education teacher.

The Board is attempting to hold Ms. White to the federal standard that applies to special education teachers who provide primary instruction in core academic subjects. There is absolutely no evidence in the record that Ms. White provided instruction in core academic subjects. The Board argues that special education teachers must instruct students in academic subjects because there is no “subject” of special education. (ROA. 81-82). This argument shows a lack of understanding of the role and services provided by special education teachers in our schools. “Special education” is defined as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability” and includes, among other things, instruction in the classroom, speech-language pathology, and the development of motor skills. 34 C.F.R. § 300.39. The federal regulation defining “highly qualified special education teachers” also clearly recognizes the fact that special education teachers do not necessarily teach core academic

² *See also* 34 C.F.R. § 200.56(d), which provides: “A special education teacher is a ‘highly qualified teacher’ under the Act if the teacher meets the requirements for a ‘highly qualified special education teacher’ in 34 CFR 200.18.”

subjects by providing a separate “highly qualified” standard for special education teachers not teaching a core academic subject. *See* 34 C.F.R. § 300.18.

Furthermore, the South Carolina State Department of Education (SDE) also acknowledges that special education teachers do not necessarily teach core academic subjects. The SDE’s website provides a link to a document detailing South Carolina’s implementation of the highly qualified teacher requirements entitled “Quick Facts about South Carolina’s Highly Qualified Teacher Requirement.” *See* <http://ed.sc.gov/agency/se/Teacher-Effectiveness/Title-II/documents/HQquickfacts.pdf>.

This document provides: “All teachers in all schools who provide the primary instruction in core academic subjects must be highly qualified.” *Id.* It further states:

Teachers who do not provide the primary instruction in a core academic subject are not required to meet the highly qualified requirement. Such teachers may include, but are not limited to, special education, ESOL, and Reading Recovery teachers who only provide reinforcement, accommodations, instruction in study skills, or act as a consultant to a highly qualified teacher of record.

Id.

The Board argues that “[t]here is no evidence in the record that Ms. White demonstrated competency in any academic subject she taught to students as required by NCLB.” (ROA. 82). However, there is no evidence in the record that she taught any academic subject. The ALC recognized the existence of a separate “highly qualified” standard for special education teachers who do not teach core academic subjects but failed to apply this appropriate standard to Ms. White. Apparently the ALC and the Board equate the reference to “class load” in the description of the Instructional Program in the charter to mean providing primary instruction in a core academic subject. (ROA, 14; 81-82). There is absolutely no evidence in the record to support this inference and, as

discussed above, there are many roles of a special education teacher that do not involve primary instruction in a core academic subject.

To support its allegation that Elsie White is not highly qualified, the Board cites in its Response Brief to a report MMBA provided to the District. (ROA. 81; 1125-28). Therein, MMBA listed teachers who were highly qualified under NCLB and taught CORE academic subjects. (ROA 1128). MMBA did not list Elsie White as highly qualified because she did not teach a CORE academic subject. (ROA 1128).³ The evidence in the record clearly demonstrates that Elsie White is highly qualified as a special education teacher. Therefore, the Court of Appeals should reverse the ALC's ruling on this issue because it is not supported by substantial evidence and applies an inappropriate legal standard, and is therefore based on an error of law.

C. The combined qualifications of MMBA's Director/Lead Teacher met charter qualification provisions

MMBA's Interim Director, Gerald Jenkins, had administrative experience as required by the charter, and Gloria Garmany, MMBA's lead teacher, held a teaching certificate as required by the charter. In its initial brief, MMBA thoroughly developed this argument-that its Director/Lead Teacher, a dual role temporarily assumed by both Gerald Jenkins *and* Gloria Garmany, met the qualification requirements of its charter. MMBA craves reference to this section of its Initial Brief herein. MMBA notes, however, that in its Response, the Board does not acknowledge that Mr. Jenkins possessed administrative experience when he assumed the role as Director for MMBA. (ROA. 82-83). Moreover, in its appointment of Mr. Jenkins as Director, MMBA ensured

³ See "Quick Facts about South Carolina's Highly Qualified Teacher Requirement", <http://ed.sc.gov/agency/se/Teacher-Effectiveness/Title-II/documents/HQquickfacts.pdf> (stating that teachers who provide primary instruction in core academic subjects must be highly qualified).

that someone on the leadership staff had administrative experience, but in its Response the Board claims Mr. Jenkins lacked such administrative experience despite the evidence to the contrary.

Additionally, MMBA reiterates that the joint role of Director/Lead Teacher as assumed by Mr. Jenkins and Ms. Garmany was a temporary solution to MMBA's need to fulfill a vacancy on its staff. The Jenkins/Garmany team assumed the responsibility of Director/Lead Teacher when MMBA's principal resigned for medical reasons in October of 2009, which was *one month prior* to the Board's November revocation vote.⁴ (ROA 228; 342; 1323). The Board did not address or recognize the temporary nature of the arrangement in its Response nor did the ALC recognize or consider the joint leadership assumed by Mr. Jenkins and Ms. Garmany or the temporary nature of the arrangement. (ROA. 14-15).

To the extent that the Court believes a breach occurred, in no way was the joint assumption of the duty of Director/Lead Teacher by Mr. Jenkins and Ms. Garmany a material breach of MMBA's charter. Therefore, substantial evidence does not exist to support a finding that a charter breach occurred because Mr. Jenkins and Ms. Garmany together met the qualifications stipulated MMBA's charter.

D. MMBA has always kept its curriculum aligned with current state standards as required by its charter

MMBA's good faith cooperation in acting on the Board's request that it demonstrate curriculum alignment was not an admission on MMBA's part that its curriculum was ever misaligned. MMBA responded to the District's July 2009 action plan in its Curriculum and Instruction Feedback Comprehensive Plan (a document that

⁴ At the time the review process began, Reginald Flenory was MMBA's principal and was certified in School Administration. (ROA 402).

the Board never reviewed) which clearly demonstrated that MMBA's curriculum is aligned to state standards. (ROA. 1159). MMBA has never conceded that its curriculum failed to convey state standards. On the contrary, "[t]he charter for MMBA states that Core Knowledge will be used as the base curriculum as it promotes the SC Standards for Curriculum in all disciplines. Core Knowledge is a driving force in the education of our students, but State Standards are primary and prioritized." (ROA. 1159). Furthermore, MMBA's November 2009 submission demonstrated to the Board what was already happening in the classrooms. (ROA. 1159). Unfortunately, this written submission, as the Board conceded in its order, was never taken into consideration. (ROA 236).

In complying with the Board's request that it demonstrate alignment, that culminated in MMBA's Curriculum and Instruction Feedback Comprehensive Plan, MMBA noted on numerous occasions that its teachers had already been provided with up-to-date materials on state standards and those standards were already being taught at MMBA. (Appellant's Brief p. 11). Moreover, it noted that "MMBA does not isolate Core Knowledge from state standards. In many areas we often search for areas that mesh seamlessly, but when that is not possible state standards are taught at all costs. In instances where there is no correlation with Core Knowledge and state standards, MMBA teaches state standards." (ROA. 1164). Thus, if an observer were to believe that MMBA only taught what was provided in the Core Knowledge teaching guide, she would have been misled into believing that there were curriculum gaps-which is likely what happened.

As noted above, during the document submission phase, Mr. Jenkins submitted an August 2009 report entitled "Midlands Math and Business Academy Core Knowledge

Curriculum.” (ROA 371-83). Therein, MMBA described the structure and approach of the Core Knowledge Curriculum as well as its benefits. (ROA 371-83). MMBA briefly mentioned state standards in the August report but noted that South Carolina state standards are the primary focus of classroom instruction. (ROA 382). Additionally, the August report explained: “The state standards guide the development of curriculum plans and lesson plans. MMBA has utilized the SC State Department of Education materials such as the Standards Implementation Guide, SC Department of Education Support Document and websites, and the ETV streamline website.” (ROA 382). However, the August report did not demonstrate how the current curriculum was aligned to state standards. Instead, the report gave an overall explanation of Core Knowledge and the other materials MMBA uses to supplement its curriculum. (ROA 382-83).

As MMBA stated in its charter application, the Core Knowledge Curriculum was used at MMBA as the *template* for teaching state standards. (ROA. 567; 762). When asked to demonstrate to the District how Core Knowledge was aligned to state standards, MMBA prepared the November 2009 Curriculum and Instruction Feedback Comprehensive Plan which demonstrated exactly what MMBA stated in its charter. In that section of its charter, MMBA indicated its plan to supplement lessons prepared using the Core Knowledge template with other outside materials, to include virtual/cyber lessons from South Carolina Virtual Charter School, to convey state standards to students in the classroom. (ROA 371-83). Thus, MMBA supplemented the Core Knowledge curriculum with other materials to align with current state standards continuously from the time the school opened its doors. MMBA’s curriculum in its entirety, including Core Knowledge as well as all other outside materials, was always aligned, as was

demonstrated in MMBA's Curriculum and Instruction Feedback Comprehensive Plan. (ROA 1159).

Absolutely no evidence in the record on appeal demonstrated that MMBA's curriculum has been misaligned for three plus years. The ALC, again, is relying on the District's findings without any supporting documentation. Nothing other than the District's sweeping conclusions indicate that teachers at MMBA were not "provid[ing] instruction to students based on the South Carolina Academic Standards on all subjects" as required under its charter. (ROA. 567; 762).

MMBA's approach to conveying state standards to its students is likely "unorthodox" as MMBA described it in its November Report because it is not the typical curriculum used in South Carolina public schools. (ROA 1159). However, use of Core Knowledge was and is simply not a breach of its charter provisions. In fact, the entire purpose of the charter school movement, as articulated by the legislature, is to explore alternative approaches to teaching. S.C. Code Ann. § 59-40-30 (Supp. 2011). In its review, the Board erred in finding that "[t]he Core Knowledge Curriculum used by MMBA had not been aligned to State standards." (ROA 233). Such a finding is flawed because MMBA only uses Core Knowledge as a template and supplements the same with additionally materials as described in its charter. Moreover, this finding does not indicate that MMBA breached its charter by failing to "provide instruction to students based on the South Carolina Academic Standards on all subjects." A thorough review of MMBA's submissions reveals that MMBA is complying with the provisions of its charter and teaching state standards.

Finally, MMBA reiterates that it never conceded that its curriculum was not aligned to current state standards. The Curriculum and Instruction Feedback Comprehensive Plan was an effort to demonstrate MMBA's pre-exiting compliance with state standards and was not an admission of non-compliance with state standards as the Board seems to indicate. In accepting the Board's limited review, the ALC equally ignores the substantial evidence contained in the record as a whole and warrants reversal.

E. MMBA complied with federal law at all times and never failed to provide IEP progress reports

In its Response Brief, the Board maintains that MMBA relies on an affidavit from Elsie White to assert that it complied with special education laws. (Resp. Br. 17). Thereafter, the Board argues that "the affidavit fails to address any specific findings of the District and fails to provide any support for the teacher's general assertion." (Resp. Br. 17). The same is true regarding Ms. Davis's report. Ms. Davis's made no reference to a student identifier, such as a number, or a student initials. (ROA 356). She merely used the term "student" or "students." (ROA 356). Additionally, Ms. Davis presumed that a parent of a special education student did not receive a progress report because there was no record of it. (ROA. 356). Ms. White's affidavit is a direct response to Ms. Davis's assertions. If Ms. Davis had been specific in her allegations Ms. White would have been able to address them specifically.⁵ Furthermore, there is no evidence from any MMBA parent that he or she did not receive a report as mandated under state and federal law. The finding that parents did not regularly receive IEP reports was based entirely on an assumption of Ms. Davis, and the *parents' affidavits disprove this assumption*.

⁵ Had Ms. Davis found: "Student Jane Smith did not receive a report timely," then Ms. White could have sworn that she timely sent Jane Smith's report and produced said report. Further, Jane Smith's parents could have sworn that they received the report that Ms. Davis sent. Without this raw data, MMBA was unable to address the District's findings specifically.

Moreover, Ms. Davis found that it was a violation of law for three of the special education students to be receiving quarterly progress reporting because it “d[id] not meet the requirement that students with disabilities receive IEP progress reports at least as often as general education students.” (ROA 356). However, general population students are required to receive progress reports, also known as report cards, once a quarter. 34 C.F.R. § 300.320 (a)(3)(ii). So, a student with disabilities who receives IEP progress reports once a quarter is receiving the reporting “as often as general education students.” 34 C.F.R. § 300.320 (a)(3)(ii) (“When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.”). The laws cited by both the ALC and the Board do not demonstrate that MMBA is failing to comply with a federal or state law by sending IEP reports out once a quarter.

Though MMBA recognizes that the Board, as its sponsor, may revoke its charter under section 59-40-110(C)(4) if it violated any provision of law from which the charter school was not specifically exempted, case law holds that only a material failure to implement an IEP violates the IDEA. *See e.g., S.S. ex rel. Shank v. Howard Rd. Acad.*, 585 F. Supp. 2d 56, 68 (D.D.C. 2008) (internal citation omitted) (“[T]o prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.”); *Van Duyn ex rel.*

Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 819 (9th Cir. 2007) (holding “state contract law does not apply to the interpretation of an IEP and that only material failures to implement an IEP constitute violations of the IDEA” and finding minor failures in implementing an IEP or following the IDEA are not violations of the statute).

It was pure legal error for Ms. Davis to find and reviewing tribunals to accept that IEP progress reports sent quarterly violate federal law. However, MMBA continues to maintain that it has at all times complied with IEP reporting and implementation. To the extent this Court finds that MMBA was not in compliance (which is refuted), a violation only occurs when there is a material failure to provide the disabled child a meaningful educational benefit. Here, there is no proof of a material failure or holding in that regard. Thus, it was legal error for the Board to revoke on that basis and for the ALC to affirm the Board’s decision on that basis.

In regards to evidence, though the Board maintains that MMBA never disproved the Board’s findings, it is MMBA’s position that the Board never demonstrated factual support for its findings in the first place. In other words, the record is not supported by any evidence, much less substantial evidence, to uphold the ALC’s determination that MMBA did not comply with state and federal law regarding special education and should be overturned. On this issue, the Court of Appeals should reverse the ALC’s holding on this issue because (1) it made a legal error and (2) the one paragraph of Ms. Davis’s report is not “substantial evidence” to support its decision.

II. MMBA did not materially breach its charter provisions

In regards to the Board’s argument that MMBA committed material violations of its charter, MMBA maintains that compliance with federal and/or state law and whether

it met reasonable progress should not be evaluated or analyzed in the context of whether or not a breach was material. Section 59-40-110(C) allows the sponsor to revoke its school's charter for four separate reasons. Therefore, MMBA is not arguing certain alleged breaches in the context of whether or not they were material.

The Charter School Act is new, as is the interpretation of it. As the Board concedes in its brief, "material" is a term of art that is not defined in the provisions of the Act. (Resp. Br. 18). Therefore, MMBA sought the definition of "material" from other legal authorities. As the Board recognized in its own Order, "[a] charter application constitutes a contract between the charter school and its sponsor." (ROA 234). Therefore, contract principles are applicable. Any alleged violation of MMBA's charter-regarding curriculum, and teacher and staff qualifications-are not "material" under either definition for "material" that MMBA cites in its initial brief.

Finally, the "arbitrary and capricious" standard of review is only one of the several articulated reasons to reverse the ALC on appeal. Here MMBA maintains that the ALC erred as a matter of law in analyzing and applying provisions of the Charter School Act. Additionally, MMBA maintains that many findings of the Board, many if not all of which were adopted by the ALC, were not supported by the substantial evidence in the record as whole; thus, the decisions and findings should be reversed. However, MMBA maintains that the Board acted arbitrarily in its annual review by ignoring reporting and other efforts of MMBA. For example, MMBA's special education teacher could not even respond to the Board's findings concerning special education reporting because she did not know where the factual basis for it arose. In that manner, the Board certainly acted arbitrarily. Moreover, the Board admittedly disregarded

MMBA's submission of its Curriculum and Instruction Feedback Comprehensive Plan from November of 2009.

MMBA did not violate its charter provisions. However, to the extent the Court finds a violation occurred, it was immaterial because (1) no breach was so fundamental and substantial as to defeat the purpose of the contract and (2) students were not deprived an expected benefit, and MMBA has cured any alleged breach. Thus, this Court should reverse the ALC's determination that a material breach occurred which warranted revocation under section 59-40-110(C)(1).

III. MMBA made reasonable progress toward its stated pupil goals

The Board argues that it had not only the right, but the obligation to revoke MMBA's charter because it did not exactly meet articulated student achievement standards in its charter. Such an assertion is legally inaccurate. Section 59-40-110(C) of the South Carolina Code allows the Board to revoke MMBA's charter should MMBA fail to meet or make "reasonable progress," as defined in the charter application, toward pupil achievement standards identified in the charter application. MMBA articulated desired student achievement goals in its charter. (ROA 900). However, there is no exact legal definition of "reasonable progress toward this goal" as the Board maintains in its brief, it merely defined its goals. (Resp. Br. 24). Moreover the Board admits that MMBA students progressed academically, just not exactly as defined in MMBA's charter. (Resp. Br. 25).

MMBA stands by its numbers and calculations. However, even if it uses the Board's data, it still made reasonable progress toward its stated student achievement goals, as the Board admits. The Board fails to acknowledge the obvious improvement on

AYP. Again, the Board is choosing to arbitrarily disregard MMBA's efforts and achievements. The Board maintains that a Court should interpret section 59-40-110(C)(2) to mean that it can and should revoke a school's charter when the school fails to meet *exact* pupil achievement standards as stated in its charter, and that any other interpretation would lead to a subjective determination of "reasonable progress." MMBA disagrees with such an assertion. Basically either a school's students are progressing academically or they are not. Either there are continued increases in test scores or there are not. It would be a simple review for a sponsor or any reviewing tribunal to recognize data moving in an upward direction, as is the case with MMBA. Additionally, the state publishes its AYP results for each school and a review of MMBA's results at the time of the revocation shows what anyone would describe as reasonable progress. These results demonstrate that in 2006,⁶ MMBA met 7 of its 13 AYP objectives. In 2007, it met 10 of 13 objectives. (ROA. 469). In 2008, it met 12 of 13 objectives, and in 2009 (the year of its revocation) and 2010 it made AYP. (ROA. 469). In fact, at the time of its revocation, MMBA was the only middle school in the District to make AYP.

Therefore, it was legal error for the ALC to hold that MMBA has failed to meet or make reasonable progress. Moreover the substantial evidence in the record on appeal does not support such a finding. On the contrary, evidence in the record indicates increased improvements in MMBA's student academic progress year after year. Therefore, the Court of Appeals should overturn the ALC's decision on reasonable progress and find that MMBA made reasonable progress toward its student achievement goals.

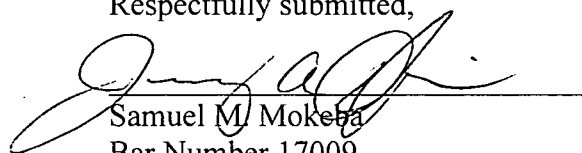
⁶ 2006 was the first year that MMBA was evaluated for AYP.

CONCLUSION

The District's review staff made many conclusions and findings that the Board and later the ALC accepted without question. MMBA had many questions about these findings and at times was baffled as to how they were reached because MMBA's staff was never provided with the raw data to support the conclusions drawn. Such a review process is flawed, and MMBA is asking the Court to interpret the Charter School Act and give guidance to those implementing it. Additionally, MMBA is asking the Court to ensure that it and all charter schools receive a fair and not arbitrary review from its sponsor.

To that end, MMBA asks the Court of Appeals to carefully consider the raw data on which the Board based many decisions and all the evidence in the record before it and find that the substantial evidence in the whole record does not support the ALC's holdings. Additionally, MMBA asks the Court of Appeals to correct the ALC's legal errors in its definition and application of statutory terms "material breach" and "reasonable progress."

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No.: 10-ALJ-30-0437-AP
Court of Appeals Tracking Number: 2012208467

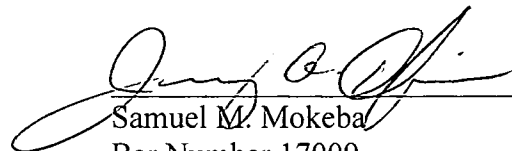
Midlands Math and Business Academy Charter School, Appellants,

v.

Richland County School District 1 Board of Commissioners, Respondents.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Reply Brief of Midlands Math and Business Academy Charter School complies with Rule 211(b), SCACR.



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