

**IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS**

FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Judge

Case No.: 2013-000525

Mary L. Dinkins Higher Learning Academy (MLD) APPELLANT

v.

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

RECORD OF APPEAL

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INDEX

<u>Pleading, Motions, Orders</u>	<u>Page</u>
1. Record of Appeal before the Administrative Law Court (Outline as followed):	
Request for Contested Hearing (June 11, 2012).....	3
Notice of Assignment (Appeal) (June 15, 2012).....	6
Order of Administrative Law Court Governing Procedure (June 19, 2012).....	7
Notice of Motion and Motion for Immediate Restraining Order or Exparte TRO (July 9, 2012).....	9
Motion to Dismiss.(July 11, 2012).....	18
Return to Appellee's Motion to Dismiss(July 24, 2012).....	30
Order of Administrative Law Court Denying Respondent's Motioin to Dismiss and Staying Final Decision(July 24, 2012).....	35
Rule to Show Cause (July 25, 2012).....	38
Order of Administrative Law Court Dismissing Appellant's Rule to Show Cause (July 30,12).....	52
MLD Charter.....	53
SC Public Charter School District's Response to MLD's FOIA Request (March 12, 2012)..	233
Order in Lee County School Board v. MLD.....	679
MLD Accontablity Report (December 9, 2011).....	696
MLD Plan to Restucture of Planning for the 2011-12 School Year(January 9,2012).....	719
MLD's Charter Application.....	727
MLD's Internal Fiscal Control Procedures.....	795
Letter of SC Public Charter School District to Dinkins-Robinson (January 13, 2012).....	806
Letter of SC Public Charter School District to Dinkins-Robinson (February 23, 2012)....	808
Student Transcripts.....	810
Student Transcripts.....	819

Notes for MLD Hearing (April 19, 2012).....	832
MLD Adequate Yearly Progress.....	838
Consideration for MLD Higher Learning Academy Charter School to transfer to the South Carolina Public Charter School District from Lee County Schools (May 26, 2010).....	844
Memorandum of Agreement Mary L. Dinkins Charter Academy (MLD) and the South Carolina Public Charter School District (SCPCD) (August 12, 2010).....	845
Letter of SC Public Charter School District to Dinkins-Robinson (February 13, 2012).....	847
Letter of SC Public Charter School District to Dinkins-Robinson (March 1, 2012).....	849
Letter of SC Public Charter School District to Dinkins-Robinson (March 12, 2012).....	850
Letter of SC Public Charter School District to Dinkins-Robinson (March 27, 2012).....	855
Letter of SC Public Charter School District to Dinkins-Robinson (March 30, 2012).....	857
Letter to Watson to Bowers (April 17, 2012).....	858
Letter of Carol to Watson (April 18, 2012).....	861
Order of Revocation (May 16, 2012).....	867
Transcript of Revocation Hearing (April 19, 2012).....	873
2. Brief of Appellant(September 17, 2012).....	1096
3. The Brief of the Respondent,(October 29, 2012).....	1141
4. The Reply Brief of the Appellant(November 13, 2012).....	1158
5. Respondent's Motion to Lift Stay and For Expedited Consideration(February 11, 2013).....	1176
6. Appellant's Return to Respondent's Motion to Lift Stay and for Expedited Consideration (February 21, 2013).....	1183
7. Respondent's Reply in Support of Respondent's Motion to Lift Stay (February 27, 2013)....	1200
8. Karl S. Bowers Letter to Judge Shirley Robinson.(December 12, 2013).....	1204
9. Appellant's Notice of Motion and Motion to instate Stay(March 28, 2013).....	1206
10. Respondent's Return in Opposition to Motion to Stay.(April 3, 2013).....	1212
11. Order Denying Appellant's Motion to Instate Stay (April 10, 2013).....	1221

12. Appellant's Notice of Appeal.(March 14, 2013).....	1225
13. Clerk of Court of Appeal's initial letter to attorneys with Docket Number(March 15, 2013)...	1229
14. Amended Certificate of Service(May 25, 2013).....	1232
15. Appellant's Notice of Motion to Restate Appeal and Allow 30 days from such order restating Appeal to File Initial brief and Designated material to be included in the Record of Appeal(Apil 22, 2013).....	1234
16. Respondent's return in Opposition to Motion to Resinstate Appeal.(April 25, 2013.....	1239
17. Appellant's Reply of Motion to Restate Appeal and Allow 30 days from such order restating Appeal to File Initial brief and Designated material to be included in the Record of Appeal(May 6, 2013).....	1261

Record on Appeal

Order of Revocation (March 1, 2013).....	1265
Certiticate of Counsel for Appellant.....	1281

12 Appellant's Notice of Appeal.(March 14, 2013).....	1225
13. Clerk of Court of Appeal's intial letter to attorneys with Docket Number(March 15, 2013)...	1229
14. Amended Certificate of Service(May 25, 2013).....	1232
15. Appellant's Notice of Motion to Restate Appeal and Allow 30 days from such order restating Appeal to File Initial brief and Designated material to be included in the Record of Appeal(Apil 22, 2013).....	1234
16. Respondent's return in Opposition to Motion to Resinstate Appeal.(April 25, 2013.....	1239
17. Appellant's Reply of Motion to Restate Appeal and Allow 30 days from such order restating Appeal to File Initial brief and Designated material to be included in the Record of Appeal(May 6, 2013).....	1261

Record on Appeal

Order of Revocation (March 1, 2013).....	1265
Certiticate of Counsel for Appellant.....	1281

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

MARY L. DINKINS ACADEMY,	:	APPEAL OF
	:	REVOCATION HEARING
Appellant,	:	
	:	
vs.	:	
	:	
SOUTH CAROLINA PUBLIC	:	
CHARTER SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

Thursday, April 19, 2012

SC PUBLIC CHARTER SCHOOL DISTRICT BOARD
MEETING, held at 3710 Landmark Drive, Suite 201,
Columbia, South Carolina, commencing at 10:00 a.m.,
before Cynthia First, a Federally Approved
Registered Professional Reporter, Certified
Realtime Reporter and Notary Public.

EVERYWORD, INC.
P.O. Box 1459
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WAYNE BRAZELL
KATHLEEN BOUNDS
TERRY SECKINGER
LAURA GETTY
LINZIE STALEY
TOM SILER
REESE BOYD

(INDEX AT REAR OF TRANSCRIPT.)

- - -

1 MR. McLAURIN: Now we have the public
2 comments section. And we have the four people
3 who want to do that -- three. So I'll just
4 call you in order, those of you who are here
5 to make public comments. You're here listed
6 on the sign-in sheet. And just to review how
7 we do this, you'll have three minutes to make
8 whatever comments you'd like to make.

9 And the Board remembers there's no
10 questions or discussion.

11 So first is Reverend Wells, I believe.

12 REVEREND WELLS: Yes, sir. I thank the
13 Board for giving me the time, to all the
14 members of the Board.

15 I'm here on behalf of MLD. I started in
16 Dillon County. And the situation has grown
17 some, but there are still some things there
18 educationally that need to be worked on. And
19 I pastored some of these students, and I've
20 seen some that have been stripped emotionally
21 and some that are socially and economically
22 deprived, and they had low self-esteem.

23 Under Minister Ralston's tutelage and her
24 teachings, they come into Sunday School, and
25 they're feeling greater self-esteem because

1 they've got this background help coming from
2 MLD.

3 And a lot of the students coming to me
4 from the public schools in Lee County couldn't
5 read Sunday School books; beginners, primary,
6 intermediate, cannot read. And a lot of them
7 have been shifted to MLD.

8 And she's getting this backwash from what
9 the district had gotten these kids up to so
10 they can read on the level with their grade.
11 And they have an AYP on them, and that's going
12 to be deleted out of the educational process
13 anyway. That's going to be like over and done
14 with.

15 And how can they comprehend and can't
16 read? So they got to take time to get them
17 from point A to point B, to get them all the
18 way to C, to the end of the alphabet. So I
19 believe they have made tremendous strides in
20 what they've done.

21 So if you give this school the death
22 penalty, you're killing a lot of the students
23 that go back into the system where they were
24 failing in, to crowded classrooms, no
25 personalized attention, and less students --

1 numbers in the class, and they get more
2 hands-on help at the classroom level, as well
3 as someone that's going to really take time to
4 meet them where they are. And some of them
5 are in bad shape, coming from homes and
6 situations that's not up to par in a economic
7 and social lifestyle.

8 So we need help. And we've done -- MLD
9 is making strides and I've seen improvement,
10 because I'm on the board there also. And I
11 see that the efforts being put in place, new
12 faculty and new things and so forth, Smart
13 Boards, trying to get these students up to
14 par.

15 But you've got to take for granted who
16 you're dealing with with a lot of these
17 students. Because the gifted ones don't have
18 no problems. They're moving right on along.
19 But you put them all in the same bag and shake
20 them up, you know, you've got a mixture of not
21 demographic, but just economic and social,
22 economically and intelligence and so forth.

23 I just be feeling sorry that they don't
24 want to come to Sunday School because they
25 can't read. I tell them, no, we'll just teach

1 you and you'll see what the teacher tell you
2 in your class. Because some of them are
3 reading a little bit better now, thank God to
4 MLD.

5 MR. McLAURIN: Thank you, sir.

6 Elijah Dinkins.

7 MR. DINKINS: Good morning. Thank you
8 very much. At this time I was going to speak,
9 but I'll just yield to the hearing at this
10 time.

11 MR. McLAURIN: Okay. Last name is
12 Bryant. I'm sorry. Is it Emma Bryant?

13 MR. BRYANT: Ennis.

14 MR. McLAURIN: Ennis. I'm sorry.

15 MR. BRYANT: Thank you also for your time
16 to allow me to speak at this hearing.

17 I am a product of over 40 years in
18 education, and I've seen it in New York and
19 I've seen it in Virginia and I've seen it in
20 North Carolina, which is my home state, and
21 I've seen it in South Carolina.

22 I stand really to bring your attention to
23 some things that have been mentioned by
24 Reverend Wells before. And I noticed that,
25 you know, in most of these meetings we start

1 with prayer, and we do the pledge, and we sort
2 of gear ourselves to the thought pattern of
3 helping people. And then sometimes we get
4 derailed.

5 I will speak mostly from the expectations
6 of that community I've been in for over 40
7 years now. There is an expectation there that
8 once kids -- parents make a decision to bring
9 their kids to MLD, that there would be some
10 impact educationally. I have seen kids who
11 have come there that would barely come out of
12 their shell, who are now leaders in the
13 classroom. I've seen kids who come there from
14 family backgrounds that I know about, because
15 I'm now dealing with some kids -- I hate to
16 say this, but I dealt with their
17 great-grandparents back in the years.

18 So I've seen them come out of poverty
19 situations and out of situations that you
20 would say that kids would just not have an
21 opportunity or chance to succeed. And I see
22 this as being -- sometimes we have to say that
23 we throw the children out in the bath water,
24 so to speak. And when we take a big tub and
25 dash all the water out, we don't know what's

1 in there.

2 But I do know this -- and I've watched
3 education. I've done a lot of research on it.
4 If we are not addressing -- we cannot just
5 address the child itself. At MLD we also have
6 to address the family. And I think my role in
7 that is knowing who those family people are.
8 I know their grandparents and I know the
9 situations that they've come up in.

10 And I think that what happens to us, many
11 times we lose sight of the things that we say
12 in the prelims of these meetings. We took a
13 pledge to do this and that for all and we're
14 going to have expectations that people will
15 succeed.

16 But as a grassroots operation there in
17 Bishopville -- as I said, I'm now on City
18 Council. I'm mayor pro tem. I have the ear
19 of a lot of people, and I'm there when I go to
20 the bank and to the grocery store and
21 whatever, and people come and talk. And they
22 speak to the things that we have been -- that
23 they say are travesties towards this program,
24 basically, the problems we've had from the
25 beginning, either with the district or with

1 the State Charter School District.

2 We talk about buses and kids could not
3 ride. We talk about the fact that we could
4 not go down the hall without the alarm going
5 off because the local district wouldn't turn
6 off the alarm. We had 62, initially 62
7 accounts -- and I can prove this from my
8 police department -- of times where we had to
9 set the alarm off in order to feed the kids.
10 So we struggled with that a long time until
11 our police chief decided to take it up with
12 the superintendent before that would go away.

13 But it's been those kinds of stresses
14 that we've had to deal with with either the
15 kids or with the community, because they're
16 coming in and asking why are these things
17 happening. And I'm at a loss to give them the
18 answer.

19 So I appeal to the Board, if you take it
20 under consideration that these are not the
21 norms for what's going on in the communities.
22 These are not the norms. These are the people
23 that I studied about way back in the school
24 that were -- I knew about the upper class, the
25 middle class, and the lower class. This is

1 the under class. That's what we're talking
2 about. Many of you know about that because
3 you've been in education a long time.

4 So let's look to those people who would
5 also be the under class people who will at
6 some point in their lives probably, as it
7 happened to me, will be asked to drive planes
8 and drive tanks and whatever else is necessary
9 to defend this country or to become leaders.

10 But leaders are taught and grown. They
11 are not just born to be. I know that and --
12 the last thing. I used to use this in my
13 science class because it's about words:

14 - - -

15 (Mr. Bryant recites in a foreign language.)

16 - - -

17 MR. BRYANT: I've learned that from Latin
18 in high school. It means Twinkle, Twinkle,
19 Little Star. But if you don't know the words,
20 you don't know what I'm talking about.

21 So we've got to get these kids to a point
22 that they feel comfortable in the smaller
23 class sizes, they feel comfortable standing up
24 and presenting themselves before people, and
25 they feel worth. And I think that if there's

1 nothing else that can be considered, the kids
2 that go there eventually start to feel worth.
3 Because their parents are exasperated with the
4 system that they're in, and so they bring them
5 to us for help. And we help them even in the
6 outreach.

7 I appreciate your time. Please consider
8 those things. And those of you who have not
9 experienced them, ask somebody who has, that
10 these are the things that impact our
11 educational situation. Thank you.

12 MR. McLaurin: Thank you, sir.

13 Sheila Haney.

14 MS. Haney: Yes. Good morning. Thank
15 you for this opportunity to speak to you. I'm
16 Dr. Sheila Haney, and I want to give you just
17 a brief background to my history with Lee
18 County.

19 Thirty years employed. I've added
20 another nine for volunteering in reading and
21 tutoring. And in my capacity with the school
22 district, I served as supervisor,
23 administrator, and now volunteer.

24 I also was very active in the civic life
25 of Bishopville and the county in leadership

1 capacities, as well.

2 Beginning my ninth year, I wanted to
3 share with you -- ninth year of tutoring and
4 involvement with MLD, I wanted to share the
5 state department relationship with Lee County
6 public schools. When I came in 1973, clearly
7 the district was in need. And I was a Title 1
8 employee, the only one in the district office
9 at that point.

10 Shortly after, I received my Ph.D. and
11 was the only Ph.D. in the office until a
12 Dr. Townes, with an honorary degree, served as
13 our superintendent for a period of time.

14 The relationship that I observed with
15 MLD -- and I was invited by my friend and
16 colleague, Benita Dinkins-Robinson, to come.
17 I relented for several months, decided not to
18 come, and then began the volunteering twice a
19 week. The last couple of years I've been
20 coming from Hartsville once a week.

21 The relationship that I observed over
22 that time, and especially this fall, brought
23 me to a point of tears. I came before school
24 began, looking at the new site that had been
25 provided by the school district as a result of

1 state department rulings, and I saw a
2 situation, again adversarial, as it has been
3 from the beginning with the school board.

4 The plant had been condemned. And I
5 found ironically I was in the same location,
6 the same office area that I had served as an
7 assistant principal at the junior high,
8 condemned. Even one child, extremely
9 allergic, had to be removed from the premises
10 probably because of asbestos.

11 About the time that Allendale School
12 District had been cited as an impaired
13 district, Lee County was right behind it. Not
14 publicly as visible, but there.

15 What brought me to tears were the
16 security system; chains across the hall;
17 bathrooms that didn't work; fountains that
18 didn't work. An exclusionary intended
19 relationship that students could not even get
20 to main service areas, particularly the
21 cafeteria. They could not utilize the library
22 that was standing dormant.

23 And you need to know there were four
24 employees from the district involved in the
25 front office area. All technology ripped out;

1 doorknobs and locks gone from every door. And
2 we were assigned again to the condemned wing
3 when the rest of the building was not being
4 used. On and on, and I could go on. I just
5 thought how -- how wrong this was.

6 Moved to the point that I intended to
7 talk to my legislative delegation
8 representative, definitely to the media, and
9 fortunately the media did support us in
10 numerous confrontations with the school board.
11 All of this, previous years of trying to make
12 do, kind of repairing that airplane in flight.

13 And I watched, I observed, and I worked
14 with students whose first names I could give
15 you. I'll never forget them. They were
16 students who would not have been part of that
17 impaired Lee County School District, would not
18 have been because of their behavior, because
19 of their performance. And, again, working
20 with them in reading, writing, all of the
21 language arts areas, I did what I could and
22 really promoted many who advanced in grade
23 levels.

24 MR. McLAURIN: Excuse me. You need to
25 bring it to a conclusion.

1 MS. HANEY: I'll do that.

2 MR. McLAURIN: Thank you.

3 MS. HANEY: I observed, as a Title 1
4 employee, illegalities. And I think that,
5 too, should be part of the story.

6 We seek justice here and I appreciate
7 your listening to each one of us. Thank you.

8 MR. McLAURIN: Thank you.

9 It looks like someone else has come in
10 who wants to speak. E. Sutton.

11 MR. SUTTON: Good morning, everyone. I'm
12 E. Sutton. Presently I live in Winnsboro,
13 South Carolina. I'm a pastor of 44 years, and
14 I'm one of the founding board members and one
15 of the first operation officers of the MLD.

16 Some many years of fighting to create and
17 hold onto a charter school. As I was reading
18 the data and information, it sounded like Lee
19 County fighting MLD all over again. As you
20 recognize that of all the charter schools, MLD
21 was the one that was authorized by the Supreme
22 Court to open up, and Lee County was demanded
23 by the Supreme Court to allow MLD.

24 MLD has struggled from its beginning. It
25 has struggled most often with the district

1 itself. It has waged its battle and has won
2 every legal battle. The sad issue today is
3 that it finds itself before the Charter School
4 District in which we worked so hard to get
5 started and create.

6 And we are of a group of individuals when
7 African-Americans were not even voting for
8 charter schools, we are part of that
9 particular group that fought the battle to
10 make sure that there was a charter school that
11 existed, because what we felt at the time is
12 that in our particular district, that we would
13 have a greater opportunity for many of our
14 children.

15 And if you look at much of MLD and the
16 battle that have gone on, even at times you
17 may cite the lack of growth, this school has
18 grown from -- I think that first day we
19 started we had close to 80 students in the
20 beginning and seven mobile units at the back
21 side of the Church of Christ. And then it
22 grew from there on a lot of private effort of
23 some actually very poor people.

24 And so we look at certain things, and
25 yes, you are going to see poverty. Lee County

1 is one of the poorest counties in the state;
2 and therefore you're going to see a great deal
3 of poverty. We knew that when we started out,
4 we would end up with many of the troubled kids
5 and the poor kids. We knew that. We
6 understood that very, very clearly.

7 My appeal to this particular board is it
8 is not time to shut down MLD. It is time for
9 the charter school system itself to do
10 everything it can to make sure that it is in
11 existence. It is actually a model school of
12 all the charter schools. Look at your record.

13 In spite of some of the difficulties that
14 MLD has struggled with, one of the things that
15 it does have is one hundred percent graduation
16 rate. That's not happening. South Carolina
17 is struggling. We are right now in the area
18 of Fairfield County, and you'll read about our
19 schools, not because there's not money, but
20 there's a great deal of working together with
21 the community.

22 One of the questions that
23 African-Americans, we constantly question is,
24 wait a minute, we have to start this system.
25 We have to pass the laws. We have to lobby

1 the legislators to make sure these particular
2 laws are passed. A lot of that came from our
3 particular area with MLD at that particular
4 time some six, seven years ago, when one of
5 the strongest growing groups of individuals to
6 charter schools were African-American,
7 especially those that were coming from
8 community and religious base.

9 I appeal to you, the Board, not a time to
10 shut us down, not a time to close us up. It
11 is time that we all pitch together and see
12 what can we do rather than fight. The Charter
13 School District does not need to sound like
14 Lee County School District. The wars have
15 been --

16 Let me give you just one particular case
17 in the early years: The school was serving
18 us, after many fights, serving our children
19 lunch. We were getting our lunch brought over
20 to our school in those seven units. I was
21 serving as operation, and PE instructor, and
22 social studies. But we ended up having a
23 march. And you probably read the background.
24 We marched from MLD to the Lee County School
25 District just to get lunch for our kids.

1 Recently bus situations, students being
2 pushed on buses. The district has certainly
3 given a great battle. Even when we sought to
4 be a part of the district, we thought by
5 coming to the Charter School District, we
6 would find a home, a safe haven, a place where
7 we could actually grow and develop.

8 You look at the overall -- even if you
9 look at the racial composition of MLD compared
10 to some of the other schools in the
11 predominantly black environment, all of a
12 sudden even the white citizens saw some value
13 in the charter school and they began to put
14 their children in the charter school.

15 So after you look at all the negative
16 stuff and all the difficulties, and you do
17 your reviews from here to there, and you ask
18 the very simple question, how much work have
19 you really put into MLD, I would ask the
20 question, where were you when we were
21 fighting? Where were you when we were in the
22 Supreme Court? Where were you when we were
23 fighting lawyer after lawyer after lawyer, and
24 yet we were fighting for the charter school
25 system and we won?

1 Where were you when the poor ones of us
2 was traveling up North to look at other
3 charter schools and see? Where were you when
4 we were trying to get other African-American
5 leadership in the House and the Senate to vote
6 along with us to pass this bill? You know,
7 where were you when we were sitting in the
8 hearings? Many of you were not there. You
9 were not there.

10 But we are the developers and we are the
11 backbone on which much of the charter school
12 system over the last seven, eight years have
13 been built on our backs.

14 MR. McLAURIN: I will have to ask you --

15 MR. SUTTON: -- as we have struggled to
16 bring it.

17 And then you go back and look and you
18 said, well, they are struggling with some
19 areas, certain areas of passing certain
20 regulations that are sitting there. But you
21 know what? The traditional public schools are
22 struggling with the same and the charter
23 schools are struggling with the same.

24 When you compare us to other charter
25 schools, I think that at the end of the day,

1 you will look at more good than you look at
2 bad.

3 I would ask that this Board not do away
4 with MLD.

5 MR. McLAURIN: Thank you. We now need to
6 move into executive session for a short period
7 of time to discuss some legal matters with our
8 attorneys. So I'll need to ask everyone to
9 step out. And we'll bring you back when we're
10 through.

11 - - -
12 (Whereupon there was a recess
13 in the proceedings from 10:26 to 10:45.)

14 - - -
15 MR. McLAURIN: We will get started.
16 We're back in open session.

17 And, Mr. Watson, I would just -- you and
18 Mr. Bowers -- point out that we are going to
19 follow the procedure in the letter, dated
20 March 27th, that went to Ms. Dinkins, that
21 you'll be allowed 10 minutes to present your
22 opening statement.

23 And then any sworn testimony, any
24 witnesses and whatnot that you want to call.
25 And, of course, any documentary evidence that

1 you want to submit for the record, that will
2 be fine, too.

3 And, you know, you've seen this letter,
4 I'm sure, and what the process will be. So
5 that's what we will be following. So go ahead
6 with your opening statement, please.

7 - - -
8 OPENING STATEMENT BY MR. WATSON

9 - - -
10 MR. WATSON: First of all, I'm Attorney
11 Johnny Watson, and I represent the Mary L.
12 Dinkins Academy.

13 First of all, before we proceed, I would
14 like to make a request, a Freedom of
15 Information request, that this information and
16 everything that transpire here be available to
17 us as soon as possible.

18 MR. McLAURIN: Absolutely.

19 MR. WATSON: And, secondly, I understand
20 from the opening that we do have a quorum; is
21 that correct?

22 MR. McLAURIN: That's right.

23 MR. WATSON: And I further understand
24 that someone was on the way. Is that person
25 now here?

1 MR. McLAURIN: They're here.

2 MR. WATSON: My first thing I want to
3 address is I requested a continuation of this
4 hearing. I was retained by MLD approximately
5 a month ago. I believe it was around
6 March 16th. And it's barely a month and a few
7 days to allow me to prepare. I don't feel
8 that that's adequate preparation time.

9 I requested a continuation through your
10 attorney. And I don't know if he consulted
11 the Board, but I assume that he did, and that
12 request was rejected. Is that the consensus
13 of the Board?

14 MR. McLAURIN: Yes. Well, if you want me
15 to get a consensus of the Board, I'm sure -- I
16 think we discussed this. Are there any
17 objections to refusing the request for a
18 continuance?

19 MR. WATSON: Okay. First of all, in my
20 letter of April 17th -- first of all, I'd like
21 to introduce that letter into the record and
22 have it marked as our Exhibit Number 1, my
23 letter to your attorney requesting that
24 continuance.

25 MR. BOWERS: No objection.

1 (Letter dated 4/17/12, to Karl "Butch"
2 Bowers, from Johnny E. Watson marked
3 Appellant's Exhibit Number 1, for
4 identification.)

5 MR. WATSON: That letter, first of all,
6 addressed the format of the hearing, and it
7 read: The format of the hearing. I think the
8 template outlined by Judge John D. McLeod for
9 the YEVA revocation hearing is a good one. I
10 have attached a copy of the relevant part of
11 that for your consideration.

12 And for the record, I'm going to read
13 what Judge McLeod said. He said, It is
14 further ordered that at a rehearing, the
15 following conventions be observed: A court
16 reporter who is duly qualified to administer
17 oaths be present to swear witnesses and take
18 transcribed testimony. Any transcript shall
19 be clearly -- shall clearly identify the
20 testimony of each witness with at least the
21 last name of the witness.

22 Number 2, the hearing shall proceed
23 informally -- as such, I may call different
24 witnesses at different times -- but as nearly
25 as possible to the format outlined in the

1 Circuit Court.

2 You're aware that the format in the
3 Circuit Court is that, first of all, the
4 moving party put on a case. I've not seen you
5 put on any case for revocation. So, first of
6 all, I think you should put on a case for
7 revocation other than just handing up a
8 letter. So I object to the way we're
9 proceeding here.

10 Testimony of each witness must be
11 concluded before commencing the testimony of
12 other witness.

13 Such hearings shall be held no sooner
14 than 60 days after reasonable details are
15 furnished.

16 The revocation letter that I have to the
17 school is dated March 12th. Clearly 60 days
18 has not been afforded me to prepare. So I
19 object to this hearing, first of all, on the
20 grounds you have not allowed me adequate
21 preparation time.

22 And he went on in that particular case to
23 say that no sooner than 60 days after you've
24 furnished reasonable details, and no later
25 than 60 days from the date of his order.

1 Again, I feel that I need more time to
2 adequately prepare. And I'm again renewing my
3 request to continue this hearing to provide me
4 adequate time to prepare. And, again, I take
5 it that you are going to reject that request?

6 MR. McLAURIN: Hold on just a minute.

7 - - -
8 (Discussion off the record.)

9 - - -
10 MR. McLAURIN: I just wanted to get some
11 details straight. Unless there is an
12 objection from the Board, we will reject that
13 request.

14 MR. WATSON: Okay. Your letter, your
15 revocation letter was dated March 12th, 2012,
16 as I indicated. Number one, it stated that
17 MLD entered the district on a probationary
18 status on August 12th, 2010 with the
19 expectation, based on the school's charter
20 application, that MLD would demonstrate a high
21 degree of academic growth.

22 First of all, I don't understand the
23 lawful basis for admitting someone on a
24 probationary basis. There is no provision for
25 that in the code. You either admit them for a

1 five- or 10-year period -- it was initially
2 five. The law has been changed to 10-year
3 period.

4 But please have someone explain to me
5 your authority for admitting MLD on a
6 probationary basis.

7 MR. BOWERS: I'll speak to that, if I
8 may.

9 MR. McLAURIN: Yes.

10 MR. BOWERS: Mr. Watson, your clients
11 agreed to it. That's the authority. There's
12 nothing in the law that -- in the Charter
13 School Act that prevents it. And your
14 clients, by letter that will be introduced
15 into the record, on August 12th, 2010, agreed
16 to -- agreed to enter the district on a
17 probationary basis and, in fact, agreed to
18 amend their charter agreement with this letter
19 of August 12th.

20 MR. WATSON: Okay. I'm going to have at
21 the appropriate time Ms. Dinkins-Robinson
22 address that. I'd like to see a copy of that
23 letter, for the record, to see that it was
24 signed by both parties.

25 MR. BOWERS: (Handing.)

1 MR. WATSON: Can I introduce this in the
2 record now?

3 MR. BOWERS: I would appreciate it, sure.
4 (Letter dated 8/12/2010 marked
5 Appellant's Exhibit Number 2, for
6 identification.)

7 MR. BOWERS: Mr. Watson, pardon the
8 interruption. Here is another letter that
9 preceded that, May 26, 2010, where Dr. Brazell
10 signed it. This preceded that letter. Just
11 for the flow of it, number one, I wanted you
12 to know about it and, number two, perhaps
13 you'd want to introduce that one, as well.

14 MR. WATSON: Yes. I will introduce this
15 as Exhibit Number 3.

16 (Letter dated 5/26/10 marked Appellant's
17 Exhibit Number 3, for identification.)

18 MR. WATSON: Now, that letter indicated
19 that MLD would demonstrate a high degree of
20 academic growth.

21 There is nothing to indicate what a high
22 degree of academic growth is. Do you have
23 anything to indicate what that means?

24 MR. BOWERS: Mr. Watson, I would say that
25 this is your opening statement. And if you

1 want to ask any witnesses, you know, during
2 the hearing portion of this, you're more than
3 welcome to do so.

4 MR. WATSON: I'll have Ms. Dinkins go
5 into those at the appropriate time then.

6 MR. BOWERS: Yes, sir.

7 MR. WATSON: Again, my first objection
8 was to this hearing proceeding at all because
9 of the lack of preparation time before the
10 meeting.

11 My second objection is based on the fact
12 that that provision -- the provision which
13 allowed this hearing to take place at all is
14 unconstitutional. We feel that that provision
15 is unconstitutional.

16 And the reason we feel that that
17 provision is unconstitutional is this: I'm
18 constantly amazed at the foresight of the
19 founding fathers in establishing the
20 Constitution and the Criminal Code. They
21 provided that if someone is accused of
22 anything, that person, the prosecutor, the
23 solicitor -- in this case I would think that
24 that would be Dr. Brazell in this case or the
25 Board, accusing MLD of not living up to an

1 agreement.

2 The prosecutor presents his argument to a
3 grand jury. The grand jury determines whether
4 or not charges should be brought. I guess
5 then, if he would be the prosecutor, this
6 Board then would constitute the grand jury.

7 So the grand jury, in this case the
8 Board, issued this letter determining that
9 you're going to terminate the charter of MLD.
10 The Constitution does not allow the person
11 that brings the charge to then sit at the
12 jury. So now you are in turn sitting as the
13 jury in the very charge that you're bringing.
14 That's fundamentally unfair.

15 And therefore, I think that that
16 provision is unconstitutional and that this
17 hearing should not take place at all, unless
18 we have a chance to present our evidence to a
19 Board, a group with no predetermined outcome.
20 You are clearly ready to determine what the
21 outcome of this hearing should be. That is
22 fundamentally unfair, and we object to this
23 hearing taking place on Constitutional
24 grounds.

25 MR. McLAURIN: You're over your time.

1 I'll give you another minute or two if you
2 need it.

3 MR. WATSON: And I object to the time
4 restraint that you impose. You're just going
5 to arbitrarily limit me to 10 minutes on a
6 matter of this importance? You're trying to
7 terminate the charter of the school that's
8 serving over 120 students along with the
9 faculty and all that goes with that. Nowhere
10 in the Civil Code do you limit somebody to 10
11 minutes in an opening statement. But, again,
12 that's another ground that I object.

13 Further, I would like to request at this
14 time that all the public comments made by the
15 witnesses who came up to give public comments
16 be included as part of the record of this
17 hearing --

18 MR. McLAURIN: Did you record those?

19 MS. FIRST: (Nodding.)

20 MR. McLAURIN: That's fine.

21 MR. WATSON: -- and made a part of the
22 record of this case.

23 MR. McLAURIN: Then what we're going to
24 need to do is get each one of those people
25 sworn saying that they did, in fact, tell the

1 truth. Now, are you going to call those
2 people as witnesses?

3 MR. WATSON: Yes. If you want them to
4 redo their statements over, I'll gladly call
5 them to do them over.

6 MR. McLAURIN: No, they don't need to
7 give their statements again. But if we swear
8 them in, I suppose we can handle that at that
9 time. Does that suit everybody? Are you okay
10 with that?

11 MR. WATSON: That's fine.

12 Now I'd like to start calling my
13 witnesses.

14 MR. BOWERS: Mr. Chairman, may I have a
15 brief opening, briefly?

16 MR. McLAURIN: Yes.

17 - - -

18 OPENING STATEMENT BY MR. BOWERS

19 - - -

20 MR. BOWERS: Mr. Chairman, members of the
21 Board, I just want to briefly respond to a
22 couple of things that Mr. Watson said in his
23 opening statement.

24 First, I object to his characterization
25 of this process as a criminal proceeding.

1 Clearly, this is not a criminal proceeding.
2 Clearly, Dr. Brazell or nobody in here has the
3 authority of the State to prosecute anybody
4 criminally. That's not what this is about.

5 This is an administrative procedure. The
6 procedure and the revocation process is set up
7 expressly in the charter school law. And I
8 just want to make sure that the record is
9 clear that this is not a criminal proceeding.

10 There is no such thing as a grand jury in
11 an administrative proceeding. There is no
12 such thing as a prosecutor. That's a term of
13 art that implies that somebody who is found
14 guilty will be found guilty of a criminal
15 matter. That's not anything close to what
16 this is today.

17 This is simply the administrative
18 process, as set up by our General Assembly
19 pursuant to the Charter School Act, that sets
20 forth the provision or the process by which a
21 charter school must be revoked. And I want to
22 remind everyone of that.

23 If the Charter School District finds --
24 believes it has evidence to show that four
25 areas have not been complied with, four

1 specific areas -- they must be specific -- if
2 the Charter School District finds evidence
3 that the school has not -- has not made
4 academic progress or has violated, made a
5 material violation of the charter application,
6 there's no discretion in the law. The
7 district must revoke the charter.

8 So there's no -- let's just be clear.
9 This is not a criminal proceeding, and I want
10 to make sure that the record is clear on that.

11 I'll wrap up with this, and I'll turn it
12 over to Mr. Watson. The evidence will show
13 that the school has materially violated its
14 charter application and has failed to meet or
15 make reasonable academic progress. And I
16 think the decision will be clear after the
17 conclusion of the presentation of witnesses
18 and evidence. Thank you, sir.

19 MR. WATSON: Well, continuing my opening
20 remarks -- again, this is an informal
21 proceeding. Continuing my remarks, I did not
22 intend to imply that this is a criminal
23 proceeding. I wanted to imply the fairness
24 doctrine that you do not, in a criminal or
25 civil proceeding, have the person who is

1 making the accusation therefore proceed and
2 then be the judge as to whether or not those
3 accusations are correct.

4 I did not mean to imply that this is a
5 criminal proceeding, but only to show the
6 unfairness of a procedure that allows the
7 Board to determine that a charter should be
8 revoked and then sit as the judges as to
9 whether that charter should be revoked.

10 MR. BOWERS: And, Mr. Watson, to be
11 clear, that's not the choice of the Charter
12 School District. That is the system that has
13 been set up by the General Assembly.

14 MR. WATSON: And I agree. That's why I
15 said I believe that provision is
16 unconstitutional, and we will challenge it at
17 the appropriate time.

18 MR. BOWERS: Which is fine. You
19 understand that this Board has no authority to
20 pass on the Constitutionality of the statute?

21 MR. WATSON: Yes. And you understand
22 that if I don't bring that up at this point
23 and make it a part of the record, then the
24 next court will not have a basis to hear that?
25 So it's appropriate to be brought up at this

1 time.

2 MR. McLAURIN: Just for the Board, I'd
3 like to point out to both of you that we don't
4 have a choice of whether to do this. I
5 understand you can bring it up, but it's not
6 like we can choose to do this in another way.
7 We're following the law.

8 MR. WATSON: Again, you are following the
9 law. I'm not saying you're not following the
10 law. I said that the law is flawed.

11 MR. McLAURIN: Okay. Then bring that up
12 with --

13 MR. WATSON: Again, I will, but I have to
14 make a record of it, and that's what I'm doing
15 now.

16 MR. McLAURIN: That's fine. Go ahead and
17 call your witness.

18 MR. WATSON: Now, it's ironic that we are
19 here when Dr. Brazell himself spoke of the
20 basic unfairness of what has transpired at
21 this point. On November 3rd, 2011,
22 Dr. Brazell wrote a letter to the Board of
23 Trustees and Superintendents for the Lee
24 County School District regarding the Mary L.
25 Dinkins Learning Academy Charter School.

1 It states, "Dear Board Members and
2 Superintendent, Dr. Cleo Richardson: As a
3 Superintendent of South Carolina Charter
4 School District, I continue to observe a lack
5 of cooperation on the part of the staff of Lee
6 County School District with respect to the
7 court-sponsored agreement between Mary L.
8 Dinkins Higher Learning Academy Charter School
9 and Lee County School District.

10 "While the most recent incidents
11 regarding the refusal to transport public
12 students are especially egregious, these
13 incidents are part of a much longer and
14 broader list of problems that the school has
15 encountered in its working relationship with
16 the Lee County School District staff.
17 Shortcomings have included blocking access to
18 voice and Internet for the school over an
19 extended period of time, forcibly removing
20 students from the cafeteria while those
21 students were eating during regular meal
22 times, and blocking the administration of the
23 school from the normal and routine use of the
24 33 renovated but empty classrooms in the
25 Dennis Intermediate School building.

1 "Most recently the administration of the
2 school has noted that the cafeteria workers no
3 longer have access to hot water, making the
4 preparation of some student meals problematic.
5 I feel that on numerous occasions such actions
6 have compromised or placed at risk the
7 physical well-being of the public school
8 students attending the school.

9 "No doubt as Board members of the school
10 district, you can understand my concern
11 regarding these problems. I assume that you
12 likewise share my interest in seeing these
13 matters resolved with all possible haste so
14 that the quality of free public education
15 being provided through the public schools,
16 through the Mary L. Dinkins Academy Charter
17 School is not adversely affected by actions or
18 lack of actions arising from the Lee County
19 School District Board and Superintendent.

20 "The administration of the South Carolina
21 Public Charter School District will continue
22 to monitor the conditions and certain stances
23 relevant to the agreed upon arrangements
24 between the Lee County Charter School District
25 and the school. It is my hope that you will

1 take a personal and professional interest in
2 resolving these problems immediately and
3 unequivocally."

4 That's a letter from you, Dr. Brazell --
5 MR. BRAZELL: Absolutely.

6 MR. WATSON: -- a letter you wrote --

7 MR. McLAURIN: You have gone way over on
8 your opening statement.

9 MR. WATSON: Again, I object to your
10 limiting my opening statement.

11 MR. McLAURIN: I note you object to it.
12 We do have another hearing later this
13 afternoon.

14 MR. WATSON: Okay. If you'll bear with
15 me for a few more minutes, I have one other
16 statement before I call witnesses.

17 MR. McLAURIN: No, sir. You can call the
18 witness. If you've got something you want to
19 enter into the record, we'll be glad to have
20 you do that, anything you want to enter in.

21 MR. WATSON: I just want to call
22 attention to your letter, your press release
23 of South Carolina Charter School District
24 which foreshadowed the foreclosure of this
25 school. Okay.

1 It says, "Without significant
2 improvement" --

3 MR. McLAURIN: Mr. Watson, either you or
4 Mr. Bowers gets to run this meeting or I get
5 to. For better or worse, I'm the one that's
6 charged to do it. And so that's just what I'm
7 going to have to do.

8 Now, I've set the ground rules for both
9 of you, and that's the way it's going to have
10 to be. Anything you want entered into the
11 record, I want you to do that. You're welcome
12 to do that.

13 MR. WATSON: Okay.

14 MR. McLAURIN: I do need for you to call
15 the witness.

16 APPELLANT'S EVIDENCE

17 MR. WATSON: At this time I'll call
18 Ms. Dinkins-Robinson.

19 - - -

20 BENITA DINKINS-ROBINSON, being first duly
21 sworn, testified as follows:

22 - - -

23 DIRECT EXAMINATION

24 - - -

25 BY MR. WATSON:

1 Q State your name for the record, please.

2 A Benita Dinkins-Robinson, B-E-N-I-T-A,
3 D-I-N-K-I-N-S, R-O-B-I-N-S-O-N.

4 Q What's your relationship to the Mary L.
5 Dinkins Charter School?

6 A I am the Executive Director and one of
7 the founding persons of the Board -- of the Board.

8 Q Okay. Did you enter an agreement on
9 August 12th, 2010 with the expectation, based on
10 the charter school application, that MLD would
11 demonstrate a high degree of academic growth?

12 A Going back and looking at that
13 particular -- when we came to the district, the
14 district understood, and it was not so much of a
15 probationary status, but I remember having an
16 agreement that we would both work together in order
17 to enhance the school.

18 They understood that we were in a hostile
19 situation with Lee County, and that for the entire
20 duration of our time, those kids were not properly
21 funded, they were not properly provided the
22 adequate education they need due to the lack of
23 funding. They had never received any IDA funding,
24 any special ed. funding for the whole duration of
25 the time that we were under the Lee County School

1 District.

2 So this district understood that we were
3 coming in almost barely deprived. They also
4 understand that our kids were coming in two to five
5 grade levels behind.

6 But going back, looking at the agreement,
7 the Memorandum of Agreement -- and that's what it
8 says -- between MLD Charter Academy and the South
9 Carolina Public Charter School District, it does
10 not specify on the academic growth. What they
11 asked us to do was to purchase a MAP data system,
12 which we did. And 75 percent of our students show
13 individual gains. That is what they asked us to
14 do, to look at the individual growth of the
15 children and make sure that those children
16 individually were making progress. That's number
17 one.

18 And ~~number one~~ reads, "The Measures of
19 Academic Progress, MAP, assessment will be given at
20 least three times throughout the year to all 3
21 through 12th grade students under the district
22 supervision. MLD will pay for the installation and
23 support costs for this assessment," which we did.

24 When we came back before them in May,
25 they stated in that May board meeting that we had

1 done everything in that agreement.

2 Q Is there any provision in that agreement
3 for the students to advance or demonstrate
4 advancement relative to students in other districts
5 or just the growth within that individual student?

6 A I think, for the record, number two says,
7 MLD will provide access to classroom, professional
8 development and student records to the South
9 Carolina Public School District staff on an ongoing
10 basis. We will provide monthly reports to the
11 South Carolina Public School Superintendent on
12 general academic progress on the school and on the
13 progress of individual students.

14 MLD will use the district-approved
15 outside consultant to review data, provide training
16 and make recommendation to provide the school. All
17 correspondence between the consultant and MLD may
18 be copied to the South Carolina Public Charter
19 School District. MLD will pay for all costs
20 related to the use of the consultant. MLD will
21 prepare and implement a report on improving the
22 anesthesics (sic) of the building. This includes,
23 but is not limited to, landscaping the grounds,
24 significantly improving the street appeal of the
25 building, and adding artwork to the inside of the

1 building to improve the sense of the building
2 becoming a school. All improvements shall be made
3 with the school or donated funds.

4 MLD will prepare a comprehensive report
5 for the renewal hearing in May of 2011 and make
6 copies of the report available to the Board members
7 at least one week before the hearing. The report
8 will include improvements made to the building, an
9 update on the quality of the teaching at the
10 school -- which we began last year, revamping and
11 doing the turnaround model.

12 We were given the opportunity to also
13 receive an additional \$500,000 from the State of
14 the South Carolina. However, for whatever reason,
15 this district and the State of South Carolina did
16 not get together; so we were not given the
17 opportunity to receive the SIG funds, which is
18 School Improvement Grant funds, in order to fully
19 implement the turnaround model. Nevertheless, we
20 still did.

21 And according to our Title 1 visit, which
22 we just had last Thursday, the reviewer stated that
23 we implemented five out of six strategies of the
24 turnaround model.

25 And going back to this, for the record:

1 Improvements made to the building and update on the
2 quality of the teaching at the school, progress
3 made at the school. Although no decision at this
4 time will be made to the extension/destruction of
5 the agreement, MLD recognizes and understands the
6 hearing will be made on or about May 20th should
7 result -- May 2011 could result in the renewal of
8 this charter and that they could have appellate
9 rates provided under the South Carolina Charter
10 School Act.

11 Q Are you familiar with the press release
12 issued by the South Carolina Charter School
13 District?

14 A Yes, sir, I am.

15 Q Is that the release you've seen
16 (handing)?

17 A It is.

18 MR. WATSON: I'd like to have this marked
19 as an exhibit.

20 MR. BOWERS: No objection.

21 (Press Release marked Appellant's Exhibit
22 Number 4, for identification.)

23 THE WITNESS: Number 7 states, MLD agrees
24 to accept the status of probation in the
25 district without appeal and to be binded by.

1 the terms of the agreement and with the
2 understanding the school will have a hearing
3 for the 10-year charter renewal on or about
4 May 2011.

5 BY MR. WATSON:

6 Q Did that hearing take place?

7 A We did have the hearing. We had the
8 hearing and the meeting. And at that time the
9 superintendent stated that we had did everything in
10 accordance to what we had agreed upon.

11 Q And did they issue your 10-year contract
12 agreement? Did they give you your 10-year charter?

13 A I don't think they issued anything at
14 that particular time. But they did -- I don't
15 recall any, whether or not they actually issued the
16 charter. But we came before them, and they stated
17 that we had already done what was asked for them,
18 that we had already done everything.

19 They also cited that our students did
20 show gains in the MAP scores. And what I
21 specifically said, not just in this hearing, but I
22 find ironically that we came before the same Board
23 in January of this year, 2012. And I will present
24 some of the same data that I gave them in January
25 of this year. And what they told us was, "Good

1 job."

2 Q Okay. So now, let me understand the
3 charter that we are operating under at the present
4 time. You initially had a charter with the Lee
5 County School Board; is that correct?

6 A Yes, sir.

7 Q Is this a copy of that charter?

8 A It is, sir.

9 MR. WATSON: I'd like to introduce this
10 for the record.

11 MR. BOWERS: May I look at it for a
12 second?

13 MR. WATSON: (Handing.)

14 MR. BOWERS: No objection.

15 (Charter School Application,
16 000222-000395, marked Appellant's Exhibit
17 Number 5, for identification.)

18 BY MR. WATSON:

19 Q So as I understand it, ma'am, the charter
20 that you are operating under presently on a
21 probationary period consists of the original Lee
22 County charter with the -- supplemented by those
23 two Memorandums of Agreement; is that correct?

24 A It is, sir.

25 Q Now, before proceeding with that, I'd

1 like to ask you about that press release again.
2 This is Exhibit Number 4. Would you read that
3 release for the record, please?

4 A The South Carolina Charter School
5 District recognizes successes and shortcomings in
6 standardized test results. The South Carolina
7 Charter School District reviewed the results of the
8 spring 2011 state standardized test scores and is
9 acting on these results.

10 Of the 11 schools in the district, three
11 schools are recognized for academic success; four
12 schools are developing plans to improve student
13 test scores; and four other schools are being put
14 on academic probation as they begin to implement
15 comprehensive changes.

16 Palmetto Scholars Academy in Charleston,
17 York Preparatory Academy in Rock Hill, and
18 Spartanburg Charter School all achieved impressive
19 student success rates on state standardized
20 testing. For Palmetto Scholars Academy and York
21 Preparatory Academy, these high scores came only
22 one year of being open; making the results even
23 more remarkable. Likewise, Spartanburg Charter
24 School has only conceded two academic years.

25 Student outcomes of the South Carolina

1 Calvert School, Palmetto E-cademy, South Carolina
2 Connection Academies and South Carolina virtual
3 schools were mixed with some positive indications,
4 but quite a few are noted for improvements. The
5 leadership team at the schools are developing plans
6 to address the problem areas. Of particular
7 concerns are the needs of at-risk students who have
8 chosen these schools in large numbers.

9 The student testing results at Calhoun
10 Falls Charter School, Provost Academic Charter
11 School, Lake City College Preparatory Academy and
12 MLD Academy in Bishopville were significantly below
13 the state average. As a result, the district
14 placed each of these schools on academic probation.
15 Without significant improvement in test scores, the
16 schools could face closing at the end of 2011-2012
17 school year.

18 "All public schools should be held
19 accountable for academic performance," says
20 Superintendent -- South Carolina Public Charter
21 School Superintendent Wayne Brazell, Ph.D. "We
22 take very seriously our responsibility to improve
23 or close underperforming schools. The
24 administrative teams at each of the schools in
25 question have already started making changes that

1 are designed to help those test scores. The
2 quality of the education of the students in all of
3 these schools is of prominent importance and we
4 will not compromise academic performance for
5 convenience or for low expectation."

6 Inherent in the concept of public charter
7 schools is the emphasis of accountability. Like
8 traditional public schools, charter schools do not
9 charge tuition and charter schools must address the
10 entire state curriculum for all grade levels
11 offered. Students are required to meet all state
12 graduation requirements and the schools are
13 required to administer all state standardized
14 tests, which is conducted live under monitored
15 condition. All public charter schools are subject
16 to state laws regarding professional license for
17 states or school staff. However, public charter
18 school is different from traditional public schools
19 in several ways. The schools are supervised by a
20 governing board that includes parents and other
21 members of the community who are ultimately
22 responsible for the operation and the performance
23 of the school. And it was dated 8/17/2011.

24 Q Okay. Now --

25 MR. McLAURIN: Mr. Watson, just so we

1 keep this moving, as we go along, I'd ask you
2 not to read documents that are already in the
3 record or are going to be put in the record.

4 MR. WATSON: That's fundamentally unfair.
5 I need the Board to hear this.

6 Because something is in the record
7 doesn't tell me these Board members are going
8 to read it. I need them to hear it now.

9 MR. McLaurin: Well, it's the Board
10 members' responsibility -- first of all,
11 you're reading documents that were released by
12 the district. We're all familiar with it, and
13 I'm watching the Board and their eyes are
14 glazing over.

15 I'm trying to make this thing more
16 effective, and I've got to think about the
17 Board's ability to do that. Anything that's
18 in the record or going to be entered into the
19 record, it's just no use in witnesses reading
20 that. And we will read it and it's their
21 responsibility to read it.

22 And so I can tell you this is going to be
23 done fairly, but it's not fair to this Board
24 or to the people who are on the agenda later
25 to have read to us things we already read

1 about and most of which don't have anything to
2 do with this.

3 MR. WATSON: You are already forming a
4 conclusion --

5 MR. McLAURIN: I am not.

6 MR. WATSON: How do you know these Board
7 members are going to actually read it? I want
8 them to hear it. This is a charter revocation
9 hearing, and they need to hear what we
10 present.

11 MR. McLAURIN: You want to object?

12 MR. BOWERS: Mr. Chairman, I'd like to
13 object. If Mr. Watson is introducing
14 documents into the record, then I believe
15 having witnesses read the documents is
16 cumulative and duplicative, and therefore is
17 inappropriate in this proceeding.

18 If the documents are made part of the
19 record, they're part of the record, and that
20 will be up to -- as you said, up to the Board
21 members to review and consider that evidence.
22 But reading the documents, I object to that.

23 MR. McLAURIN: Yeah, I'm just going to --

24 MR. WATSON: Okay. Continuing.

25 MR. McLAURIN: Are we clear on that? I

1 understand you don't agree with it.

2 MR. WATSON: I mean, I understand your
3 point of view, and I understand that -- I want
4 you to understand that I disagree with that.

5 MR. McLAURIN: I understand.

6 MR. WATSON: And that's not the way
7 proceed -- court proceedings are done. This
8 is analogous to a court proceeding.

9 MR. McLAURIN: Actually --

10 MR. BOWERS: Mr. Chairman, if I may, the
11 letter that was sent to the school regarding
12 the procedure says specifically that this
13 procedure will be -- this process will be
14 governed by the South Carolina Rules of
15 Evidence. South Carolina Rule of Evidence
16 403, it says, "Although relevant, evidence may
17 be excluded if its probative value is
18 substantially outweighed by the danger of
19 unfair prejudice, confusion of the issues,
20 misleading the jury or by considerations of
21 undue delay, waste of time or needless
22 presentation of cumulative evidence."

23 So, Mr. Watson, I actually agree with you
24 that, yes, this should be run like a court
25 proceeding. And under Rule 403, clearly this

1 cumulative, duplicative reading of documents
2 is inappropriate.

3 MR. WATSON: Again, it's not cumulative
4 because it hasn't been read. It's being read
5 for the first time here in this proceeding.
6 How can it be cumulative?

7 MR. BOWERS: Because it's in the record.

8 MR. McLaurin: It's in the record.

9 MR. BOWERS: You already made these
10 documents exhibits, and so it's in the record.

11 MR. WATSON: Again, I object to your
12 characterization.

13 MR. McLaurin: That's fine, but I'm not
14 going to subject the Board to --

15 MR. WATSON: Continuing here.

16 BY MR. WATSON:

17 Q Now, in that release, it seems that that
18 release, the School Board -- the district's release
19 is comparing your students' achievement to the
20 achievement of the Palmetto Academy, the York
21 Academy. Do your students have the same background
22 as those students?

23 A They do not.

24 Q Is there anything in your agreement that
25 says that you will achieve at the same --

1 test-wise, at the same level as those students who
2 come from different backgrounds?

3 A The agreement does not even specify
4 specifically the goals and objectives or any
5 measurable progress. It just says that we will use
6 the MAP data assessment, which we agreed upon so
7 that the district could monitor our student
8 individual growth, knowing that these students were
9 coming in from poverty-based backgrounds.

10 And we have done intensive research,
11 which we provided to the Board in our January
12 meeting, regarding the effect of poverty on
13 students and how it affects. And they normally
14 come in one and a half grade levels behind their
15 contingent richer counterpart per se.

16 This overall district background, the
17 poverty rating as a whole, including our 98 percent
18 poverty rate, is about 37 percent. Our poverty
19 rating at the MLD at this point is about
20 97 percent. So the majority of our children come
21 in two to five grade levels behind, which I have
22 relayed to this Board on numerous occasions,
23 including as recent as January when we were asked
24 to present our progress and our update and our
25 changes, that we will go back over, to this

1 particular Board.

2 Q So nothing in your agreements state that
3 your students are to pass tests at the same rate or
4 achieve scores at the same level as other schools?

5 A No, sir. And the schools that were cited
6 were primarily children that are at risk. They
7 were -- three out of the four, one is a virtual
8 school. But the three brick and mortar schools
9 that were cited on probation are all schools that
10 are poverty-stricken schools. Lake City, which is
11 predominantly African-American and poverty
12 stricken; Calhoun Falls, I think, has about an
13 85 percent poverty rating; and MLD.

14 What we've been told repeatedly is that
15 if this district did not have those particular
16 students in their district, then they would score
17 higher. Because the legislation is looking at
18 them, so they had to do something, and we were the
19 something.

20 Q So is this an attempt, then, to revoke
21 the charter of the poverty schools?

22 MR. BOWERS: Objection; calls for
23 speculation. No basis in fact.

24 MR. WATSON: I think there is basis in
25 fact.

1 MR. BOWERS: Hold on.

2 MR. McLAURIN: Objection sustained. ✓

3 BY MR. WATSON:

4 Q Moving on to item number 2 in the
5 March 12th letter. The district could place MLD on
6 academic probation on August 15th, 2011.

7 Were the terms of that academic probation
8 specified? Do you have something in writing
9 spelling out what that meant and what you could do
10 to get out of the academic probation?

11 A We did not. The only thing they said is
12 that we needed to make significant gains. And
13 there was no specification on what type of gains.
14 It was just significant gains by the end of
15 2011-2012.

16 Our school and our children were not even
17 given an opportunity, even after bringing on a
18 state consultant, which is from this district. I
19 think she -- which we also presented evidence of
20 her letter, and she may elaborate on that later.

21 But even after bringing her in to make
22 sure that we were providing these children an
23 adequate education, knowing that we had to do
24 something aggressive because they were coming in
25 two to five grade levels behind, we weren't even

1 given an opportunity to take the first PASS test.
2 The first PASS test was not even administered until
3 the middle of March. We already had our revocation
4 notice prior to even giving the first PASS test.

5 Q Okay. Now, the revocation law states
6 that any revocation must be based on an order.
7 What -- do you know what order they are basing this
8 attempted revocation on?

9 A We did not have an annual evaluation. So
10 if that's the question, no, I do not. I have that
11 blanket letter that came to all four of those
12 poverty-stricken schools, and that's all I got,
13 that we needed to make significant gains.

14 And we have done everything in our power
15 and willpower to comply. And after even meeting
16 with Dr. Brazell with me and my board members, what
17 he said was, "Benita, just show gains."

18 And I said, "Dr. Brazell, we are doing
19 that. If you look at our MAP data" -- which I
20 think I will submit for the record once I go
21 through this -- "when you look at our MAP data,
22 most of our kids have made 10- to 25-point gains in
23 one year."

24 But if they are coming in scoring 147 and
25 157 on the MAP test, and they need a 230 or 220 to

1 make proficient or max on a state test, there is no
2 way possible. And I think that is why Dr. Zais'
3 office is also beginning to look at it.

4 We have to look at the individual growth
5 of the children. And that is what I thought as a
6 whole that this district was helping us do. That
7 was one of the reasons they mandated that we not
8 even use the assessment tools that we previously
9 bought, but use one of the ones that they
10 recommended, which is MAPS.

11 We also talked about purchasing a data
12 system for next year that we could look at the
13 children individual growth monthly. So I was under
14 the assumption that we were moving forward to look
15 at the individual growth of these children. What
16 they said was that we got to figure out how to make
17 it work in the rural counties. And what we said
18 was that we would eventually be the model because
19 we have increased our population by almost double.
20 We had 80 students in K through 8 last year. This
21 year we have 152.

22 Q How is your graduation rate?

23 A We have a hundred percent. And I did
24 present that to them last time, but I can go back
25 and pull it out of the PowerPoint that we gave

1 them.

2 MR. McLAURIN: Well, that's not
3 necessary. She's answered the question, "a
4 hundred percent."

5 THE WITNESS: But I want to compare it,
6 if I may, to the other schools in the
7 district.

8 MR. WATSON: Excuse me a second.

9 MR. McLAURIN: That's fine.

10 MR. WATSON: Are you acting as a judge or
11 are you acting as a prosecutor?

12 MR. McLAURIN: I'm trying to act as a
13 facilitator to keep this meeting going at a
14 pace where it will be useful.

15 MR. WATSON: I find what we're doing
16 extremely useful to make a record. Useful to
17 who? What's your criteria?

18 MR. McLAURIN: To the Board. This Board
19 has to make a decision. Okay?

20 MR. WATSON: Yes, and so the Board needs
21 to hear what we are presenting.

22 MR. McLAURIN: That's right. But it's my
23 job to keep the thing moving at a pace that is
24 useful to the Board and fair to you.

25 Go ahead. Introduce what you want to

1 say.

2 THE WITNESS: Our graduation rate
3 compared to the other charters in this
4 district, South Carolina Virtual School, which
5 is the lowest, had 379 students that should
6 graduate. I'll just go to the rate.

7 South Carolina Virtual Charter Schools,
8 their graduation rate was 7.4 percent. South
9 Carolina Provost, which is the next lowest,
10 had 18 -- 8.1 percent. South Carolina
11 Connection Academy had 38.1. Palmetto State
12 E-cademy had 18.1 percent. Calhoun Falls
13 Charter School, which is the other school that
14 was cited, had 79.2 percent. And we had a
15 hundred percent graduation rate.

16 BY MR. WATSON:

17 Q Now, what about the schools that they
18 seem to be particularly proud of? Did their rate
19 exceed your rate?

20 A No, sir, they did not.

21 Q Did any of the schools' graduation rate
22 exceed your rate?

23 A No, sir, it did not.

24 Q Now, do the number of students on free
25 lunch program somewhere reflect anything about the

1 abilities of the students to perform?

2 A Studies show that children that come from
3 poverty traditionally come one and a half grade
4 levels behind their regular richer counterpart,
5 because they are not afforded all the other
6 opportunities that those particular students may
7 have. And that is research based.

8 We have done extensive studies with
9 Francis Marion, who is -- the Center of Excellence,
10 if I'm not mistaken, is the name of them -- who is
11 beginning to work with us to be able to better work
12 with the children that are in poverty.

13 Q Okay. Now, let me back up a little bit
14 to the audit upon which this hearing is supposed to
15 be based. How long have you been in this district?

16 A 18 months.

17 Q 18 months.

18 A Well, 19 now.

19 Q 19 months now. So you had one complete
20 school year. And then this is the second school
21 year?

22 A Yes, sir.

23 Q At the end of the first year, did they
24 present you -- did they do an audit?

25 A We did not do an annual review, no, sir.

1 Q Have they done one this year?

2 A No, sir.

3 Q So where is the audit that has to be the
4 basis of a revocation?

5 A I can't answer that, sir.

6 Q Now, let's move on to item 3 for a
7 minute. It says that MLD's audit, independent
8 audit, revealed significant deficiencies related to
9 the failure to maintain documentation to verify
10 free and reduced lunch applications and failure to
11 maintain a properly designed financial management
12 system.

13 Again, will you comment on that?

14 A I can. We sent the letter. And if I may
15 read this letter --

16 Q Go ahead.

17 A Not this letter.

18 Q We are addressing item number 3.

19 A It's in the letter we sent to
20 Dr. Brazell's office. I got it. In a letter, and
21 I'm pretty sure he'll enter it into evidence
22 later --

23 MR. WATSON: Excuse me. Let me enter
24 that into evidence right now, please.

25 (Letter dated 3/6/12 marked Appellant's

1 Exhibit Number 6, for identification.)

2 MR. WATSON: I'd like to enter the letter
3 to Dr. Brazell, Superintendent of the School
4 District, dated March 6, 2012, along with its
5 accompanying attachments.

6 MR. BOWERS: No objection; however,
7 Mr. Chairman, I do object to the witness
8 reading this document, which is now being
9 placed in the record without objection.

10 BY MR. WATSON:

11 Q Summarize for me your response to that
12 particular concern.

13 A MLD -- the free and reduced lunch
14 component has nothing to do when they began to cite
15 us in the January -- the February letter was
16 regarding Title 1. The free and reduced lunch
17 count, they do not have any direct finding.

18 We had every free and reduced lunch form.
19 However, because I had a turnaround in staff, we
20 literally became a brand-new school. I mean, when
21 the district asked us to clean house, we literally
22 cleaned house, including my administrative staff.

23 So though I had every lunch form, which I
24 forwarded to this district, every single lunch
25 form, there is a verification process that is

1 supposed to be done for 2010. We have it for two
2 thousand -- this school term. But I did not have,
3 because I fired my administrative staff, my main
4 administrative staff; so I did not have where my
5 parents go to DSS and get a copy of their food
6 stamp form. That is the only thing that we were
7 missing out of the entire audit, was three papers
8 that verified that those parents were on food
9 stamps.

10 Other than that, for the record, we have
11 every free and reduced lunch form for you, SCA.
12 And that is all Title 1 needs, is a copy of each
13 free and reduced lunch form, which we had to also
14 use for SCS services. So we had that available to
15 Mrs. Bryant early February of the previous year so
16 that we could get ready to do our supplementary
17 services.

18 So this district had those free and
19 reduced lunch forms as early as February of 2011.

20 Q Okay. So you disagree with their
21 statement in item number 3; is that correct?

22 A Yes, sir.

23 Q Now, item number 4 states that MLD failed
24 to comply with the deadline set by the district of
25 verification of lottery and professional funds

1 expenditure.

2 Now, my question as to that: You'll
3 agree that you did not comply by the deadline?

4 A I do.

5 Q But did y'all comply?

6 A We did. They received it by -- I think
7 it was due on the 10th, and they had it by the
8 11th. The reasoning was is that because it was a
9 state -- it was a district level paperwork -- we
10 had also just received an eviction notice from Lee
11 County. So I think everybody's already talked to
12 it before.

13 We have had to keep jumping through
14 hurdles. But because it was a state level
15 document, they sent it to us and said just do it.
16 So I called Ms. Watley at home, and it was on the
17 11th, and said I was going to just fax you what I
18 already did, but I wanted to make sure that it was
19 adequately and appropriately done. So I asked her
20 to walk me through it to make sure she still had it
21 before the time of her deadline. And her deadline,
22 according to her paperwork, was the 13th.

23 But I didn't want to just send her
24 paperwork that wasn't adequately done. So I asked
25 her to walk me through it, and she did. So we

1 corresponded back and forth through e-mail and
2 telephone at her home and at school, and we did
3 comply and make sure that she did have it.

4 Q So you complied. Now, do -- I don't see
5 anywhere in the revocation procedure where it being
6 untimely as a grounds for revocation. But you
7 ultimately got them the data they requested; is
8 that correct?

9 A Yes, sir.

10 Q Moving on to item number 5. Item number
11 5 states that MLD's report card data verified that
12 MLD failed to make reasonable academic progress
13 insofar as student test scores have been
14 consistently lower than both the district and other
15 schools statewide.

16 I think you already addressed that in
17 that it's your understanding that nowhere in your
18 agreement does it state that you are going to
19 make -- your students are going to score comparable
20 to other students. They just have to make
21 reasonable progress; is that correct?

22 A Yes, sir.

23 Q Most test scores have declined over the
24 past two years -- past two or three years. The
25 number of objectives not met on the AYP has

1 increased over the past years.

2 Hasn't the AYP been discredited in some
3 sense?

4 A It is by most all credible educational
5 people, including Dr. Zais and State Department of
6 Education. That is why they are asking for a
7 waiver. And that "No Child Left Behind" Act has
8 failed. And I think the federal government knows
9 that "No Child Left Behind" Act has failed. That
10 is why they are putting into the waiver that we
11 will begin to look at the individual growth of our
12 children.

13 Particularly, I think Dr. Zais' office
14 has been hitting really hard, according to what
15 I've been seeing on the news, hitting hard that we
16 are going to have to start looking at differently
17 working with the children that are in poverty
18 because they do come behind and they do need extra
19 assistance.

20 Even on their website, if you go on the
21 State Department's website, under the special ed.
22 component, it lists that children that are
23 socially, economically deprived are no different
24 than children that are in alternative-based
25 schools. So I think that that is where we're

1 moving as a state and as a country, is to begin to
2 look at the individual growth of the child.

3 So to answer your question regarding the
4 AYP, according to our Title 1 visit, if the waiver
5 goes through -- and we are all praying that it goes
6 through quickly -- that component of the "No Child
7 Left Behind" Act will be null and void. In most
8 other states, it is already null and void.

9 Q Okay. Moving on to item number 6, it
10 states that MLD violated its charter, as revised in
11 2010, by meeting only three of its six academic
12 goals.

13 Now, I have from the document, the
14 charter that was previously introduced, your six
15 academic goals. Will you, please, state what they
16 are?

17 A Read, write and communicate effectively;
18 use mathematics, science and arts and computers
19 effectively; define, analyze and solve problems
20 from a global point of view; acquire, integrate and
21 apply essential knowledge of the course academics;
22 discipline, study and work effectively; demonstrate
23 personal and social and civic responsibilities.

24 Q Tell me how your students are performing
25 as to those goals.

1 A They are progressing.

2 Q In all six categories?

3 A In all six categories.

4 Q Not as measured by some district-wide
5 test, but as measured as each individual student? ✓

6 A Yes, sir.

7 Q So you disagree with that assertion in
8 item number 6?

9 A Yes, sir. And just to go back, on the
10 May 26, on the Memorandum Agreement, they had asked
11 us to do -- complete a renewal of the charter.
12 However, when we came back on the August, they
13 tabled that charter. Dr. -- so that charter was
14 never entered into. So we were only going by the
15 charter that we were under in 2005.

16 Q And those are the --

17 A Those are the six goals.

18 Q -- six goals that were stated there?

19 A Yes, sir.

20 Q Not by taking some test as compared to
21 some rich student; is that correct?

22 A Yes, sir.

23 Q I am going to ask you to address part of
24 the next item, item 7. And I am going to ask
25 Mr. Mosley to address the accounting.

1 Who performs your accounting function?

2 A Kelley-Moser Consulting firm.

3 Q And he is here?

4 A Yes, sir, he is.

5 Q Now, item 7 said that MLD violated its
6 charter by failing to adhere to accounting,
7 auditing and reporting procedures as set forth in
8 the charter application.

9 And one of the grounds for revocation,
10 again, a revocation that must be based on an audit
11 that does not exist, one of the grounds for such
12 revocation, if you bear with me, is that your
13 organization must fail to meet generally accepted
14 standards of fiscal management.

15 Have you been cited for failing to meet
16 generally accepted standards? Do you have a fiscal
17 system in place?

18 A We do, and we've never been cited.
19 That's also included in that May 6th, 2012 letter
20 which was sent by our board chair. And in that
21 letter also has the copies of our fiscal management
22 system.

23 Q I believe Mr. Mosley will introduce that
24 document. When he arrives, I will call him as a
25 witness to address that concern.

1 Now, as far as the progress of your
2 individual students, have you been getting any
3 assistance from anyone at the district as far as --
4 let me see this exhibit here. This one, exhibit --
5 as part of this exhibit is this letter from
6 Patricia W. Smith. Who is that?

7 A She is our educational consultant that
8 was sent from this office.

9 Q And what role does she perform for you?

10 A She is now considered our lead curriculum
11 specialist. She is on staff three days a week.
12 She performs a number of duties to include making
13 sure that the curriculum is in place, that the
14 teachers are actively implementing the curriculum.
15 She does student assessments individually to make
16 sure -- so that we know specifically where the
17 students are and that we can use those assessments
18 to move students to another level.

19 She's been a godsend. So we do
20 appreciate this office sending her to assist us in
21 moving those children to another level.

22 MR. WATSON: Would you mind -- I want her
23 to step down for a while while I have
24 Ms. Smith address --

25 MR. BOWERS: Mr. Chairman, I object to

1 that.

2 MR. WATSON: This is informal.

3 MR. BOWERS: I object to that because I
4 want an opportunity to cross-examine this
5 witness. I'm happy to call Mr. Moser, but I
6 think you need to finish with this witness
7 until I have an opportunity to cross-examine
8 her. And I would object to interrupting --

9 MR. WATSON: Again, I can recall -- this
10 being an informal procedure, I can recall this
11 witness.

12 MR. McLAURIN: I'm okay with that. Why
13 don't you cross-examine her. And then
14 Mr. Moser, and then he can recall her, and you
15 can cross-examine her again.

16 MR. BOWERS: I don't have any objection
17 to you recalling her.

18 MR. WATSON: You can go ahead and
19 cross-examine her if you'd like.

20 MR. BOWERS: Thank you.

21 - - -

22 CROSS-EXAMINATION

23 - - -

24 BY MR. BOWERS:

25 Q Ma'am, I won't take long, but I do have a

1 few questions to ask based on your testimony here
2 this morning.

3 In reference to, I believe it is either
4 Exhibit Number 2 or 3 -- it's the agreement
5 between -- that you and Dr. Brazell signed.

6 A Uh-huh.

7 Q If I recall your testimony correctly, you
8 indicated that there are no -- there are no
9 academic standards referenced in that letter; is
10 that correct?

11 A Not in the one that was dated 8/12.

12 Q Okay. But there are academic standards
13 in your charter agreement that that letter amended,
14 correct?

15 A We never amended that charter. The
16 charter was tabled.

17 Q Go ahead. I'm listening.

18 A The charter was tabled. What he said
19 was -- because we never went back to it.

20 Q Yes, ma'am.

21 A What he said -- Ms. Watley and I worked
22 on a revised charter. That is true. When we came
23 back before them in May -- when we came back before
24 them in August -- correction. Sorry.

25 Q That's all right.

1 A -- we brought all the documents with us.
2 And at that time our current attorney, who is still
3 here -- is here, was also with us. What they did
4 was say that we would come back and look at that
5 charter in May of 2011. So they tabled that
6 charter. We never reviewed it.

7 Q I understand.

8 A And so that charter was never adopted.

9 Q I understand. May I see Exhibit 2,
10 please, ma'am?

11 A (Handing.)

12 Q Thank you. And maybe I didn't state my
13 question clearly.

14 A Okay. So we don't have a revised
15 charter. We're still operating under 2005.

16 Q Hear me out.

17 A Okay.

18 Q Exhibit 2 specifically states, "This
19 agreement constitutes an amendment to the MLD
20 charter agreement and is hereby incorporated into
21 the charter agreement."

22 So my question is, ma'am, do you deny
23 that Exhibit 2, that you signed on August the 12th,
24 2010, is an amendment to your original charter?

25 A That it's an addition to this charter?

1 Q Yes, ma'am.

2 A That those sheets would go with this
3 charter.

4 Q Okay. That's all I'm trying to confirm.
5 So this charter, which we're referring to,
6 Exhibit 5, this charter agreement is in full force
7 and effect now, correct?

8 A Yes, sir.

9 Q Okay. And would you agree with me that
10 there are academic standards contained in that
11 charter agreement?

12 A Yes, sir.

13 Q Okay. I'll put these back in front of
14 you.

15 Ma'am, I believe Mr. Watson asked you a
16 question about the academic probation notice. And
17 if I recall your testimony correctly, you said you
18 didn't -- you don't recall receiving any
19 correspondence.

20 A It was one letter.

21 Q Okay. Well, that's a letter.

22 A No, I didn't. What I said was, sir, that
23 I received the same blanket letter that all four of
24 the other poverty-stricken schools, or three of the
25 four that I know are poverty-stricken schools,

1 received.

2 Q So is your testimony now that you did
3 receive notice that you are on probation?

4 A It was the same testimony that I gave
5 previously, sir.

6 Q Okay. Is this that letter (handing)?

7 A It is, sir.

8 MR. BOWERS: Okay. I'd like to have that
9 marked, please, ma'am --

10 MR. WATSON: Without objection.

11 MR. BOWERS: -- and entered into the
12 record.

13 (Academic probation letter marked
14 Respondent's Exhibit Number 7, for
15 identification.)

16 BY MR. BOWERS:

17 Q Ma'am, you talked about your one hundred
18 percent graduation rate:

19 A Yes, sir.

20 Q In fact, I've heard that a lot. Is it
21 fair to say that that is one of your -- is it fair
22 to say that that was one of your biggest
23 achievements, is a hundred percent graduation rate?

24 A Yes, sir. And what we told this district
25 is that we know the kids start off struggling. But

1 what's more important, the beginning result or the
2 end result?

3 Q Here's the question I have for you.

4 A Okay.

5 Q If that was one of your biggest
6 achievements, why did you do away with the high
7 school program?

8 A Because --

9 Q Why did you do away with 9 through 12?

10 A Because we were moving to the state -- we
11 were moving to the district building, and I knew
12 that we would be limited in space.

13 Also, this district and I, along with our
14 attorney, looked at revamping the entire program,
15 and they asked us to be more focus based; and that
16 K-12, though we were achieving, was a wide-range
17 area to work on.

18 So as we were partnering, we were working
19 together collaboratively with our attorney and our
20 board and this administration, that was something
21 that we looked at.

22 We also knew that we had worked really
23 hard with those particular students, and we wanted
24 to make sure that those kids did not drop out. I
25 will tell you what we did do. Even though we did

1 not maintain the high school for this school term,
2 I sent most of the kids back to the regular public
3 charter -- public school. Most of them, if they
4 did not drop out, I had to come up with another
5 alternative program for them.

6 And what I did was I tried to partner
7 with Whitmore, who is one of our other sister
8 schools in this district, so that those particular
9 students would still have a chance.

10 Q Are you --

11 A And we housed those students, too.

12 Q Okay.

13 A Even though Whitmore is responsible for
14 their academic performance, every day we feed them.
15 Every day they come to us. We even pick them up if
16 we have to.

17 Q Of your students that -- of this one
18 hundred percent that graduate, did they all have
19 sufficient credits to graduate high school in South
20 Carolina?

21 A They did. Most all of our students had
22 over 28 units.

23 Q And how many are required in South
24 Carolina?

25 A 24.

1 Q So your testimony here is that all of
2 them had sufficient credits to graduate?

3 A Yes, sir.

4 Q Are you aware of any students taking the
5 end of course exam -- I'm talking about last year,
6 of course -- taking the end of course exam for
7 classes for which they were not registered?

8 A I am not totally aware of all of those.
9 I fired my guidance counselor, too.

10 Q Well, let's talk about that for a second.

11 A So I can't specifically talk on all of
12 the -- without having the actual data in front of
13 me, I can't effectively talk and efficiently talk
14 on those end of course data that I do not have and
15 have not reviewed, because we switched from the
16 high school level back to the elementary level.

17 So my focus totally this year has been K
18 through 8th grade. So I would plead the Fifth and
19 say I cannot discuss the end of course data because
20 I don't know.

21 MR. WATSON: Excuse me. At this point I
22 would like to make a motion to supplement the
23 record as needed after this hearing.

24 MR. McLAURIN: Yes, sir, absolutely.

25 MR. BOWERS: No objection.

1 BY MR. BOWERS:

2 Q So is it your testimony that it's
3 possible that students took an end of course exam
4 for classes which they were not registered?

5 A I'm going to tell you I plead the Fifth
6 because I don't know anything about that, sir.

7 Q Ma'am, this is not a criminal proceeding.

8 A It doesn't matter. My Constitutional
9 right says that if I do not know the answer --

10 Q Right.

11 A -- that I have a right to say I will
12 amend to my Fifth -- my amendment.

13 Q All right.

14 A So I do not know; so I will plead the
15 Fifth.

16 Q Ma'am, obviously, I'm not your lawyer so
17 I'm not giving you legal advice --

18 MR. WATSON: Excuse me a second.

19 MR. BOWERS: Sure.

20 - - -

21 (Discussion off the record.)

22 - - -

23 THE WITNESS: I'll look it up and see
24 whether or not I can look it up, but I do not
25 know, nor do I recall that.

1 BY MR. BOWERS:

2 Q Okay. Again, as I was saying, I'm not
3 your lawyer, so I'm not giving you legal advice,
4 but my understanding of the Fifth Amendment is that
5 it protects against self-incrimination of criminal
6 conduct.

7 So I'll ask you, are you really asserting
8 Fifth Amendment against self-incrimination?

9 MR. WATSON: She's been asked and
10 explained that. It's already been asked and
11 explained.

12 MR. BOWERS: Well, it hasn't actually
13 been adequately explained because I've heard
14 two different answers.

15 THE WITNESS: I am not sure, but I will
16 be glad to look it up for you, sir.

17 MR. BOWERS: Thank you.

18 BY MR. BOWERS:

19 Q I've heard some discussion during your
20 testimony about test scores and comparing other
21 districts. You've got a document here that is your
22 school's accountability data based on Education
23 Accountability Act annual report cards published by
24 the South Carolina Department of Education
25 (handing). Are you familiar with that document?

1 A Yes, sir. It was included in the
2 revocation procedure.

3 Q Okay. So you've seen that?

4 A Yes, sir.

5 MR. BOWERS: I'd like to introduce this
6 into the record. Any objection?

7 MR. WATSON: No objection.

8 (MLD Accountability Data marked
9 Respondent's Exhibit Number 8, for
10 identification.)

11 BY MR. BOWERS:

12 Q Ma'am, I'm going to ask you a couple
13 questions about this. In 2009, what was the -- I'm
14 looking at the box down at the bottom right corner,
15 High School EOC Exams. What does EOC stand for?

16 A End of course exams.

17 Q End of course exams. In 2009, what
18 percentage of students at MLD scored 70 percent or
19 above on end of course exams?

20 A 16 percent.

21 Q 2010, what was the percentage?

22 A 21.4.

23 Q Okay. In 2011, what was the percentage?

24 A 5.3.

25 Q Okay. Would you say going from

1 21.4 percent to 5.3 percent is adequate progress?

2 A What I would say is that you have to look
3 at the individual child. Most of the students that
4 took the end of the course test in 2011 were also
5 special ed. students.

6 ~~So~~ when you look at growth for real, you
7 have to look at the individual child. You can't
8 look at a blanket document and judge where the
9 child actually was. And I think this is where we
10 as a community and as a state have failed.

11 Now, if you're looking at that data, if
12 you look at the individual students, most of the
13 students -- because I know personally, most of the
14 students that took those particular tests were
15 special ed. students.

16 Q Did you make a special provision to let
17 the state department know that they were special
18 ed. students?

19 A I'm pretty sure it was in there.

20 Q You're pretty sure or do you have any
21 documentation to confirm that that's in there?

22 A No, but I would be glad to look it up for
23 you.

24 Q That would be great.

25 A Okay.

1 Q Let's look at the AYP box up in the top
2 left corner. What does AYP stand for?

3 A Adequate Yearly Progress.

4 Q And I heard some testimony earlier and I
5 heard some commentary from your attorney that
6 talked about the fact that AYP is largely
7 discredited. Is that fair to say?

8 A Yes, sir.

9 Q Is it also fair to say, though, that it's
10 still valid and applies in South Carolina?

11 A I'm not sure where we are on the waiver,
12 so I'm not sure.

13 Q What's your position with the school?

14 A I'm Director.

15 Q Is this your full-time job?

16 A It is.

17 Q Would you be aware -- is the AYP issue an
18 important one to your school?

19 A It is.

20 Q Would you be aware if a waiver had been
21 granted, given your position in the school full
22 time? You run the school, correct?

23 A I do.

24 Q Would you be aware if a waiver had been
25 granted?

1 A I would -- as soon as this office
2 notified me, I'm pretty sure I would, because he's
3 my superintendent.

4 Q He is your superintendent.

5 A So as soon as -- I would be aware as soon
6 as they -- it comes down from them.

7 Q Have you been notified that --

8 A Not yet, sir.

9 Q Okay. So is it fair to say, then, that
10 AYP still applies in South Carolina? If you don't
11 know, you don't know. That's fine.

12 A I don't know.

13 Q You don't know. Okay. Look at the AYP
14 numbers.

15 A Okay. Do you want me to begin with 2006?

16 Q No, ma'am. I'm going to ask you some
17 questions about it.

18 A Okay. Go ahead, sir.

19 Q I want to look at 2011.

20 A Okay.

21 Q The attendance participation number is 4;
22 is that right?

23 A Uh-huh.

24 Q And then it says objectives not met is 7.
25 Okay. So does that -- does that mean four students

1 at least missed one -- didn't satisfy one
2 objective, and some maybe failed to satisfy more
3 than one? Is that what that means?

4 A AYP objectives primarily were coming out
5 of the PowerSchool system. And because we had to
6 switch over from Lee County -- first of all, we
7 were switching from SASI to PowerSchool, and then
8 PowerSchool, from Lee County PowerSchool to this
9 district PowerSchool. So we had some PowerSchool
10 issues.

11 Normally, if you look, we're consistently
12 on the same participation data. But because we had
13 some PowerSchool issues -- and we're not admitting
14 that we didn't have some PowerSchool issues in
15 switching. For instance, half of the kids didn't
16 even transfer from Lee County. And I think their
17 PowerSchool person is here, so they can attest that
18 last year most all the schools had some PowerSchool
19 issues, particularly that we had PowerSchool
20 issues, and I can contest (sic) to ours.

21 However, this year we have made some
22 adjustments in those PowerSchool issues, so we
23 won't even have those same problems. But that was
24 part of the issue with that particular component,
25 was our PowerSchool data.

1 Q What is PowerSchool?

2 A Accounting data system for students.

3 Q For students? Okay.

4 A For particularly attendance purposes.

5 Q Does that also contain accountability
6 data for their academic performance?

7 A The report card component.

8 Q The report card component. Okay.

9 Were you asked by anybody for the
10 district for report card information regarding
11 your -- from Power -- what's it called,
12 PowerSchool?

13 A No, sir, we weren't.

14 Q You never were?

15 A No, sir. Our PowerSchool person works
16 really well with Ms. Z and Mr. Williams; so I think
17 we're pretty up on our PowerSchool.

18 Q How about grades and schedules, would
19 that be in PowerSchool?

20 A It is.

21 Q It is?

22 A Uh-huh. And we're current.

23 Q You're current?

24 A We are.

25 Q Okay. We looked at the EOC numbers a

1 minute ago, right?

2 A Yes, sir.

3 Q And 2011, only 5.3 percent scored 70 or
4 above, right?

5 A Yes, sir.

6 Q I'm looking at some of these grades here
7 from 2011. And I won't read anybody's names, but
8 they are 57, 54, 48, 44.

9 Here is my question: With end of course
10 scores that low, how could all of them graduate?

11 A If you look across the board, even with
12 our struggling students -- and I have another
13 document I'm pretty sure you could share -- that we
14 talked to Lee County, and what we said is we're
15 pulling your children that need the most attention.
16 Some of those kids would have been
17 alternative-based students.

18 So if we're pulling it, and you're
19 looking at Lee County and looking at one similar,
20 only 32.1 percent of those received -- or passed
21 it, and they received all the adequate funding. We
22 only got \$1,800 per child.

23 And according to our superintendent, last
24 year would have been our base year. That is why
25 they went to the Senate and stated that not to look

1 at this data last year because we were not
2 adequately funded, and we were not.

3 Q All right.

4 A \$1,800 per child is all we were given to
5 make these children perform who were coming to us
6 drastically low.

7 If I have a -- and the ones that were in
8 2011, they wouldn't have been taking the end of
9 course exam if they were graduating. Most of the
10 time the end of course exam is for 9th and 10th
11 graders, not seniors.

12 Q Okay. Well, then it would have been 2009
13 and 2010, correct?

14 A Yes, sir.

15 Q Okay. But in those years you had --

16 A 2009 would have been the only year.

17 Q Would have been the only year?

18 A Because by that time they would have been
19 11th grade and 12th grade. So 2009 is when they
20 would particularly take the end of the course test.

21 Q Okay.

22 A And they all passed the HSAP.

23 Q That still didn't answer my question. My
24 question was -- regardless of whether it's
25 16 percent, 21 percent or 5.3 percent, it's not a

1 hundred percent.

2 My question is: How do all of your
3 students that were in high school when you had a
4 high school program, how do they all graduate at
5 end of courses when they don't all have
6 satisfactory grades on end of course exams? How
7 does that happen?

8 A Because the end of course is only a
9 percentage of the thing.

10 Q I understand.

11 A If they're coming to class and they're
12 participating adequately -- if you look at our
13 attendance rate, they were doing well coming. If
14 they're doing their work in class, you're not going
15 to fail based on one test.

16 Q But isn't the end of course exam a
17 reflection of what -- supposed to be anyway, a
18 reflection of what a student has learned throughout
19 the school year?

20 A It is. It is some of it. However, it
21 all depends on whether or not that particular
22 teacher. I cannot contest to what each individual
23 teacher taught, nor can I contest to each one of
24 their individual grades.

25 Q Let me ask it this way: The grades that

1 your students have had, would you consider that
2 adequate academic progress over the last 18 months?

3 A I would tell you they all passed the
4 HSAP. We had over -- we had several students to
5 score over 1100 on their SAT. And eight out of the
6 nine students that we graduated, eight out of the
7 nine have been accepted into a college.

8 Q Do you know which colleges?

9 A Various colleges.

10 Q Can you name them here?

11 A No, not specifically, but I will be glad
12 to get back with you on those.

13 Q Do you have a child who is one of those
14 children that's in college?

15 MR. WATSON: Answer the question.

16 THE WITNESS: I do have a child, one of
17 those children.

18 BY MR. BOWERS:

19 Q Do you know where he's at school?

20 A I do.

21 Q What school is that?

22 A Central Carolina.

23 Q Where is that?

24 A That's in Sumter, Lee, Clarendon. And he
25 scored 1100 on the SAT.

1 Q 'Congratulations. That's better than I
2 did.

3 A Thank you.

4 MR. WATSON: Better than I did.

5 MR. BOWERS: I bet if you combine my
6 score and Johnny's score, we might be 1100.

7 THE WITNESS: And his mother died. So he
8 was not only -- not only was he -- his mother
9 died when I got him. So not only is this an
10 achievement for him to graduate school and to
11 be one of the first ones of his school -- of
12 his, not just peers, his family to even be
13 accepted into a college --

14 BY MR. BOWERS:

15 Q Yes, ma'am.

16 A -- is an achievement.

17 Q Yes, ma'am.

18 Let me ask you this: Over the 18, 19
19 months that your school has been in this district,
20 is it your testimony that your students have made
21 adequate academic progress in accordance with the
22 terms set forth in your original charter agreement?

23 A The agreement that we looked upon, that
24 we were partnering with working on as a true
25 sponsor, as a partner and sponsor, I will say yes,

1 because we looked at the data together.

2 Q No, ma'am, I'm not talking about the 2010
3 letter. I'm talking about --

4 A I'm talking about continuously when we
5 meet.

6 Q I'm talking about -- and this has already
7 been made part of the record. This is just a
8 subset of the six academic goals. And what I'm
9 asking you, this is from -- that's an excerpt of
10 this document that you read from earlier, those six
11 academic goals.

12 And my question is: Is it your testimony
13 that your students in your school have satisfied
14 each one of those six academic goals?

15 A Yeah. The first one says that they are
16 reading, writing and communicating effectively. I
17 would say yes, they are doing much better and they
18 are progressing along. Some students come to us
19 and they are on a first grade --

20 Q I understand.

21 A Wait a minute. Let me finish.

22 Q Sure. Go ahead.

23 MR. WATSON: Let her answer the question.

24 THE WITNESS: They come to us on a first
25 grade level. And in testimony previously by

1 our reading specialist who comes to work with
2 us, those students are moving one to two grade
3 levels each year.

4 So you asked me, are they reading and
5 writing, communicating effectively? Are they
6 making progress? My answer to you is yes.

7 BY MR. BOWERS:

8 Q Are they -- let me see it again. Let me
9 read from the document.

10 A It does not have a percentage. Yes, they
11 are.

12 Q Are they reading, writing and
13 communicating effectively?

14 A Yes, they are progressing.

15 Q That's not my question.

16 A Your previous question said --

17 Q Correct. Listen to this question,
18 please, ma'am.

19 A Okay.

20 Q Are they reading, writing and
21 communicating effectively?

22 A They are progressing, making progress on
23 those things.

24 Q So they are not there yet. That's what
25 progressing means, right?

1 A They are not completely there yet, but we
2 all have to keep working.

3 Q Thank you, ma'am.

4 We've talked a little bit about the free
5 and reduced lunch program a little while ago. You
6 did, right?

7 A Yes, sir.

8 Q I've got some documents here. It's not a
9 lot of them. I'm not going to read the names, but
10 does that look like one of the documents that you
11 submitted to the school -- I'm sorry -- to the
12 district to confirm the free and reduced -- to
13 comply with the requirement to produce documents on
14 the free and reduced school lunch program?

15 A This is one of the lunch forms; however,
16 this particular family gave me four different
17 forms, if that's what you're asking. So I have
18 four different documents for this particular
19 family.

20 Q Okay. Well, what is this document?

21 A This is just one from one of them. I
22 mean, I can't attest to one of them, but I do have
23 and would love to make sure that you have all of
24 them accurately.

25 Q So they gave you four?

1 A Uh-huh.

2 Q Here is another one with the same family
3 name (handing). Do you mind if I look over your
4 shoulder?

5 A Uh-huh..

6 Q Thank you..

7 A And you see why they gave me four?

8 Q No. Tell me why.

9 A Well, because when we give out the lunch
10 form, every child gets one, but we only have to
11 take one per family.

12 Q Okay.

13 A This is why this one has been certified
14 and this one wasn't, because I only have to certify
15 one per family.

16 Q So this is one that was -- who filled
17 this out?

18 A The parents. Whoever the child's
19 parents, so David Gillespie.

20 Q Okay. And what does that name say?

21 A David Gillespie.

22 Q All right. Let me ask you a question.

23 I'm not a handwriting expert, and I don't think you
24 are either. Are you a handwriting expert?

25 A I am not, sir.

1 Q So I'm not asking you to give an expert
2 opinion. Does that signature and that signature
3 look the same?

4 A But when I get an application --

5 Q No, that's not my question.

6 MR. WATSON: Objection. What's the
7 relevance?

8 BY MR. BOWERS:

9 Q My question is do those -- take a look.

10 MR. WATSON: Okay. But my objection as
11 to relevance is is there any provision that
12 says who has to fill out the form?

13 MR. BOWERS: No. Here is the relevance.
14 The school was late in getting the documents
15 in. And when the documents finally arrived,
16 there's a question as to the legitimacy of the
17 documents.

18 MR. WATSON: Why? Because of the
19 different handwriting?

20 MR. BOWERS: Absolutely.

21 MR. WATSON: I mean, who says who can
22 fill out the form?

23 MR. BOWERS: I'm not talking about
24 filling out the form. I'm talking about a
25 signature. A person's signature don't look

1 the same. That's all I'm asking, do they look
2 the same?

3 MR. WATSON: Okay. Do you have any
4 information on who has authority to sign that
5 form? Who has --

6 THE WITNESS: I will tell you by law,
7 though. According to the free and reduced
8 lunch form, and because we have to wear so
9 many hats, I have learned a lot in this
10 business.

11 According to the free and reduced lunch
12 form, if I have a child who parent didn't even
13 fill out the form, but I have enough
14 information to say that that child is free and
15 reduced lunch form -- I'm not saying I filled
16 this out, because Mr. Gillespie for real is 85
17 year old -- 85, plus taking care of his
18 grandchildren.

19 BY MR. BOWERS:

20 Q Okay.

21 A But per se, for the record, according to
22 free and reduced lunch, if I have a child that
23 comes in, and the parent per se could be homeless
24 or whatever and did not fill out the form, as the
25 coordinator of the program, if I know that that

1 child is still eligible for free and reduced lunch,
2 I can fill out the form.

3 Q I don't dispute that. Can you sign a
4 person's name?

5 A I can sign on behalf of the child. I
6 sign it on behalf of the child.

7 Q Did you sign one of those documents?

8 A I did not, sir.

9 Q Have you done that before?

10 A No, I did not.

11 Q Well, you just told me you had the
12 authority to do it.

13 A I said I had the authority to do it for a
14 child.

15 MR. WATSON: Unless you have a specific
16 form that you could ask her, I object to this.

17 MR. BOWERS: I have a specific form right
18 in front of her.

19 MR. WATSON: Okay. She's answered the
20 question.

21 Did you sign that form?

22 THE WITNESS: No, sir, I did not.

23 BY MR. BOWERS:

24 Q Let me ask this question one more time.
25 Do those look like the same signatures?

1 MR. WATSON: Again, I have already
2 objected as to relevance. It does not matter.

3 THE WITNESS: I am not a handwriting
4 expert. I can't tell you, sir.

5 MR. BOWERS: Okay. I'd like to introduce
6 these into the record.

7 MR. WATSON: Without objection.

8 (Free and Reduced Price School Meals
9 Family Applications marked Respondent's
10 Exhibit Number 9, for identification.)

11 THE WITNESS: But I am sure Mr. Gillespie
12 would really love to come tell you that those
13 are accurate stuff. So you could always
14 subpoena him in, sir.

15 MR. BOWERS: I could. Thank you for the
16 guidance.

17 BY MR. BOWERS:

18 Q Ma'am, I've only got a couple more
19 questions. Thank you for your patience with me. I
20 appreciate it.

21 A No problem.

22 Q Does the school -- has the school
23 maintained a financial management system?

24 A We have, sir. We have been with Bill
25 Moser our entire existence, and he has done an

1 excellent job.

2 MR. WATSON: He's here to testify.

3 MR. BOWERS: Okay. Are you going to call
4 him?

5 MR. WATSON: I'm going to call him as a
6 witness.

7 BY MR. BOWERS:

8 Q I'll ask him, too, but I want to hear it
9 from you, as a leader of the school. Is it your
10 testimony that you have maintained a financial
11 management system?

12 A We have, and we work in conjunction with
13 Kelley-Moser.

14 Q Okay.

15 A They do the majority of the finances and
16 we do the operations, Mr. Bryant and I.

17 Q I've heard Mr. Watson refer to an audit.
18 I think he's talking about --

19 A He's talking about an annual evaluation.

20 Q Annual evaluation. I want to talk about
21 an audit. Okay?

22 A Yes, sir.

23 Q Are you aware that the school is
24 required, like all public schools in South
25 Carolina, to produce an audit to their district?

1 A Yes, sir.

2 Q Did the -- did your school produce an
3 audit in a timely fashion to the district? Did you
4 comply with the deadlines to produce an audit?

5 A We did comply with their final
6 deadline -- with the deadline.

7 Q You said, "the final deadline."

8 A Well, their deadline.

9 Q Are you telling me that they granted you
10 an extension?

11 A They did, and we complied.

12 Q Okay. So what was the original deadline?
13 Do you recall?

14 A I don't.

15 Q If I said November 1st of 2011, would
16 that ring a bell?

17 MR. WATSON: Excuse me. I'd like to
18 introduce all of the audits of all of the
19 schools, if you don't mind.

20 MR. BOWERS: At the appropriate time. No
21 objection.

22 BY MR. BOWERS:

23 Q Ma'am, let me ask it this way, if you
24 don't remember the specific date: Did the school
25 comply with the initial deadline as set by the

1 State Department of Education to supply an audit to
2 the district?

3 A We had to -- because of last year, this
4 office -- we did not. Let me just say no.

5 MR. BOWERS: No further questions.

6 MR. WATSON: Just a couple rebuttal
7 questions.

8 First of all, I'd like to introduce the
9 audits of all of the schools, including this
10 school, into the record. Now, this is a lot
11 of paperwork. And, again, the district, of
12 course, supplied these.

13 MR. McLaurin: Right.

14 MR. WATSON: So do you want these
15 physical copies or do you want to just use
16 what you have available to you?

17 MR. McLaurin: She's going to need to
18 mark them. Let's give them to her.

19 MR. WATSON: Let me do it this way.

20 MR. McLaurin: I'd just appreciate you
21 not reading them.

22 - - -

23 REDIRECT EXAMINATION

24 - - -

25 BY MR. WATSON:

1 Q Did you make a Freedom of Information
2 request for the audits from the district?

3 A I did, sir.

4 Q And is this your letter requesting the --
5 let's see -- requesting the audits?

6 A Yes, sir.

7 MR. WATSON: I'd like to, again,
8 introduce all this at one time.

9 MR. McLAURIN: Yes, sir.

10 MR. BOWERS: No objection.

11 BY MR. WATSON:

12 Q And this is their response cover letter
13 and all of the audits they supplied?

14 A Yes, sir.

15 MR. WATSON: I'd like to introduce all of
16 this into the record.

17 (Cover letter dated 3/12/12, with
18 attachments marked Appellant's Exhibit Number
19 10, for identification.)

20 BY MR. WATSON:

21 Q Now, a reference was made to the 11
22 students or the however many students were that
23 graduated from the school, and said was one of
24 those your children.

25 As part of your agreement, aren't you

1 allowed to have a certain amount of families and
2 staff enrolled in the school?

3 A Yes, sir.

4 Q Okay. So there's no concern there.

5 And I don't know if you are familiar with
6 the process. Back in my day, you know, if you
7 didn't make reasonable progress in school, they'll
8 hold you back forever. You could be in school a
9 hundred years.

10 But I know in modern times, students that
11 are academically incapable of performing at a
12 certain level do get to get some type of -- some
13 type of social promotion. And that's the policy
14 throughout the district now, is it not?

15 MR. BOWERS: I object. She has no basis
16 to speak about the policies throughout the
17 district. I'm happy for her to answer the
18 question as it relates to the school.

19 THE WITNESS: Those particular students
20 that graduated were not socially promoted.

21 BY MR. WATSON:

22 Q Okay. Thank you.

23 A They earned their units.

24 Q And tell me what each of the students are
25 doing now, if you can recall offhand.

1 A Eight out of the nine of them are or have
2 been accepted into a college.

3 Q And where is the ninth one? What's that
4 ninth one doing?

5 A He's working. So everybody is doing
6 something.

7 Q Okay.

8 A And as I stated earlier, even if we can't
9 save them, we place them and make sure that they
10 have a chance to make it.

11 Q And, again, you are --

12 A And that's the goal of the charter.

13 Q MLD was brought into the district on a
14 probationary basis. I'm still having trouble
15 defining the terms of the probation. Was that ever
16 spelled out to you in any way?

17 A No more than the agreement that was said,
18 that was given. However, they understood that we
19 were coming in from a hostile district, and that
20 this district was formed to help charters come out
21 of a hostile situation, not to create another
22 hostile situation.

23 Q I'm just curious as to -- your school has
24 had to fight all the way with the Lee School
25 District for a long time. In fact, you had the

1 backing of this Board in your efforts to gain the
2 charter. This is a copy of an order that came out
3 of this that summarized the long history of the
4 fight with the Lee County School Board, is it not?

5 A It is, sir.

6 MR. WATSON: I'd like to introduce this
7 into evidence for background.

8 MR. BOWERS: No objection, although I do
9 object to this line of questioning because
10 he's going beyond my cross-examination.

11 MR. WATSON: Again, this is an informal
12 procedure.

13 MR. BOWERS: But the Rules of Evidence
14 apply, and on redirect he's limited to only
15 the matters that I raised on
16 cross-examination.

17 MR. WATSON: Again, this is an informal
18 proceeding.

19 MR. BOWERS: But you don't get multiple
20 bites at the apple.

21 MR. McLAURIN: When you want it to be
22 informal, you want to be informal. When you
23 want to follow the Rules of Evidence --

24 MR. WATSON: I've never objected to it
25 not being informal. I never objected.

1 MR. McLAURIN: But in other instances,
2 you said you want to follow the Rules of
3 Evidence.

4 MR. WATSON: I didn't introduce anything
5 he wanted to introduce. I objected to --

6 MR. BOWERS: Mr. Chairman, I don't object
7 to the introduction of the material.

8 MR. McLAURIN: Thank you. I would like
9 for you to move this thing along.

10 MR. BOWERS: What I do object to is any
11 questioning with regard to it.

12 MR. WATSON: You know, you're getting on
13 me again about moving it along, and you never
14 once objected to him or talked to him about
15 moving things along. You're showing prejudice
16 here.

17 MR. McLAURIN: Well, you can complain
18 about that and you can file an objection about
19 that. I don't think I am. If one person is
20 dragging it out and another person isn't, then
21 I'm not going to complain --

22 MR. WATSON: And you made that
23 determination, right?

24 MR. McLAURIN: That's what I'm charged to
25 do, sir.

1 MR. WATSON: Right. But he can do all he
2 wants without you butting in, but as soon as
3 I -- I haven't made two statements, and you're
4 already accusing me of delaying.

5 MR. McLAURIN: Okay.

6 (Order marked Appellant's Exhibit Number
7 11, for identification.)

8 BY MR. WATSON:

9 Q Okay. Did you do -- what's this document
10 (handing)?

11 A This was our accountability plan that we
12 submitted 2009 -- I mean, December 9th, 2011. This
13 is our accountability document that he talked about
14 earlier. But we had to come up with some goals and
15 objectives that we can work on, as each school in
16 addition had to do an accountability plan, and this
17 was ours..

18 Q And as a result of that document, did you
19 come up with a restructuring plan?

20 A We did.

21 Q Is this that plan?

22 A This is also our restructuring plan that
23 we also went over with our Title 1 audit and Title
24 1 review. So this was also submitted to the State
25 Department of Education.

1 MR. WATSON: I'd like to introduce these
2 documents into the record.

3 MR. BOWERS: No objection.

4 (2010-2011 Accountability Report
5 marked Appellant's Exhibit Number 12, for
6 identification.)

7 (Plan to Restructure of Planning for the
8 2011-2012 School Year marked Appellant's
9 Exhibit Number 13, for identification.)

10 THE WITNESS: We also went over all of
11 our restructuring plan at our January board
12 meeting.

13 BY MR. WATSON:

14 Q And you mentioned a charter that was
15 worked on but never adopted. Is this a copy of
16 that document (handing)?

17 A It is, sir.

18 MR. WATSON: I'd like to submit this for
19 the record.

20 MR. BOWERS: No objection.

21 (Charter School Application marked
22 Appellant's Exhibit Number 14, for
23 identification.)

24 MR. WATSON: That's all I have of this
25 witness at this time.

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- - -
(Witness excused.)
- - -

MR. McLAURIN: Well, what I'd like to do
is take a short break. The Board can -- you
think we can be back in five minutes? I'd
like to keep it moving.

- - -
(Whereupon there was a recess
in the proceedings from 12:26 to 12:34.)
- - -

MR. McLAURIN: We are back in order.

MR. WATSON: At this time I'd like to
call Mr. Moser.

- - -
WILLIAM MOSER, being first duly sworn,
testified as follows:
- - -

DIRECT EXAMINATION
- - -

BY MR. WATSON:

Q Would you state your name for the record,
please?

A William Moser, M-O-S-E-R.

Q Mr. Moser, who do you work for?

1 A Kelley-Moser Consulting.

2 Q And as such, are you qualified to -- do
3 you know what generally accepted fiscal --
4 standards of fiscal management mean?

5 A Yes.

6 Q And what's been your role in working with
7 MLD?

8 A I have known Ms. Dinkins and the original
9 planning committee December 2003, and they
10 submitted their application in December of 2004;
11 and in direct capacity have been providing
12 financial services to them since we contracted in
13 December of 2004.. So it's been eight years and
14 some months.

15 Q So you've been providing advice to them
16 as regards their financial management system the
17 entire time?

18 A Yes, sir.

19 Q Do you advise any other schools besides
20 MLD?

21 A Yes, sir.

22 Q How many schools do you advise?

23 A Sixteen.

24 Q And of those other 15 schools, have any
25 of those schools ever been said to not have a

1 generally accepted -- that their accounting system
2 did not meet generally accepted fiscal standards?

3 A Of the current clients?

4 Q Yes.

5 A No.

6 Q And what about MLD?

7 A Has it ever been said?

8 Q Does their system meet generally accepted
9 standards of fiscal management?

10 A Yes.

11 Q Would those generally accepted standards
12 include internal fiscal controls and procedures and
13 the like?

14 A Yes, sir.

15 Q Are you familiar with this document
16 (handing)?

17 A Yes, sir.

18 MR. WATSON: I'd like to have this marked
19 as our next exhibit.

20 MR. BOWERS: What is it, Mr. Watson?

21 MR. WATSON: Internal Fiscal Control
22 Procedures.

23 MR. BOWERS: No objection.

24 (Internal Fiscal Control Procedures
25 marked Appellant's Exhibit Number 15, for

1 identification.)

2 BY MR. WATSON:

3 Q Would you tell me what this document is
4 (handing)?

5 A It's the Internal Fiscal Control
6 Procedures for MLD Higher Learning Academy. We
7 produced this document in conjunction with the
8 school. In its original form it's a template. We
9 modify it for the needs and desires of the school.

10 We crafted this in conjunction with the
11 multiple auditors to make sure that it did hit the
12 generally accepted standards of fiscal management
13 as it pertains to internal fiscal controls.

14 Q And that's done to be in compliance with
15 what's required under the South Carolina Public
16 Charter School law?

17 A Yes, sir.

18 Q And they are in compliance?

19 A Yes, sir.

20 Q Now, does being late with the input to
21 any data mean that you're not in compliance with
22 the standards?

23 A I'm not the one that enforces the
24 standards. I can't answer that.

25 Q But the system that you have in place

1 meets all the standards?

2 A Meets all the standards, yes, sir.

3 MR. WATSON: Nothing further.

4 - - -

5 CROSS-EXAMINATION

6 - - -

7 BY MR. BOWERS:

8 Q Mr. Moser, you mentioned a moment ago
9 that you have other clients that are charter
10 schools; is that correct?

11 A Yes, sir.

12 Q How long have you been providing
13 financial services to charter schools?

14 A I got out of the Marine Corps in '98 --
15 since '99.

16 Q Okay. Whose job is it to maintain a
17 financial management system? Is that your job or
18 is that the school's job?

19 A We do it concurrently. We craft the
20 system together; we execute the system together; we
21 maintain the system together.

22 Q Okay. Has the school upheld its end of
23 that bargain and maintained an adequate financial
24 management system?

25 A Yes. It is in place and it's maintained.

1 Q Okay. You understand -- is it fair to
2 say that you understand that the schools must
3 submit an annual audit?

4 A Yes, sir.

5 Q Okay. Are you aware that MLD did not
6 submit an annual audit by the deadline to satisfy
7 the State Department of Education by November
8 1st --

9 A Yes, sir.

10 Q You are aware of that?

11 A Yes, sir.

12 Q Do you know why they didn't?

13 A I do not.

14 Q Were you involved -- would you have
15 performed that audit?

16 A No.

17 Q Who would have performed that audit?

18 A It has to be an independent outside
19 auditor, a licensed CPA firm.

20 Q Did they -- did MLD have such an outside
21 licensed independent auditor to perform that
22 service?

23 A Yeah, every year that we've had them,
24 every year they've had an audit. And this year
25 they engaged a CPA firm that was proper to execute

1 an audit in this state.

2 Q When did they engage that firm?

3 A Without documentation in front of me, it
4 was the September/October timeframe. It was later
5 in the year.

6 Q Did they have one prior to that?

7 A Yes, sir.

8 Q Do you know why they changed CPA firms?

9 A No, sir. I will say that a lot of folks
10 change every two to three, four years just for the
11 sake of changing, but I do not know why they did.

12 Q Would you say in your experience that a
13 lot of them change firms within 30 to 60 days prior
14 to the production of an audit?

15 A No.

16 Q So it's unusual for that to happen?

17 A Yes.

18 Q But that happened here, right?

19 A Yes.

20 Q And you don't know why?

21 A No. It's happened one other time, and
22 that was when an auditor said to the school, we
23 can't do this, and they were left trying to get a
24 new auditor.

25 Q Did that happen here?

1 A No, sir. I'm saying that's the only
2 other time it's ever happened in that 60-day time
3 window.

4 Q So you don't know -- tell me again what
5 your responsibilities are with the school, as a
6 contractor, what your responsibilities are as a
7 contractor.

8 A Nutshell, turnkey back office. That's
9 the guts of it. Accounts payable -- or accounts
10 receivable, accounts payable, payroll processing,
11 all the reporting involved with that.

12 Then the other side is the financial
13 management, the budget creation, the financial
14 analysis, consultation to the board.

15 Q So would you have been in contact with
16 the auditor in that --

17 A Only after the engagement.

18 Q Only after the engagement?

19 A That's correct. We provide
20 recommendations for auditors that we know. We put
21 them in contact. But to clear any conflict of
22 interest, since it's in fact our work being
23 audited, they then engage the auditors, have --
24 I've seen boards bring them in and talk to them.

25 Once they engage them, then we start in

1 very close contact with them.

2 Q So the previous auditors that were --
3 that went the other way or they went separate ways,
4 rather, after they were engaged -- when were they
5 engaged? Do you know?

6 A It was Elliott Davis, and they had done
7 their audit for quite some time.

8 Q And you were with the school since its
9 existence, right?

10 A Yes.

11 Q So is it fair to say that you had
12 interaction with Elliott Davis?

13 A Oh, absolutely.

14 Q Up until their termination?

15 A Absolutely.

16 Q Okay. And you still don't know why they
17 left?

18 A No. That was a board decision, and I
19 think you need to ask the board.

20 Q Nobody at Elliott Davis told you why?

21 A No.

22 Q Okay. The annual audit. Let me make
23 sure I ask you this question. It was not produced
24 in a timely fashion, was it?

25 A No.

1 Q Are you aware of whether the school
2 reported financial information to its sponsor, to
3 the district, in accordance with its charter
4 agreement?

5 A Every report that I know of, with the
6 exception of one, has been done in a timely
7 fashion.

8 Q Which one was that?

9 A That was the report for professional
10 development and lottery funds.

11 Q And that was not provided in a timely
12 fashion?

13 A No.

14 Q Do you know why?

15 A I don't.

16 MR. BOWERS: I don't have any further
17 questions.

18 - - -

19 REDIRECT EXAMINATION

20 - - -

21 BY MR. WATSON:

22 Q Not providing something on time. If the
23 extension is granted, it would not be considered a
24 material breach, would it?

25 A Nothing being provided on time -- say the

1 question again.

2 Q If they have permission and are granted
3 an extension of the time to perform, and they have
4 complied with that extended time, that's complying,
5 is it not?

6 A Again, I don't know -- there's a lot of
7 governance and a lot of authority that I don't
8 know. Why was the extension granted? Did they
9 make the extension time?

10 But if the extension was given, I can
11 only assume it was for legitimate reasons. And if
12 they met it by the extension time, then they have
13 met the requirement.

14 Q Monetarily, is MLD operating on a
15 fiscally sound basis?

16 A Absolutely.

17 MR. WATSON: Nothing further.

18 MR. McLAURIN: Okay. Thank you.

19 THE WITNESS: Thank you, sir.

20 - - -

21 (Witness excused.)

22 - - -

23 MR. WATSON: I would like to call one
24 more witness, Ms. Patricia Smith.

25 - - -

1 PATRICIA W. SMITH, being first duly
2 sworn, testified as follows:

3 - - -

4 DIRECT EXAMINATION

5 - - -

6 BY MR. WATSON:

7 Q State your name for the record, please.

8 A My name is Patricia W. Smith.

9 Q Who do you work for?

10 A Presently I'm working out of this office,
11 but I am working at MLD and Lake City College
12 Preparatory Academy.

13 Q How is it that you came to be at MLD?

14 A This office told me about the need for
15 curriculum development and test score improvement
16 and asked me to go and see if they would hire me.
17 And if they would, then they would supplement my
18 salary, but they would hope that they would go
19 beyond what this office was requesting, so that
20 they could have ongoing staff development rather
21 than one-shot deals.

22 Q And this is your report as introduced
23 already as part of an exhibit (indicating)?

24 A That was a letter that -- the Board had
25 requested the rationalization for my services. So

1 I tried to do it in a brief manner. So I submitted
2 that letter.

3 Q And what services do you perform at the
4 school, again?

5 A My services are really not limited there.
6 If I -- if you would -- would y'all allow me to
7 read this letter? It's not long.

8 MR. McLaurin: Okay.

9 THE WITNESS: It kind of tells what I've
10 done.

11 To Whom it May Concern: I accepted the
12 challenge to work at MLD and began working on
13 September 2nd, 2012. The focus for the month
14 of September was on where the students, as
15 well as the staff, were as it related to best
16 practices.

17 Knowing that the test scores were low, I
18 began my work by focusing on the teaching
19 practices used with the students enrolled
20 there. What I found was a lot to be desired.
21 The practices I found in my -- in many
22 classrooms were not motivational enough to
23 engage students in a meaningful way.

24 Because I was only coming once a week,
25 the follow-up was too far apart to debrief in

1 a way that changes would really take place.
2 Teachers were not able to transfer the
3 abstract conversations into practice without
4 actually observing the strategies in action.

5 After a lengthy follow-up with
6 Mrs. Robinson about my findings, she asked
7 that I begin providing staff development to
8 begin the last week of September and to
9 continue every first Wednesday of each month.
10 There was too much of a gap between my visits
11 to provide teachers with the needed feedback
12 and support, so the administrative team
13 decided that I should visit each Monday and
14 Wednesday to provide the support that was
15 needed to see changes, especially with small
16 group instruction.

17 In order for the teachers to see where
18 their students were instructionally,
19 Mrs. Robinson asked that I administer the
20 Domine Sentence Writing and Spelling
21 Assessment to all students of grades 3 through
22 8.

23 The results show teachers that their
24 students were on the average in the second and
25 third stanine on a scale of 1 to 9. We saw

1 that we had much work to do, so we began to
2 use the assessment to inform instruction,
3 knowing that it was impossible to move an
4 entire school up to the average stanine, but
5 we would be able to help them show growth.

6 Once teachers understood the increased
7 demands for change and the requirements to use
8 the assessment to inform instruction, we were
9 really ready to integrate test-taking
10 strategies into the curriculum. I provided
11 sample release assessment items for teachers
12 to use in a way that students would understand
13 why distractors for multiple choice items were
14 correct or incorrect. I requested that they
15 use -- not use them as tests, but basically
16 instructionally.

17 As we worked to meet the needs of
18 students, we had a shift in the instructional
19 staff and had to work hard to help students
20 not lose what we were trying to accomplish
21 with them. We have been fortunate to have
22 teachers who replaced those we lost committed
23 to our plans.

24 When Mr. V realized that lesson plans
25 were not reflecting our practices, he asked

1 that I be given the time to work with teachers
2 to assure the plans were of such that
3 students -- and the standards and the
4 indicators followed the pacing guide.

5 In December I was asked to work Monday,
6 Tuesday and Wednesday of each week to assure
7 the requirements and expectations were
8 continued with our shift in staff. I was
9 gradually introducing best practices as I
10 worked with the staff, taking notes when
11 observing, giving teachers feedback on lesson
12 plans, having one-on-one conferences with
13 staff, doing demonstration lessons, doing
14 research, providing them item analysis and
15 working with students.

16 Teacher input is accepted and their ideas
17 are integrated if it does not interfere with
18 student learning. I understand that it takes
19 time to see real change, but we are not beyond
20 research, which lets us know that it takes
21 three to five years to see change with a
22 sustained effect. Therefore, we are on the
23 road to real and honest growth, which was my
24 major goal when I was sent from the state
25 charter school office to provide support to

1 your school. I am a hard worker and I aim for
2 nothing but success.

3 Let me know how I might be of further
4 assistance to you. Respectfully.

5 BY MR. WATSON:

6 Q So would you say that the school is
7 making reasonable progress toward achieving --
8 toward the pupil achievement of the standards?

9 A I would say that they are making
10 progress. I gave the students the assessment piece
11 in September and October, trying to develop a
12 window of time. And I decided I would do that
13 beginning of the year, mid-year and end of year,
14 just as we had been doing for the State Department.

15 And I did give them the assessment piece
16 again in January, and the kids did show significant
17 growth on the average. So I was pleased with the
18 progress.

19 And with the change in staff, I see an
20 opportunity for the students to really show growth
21 because they're actually working hard.

22 Q The new staff is working better and
23 harder?

24 A They are really in tune with making
25 change when change is necessary. I mean, I think I

1 related that information to Dr. Brazell. I told
2 him that I really wanted to see the difference made
3 at the school, if they were to remain open.

4 The teachers are working hard. They're
5 staying late. They're making the classrooms
6 conducive to learning. They are learning how to
7 make students responsible for their own learning.

8 When I first got there, it was just teach
9 at students, and it was something rote like we did
10 back in the day -- I won't tell you when my day
11 was -- but like read page 66 and do the questions
12 at the end of the chapter. So it was that type of
13 instruction.

14 But now they've learned, and some of them
15 have worked with me. I will say that Ms. Dinkins
16 was really fortunate in the middle of the year to
17 get some quality teachers who had been through
18 Reading First, which is an initiative that came
19 from the State Department, and they had worked with
20 me under my leadership in Florence County. Two of
21 those teachers came on board, and it was not hard
22 for them to make the shift, but they came in and
23 they helped me to help the other teachers
24 understand the significance of change.

25 MR. WATSON: I have nothing further.

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CROSS-EXAMINATION

BY MR. BOWERS:

Q Just a couple of quick questions, please, ma'am.

A Sure.

Q Is it fair to say that the district sent you to MLD to help?

A They did.

Q Okay. And how long have you been there? Remind me. I'm sorry.

A I started on September 2nd there.

Q Of 2011?

A Yes.

Q And have you been continuously at MLD since that time?

A I have been there every week. I go -- I've been working there since that week every week. And in October I started -- September I worked one day a week, but I also worked at night. And I corresponded -- I sent correspondence ongoing even when I wasn't there.

And in October I started the two days, because talking back and forth to administrators

1 was not enough to get it over to the teachers.

2 Q Yes, ma'am.

3 A And it's just been gradual. And then I
4 even go by there en route. I visit that school
5 every day.

6 Q Okay. And who pays your salary?

7 A MLD does. The State supplements -- was
8 it 10,000, Wayne? 10,000. But by December, I had
9 already been paid 15,000 from them, because I
10 basically let them know early I don't like one-shot
11 deals because it's just like coming and giving me
12 medicine for a cold and not checking to see if I'm
13 doing any better. So...

14 Q But the district did send you, correct?

15 A They did. But they said it was up to
16 them to accept me. They didn't force me there.

17 Q Right.

18 A There was a need they saw, and they knew
19 that I could put forth the effort to go there.

20 Q So in your experience, is it fair to say
21 that the district was trying to help MLD?

22 A I will say that they did have that in
23 mind when they sent me there.

24 Q Okay. Are you familiar with the academic
25 goals contained in MLD's charter?

1 A No, I have not looked at the charter. I
2 basically worked with the curriculum instruction
3 there.

4 Q Okay.

5 A And that's where my focus is. But I do
6 know a little bit about assessment and curriculum
7 and instruction.

8 Q Okay.

9 A So I look at the stanine of 1 through 9,
10 and whether the students were -- and I look at a
11 stanine on the stanine of 1 through 9, 1, 2 and 3
12 being below level, 4, 5 and 6 on grade level,
13 beginning, middle and end, 7, 8 and 9 above grade
14 level, beginning, middle and end of the year.

15 And most of her kids, when I tested them
16 at the beginning of the year, they were all
17 basically falling in that first quarter of -- I
18 mean, first third of the stanine, which was below
19 grade placement. And it would take a lot to get
20 them from that point all the way up to on grade
21 level, honestly get them there for a sustained
22 effect.

23 Q But you're not familiar with the goals as
24 set forth in the charter?

25 A No, but I know what she basically told

1 me.

2 Q I understand.

3 A I didn't ever read it.

4 Q You never read the charter information?

5 A No, I never read the charter.

6 MR. BOWERS: Thank you, ma'am. No
7 further questions.

8 MR. WATSON: Nothing further.

9 - - -

10 (Witness excused.)

11 - - -

12 MR. WATSON: I have no other witnesses
13 except for validating or having the witnesses
14 who gave public statements officially sworn
15 in.

16 MR. McLAURIN: Absolutely. If you'll
17 have them come forward and be sworn in.

18 MR. WATSON: Everybody who gave a public
19 statement earlier --

20 MR. McLAURIN: That was Mr. Wells,
21 Bryant, Haney, Sutton. Who am I missing here?
22 Dinkins.

23 MS. BOUNDS: Mr. Dinkins passed on the
24 remarks.

25 MR. McLAURIN: That's right, he passed.

1 You're right.

2 Without objection -- Mr. Bowers says he
3 doesn't object. If you don't, we'll just do
4 them all at one time.

5 MR. WATSON: That's fine.

6 - - -

7 ESTON WELLS, ENNIS BRYANT, SHEILA M.
8 HANEY and E. SUTTON were collectively sworn in
9 at this time.

10 - - -

11 MR. WATSON: That's all I have at this
12 time. Thank you.

13 RESPONDENT'S EVIDENCE

14 MR. BOWERS: Mr. Chairman, at this time I
15 would call Ms. Dana Reed.

16 - - -

17 DIRECT EXAMINATION

18 - - -

19 BY MR. BOWERS:

20 Q Good afternoon, Ms. Reed.

21 A Hi.

22 Q Tell us what your job duties and title
23 are.

24 A I am the Compliance Supervisor for the
25 South Carolina Public Charter School District. And

1 as such, I review adherence of our schools, all of
2 our schools, to the terms of their charters and to
3 state and federal regulations and requirements.

4 Q Have you reviewed the charter of MLD?

5 A Yes.

6 Q And what have you found?

7 A Well, there is the charter. I have
8 reviewed the charter that the school came in on
9 with Lee County when they were authorized by Lee
10 County, and that was in 2004.

11 Q Right.

12 A And in terms of their goals, you know,
13 ~~the goals were very vague and not measurable.~~ They
14 indicated that the students -- as you all pointed
15 out earlier, there was a lot of discussion about
16 reading, writing and communicating effectively.

17 And then there was another charter put
18 together, a revised charter, that did have more
19 specific goals as the Board had directed them back
20 in May of 2011 to have. And I did review the
21 adherence to both, the terms of both those charters
22 from an academic standpoint.

23 Q I think we have agreed here, both the
24 school and the district, that the charter agreement
25 is constituted by the initial agreement in 2004,

1 plus the amendments that have been made exhibits
2 number 2 and 3 here in this proceeding.

3 Ms. Reed, I've got a couple of letters
4 here that are from you I'd like to take a look at,
5 please.

6 A Certainly.

7 Q The first one is dated January 13, 2012
8 (handing). Is that your letter?

9 A It is.

10 Q Did you send that to
11 Ms. Dinkins-Robinson?

12 A I did.

13 MR. BOWERS: I'd like to make this an
14 exhibit, please.

15 MR. WATSON: Without objection.

16 (Letter dated 1/13/12, to Ms. Benita
17 Dinkins-Robinson, from Dana C. Reed
18 marked Respondent's Exhibit Number 16, for
19 identification.)

20 BY MR. BOWERS:

21 Q Ms. Reed, I promise I'm not going to ask
22 you to read this letter. However, I would like you
23 to briefly summarize what you were trying to
24 communicate to the school.

25 A Sure. I wanted to communicate to

1 Ms. Dinkins-Robinson that there is a section of the
2 South Carolina Code of Laws that does require that
3 each school district report to the State Department
4 at its audit by December 1st, the close of that
5 fiscal year; and that any authorized charter
6 school, like MLD, has to adhere to the same
7 financial audits, accounting procedures, and audit
8 requirements as any other public school in the
9 state.

10 MR. McLAURIN: Ms. Reed, could you speak
11 up just a little bit?

12 THE WITNESS: Sure. Do you need me to
13 repeat that?

14 MR. McLAURIN: No.

15 THE WITNESS: And then my findings was
16 that all of the school leaders were apprised
17 that we as a district would need that
18 independent audit submitted and -- obtained
19 and submitted to us by November 1st in order
20 for us to submit one comprehensive report to
21 the State Department by its deadline of
22 December 1st.

23 And that was not done by MLD; and
24 therefore we issued this letter.

25 BY MR. BOWERS: .

1 Q Is it fair to characterize this letter of
2 January 13th, 2012 as an extension?

3 A No. We did --

4 Q How would you characterize it?

5 A We would characterize it as a Letter of
6 Caution, extreme caution, that they had departed
7 from a standard that they were required to adhere
8 to, one that's set forth in their charter and also
9 required by state law.

10 Q In fact, as I look at the letter, it says
11 MLD -- the district issues MLD this Letter of
12 Caution.

13 A Exactly.

14 Q So it's not an extension letter?

15 A No, it was not an extension letter.

16 Q But it is fair to say that you said,
17 "Hey, we still need the audit."

18 A We did.

19 Q "Get it in"?

20 A Exactly.

21 Q But that's not an extension, that's we
22 still need it?

23 A Exactly. The deadline had passed
24 already.

25 Q But at no time did the district waive the

1 requirement?

2 A No, we did not.

3 Q I've got another letter that I want to
4 give you and introduce into the record, dated
5 February 23rd, 2012.

6 MR. WATSON: Without objection.

7 (Letter dated 2/23/12, to Ms. Benita
8 Dinkins-Robinson, from Dana C. Reed,
9 marked Respondent's Exhibit Number 17, for
10 identification.)

11 THE WITNESS: That is my letter.

12 MR. BOWERS: I'd like to have that
13 entered as part of the record.

14 BY MR. BOWERS:

15 Q This appears to be a follow-up to the
16 Letter of Caution; is that right?

17 A It was.

18 Q Summarize this letter briefly for us,
19 ma'am.

20 A Sure. I outlined the previous Letter of
21 Caution for the failure to submit the independent
22 audit, and that as a result of us finally getting
23 their independent audit, even though it was well
24 past the deadline, there were two significant
25 deficiencies noted in that independent audit.

1 One, the failure to maintain a properly
2 designed financial management system in which the
3 duties were properly segregated. There was
4 competitive bidding documented and clear
5 instructions provided for purchasing decision
6 making.

7 And then the latter deficiency was the
8 failure to maintain documentation that would
9 support the verification of applications for free
10 and reduced lunches.

11 Also, by that time it was determined that
12 the school had also failed to meet another state
13 requirement, which was the deadline for submission
14 of verification of lottery and professional
15 development funds.

16 Q And I think we've heard testimony today
17 that has confirmed that they did not submit that
18 required information --

19 A That's correct.

20 Q -- in a timely fashion.

21 So, Ms. Reed, is it your testimony that
22 the school failed to maintain a properly designed
23 financial management system?

24 A Yes.

25 Q Okay. That contradicts Mr. Moser's

1 testimony --

2 A It does.

3 Q -- earlier. So you disagree with
4 Mr. Moser?

5 A I do to the extent that I'm looking at it
6 as the compliance supervisor at the schools, the
7 four grounds upon which schools can be revoked, and
8 looking at adherence to generally accepted
9 standards of fiscal management the school would
10 have to maintain by law.

11 And so we had a violation of state -- two
12 state requirements, and then we had the
13 deficiencies that were significant noted by the
14 independent audit. And then coupled with the
15 general just overall situation for the school, the
16 fact that it was on probation, had been issued
17 academic probation, we did note in that letter what
18 the next step could be.

19 Q Okay. And under its charter application,
20 was the school required to maintain a properly
21 designated financial management system?

22 A Yes, and to submit an independent --
23 obtain and submit an independent audit each year.

24 MR. BOWERS: No further questions.

25 MR. WATSON: I have a couple questions.

1

- - -

2

CROSS-EXAMINATION

3

- - -

4

BY MR. WATSON:

5

Q You indicated that the goals and standards in the charter were not -- were vague and not measurable; is that correct?

8

A I would describe them as such.

9

Q Thank you. So you can't -- if they're vague and not measurable, they're what they say. They're vague and you can't measure them, correct?

12

A I would have to say that the performance at the school was so abysmal that there was no way you could interpret any progress being made towards academic achievement.

16

Q Okay. Right. And that was the standard that was the charter agreed on by the district. They agreed on the standard that was vague and unmeasurable is what you're saying, right?

20

A The Memorandum of Agreement to which both parties agreed made it clear that they would have a progression -- show a progression, and that they would work -- that they would achieve high standards and show high standards of growth. That was not met.

1 Q Does it say high standards of growth
2 relative to the other school or relative to each
3 individual student's growth?

4 A It does not say to other school or to
5 each child's individual growth.

6 Q Thank you. And your letter of
7 February 23rd goes on to say MLD must submit the
8 independent audit no later than January 20th, 2012.

9 A You must be referring to the January 13th
10 letter?

11 Q Yeah. Is that correct?

12 A Yes, but it did not waive, it did not
13 exonerate them --

14 Q So they were not on time, but they did
15 submit it under this new schedule that you --

16 A It did. It did arrive on that date --

17 Q Thank you.

18 A -- two months later.

19 Q Thank you. You said two months later.
20 The original deadline was when?

21 A The deadline was November 1st for them to
22 submit it to us.

23 Q November 1st? Okay. Thank you.

24 And are you an accountant?

25 A No.

1 Q So what qualifies you to say what's a
2 generally accepted fiscal standard?

3 A I'm viewing the adherence to the charter
4 and what the charter stated it would adhere to.
5 And what is outlined in the charter school's act
6 are generally accepted standards of fiscal
7 management.

8 Q But you're saying you're not an
9 accountant, so you can't measure those things,
10 correct?

11 A I didn't indicate that I could measure
12 that. That was my opinion of whether or not they
13 met that standard. And by virtue of failing to
14 submit their independent audit, they not only met
15 that standard, but they also violated a provision
16 of law from which the school is not exempt.

17 Q Okay. Again, I just want to get
18 clarified your accounting credentials.

19 A And I've already stated that.

20 MR. BOWERS: Objection; asked and
21 answered.

22 MR. WATSON: Thank you.

23 BY MR. WATSON:

24 Q Is Mr. Moser such a qualified person, in
25 your opinion?

1 A Yes.

2 MR. WATSON: No further questions.

3 - - -

4 REDIRECT EXAMINATION

5 - - -

6 BY MR. BOWERS:

7 Q Is Mr. Moser a CPA? Do you know if
8 Mr. Moser is a CPA?

9 A No.

10 Q Is he an accountant?

11 A No.

12 MR. BOWERS: Thank you. No further
13 questions.

14 - - -

15 (Witness excused.)

16 - - -

17 MR. McLaurin: Do you have another
18 witness?

19 MR. BOWERS: I do. Very quickly I call
20 Ms. Courtney Mills, please.

21 - - -

22 COURTNEY MILLS, being first duly sworn,
23 testified as follows:

24 - - -

25 DIRECT EXAMINATION

1

2

BY MR. BOWERS:

3

Q Good afternoon.

4

A Hi.

5

6

Q Please state your name for the record and your job title.

7

8

A My name is Courtney Mills, and I'm the Director of Accountability for the district.

9

10

Q Okay. How long have you been doing this job?

11

A I began here in July of 2011.

12

Q And prior to that, what did you do?

13

14

15

A Prior to that, I was a mathematics teacher and an assistant principal at one of the schools in the district.

16

17

18

Q Okay. Tell us very briefly, what are your responsibilities in this job as it relates to MLD?

19

20

21

22

A I have two -- two -- dual roles. One is to oversee the coordination of state testing; so I work with the school test coordinators to make sure that the tests are administered properly.

23

24

And then I, in my role of accountability, I help the schools submit their data to the State.

25

And once the data has been published, I help

1 compile it and report it to the Board.

2 Q Okay. We've seen a document introduced
3 into the record earlier that has accountability
4 data such as EOC scores, AYP, things of that
5 nature. Are you familiar with those numbers?

6 A I am.

7 Q I'll hand you that real quick just to
8 refer to (handing).

9 MR. WATSON: Do you have an extra one?

10 MR. BOWERS: I haven't decided if I want
11 to introduce this yet. If I do, I'll give you
12 one.

13 MR. WATSON: Okay.

14 BY MR. BOWERS:

15 Q In your work -- in your role with the
16 district, in your work at MLD, please tell the
17 members of the Board what you found.

18 A The data that I have presented at
19 previous hearings or previous meetings of the
20 Board, the academics at MLD are significantly
21 subpar.

22 There are many different measurements.
23 You can look at Adequate Yearly Progress, you can
24 look at PASS, you can look at HSAP, and of course
25 all the different state tests that as a public

1 school MLD is required to participate in. And they
2 all show very abysmal scores.

3 Q And you used to be with a charter school,
4 correct?

5 A Correct..

6 Q If I understand your testimony correctly,
7 you were assistant principal?

8 A Yes.

9 Q So you understand -- you understand
10 compliance with the Charter School Act, correct?

11 A Yes. Correct.

12 Q What else did you find?

13 A I can go into specifics if you'd like me
14 to.

15 Q That would be great.

16 A Okay. If you look at their AYP, Adequate
17 Yearly Progress, taking a look at their scores
18 here -- now, I've heard, you know, there's some
19 question about AYP. But AYP is still in effect.
20 This is the current --

21 Q No waiver has been granted, to your
22 knowledge?

23 A No waiver has been granted. It has been
24 applied for but has not been approved.

25 Under the current system of AYP, which is

1 the system we have for federal accountability, you
2 can look at the total number of objectives that MLD
3 has been measured against and the number that they
4 have met. And if you look at the totals, MLD most
5 of the time has met roughly half, maybe slightly
6 more, slightly less than half of those objectives. *

7 But if you really dig down into it and
8 break those objectives up, there's three different
9 types of objectives that are measured on AYP. One
10 of those is participation in state tests. Schools
11 are required to test 95 percent of their students.
12 If you look at the participation objectives, MLD
13 has done a fairly good job of making sure that all
14 of their students get tested. *

15 If you look at the second type of
16 objective is academic, how the students actually
17 perform on those tests, that's the area where
18 there's a significant deficiency.

19 In all of the objectives that MLD has
20 been measured against, they've had 22 different
21 academic objectives from 2006 to 2011. Of those
22 22, the school only met one academic objective.

23 The third type is attendance, whether the
24 kids come to school. And MLD does a consistent job
25 of, what's been reported, that the students are

1 coming to school.

2 So they're coming to school, they're
3 being tested, but their performance on those tests
* 4 has not shown adequate progress.

5 Q Okay. You're aware that under charter
6 school law, a charter must be revoked if a school
7 has failed to meet or make reasonable progress, as
8 defined in the charter application, toward pupil
9 achievement standards identified in the charter
10 application? You're aware of that, correct?

11 A I am, yes.

12 Q We heard previous testimony and
13 questioning from Mr. Watson that the goals and
14 objectives in MLD's charter application are
15 subjective.

16 Do you know who -- who prepared these
17 goals and objectives?

18 A My understanding would be that would be
19 the planning committee of MLD that sought to open
20 the school.

21 Q And this was in -- this is from 2004, I
22 believe.

23 A That's my understanding.

24 Q Okay. And that was when they were going
25 into the Lee County School District, correct?

1 A Correct.

2 Q So it wasn't this district?

3 A Correct.

4 Q But these are the standards that the
5 school set for themselves, right?

6 A Correct.

7 Q So if they're subjective or not easily
8 defined, that's sort of their problem, right?

9 A I agree, yes.

10 Q However, given the subjectivity of these
11 goals, under any reasonable interpretation, is it
12 fair to say that they have made satisfactory --
13 reasonable progress toward pupil achievement
14 standards?

15 A Based on the standardized test scores
16 that we have seen, no, I would say they have not
17 made progress towards meeting those goals.

18 Q Okay. Do you have anything else to add
19 regarding EOC or PASS scores?

20 A I do. I'd like to talk about EOC.

21 Q I'd like to hear what you have to say
22 about it.

23 A EOC stands for end of course exams, as
24 you've heard. End of course exams are given in
25 five different subjects that are considered

1 benchmark courses that the State has determined.
2 Any student who's enrolled in one of those courses
3 is required to take the exam. The score on that
4 exam counts as 20 percent of the student's final
5 grade in the course.

6 Q Pardon my interruption.

7 A Sure.

8 Q Didn't you say earlier that the school
9 did really well with attendance numbers, correct?

10 A Correct.

11 Q How many students -- in May of 2011, how
12 many students at MLD were enrolled in classes that
13 required an end of course exam?

14 A In May of 2011, there were 61 students at
15 MLD who were enrolled in classes that required an
16 EOC.

17 Q And then how many of those students
18 actually took the exam?

19 A Seven.

20 Q Continue.

21 A There were also 12 other students who
22 were not enrolled in the course who also took the
23 exam.

24 Q Is that commonplace?

25 A No.

1 Q All right. In your experience, why would
2 a student who's not enrolled in a course take an
3 end of course exam?

4 A I have no reason why a student not
5 enrolled in a course would take the exam.

6 Q In your experience, have you ever seen
7 that?

8 A No.

9 Q Continue.

10 A So there were a total of 19 students who
11 took end of course exams in the spring of 2011. Of
12 those 19, 18 of them failed the exam. That leads
13 to the five percent passing rate that was mentioned
14 earlier. That's one out of the 19 that actually
15 passed the exam.

16 Q Let me ask you a question about a
17 particular class.

18 A Okay.

19 Q Biology 1, do you know how many students
20 were enrolled in Biology 1?

21 A There were 10 that year.

22 Q How many of them took the EOC that year?

23 A None of them.

24 Q Under any reasonable interpretation of
25 academic standards, is that acceptable?

1 A No.

2 Q Do you know why no EOC -- none of those
3 Biology students took the EOC?

4 A I do not know why.

5 Q Have you asked?

6 A I have not.

7 Q That's okay. Do you have anything else
8 on EOC?

9 A I think that covers it for EOC.

10 Q Let me ask you one follow-up question on
11 EOC.

12 A Sure.

13 Q If a student had a 64 EOC score and then
14 earned a 93 average for the year, what would that
15 student have had to achieve on the coursework for
16 the whole entire year?

17 A That student would have needed to have a
18 100 average in their coursework in order to average
19 in with that EOC score to get a 93, which, in my
20 opinion, is very unrealistic that a student would
21 have a 100 percent average in a course and score a
22 64 on the end of course exam.

23 Q How about HSAP, do you want to talk about
24 that?

25 A Sure. HSAP, as we commonly refer to it,

1 is the High School Assessment Program. That is the
2 test that students must take and pass in order to
3 graduate. It's commonly called the exit exam.

4 Students have to earn a passing score on both the
5 ELA and the math portion in order to graduate.

6 There's been a lot of talk of the
7 100 percent graduation rate, so that certainly led
8 to some looking into of HSAP scores.

9 I believe it was Ms. Dinkins-Robinson's
10 testimony that all of those nine students who
11 graduated did pass HSAP. In my attempt to confirm
12 that for this hearing, I contacted the State
13 Department and did ask for HSAP scores for all nine
14 of those students.

15 Q And what did -- did you receive that
16 information?

17 A I did.

18 Q And what did that information reveal?

19 A The contact person at the State
20 Department who handles HSAP sent me those scores
21 and called me and said, "Yes, they all passed, but
22 there's something very alarming, very suspicious,"
23 was the term that he actually used about those
24 scores.

25 Q What was that?

1 A There were three students who had to take
2 the math portion multiple times in order to pass.
3 That's not so unusual. Plenty of students fail it
4 the first time or two and have to keep taking it.

5 But the three students that he was
6 referring to failed it two or three times, and then
7 on the final attempt had significant jumps in their
8 scores. Two students jumped from a Level 1 to a
9 Level 4. Level 1 is not passing. Level 4 is
10 considered exceptional. That's the highest score.

11 Q Well, couldn't that just be due to better
12 instruction? New staff?

13 A I suppose it could be, but it would be
14 highly unusual for two students to have such a
15 large jump. Typically, when students are having
16 trouble passing, when they finally do pass it, they
17 just barely score a Level 2.

18 Q In your experience, have you ever seen a
19 student have that kind of a significant jump?

20 A I have never seen a jump that high, no.

21 Q Other than this case?

22 A Correct.

23 Q And is that consistent with the end of
24 course scores, as well? Have you ever seen, in
25 your experience, a student who had an end of course

1 score below 70 that had a score of above 90 for the
2 entire year?

3 A I haven't done any studies to compare
4 scores, but I would think it's unusual for a
5 student to score very poorly on end of course, and
6 then score so well on HSAP.

7 Q Anything else about testing that you'd
8 like to talk about?

9 A Could we address PASS?

10 Q Absolutely. Let's talk about PASS.

11 A PASS is the Palmetto Assessment of State
12 Standards. That's the test that all students in
13 grades 3 through 8 are required to take. As we
14 mentioned, PASS is the exam that has been used for
15 MLD's AYP purposes, because the majority of their
16 students fall within those grades.

17 So as we've mentioned before, the staff
18 of MLD have done a good job of making sure their
19 students take PASS, but the results have been very
20 poor. And I did compare -- there's been a lot of
21 talk also of these being students of poverty. And
22 the State does look at that. And when they publish
23 the school report cards, they compare schools not
24 just to schools within their districts, but to
25 other schools around the state who have similar

1 poverty rates.

2 And so if you look at the information on
3 MLD's report cards, it becomes very obvious that
4 not only are their scores poor, but they're very
5 poor in comparison to other schools who have
6 similar poverty rates.

7 Q Of these six objectives that are
8 contained in the school's charter application, the
9 academic objectives, how many -- are you aware of
10 how many they achieved during its first year in the
11 district?

12 A I will be honest. When we were preparing
13 for this, I spent more time looking at the second
14 set of objectives that were in the second charter
15 that we said has not actually officially been
16 adopted. I did look at the first two objectives in
17 that original charter, which to me are the academic
18 ones --

19 Q Right.

20 A -- reading, writing and communicating
21 effectively, and then using math, science, the arts
22 and computers effectively. And -- yes, those first
23 two.

24 And in my opinion, based on the test
25 scores, the state test scores, those students have

1 not demonstrated that they have met these goals.

2 Q Okay. Those are the goals contained in
3 the charter --

4 A Correct.

5 Q -- application?

6 A Yes.

7 Q Anything else about PASS scores?

8 A I don't think so.

9 Q Okay. I want to ask you -- moving along,
10 I want to ask you a question about transcripts.

11 A Okay.

12 Q That document I gave you before, I'm not
13 going to introduce that into the record. I am
14 going to introduce this into the record (handing).

15 (Standard High School Transcripts
16 marked Respondent's Exhibit Number 18, for
17 identification.)

18 MR. BOWERS: I'd like to introduce this
19 into the record.

20 MR. WATSON: Without objection.

21 MR. BOWERS: Thank you.

22 BY MR. BOWERS:

23 Q This document that I've just handed you,
24 Courtney, is a -- at the top it says, State of
25 South Carolina Standard High School Transcript,

1 correct?

2 A Correct.

3 MR. BOWERS: Okay. And, Mr. Watson, as
4 you can see, for privacy purposes we've
5 blacked out the students' names and guardian
6 names to protect their anonymity. But we have
7 identified each student by alpha, A, B, C and
8 so on. Okay?

9 BY MR. BOWERS:

10 Q Ms. Mills, where did you get this
11 document?

12 A These documents were given to me by
13 William James, who is our Director of Technology
14 here in the district. He printed these documents
15 out of PowerSchool on April the 12th.

16 Q We've heard some discussion about
17 PowerSchool when Ms. Dinkins was up here and what
18 PowerSchool is. Can you refresh our memory of what
19 PowerSchool is?

20 A PowerSchool is the system that all
21 schools in the state use, all public schools in the
22 state use to keep track of student data.

23 Q Okay. I'll hand you another document.
24 You probably already have a copy of that, too,
25 don't you?

1 A I do.

2 MR. BOWERS: I'd like to introduce this
3 for the record, as well.

4 MR. WATSON: Without objection.

5 (MLD Higher Learning Academy Official
6 School Transcripts marked Respondent's Exhibit
7 Number 19, for identification.)

8 BY MR. BOWERS:

9 Q Ms. Mills, this one is entitled at the
10 top, MLD Higher Learning Academy Official School
11 Transcript, correct?

12 A Yes.

13 Q Where did you get these documents?

14 A This document was submitted by
15 Ms. Dinkins-Robinson last week as part of a Title 1
16 audit.

17 Q Have you compared the audits -- I'm
18 sorry -- the transcripts that you've received from
19 the school with the transcripts that you've
20 received through PowerSchool from the State
21 Department?

22 A I have.

23 Q Okay. And what did that comparison
24 yield?

25 A There are a lot of discrepancies between

1 the two.

2 Q What do you mean, discrepancies?

3 A There are several different examples.

4 The GPAs, grade point averages, that are published
5 on the -- what was referred to as the official
6 document, which was submitted to Title 1 and what
7 came out of PowerSchool, the GPAs do not match for
8 any of the students.

9 Q How does that happen? I mean, isn't the
10 PowerSchool information -- shouldn't the transcript
11 that the school issues be identical?

12 A Yes, it should be.

13 Q But you're telling me it's not?

14 A Correct.

15 Q So you have GPAs that are not the same?

16 A Correct.

17 Q Are they better or worse?

18 A I honestly -- there are some higher and
19 some lower.

20 Q Some higher and some lower?

21 A They're just different.

22 Q All right. What else did you notice in
23 your comparison?

24 A The numbers of credits, the overall
25 numbers of credits that appear on the transcripts

1 submitted to Title 1 and the transcripts that came
2 out of PowerSchool. The total number of credits
3 don't match and the specific courses don't match.

4 Q Let me clarify. Is this from the one
5 graduating class?

6 A Yes. These are transcripts for the nine
7 students who graduated.

8 Q I should have clarified that earlier.
9 Did all -- according to the State Department
10 information through PowerSchool, did every one of
11 these students have the required 24 hours -- I'm
12 sorry -- 24 credits to graduate?

13 A According to the ones that were in
14 PowerSchool, yes, they all had at a minimum 24
15 credits.

16 Q How about the transcript from the school?

17 A Those do not. There is one student
18 referred to as student D, who, according to the
19 transcript submitted for Title 1, only earned 22
20 credits.

21 Q Do you recall previous testimony that all
22 of the students who graduated had earned at least
23 24 credits?

24 A That's correct.

25 Q Okay. But the transcript from the school

1 itself, at least one of them for student D, says
2 they only earned 22.

3 A Correct.

4 Q Okay. Do you know why there's that
5 discrepancy?

6 A I do not.

7 Q But that discrepancy does exist, correct?

8 A Yes.

9 Q What else, if anything, did your
10 comparison yield?

11 A There are discrepancies in birth dates.
12 There are two students whose birth dates don't
13 match on the two sets of transcripts. One is only
14 off by a couple of days and one is off by several
15 months.

16 It's interesting to note that these
17 official transcripts that were submitted to Title 1
18 are not signed.

19 Q Is that common?

20 A I would think not.

21 Q Have you ever seen transcripts unsigned
22 by a registrar or some leadership of the school?

23 A Not that were submitted in any kind of
24 official capacity, no.

25 Q And these were -- remind us again. Why

1 were these submitted?

2 A These were submitted as part of a Title 1
3 audit last week, yes.

4 Q And who conducts a Title 1 audit?

5 A It's conducted by the State Department of
6 Education.

7 Q For what purpose? Do you know?

8 A Not my area of expertise. Sorry.

9 Q That's okay. That's okay.

10 But within your area of expertise in
11 comparing these transcripts, you noticed these --
12 would you describe these as significant
13 discrepancies?

14 A Absolutely, just the fact that the
15 courses themselves don't match up, there are grades
16 that don't match up. One might say the student
17 earned a 93, and on the other one it will say an
18 83. And it's not just a single one here or there
19 that could be what I would consider a clerical
20 error. There are numerous discrepancies between
21 the students' grades in the courses.

22 Q Anything else you'd like to tell us about
23 these transcripts?

24 A No.

25 Q Okay. I think that's enough.

1 MR. BOWERS: I don't have any further
2 questions. Please answer any questions of
3 Mr. Watson.

4 MR. McLAURIN: Mr. Watson.

5 MR. WATSON: I have some questions.

6 - - -

7 CROSS-EXAMINATION

8 - - -

9 BY MR. WATSON:

10 Q First of all, you heard the young lady
11 who spoke right before you indicate that the
12 standards, to use her words, are vague and not
13 measurable; is that correct?

14 A I agree with Ms. Reed's evaluation of the
15 goals, yes.

16 Q Okay. So if they're vague and not
17 measurable, by definition they're vague and you
18 can't measure them.

19 A I believe it opens the measurement up to
20 interpretation.

21 Q Exactly. And that is the measurement
22 agreed to as part of the charter under which MLD is
23 to operate; is that correct?

24 A Yes.

25 Q Now, you indicated that MLD is good about

1 getting students to take the test.

2 A Yes.

3 Q Is that right?

4 A That's correct.

5 Q How do they compare with other schools as
6 far as getting the students to take the test?

7 A I have not compared. I have not looked
8 at the data to compare the different schools. Some
9 of our schools do a good job of getting their
10 students to take the test, and some do not, as
11 well.

12 Q Do you have anyone that does a better job
13 than MLD?

14 A I've not looked at specific data to be
15 able to answer that.

16 Q Thank you. And the attendance is very
17 good?

18 A The attendance that they report is very
19 good, yes.

20 Q Okay. Now, again, there seems to be a
21 question as to whether students are to be measured
22 as compared to other students in other schools or
23 whether these goals, when you say show individual
24 growth, as to where that student started and where
25 that student ended up.

1 The students at MLD showed growth from
2 where they started and where they ended up; is that
3 correct?

4 A I have no data that supports that.

5 Q You don't have any that doesn't support
6 that?

7 A If you look at the school-wide data for
8 PASS, HSAP and end of course exams, there is not an
9 upward trajectory in the number of students who are
10 meeting standards, so...

11 Q Again, that's toward other schools. I'm
12 talking about one individual student. Does that
13 report reflect the progress of any one individual
14 student as far as where he started and where he
15 progressed?

16 A Those do not reflect individual students,
17 no.

18 Q Thank you. Now, you indicated that the
19 district is seeking a waiver from the AYP.

20 A No. The State is.

21 Q The State is.

22 A Yes.

23 Q That's even more significant. Why is
24 that?

25 A AYP is sometimes considered to be -- it's

1 an all-or-nothing system. In order to meet AYP,
2 you have to meet every single objective that has
3 been set for you.

4 One of the reasons, and there are many
5 reasons, but one of the reasons that the State is
6 seeking a waiver is that the new system that they
7 are designing would show the numbers of objectives
8 that schools are meeting more clearly and not an
9 all-or-nothing system.

10 Q Right. So you are saying, then, that you
11 are measuring students at MLD against a system
12 that's largely been discredited; is that correct?

13 A I would not say that, no.

14 Q But, I mean, it's significant enough for
15 the State to seek a waiver.

16 A The State is seeking a waiver, yes.

17 MR. WATSON: Thank you.

18 I don't have any -- enough knowledge to
19 proceed to ask any questions about these
20 individual test scores, so I have no questions
21 of her at this time.

22 I would like to call Ms. Dinkins in
23 rebuttal.

24 MR. BOWERS: Hold on for a second. I
25 have redirect.

1 MR. WATSON: Okay.

2 MR. BOWERS: Very quickly.

3 - - -

4 REDIRECT EXAMINATION

5 - - -

6 BY MR. BOWERS:

7 Q Ms. Mills, Mr. Watson just asked you
8 several questions about the AYP in trying to
9 discredit it.

10 A Yes.

11 Q And you indicated that the State has
12 sought a waiver, correct?

13 A Correct.

14 Q Are you familiar with what the
15 Superintendent's position is on that waiver?

16 A Somewhat.

17 Q Can you elaborate? And don't speculate
18 if you can't.

19 A I'd prefer not to.

20 Q Okay. I don't want you to speculate.

21 A Thank you.

22 Q Let's go at it this way: If you
23 completely disregarded the AYP and focused only on
24 PASS, HSAP and EOC, would your testimony from my
25 prior examination be the same in that the school

1 has failed to make reasonable progress as defined
2 in the charter application toward pupil
3 achievement?

4 A Yes, it would. And I would further say
5 that I'm familiar with the new terms of the waiver.
6 Of course, the waiver has not been approved. But
7 if it is approved in the most recent version that I
8 have seen, I don't believe the results for MLD
9 would be any better than the current system of AYP.

10 Q But even if AYP didn't exist --

11 A Right.

12 Q -- and we didn't have these numbers,
13 they still have failed to meet adequate progress as
14 defined in their own charter which they drafted?

15 A Yes.

16 MR. BOWERS: No further questions.

17 MR. WATSON: One further rebuttal
18 question.

19 MR. BOWERS: I object. It's not
20 ping-pong.

21 MR. McLAURIN: Let's give him a shot.

22 MR. WATSON: I get to ask a question, as
23 well.

24 MR. McLAURIN: Go ahead.

25 - - -

1 RECROSS-EXAMINATION

2 - - -

3 BY MR. WATSON:

4 Q Again, you stated that these objectives
5 are comparing essentially apples and oranges..
6 You're comparing one student's level of achievement
7 with another school's level for that same category
8 of income and all of that, correct?

9 A No, I was not referring to comparing to
10 other schools. I was talking about school-wide
11 data at MLD.

12 Q School-wide data at MLD?

13 A Yes.

14 Q So, again, do these reports measure the
15 growth in any individual student?

16 A I've already said they do not.

17 MR. WATSON: Thank you. Nothing further
18 of this witness.

19 MR. BOWERS: Nothing further.

20 - - -

21 (Witness excused.)

22 - - -

23 MR. BOWERS: That's all I have at this
24 time. I rest.

25 MR. McLAURIN: Okay.

1 MR. WATSON: I'd like to call a rebuttal
2 witness.

3 APPELLANT'S EVIDENCE - REBUTTAL

4 - - -

5 BENITA DINKINS-ROBINSON, having been
6 previously duly sworn, testified as follows:

7 - - -

8 DIRECT EXAMINATION

9 - - -

10 BY MR. WATSON:

11 Q Now, you heard a number of statements
12 made.

13 MR. McLaurin: Before you get started, I
14 want to remind Ms. Dinkins, you're still under
15 oath.

16 THE WITNESS: Okay.

17 BY MR. WATSON:

18 Q I don't know enough about testing and all
19 of this. Again, I'm here representing you on less
20 than a month's notice with no time to adequately
21 understand these things. So I need you then to
22 elaborate on the things that have just been said.

23 Tell me about, what's a PASS test?

24 A The Palmetto Achievement Standards --
25 I've been through about four. What is this one

1 called?

2 Q All I have here is the word PASS.

3 A It's an assessment test that is done by
4 the State. First we were taking TACHS, and then it
5 will be -- after this year, we will have a new one,
6 so...

7 Q Okay. How does that relate to the
8 measurement of students?

9 A I think, as I attested earlier, our MAP
10 data system gives us the best reliable assessment,
11 too. Our children typically -- and I have
12 expressed this to this Board and administrative on
13 numerous occasions.

14 Our superintendent has only been in Lee
15 County for 30 minutes, but I have attested that
16 these children are coming in drastically low. And
17 yes, it is scary, but this is where they are.

18 The MAP data system, which this district
19 required that we have, and Ms. Mills, who is the
20 expert in testing and should also have that data
21 system, shows specifically individually where these
22 children come. And if they are coming scoring 130,
23 140, 150, realistically, realistically, and as our
24 expert that this district so gratefully --
25 gracefully gave us, told you that they're scoring

1 on a 2, 3 stanine. There is no way within this
2 18-month grace period that we have allowed under
3 this district, knowing that since they went back to
4 '06, that in '06 -- since '06, the entire time of
5 this charter, we have been harassed. Injustice has
6 been done upon not only the administrative staff,
7 but the children themselves, quote-unquote, have
8 been beaten down.

9 But this district knew this taking us on.
10 They also knew this in August. And this data they
11 are quoting now based on high school students, we
12 don't even have high school this year. So I say to
13 you that I think that most of that is irrelevant.

14 If they found that we had discrepancy as
15 a sponsor, and in particular we had discrepancies,
16 then say that we got discrepancies. And let's see
17 if we're a sponsor and we're partnering, then tell
18 us what the discrepancies are and we will look at
19 them.

20 Q Prior to today, have you heard these
21 allegations that are being made now, prior to this
22 time right here today?

23 A Never, sir. Never.

24 Q Would you like the chance to look at and
25 respond to the allegations that are being made?



1 A And I will. And even on the graduation
2 piece -- if I may, only a second. They called it a
3 Title 1 review. They sent me a memo. It was
4 dated -- on the day before the review. I didn't
5 even get the memo that they were going to do a
6 graduation rate review until 12:30 that night,
7 before the review.

8 So I asked the person that is over the
9 official graduation rate -- and as I told you, we
10 had issues with PowerSchool previously. We are
11 correcting those issues from last year. And this
12 was last year's data that we are attesting to.

13 So I asked them to send me the official
14 transcript, knowing that I didn't receive the
15 information in adequate time to even totally review
16 it, and knowing -- also knowing that Title 1
17 audit -- and I never even heard of Title 1 audit,
18 actual graduation rate audit; so that was new to
19 me.

20 So even after that, I gave them the
21 documents that were forwarded to me by the person
22 that does those data. Upon review, I will be glad
23 to look at those data and make sure they all are
24 concurrent. Every child has every adequate credit,
25 and we can pull them based on data. So I don't

1 even know.

2 Q Tell me about the comments you made about
3 the EOC. What is that and how does that apply?

4 A I don't even know. We didn't even have
5 61 students in the high school, so I don't know
6 where she got that number from. We didn't even
7 have that many students in high school.

8 Q HSAP, what is that?

9 A HSAP, as she stated earlier, all of those
10 students did pass. And one of the reasons they
11 scored higher is because we provided additional
12 tutoring after school, Saturday school. Because we
13 told them -- some of those students would have been
14 dropouts, but we pushed those students, and that is
15 the good thing.

16 What she could not say is that they did
17 not pass, because they all passed. So that should
18 be commended.

19 Q Tell me about --

20 MR. WATSON: Excuse me. May I have
21 access to that document that you had her look
22 at that you did not include in the record?

23 MR. BOWERS: No, sir.

24 MR. WATSON: I would like to include that
25 document in the record.

1 MR. BOWERS: No, sir. It's notes.

2 MR. WATSON: You're saying that's
3 preparation for -- but you introduced it here.

4 MR. BOWERS: I did not.

5 MR. WATSON: I mean, you let her testify
6 from it.

7 MR. BOWERS: I did not introduce it.

8 MR. WATSON: I would like to introduce
9 it.

10 MR. BOWERS: No.

11 MR. WATSON: I would like to introduce
12 the document.

13 MR. BOWERS: Let's introduce it. You can
14 have it.

15 MR. WATSON: It's something you obviously
16 want to hide, and I want to see what it is.

17 MR. BOWERS: No, it's nothing I want to
18 hide.

19 MR. WATSON: Then why don't you introduce
20 it?

21 MR. BOWERS: I just said I would,
22 Mr. Watson.

23 MR. WATSON: Over great brouhaha.

24 MR. McLAURIN: Okay. Both of y'all, we
25 didn't come here for this.

1 MR. WATSON: So this is a document you
2 had her testify from that you didn't
3 introduce.

4 MR. BOWERS: No, that's not it.

5 MR. WATSON: That's not it? Okay. Give
6 me the right document.

7 MR. BOWERS: That's it. (handing).

8 MR. WATSON: Thank you. We'd like to
9 have a chance to look at this document and
10 review it and respond accordingly. I'd like
11 to enter it into the record.

12 (Notes for MLD hearing marked Appellant's
13 Exhibit Number 20, for identification.)

14 MR. BOWERS: While we're at it, we'll put
15 that one in, too. May I introduce this one at
16 this time? Do you object?

17 MR. WATSON: I don't know what that is.
18 That's already in the record.

19 MR. BOWERS: Is that already in the
20 record?

21 MR. WATSON: That's already in the
22 record. Go ahead. Introduce it again. I
23 don't have any objection.

24 (AYP, EOC, HSAP and PASS scores
25 marked Respondent's Exhibit Number 21, for

1 identification.)

2 BY MR. WATSON:

3 Q Now, take a look at these two transcripts
4 of students. They indicated that those things are
5 not signed (handing). Now, tell me about that.

6 A I literally just pulled them off of the
7 person that prepares our transcripts that we sent
8 off, sent them, and I actually just -- I normally
9 sign them. So I actually just handed them over to
10 the thing.

11 And since it was an audit, if it was a
12 problem at the audit, if he would have told me it
13 was a problem, I would have automatically made sure
14 I made those adjustments. That's the only thing I
15 did was forward what was originally given to me,
16 and I forwarded them over.

17 Q Who prepared those documents?

18 A Mr. V.

19 MR. WATSON: Okay. Again, we've already
20 indicated that we could submit anything. I'd
21 like to have an affidavit from Mr. V regarding
22 these transcripts.

23 MR. McLAURIN: My plan is, for both of
24 y'all, to hold the record open until the 30th
25 of this month. That will give you time to do

1 that.

2 MR. WATSON: Thank you.

3 BY MR. WATSON:

4 Q And on both of those records that they
5 introduced, do the schools have the minimum 24
6 credits?

7 A On the official transcripts that we
8 originally did, not talking about the PowerSchool,
9 because I haven't looked at that data, but
10 according to the official transcripts that we
11 normally give out to all the schools, everyone has
12 the official amount of credits that they need to
13 graduate.

14 Q There is the implication of some type of
15 impropriety here. Speak on that for me. They're
16 implying that you were changing grades or scores or
17 a student going from 64 to 93. How is that
18 possible?

19 A We had to go back and input -- remember,
20 I told you we did have some loopholes in the
21 PowerSchool. So they had to take the data that
22 they got off the report cards or the transcripts
23 that we did. And one other additional person, who
24 is Mr. Dinkins -- Mr. V did these transcripts and
25 Mr. Dinkins took the information off of Mr. V's

1 transcripts and put them onto these transcripts.
2 So I had two people working on those data systems.
3 So he could have looked at the 93 and
4 missed and put an 83. That would have been -- I
5 mean, but then we had to quickly get it in because
6 the district did want to make sure that not only
7 did we have an official transcript that we had, so
8 that it was in PowerSchool.

9 Q You have no objection to Mr. Dinkins and
10 Mr. V addressing those concerns?

11 A No, or making sure that they are
12 accurately aligned together.

13 Q Again, does your agreement in any way,
14 shape or form say that your students have to make
15 scores, from the time they come in, on some
16 percentage increase in regard to other students in
17 the district?

18 A No, sir.

19 Q And they indicated then that you worked
20 on another document to try to give some specificity
21 for those goals and objectives, but that other
22 document was never agreed to, right?

23 A Yes, sir.

24 MR. WATSON: I have nothing further.

25 MR. BOWERS: I have no questions.

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- - -
(Witness excused.)
- - -

MR. BOWERS: I would like to state for the record that we expressly do not waive the attorney-client privilege with any documents that have been submitted for the record today.

MR. McLAURIN: Okay.

MR. WATSON: I have nothing further.

MR. McLAURIN: That will terminate this hearing.

But what we do need to do now is the Board needs to go into executive session to get some legal counsel, and we will come back out into open session. I want to make sure you did understand you have until April 30th to keep the record open to submit anything --

MR. WATSON: Today is April what?

MR. BOWERS: 19th.

MR. WATSON: 19th. And we've got 30 days?

MR. McLAURIN: That isn't 30 days. That actually gives us, I think, a problem. Our next Board meeting is May 3rd. And we have to vote on this --

1 MR. WATSON: Continue. I'm listening.

2 MR. McLAURIN: You're good. We have to
3 vote on this before the end of the school
4 year. And the only meeting we've got before
5 the end of the school year is the 3rd of May.

6 And so April 30th gives us then a little
7 bit of time to look at the documents that get
8 submitted, because we want to be able to do
9 that. So it has to be by then.

10 MR. WATSON: Is there a reason why this
11 has to be done by April 30th?

12 MR. McLAURIN: Yes, sir, because we have
13 to make a decision on this by the end of the
14 school year. That's under the law.

15 MR. WATSON: Okay. That's it then, I
16 guess. That's the end of this session.

17 MR. McLAURIN: And so we will go into
18 executive session if I hear a motion.

19 MR. SILER: I move.

20 MS. BOUNDS: Second.

21 MR. McLAURIN: Without objection. We
22 will then come back into open session.

23 - - -

24 (Whereupon there was a recess
25 in the proceedings from 1:45 to 2:05.)

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MR. McLaurin: We are back in the open session.

For the record, we got some legal counsel. No decisions were made in executive session.

So the revocation hearing has ended, the hearing portion of it. We have stated that we will keep the record open. Do I hear a motion for that?

MS. Staley: I make a motion that we hold the record open until 5:00 p.m. on April the 30th, that all documents would be received by that time, and then reconvene on May the 3rd at our meeting.

MR. McLaurin: Only for the purpose of a vote, right?

MS. Staley: Only for the purpose of a vote, yes.

MR. Boyd: Second.

MR. McLaurin: Any objection? Okay.

So you know when to have your documents in?

MR. Watson: April 30th at 5:00.

MR. McLaurin: Yeah. And then on May the

1 3rd, we will vote after we have gotten
2 everything.

3 MR. WATSON: Understood. I thank you
4 all.

5 - - -

6 (Proceeding concluded at 2:15 p.m.)

7 - - -

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CERTIFICATE OF REPORTER

I, Cynthia First, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify: That the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that it is a correct transcript of the same.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 19th day of April 2012, at Chapin, Lexington County, South Carolina.

Cynthia First

Cynthia First,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 16, 2018

I N D E X

	PAGE
Opening Statement by Mr. Watson	22
Opening Statement by Mr. Bowers	32
APPELLANT'S EVIDENCE	
Benita Dinkins-Robinson	
Direct Examination by Mr. Watson	41
Cross-Examination by Mr. Bowers	73
Redirect Examination by Mr. Watson	105
Rebuttal Examination by Mr. Watson	173
William Moser	
Direct Examination by Mr. Watson	112
Cross-Examination by Mr. Bowers	116
Redirect Examination by Mr. Watson	121
Patricia W. Smith	
Direct Examination by Mr. Watson	123
Cross-Examination by Mr. Bowers	130
RESPONDENT'S EVIDENCE	
Dana Reed	
Direct Examination by Mr. Bowers	134
Cross-Examination by Mr. Watson	142
Redirect Examination by Mr. Bowers	145
Courtney Mills	
Direct Examination by Mr. Bowers	146
Cross-Examination by Mr. Watson	166

RESPONDENT'S EVIDENCE (Continued)

Courtney Mills

Redirect Examination by Mr. Bowers	170
Recross-Examination by Mr. Watson	172
Certificate of Reporter	187

E X H I B I T S

APPELLANT'S EXHIBITS	DESCRIPTION	MARKED
1	Letter dated 4/17/12, to Karl "Butch" Bowers, from Johnny E. Watson	24
*2	Letter dated 8/12/2010	28
*3	Letter dated 5/26/10	28
*4	Press Release	45
5	Charter School Application, 000222-000395	47
*6	Letter dated 3/6/12	63
10	Cover letter dated 3/12/12, with attachments	105
11	Cover letter dated 3/12/12, with attachments	110
12	2010-2011 Accountability Report	111
13	Plan to Restructure of Planning for the 2011-2012 School Year	111
14	Charter School Application	111
15	Internal Fiscal Control Procedures	114
20	Notes for MLD hearing	179

RESPONDENT'S	EXHIBITS	DESCRIPTION	MARKED
*7		Academic probation letter	77
8		MLD Accountability Data	83
9		Free and Reduced Price School Meals Family Applications	101
16		Letter dated 1/13/12, to Ms. Benita Dinkins-Robinson, from Dana C. Reed	136
17		Letter dated 2/23/12, to Ms. Benita Dinkins-Robinson, from Dana C. Reed	139
18		Standard High School Transcripts	159
19		MLD Higher Learning Academy Official School Transcripts	161
21		AYP, EOC, HSAP and PASS scores	179

*Not provided to the court reporter

WORD INDEX

< \$ >

\$1,800 89:22 90:4

\$500,000 44:13

< 0 >

000222-000395

47:16 189:1

06 175:4, 4, 4

< 1 >

1 12:7 15:3

23:22 24:3 44:21

64:16 65:12 69:4

110:23, 24 125:25

132:9, 11, 11

136:16 153:19, 20

156:8, 9 161:15

162:6 163:1, 19

164:17 165:2, 4

176:3, 16, 17

189:1 190:1

1:45 184:25

10 21:21 28:16

31:5, 10 58:22

105:19 153:21

189:1, 1

10,000 131:8, 8

10:00 1:1

10:26 21:13

10:45. 21:13

100 154:18, 21

155:7

101 190:1

105 188:1 189:1

10th 66:7 90:10

10-year 27:1, 2

46:3, 11, 12

11 48:10 105:21

110:7 189:1

110 189:1

1100 92:5, 25

93:6

111 189:1, 1, 1

112 188:1

114 189:1

116 188:1

11th 66:8, 17

90:19

12 24:1 28:4

63:25 74:11 78:9

105:17, 17 111:5

136:16 139:7

152:21 189:1, 1, 1,

1, 1, 1, 1, 1 190:1,

1

12:26 112:10

12:30 176:6

12:34. 112:10

120 31:8

121 188:1

123 188:1

12th 25:17 26:15,

18 27:15, 19 41:9

42:21 57:5 75:23

90:19 160:15

13 111:9 136:7,

16 189:1 190:1

130 174:22 188:1

134 188:1

136 190:1

139 190:1

13th 66:22 138:2

143:9

14 111:22 189:1

140 174:23

142 188:1

145 188:1

1459 1:1

146 188:1

147 58:24

15 113:24 114:25

189:1

15,000 131:9

150 174:23

152 59:21

157 58:25

159 190:1

15th 57:6

16 83:20 90:25

136:18 187:1

190:1

161 190:1

166 188:1

16th 23:6

17 24:1 50:23

139:9 189:1

190:1

170 189:1

172 189:1

1727 2:1

173 188:1

179 189:1 190:1

17th 23:20

18 61:10 62:16,

17 92:2 93:18

153:12 159:16

190:1

18.1 61:12

187 189:1

18-month 175:2

19 1:1 62:18, 19

93:18 153:10, 12,

14 161:7 190:1

1973 12:6

19th 183:19, 20

187:1

1st 103:15 117:8

137:4, 19, 22

143:21, 23

< 2 >

2 24:22 28:5

57:4 74:4 75:9,

18, 23 132:11

136:2 139:7

156:17 175:1

189:1 190:1

2:05. 184:25

2:15 186:6

20 152:4 179:13

189:1

2003 113:9

2004 113:10, 13

135:10, 25 150:21

2005 70:15 75:15

2006 86:15

149:21

2009 83:13, 17

90:12, 16, 19

110:12

201 1:1

2010 26:18 27:15

28:4, 9 41:9 65:1

69:11 75:24

83:21 90:13 94:2

189:1

2010-2011 111:4

189:1

2011 36:21 44:5

45:7 46:4 48:8

50:23 57:6 65:19

75:5 83:23 84:4

86:19 89:3, 7

90:8 103:15

110:12 130:14

135:20 146:11

149:21 152:11, 14

153:11

2011-2012 49:16

57:15 111:8

189:1

2012 1:1 26:15

46:23 64:4 71:19

124:13 136:7

138:2 139:5

143:8 187:1

2018 187:1

20th 45:6 143:8

21 90:25 179:25

190:1

21.4 83:22 84:1

22 149:20, 22

163:19 164:2

188:1

220 58:25

23 139:7 190:1

230 58:25

23rd 139:5 143:7

24 79:25 163:11,

12, 14, 23 181:5

189:1

25-point 58:22

26 28:9, 16 70:10

189:1

2715 2:1

27th 21:20

28 79:22 189:1, 1

29201 1:1 2:1

29204 2:1

2nd 124:13

130:13

< 3 >

3 28:15, 17 42:20

63:6, 18, 25 65:21

74:4 105:17

125:21 132:11	60-day 119:2	99 116:15	accepted 71:13,
136:2 157:13	61 152:14 177:5	9th 90:10 110:12	16 92:7 93:13
175:1 189:1, 1, 1,	62 9:6, 6		107:2 113:3
1	63 189:1	< A >	114:1, 2, 8, 11
30 118:13 174:15	64 154:13, 22	a.m 1:1	115:12 124:11
183:20, 22	181:17	abilities 62:1	127:16 141:8
30th 180:24	66 129:11	ability 51:17	144:2, 6
183:16 184:6, 11	6th 71:19	able 62:11 125:2	access 37:17
185:13, 24		126:5 167:15	38:3 43:7 177:21
32 188:1	< 7 >	184:8	accompanying
32.1 89:20	7 45:23 70:24	Absolutely 22:18	64:5
33 37:24	71:5 77:14 86:24	39:5 80:24 98:20	accomplish
37 55:18	132:13 190:1	120:13, 15 122:16	126:20
3710 1:1	7.4 61:8	133:16 157:10	accountability
379 61:5	70 83:18 89:3	165:14	50:7 82:22, 23
38.1 61:11	157:1	abstract 125:3	83:8 88:5 110:11,
3rd 36:21 183:24	73 188:1	abysmal 142:13	13, 16 111:4
184:5 185:14	75 42:12	148:2	146:8, 23 147:3
186:1	77 190:1	academic 26:21	149:1 189:1
	79.2 61:14	28:20, 22 34:4, 15	190:1
< 4 >		41:11 42:10, 19	accountable 49:19
4 24:1 45:22	< 8 >	43:12 48:11, 14,	accountant
48:2 65:23 86:21	8 28:4 50:23	24 49:10, 14, 19	143:24 144:9
132:12 156:9, 9	59:20 74:11 83:9	50:4 57:6, 7, 10	145:10
189:1, 1	125:22 132:13	67:12 69:11, 15	accounting 70:25
40 6:17 7:6	157:13 189:1	74:9, 12 76:10, 16	71:1, 6 88:2
403 53:16, 25	190:1	77:13 79:14 88:6	114:1 137:7
41 188:1	8.1 61:10	92:2 93:21 94:8,	144:18
44 15:13 89:8	80 16:19 59:20	11, 14 131:24	accounts 9:7
45 189:1	803-212-0012 1:1	135:22 141:17	119:9, 9, 10
47 189:1	803-400-1600 2:1	142:15 149:16, 21,	accurate 101:13
48 89:8	803-454-6504 2:1	22 153:25 158:9,	accurately 96:24
	83 165:18 182:4	17 190:1	182:12 187:1
< 5 >	190:1	academically	accusation 35:1
5 28:16 47:17	85 56:13 99:16,	106:11	accusations 35:3
67:10, 11 76:6	17	academics 69:21	accused 29:21
132:12 189:1, 1	8th 80:18	147:20	accusing 29:25
5.3 83:24 84:1		Academies 49:2	110:4
89:3 90:25	< 9 >	ACADEMY 1:1	achieve 54:25
5:00 185:12, 24	9 78:9 101:10	2:1 22:12 36:25	56:4 142:23
54 89:8	125:25 132:9, 11,	37:8 38:16 42:8	154:15
57 89:8	13 190:1	48:16, 17, 20, 21	achieved 48:18
	90 157:1	49:11, 12 54:20,	158:10
< 6 >	93 154:14, 19	21 61:11 115:6	achievement
6 63:25 64:1, 4	165:17 181:17	123:12 161:5, 10	54:19, 20 93:10,
69:9 70:8 132:12	182:3	190:1	16 128:8 142:15
189:1, 1	95 149:11	accept 45:24	150:9 151:13
60 25:14, 17, 23,	97 55:20	131:16	171:3 172:6
25 118:13	98 55:17 116:14	acceptable 153:25	173:24

achievements 77:23 78:6	adjustments 87:22 180:14	46:10 55:6	amendments 136:1
achieving 78:16	administer 24:16	135:23 142:17, 18,	amount 106:1
128:7	50:13 125:19	21 166:22 182:22	181:12
acquire 69:20	administered 58:2	agreement 27:18	analogous 53:8
Act 27:13 33:19	146:22	30:1 37:7 41:8,	analysis 119:14
45:10 60:12 68:7,	administration	16 42:6, 7 43:1, 2	127:14
9 69:7 82:23	37:22 38:1, 20	45:5 46:1, 12	analyze 69:19
144:5 148:10	78:20	47:23 54:24 55:3	anesthetics 43:22
acting 48:9	ADMINISTRATIVE	67:18 70:10 74:4,	annual 58:9
60:10, 11	1:1 33:5, 11, 17	13 75:19, 20, 21	62:25 82:23
action 125:4	49:24 64:22 65:3,	76:6, 11 93:22, 23	102:19, 20 117:3,
actions 38:5, 17,	4 125:12 174:12	105:25 107:17	6 120:22
18	175:6	121:4 135:24, 25	anonymity 160:6
active 11:24	administrator	142:20 182:13	answer 9:18 63:5
actively 72:14	11:23	agreements 56:2	69:3 81:9 90:23
actual 80:12	administrators	agrees 45:23	92:15 94:23 95:6
176:18	130:25	ahead 22:5 36:16	106:17 115:24
add 151:18	admit 26:25	60:25 63:16	166:2 167:15
added 11:19	admitting 26:23	73:18 74:17	answered 60:3
adding 43:25	27:5 87:13	86:18 94:22	100:19 144:21
addition 75:25	adopted 75:8	171:24 179:22	answers 82:14
110:16	111:15 158:16	aim 128:1	anybody 33:3
additional 44:13	advance 43:3	airplane 14:12	88:9
177:11 181:23	advanced 14:22	alarm 9:4, 6, 9	anybody's 89:7
address 8:5, 6	advancement 43:4	alarming 155:22	anyway 4:13
23:3 27:22 49:6	adversarial 13:2	aligned 182:12	91:17
50:9 70:23, 25	adversely 38:17	allegations	apart 124:25
71:25 72:24	advice 81:17	175:21, 25	APPEAL 1:1
157:9	82:3 113:15	Allendale 13:11	9:19 17:7 18:9
addressed 24:6	advise 113:19, 22	allergic 13:9	43:24 45:25
67:16	affidavit 180:21	all-or-nothing	appear 162:25
addressing 8:4	affixed 187:1	169:1, 9	APPEARANCES
63:18 182:10	afforded 25:18	allow 6:16 15:23	2:1
adequate 23:8	62:5	23:7 30:10 124:6	appears 139:15
25:20 26:4 41:22	African-American	allowed 21:21	Appellant 1:1 2:1
57:23 84:1 85:3	18:6 20:4 56:11	25:20 29:13	Appellant's 24:3
89:21 92:2 93:21	African-Americans	106:1 175:2	28:5, 16 40:16
116:23 147:23	16:7 17:23	allows 35:6	45:21 47:16
148:16 150:4	afternoon 39:13	alpha 160:7	63:25 105:18
171:13 176:15, 24	134:20 146:3	alphabet 4:18	110:6 111:5, 8, 22
adequately 26:2	agenda 51:24	alternative 79:5	114:25 173:3
66:19, 24 82:13	aggressive 57:24	alternative-based	179:12 188:1
90:2 91:12	ago 18:4 23:5	68:24 89:17	189:1
173:20	89:1 96:5 116:8	amazed 29:18	appellate 45:8
adhere 71:6	agree 35:14 53:1,	amend 27:18	apple 108:20
137:6 138:7	23 66:3 76:9	81:12	apples 172:5
144:4	151:9 166:14	amended 74:13,	application 26:20
adherence 135:1,	agreed 27:11, 15,	15	34:5, 14 41:10
21 141:8 144:3	16, 17 38:23	amendment 75:19,	47:15 71:8 98:4
		24 81:12 82:4, 8	

111:21 113:10 141:19 150:8, 10, 14 158:8 159:5 171:2 189:1, 1 applications 63:10 101:9 140:9 190:1 applied 148:24 applies 85:10 86:10 apply 69:21 108:14 177:3 appreciate 11:7 15:6 28:3 72:20 101:20 104:20 apprised 137:16 appropriate 27:21 29:5 35:17, 25 103:20 appropriately 66:19 Approved 1:1 148:24 171:6, 7 approximately 23:4 April 1:1 23:20 160:15 183:16, 18 184:6, 11 185:12, 24 187:1 arbitrarily 31:5 area 13:6, 25 17:17 18:3 78:17 149:17 165:8, 10 areas 13:20 14:21 20:19, 19 33:25 34:1 49:6 argument 30:2 arising 38:18 arrangements 38:23 arrive 143:16 arrived 98:15 arrives 71:24 art 33:13 arts 14:21 69:18 158:21 artwork 43:25 asbestos 13:10 asked 10:7 42:11, 13 46:17 55:23	64:21 66:19, 24 70:10 76:15 78:15 82:9, 10 88:9 95:4 123:16 125:6, 19 126:25 127:5 144:20 154:5 170:7 176:8, 13 asking 9:16 68:6 94:9 96:17 98:1 99:1 Assembly 33:18 35:13 asserting 82:7 assertion 70:7 assessment 42:19 55:6 59:8 125:21 126:2, 8, 11 128:10, 15 132:6 155:1 157:11 174:3, 10 assessment, 42:23 assessments 72:15, 17 assigned 14:2 assist 72:20 assistance 68:19 72:3 128:4 assistant 13:7 146:14 148:7 assume 23:11 38:11 122:11 assumption 59:14 assure 127:2, 6 at-risk 49:7 attached 24:10 attachments 64:5 105:18 189:1, 1 attempt 56:20 155:11 156:7 attempted 58:8 attendance 86:21 88:4 91:13 149:23 152:9 167:16, 18 attending 38:8 attention 4:25 6:22 39:22 89:15	attest 87:17 96:22 attested 174:9, 15 attesting 176:12 Attorney 22:10 23:10, 23 75:2 78:14, 19 85:5 attorney-client 183:6 attorneys 21:8 audit 62:14, 24 63:3, 7, 8 65:7 71:10 102:17, 21, 25 103:3, 4 104:1 110:23 117:3, 6, 15, 17, 24 118:1, 14 120:7, 22 137:4, 7, 18 138:17 139:22, 23, 25 141:14, 23 143:8 144:14 161:16 165:3, 4 176:17, 17, 18 180:11, 12 audited 119:23 auditing 71:7 auditor 117:19, 21 118:22, 24 119:16 auditors 115:11 119:20, 23 120:2 audits 103:18 104:9 105:2, 5, 13 137:7 161:17 August 26:18 27:15, 19 41:9 57:6 70:12 74:24 75:23 175:10 authority 27:5, 11 33:3 35:19 99:4 100:12, 13 122:7 authorized 15:21 135:9 137:5 automatically 180:13 available 22:16 44:6 65:14 104:16 Avenue 2:1 average 49:13 125:24 126:4	128:17 154:14, 18, 18, 21 averages 162:4 aware 25:2 80:4, 8 85:17, 20, 24 86:5 102:23 117:5, 10 121:1 150:5, 10 158:9 AYP 4:11 67:25 68:2 69:4 85:1, 2, 6, 17 86:10, 13 87:4 147:4 148:16, 19, 19, 25 149:9 157:15 168:19, 25 169:1 170:8, 23 171:9, 10 179:24 190:1 < B > back 4:23 7:17 9:23 16:20 20:17 21:9, 16 41:12 42:6, 24 44:25 55:25 59:24 62:13 67:1 70:9, 12 74:19, 23, 23 75:4 76:13 79:2 80:16 92:12 106:6, 8 112:6, 12 119:8 129:10 130:25 135:19 175:3 181:19 183:14 184:22 185:2 backbone 20:11 background 4:1 11:17 18:23 54:21 55:16 108:7 backgrounds 7:14 55:2, 9 backing 108:1 backs 20:13 backwash 4:8 bad 5:5 21:2 bag 5:19 bank 8:20 barely 7:11 23:6 42:3 156:17
---	---	--	---

bargain 116:23	173:5 188:1	78:20 89:11	177:23 178:1, 4, 7,
base 18:8 89:24	190:1, 1	108:1, 4 111:11	10, 13, 17, 21
based 26:19	B-E-N-I-T-A 41:2	112:5 119:14	179:4, 7, 14, 19
29:11 41:9 58:6	best 124:15	120:18, 19 123:24	182:25 183:4, 19
62:7, 15 71:10	127:9 174:10	129:21 135:19	188:1, 1, 1, 1, 1, 1,
74:1 78:15 82:22	bet 93:5	147:1, 17, 20	1 189:1, 1
91:15 151:15	better 6:3 40:5	174:12 183:13, 24	Box 1:1 83:14
158:24 175:11	62:11 93:1, 4	Boards 5:13	85:1
176:25	94:17 128:22	119:24	BOYD 2:1 185:20
basic 36:20	131:13 156:11	Board's 51:17	brand-new 64:20
basically 8:24	162:17 167:12	books 4:5	BRAZELL 2:1
126:15 131:10	171:9	born 10:11	28:9 29:24 33:2
132:2, 17, 25	beyond 108:10	bottom 83:14	36:19, 22 39:4, 5
basing 58:7	123:19 127:19	bought 59:9	49:21 58:16, 18
basis 26:23, 24	bidding 140:4	BOUNDS 2:1	64:3 74:5 129:1
27:6, 17 35:24	big 7:24	133:23 184:20	Brazell's 63:20
43:10 56:23, 24	biggest 77:22	BOWERS 2:1	breach 121:24
63:4 106:15	78:5	21:18 23:25 24:2	break 112:5
107:14 122:15	bill 20:6 101:24	27:7, 10, 25 28:3,	149:8
bath 7:23	binded 45:25	7, 24 29:6 32:14,	brick 56:8
bathrooms 13:17	Biology 153:19,	18, 20 35:10, 18	brief 11:17 32:15
battle 16:1, 2, 9,	20 154:3	40:4 45:20 47:11,	124:1
16 19:3	birth 164:11, 12	14 52:12 53:10	briefly 32:15, 21
bear 39:14 71:12	Bishopville 8:17	54:7, 9 56:22	136:23 139:18
beaten 175:8	11:25 49:12	57:1 64:6 72:25	146:16
becoming 44:2	bit 6:3 62:13	73:3, 16, 20, 24	bring 6:22 7:8
began 12:18, 24	96:4 132:6	77:8, 11, 16 80:25	11:4 14:25 20:16
19:13 44:10	137:11 184:7	81:1, 19 82:1, 12,	21:9 35:22 36:5,
64:14 124:12, 18	bites 108:20	17, 18 83:5, 11	11 119:24
126:1 146:11	black 19:11	92:18 93:5, 14	bringing 30:13
beginners 4:5	blacked 160:5	95:7 98:8, 13, 20,	57:17, 21
beginning 8:25	blanket 58:11	23 99:19 100:17,	brings 30:11
12:2 13:3 15:24	76:23 84:8	23 101:5, 15, 17	broader 37:14
16:20 59:3 62:11	blocking 37:17, 22	102:3, 7 103:20,	brought 12:22
78:1 128:13	BOARD 1:1 2:1	22 104:5 105:10	13:15 18:19 30:4
132:13, 14, 16	3:9, 13, 14 5:10	106:15 108:8, 13,	35:25 75:1
behalf 3:15	9:19 13:3 14:10	19 109:6, 10	107:13
100:5, 6	15:14 17:7 18:9	111:3, 20 114:20,	brouhaha 178:23
behavior 14:18	21:3 23:11, 13, 15	23 116:7 121:16	Bryant 6:12, 12,
believe 3:11 4:19	26:12 29:25 30:6,	130:4 133:6	13, 15 10:15, 17
23:5 35:15 52:14	8, 19 32:21 35:7,	134:2, 14, 19	65:15 102:16
71:23 74:3 76:15	19 36:2, 22 37:1	136:13, 20 137:25	133:21 134:7
150:22 155:9	38:9, 19 41:7, 7	139:12, 14 141:24	budget 119:13
166:19 171:8	42:25 44:6 46:22	144:20 145:6, 12,	building 14:3
believes 33:24	47:5 50:20 51:5,	19 146:2 147:10,	37:25 43:22, 25
bell 103:16	7, 9, 13, 23 52:6,	14 159:18, 21, 22	44:1, 1, 8 45:1
benchmark 152:1	20 54:14, 18	160:3, 9 161:2, 8	78:11
Benita 12:16	55:11, 22 56:1	166:1 169:24	built 20:13
40:20 41:2 58:17	58:16 60:18, 18,	170:2, 6 171:16,	bus 19:1
136:16 139:7	20, 24 71:20	19 172:19, 23	

buses 9:2 19:2 business 99:10 Butch 24:1 189:1 butting 110:2 < C > cafeteria 13:21 37:20 38:2 Calhoun 49:9 56:12 61:12 call 3:4 21:24 24:23 32:1, 4 36:17 39:16, 17, 21 40:14, 17 71:24 73:5 102:3, 5 112:14 122:23 134:15 145:19 169:22 173:1 called 66:16 88:11 155:3, 21 174:1 176:2 calling 32:12 calls 56:22 Calvert 49:1 capacities 12:1 capacity 11:21 113:11 164:24 card 67:11 88:7, 8, 10 cards 82:23 157:23 158:3 181:22 care 99:17 CARLYLE 2:1 CAROLINA 1:1, 1, 1, 1 2:1, 1, 1 6:20, 21 15:13 17:16 37:3 38:20 39:23 42:9 43:9, 11, 18 44:14, 15 45:9, 12 48:4, 6, 25 49:1, 2, 20 53:14, 15 61:4, 7, 9, 10 79:20, 24 82:24 85:10 86:10 92:22 102:25 115:15 134:25 137:2 159:25 187:1, 1, 1 CARROLL 2:1	case 18:16 25:4, 5, 6, 22 29:23, 24 30:7 31:22 156:21 categories 70:2, 3 category 172:7 cause 187:1, 1 caution 138:6, 6, 12 139:16, 21 Center 62:9 Central 92:22 certain 16:24 20:19, 19 38:22 106:1, 12 certainly 19:2 136:6 155:7 CERTIFICATE 187:1 189:1 Certified 1:1 97:13 certify 97:14 187:1, 1 chains 13:16 chair 71:20 CHAIRMAN 2:1 32:14, 20 52:12 53:10 64:7 72:25 109:6 134:14 challenge 35:16 124:12 chance 7:21 30:18 79:9 107:10 175:24 179:9 change 118:10, 13 126:7 127:19, 21 128:19, 25, 25 129:24 changed 27:2 118:8 changes 48:15 49:25 55:25 125:1, 15 changing 118:11 181:16 Chapin 187:1 chapter 129:12 characterization 32:24 54:12	characterize 138:1, 4, 5 charge 30:11, 13 50:9 charged 40:6 109:24 charges 30:4 Charleston 48:16 CHARTER 1:1, 1 2:1, 1 9:1 15:17, 20 16:3, 8, 10 17:9, 12 18:6, 12 19:5, 13, 14, 24 20:3, 11, 22, 24 26:19 27:12, 18 30:9 31:7 33:7, 19, 21, 23 34:2, 5, 7, 14 35:7, 9, 11 36:25 37:3, 8 38:16, 21, 24 39:23 41:5, 10 42:8, 9 43:18 45:8, 9, 12 46:3, 12, 16 47:3, 4, 7, 15, 19, 22 48:4, 7, 18, 23 49:10, 10, 20 50:6, 8, 9, 15, 17 52:8 56:21 61:7, 13 69:10, 14 70:11, 13, 13, 15 71:6, 8 74:13, 15, 16, 18, 22 75:5, 6, 8, 15, 20, 21, 24, 25 76:3, 5, 6, 11 79:3 93:22 107:12 108:2 111:14, 21 115:16 116:9, 13 121:3 127:25 131:25 132:1, 24 133:4, 5 134:25 135:4, 7, 8, 17, 18, 24 137:5 138:8 141:19 142:6, 17 144:3, 4, 5 148:3, 10 150:5, 6, 8, 9, 14 158:8, 14, 17 159:3 166:22 171:2, 14 175:5 189:1, 1	charters 61:3 107:20 135:2, 21 checking 131:12 chief 9:11 child 8:5 13:8 68:7, 9 69:2, 6 84:3, 7, 9 89:22 90:4 92:13, 16 97:10 99:12, 14, 22 100:1, 5, 6, 14 176:24 children 7:23 16:14 18:18 19:14 42:15, 15 55:20 56:6 57:16, 22 59:5, 13, 15 62:2, 12 68:12, 17, 22, 24 72:21 89:15 90:5 92:14, 17 105:24 174:11, 16, 22 175:7 child's 97:18 143:5 choice 35:11 36:4 126:13 choose 36:6 chosen 49:8 Christ 16:21 Church 16:21 Circuit 25:1, 3 cite 16:17 64:14 cited 13:12 46:19 56:5, 9 61:14 71:15, 18 citizens 19:12 City 8:17 49:11 56:10 123:11 civic 11:24 69:23 Civil 31:10 34:25 Clarendon 92:24 clarified 144:18 163:8 clarify 163:4 class 5:1 6:2 9:24, 25, 25 10:1, 5, 13, 23 91:11, 14 153:17 163:5 classes 80:7 81:4 152:12, 15
---	---	---	--

classroom 5:2 7:13 43:7	182:15 183:14 184:22	comparing 54:19 82:20 165:11 172:5, 6, 9	34:17 52:4
classrooms 4:24 37:24 124:22 129:5	comes 86:6 95:1 99:23	comparison 158:5 161:23 162:23 164:10	concurrent 176:24 concurrently 116:19
clean 64:21	comfortable 10:22, 23	competitive 140:4	condemned 13:4, 8 14:2
cleaned 64:22	coming 4:1, 3 5:5 9:16 12:20 18:7 19:5 42:3, 4 55:9 57:24 58:24 87:4 90:5 91:11, 13 107:19 124:24 131:11 150:1, 2 174:16, 22	compile 147:1	condition 50:15
clear 33:9 34:8, 10, 16 35:11 52:25 119:21 140:4 142:21	commencing 1:1 25:11	complain 109:17, 21	conditions 38:22
clearly 12:6 17:6 24:19, 19 25:17 30:20 33:1, 2 53:25 75:13 169:8	commended 177:18	complete 62:19 70:11	conductive 129:6
Cleo 37:2	comment 63:13	compliance 115:14, 18, 21 134:24 141:6 148:10	conduct 82:6
clerical 165:19	commentary 85:5	complied 33:25 67:4 103:11 122:4	conducted 50:14 165:5
clients 27:10, 14 114:3 116:9	comments 3:2, 5, 8 31:14, 15 177:2	comply 58:15 65:24 66:3, 5 67:3 96:13 103:4, 5, 25	conducts 165:4
close 16:19 18:10 33:15 49:23 120:1 137:4	Commission 187:1	complying 122:4	conferences 127:12
closing 49:16	committed 126:22	component 64:14 68:22 69:6 87:24 88:7, 8	confirm 76:4 84:21 96:12 155:11
code 26:25 29:20 31:10 137:2	committee 113:9 150:19	composition 19:9	confirmed 140:17
cold 131:12	common 164:19	comprehend 4:15	conflict 119:21
collaboratively 78:19	commonly 154:25 155:3	comprehensive 44:4 48:15 137:20	confrontations 14:10
colleague 12:16	commonplace 152:24	compromise 50:4	confusion 53:19
collectively 134:8	communicate 69:17 136:24, 25	compromised 38:6	Congratulations 93:1
College 49:11 92:7, 14 93:13 107:2 123:11	communicating 94:16 95:5, 13, 21 135:16 158:20	computers 69:18 158:22	conjunction 102:12 115:7, 10
colleges 92:8, 9	communities 9:21	conceded 48:24	Connection 49:2 61:11
Columbia 1:1, 1 2:1, 1	community 7:6 9:15 17:21 18:8 50:21 84:10	concept 50:6	consensus 23:12, 15
combine 93:5	comparable 67:19	concern 38:10 64:12 71:25 106:4 124:11	consider 11:7 52:21 92:1 165:19
come 3:24 5:24 7:11, 11, 13, 18 8:9, 21 12:16, 18 15:9 55:2, 14, 20 62:2, 3 68:18 75:4 79:4, 15 94:18, 24 101:12 107:20 110:14, 19 133:17 149:24 174:22 178:25	compare 20:24 60:5 157:3, 20, 23 167:5, 8	concerns 49:7 182:10	consideration 9:20 24:11
	compared 19:9 61:3 70:20 161:17 167:7, 22	concluded 25:11 186:6	considerations 53:20
		conclusion 14:25	considered 11:1 72:10 121:23 151:25 156:10 168:25
			consistent 149:24 156:23
			consistently 67:14 87:11
			consists 47:21
			constantly 17:23 29:18

constitute 30:6	convenience 50:5	counsel 183:14	Courtney 145:20,
constituted 135:25	conventions 24:15	185:5 187:1	22 146:7 159:24
constitutes 75:19	conversations	counselor 80:9	188:1 189:1
Constitution	125:3	count 64:17	court-sponsored
29:20 30:10	cooperation 37:5	counterpart 55:15	37:7
Constitutional	coordination	62:4	cover 105:12, 17
30:23 81:8	146:20	counties 17:1	189:1, 1
Constitutionality	coordinator 99:25	59:17	covers 154:9
35:20	coordinators	country 10:9 69:1	CPA 117:19, 25
consultant 43:15,	146:21	counts 152:4	118:8 145:7, 8
17, 20 57:18 72:7	copied 43:18	County 3:16 4:4	craft 116:19
consultation	copies 44:6	11:18, 25 12:5	crafted 115:10
119:14	71:21 104:15	13:13 14:17	create 15:16
consulted 23:10	copy 24:10 27:22	15:19, 22 16:25	16:5 107:21
Consulting 71:2	47:7 65:5, 12	17:18 18:14, 24	creation 119:13
113:1	108:2 111:15	36:24 37:6, 9, 16	credentials 144:18
contact 119:15,	160:24	38:18, 24 41:19,	credible 68:4
21 120:1 155:19	corner 83:14 85:2	25 47:5, 22 66:11	credit 176:24
contacted 155:12	Corps 116:14	87:6, 8, 16 89:14,	credits 79:19
contain 88:5	correct 22:21	19 108:4 129:20	80:2 162:24, 25
contained 76:10	35:3 47:5, 23	135:9, 10 150:25	163:2, 12, 15, 20,
131:25 158:8	65:21 67:8, 21	174:15 187:1	23 181:6, 12
159:2 187:1	70:21 74:10, 14	couple 12:19	Criminal 29:20
contest 87:20	76:7 85:22 90:13	32:22 83:12	32:25 33:1, 9, 14
91:22, 23	95:17 116:10	101:18 104:6	34:9, 22, 24 35:5
contingent 55:15	119:19 126:14	130:5 136:3	81:7 82:5
continuance	131:14 140:19	141:25 164:14	criminally 33:4
23:18, 24	142:7, 11 143:11	coupled 141:14	criteria 60:17
continuation 23:3,	144:10 148:4, 5,	course 21:25	CROSS-EXAMINAT
9	10, 11 150:10, 25	69:21 80:5, 6, 6,	ION 73:22 108:10,
continue 26:3	151:1, 3, 6 152:9,	14, 19 81:3 83:16,	16 116:5 130:2
37:4 38:21 125:9	10 156:22 159:4	17, 19 84:4 89:9	142:2 166:7
152:20 153:9	160:1, 2 161:11	90:9, 10, 20 91:6,	188:1, 1, 1, 1, 1
184:1	162:14, 16 163:24	8, 16 104:12	cross-examine
continued 127:8	164:3, 7 166:13,	147:24 151:23, 24	73:4, 7, 13, 15, 19
189:1	23 167:4 168:3	152:5, 13, 22	crowded 4:24
continuing 34:19,	169:12 170:12, 13	153:2, 3, 5, 11	cumulative 52:16
21 52:24 54:15	172:8 187:1	154:21, 22 156:24,	53:22 54:1, 3, 6
continuously 94:4	correcting 176:11	25 157:5 168:8	curious 107:23
130:16	correction 74:24	171:6	current 75:2
contract 46:11	correctly 74:7	courses 91:5	88:22, 23 114:3
contracted 113:12	76:17 148:6	152:1, 2 163:3	148:20, 25 171:9
contractor 119:6,	corresponded	165:15, 21	curriculum 50:10
7	67:1 130:22	coursework	72:10, 13, 14
contradicts 140:25	correspondence	154:15, 18	123:15 126:10
Control 114:21,	43:17 76:19	COURT 1:1	132:2, 6
24 115:5 189:1	130:22	15:22, 23 19:22	Cynthia 1:1
controls 114:12	costs 42:23 43:19	24:15 25:1, 3	187:1, 1
115:13	Council 8:18	35:24 53:7, 8, 24	< D >
		190:1	

Dana 134:15 136:17 139:8 188:1 190:1, 1 danger 53:18 dash 7:25 data 15:18 42:11 43:15 46:24 55:6 58:19, 21 59:11 67:7, 11 80:12, 14, 19 82:22 83:8 84:11 87:12, 25 88:2, 6 90:1 94:1 115:21 146:24, 25 147:4, 18 160:22 167:8, 14 168:4, 7 172:11, 12 174:10, 18, 20 175:10 176:12, 22, 23, 25 181:9, 21 182:2 190:1 date 25:25 103:24 143:16 dated 21:19 24:1 25:17 26:15 28:4, 16 50:23 63:25 64:4 74:11 105:17 136:7, 16 139:4, 7 176:4 189:1, 1, 1, 1, 1, 1 190:1, 1 dates 164:11, 12 David 97:19, 21 Davis 120:6, 12, 20 day 16:18 20:25 79:14, 15 106:6 129:10, 10 130:21 131:5 176:4 187:1 days 23:7 25:14, 17, 23, 25 72:11 118:13 130:24 164:14 183:21, 22 deadline 65:24 66:3, 21, 21 103:6, 6, 7, 8, 12, 25 117:6 137:21 138:23 139:24 140:13 143:20, 21	deadlines 103:4 deal 9:14 17:2, 20 dealing 5:16 7:15 deals 123:21 131:11 dealt 7:16 Dear 37:1 death 4:21 debrief 124:25 December 110:12 113:9, 10, 13 127:5 131:8 137:4, 22 decided 9:11 12:17 125:13 128:12 147:10 decision 7:8 34:16 45:3 60:19 120:18 140:5 184:13 decisions 185:5 declined 67:23 defend 10:9 deficiencies 63:8 139:25 141:13 deficiency 140:7 149:18 define 69:19 defined 150:8 151:8 171:1, 14 defining 107:15 definitely 14:8 definition 166:17 degree 12:12 26:21 28:19, 22 41:11 delay 53:21 delaying 110:4 delegation 14:7 deleted 4:12 demand 15:22 demand 126:7 demographic 5:21 demonstrate 26:20 28:19 41:11 43:3 69:22 demonstrated 159:1 demonstration	127:13 Dennis 37:25 deny 75:22 departed 138:6 department 9:8 12:5 13:1 68:5 82:24 84:17 104:1 110:25 117:7 128:14 129:19 137:3, 21 155:13, 20 161:21 163:9 165:5 Department's 68:21 depends 91:21 deprived 3:22 42:3 68:23 derailed 7:4 describe 142:8 165:12 DESCRIPTION 189:1 190:1 designated 141:21 designed 50:1 63:11 140:2, 22 designing 169:7 desired 124:20 desires 115:9 destruction 45:4 details 25:14, 24 26:11 determination 109:23 determine 30:20 35:7 determined 140:11 152:1 determines 30:3 determining 30:8 develop 19:7 128:11 developers 20:10 developing 48:12 49:5 development 43:8 121:10 123:15, 20 125:7 140:15 died 93:7, 9 difference 129:2	different 24:23, 24 50:18 55:2 68:23 82:14 96:16, 18 98:19 147:22, 25 149:8, 20 151:25 162:3, 21 167:8 differently 68:16 difficulties 17:13 19:16 dig 149:7 Dillon 3:16 DINKINS 1:1 2:1 6:6, 7 21:20 22:12 29:4 36:25 37:8 38:16 41:5 113:8 129:15 133:22, 23 160:17 169:22 173:14 181:24, 25 182:9 D-I-N-K-I-N-S 41:3 Dinkins-Robinson 12:16 27:21 40:18, 20 41:2 136:11, 17 137:1 139:8 161:15 173:5 188:1 190:1, 1 Dinkins-Robinson's 155:9 DIRECT 40:23 64:17 112:19 113:11 123:4 134:17 145:25 173:8 188:1, 1, 1, 1, 1 directed 135:19 Director 41:6 85:14 146:8 160:13 disagree 53:4 65:20 70:7 141:3 discipline 69:22 discredit 170:9 discredited 68:2 85:7 169:12 discrepancies 161:25 162:2 164:11 165:13, 20 175:15, 16, 18
---	---	---	---

discrepancy 164:5, 7 175:14 discretion 34:6 discuss 21:7 80:19 discussed 23:16 discussion 3:10 26:8 81:21 82:19 135:15 160:16 dispute 100:3 disregarded 170:23 distractors 126:13 DISTRICT 1:1, 1 2:1, 1 4:9 8:25 9:1, 5 11:22 12:7, 8, 25 13:12, 13, 24 14:17 15:25 16:4, 12 18:13, 14, 25 19:2, 4, 5 26:17 27:16 33:23 34:2, 7 35:12 36:24 37:4, 6, 9, 16 38:10, 19, 21, 24 39:23 41:13, 14 42:1, 2, 9, 21 43:9, 19 44:15 45:13, 25 48:5, 7, 10 49:13 51:12 55:7, 16 56:15, 16 57:5, 18 59:6 60:7 61:4 62:15 64:4, 21, 24 65:18, 24 66:9 67:14 72:3 77:24 78:11, 13 79:8 87:9 88:10 93:19 96:12 102:25 103:3 104:2, 11 105:2 106:14, 17 107:13, 19, 20, 25 121:3 130:8 131:14, 21 134:25 135:24 137:3, 17 138:11, 25 142:17 146:8, 15 147:16 150:25 151:2 158:11 160:14 168:19 174:18, 24 175:3, 9 182:6, 17	district-approved 43:14 districts 43:4 82:21 157:24 district's 54:18 district-wide 70:4 doctrine 34:24 document 64:8 66:15 69:13 71:24 82:21, 25 84:8 89:13 94:10 95:9 96:20 110:9, 13, 18 111:16 114:15 115:3, 7 147:2 159:12, 23 160:11, 23 161:14 162:6 177:21, 25 178:12 179:1, 6, 9 182:20, 22 documentary 21:25 documentation 63:9 84:21 118:3 140:8 documented 140:4 documents 51:2, 11 52:14, 15, 18, 22 54:1, 10 75:1 96:8, 10, 13, 18 98:14, 15, 17 100:7 111:2 160:12, 14 161:13 176:21 180:17 183:6 184:7 185:13, 22 doing 36:14 44:11 58:18 60:15 91:13, 14 94:17 106:25 107:4, 5 127:13, 13 128:14 131:13 146:9 Domine 125:20 DON 2:1 donated 44:3 door 14:1 doorknobs 14:1 dormant 13:22 double 59:19 doubt 38:9	Dr 11:16 12:12 28:9 29:24 33:2 36:19, 22 37:2 39:4 58:16, 18 59:2 63:20 64:3 68:5, 13 70:13 74:5 129:1 drafted 171:14 dragging 109:20 drastically 90:6 174:16 Drive 1:1 10:7, 8 drop 78:24 79:4 dropouts 177:14 DSS 65:5 dual 146:19 due 41:22 66:7 156:11 duly 24:16 40:20 112:16 123:1 145:22 173:6 duplicative 52:16 54:1 duration 41:20, 24 duties 72:12 134:22 140:3 < E > ear 8:18 earlier 85:4 94:10 107:8 110:14 133:19 135:15 141:3 147:3 152:8 153:14 163:8 174:9 177:9 early 18:17 65:15, 19 131:10 earn 155:4 earned 106:23 154:14 163:19, 22 164:2 165:17 easily 151:7 eating 37:21 E-cademy 49:1 61:12 economic 5:6, 21 economically 3:21 5:22 68:23	ed 41:24 68:21 84:5, 15, 18 Edgewood 2:1 education 6:18 8:3 10:3 38:14 41:22 50:2 57:23 68:6 82:22, 24 104:1 110:25 117:7 165:6 educational 4:12 11:11 68:4 72:7 educationally 3:18 7:10 effect 55:12 76:7 127:22 132:22 148:19 effective 51:16 effectively 69:17, 19, 22 80:13 94:16 95:5, 13, 21 135:16 158:21, 22 efficiently 80:13 effort 16:22 131:19 efforts 5:11 108:1 egregious 37:12 eight 20:12 92:5, 6 107:1 113:13 either 8:25 9:14 26:25 40:3 74:3 97:24 ELA 155:5 elaborate 57:20 170:17 173:22 elementary 80:16 eligible 100:1 Elijah 6:6 Elliott 120:6, 12, 20 e-mail 67:1 Emma 6:12 emotionally 3:20 emphasis 50:7 employed 11:19 employee 12:8 15:4 employees 13:24 empty 37:24 en 131:4
--	---	--	--

encountered 37:15	establishing 29:19	156:10	153:1, 6 156:18,
ended 18:22	ESTON 134:7	excerpt 94:9	25
167:25 168:2	evaluation 58:9	excluded 53:17	experienced 11:9
185:7	102:19, 20 166:14	exclusionary	expert 97:23, 24
enforces 115:23	events 187:1	13:18	98:1 101:4
engage 118:2	eventually 11:2	Excuse 14:24	174:20, 24
119:23, 25 124:23	59:18	60:8 63:23 80:21	expertise 165:8,
engaged 117:25	everybody 32:9	81:18 103:17	10
120:4, 5	107:5 133:18	177:20	expires 187:1
engagement	everybody's 66:11	excused. 112:2	explain 27:4
119:17, 18	EVERYWORD 1:1	122:21 133:10	explained 82:10,
enhance 41:17	eviction 66:10	145:15 172:21	11, 13
Ennis 6:13, 14	evidence 21:25	183:2	expressed 174:12
134:7	30:18 33:24 34:2,	execute 116:20	expressly 33:7
enrolled 106:2	12, 18 40:16	117:25	183:5
124:19 152:2, 12,	52:21 53:15, 15,	executive 21:6	extended 37:19
15, 22 153:2, 5, 20	16, 22 57:19	41:6 183:13	122:4
enter 27:16	63:21, 24 108:7,	184:18 185:5	extension 45:4
39:19, 20 41:8	13, 23 109:3	exempt 144:16	103:10 121:23
63:21, 23 64:2	134:13 173:3	Exhibit 23:22	122:3, 8, 9, 10, 12
179:11	187:1 188:1, 1	24:3 28:5, 15, 17	138:2, 14, 15, 21
entered 26:17	189:1	45:19, 21 47:16	extensive 62:8
40:10 51:18	Exactly 138:13,	48:2 64:1 72:4, 4,	extent 141:5
70:14 77:11	20, 23 166:21	5 74:4 75:9, 18,	extra 68:18 147:9
139:13	exam 80:5, 6	23 76:6 77:14	extreme 138:6
entire 41:19	81:3 90:9, 10	83:9 101:10	extremely 13:8
50:10 65:7 78:14	91:16 152:3, 4, 13,	105:18 110:6	60:16
101:25 113:17	18, 23 153:3, 5, 12,	111:5, 9, 22	eyes 51:13
126:4 154:16	15 154:22 155:3	114:19, 25 123:23	
157:2 175:4	157:14	136:14, 18 139:9	< F >
entitled 161:9	EXAMINATION	159:16 161:6	face 49:16
environment	40:23 104:23	179:13, 25	facilitator 60:13
19:11	112:19 121:19	exhibits 54:10	fact 9:3 27:17
EOC 83:15, 15	123:4 134:17	136:1 189:1	29:11 31:25
88:25 147:4	145:4, 25 170:4,	190:1	56:23, 25 77:20
151:19, 20, 23	25 173:8 188:1, 1,	exist 71:11 164:7	85:6 107:25
152:16 153:22	1, 1, 1, 1, 1, 1, 1	171:10	119:22 138:10
154:2, 3, 8, 9, 11,	189:1	existed 16:11	141:16 165:14
13, 19 170:24	examples 162:3	existence 17:11	faculty 5:12 31:9
177:3 179:24	Exams 83:15, 16,	101:25 120:9	fail 71:13 91:15
190:1	17, 19 91:6	exit 155:3	156:3
error 165:20	151:23, 24 153:11	exonerate 143:13	failed 34:14
especially 12:22	168:8	expectation 7:7	65:23 67:12 68:8,
18:7 37:12	exasperated 11:3	26:19 41:9 50:5	9 84:10 87:2
125:15	exceed 61:19, 22	expectations 7:5	140:12, 22 150:7
ESQUIRE 2:1, 1, 1	Excellence 62:9	8:14 127:7	153:12 156:6
essential 69:21	excellent 102:1	expenditure 66:1	171:1, 13
essentially 172:5	exception 121:6	experience	failing 4:24 71:6,
	exceptional	118:12 131:20	15 144:13

failure 63:9, 10 139:21 140:1, 8	Fifth 80:18 81:5, 12, 15 82:4, 8	112:16 123:1 125:9 129:8, 18	form 64:18, 23, 25 65:6, 11, 13 97:10
fair 51:23 60:24 77:21, 21 85:7, 9	fight 18:12 107:24 108:4	132:17, 18 136:7 145:22 156:4	98:12, 22, 24 99:5, 8, 12, 13, 15, 24
86:9 117:1 120:11 130:8	fighting 15:16, 19 19:21, 23, 24	158:10, 16, 22 166:10 174:4	100:2, 16, 17, 21 115:8 182:14
131:20 138:1, 16 151:12	fighths 18:18	187:1, 1	format 24:6, 7, 25 25:2
Fairfield 17:18	figure 59:16	fiscal 71:14, 16, 21 113:3, 4 114:2,	formed 107:20
fairly 51:23 149:13	file 109:18	9, 12, 21, 24 115:5, 12, 13 137:5	forming 52:3
fairness 34:23	fill 98:12, 22 99:13, 24 100:2	141:9 144:2, 6 189:1	forms 65:19 96:15, 17
fall 12:22 157:16	filled 97:16 99:15	fiscally 122:15	forth 5:12, 22 33:20 67:1 71:7
falling 132:17	filling 98:24	five 27:1, 2 42:4 44:23 55:21	93:22 130:25 131:19 132:24
Falls 49:10 56:12 61:12	final 103:5, 7 152:4 156:7	57:25 112:6 127:21 151:25	138:8
familiar 45:11 51:12 82:25	finally 98:15 139:22 156:16	153:13	fortunate 126:21 129:16
106:5 114:15 131:24 132:23	finances 102:15	flawed 36:10	fortunately 14:9
147:5 170:14 171:5	financial 63:11 101:23 102:10	flight 14:12	forward 59:14 133:17 180:15
families 106:1	113:12, 16 116:13, 17, 23 119:12, 13	Florence 129:20	forwarded 64:24 176:21 180:16
family 7:14 8:6, 7 93:12 96:16, 19	121:2 137:7 140:2, 23 141:21	flow 28:11	fought 16:9
97:2, 11, 15 101:9 190:1	find 19:6 46:22 60:15 148:12	focus 78:15 80:17 124:13	found 13:5 33:13, 14 124:20, 21
far 72:1, 3 124:25 167:6	finding 64:17	132:5	135:6 147:17 175:14
168:14	findings 125:6 137:15	focused 170:23	founding 15:14 29:19 41:7
fashion 103:3 120:24 121:7, 12	finds 16:3 33:23 34:2	focusing 124:18	fountains 13:17
140:20	fine 22:2 31:20 32:11 35:18	folks 118:9	four 3:2 13:23 33:24, 25 48:11,
fathers 29:19	36:16 54:13 60:9 86:11 134:5	follow 21:19 108:23 109:2	13 56:7 58:11 76:23, 25 86:25
fax 66:17	finish 73:6 94:21	followed 127:4	96:16, 18, 25 97:7 118:10 141:7
February 64:15 65:15, 19 139:5	fired 65:3 80:9	following 22:5 24:15 36:7, 8, 9	173:25
143:7	firm 71:2 117:19, 25 118:2	follows 40:21 112:17 123:2	Francis 62:9
federal 68:8 135:3 149:1	firms 118:8, 13	145:23 173:6	free 38:14 61:24 63:10 64:13, 16,
Federally 1:1	First 1:1 3:11 14:14 15:15	follow-up 124:25 125:5 139:15	18 65:11, 13, 18 96:4, 12, 14 99:7,
feed 9:9 79:14	16:18 22:10, 13 23:2, 19, 20 24:5	154:10	11, 14, 22 100:1 101:8 140:9
feedback 125:11 127:11	25:3, 5, 19 26:22 29:7 31:19 32:24	food 65:5, 8	190:1
feel 10:22, 23, 25 11:2 23:7 26:1	40:20 51:10 54:5 58:1, 2, 4 62:23	force 76:6 131:16	Freedom 22:14 105:1
29:14, 16 38:5	87:6 93:11 94:15, 19, 24 104:8	forcibly 37:19	friend 12:15
feeling 3:25 5:23		foreclosure 39:24	
felt 16:11		foreign 10:15	
		foreshadowed 39:24	
		foresight 29:18	
		forever 106:8	
		forget 14:15	

front 13:25 76:13 80:12 100:18 118:3 full 76:6 85:21 full-time 85:15 fully 44:18 187:1 function 71:1 fundamentally 30:14, 22 51:4 funded 41:21 90:2 funding 41:23, 23, 24 89:21 funds 44:3, 17, 18 65:25 121:10 140:15 furnished 25:15, 24 further 22:23 24:14 31:13 104:5 116:3 121:16 122:17 128:3 129:25 133:7, 8 141:24 145:2, 12 166:1 171:4, 16, 17 172:17, 19 182:24 183:9 187:1	Gillespie 97:19, 21 99:16 101:11 give 4:21 9:17 11:16 14:14 18:16 31:1, 15 32:7 46:12 97:9 98:1 104:18 128:15 139:4 147:11 171:21 179:5 180:25 181:11 182:20 given 19:3 42:19 44:12, 16 57:17 58:1 85:21 90:4 107:18 122:10 127:1 151:10, 24 160:12 180:15 gives 174:10 183:23 184:6 giving 3:13 58:4 81:17 82:3 127:11 131:11 glad 39:19 82:16 84:22 92:11 176:22 gladly 32:4 glazing 51:14 global 69:20 go 4:23 8:19 9:4, 12 11:2 14:4 20:17 22:5 29:4 36:16 51:1 55:25 58:20 59:24 60:25 61:6 63:16 65:5 68:20 70:9 73:18 74:17 76:2 86:18 94:22 123:16, 18 130:18 131:4, 19 148:13 170:22 171:24 179:22 181:19 183:13 184:17 goal 107:12 127:24 goals 55:4 69:12, 15, 25 70:17, 18 94:8, 11, 14 110:14 131:25 132:23 135:12, 13, 19 142:5 150:13,	17 151:11, 17 159:1, 2 166:15 167:23 182:21 God 6:3 godsend 72:19 goes 31:9 69:5, 5 143:7 going 4:11, 13 5:3 6:8 8:14 9:4, 21 16:25 17:2 21:18 24:12 26:5 27:20 30:9 31:4, 23 32:1 40:7, 9 41:12 42:6 44:25 51:3, 7, 18, 22 52:7, 23 54:14 60:13 66:17 67:18, 19 68:16 70:14, 23, 24 81:5 83:12, 25 86:16 91:14 96:9 102:3, 5 104:17 108:10 109:21 136:21 150:24 159:13, 14 176:5 181:17 Good 6:7 11:14 15:11 21:1 24:9 46:25 134:20 146:3 149:13 157:18 166:25 167:9, 17, 19 177:15 184:2 gotten 4:9 186:1 governance 122:7 governed 53:14 governing 50:20 government 68:8 GPAs 162:4, 7, 15 grace 175:2 gracefully 174:25 grade 4:10 14:22 42:5, 21 50:10 55:14, 21 57:25 62:3 80:18 90:19, 19 94:19, 25 95:2 132:12, 13, 19, 20 152:5 162:4 graders 90:11 grades 88:18 89:6 91:6, 24, 25	125:21 157:13, 16 165:15, 21 181:16 gradual 131:3 gradually 127:9 graduate 61:6 79:18, 19 80:2 89:10 91:4 93:10 155:3, 5 163:12 181:13 graduated 92:6 105:23 106:20 155:11 163:7, 22 graduating 90:9 163:5 graduation 17:15 50:12 59:22 61:2, 8, 15, 21 77:18, 23 155:7 176:1, 6, 9, 18 grand 30:3, 3, 6, 7 33:10 grandchildren 99:18 grandparents 8:8 Grant 44:18 granted 5:15 85:21, 25 103:9 121:23 122:2, 8 148:21, 23 grassroots 8:16 gratefully 174:24 great 17:2, 20 19:3 84:24 148:15 178:23 greater 3:25 16:13 great-grandparents 7:17 grew 16:22 grocery 8:20 ground 31:12 40:8 grounds 25:20 30:24 43:23 67:6 71:9, 11 141:7 group 16:6, 9 30:19 125:16 groups 18:5
--	--	--	---

grow 19:7	happen 91:7	107:20 126:5, 19	House 20:5
growing 18:5	118:16, 25 162:9	129:23 130:9	64:21, 22
grown 3:16	happened 10:7	131:21 146:24, 25	housed 79:11
10:10 16:18	118:18, 21 119:2	helped 129:23	HSAP 90:22 92:4
growth 16:17	happening 9:17	helping 7:3 59:6	147:24 154:23, 25
26:21 28:20, 22	17:16	hereunto 187:1	155:8, 11, 13, 20
41:11 42:10, 14	happens 8:10	Hey 138:17	157:6 168:8
43:5 55:8 59:4,	happy 73:5	Hi 134:21 146:4	170:24 177:8, 9
13, 15 68:11 69:2	106:17	hide 178:16, 18	179:24 190:1
84:6 126:5	harassed 175:5	high 10:18 13:7	hundred 17:15
127:23 128:17, 20	hard 16:4 68:14,	26:20 28:19, 21	59:23 60:4 61:15
142:24 143:1, 3, 5	15 78:23 126:19	41:11 48:21 78:6	77:17, 23 79:18
167:24 168:1	128:1, 21 129:4,	79:1, 19 80:16	91:1 106:9
172:15	21	83:15 91:3, 4	hurdles 66:14
guardian 160:5	harder 128:23	142:23, 24 143:1	
guess 30:4	Hartsville 12:20	155:1 156:20	<I>
184:16	haste 38:13	159:15, 25 175:11,	IDA 41:23
guidance 80:9	hate 7:15	12 177:5, 7 190:1	ideas 127:16
101:16	hats 99:9	Higher 2:1 37:8	identical 162:11
guide 127:4	haven 19:6	56:17 115:6	identification.
guilty 33:14, 14	hear 35:24 51:5,	161:5, 10 162:18,	24:4 28:6, 17
guts 119:9	8 52:8, 9 60:21	20 177:11 190:1	45:22 47:17 64:1
	75:16 102:8	highest 156:10	77:15 83:10
<H>	151:21 184:18	highly 156:14	101:10 105:19
half 55:14 62:3	185:9	Hill 48:17	110:7 111:6, 9, 23
87:15 149:5, 6	heard 77:20	hire 123:16	115:1 136:19
hall 9:4 13:16	82:13, 19 85:4, 5	history 11:17	139:10 159:17
Hampton 2:1	102:17 140:16	108:3	161:7 179:13
hand 147:7	148:18 150:12	hit 115:11	180:1
160:23 187:1	151:24 160:16	hitting 68:14, 15	identified 150:9
handed 159:23	166:10 173:11	hold 15:17 26:6	160:7
180:9	175:20 176:17	57:1 106:8	identify 24:19
handing 25:7	HEARING 1:1	169:24 180:24	illegalities 15:4
45:16 77:6 82:25	6:9, 16 23:4 24:6,	185:11	immediately 39:2
97:3 110:10	7, 9, 22 25:19	home 6:20 19:6	impact 7:10
111:16 114:16	26:3 29:2, 8, 13	66:16 67:2	11:10
115:4 136:8	30:17, 21, 23	homeless 99:23	impaired 13:12
147:8 159:14	31:17 39:12 44:5,	homes 5:5	14:17
179:7 180:5	7 45:6 46:2, 6, 7,	honest 127:23	implement 43:21
Handing. 27:25	8, 21 52:9 62:14	158:12	44:19 48:14
47:13 75:11	80:23 155:12	honestly 132:21	implemented
handle 32:8	179:12 183:11	162:18	44:23
handles 155:20	185:7, 8 189:1	honorary 12:12	implementing
hands-on 5:2	hearings 20:8	hope 38:25	72:14
handwriting 97:23,	25:13 147:19	123:18	implication 181:14
24 98:19 101:3	held 1:1 25:13	hostile 41:18	implies 33:13
Haney 11:13, 14,	49:18	107:19, 21, 22	imply 34:22, 23
16 15:1, 3 133:21	he'll 63:21	hot 38:3	35:4
134:8	help 4:1 5:2, 8	hours 163:11	implying 181:16
	11:5, 5 50:1		

importance 31:6 50:3	135:14 142:5 166:25 168:18	instructional 126:18	127:9
important 78:1 85:18	170:11 180:4, 20 182:19	instructionally 125:18 126:16	introduction 109:7
impose 31:4	indicating 123:23	instructions 140:5	invited 12:15
impossible 126:3	indications 49:3	instructor 18:21	involved 13:24 117:14 119:11
impressive 48:18	indicators 127:4	integrate 69:20 126:9	involvement 12:4
impropriety 181:15	individual 42:13, 14 43:5, 13 55:8 59:4, 13, 15 68:11 69:2 70:5 72:2 84:3, 7, 12 91:22, 24 143:3, 5 167:23 168:12, 13, 16 169:20 172:15	integrated 127:17	ironic 36:18
improve 44:1 48:12 49:22	individually 42:16 72:15 174:21	intelligence 5:22	ironically 13:5 46:22
improvement 5:9 40:2 44:18 49:15 123:15	individuals 16:6 18:5	intend 34:22	irrelevant 175:13
improvements 44:2, 8 45:1 49:4	inform 126:2, 8	intended 13:18 14:6	issue 16:2 46:11 85:17 87:24
improving 43:21, 24	informal 34:20 73:2, 10 108:11, 17, 22, 22, 25	intensive 55:10	issued 30:8 45:12 46:13, 15 137:24 141:16
inappropriate 52:17 54:2	informally 24:23	interaction 120:12	issues 53:19 87:10, 13, 14, 19, 20, 22 138:11 162:11 176:10, 11
incapable 106:11	information 15:18 22:15, 15 88:10 99:4, 14 105:1 121:2 129:1 133:4 140:18 155:16, 18 158:2 162:10 163:10 176:15 181:25	interest 38:12 39:1 119:22	item 57:4 63:6, 18 65:21, 23 67:10, 10 69:9 70:8, 24, 24 71:5 127:14
incidents 37:10, 13	inherently 24:23	interested 187:1	items 126:11, 13
include 44:8 72:12 114:12 177:22, 24	initial 103:25 135:25	interesting 164:16	its 15:24 16:1 34:13 37:15 53:17 64:4 69:10, 11 71:5 115:8 116:22 120:8 121:2, 3 137:4, 21 141:19 158:10
included 31:16 37:17 71:19 83:1	initially 9:6 27:1 47:4	interfere 127:17	
includes 43:22 50:20	initiative 129:18	intermediate 4:6 37:25	
including 55:17, 23 64:22 68:5 104:9	Injustice 175:5	internal 114:12, 21, 24 115:5, 13 189:1	
income 172:8	input 115:20 127:16 181:19	Internet 37:18	
incorporated 75:20	inside 43:25	interpret 142:14	
incorrect 126:14	insofar 67:13	interpretation 151:11 153:24 166:20	
increase 182:16	installation 42:22	interrupting 73:8	
increased 59:19 68:1 126:6	instance 87:15	interruption 28:8 152:6	
independent 63:7 117:18, 21 137:18 139:21, 23, 25 141:14, 22, 23 143:8 144:14	instances 109:1	introduce 23:21 28:1, 13, 14 47:9 60:25 71:23 83:5 101:5 103:18 104:8 105:8, 15 108:6 109:4, 5 111:1 139:4 147:11 159:13, 14, 18 161:2 178:7, 8, 11, 13, 19 179:3, 15, 22	
INDEX 2:1	instruction 125:16 126:2, 8 129:13 132:2, 7 156:12	introduced 27:14 69:14 123:22 147:2 178:3 181:5	
indicate 28:21, 23 144:11 166:11		introducing 52:13	
indicated 26:16 28:18 74:8			<J> James 160:13 January 46:23, 24 55:11, 23 64:15 111:11 128:16 136:7 138:2 143:8, 9 job 47:1 60:23 85:15 102:1 116:16, 17, 18 134:22 146:6, 10, 17 149:13, 24 157:18 167:9, 12 John 24:8 JOHNNY 2:1 22:11 24:2 189:1

Johnny's 93:6	29:1 52:6 58:7	10, 10 58:5 99:6	127:11
JR 2:1	72:16 76:25	115:16 138:9	lessons 127:13
Judge 24:8, 13	77:25 80:20 81:6,	141:10 144:16	lets 127:20
35:2 60:10 84:8	9, 14, 25 84:13, 17	150:6 184:14	letter 21:19 22:3
judges 35:8	86:11, 11, 12, 13	lawful 26:23	23:20, 21, 23 24:1,
July 146:11	92:8, 19 99:25	laws 17:25 18:2	5 25:8, 16 26:14,
jump 156:15, 19,	106:5, 6, 10	50:16 137:2	15 27:14, 18, 23
20	109:12 113:3	lawyer 19:23, 23,	28:4, 8, 10, 16, 18
jumped 156:8	117:12 118:8, 11,	23 81:16 82:3	30:8 36:22 39:4,
jumping 66:13	20 119:4, 20	lead 72:10	6, 22 53:11 57:5,
jumps 156:7	120:5, 16 121:5,	leader 102:9	20 58:11 63:14,
junior 13:7	14 122:6, 8	leaders 7:12	15, 17, 19, 20, 25
jury 30:3, 3, 6, 7,	127:20 128:3	10:9, 10 137:16	64:2, 15 71:19, 21
12, 13 33:10	131:10 132:6, 25	leadership 11:25	72:5 74:9, 13
53:20	135:12 145:7	20:5 49:5 129:20	76:20, 21, 23 77:6,
justice 15:6	148:18 150:16	164:22	13 94:3 105:4, 12,
	153:19 154:2, 4	leads 153:12	17 123:24 124:2,
< K >	164:4 165:7	learned 10:17	7 136:8, 16, 22
K-12 78:16	173:18 177:1, 4, 5	91:18 99:9	137:24 138:1, 5,
KARL 2:1 24:1	179:17 185:22	129:14	10, 11, 14, 15
189:1	knowing 8:7	Learning 2:1	139:3, 7, 11, 16, 18,
KATHLEEN 2:1	55:8 57:23	36:25 37:8 115:6	20 141:17 143:6,
keep 51:1 60:13,	124:17 126:3	127:18 129:6, 6, 7	10 189:1, 1, 1, 1, 1,
23 66:13 96:2	175:3 176:14, 16,	161:5, 10 190:1	1 190:1, 1, 1
112:7 156:4	16	led 155:7	letters 136:3
160:22 183:17	knowledge 69:21	Lee 4:4 11:17	level 4:10 5:2
185:9	148:22 169:18	12:5 13:13 14:17	55:1 56:4 66:9,
Kelley-Moser 71:2	known 113:8	15:18, 22 16:25	14 72:18, 21
102:13 113:1	knows 68:8	18:14, 24 36:23	80:16, 16 94:25
kids 4:9 7:8, 9,	< L >	37:5, 9, 16 38:18,	106:12 132:12, 12,
10, 13, 15, 20 9:2,	lack 16:17 29:9	24 41:19, 25 47:4,	14, 21 156:8, 9, 9,
9, 15 10:21 11:1	37:4 38:18 41:22	21 66:10 87:6, 8,	9, 17 172:6, 7
17:4, 5 18:25	lady 166:10	16 89:14, 19	levels 14:23 42:5
41:20 42:4 58:22	Lake 49:11 56:10	92:24 107:24	50:10 55:14, 21
77:25 78:24 79:2	123:11	108:4 135:9, 9	57:25 62:4 95:3
87:15 89:16	Landmark 1:1	150:25 174:14	Lexington 187:1
128:16 132:15	landscaping 43:23	Left 68:7, 9 69:7	library 13:21
149:24	language 14:21	85:2 118:23	license 50:16
killing 4:22	language. 10:15	120:17	licensed 117:19,
kind 14:12 124:9	large 49:8	legal 16:2 21:7	21
156:19 164:23	156:15 187:1, 1	81:17 82:3	life 11:24
kinds 9:13	largely 85:6	183:14 185:4	lifestyle 5:7
knew 9:24 17:3,	169:12	legislation 56:17	likewise 38:12
5 78:11, 22	late 98:14 115:20	legislative 14:7	48:23
131:18 175:9, 10	129:5	legislators 18:1	limit 31:5, 10
know 5:20 6:25	Latin 10:17	legitimacy 98:16	limited 43:23
7:14, 25 8:2, 8, 8	LAURA 2:1	legitimate 122:11	78:12 108:14
10:2, 11, 19, 20	LAW 1:1 27:2, 12	lengthy 125:5	124:5
13:23 20:6, 21	33:7 34:6 36:7, 9,	lesson 126:24	limiting 39:10
22:3 23:10 28:12			

line 108:9	looked 78:14, 21	130:6 131:2	161:6 179:12, 25
LINZIE 2:1	88:25 93:23 94:1	133:6 139:19	189:1 190:1
list 37:14	132:1 167:7, 14	main 13:20 65:3	MARY 1:1 2:1
listed 3:5	181:9 182:3	maintain 63:9, 11	22:11 36:24 37:7
Listen 95:17	looking 12:24	79:1 116:16, 21	38:16 41:4
listening 15:7	41:12 42:6 56:17	140:1, 8, 22	match 162:7
74:17 184:1	68:16 83:14	141:10, 20	163:3, 3 164:13
lists 68:22	84:11 89:6, 19, 19	maintained	165:15, 16
literally 64:20, 21	141:5, 8 155:8	101:23 102:10	material 34:5
180:6	158:13	116:23, 25	109:7 121:24
little 6:3 10:19	looks 15:9	major 127:24	materially 34:13
62:13 96:4, 5	loopholes 181:20	majority 55:20	math 155:5
132:6 137:11	lose 8:11 126:20	102:15 157:15	156:2 158:21
184:6	loss 9:17	making 5:9 35:1	mathematics
live 15:12 50:14	lost 126:22	38:3 42:16 48:22	69:18 146:13
lives 10:6	lot 4:3, 6, 22 5:16	49:25 72:12 95:6,	matter 31:6
living 29:25	8:3, 19 16:22	22 128:7, 9, 24	33:15 81:8 101:2
LLP 2:1	18:2 77:20 96:9	129:5 140:6	matters 21:7
lobby 17:25	99:9 104:10	149:13 157:18	38:13 108:15
local 9:5	118:9, 13 122:6, 7	182:11	max 59:1
location 13:5	124:20 132:19	management	mayor 8:18
locks 14:1	135:15 155:6	63:11 71:14, 21	McLAURIN 2:1
long 9:10 10:3	157:20 161:25	101:23 102:11	3:1 6:5, 11, 14
62:15 73:25	lottery 65:25	113:4, 16 114:9	11:12 14:24 15:2,
107:25 108:3	121:10 140:14	115:12 116:17, 24	8 20:14 21:5, 15
116:12 124:7	love 96:23 101:12	119:13 140:2, 23	22:18, 22 23:1, 14
130:11 146:9	low 3:22 50:5	141:9, 21 144:7	26:6, 10 27:9
longer 37:13 38:3	89:10 90:6	mandated 59:7	30:25 31:18, 20,
look 10:4 16:15,	124:17 174:16	manner 124:1	23 32:6, 16 36:2,
24 17:12 19:8, 9,	lower 9:25 67:14	MAP 42:11, 19	11, 16 39:7, 11, 17
15 20:2, 17 21:1,	162:19, 20	46:20 55:6 58:19,	40:3, 14 50:25
1 42:14 47:11	lowest 61:5, 9	21, 25 174:9, 18	51:9 52:5, 11, 23,
58:19, 21 59:3, 4,	lunch 18:19, 19,	MAPS 59:10	25 53:5, 9 54:8,
12, 14 68:11 69:2	25 61:25 63:10	march 18:23	13 57:2 60:2, 9,
75:4 81:23, 24	64:13, 16, 18, 23,	21:20 23:6 25:17	12, 18, 22 73:12
82:16 84:2, 6, 7, 8,	24 65:11, 13, 19	26:15 57:5 58:3	80:24 104:13, 17,
12, 22 85:1 86:13,	96:5, 14, 15 97:9	64:4	20 105:9 108:21
19 87:11 89:11,	99:8, 11, 15, 22	marched 18:24	109:1, 8, 17, 24
25 91:12 96:10	100:1	Marine 116:14	110:5 112:4, 12
97:3 98:3, 9, 25	lunches 140:10	Marion 62:9	122:18 124:8
99:1 100:25		mark 104:18	133:16, 20, 25
132:9, 10 136:4	< M >	marked 23:22	137:10, 14 145:17
138:10 147:23, 24,	ma'am 47:19	24:2 28:4, 16	166:4 171:21, 24
24 148:16, 17	73:25 74:20	45:18, 21 47:16	172:25 173:13
149:2, 4, 12, 15	75:10, 22 76:1, 15	63:25 77:9, 13	178:24 180:23
157:22 158:2, 16	77:9, 17 81:7, 16	83:8 101:9	183:8, 10, 22
168:7 175:18, 24	83:12 86:16	105:18 110:6	184:2, 12, 17, 21
176:23 177:21	93:15, 17 94:2	111:5, 8, 21	185:2, 16, 21, 25
179:9 180:3	95:18 96:3	114:18, 25 136:18	McLeod 24:8, 13
184:7	101:18 103:23	139:9 159:16	meal 37:21

meals 38:4 101:8 190:1	38:9 44:6 50:21 51:7, 10 52:7, 21 58:16 147:17	19:9, 19 21:4 23:4 26:17, 20 27:5 28:19 29:25 30:9 41:10 42:8, 22 43:7, 14, 17, 19, 20 44:4 45:5, 23 49:12 55:19 56:13 57:5 64:13 65:23 67:12 69:10 71:5 75:19 83:8, 18 107:13 113:7, 20 114:6 115:6 117:5, 20 122:14 123:11, 13 124:12 130:9, 16 131:7, 21 135:4 137:6, 23 138:11, 11 143:7 146:18 147:16, 20 148:1 149:2, 4, 12, 19, 24 150:19 152:12, 15 157:18 161:5, 10 166:22, 25 167:13 168:1 169:11 171:8 172:11, 12 179:12 189:1 190:1, 1	months 12:17 62:16, 17, 19 92:2 93:19 113:14 143:18, 19 164:15 month's 173:20 morning 6:7 11:14 15:11 74:2 mortar 56:8 Moser 73:5, 14 101:25 112:14, 16, 24, 25 116:8 141:4 144:24 145:7, 8 188:1 M-O-S-E-R 112:24 Moser's 140:25 Mosley 70:25 71:23 mother 93:7, 8 motion 80:22 184:18 185:9, 11 motivational 124:22 move 21:6 63:6 72:18 109:9 126:3 184:19 Moved 14:6 moving 5:18 25:4 51:1 57:4 59:14 60:23 67:10 69:1, 9 72:21 78:10, 11 95:2 109:13, 15 112:7 159:9 multiple 108:19 115:11 126:13 156:2
mean 35:4 53:2 64:20 86:25 96:22 98:21 110:12 113:4 115:21 128:25 132:18 162:2, 9 169:14 178:5 182:5	memo 176:3, 5 Memorandum 42:7 70:10 142:20 Memorandums 47:23 memory 160:18 mentioned 6:23 111:14 116:8 153:13 157:14, 17 met 67:25 86:24 122:12, 13 142:25 144:13, 14 149:4, 5, 22 159:1 middle 9:25 58:3 129:16 132:13, 14 mid-year 128:13 Mills 145:20, 22 146:7 160:10 161:9 170:7 174:19 188:1 189:1 mind 72:22 97:3 103:19 131:23 minimum 163:14 181:5 Minister 3:23 minute 17:24 26:6 31:1 63:7 89:1 94:21 minutes 3:7 21:21 31:5, 11 39:15 112:6 174:15 misleading 53:20 missed 87:1 182:4 missing 65:7 133:21 mistaken 62:10 mixed 49:3 mixture 5:20 MLD 3:15 4:2, 7 5:8 6:4 7:9 8:5 12:4, 15 15:15, 19, 20, 23, 24 16:15 17:8, 14 18:3, 24	MLD's 63:7 67:11 131:25 150:14 157:15 158:3 mobile 16:20 model 17:11 44:11, 19, 24 59:18 modern 106:10 modify 115:9 moment 116:8 Monday 125:13 127:5 Monetarily 122:14 money 17:19 monitor 38:22 55:7 monitored 50:14 month 23:5, 6 124:13 125:9 180:25 monthly 43:10 59:13	name 6:11 24:21 41:1 62:10 92:10 97:3, 20 100:4 112:22 123:7, 8 146:5, 7 names 14:14 89:7 96:9 160:5, 6 nature 147:5 nearly 24:24 necessary 10:8 60:3 128:25
meaningful 124:23 means 10:18 28:23 87:3 95:25 meant 57:9 measurable 55:5 135:13 142:7, 10 166:13, 17 measure 142:11 144:9, 11 166:18 172:14 measured 70:4, 5 149:3, 9, 20 167:21 measurement 166:19, 21 174:8 measurements 147:22 Measures 42:18 measuring 169:11 media 14:8, 9 medicine 131:12 meet 5:4 34:14 50:11 71:13, 15 94:5 114:2, 8 126:17 140:12 150:7 169:1, 2 171:13 MEETING 1:1 29:10 40:4 42:25 46:8 55:12 58:15 60:13 69:11 111:12 151:17 168:10 169:8 183:24 184:4 185:15 meetings 6:25 8:12 147:19 meets 116:1, 2 members 3:14 15:14 32:20 37:1			

need 3:18 5:8 12:7 13:23 14:24 18:13 21:5, 8 26:1 31:2, 24 32:6 40:14 41:22 51:5, 8 52:9 58:25 68:18 73:6 89:15 104:17 120:19 123:14 131:18 137:12, 17 138:17, 22 173:21 181:12 183:12 needed 57:12 58:13 80:23 125:11, 15 154:17 needless 53:21 needs 49:7 60:20 65:12 115:9 126:17 183:13 negative 19:15 neither 187:1 never 14:15 41:23 70:14 71:18 74:15, 19 75:6, 8 88:14 108:24, 25 109:13 111:15 133:4, 5 156:20 175:23, 23 176:17 182:22 Nevertheless 44:19 new 5:11, 12 6:18 12:24 118:24 128:22 143:15 156:12 169:6 171:5 174:5 176:18 news 68:15 night 130:21 176:6 nine 11:20 92:6, 7 107:1 155:10, 13 163:6 ninth 12:2, 3 107:3, 4 Nodding. 31:19 normal 37:23 normally 55:13 87:11 180:8	181:11 norms 9:21, 22 North 6:20 20:2 Notary 1:1 187:1, 1 note 39:11 141:17 164:16 noted 38:2 49:4 139:25 141:13 notes 127:10 178:1 179:12 187:1 189:1 notice 58:4 66:10 76:16 77:3 162:22 173:20 noticed 6:24 165:11 notified 86:2, 7 November 36:21 103:15 117:7 137:19 143:21, 23 null 69:7, 8 Number 23:22 24:3, 22 26:16 28:5, 11, 12, 15, 17 42:16, 18 43:6 45:22, 23 47:17 48:2 57:4 61:24 63:18 64:1 65:21, 23 67:10, 10, 25 69:9 70:8 72:12 74:4 77:14 83:9 86:21 101:10 105:18 110:6 111:5, 9, 22 114:25 136:2, 18 139:9 149:2, 3 159:16 161:7 163:2 168:9 173:11 177:6 179:13, 25 numbers 5:1 49:8 86:14 88:25 147:5 152:9 162:24, 25 169:7 171:12 numerous 14:10 38:5 55:22 165:20 174:13	Nutshell 119:8 < O > oath 173:15 oaths 24:17 object 25:8, 19 30:22 31:3, 12 32:24 39:9, 11 52:11, 13, 22 54:11 64:7 72:25 73:3, 8 100:16 106:15 108:9 109:6, 10 134:3 171:19 179:16 objected 101:2 108:24, 25 109:5, 14 objection 23:25 26:12 29:7, 11 45:20 47:14 56:22 57:2 64:6, 9 73:16 77:10 80:25 83:6, 7 98:6, 10 101:7 103:21 105:10 108:8 109:18 111:3, 20 114:23 134:2 136:15 139:6 144:20 159:20 161:4 179:23 182:9 184:21 185:21 objections 23:17 objective 87:2 149:16, 22 169:2 objectives 55:4 67:25 86:24 87:4 110:15 149:2, 6, 8, 9, 12, 19, 21 150:14, 17 158:7, 9, 14, 16 169:7 172:4 182:21 observe 37:4 observed 12:14, 21 14:13 15:3 24:15 observing 125:4 127:11 obtain 141:23	obtained 137:18 obvious 158:3 obviously 81:16 178:15 occasions 38:5 55:22 174:13 October 118:4 128:11 130:20, 24 187:1 offered 50:11 offhand 106:25 office 12:8, 11 13:6, 25 59:3 63:20 68:13 72:8, 20 86:1 104:4 119:8 123:10, 14, 19 127:25 officers 15:15 Official 161:5, 10 162:5 164:17, 24 176:9, 13 181:7, 10, 12 182:7 187:1 190:1 officially 133:14 158:15 Oh 120:13 Okay 6:11 23:19 26:14 27:20 32:9 36:11 39:14, 25 40:13 41:8 47:2 50:24 52:24 58:5 60:19 62:13 65:20 69:9 73:12 74:12 75:14, 17 76:4, 9, 13, 21 77:6, 8 78:4 79:12 82:2 83:3, 23, 25 84:25 86:9, 13, 15, 18, 20, 25 88:3, 8, 25 90:12, 15, 21 95:19 96:20 97:12, 20 98:10 99:3, 20 100:19 101:5 102:3, 14, 21 103:12 106:4, 22 107:7 110:5, 9 116:16, 22 117:1, 5 120:16, 22 122:18 124:8
--	---	---	--

130:11 131:6, 24
132:4, 8 140:25
141:19 142:16
143:23 144:17
146:9, 16 147:2,
13 148:16 150:5,
24 151:18 153:18
154:7 159:2, 9, 11
160:3, 8, 23
161:23 163:25
164:4 165:9, 9, 25
166:16 167:20
170:1, 20 172:25
173:16 174:7
178:24 179:5
180:19 183:8
184:15 185:21
old 99:17
once 7:8 12:20
58:20 109:14
119:25 124:24
126:6 146:25
one-on-one
127:12
ones 5:17 20:1
59:9 90:7 93:11
158:18 163:13
one-shot 123:21
131:10
ongoing 43:9
123:20 130:22
open 15:22
21:16 48:22
129:3 150:19
180:24 183:15, 17
184:22 185:2, 9,
12
opening 21:22
22:6, 8, 20 28:25
31:11 32:15, 18,
23 34:19 39:8, 10
188:1, 1
opens 166:19
operate 166:23
operating 47:3, 20
75:15 122:14
operation 8:16
15:15 18:21
50:22
operations 102:16

opinion 98:2
144:12, 25 154:20
158:24
opportunities 62:6
opportunity 7:21
11:15 16:13
44:12, 17 57:17
58:1 73:4, 7
128:20
oranges 172:5
order 3:4 9:9
25:25 41:16
44:18 58:6, 7
108:2 110:6
112:12 125:17
137:19 154:18
155:2, 5 156:2
169:1
ordered 24:14
organization 71:13
original 47:21
75:24 93:22
103:12 113:8
115:8 143:20
158:17
originally 180:15
181:8
outcome 30:19, 21
outcomes 48:25
outlined 24:8, 25
139:20 144:5
outreach 11:6
outside 43:15
117:18, 20
outweighed 53:18
overall 19:8
55:16 141:15
162:24
oversee 146:20

< P >

p.m 185:12
p.m. 186:6
P.O 1:1
pace 60:14, 23
pacing 127:4
page 129:11
188:1
paid 131:9

Palmetto 48:16,
20 49:1 54:20
61:11 157:11
173:24
papers 65:7
paperwork 66:9,
22, 24 104:11
par 5:6, 14
pardon 28:7
152:6
parent 99:12, 23
parents 7:8 11:3
50:20 65:5, 8
97:18, 19
part 14:16 15:5
16:8 19:4 24:10
31:16, 21 35:23
37:5, 13 52:18, 19
70:23 72:5 87:24
94:7 105:25
123:23 139:13
161:15 165:2
166:22
participate 148:1
participating
91:12
participation
86:21 87:12
149:10, 12
particular 16:9, 12
17:7 18:1, 3, 3, 16
25:22 41:13
46:14 49:6 56:1,
15 62:6 64:12
78:23 79:8 84:14
87:24 91:21
96:16, 18 106:19
153:17 175:15
particularly 13:20
61:18 68:13
87:19 88:4 90:20
parties 27:24
142:21
partner 79:6
93:25
partnering 78:18
93:24 175:17
party 25:4 187:1
pass 17:25 20:6
35:20 56:3 58:1,

2, 4 147:24
151:19 155:2, 11
156:2, 16 157:9,
10, 11, 14, 19
159:7 168:8
170:24 173:23
174:2 177:10, 17
179:24 190:1
passed 18:2
89:20 90:22 92:3
133:23, 25 138:23
153:15 155:21
177:17
passing 20:19
153:13 155:4
156:9, 16
pastor 15:13
pastored 3:19
patience 101:19
Patricia 72:6
122:24 123:1, 8
188:1
pattern 7:2
pay 42:22 43:19
payable 119:9, 10
payroll 119:10
pays 131:6
PE 18:21
peers 93:12
penalty 4:22
pending 187:1
people 3:2 7:3
8:7, 14, 19, 21
9:22 10:4, 5, 24
16:23 31:24 32:2
51:24 68:5 182:2
percent 17:15
42:12 55:17, 18,
20 56:13 59:23
60:4 61:8, 10, 12,
14, 15 77:18, 23
79:18 83:18, 20
84:1, 1 89:3, 20
90:25, 25, 25 91:1
149:11 152:4
153:13 154:21
155:7
percentage 83:18,
21, 23 91:9 95:10
182:16

perform 62:1 72:9 90:5 117:21 122:3 124:3 149:17	115:25 116:25 125:1	position 85:13, 21 170:15	prepare 23:7 25:18 26:2, 4 43:21 44:4
performance 14:19 50:4, 22 79:14 88:6 142:12 150:3	placed 38:6 49:14 64:9	positive 49:3	prepared 150:16 180:17
performance, 49:19	placement 132:19	possible 22:17 24:25 38:13 59:2 81:3 181:18	prepares 180:7
performed 117:15, 17	plan 110:11, 16, 19, 21, 22 111:7, 11 180:23 189:1	poverty 7:18 16:25 17:3 55:12, 17, 18, 18 56:11, 13, 21 62:3, 12 68:17 157:21 158:1, 6	preparing 158:12
performing 69:24 106:11	planes 10:7	poverty-based 55:9	present 21:21 24:17 30:18 46:23 47:3 52:10 55:24 59:24 62:24
performs 71:1 72:12	Planning 111:7 113:9 150:19 189:1	poverty-stricken 56:10 58:12 76:24, 25	presentation 34:17 53:22
period 12:13 21:6 27:1, 3 37:19 47:21 175:2	plans 48:12 49:5 126:23, 24 127:2, 12	power 58:14 88:11	presented 57:19 147:18
permission 122:2	plant 13:4	PowerPoint 59:25	presenting 10:24 60:21
person 22:24 29:22 30:10 34:25 87:17 88:15 109:19, 20 144:24 155:19 176:8, 21 180:7 181:23	plead 80:18 81:5, 14	PowerSchool 87:5, 7, 8, 8, 9, 9, 13, 14, 17, 18, 19, 22, 25 88:1, 12, 15, 17, 19 160:15, 17, 18, 19, 20 161:20 162:7, 10 163:2, 10, 14 176:10 181:8, 21 182:8	Presently 15:12 47:20 123:10
personal 39:1 69:23	Please 11:7 22:6 27:4 41:1 48:3 63:24 69:15 75:10 77:9 95:18 112:23 123:7 130:5 136:5, 14 145:20 146:5 147:16 166:2	practice 125:3	presents 30:2
personalized 4:25	pledged 128:17	practices 124:16, 19, 21 126:25 127:9	press 39:22 45:11, 21 48:1 189:1
personally 84:13	pledge 7:1 8:13	prayer 7:1	pretty 63:21 84:19, 20 86:2 88:17 89:13
persons 41:7	Plenty 156:3	praying 69:5	prevents 27:13
person's 98:25 100:4	plus 99:17 136:1	preceded 28:9, 10	previous 14:11 65:15 95:16 120:2 139:20 147:19, 19 150:12 163:21
pertains 115:13	point 4:17, 17 10:6, 21 12:9, 23 14:6 21:18 35:22 36:3, 21 53:3 55:19 69:20 80:21 132:20 162:4	predetermined 30:19	previously 59:8 69:14 77:5 94:25 173:6 176:10
Ph.D 12:10, 11 49:21	pointed 135:14	predominantly 19:11 56:11	Price 101:8 190:1
physical 38:7 104:15	police 9:8, 11	prefer 170:19	primarily 56:6 87:4
pick 79:15	policies 106:16	prejudice 53:19 109:15	primary 4:5
piece 128:10, 15 176:2	policy 106:13	prelims 8:12	principal 13:7 146:14 148:7
ping-pong 171:20	poor 16:23 17:5 20:1 157:20 158:4, 5	premises 13:9	printed 160:14
pitch 18:11	poorest 17:1	preparation 23:8 25:21 29:9 38:4 178:3	prior 58:4 118:6, 13 146:12, 13 170:25 175:20, 21
place 5:11 19:6 29:13 30:17, 23 46:6 57:5 71:17 72:13 107:9	poorly 157:5	Preparatory 48:17, 21 49:11 123:12	privacy 160:4
	population 59:19		private 16:22
	portion 29:2 155:5 156:2 185:8		privilege 183:6
			pro 8:18

probably 10:6 13:10 18:23 160:24	produced 115:7 120:23	119:19 125:11, 14 127:25	pushed 19:2 177:14
probation 45:24 48:14 49:14 56:9 57:6, 7, 10 76:16 77:3, 13 107:15 141:16, 17 190:1	product 6:17	provided 12:25 29:21 38:15 41:21 45:9 55:11 121:11, 25 126:10 140:5 177:11 190:1	put 5:11, 19 19:13, 19 25:4, 5, 6 48:13 51:3 76:13 119:20 131:19 135:17 179:14 182:1, 4
probationary 26:17, 24 27:6, 17 41:15 47:21 107:14	production 118:14	provision 26:24 29:12, 12, 14, 17 30:16 33:20 35:15 43:2 84:16 98:11 144:15	putting 68:10
probative 53:17	Professional 1:1 39:1 43:7 50:16 65:25 121:9 140:14 187:1, 1	Provost 49:10 61:9	< Q >
problem 49:6 101:21 151:8 180:12, 13 183:23	proficient 59:1	PUBLIC 1:1, 1, 1 2:1, 1 3:1, 5 4:4 12:6 20:21 31:14, 15 37:11 38:7, 14, 15, 21 42:9 43:9, 11, 18 49:18, 20 50:6, 8, 15, 17, 18 79:2, 3 102:24 115:15 133:14, 18 134:25 137:8 147:25 160:21 187:1, 1	qualified 24:16 113:2 144:24
problematic 38:4	progress 34:4, 15 42:16, 19 43:12, 13 45:2 55:5, 24 67:12, 21 72:1 84:1 85:3 92:2 93:21 95:6, 22 106:7 128:7, 10, 18 142:14 147:23 148:17 150:4, 7 151:13, 17 168:13 171:1, 13	progressed 168:15	qualifies 144:1
problems 5:18 8:24 37:14 38:11 39:2 69:19 87:23	progressing 70:1 94:18 95:14, 22, 25	publicly 13:14	quality 38:14 44:9 45:2 50:2 129:17
procedure 21:19 33:5, 6 35:6 53:12, 13 67:5 73:10 83:2 108:12	progression 142:22, 22	published 82:23 146:25 162:4	quarter 132:17
procedures 71:7 114:12, 22, 24 115:6 137:7 189:1	prominent 50:3	pull 59:25 176:25	question 17:23 19:18, 20 49:25 58:10 60:3 66:2 69:3 75:13, 22 76:16 78:3 89:9 90:23, 24 91:2 92:15 94:12, 23 95:15, 16, 17 97:22 98:5, 9, 16 100:20, 24 106:18 120:23 122:1 148:19 153:16 154:10 159:10 167:21 171:18, 22
proceed 22:13 24:22 35:1 53:7 169:19	promise 136:21	pulled 180:6	questioning 108:9 109:11 150:13
proceeding 25:9 29:8 32:25 33:1, 9, 11 34:9, 21, 23, 25 35:5 47:25 52:17 53:8, 25 54:5 81:7 108:18 136:2 186:6	promoted 14:22 106:20	pulling 89:15, 18	questions 3:10 17:22 74:1 83:13 86:17 101:19 104:5, 7 121:17 129:11 130:5 133:7 141:24, 25 145:2, 13 166:2, 2, 5 169:19, 20 170:8 171:16 182:25
proceedings 21:13 53:7 112:10 184:25 187:1	promotion 106:13	pupil 128:8 150:8 151:13 171:2	quick 130:5 147:7
process 4:12 22:4 32:25 33:6, 18, 20 53:13 64:25 106:6	proper 117:25	purchase 42:11	quickly 69:6 145:19 170:2 182:5
processing 119:10	properly 41:20, 21 63:11 140:1, 3, 22 141:20 146:22	purchasing 59:11 140:5	quite 49:4 120:7
produce 96:13 102:25 103:2, 4	prosecute 33:3	purpose 165:7 185:16, 18	quorum 22:20
	prosecutor 29:22 30:2, 5 33:12 60:11	purposes 88:4 157:15 160:4	
	protect 160:6	pursuant 33:19	
	protects 82:5		
	proud 61:18		
	prove 9:7		
	provide 26:3 43:7, 10, 15, 16		

quote-unquote 175:7 quoting 175:11	126:9 128:20, 24 129:2, 16 149:7 152:9 Realtime 1:1 REAR 2:1 reason 29:16 44:14 153:4 184:10 reasonable 25:14, 24 34:15 67:12, 21 106:7 128:7 150:7 151:11, 13 153:24 171:1 reasoning 66:8 reasons 59:7 122:11 169:4, 5, 5 177:10 rebuttal 104:6 169:23 171:17 173:1, 3 188:1 recall 46:15 73:9, 10, 14 74:7 76:17, 18 81:25 103:13 106:25 163:21 recalling 73:17 receivable 119:10 receive 44:13, 17 77:3 155:15 176:14 received 12:10 41:23 66:6, 10 76:23 77:1 89:20, 21 161:18, 20 185:13 receiving 76:18 recess 21:12 112:9 184:24 recites 10:15 recognize 15:20 recognized 48:11 recognizes 45:5 48:5 recommendation 43:16 recommendations 119:20 recommended 59:10 reconvene 185:14	record 17:12 22:1 23:21 24:12 27:15, 23 28:2 31:16, 18, 22 33:8 34:10 35:23 36:14 39:19 40:11 41:1 43:6 44:25 47:10 48:3 51:3, 3, 6, 18, 19 52:14, 19, 19 54:7, 8, 10 58:20 60:16 64:9 65:10 77:12 80:23 83:6 94:7 99:21 101:6 104:10 105:16 111:2, 19 112:22 123:7 139:4, 13 146:5 147:3 159:13, 14, 19 161:3 177:22, 25 179:11, 18, 20, 22 180:24 183:5, 7, 17 185:4, 9, 12 record. 26:8 81:21 records 43:8 181:4 RECROSS-EXAMIN ATION 172:1 189:1 REDIRECT 104:23 108:14 121:19 145:4 169:25 170:4 188:1, 1, 1 189:1 redo 32:4 reduced 63:10 64:13, 16, 18 65:11, 13, 19 96:5, 12, 14 99:7, 11, 15, 22 100:1 101:8 140:10 190:1 Reed 134:15, 20 136:3, 17, 21 137:10 139:8 140:21 188:1 190:1, 1 Reed's 166:14 REESE 2:1	refer 102:17 147:8 154:25 reference 74:3 105:21 referenced 74:9 referred 162:5 163:18 referring 76:5 143:9 156:6 172:9 reflect 61:25 168:13, 16 reflecting 126:25 reflection 91:17, 18 refresh 160:18 refusal 37:11 refusing 23:17 regard 109:11 182:16 regarding 36:24 37:11 38:11 50:16 53:11 55:12 64:16 69:3 88:10 151:19 180:21 regardless 90:24 regards 113:16 Registered 1:1 80:7 81:4 187:1, 1 registrar 164:22 regular 37:21 62:4 79:2 regulations 20:20 135:3 rehearing 24:14 reject 26:5, 12 rejected 23:12 relate 174:7 related 43:20 63:8 124:15 129:1 187:1 relates 106:18 146:17 relationship 12:5, 14, 21 13:19 37:15 41:4 relative 43:4
--	--	--	---

143:2, 2	reports 43:10	response 64:11	revoked 33:21
relayed 55:22	172:14	105:12	35:8, 9 141:7
release 39:22	represent 22:11	responsibilities	150:6
45:11, 15, 21 48:1,	representative	69:23 119:5, 6	RICE 2:1
3 54:17, 18, 18	14:8	146:17	rich 70:21
126:11 189:1	Representing 2:1,	responsibility	Richardson 37:2
released 51:11	1 173:19	49:22 51:10, 21	richer 55:15 62:4
relented 12:17	request 22:14, 15	responsible 50:22	ride 9:3
relevance 98:7,	23:12, 17 26:3, 5,	79:13 129:7	right 5:18 13:13
11, 13 101:2	13 31:13 105:2	rest 14:3 172:24	17:17 22:22
relevant 24:10	requested 23:3, 9	restraint 31:4	60:22 63:24
38:23 53:16	67:7 123:25	Restructure 111:7	74:25 81:9, 10, 11,
reliable 174:10	126:14	189:1	13 83:14 86:22
religious 18:8	requesting 23:23	restructuring	89:1, 4 90:3
remain 129:3	105:4, 5 123:19	110:19, 22 111:11	95:25 96:6 97:22
remarkable 48:23	require 137:2	result 12:25 45:7,	100:17 104:13
remarks 34:20, 21	required 50:11, 13	7 49:13 78:1, 2	109:23 110:1
133:24	79:23 102:24	110:18 139:22	118:18 120:9
remember 41:15	115:15 138:7, 9	results 48:6, 7, 9,	131:17 133:25
103:24 181:19	140:18 141:20	22 49:9 125:23	134:1 135:11
remembers 3:9	148:1 149:11	157:19 171:8	139:16 142:16, 19
remind 33:22	152:3, 13, 15	retained 23:4	151:5, 8 153:1
130:12 164:25	157:13 163:11	revamping 44:10	158:19 162:22
173:14	174:19	78:14	166:11 167:3
removed 13:9	requirement	reveal 155:18	169:10 171:11
removing 37:19	96:13 122:13	revealed 63:8	175:22 179:6
renewal 44:5	139:1 140:13	Reverend 3:11, 12	182:22 185:17
45:7 46:3 70:11	requirements	6:24	ring 103:16
renewing 26:2	50:12 126:7	review 3:6 43:15	ripped 13:25
renovated 37:24	127:7 135:3	52:21 62:25	risk 38:6 56:6
repairing 14:12	137:8 141:12	110:24 135:1, 20	road 127:23
repeat 137:13	research 8:3	176:3, 4, 6, 7, 15,	Robinson 125:6,
repeatedly 56:14	55:10 62:7	22 179:10	19
replaced 126:22	127:14, 20	reviewed 48:7	R-O-B-I-N-S-O-N
report 43:21 44:4,	resolved 38:13	75:6 80:15 135:4,	41:3
6, 7 67:11 82:23	resolving 39:2	8	Rock 48:17
88:7, 8, 10 111:4	respect 37:6	reviewer 44:22	role 8:6 72:9
121:5, 9 123:22	Respectfully 128:4	reviews 19:17	113:6 146:23
137:3, 20 147:1	respond 32:21	revised 69:10	147:15
157:23 158:3	175:25 179:10	74:22 75:14	roles 146:19
167:18 168:13	Respondent 1:1	135:18	rote 129:9
181:22 189:1	2:1	REVOCATION 1:1	roughly 149:5
reported 121:2	Respondent's	24:9 25:5, 7, 16	route 131:4
149:25	77:14 83:9 101:9	26:15 33:6 52:8	routine 37:23
Reporter 1:1, 1	134:13 136:18	58:3, 5, 6, 8 63:4	Rule 53:15, 25
24:16 187:1, 1, 1	139:9 159:16	67:5, 6 71:9, 10,	rules 40:8 53:14
189:1 190:1	161:6 179:25	12 83:2 185:7	108:13, 23 109:2
reporting 71:7	188:1 189:1	revoke 34:7	rulings 13:1
119:11	190:1	56:20	run 40:4 53:24

85:22	24 20:11 25:17	10, 19 162:11	23 82:20 89:10
rural 59:17	27:13 31:7 33:7,	163:16, 25 164:22	124:17 147:4
< S >	19, 21, 23 34:2, 3,	170:25 175:11, 12	148:2, 17 151:15,
sad 16:2	13 35:12 36:24,	177:5, 7, 12, 12	19 155:8, 13, 20,
safe 19:6	25 37:4, 6, 8, 9, 14,	184:3, 5, 14 189:1,	24 156:8, 24
sake 118:11	16, 18, 23, 25 38:2,	1, 1 190:1, 1, 1	157:4 158:4, 25,
sake 118:11	7, 8, 9, 17, 19, 21,	schools 4:4 12:6	25 159:7 169:20
salary 123:18	24, 25 39:23, 25	15:20 16:8 17:12,	179:24 181:16
131:6	41:5, 10, 17, 25	19 18:6 19:10	182:15 190:1
sample 126:11	42:9 43:9, 11, 12,	20:3, 21, 23, 25	scoring 58:24
SANDRIDGE 2:1	16, 19 44:2, 3, 10,	38:15 48:10, 11,	174:22, 25
SASI 87:7	18 45:2, 3, 10, 12	12, 13 49:3, 5, 8,	SCS 65:14
SAT 92:5, 25	46:2 47:5, 15	14, 16, 18, 23, 24	se 55:15 99:21,
satisfactory 91:6	48:4, 7, 18, 24	50:3, 7, 8, 8, 9, 12,	23
151:12	49:1, 10, 11, 17, 21	15, 18, 19 56:4, 5,	seal 187:1
satisfied 94:13	50:17, 18, 23	8, 9, 10, 21 58:12	SECKINGER 2:1
satisfy 87:1, 2	53:11 54:18 56:8	60:6 61:7, 17, 21	second 29:11
117:6	57:16 61:4, 13, 13	67:15 68:25	47:12 60:8 62:20
Saturday 177:12	62:20, 20 64:3, 20	76:24, 25 79:8	80:10 81:18
save 107:9	65:2 67:2 78:7	87:18 102:24	125:24 149:15
saw 13:1 19:12	79:1, 1, 3, 19	103:19 104:9	158:13, 14 169:24
125:25 131:18	80:16 83:15	113:19, 22, 24, 25	176:2 184:20
saying 31:25	85:13, 18, 21, 22	116:10, 13 117:2	185:20
36:9 82:2 99:15	91:3, 4, 19 92:19,	135:1, 2 141:6, 7	secondly 22:19
119:1 142:19	21 93:10, 11, 19	146:15, 24 149:10	section 3:2 137:1
144:8 169:10	94:13 96:11, 14	157:23, 24, 25	security 13:16
178:2	98:14 101:8, 22,	158:5 160:21, 21	see 5:11 6:1
says 40:1 42:8	22 102:9, 23	167:5, 8, 9, 22	7:21 16:25 17:2
43:6 49:19 53:12,	103:2, 24 104:10	168:11 169:8	18:11 20:3 27:22,
16 54:25 55:5	105:23 106:2, 7, 8,	172:10 181:5, 11	23 67:4 72:4
63:7 81:9 86:24	18 107:23, 24	school's 26:19	75:9 81:23 95:8
94:15 98:12, 21	108:4 110:15	82:22 116:18	97:7 105:5
134:2 138:10	111:8, 21 115:8, 9,	144:5 158:8	123:16 125:15, 17
159:24 164:1	16 116:22 118:22	172:7	127:19, 21 128:19
SC 1:1 2:1	119:5 120:8	school-wide	129:2 131:12
SCA 65:11	121:1 124:4	168:7 172:10, 12	160:4 175:16
scale 125:25	126:4 127:25	science 10:13	178:16
scary 174:17	128:1, 6 129:3	69:18 158:21	seeing 38:12
schedule 143:15	131:4 134:25	score 56:16	68:15
schedules 88:18	135:8, 24 136:24	67:19 92:5 93:6,	seek 15:6 169:15
Scholars 48:16, 20	137:3, 6, 8, 16	6 123:15 152:3	seeking 168:19
SCHOOL 1:1, 1	140:12, 22 141:9,	154:13, 19, 21	169:6, 16
2:1, 1 3:24 4:5,	15, 20 142:13	155:4 156:10, 17	seen 3:20 5:9
21 5:24 9:1, 23	143:2, 4 144:16	157:1, 1, 5, 6	6:18, 19, 19, 21
10:18 11:21	146:21 148:1, 3,	scored 83:18	7:10, 13, 18 22:3
12:23, 25 13:3, 11	10 149:22, 24	89:3 92:25	25:4 45:15 83:3
14:10, 17 15:17	150:1, 2, 6, 6, 20,	177:11	119:24 147:2
16:3, 10, 17 17:9,	25 151:5 152:8	scores 46:20	151:16 153:6
11 18:13, 14, 17,	155:1 157:23	48:8, 13, 21 49:15	156:18, 20, 24
20, 24 19:5, 13, 14,	159:15, 25 161:6,	50:1 56:4 67:13,	

164:21 171:8 segregated 140:3 self-esteem 3:22, 25 self-incrimination 82:5, 8 Senate 20:5 89:25 send 66:23 131:14 136:10 176:13 sending 72:20 seniors 90:11 sense 44:1 68:3 sent 53:11 63:14, 19 66:15 71:20 72:8 79:2 127:24 130:8, 22 131:23 155:20 176:3 180:7, 8 Sentence 125:20 separate 120:3 September 118:4 124:13, 14 125:8 128:11 130:13, 20 seriously 49:22 served 11:22 12:12 13:6 service 13:20 117:22 services 65:14, 17 113:12 116:13 123:25 124:3, 5 serving 18:17, 18, 21 31:8 session 21:6, 16 183:13, 15 184:16, 18, 22 185:3, 6 set 9:9 33:6, 18 35:13 40:8 65:24 71:7 93:22 103:25 132:24 138:8 151:5 158:14 169:3 sets 33:19 164:13 seven 16:20 18:4, 20 20:12 152:19 shake 5:19 shape 5:5 182:14	share 12:3, 4 38:12 89:13 sheet 3:6 sheets 76:2 Sheila 11:13, 16 134:7 shell 7:12 shift 126:18 127:8 129:22 shifted 4:7 short 21:6 112:5 Shortcomings 37:17 48:5 Shortly 12:10 shot 171:21 shoulder 97:4 show 33:24 34:12 35:5 42:12 46:20 58:17 62:2 125:23 126:5 128:16, 20 142:22, 24 148:2 167:23 169:7 showed 168:1 showing 109:15 shown 150:4 shows 174:21 shut 17:8 18:10 sic 43:22 87:20 side 16:21 119:12 SIG 44:17 sight 8:11 sign 99:4 100:3, 5, 6, 7, 21 180:9 signature 98:2, 2, 25, 25 signatures 100:25 signed 27:24 28:10 74:5 75:23 164:18 180:5 significance 129:24 significant 40:1 49:15 57:12, 14 58:13 63:8 128:16 139:24 141:13 149:18 156:7, 19 165:12 168:23 169:14	significantly 43:24 49:12 147:20 sign-in 3:6 SILER 2:1 184:19 similar 89:19 157:25 158:6 simple 19:18 simply 33:17 single 64:24 165:18 169:2 sir 3:12 6:5 11:12 29:6 34:18 39:17 45:14 47:6, 8, 24 56:5 61:20, 23 62:22, 25 63:2, 5 65:22 67:9, 22 70:6, 9, 19, 22 71:4 76:8, 12, 22 77:5, 7, 19, 24 80:3, 24 81:6 82:16 83:1, 4 85:8 86:8, 18 88:13, 15 89:2, 5 90:14 96:7 97:25 100:8, 22 101:4, 14, 24 102:22 103:1 105:3, 6, 9, 14 106:3 108:5 109:25 111:17 113:18, 21 114:14, 17 115:17, 19 116:2, 11 117:4, 9, 11 118:7, 9 119:1 122:19 175:23 177:23 178:1 182:18, 23 184:12 sister 79:7 sit 30:11 35:8 site 12:24 sitting 20:7, 20 30:12 situation 3:16 11:11 13:2 41:19 107:21, 22 141:15 situations 5:6 7:19, 19 8:9 19:1 six 18:4 44:23 69:11, 14 70:2, 3,	17, 18 94:8, 10, 14 158:7 Sixteen 113:23 sizes 10:23 slightly 149:5, 6 small 125:15 smaller 10:22 Smart 5:12 Smith 72:6, 24 122:24 123:1, 8 188:1 social 5:7, 21 18:22 69:23 106:13 socially 3:21 68:23 106:20 solicitor 29:23 solve 69:19 somebody 11:9 31:10 33:13 Somewhat 170:16 soon 22:17 86:1, 5, 5 110:2 sooner 25:13, 23 sorry 5:23 6:12, 14 74:24 96:11 130:12 161:18 163:12 165:8 sort 7:1 151:8 sought 19:3 150:19 170:12 sound 18:13 122:15 sounded 15:18 SOUTH 1:1, 1, 1, 1 2:1, 1, 1 6:21 15:13 17:16 37:3 38:20 39:23 42:8 43:8, 11, 18 44:14, 15 45:9, 12 48:4, 6, 25 49:1, 2, 20 53:14, 15 61:4, 7, 8, 10 79:19, 23 82:24 85:10 86:10 102:24 115:15 134:25 137:2 159:25 187:1, 1, 1 space 78:12
---	---	---	---

Spartanburg 48:18, 23 speak 6:8, 16 7:5, 24 8:22 11:15 15:10 27:7 106:16 137:10 181:15 special 41:24 68:21 84:5, 15, 16, 17 specialist 72:11 95:1 specific 34:1, 1 100:15, 17 103:24 135:19 163:3 167:14 specifically 46:21 53:12 55:4 72:16 75:18 80:11 92:11 174:21 specification 57:13 specificity 182:20 specifics 148:13 specified 57:8 specify 42:10 55:3 speculate 170:17, 20 speculation 56:23 spelled 107:16 spelling 57:9 125:20 spent 158:13 spite 17:13 spoke 36:19 166:11 sponsor 93:25, 25 121:2 175:15, 17 spring 48:8 153:11 staff 37:5, 16 43:9 50:17 64:19, 22 65:3, 4 72:11 106:2 123:20 124:15 125:7 126:19 127:8, 10, 13 128:19, 22 156:12 157:17 175:6	STALEY 2:1 185:11, 18 stamp 65:6 stamps 65:9 stances 38:22 stand 6:22 83:15 85:2 standard 138:7 142:16, 18 144:2, 13, 15 159:15, 25 190:1 standardized 48:6, 8, 19 50:13 151:15 standards 71:14, 16 74:9, 12 76:10 113:4 114:2, 9, 11 115:12, 22, 24 116:1, 2 127:3 128:8 141:9 142:6, 24, 24 143:1 144:6 150:9 151:4, 14 153:25 157:12 166:12 168:10 173:24 standing 10:23 13:22 standpoint 135:22 stands 151:23 stanine 125:25 126:4 132:9, 11, 11, 18 175:1 Star 10:19 start 6:25 11:2 17:24 32:12 68:16 77:25 119:25 started 3:15 16:5, 19 17:3 21:15 49:25 130:13, 20, 24 167:24 168:2, 14 173:13 STATE 1:1 6:20 9:1 12:5 13:1 17:1 33:3 41:1 44:13, 15 48:8, 19 49:13 50:10, 11, 13, 16 56:2 57:18 59:1 61:11 66:9, 14 67:18 68:5, 21 69:1, 15 75:12 78:10 84:10, 17 104:1 110:24 112:22 117:7 118:1 123:7 127:24 128:14 129:19 131:7 135:3 137:3, 9, 21 138:9 140:12 141:11, 12 146:5, 20, 24 147:25 149:10 152:1 155:12, 19 157:11, 22, 25 158:25 159:24 160:21, 22 161:20 163:9 165:5 168:20, 21 169:5, 15, 16 170:11 174:4 183:4 187:1, 1 stated 26:16 42:25 44:22 46:9, 16 70:18 89:25 107:8 144:4, 19 172:4 177:9 185:8 statement 21:22 22:6, 8 28:25 31:11 32:18, 23 39:8, 10, 16 65:21 133:19 188:1, 1 statements 32:4, 7 110:3 133:14 173:11 states 37:1 45:23 50:17 58:5 65:23 67:11 69:8, 10 75:18 statewide 67:15 status 26:18 41:15 45:24 statute 35:20 staying 129:5 step 21:9 72:23 141:18 store 8:20 story 15:5 straight 26:11	strategies 44:23 125:4 126:10 Street 2:1 43:24 stresses 9:13 strides 4:19 5:9 stripped 3:20 strongest 18:5 strucken 56:12 struggled 9:10 15:24, 25 17:14 20:15 struggling 17:17 20:18, 22, 23 77:25 89:12 student 38:4 43:5, 8 48:12, 19, 25 49:9 55:7 67:13 70:5, 21 72:15 91:18 127:18 152:2 153:2, 4 154:13, 15, 17, 20 156:19, 25 157:5 160:7, 22 163:17, 18 164:1 165:16 167:24, 25 168:12, 14 172:15 181:17 students 3:19 4:3, 22, 25 5:13, 17 13:19 14:14, 16 16:19 19:1 31:8 37:12, 20, 21 38:8 42:12, 21 43:3, 4, 13 46:19 49:7 50:2, 11 54:19, 21, 22 55:1, 8, 13 56:3, 16 59:20 61:5, 24 62:1, 6 67:19, 20 69:24 72:2, 17, 18 78:23 79:9, 11, 17, 21 80:4 81:3 83:18 84:3, 5, 12, 13, 14, 15, 18 86:25 88:2, 3 89:12, 17 91:3 92:1, 4, 6 93:20 94:13, 18 95:2 105:22, 22 106:10, 19, 24 124:14, 19,
--	--	--

23 125:18, 21, 24 126:12, 18, 19 127:3, 15 128:10, 20 129:7, 9 132:10 135:14 149:11, 14, 16, 25 152:11, 12, 14, 17, 21 153:10, 19 154:3 155:2, 4, 10, 14 156:1, 3, 5, 8, 14, 15 157:12, 16, 19, 21 158:25 160:5 162:8 163:7, 11, 22 164:12 165:21 167:1, 6, 10, 21, 22 168:1, 9, 16 169:11 174:8 175:11 177:5, 7, 10, 13, 14 180:4 182:14, 16 student's 143:3 152:4 172:6 studied 9:23 studies 18:22 62:2, 8 157:3 study 69:22 stuff 19:16 101:13 subject 50:15 54:14 subjective 150:15 151:7 subjectivity 151:10 subjects 151:25 submission 140:13 submit 22:1 58:20 111:18 117:3, 6 137:20 139:21 140:17 141:22, 23 143:7, 15, 22 144:14 146:24 180:20 183:17 submitted 96:11 110:12, 24 113:10 124:1 137:18, 19 161:14 162:6	163:1, 19 164:17, 23 165:1, 2 183:7 184:8 subpar 147:21 subpoena 101:14 subset 94:8 substantially 53:18 succeed 7:21 8:15 success 48:11, 19 128:2 successes 48:5 sudden 19:12 sufficient 79:19 80:2 suit 32:9 Suite 1:1 Summarize 64:11 136:23 139:18 summarized 108:3 Sumter 92:24 Sunday 3:24 4:5 5:24 superintendent 9:12 12:13 37:2, 3 38:19 43:11 46:9 49:20, 21 64:3 86:3, 4 89:23 174:14 Superintendents 36:23 Superintendent's 170:15 supervised 50:19 supervision 42:22 supervisor 11:22 134:24 141:6 supplement 80:22 123:17 supplementary 65:16 supplemented 47:22 supplements 131:7 supplied 104:12 105:13 supply 104:1	support 14:9 42:23 125:12, 14 127:25 140:9 168:5 supports 168:4 suppose 32:8 156:13 supposed 62:14 65:1 91:17 Supreme 15:21, 23 19:22 sure 16:10 17:10 18:1 22:4 23:15 28:3 33:8 34:10 42:15 57:22 63:21 66:18, 20 67:3 72:13, 16 78:24 81:19 82:15 84:19, 20 85:11, 12 86:2 89:13 94:22 96:23 101:11 107:9 115:11 120:23 130:7 136:25 137:12 139:20 146:21 149:13 152:7 154:12, 25 157:18 176:23 180:13 182:6, 11 183:15 suspicious, 155:22 sustained 57:2 127:22 132:21 Sutton 15:10, 11, 12 20:15 133:21 134:8 swear 24:17 32:7 switch 87:6 switched 80:15 switching 87:7, 15 sworn 21:23 31:25 40:21 112:16 123:2 133:14, 17 134:8 145:22 173:6 system 4:23 11:4 13:16 17:9, 24 19:25 20:12 35:12 42:11	59:12 63:12 71:17, 22 87:5 88:2 101:23 102:11 113:16 114:1, 8 115:25 116:17, 20, 20, 21, 24 140:2, 23 141:21 148:25 149:1 160:20 169:1, 6, 9, 11 171:9 174:10, 18, 21 systems 182:2 < T > tabled 70:13 74:16, 18 75:5 TACHS 174:4 take 4:16 5:3, 15 7:24 9:11, 19 24:17 26:4 29:13 30:17 39:1 46:6 49:22 58:1 73:25 90:20 97:11 98:9 112:5 125:1 132:19 136:4 152:3 153:2, 5 155:2 156:1 157:13, 19 167:1, 6, 10 180:3 181:21 taken 187:1 takes 127:18, 20 talk 8:21 9:2, 3 14:7 80:10, 11, 13, 13 102:20 119:24 151:20 154:23 155:6 157:8, 10, 21 talked 59:11 66:11 77:17 85:6 89:14 96:4 109:14 110:13 talking 10:1, 20 80:5 94:2, 3, 4, 6 98:23, 24 102:18, 19 130:25 168:12 172:10 181:8 tanks 10:8
--	---	--	---

taught 10:10 91:23 teach 5:25 129:8 teacher 6:1 91:22, 23 127:16 146:14 teachers 72:14 125:2, 11, 17, 23 126:6, 11, 22 127:1, 11 129:4, 17, 21, 23 131:1 teaching 44:9 45:2 124:18 teachings 3:24 team 49:5 125:12 teams 49:24 tears 12:23 13:15 technology 13:25 160:13 telephone 67:2 tell 5:25 6:1 31:25 51:7, 22 69:24 78:25 81:5 92:3 97:8 99:6 101:4, 12 106:24 115:3 119:4 129:10 134:22 146:16 147:16 165:22 173:23 175:17 177:2, 19 180:5 telling 103:9 162:13 tells 124:9 tem 8:18 template 24:8 115:8 term 33:12 65:2 79:1 155:23 terminate 30:9 31:7 183:10 termination 120:14 terms 46:1 57:7 93:22 107:15 135:2, 12, 21 171:5 TERRY 2:1 test 48:6, 8, 13 49:15 50:1 58:1,	2, 4, 25 59:1 67:13, 23 70:5, 20 82:20 84:4 90:20 91:15 123:15 124:17 146:21 149:11 151:15 155:2 157:12 158:24, 25 167:1, 6, 10 169:20 173:23 174:3 tested 132:15 149:14 150:3 testified 40:21 112:17 123:2 145:23 173:6 testify 102:2 178:5 179:2 testimony 21:23 24:18, 20 25:10, 11 74:1, 7 76:17 77:2, 4 80:1 81:2 82:20 85:4 93:20 94:12, 25 102:10 140:16, 21 141:1 148:6 150:12 155:10 163:21 170:24 testing 48:20 49:9 146:20 157:7 173:18 174:20 tests 50:14 56:3 84:14 126:15 146:22 147:25 149:10, 17 150:3 test-taking 126:9 test-wise 55:1 thank 3:12 6:3, 5, 7, 15 11:11, 12, 14 15:2, 7, 8 21:5 34:18 73:20 75:12 82:17 93:3 96:3 97:6 101:15, 19 106:22 109:8 122:18, 19 133:6 134:12 142:9 143:6, 17, 19, 23 144:22 145:12 159:21 167:16 168:18 169:17	170:21 172:17 179:8 181:2 186:3 thereof 187:1 thing 10:12 23:2 33:10, 12 51:15 57:11 60:23 65:6 91:9 109:9 177:15 180:10, 14 things 3:17 5:12 6:23 8:11, 22 9:16 11:8, 10 16:24 17:14 32:22 51:25 95:23 109:15 144:9 147:4 173:21, 22 180:4 think 8:6, 10 10:25 15:4 16:18 20:25 23:16 24:7 25:6 29:23 30:15 34:16 43:6 46:13 51:16 56:12, 24 57:19 58:20 59:2 66:6, 11 67:16 68:8, 13, 25 73:6 84:9 87:16 88:16 97:23 102:18 109:19 112:6 120:19 128:25 135:23 140:16 154:9 157:4 159:8 164:20 165:25 174:9 175:13 183:23 third 125:25 132:18 149:23 Thirty 11:19 thought 7:2 14:5 19:4 59:5 thousand 65:2 three 3:3, 7 42:20 48:10 56:7, 8 65:7 67:24 69:11 72:11 76:24 118:10 127:21 149:8 156:1, 5, 6 throw 7:23	Thursday 1:1 44:22 time 3:13 4:16 5:3 6:8, 10, 15 9:10 10:3 11:7 12:13, 22 13:11 16:11 17:8, 8 18:4, 9, 10, 11 21:7 23:8 25:21 26:1, 4 27:21 29:5, 9 30:25 31:3, 14 32:9 35:17 36:1 37:19 40:17 41:20, 25 45:4 46:8, 14 47:4 53:21 54:5 59:24 66:21 75:2 85:22 90:10, 18 100:24 103:20 105:8 107:25 111:25 112:13 113:17 118:21 119:2, 2 120:7 121:22, 25 122:3, 4, 9, 12 127:1, 19 128:12 130:17 134:4, 9, 12, 14 138:25 140:11 143:14 149:5 156:4 158:13 169:21 172:24 173:20 175:4, 22 176:15 179:16 180:25 182:15 184:7 185:14 timeframe 118:4 timely 103:3 120:24 121:6, 11 140:20 times 8:11 9:8 16:16 24:24 37:22 42:20 106:10 156:2, 6 Title 12:7 15:3 44:21 64:16 65:12 69:4 110:23, 23 134:22 146:6 161:15 162:6 163:1, 19
--	---	--	--

164:17 165:2, 4 176:3, 16, 17 today 16:2 33:16 140:16 175:20, 22 183:7, 18 TODD 2:1 told 46:25 56:14 77:24 100:11 120:20 123:14 129:1 132:25 174:25 176:9 177:13 180:12 181:20 TOM 2:1 tools 59:8 top 85:1 159:24 161:10 total 149:2 153:10 163:2 totally 80:8, 17 176:15 totals 149:4 Townes 12:12 track 160:22 traditional 20:21 50:8, 18 traditionally 62:3 training 43:15 trajectory 168:9 transcribed 24:18 transcript 24:18 159:25 161:11 162:10 163:16, 19, 25 176:14 182:7 187:1 TRANSCRIPT. 2:1 transcripts 159:10, 15 161:6, 18, 19 162:25 163:1, 6 164:13, 17, 21 165:11, 23 180:3, 7, 22 181:7, 10, 22, 24 182:1, 1 190:1, 1 transfer 87:16 125:2 transpire 22:16 transpired 36:20 transport 37:11	traveling 20:2 travesties 8:23 tremendous 4:19 tried 79:6 124:1 trouble 107:14 156:16 troubled 17:4 true 74:22 93:24 Trustees 36:23 truth 32:1 try 182:20 trying 5:13 14:11 20:4 31:6 51:15 60:12 76:4 118:23 126:20 128:11 131:21 136:23 170:8 tub 7:24 Tuesday 127:6 tuition 50:9 tune 128:24 turn 9:5 30:12 34:11 turnaround 44:11, 19, 24 64:19 turnkey 119:8 tutelage 3:23 tutoring 11:21 12:3 177:12 twice 12:18 Twinkle 10:18, 18 two 28:12 31:1 42:4 43:6 47:23 48:24 55:21 57:25 65:1 67:24, 24 82:14 95:2 110:3 118:10 129:20 130:24 139:24 141:11 143:18, 19 146:19, 19 156:4, 6, 8, 14 158:16, 23 162:1 164:12, 13 180:3 182:2 type 57:13 106:12, 13 129:12 149:15, 23 181:14 types 149:9 Typically 156:15	174:11 < U > Uh-huh 74:6 86:23 88:22 97:1, 5 ultimately 50:21 67:7 unconstitutional 29:14, 15, 17 30:16 35:16 underperforming 49:23 understand 22:19, 23 26:22 35:19, 21 36:5 38:10 42:4 47:2, 19 53:1, 2, 3, 4, 5 75:7, 9 91:10 94:20 117:1, 2 126:12 127:18 129:24 133:2 148:6, 9, 9 173:21 183:16 understanding 46:2 67:17 82:4 150:18, 23 understands 45:5 understood 17:6 41:14, 18 42:2 107:18 126:6 186:3 undue 53:21 unequivocally 39:3 unfair 30:14, 22 51:4 53:19 unfairness 35:6 36:20 units 16:20 18:20 79:22 106:23 unmeasurable 142:19 unrealistic 154:20 unsigned 164:21 untimely 67:6 unusual 118:16 156:3, 14 157:4	update 44:9 45:1 55:24 upheld 116:22 upper 9:24 upward 168:9 use 10:12 37:23 43:14, 20 51:19 55:5 59:8, 9 65:14 69:18 72:17 104:15 126:2, 7, 12, 15, 15 160:21, 22 166:12 useful 60:14, 16, 16, 24 utilize 13:21 < V > vague 135:13 142:6, 10, 11, 18 166:12, 16, 17 valid 85:10 validating 133:13 value 19:12 53:17 Various 92:9 verification 64:25 65:25 140:9, 14 verified 65:8 67:11 verify 63:9 version 171:7 view 53:3 69:20 viewing 144:3 violated 34:4, 13 69:10 71:5 144:15 violation 34:5 141:11 Virginia 6:19 virtual 49:2 56:7 61:4, 7 virtue 144:13 visible 13:14 visit 44:21 69:4 125:13 131:4 visits 125:10 voice 37:18 void 69:7, 8 volunteer 11:23 volunteering 11:20 12:18
--	--	---	--

vote 20:5 183:25
 184:3 185:17, 19
 186:1
voting 16:7
vs 1:1
V's 181:25

<W>
waged 16:1
wait 17:24 94:21
waive 138:25
 143:12 183:5
waiver 68:7, 10
 69:4 85:11, 20, 24
 148:21, 23 168:19
 169:6, 15, 16
 170:12, 15 171:5,
 6
walk 66:20, 25
want 3:3 5:24
 11:16 21:24 22:1
 23:2, 14 28:13
 29:1 32:3, 21
 33:8, 21 34:9
 39:18, 20, 21
 40:10, 11 52:7, 11
 53:3 60:5, 25
 66:23 72:22 73:4
 86:15, 19 102:8,
 20 104:14, 15
 108:21, 22, 23
 109:2 139:3
 144:17 147:10
 154:23 159:9, 10
 170:20 173:14
 178:16, 16, 17
 182:6 183:15
 184:8
wanted 12:2, 4
 26:10 28:11
 34:23 66:18
 78:23 109:5
 129:2 136:25
wants 15:10
 110:2
wars 18:14
waste 53:21
watched 8:2
 14:13
watching 51:13

water 7:23, 25
 38:3
Watley 66:16
 74:21
WATSON 2:1
 21:17 22:8, 10, 11,
 19, 23 23:2, 19
 24:2, 5 26:14
 27:10, 20 28:1, 7,
 14, 18, 24 29:4, 7
 31:3, 21 32:3, 11,
 22 34:12, 19
 35:10, 14, 21 36:8,
 13, 18 39:6, 9, 14,
 21 40:3, 13, 17, 25
 45:18 46:5 47:9,
 13, 18 50:25 51:4
 52:3, 6, 13, 24
 53:2, 6, 23 54:3,
 11, 15, 16 56:24
 57:3 60:8, 10, 15,
 20 61:16 63:23
 64:2, 10 72:22
 73:2, 9, 18 76:15
 77:10 80:21
 81:18 82:9 83:7
 92:15 93:4 94:23
 98:6, 10, 18, 21
 99:3 100:15, 19
 101:1, 7 102:2, 5,
 17 103:17 104:6,
 14, 19, 25 105:7,
 11, 15, 20 106:21
 108:6, 11, 17, 24
 109:4, 12, 22
 110:1, 8 111:1, 13,
 18, 24 112:13, 21
 114:18, 20, 21
 115:2 116:3
 121:21 122:17, 23
 123:6 128:5
 129:25 133:8, 12,
 18 134:5, 11
 136:15 139:6
 141:25 142:4
 144:22, 23 145:2
 147:9, 13 150:13
 159:20 160:3
 161:4 166:3, 4, 5,
 9 169:17 170:1, 7

171:17, 22 172:3,
 17 173:1, 10, 17
 177:20, 24 178:2,
 5, 8, 11, 15, 19, 22,
 23 179:1, 5, 8, 17,
 21 180:2, 19
 181:2, 3 182:24
 183:9, 18, 20
 184:1, 10, 15
 185:24 186:3
 188:1, 1, 1, 1, 1, 1,
 1, 1, 1 189:1, 1
watsonlawfirm@sc.
twcbc.com 2:1
way 4:18 9:23
 22:24 25:8 36:6
 39:7 40:9 53:6
 59:2 91:25
 103:23 104:19
 107:16, 24 120:3
 124:23 125:1
 126:12 132:20
 142:13 170:22
 175:1 182:13
WAYNE 2:1
 49:21 131:8
ways 50:19 120:3
wear 99:8
website 68:20, 21
Wednesday 125:9,
 14 127:6
week 12:19, 20
 44:7 72:11
 124:24 125:8
 127:6 130:18, 19,
 19, 21 161:15
 165:3
welcome 29:3
 40:11
well 5:2 12:1
 20:18 23:14
 28:13 34:19 51:9
 60:2 62:18 76:21
 80:10 82:12
 88:16 90:12
 91:13 96:20 97:9
 100:11 103:8
 109:17 112:4
 124:15 135:7
 139:23 152:9

156:11, 24 157:6
 161:3 167:11
 171:23
well-being 38:7
Wells 3:11, 12
 6:24 133:20
 134:7
went 21:20 25:22
 74:19 89:25
 110:23 111:10
 120:3, 3 175:3
we're 8:13 10:1
 21:9, 16 25:8
 31:23 36:7 51:12
 60:15 68:25
 75:15 76:5 87:11,
 13 88:17, 22
 89:14, 18 175:17,
 17 179:14
we've 5:8 8:24
 9:14 10:21 56:14
 71:18 96:4
 117:23 140:16
 147:2 157:17
 160:4, 16 180:19
 183:20 184:4
whatnot 21:24
white 19:12
Whitmore 79:7, 13
wide-range 78:16
WILLIAM 112:16,
 24 160:13 188:1
Williams 88:16
willpower 58:15
window 119:3
 128:12
wing 14:2
Winnsboro 15:12
witness 24:20, 21
 25:10, 12 36:17
 39:18 40:15
 45:23 60:5 61:2
 64:7 71:25 73:5,
 6, 11 81:23 82:15
 92:16 93:7 94:24
 99:6 100:22
 101:3, 11 102:6
 106:19 111:10, 25
 112:2 122:19, 21,
 24 124:9 133:10

137:12, 15 139:11
 145:15, 18 172:18,
 21 173:2, 16
 183:2 187:1
witnesses 21:24
 24:17, 24 29:1
 31:15 32:2, 13
 34:17 39:16
 51:19 52:15
 133:12, 13
WOMBLE 2:1
won 16:1 19:25
word 174:2
words 10:13, 19
 166:12
work 13:17, 18
 19:18 41:16
 59:17 62:11, 11
 69:22 78:17
 91:14 95:1
 102:12 110:15
 112:25 119:22
 123:9 124:12, 18
 126:1, 19 127:1, 5
 142:23 146:21
 147:15, 16
worked 3:18
 14:13 16:4 74:21
 78:22 111:15
 126:17 127:10
 129:15, 19 130:20,
 21 132:2 182:19
worker 128:1
workers 38:2
working 14:19
 17:20 37:15
 68:17 78:18
 93:24 96:2 107:5
 113:6 123:10, 11
 124:12 127:15
 128:21, 22 129:4
 130:19 182:2
works 88:15
worse 40:5
 162:17
worth 10:25 11:2
wrap 34:11
write 69:17
writing 14:20
 57:8 94:16 95:5,

12, 20 125:20
 135:16 158:20
wrong 14:5
wrote 36:22 39:6

< Y >
y'all 66:5 124:6
 178:24 180:24
Yeah 52:23
 94:15 117:23
 143:11 185:25
year 12:2, 3
 42:20 44:10
 46:23, 25 48:22
 49:17 58:23
 59:12, 20, 21
 62:20, 21, 23 63:1
 65:15 80:5, 17
 87:18, 21 89:24,
 24 90:1, 16, 17
 91:19 95:3 99:17
 104:3 111:8
 117:23, 24, 24
 118:5 128:13, 13
 129:16 132:14, 16
 137:5 141:23
 153:21, 22 154:14,
 16 157:2 158:10
 174:5 175:12
 176:11 184:4, 5,
 14 189:1
Yearly 85:3
 147:23 148:17
years 6:17 7:7,
 17 11:19 12:19
 14:11 15:13, 16
 18:4, 17 20:12
 48:24 67:24, 24
 68:1 90:15 106:9
 113:13 118:10
 127:21
year's 176:12
YEVA 24:9
yield 6:9 161:24
 164:10
York 6:18 48:17,
 20 54:20
young 166:10

< Z >
Zais 59:2 68:5, 13

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Record on Appeal on Respondent by placing a copy in the mail, postage prepaid, to Respondent's attorney of record, Johnny E. Watson, Sr., Post Office Box 2305, Columbia, South Carolina 29202.

WOMBLE CARLYLE SANDRIDGE & RICE

By: Deborah L. Johnson
Deborah L. Johnson

Columbia, South Carolina
August 14, 2012

IN THE STATE OF SOUTH CAROLINA
IN The Administrative Law Court

FROM THE SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No.: 2012-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD), ... APPELLANT

v.

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

BRIEF OF APPELLANT

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SC ADMIN. LAW COURT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION	i
ISSUES PRESENTED FOR REVIEW	i
I. Whether the Charter of the Mary L. Dinkins Higher Learning Academy was lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);	
II. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);	
III. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) and	
IV. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?	
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	12
ARGUMENTS.....	14
I. The Charter of the Mary L. Dinkins Higher Learning Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).	
A. Standard of Review	14
B. Discussion of the Issue	16

II. The South Carolina Charter Act is not 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).

- A. Standard of Review 31
- B. Discussion of the Issue 31

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

- A. Standard of Review 32
- B. Discussion of the Issue 32

IV. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

- A. Standard of Review 33, 34
- B. Discussion of the Issue 33, 35

CONCLUSION 35

ii

TABLE OF AUTHORITIES

CASES

1. Beaufort County Bd. of Educ. v. Lighthouse Charter School Comm., et al, 335 S.C. 230, 234, 516 S.E. 2d 655, 657 (1999); S.C. Code Ann. § 1-23-380(5) (as amended 2008) 15
2. Eagle Container v. County of Newberry, 336 S. C. 611, 622 S. E. 2d 733 (S. C. App. 2005) 35
3. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005) 16
4. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 20-21, 507 S.E.2d 328, 332 (1998) 16

STATUTES

1. S.C. Code Ann. § 1-23-380(5) (as amended 2008) 15
2. S. C. Code Ann. § 1-23-600(D) and (E) (as amended 2008) 15
3. S. C. Code Ann. §§ 59-40-10 et seq., the South Carolina Charter Schools Act of 1996 ("Act") 14, throughout

REGULATIONS

1. South Carolina Regulation 43-234(I)(A) 15
2. Reg. 43-600 15

OTHER REFERENCES

1. Valparaiso University Law Review (Deciding Recusal Motions: Who Judges the Judges? Volume 28, Number 2 31
2. Wikipedia (Judicial Disqualification) 31

iii

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. The Mary L. Dinkins Higher Learning Academy (MLD) is a charter school created under that act in 2003. 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 MLD school's charter was revoked by the South Carolina Public Charter School District (SCPCSD or the District) in its decision issued May 16, 2012. The Act provided for the appeal of actions of the SCPCSD to the South Carolina Administrative Law Court (ALC). This appeal was initiated under that act by the Mary L. Dinkins Higher Learning Academy by the filing of Notice of Contested Hearing on June 11, 2010 with the ALC.

ISSUES PRESENTED FOR REVIEW

- I. Whether the Charter of the Mary L. Dinkins Higher Learning Academy was lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
- II. Whether the South Carolina Charter Act is constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
- III. Whether the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) and

IV. Whether the South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to S. C. Code Ann. §§ 59-40-10 et seq., the South Carolina Charter Schools Act of 1996 ("Act"). The Mary L. Dinkins Higher Learning Academy's School Board ("MLD Board") filed an appeal with the ALC on June 11, 2012, seeking review of the South Carolina Public Charter School District Board's ("Charter School Board") decision dated May 16, 2012. Rec 867. In its decision, the Charter School Board revoked the charter of Mary L. Dinkins Higher Learning Academy ("MLD Academy").

In its June 11, 2012 filing the MLD attorney filed an appeal and captioned the filing a "Request for a Contested Hearing". Rec 3. The SCPCSD Board, after its May 16, 2012 decision, started taking steps to put its revocation decision into effect by issuing various press releases and taking other steps to close the MLD Academy. Rec 14. Thereafter on July 9, 2012 the attorney for the MLD Academy filed a Notice of Motion and Motion for Immediate Restraining Order or Exparte TRO seeking to stop the school closing actions of the SCPCSD's Board. Rec 9. On July 11, 2012 the attorney for the SCPCSD Board filed a Motion to Dismiss the appeal of the MLD Academy because it was captioned a contested hearing and not an appeal. Rec 18.

On July 24, 2012 this Court issued its order denying the motion of the SCPCSD Board. Rec 35. On the same day as this Court's order was issued, the attorney for the MLD Academy filed his Return to Appellee's Motion to Dismiss which proved to be moot in light of this Court's dismissing the motion of the SCPCSD Board. Rec 30.

On July 25, 2012 the MLD attorney filed a Rule to Show Cause due to the continued actions of the SCPCSD Board to take steps to put its May 16, 2012 order in effect by moving forward with its school closing actions. Rec 38.

On July 27, 2012 this Court held a hearing on the MLD Board's motion for a TRO. During the hearing the parties agreed that the SCPCSD Board would abide by the automatic stay provided by the ALC's rules and stop taking actions to close the MLD

Academy until the appeal is resolved. I issued my order dated July 30, 2012 containing the agreement of the parties. Rec 52.

FACTUAL AND PROCEDURAL BACKGROUND

There has been litigation between the MLD Academy and its prior sponsor, The Lee County School Board, over the right of the MLD Academy to exist as a Charter School in South Carolina under the South Carolina Charter School Act. The Lee County School District initially refused to sponsor the MLD Academy. A lawsuit was filed by MLD which sought to force the Lee County School District to issue it a charter and become its sponsor. That case made its way to the South Carolina Supreme Court which effectively ordered the Lee County School District to sponsor the MLD Academy. Cite__.

Almost immediately after its sponsorship began the Lee County School District sought to revoke the charter of the MLD Academy. That case made it to this Court where Judge Marvin F. Kittrell issued an order denying the Lee County School District's attempt to revoke the MLD charter. Rec 679.

Thereafter, the MLD Academy left the sponsorship of the Lee County School Board and came under the sponsorship of the Appellee, the South Carolina Public Charter School District by agreement of the parties. Rec 845.

The last litigation of the MLD Academy and the Lee County School Board was the order denying the Lee County School Board's attempt to revoke the charter of the MLD Academy. In his order in that case dated August __, 2008, Judge Marvin F. Kittrell issued the order of the court and noted the following Factual Background and Procedural History which are relevant here and quoted from that order:

“MLD Academy filed a charter school application (“Application”) on June 1, 2004. It was denied by the School Board on July 20, 2004. MLD Academy appealed the denial to the State Board which reversed the School Board’s decision. The State Board’s decision effectively granted the charter to MLD Academy and required the School Board

to serve as MLD Academy's sponsor. Thereafter, the School Board appealed the State Board's decision to circuit court, which affirmed the State Board's decision.¹

Subsequently, the School Board appealed to the South Carolina Court of Appeals and filed a Petition for Supersedeas with the South Carolina Supreme Court. On July 6, 2005, the Supreme Court granted certiorari.

During the pendency of the initial appeal, MLD Academy became operational and opened on September 1, 2005. Beginning September 1, 2005, the School Board began making monthly payments to MLD Academy based upon its requests. On February 1, 2006, Dr. Lloyd Hunter, Superintendent for the Lee County School District ("School District"), notified MLD Academy that the School District would evaluate its performance for the 2005-2006 school year. The School District's evaluation team conducted an evaluation on April 27, 2006; however, MLD Academy did not permit the evaluation team to observe instruction, interview core area teachers, or examine school records. Additionally, on July 27, 2006, the landlord terminated the lease on MLD Academy's facility.

On August 1, 2006, the School Board adopted a motion to initiate revocation proceedings against MLD Academy's charter because of MLD Academy's failure to employ a certified administrator with experience in school administration as required by the Application, the School District's inability to fully evaluate MLD Academy in April 2006, and the proposed lease termination.² However, the School Board held the revocation in abeyance pending a ruling on its appeal to the South Carolina Supreme Court regarding the Application, improvement of the conditions on which its revocation determination was based, or further action by the School Board, whichever occurred earliest. On January 29, 2007, the Supreme Court affirmed the State Board's decision which granted the charter to MLD Academy.

On February 20, 2007, less than one month after the Supreme Court's decision, Dr. Hunter wrote MLD Academy, offering it the opportunity to demonstrate that the issues cited in its 2006 revocation determination had been remedied. Further, the School District notified MLD Academy that it wished to complete its evaluation. On March 20, 2007, Dr. Hunter notified MLD Academy that the School District would appoint an evaluation team ("team") to evaluate MLD Academy's performance for the 2006-2007

¹ Prior to the enactment of Act 387, appeals from the State Board were made to the circuit court. Act 387 of 2006 effectively changed the appeals process and made all appeals from the State Board to the ALC.

² The Notice of Violation and Revocation was signed on August 3, 2006.

4

school year and MLD Academy was given the opportunity to make recommendations for members of the team. In response, MLD Academy questioned the School District's authority to conduct an evaluation and did not recommend any members for the team. Thereafter, the School District appointed Dr. Yvonne Barnes and Titus Duren to serve as the evaluation team; neither were employees of the School District.

1. Prior to the on-site evaluation, Dr. Barnes met with Bonita Dinkins-Robinson, the director of MLD Academy, to discuss the evaluation tool the team would utilize. Subsequently, the team conducted an evaluation on May 16, 2007 and May 21, 2007.³ During the evaluation, MLD Academy refused permission for the team to observe instructional delivery and methodology, interview core area teachers, and examine individual student records.

The team submitted its formal report detailing its findings to the School District on May 24, 2007. It was accepted by the School Board at a meeting on June 14, 2007. The findings noted that MLD Academy "met" 29 of the 32 areas observed, but only "partially met" the other three. After considering the report, the School Board voted on June 27, 2007 to notify MLD Academy of its intent to revoke its charter. It stated that the revocation was due to MLD Academy's failure to fully cooperate with the evaluation team and because of its poor grades on its 2006 Annual School Report Card.

After it had been notified of the School Board's revocation determination, MLD Academy requested a hearing. The School Board held a hearing on July 20, 2007, and on August 6, 2007, it revoked the charter. In its written Order ("School Board Order") dated August 7, 2007, the School Board made the revocation effective on September 1, 2007 and concluded that:

- (1) the Supreme Court's decision dated January 29, 2007 effectively made it the sponsor of MLD Academy;
- (2) Section 59-40-110(A) provided that the School District, as sponsor of MLD Academy, must annually evaluate the conditions outlined in subsection (C) thereof in making a determination for the nonrenewal or revocation of its charter;

³ The School District attempted to contact MLD Academy about dates for the 2007 evaluation beginning in March 2007. In response, MLD Academy questioned whether the School District was authorized to conduct an evaluation and noted that "the timing is bad, as it is coming at the time of PACT testing, when the school really does not have time to gather information." However, PACT testing was not scheduled to begin until May 7, 2007, approximately six weeks later, with five potential weeks within which to conduct the evaluation, excluding spring break. Subsequently, MLD Academy suggested that the evaluation take place in June 2007, after the school year had ended. The evaluation was finally conducted on May 16, 2007 and May 21, 2007, and although there was PACT testing at the school on the dates the evaluation was finally conducted, it was concluded each morning by 10:00 a.m.

- (3) Section 59-40-110 (C) requires that a school district revoke a charter if it determines that the school committed a material violation of the conditions, standards, or procedures provided for in its charter application or failed to meet or make reasonable progress, as defined in its application, toward pupil achievement standards identified therein;
- (4) MLD Academy failed to cure several material violations remaining from the 2006 evaluation; i.e. not offering evidence of its implementation strategies, methodologies, techniques, and practices with respect to curriculum and instruction as required by its Application, which constituted a material violation of its Application;
- (5) MLD Academy materially violated its Application by failing to fully cooperate with the 2007 evaluation team during its evaluation by: (a) prohibiting it from reviewing its practices and techniques with respect to its curriculum and instruction; (b) not providing it with any evidence of its implementation strategies, methodologies, techniques and practices with respect to its curriculum and instruction; and (c) refusing to allow the team to observe instruction being delivered by its teachers or to speak with its teachers in core instructional areas;
- (6) MLD Academy's instruction and curriculum implementation failed to meet pupil achievement standards specified in its Application as measured by its 2006 Annual School Report Card and constituted a material violation of Section 59-40-110(C)(2);
- (7) MLD Academy did not meet the adequate yearly progress established in the No Child Left Behind Act;
- (8) MLD Academy, by failing to provide evidence of proper documentation of student records, or by refusing to allow the evaluation team to review the records, committed a material violation of its Application and of Section 59-40-110(C)(1); and
- (9) MLD Academy's failure to demonstrate community involvement in the governance and operation of the school, or by refusing the evaluation team the opportunity to speak with parents or teachers who could verify community involvement with school activities, constituted a material violation of Section 59-40-110(C)(1). 4

MLD Academy appealed the School Board's Order to the State Board which held a hearing on October 10, 2007. On October 30, 2007, the State Board issued its Order ("State Board Order"), reversing the School Board's decision. On November 29, 2007, the School Board filed an appeal with the ALC.

4 The School Board explained in its order that many of these findings resulted from the evaluation team's inability to observe instruction or speak with core area teachers, have access to student records, or speak with parents and teachers who could verify community involvement with school activities.

On December 10, 2007, MLD Academy filed a Petition for Writ of Mandamus with the South Carolina Supreme Court, requesting it to exercise its original jurisdiction and order the School Board to continue providing funding to MLD Academy during the pendency of the appeal to the ALC. On December 14, 2007, the Supreme Court denied MLD Academy's Petition for Writ of Mandamus. On December 19, 2007, MLD Academy filed a Petition for Writ of Mandamus, or in the alternative, a motion for a Lift of Stay with the ALC. After conducting a telephonic hearing, this Court issued an order on December 28, 2007, which lifted the stay and ordered the School Board to continue funding MLD Academy during the pendency of this appeal."

Judge Kittrell evaluated the record as it pertained to MLD's:

1. Instructional Delivery and concluded that:

Accordingly, I find that there is not substantial evidence in the record to support the School Board's determination that MLD materially violated its charter school application by failing to allow observation of instructional delivery. MLD Academy attempted to comply with all requests for information made by the School Board and permitted on-site evaluations in both 2006 and 2007. Furthermore, MLD Academy provided the team with the success of its students in achieving the specific educational goals for which the school was established, thereby meeting the requirements of Item N of the Statement of Assurances and Section 59-40-140(H). Moreover, the refusal by MLD Academy to allow the evaluation team to sit in its classrooms and observe instruction, which is not required by any of the applicable statutes, regulations or the Application, does not amount to a material violation of the Application.

Therefore, the State Board's determination on this issue is affirmed.

2. As to Pupil Achievement Standards and the Annual Report Card he concluded that:

It is apparent to this Court that the State Board read the record carefully and noted the many difficulties, struggles and problems the parties had working with each other. **The creation of the charter school would take funds away from School District which it could use in its public schools, and there is a history of litigation involving the parties, including the issue of the grant of the original charter which was ultimately decided by the South Carolina Supreme Court. This court has reviewed the record carefully and also is aware of the funding issues MLD Academy had to overcome.** Therefore, the Court finds that the State Board correctly addressed this issue and adopts its analysis. **The School Board misapplied § 59-40-110(C) which amounted to an**

error of law, as Section 59-40-110(C)(2) does not require a charter school to meet its stated pupil achievement standards, only that “reasonable progress” be made.

Accordingly, the decision of the State Board with regard to this issue is affirmed.

3. As to Access to Student Records he concluded that:

Accordingly, the Court finds that there is not substantial evidence in the record to support the School Board’s determination with regard to student records. Furthermore, a failure by MLD Academy to provide student records to the team to evaluate when they were available to the School District at its office is not a material violation of the Application and MLD Academy’s contract with the School District. Therefore, the ruling by the State Board on this issue is affirmed.

4. Finally as to Parental and Community Involvement he found that:

In its Order, the State Board concluded that “[t]he fact that the evaluation team did not speak to parents and teachers, alone, is not under any reasonable reading of the charter school law valid ground for revocation of a charter.” (R. at 12). I agree. Although the team did not speak to parents and teachers, MLD Academy had invited school district officials and its superintendent to a parent meeting on March 22, 2007. Additionally, the record shows that the team did evaluate whether “[p]arental, professional educator, and community involvement in the governance and operation of the school is consistent with the approved charter application” and found that MLD Academy “partially met” this criteria. (R. at 217). In its report, the team found that documentation was provided which showed that the board’s make-up consisted of the categories identified. **Further, other information was included in the record which evidenced parental and community involvement, including the agendas and attendance sheets of participation by parents at parents meetings, parent surveys, community meetings, author’s teas, Mornings with Moms announcements, and open houses.**

He further concluded as follows:

“Therefore, I find that there is not substantial evidence in the record to support the School Board’s conclusion that MLD materially violated its charter school application by failing to demonstrate parental and community involvement in the operation and governance of the school. Accordingly, the State Board’s determination on this issue is affirmed.”

Judge Kittrell's findings and decision represent the law of the case between the parties to this case as they were both parties to that case. **The decision cannot be re-litigated as it was not appealed. All of the allegations above have been decided.** We

are thus concerned only with the last three school years. However, MLD was not allowed to complete year 3 before the revocation proceedings were initiated.

After that decision of this Court MLD left the sponsorship of the Lee County School Board and started the 2009-2010 school year under the sponsorship of the SCPCSD by agreement between the MLD Board and the SCPCSD Board as stated above.

The SCPCSD Board wrote the MLD Board on February 23, 2012 setting the stage for its intention to revoke the charter of the MLD Academy at the close of the 2011-2012 school year. Rec 847.

A revocation hearing was held before the SCPCSD Board on April 19, 2012. Rec 3. After the hearing, the record was left open briefly for the submission of additional documents by MLD.

On May 16, 2012 the SCPCSD Board issued its decision revoking the charter of the MLD Academy based on the following **alleged**:

FINDINGS OF FACT

The District has reviewed all of the testimony and evidence submitted by the parties. Based on the totality of the evidence, the District makes the following factual findings:

1. As a condition of entering the District, MLD agreed to show a high degree of academic progress.
2. MLD's charter agreement states that it will teach students to "[r]ead. Write, and communicate effectively".
3. MLD's charter agreement states that it will teach it's students to "[u]se mathematics, science, the arts and computers effectively."
4. MLD's charter agreement states that it will teach its students to, "[a]cquire, integrate, and apply essential knowledge from the core academic disciplines,"
5. MLD's charter agreement states that it will incorporate the "South Carolina Academic Standards for all subjects" to "identify the goals that our students will achieve at each grade level,"

6. Over the past six years, MLD has met one Annual Yearly Progress (“AYP”) academic objective out of twenty-two, or 4.5% of its AYP academic objectives over the time frame.

7. In May 2011, sixty-one students at MLD were enrolled in classes that require an end-of-course (“EOC”) exam. However, only seven students enrolled in those courses took an EOC exam. Twelve additional students who were not enrolled in those courses took an EOC exam. No one at MLD has explained why so many students who were enrolled in those courses failed to take an EOC exam or why students who were not enrolled in those courses did take an EOC exam. Nevertheless, eighteen of nineteen students who took an EOC exam failed. The breakdown of these scores is as follows:

<u>Course</u>	<u>Students Enrolled</u>	<u>Enrolled Students who took an EOC</u>	<u>Enrolled students who passed an EOC</u>	<u>Non-Enrolled Students who took an EOC</u>	<u>Non-Enrolled Students who passed an EOC</u>
Algebra I	20	1	0	0	0
Biology	10	0	0	0	0
Physical Science	11	3	0	6	0
United States History	8	0	0	5	0
English	12	3	1	1	0
<u>Totals</u>	<u>61</u>	<u>7</u>	<u>1</u>	<u>12</u>	<u>0</u>

8. In 2009, 55.6% of MLS's students who took the High School Assessment Program (“HSAP”) passed both sections of the test. In 2010 and 2011, this percentage dropped to 14.3% and 16.7%, respectively.

9. In 2010, 45% of MLD's middle school students met the English/Languish Arts standards of the Palmetto Assessment of State Standards (“PASS”) test. In 2011, this

percentage dropped to 21%. In 2011, only 21.1% of MLD's middle school students met the Mathematics standards for the test.

10. In 2010, 32.4% of MLD's elementary students met the Mathematics standards of the PASS test. In 2011, this percentage dropped to 14.3%. In 2011, 50% of MLD's elementary students met the English/Language Arts standards of the test.

11. One of MLD's high school graduates was awarded a diploma despite having only twenty-two course credits

From those alleged Findings of Fact the SCPCSD's Board reached the following:

CONCLUSIONS OF LAW

1. South Carolina Code § 59-40-110(C) authorizes a sponsoring school district to revoke or not renew the charter that “commit[s] a material violation of the conditions, standards, or procedure provided for in the charter application”; that “fail[s] to meet or make reasonable progress, as defined in the charter application, towards pupil achievement standards identified in the charter application”, or that “violates[s] any provision of the law from which the charter school was not specifically exempted,”
2. Under any reasonable interpretation of the Charter School Act or understanding of MLD'S charter agreement, MLD's record of student test scores cannot support the continued operation as a school District. Under any metric – AYP Testing, EOC testing HSAP testing or PASS testing – MLD has failed to make progress towards adequately educating its students:
 - Over a six-year period, it has met only one of twenty-two AYP academic objectives.
 - In 2011, only one student passed any EOC examination, and – for no apparent reason – fifty-four out of sixty-one students were never given an EOC examination in classes that required such test.

//

- The percentage of MLD students who passed the HSAP exam fell from 55.6% in 2009 to 16.7% in 2011.
- From 2010 to 2011, the percentage of MLD elementary students who met the state's standards for mathematics, as measured through the PASS test, dropped from 32.4% to 14.3%. In the same time period, the percentage of MLD students who met the state's standards for English and language arts dropped from 45% to 21%.

When questioned at the April 19, 2012 hearing in this matter, Benita Dinkins-Robinson -- the chief administrative official with MLD -- conceded that the school had not met at least one of the academic standards set forth in the school's charter agreement. Under these circumstances, the District concludes that the revocation is appropriate under South Carolina Code § 59-40-110(C)(1) and (C)(2).

3. South Carolina Regulation 43-234(I)(A) requires students to earn twenty four specific course credits in order to be awarded a high school diploma. MLD awarded at least one student a high school diploma even though the student had only earned twenty-two of the required credits. The District concludes that this violation of state law also makes revocation appropriate under South Carolina Code § 59-40-110(C)(4).

This appeal followed that decision.

SUMMARY OF ARGUMENTS

The Appellant respectfully requests that this Court take judicial notice of the fact that this case closely mirrors the case that has been previously heard by this Court and of the Court's decision and order in that cases. None of the alleged grounds for revocation pass statutory muster. Judge Kittrell has specifically stated that **"The School Board misapplied § 59-40-110(C) which amounted to an error of law, as Section 59-40-110(C)(2) does not require a charter school to meet its stated pupil achievement standards, only that "reasonable progress" be made."**

- I. The Charter of the Mary L. Dinkins Higher Learning Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South

Carolina Code of Laws Annotated 1976). The attempted revocation of the MLD charter does not meet any of the grounds enumerated in the South Carolina Code of laws.

II. The South Carolina Charter Act is not 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). It is fundamental to the American Scheme of Justice that one cannot be both the accuser and the judge in a case. That basic tenet of justice has been violated in this case. The SCPCSD's Board made a decision to revoke the charter of the MLD Academy. It then followed the law and granted the MLD Academy a revocation hearing with a predetermined outcome. In essence, MLD was told that we will give you the required hearing and then revoke your charter.

III. The revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976). The Charter School act requires that the revocation hearing be held not less than 60 days after notification of revocation is given. MLD was given notice of the intention of the SCPCSD Board's Decision to revoke its charter on March 12, 2012. The revocation hearing was held on April 19, 2012. The request for more time by the MLD attorney was denied in advance of the hearing and again at the start of the hearing. Rec 861. Judge McLeod's admonition the hold hearing a minimum of 60 days after reasonable details are furnished were likewise ignored. Rec 860.

IV. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy. The Charter school act does not allow for the issuance of conditional charters except as specifically authorized by the Act. Further charters must be granted for a ten year period

or not granted at all. MLD was wrongfully denied a 10 years charter. MLD was not given 60 days to prepare for the revocation hearing and the revocation was done before the end of the 2011-2012 school year without the **required audit** of the school.

ARGUMENTS

I. The Charter of the Mary L. Dinkins Higher Learning Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

A. **Standard of Review.** In his order Judge Kittrell correctly wrote the following regarding the Jurisdiction and Standard of Review of this Court:

“S.C. Code Ann. § 59-40-110(C) provides that a sponsor must revoke a school’s charter if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedure provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or
- (4) violated any provision of law from which the charter school was specifically exempted.⁵

Section 59-40-110(A) requires the sponsor to annually evaluate the conditions outlined in § 59-40-110(C) and to use those evaluation results in making a determination for nonrenewal or revocation of the charter. If a sponsor decides to revoke a charter, it **must** notify the charter school’s governing body in writing and in reasonable detail of the grounds for the proposed termination at least sixty days prior to termination of the charter. § 59-40-110(D). A charter school’s governing body may then request, in writing, a hearing before the sponsor within fourteen days of receipt of the notice of termination of the charter. § 59-40-110(F). After receipt of a timely request for a hearing by a charter school governing body, the sponsor shall conduct a hearing prior to taking final action. §

⁵ The only grounds for revocation of a charter are those contained in § 59-40-110(C). S.C. Code Ann. § 59-40-110(E).

59-40-110(F). A final decision of the sponsor to revoke a charter may then be appealed to the State Board pursuant to the provisions of §§ 59-40-90 and 59-40-110(H).⁶

Appeals from a decision by a local school board must be filed with the State Board within 10 days of the school board's decision. § 59-40-90 (B); see also Reg. 43-600. Pursuant to § 59-40-90(C) and 24 S.C. Code Ann. Reg. 43-600(I)(G), the State Board must, within 45 days after receipt of the Notice of Appeal and, after reasonable public notice, conduct a public hearing to consider the appeal. Each party to the appeal is authorized to make an oral argument at the hearing addressing the issues on appeal, and the State Board may, at its discretion, allow public comments addressing the issues on appeal. Within 20 days of the public hearing, the State Board must issue a final written order. Reg. 43-600(I)(D) provides that the State Board's review will be limited to the record on appeal and that it will not consider any fact that does not appear in the record on appeal. Further, Reg. 43-600(I)(E) provides that the standard of review to be applied by the State Board in its appellate review mirrors the limited standard of review contained in the South Carolina Administrative Procedures Act ("APA"); Beaufort County Bd. of Educ. v. Lighthouse Charter School Comm., et al, 335 S.C. 230, 234, 516 S.E. 2d 655, 657 (1999); S.C. Code Ann. § 1-23-380(5) (as amended 2008).⁷

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.

⁶ Effective May 21, 2008, Act No. 239, § 4 (2008) changed the appeals process to provide that all appeals from final decisions by local school boards are made directly to the ALC.

⁷ The APA was recently amended by R.413, H.3575, 117th Sess. (S.C. 2008); Act No. 334 of 2008; § 5 (effective June 16, 2008).

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

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. Substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding.

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

The same Jurisdiction and Standard of Review used by Judge Kittrell apply here.

B. Discussion of the Issue.

The SCPCSD Board has shown no lawful ground for revoking MLD's charter.

- (1) MLD committed no material violation of the conditions, standards, or procedure provided for in the charter application; The record is devoid of any showing of any material violation of any condition, standard or procedure provided for in the Charter School Act. **The School Board misapplied § 59-40-110(C) which amounted to an**

error of law, as Section 59-40-110(C)(2) does not require a charter school to meet its stated pupil achievement standards, only that “reasonable progress” be made. The record shows that MLD has taken every step required of it by the SCPCSD. It employed its consultant, it revamped its entire school, including hiring an entirely new staff.

(2) MLD did not fail to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application. MLD's Director clearly outlined the objectives of the parties when MLD came under the sponsorship of the SCPCSD and the achievement of MLD of those objectives. REC 42-45.

(3) MLD clearly met generally accepted standards of fiscal management in its accounting as demonstrated by the report of its accountant with no countervailing statement by any other accounting professional; Further, the financial audit of MLD for the school year ending June 30, 2011, done by the Certified Public Accounting from of Petway, Mills and Pearson, PA, found that, “... Our opinion is considered a clean audit opinion in that we found the financial statements as presented to us to be in conformity with generally accepted accounting principles and to fairly state financial position....”. Rec 866.

(4) Finally, MLD violated no provision of law from which the charter school was specifically exempted. There was an allegation that MLD graduated one student without the required credit hours but no proof was offered to substantiate that allegation. However, even if MLD inadvertently graduated someone who was short of the required hours (which is strictly denied) that does not rise to the level which would be cause to shut down an entire school. MLD no longer has high school students after its restructuring in any event.

The SCPCSD's letter of March 12, 2012 informing MLD of its revocation decision has 7 bullets/allegations. Rec 850. They do not mirror the allegations in the SCPCSD's revocation decision. Rec 867. MLD's Director, gave a detailed response to each of those allegations. They are in the record. Rec 929-944. The responses clearly shows that the allegations are baseless. However, the responses did not matter because the SCPCSD had made its decision and the hearing was only a formality. The responses were not given any weight by the prejudiced board.

Dr. McLaurin believes that students at all of the charter schools should show a certain acceptable range of scores on state mandated tests. To him, and hence the board, that is the sole measure of a schools worth. It does not matter that MLD and other schools with students that are almost 100% free lunch students and come from homes where there is little or not help are severely handicapped when it comes to getting the students to perform well on standardized tests. It does not matter that the students are light years ahead of where they would otherwise be without MLD and other similarly situated schools. The final test scores are all that matters to them.

Nonetheless, the allegation specific responses to the allegations in the SCPCSD Board 's May 16, 2012 Decision are as follows:

As to the Findings of fact that:

1. As a condition of entering the District, MLD agreed to show a high degree of academic progress.

Response: There is a copy of the Charter of the Mary L. Dinkins Higher Learning Academy in the Record on Appeal. Rec-53. The stated Goals of the Academy are that each student who completes MLD Higher Learning Academy will be able to:

- a. Read, write and communicate effectively,
- b. Use mathematics, science, the arts and computers effectively,

- c. Define, analyze and solve problems from a global point of view,
- d. Study and work effectively and
- e. Demonstrate personal and social and civic responsibility. Rec-59.

That charter was supplemented by the "Considerations for MLD Higher Learning Academy Charter School to transfer to the South Carolina Public Charter School District ..." document, Rec-844. Statement #2 of those considerations state, "... SCPCSD will expect a high degree by reasonable amount of specific academic growth by students as part of the renewal process."

There is no doubt that that consideration has been achieved. A reading of the opening statements of all of the non-party witness clearly state the academic growth of the students.

a. Reverend Wells spoke of the vast improvement of the children who attend his church who were MLD students. Without MLD his church had trouble teach the children in Sunday school because many could not read. MLD helped to eliminate that problem in his church. Rec 875-878.

b. Mr. Ennis Bryant spoke of how MLD turned "kids in a shell" into leaders, how MLD addressed the whole family as well as the child, how MLD eliminated generational problems of the families. Rec 878- 882.

c. Dr. Shelia Haney spoke of her commitment to teach the students, how she tutors the students and deplored the way MLD has been treated by Lee County and the SCPCSD and how MLD still serve the rejected and disadvantaged students. Rec 883-887.

d. Pastor Sutton spoke of the greater opportunity MLD affords its students. How MLD serves the troubled and poor students (black and white) and achieved a 100% graduation rate for its senior class. Rec 887-892.

e. Superintendent McLaurin, in his press release, said "Of particular concerns are the needs of **at-risk students who have chosen these schools in large numbers.**". Rec 921, lines 6-8. The reason parents choose MLD is that MLD is making a difference where the public schools of Lee County are failing these students. The schools that do well on the standard test do not have a high percentage of free lunch students as MLD does.

Clearly MLD has met that objective by any measurable standard.

The Memorandum of Agreement between the parties provided MLD will do the following:

- a. The Measures of Academic Success (MAP) Assessment will be give three times throughout the year to all 3-12 grade students under district supervision. MLD will pay for the installation and support costs for this assessment.
- b. MLD will provide access to classroom, professional development, and student records to SCPCSD staff on an on-going basis.
- c. MLD will make monthly written reports to the SCPCSD Superintendent on the general academic progress of the school and on the progress of individual students.
- d. MLD will use a district-approved outside consultant to review data, provide training, and make recommendations to improve the school. All correspondence between the consultant and MLD must be copied to SCPCSD. MLD will pay for all costs related to the use of consultants.
- e. MLD will prepare and implement a report on improving the esthetics of the building. This includes, but is not limited to, landscaping the grounds, significantly improving the "street appeal" of the building, and adding art work to the inside of the building to improve the sense of the building being a school. All improvements should be made with school or donated funds.
- f. MLD will prepare a comprehensive report for renewal hearing in May 2011 and make copies of the report available to Board Members at least one week before the hearing. The report will include improvements made to the building, an update on the quality of teaching at the school, an update on the financial standing of the school, and a thorough report on the academic progress made at the school. Although no decision has been made at the time of the execution of this Agreement, MLD recognizes and understands that the hearing that will be held on or about May 2011 could result in the non-renewal of its Charter and that they would have appellate rights provided under the South Carolina Charter School Act.

g. MLD agrees to accept the status of probation in the district without appeal and to be bound by the terms of this Agreement, with the understanding that the school will have a hearing for a ten year charter renewal on or about May 2011.

h. The SCPCSD agrees to work with the MLD as a school in full standing while they complete the probationary period through May 2011. Rec-845.

MLD has completed all of the requirements outlined in this agreement as stated in the district May board meeting. Rec 914-915.

2. MLD's charter agreement states that it will teach students to "[r]ead, Write, and communicate effectively".

Response: As indicated by the district's own consultant, Patricia Smith, and the MLD Executive Director, most of MLD's students come to the school 2 to 5 grade levels behind. According to that same district consultant, most students scored between a 1 and 2 on her state given Domini Assessment test. However, MLD data shows that 84% of its students made gains in the areas of ELA and Reading Comprehension using the Measures of Academic Success (MAP) Assessment that was required by this district. This test allows one to see the individual growth of each child. Rec 915.

3. MLD's charter agreement states that it will teach its students to "[u]se mathematics, science, the arts and computers effectively."

Response: Respectfully, MLD data shows that 87% of its students made gains in the areas of Math using the Measures of Academic Success (MAP) Assessment. The current 2012 PASS data also shows that overall MLD made a 17.68 gain in Math and a 22.15 gain in Science. Rec 918.

4. MLD's charter agreement states that it will teach its students to, "[a]cquire, integrate, and apply essential knowledge from the core academic disciplines,".

Response: In order to ensure that MLD was implementing all of South Carolina State Standards they did the following:

a. At the end of the academic year, 2010-2011, MLD, with the benediction of the District, MLD restructured its school, replacing almost every teacher and reducing the school from a K-12 to K-8. In essence, MLD became a new school. There has not been a complete school year since the changes were implemented to weigh the impact of the restructuring. Further, MLD graduated 100% of its senior class and all of the graduates have gone on to greater things, including the fact that most of them are in college. Rec 889.

b. MLD also welcomed, at the District's request, a consultant to assist them in enhancing the academic performance at the school. The district's consultant is on staff three days a week. The District (state) consultant, along with the curriculum coordinator, was responsible for making sure that teachers implement all standards at each grade level. MLD has also contracted two additional state approved consultants in the areas of math and science.

c. In addition, MLD has instituted after school programs and Saturday school. These programs are intended to bring most of the students, who come from very poor backgrounds and in most cases many grade levels below, to grade levels.

5. MLD's charter agreement states that it will incorporate the "South Carolina Academic Standards for all subjects" to "identify the goals that our students will achieve at each grade level,".

Response: Mary L. Dinkins Higher Learning Academy (MLD) is in its seventh year of operation but is barely eighteen months into its relationship with the South Carolina Public Charter School District (District). During its seven years of existence, MLD has gone through a tumultuous history combating massive injustice from the Lee County School District which culminated in multiple trips on Appeals and one to the Supreme Court of South Carolina just to maintain its existence. As a result of this tumultuous

relationship with Lee County School District, MLD decided to join the South Carolina Public Charter School District eighteen months ago. MLD has shown gain as evidenced by the 2012 test scores which were not available because the revocation hearing took place prior to the end of the school year. 60 percent of the students met or scored exemplary in at least one area on the PASS and 80 percent of students made individual gain on the same test. As indicated, previous the Measures of Academic Success (MAP) Assessment for the 2011-12 school year shows that 84% of the student made gain in ELA and 87% made gain in Math.

6. Over the past six years, MLD has met one Annual Yearly Progress (“AYP”) academic objective out of twenty-two, or 4.5% of its AYP academic objectives over the time frame.

Response: MLD was all under the direction of the South Carolina Charter School District for eighteen (18) months not six years. However, record shows the following:

<u>AYP for MLD</u>	<u>AYP for Lee County</u>
2009: 7 / 9 (77%)	2009: 12 / 21 (57%)
2008: 7 / 9 (77%)	2008: 11 / 19 (57%)
2007: 5 / 9 (55%)	2007: 11 / 19 (57%)
2006: 7 / 13 (53%)	2006: 11 / 21 (52%)

The following data was presented to the South Carolina Charter School Board at their May 2011 meeting:

13 out of 13 Objectives Met (100%), Met AYP
7 out of 9 Objectives Met (77%), Not Met AYP
10 out of 13 Objectives Met (76%), Not Met AYP
10 out of 13 Objectives Met (76%), Not Met AYP
9 out of 13 Objectives Met (69%), Not Met AYP
9 out of 13 Objectives Met (69%), Not Met AYP
7 out of 13 Objectives Met (53%), Not Met AYP

We feel that this district is out of touch of reality in failing to realize that when working with at risk student one must look at the individual growth of the students, Rec 931, as indicated by the State Department of Education's request to the United States Department of Education for a waiver from the No Child Left behind act which would make AYP void in South Carolina. However, as the evidence shows, MLD was number two in Lee County. The new reports for 2012 also indicates that MLD out scored every school in Lee County but one even in spite of being constantly under the harassment by the Lee County School Board as well as the SCPCSD's board. Rec 909-911 (Dr. Brazzle's letter to Lee County read into record). Imagine what MLD can accomplish if MLD's Director were allowed to devote her time and attention to the school and not be in court as she has for the school's entire existence.

Also in 2010-11, the charter district stated in its January 2012 meeting that this district and its schools were under funded so that 2011-12 would be our base year. MLD only received a base of \$2,100 per child.

7. In May 2011, sixty-one students at MLD were enrolled in classes that require an end-of-course ("EOC") exam. However, only seven students enrolled in those courses took an EOC exam. Twelve additional students who were not enrolled in those courses took an EOC exam. No one at MLD has explained why so many students who were enrolled in those courses failed to take an EOC exam or why students who were not enrolled in those courses did take an EOC exam. Nevertheless, eighteen of nineteen students who took an EOC exam failed. The breakdown of these scores is as follows:

<u>Course</u>	<u>Students Enrolled</u>	<u>Enrolled Students who took an EOC</u>	<u>Enrolled students who passed an EOC</u>	<u>Non-Enrolled Students who took an EOC</u>	<u>Non-Enrolled Students who passed an EOC</u>

Algebra I	20	1	0	0	0
Biology	10	0	0	0	0
Physical Science	11	3	0	6	0
United States History	8	0	0	5	0
English	12	3	1	1	0
<u>Totals</u>	<u>61</u>	<u>7</u>	<u>1</u>	<u>12</u>	<u>0</u>

Response: In May of 2011, MLD only had 16 students in grades 9 through 11 not 61 students. All of the students that were required to take the test did. MLD's test coordinator works directly with the district test coordinator to ensure that all students who are suppose to take the right test do. The district test coordinator is the only person who can order state tests. As indicated by the director, at no point was this issue or concern brought to school until the hearing of April 2012.

8. In 2009, 55.6% of MLD's students who took the High School Assessment Program ("HSAP") passed both sections of the test. In 2010 and 2011, this percentage dropped to 14.3% and 16.7%, respectively.

Response: Please note under the direction and approval of the South Carolina Public charter school MLD is currently not serving high school students. This change in the charter was done in May of 2011. Most of the students who took the HSAP test in 2011 were special education students. MLD was not under the direction of the South Carolina Public Charter School but in Lee County which from the onset created an hostile environment. Initially MLD, attracted students that were on level and/or gifted. However, after continuous harassment, abuse and uncertainty to the organization goal of just being a school of choice, MLD became known as the "Healing Grace" of the community. The school as evidence by the testimony began serving students that were 2 to 5 grade levels behind.

9. In 2010, 45% of MLD's middle school students met the English/Language Arts standards of the Palmetto Assessment of State Standards ("PASS") test. In 2011, this percentage dropped to 21%. In 2011, only 21.1% of MLD's middle school students met the Mathematics standards for the test.

Response: In January of 2012, MLD met with the South Carolina Public Charter Board of Directors and informed them that the students that MLD was now attracting were coming into the school two to five grade levels behind as evidenced by the District's state consultant and their required assessment. MLD also stated that they have implemented strategies that would ensure individual growth of the students but only about 15% of the students were coming in able to pass a state test. They also stated that children of poverty are disadvantage as indicated by the South Carolina Department of Education website and need additional resources to be successful. At that meeting the district stated that all schools would be given a chance to succeed because of the 2010-11 school year the district was under funded so 2011-12 would be our base year.

10. In 2010, 32.4% of MLD's elementary students met the Mathematics standards of the PASS test. In 2011, this percentage dropped to 14.3%. In 2011, 50% of MLD's elementary students met the English/Language Arts standards of the test.

Response: See response to item 8.

11. One of MLD's high school graduates was awarded a diploma despite having only twenty-two course credits.

Response: After its first academic year with the District, MLD graduated all of its twelfth graders which, upon information and belief, was the only high school among the District's schools to accomplish such a feat. In fact, it may be the only public school in the state that had a 100 percent graduation rate. All of the nine graduates passed the state HSAP assessment and all of this students had all required units. The district never

indicated which student had a discrepancy and the first time this concern was mentioned was at the hearing. 8 out of the 9 students were accepted into college and the average SAT score was 1080. The South Carolina Public Charter's School overall graduation rate was only 15% for 2011 school year. MLD's graduation rate was by far the highest in this district. Therefore, the end result is that even though these students come drastically behind, with assistance and guidance, MLD is producing graduates and leaders which is in the spirit of the charter. The director stated that Lee County 2012 current valedictorian is a product of MLD. Testimony made the Director and the principal consultant show that MLD's program has saved many students that might have dropped out. 78% of the graduates were African American Males. The school's population has also doubled from 2010-11 to 2011-12.

As to the SCPCSD's Conclusions of Law, the following response is provided:

CONCLUSIONS OF LAW

1. South Carolina Code § 59-40-110(C) authorizes a sponsoring school district to revoke or not renew the charter that "commit[s] a material violation of the conditions, standards, or procedure provided for in the charter application"; that "fail[s] to meet or make reasonable progress, as defined in the charter application, towards pupil achievement standards identified in the charter application", or that "violates[s] any provision of the law from which the charter school was not specifically exempted,"

Response: This is merely a statement of the law which provides no application to the instant case.

2. Under any reasonable interpretation of the Charter School Act or understanding of MLD's charter agreement, MLD's record of student test scores cannot support the continued operation as a school District. Under any metric – AYP Testing, EOC testing

HSAP testing or PASS testing – MLD has failed to make progress towards adequately educating its students:

Response: The SCPCSD has been comparing apples and oranges and wondering why they are not the same. Rec 920-930. By any measure MLD students are light years ahead of where they were when they came to MLD. For the most part they would comprise the dropouts if they were in a regular failed school system such as the public school system of Lee County. To look at raw test scores of the students of MLD as the sole measure of the value of the school is wrong.

Further, MLD students were not given an opportunity to take the PASS test before the revocation letter was sent out. Rec 930. Also, the PASS test has been largely discredited and is no longer used by the State Department of Education. Rec 940.

- Over a six-year period, it has met only one of twenty-two AYP academic objectives.

Response: MLD has only been with this district for 18 months. This district can not use previous data from another district to revoke a charter. It must rely on the 10 years they are responsible for in issuing the MLD charter which started in 2010-11. The previous years have been addressed by Judge Kittrell in the prior litigation. They have not even allow for a full two years to determine whether or not there would be a growth in assisting these children under there direction.

- In 2011, only one student passed any EOC examination, and – for no apparent reason – fifty-four out of sixty-one students were never given an EOC examination in classes that required such test.

Response: MLD had only 16 high school students that would have taken the test in 2011.

MLD no longer has high school students under the blessing of this district.

- The percentage of MLD students who passed the HSAP exam fell from 55.6% in 2009 to 16.7% in 2011.

Response: As indicated previously, MLD is now attracting at-risk students that come from disadvantage homes. Most of these students are two to five grade levels behind..

Also, note that half of these students who took the test in 2011 were receiving special educational services. Again, note that in the May 2011 meeting the board allowed MLD to be more focused and alter the charter to allow them to serve students in grades K4 through 8th grade instead of K4 through 12th grade.

- From 2010 to 2011, the percentage of MLD elementary students who met the state's standards for mathematics, as measured through the PASS test, dropped from 32.4% to 14.3%. In the same time period, the percentage of MLD students who met the state's standards for English and language arts dropped from 45% to 21%.

When questioned at the April 19, 2012 hearing in this matter, Benita Dinkins-Robinson -- the chief administrative official with MLD -- conceded that the school had not met at least one of the academic standards set forth in the school's charter agreement. Under these circumstances, the District concludes that the revocation is appropriate under South Carolina Code § 59-40-110(C)(1) and (C)(2).

Response: The director and all of the others who testified clearly stated that based on the individual growth of students the school has met all of the objectives. The director and the state curriculum coordinator indicated that the school was attracting students that were two to five grade levels behind. The school has to work with the students that they are given. Again, MLD has only been with this district for 18 months before they hastily made this decision to revoke. The district did not even allow for two years to show a comparison. The district only looked at one set of data. The district did not even used

the data from the assessment tool that they ordered MLD to purchase. That data showed that MLD made 87% gain in Math and 84% gain in ELA in one year.

The SCPCSD decision went on to add “When questioned at the April 19, 2012 hearing in this matter, Benita Dinkins-Robinson – the chief administrative official with MLD – conceded that the school had not met at least one of the academic standards set forth in the school's charter agreement. Under these circumstances, the District concludes that revocation is appropriate under South Carolina Code §§ 59-40-110(C)(1) and (C)(2).”.

Response: After outlining the deprivation of funds and other atrocities perpetrated on MLD by its prior sponsor, the Lee County School Board, Ms. Dinkins-Robinson went of to say “And according to our Title 1 visit, which was just last Thursday, the reviewer stated that we implemented five out of six strategies of the turnaround model.”. That is an 83.33 success rate. If all of the charter schools were revoked for missing one of their objectives, I dare say the Mr. McLaurin and his entire staff would be out of work as there would be no charter schools.

3. South Carolina Regulation 43-234(I)(A) requires students to earn twenty four specific course credits in order to be awarded a high school diploma. MLD awarded at least one student a high school diploma even though the student had only earned twenty-two of the required credits. The District concludes that this violation of state law also makes revocation appropriate under South Carolina Code § 59-40-110(C)(4).

Response: MLD knows of no student who was awarded a diploma without the required twenty four hours. If that is so (which MLD denies) it was an oversight. That is certainly not a reason to revoke MLD's charter when it is helping so many students.

II. The South Carolina Charter Act is not 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).

A. Standard of Review.

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 absense 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.

This issue is properly preserved though not delved into at the hearing before the SCPCSD Board . Rec 34-36. The Charter School Act provides for a hearing before the SCPCSD Board. That provision is inherently unfair when the accuser is the SCPCSD itself. The SCPCSD Board are the very one who are seeking to revoke the chartered of MLD. The outcome of the hearing is predetermined. No matter what information is presented the had had already made a decision. They published news releases prior to the hearing announcing their intend to revoke the charter of the school. Rec 911.

In order for there to be a fair hearing the judge has to be neutral. There was no pretence of neutrality by the chairman of the SCPCSD Board, Mr. Don McLaurin. During the breaks Mr. McLaurin consulted with the attoreny for the Appellee with the attorney for the Appellant being present. That is clearly prejudicial.

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 or dismiss the Appellee's case. This is especially true when the trier of fact constantly cut off the presentation of evidence in the making of the record. Rec 886 (McLaurin cut off Ms. Haney), Rec 892 (McLaurin cuts off Mr. Sutton) Rec 39 (McLaurin cutoff atty. Watson).

Further, the trier of fact, the SCPCSD Board, was being represented by the attorney for the SCPCSD and the trier of fact made objections and sided with their attorney constantly. Rec52-57. Justice requires that this appeal not be limited to the record made below.

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

A. Standard of Review.

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

B. Discussion of the Issue.

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 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 MLD school charter. Rec 873-1062. The entire hearing was a sham to reach Mr. McLaurin's predetermined outcome. All of the board member followed he lead like so many lemmings walking off a cliff.

On March 27, 2012 The Superintendent of the SCPCSD, Dr. Wayne Brazzell, wrote a letter to the Executive Director of the MLD Academy informing her of the SCPCSD Board's Decision to revoke the MLD Charter with a copy of the letter to the Chairman of the MLD Board, Mr. George Williams. The letter gave only about two weeks notice for the revocation hearing with a revocation hearing date of April 12, 2012. Rec 855-856. At the request of MLD's prior attorney the hearing was rescheduled for April 19, 2012. Rec 857. I thereafter on April 17, 2012 requested the allowance of at least 60 days as required by the Charter School Act. Rec 858-860. That request was denied (Rec 861) and the revocation hearing was held on April 19, 2012 in violation of the Charter School Act. Rec 864.

My request for a continuance at the start of the revocation hearing was also summarily rejected. Rec 895.

This is a clear violation of the statute. The revocation should therefore be denied.

IV. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

A1. 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."

B1. 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. The SCPCSD violated the provisions of the law when it purported to grant the Mary L. Dinkins Academy a provisional charter. Rec 844, 845. This is a clear violation of a statutory provision.

A2. Standard of Review.

Section 59-40-80 states, "A sponsor may conditionally authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates such authority is necessary for to meet the requirements of this chapter.

B2. Discussion of the Issue.

The Charter School Act does not allow for the sponsorship of a charter school on a conditional basis where that charter school already exist as an operating charter school and has in place its space, equipment, facilities and personnel as the Mary L. Dinkins Academy did when it came under the sponsorship of the South Carolina Public Charter School District. The provision in the agreement of the parties that purportedly admitted the MLD on a provisional basis is clearly contrary to the law. This is a clear violation of a statutory provision.

A3. 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."

"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).

B3. Discussion of the Issue:

The SCPCSD did not do an audit of MLD for the 2010-2011 or for the 2011-2012 school year as required by the Charter School Act. Rec 934-935. In fact, the revocation hearing and revocation decision were done while the school year was still in progress this year. This is clearly contrary to the law. The revocation must be denied on that ground alone.

The Charter school mandates that the annual audit must be used in making the determination. That provision is not discretionary.

Further, the financial audit of MLD for the school year ending June 30, 2011, done by the Certified Public Accounting firm of Petway, Mills and Pearson, PA, found that, “... Our opinion is considered a clean audit opinion in that we found the financial statements as presented to us to be in conformity with generally accepted accounting principles and to fairly state financial position....”. Rec 866.

The revocation should be denied on this ground alone.

CONCLUSION

Mary L. Dinkins Higher Learning Academy (MLD) is in its seventh year of operation but is barely eighteen months into its relationship with the South Carolina Public Charter School District (District). During its seven years of existence, MLD has gone through a tumultuous history combating massive injustice from the Lee County School District which culminated in multiple trips on Appeals and one to the Supreme Court of South Carolina just to maintain its existence. As a result of this tumultuous relationship with Lee County School District, MLD decided to join the South Carolina Public Charter School District eighteen months ago. When MLD joined The District, it was placed on probation.

During MLD's initial year with the District, it served students K through 12. After its first academic year with the District, MLD graduated all of its twelfth graders which, upon information and belief, was the only high school among the District's schools to accomplish such a feat. In fact, it may be the only public school in the state that had a 100 percent graduation rate. Also, at the end of the academic year, 2010-2011, MLD, with the benediction of the District, restructured its school, replacing almost every teacher and reducing the school from a K-12 to K-8. In essence, MLD became a new school.

MLD also welcomed, at the District's request, a consultant to assist them in enhancing the academic performance at the school. During the District Board meeting at the beginning of August of 2011, MLD was placed on academic probation along with three other schools with stringent recommendation to demonstrate academic progress by the end of the school 2011 - 2012. It was as a result of those instructions that MLD took the actions stated above of replacing teachers and altering its programs. The District, which has the responsibility of overseeing the academic, physical and operational health of the school, asked that MLD get a consultant which MLD has been paying for throughout this year. The district's consultant is on staff three days a week (See Exhibit I). MLD has also contracted two additional state approved consultants in the areas of math and science. In addition, MLD has instituted after school programs and Saturday school. These programs are intended to bring most of the students, who come from very poor backgrounds and in most cases many grade levels below, to grade levels. Despite the continuous harassment and injustice to the students and staff of MLD by the local district our students continue strive for excellence. MLD has seen progress in our students using the MAP assessment program which we procured based on the

District's recommendation. These results have demonstrated progress across the board that our students have made overtime through out the school year. These results give us hope that the students will perform better during state testing at the end of the year and demonstrate reasonable academic progress.

On January 13, 2012, MLD received a letter of *caution* from The District indicating that MLD's audit was tardy; even though MLD submitted its audit within the extended time frame provided by the District of January 20, 2012. The audit did not reveal any mismanagement or misappropriation of funds. In fact it was an unqualified audit.

On February 23, 2012 the District sent a letter which seems to indicate that the audit revealed significant deficiencies in the area of finance. The letter further indicated that the there was a "*significant departure from State and Federal requirements for record keeping and documentation for Title I.*" MLD disagrees with the assessment that it violated any Title I requirements. All Title I documents **for FY-11** were completed and forwarded to the District in a timely manner and MLD attached documentation that was forwarded to the District at that time. Furthermore, a review of the audit failed to indicate any deficiencies regarding record keeping and documentation for Title I eligibility. There is a distinction between maintaining documentation to support verification for applications for Child Nutrition, CFDA No. 10.55 and 10.559 as specifically cited in Audit Finding 11-1 and Title 1. As a matter of record, on page 37 of our FY-11 Audit (last paragraph of the COMPLIANCE section), the auditor noted – with the exception of "verification of approved applications for free and reduced meals" MLD "complied, in all material respects, with the compliance requirements referred to above that

could have a direct and material effect on each of its major federal programs for the year ending June 30, 2011.”

A SCPCSD letter also indicated as one of the deficiencies “the failure to maintain properly designed financial management system in which duties are properly segregated, clear instructions are provided for purchasing decisions, and competitive bidding is documented”. MLD has in place and has maintained properly designed financial management system. A copy of the system is attached herewith as Exhibit III. The system has always been part of the school’s procedures and that continues to date. The system clearly distinguishes the duties and provides clear instructions regarding purchasing and decision making. There is no requirement for competitive bidding for Charter Schools in the South Carolina Public Charter School Act and hence, that is not required. Furthermore, we spoke with the auditor, Phyllis Pearson, and her reference to “competitive bids” or a “competitive bid process” was in the vein of best practices. Any inference by your office that this element is in any way mandatory is incorrect.

The second seems to tie with Title I indicates that there is a failure to maintain documentation to support verification of application approval for free and reduced priced meals. MLD acknowledges that during a period year, as some staff were transitioning in and out of the school, most of the documentation were not properly maintained, however, since the beginning of this academic year, MLD has maintained complete and thorough records of everyone involved in the Child Nutrition Program, CFDA No. 10.55 and 10.559.

What is most telling and appalling to the MLD Board is the fact that when the District received and reviewed MLD’s audit and realized that there were some noted deficiencies but every audit in the District’s schools seem to have some noted deficiencies, the District in its role as sponsor did not call the school to inquire if it lacked properly designed

financial management system in which duties are properly segregated. The District also did not inquire from MLD if it had documentation to support the free and reduced price meals, and if it did not, what steps have been taken to correct the problem. In this case, fortunately, most of the things indicated herein are in place and in the case of documentation for free and reduced price meals, adequate steps have been taken since August of last year to ensure that said documentations are properly maintained.

Furthermore, the SCPCSD indicated that MLD's probationary status was due to poor academic performance as well as continued deficiencies in the areas of compliance and finance. This is the first time MLD's Board is being informed that its probationary status has been based on what was described as "continued deficiencies in the areas of compliance and finance." MLD's Board has not received any letter indicating that MLD has continuously been deficient in the area of compliance and finance. The MLD Board would request that if there has been any correspondence prior to the Reed Letter indicating that that our probationary status was based on continued deficiencies in the areas of compliance and finance we would like a copy.

MLD cherishes its relationship with the District and takes its responsibilities of educating the children seriously. We take these matters seriously and if there are deficiencies as indicated above please let us know. Also, steps have been taken to assist students in performing better this academic year and this Board is confident that with all that has been done to assist MLD students, they are performing and have performed better on the year end testing.

The Mary L. Dinkins Academy opened its doors officially in September 2005. It had to fight all of the way to the South Carolina Supreme Court to have the Lee County School Board accept its right to exist. It has never been able to give its complete attention to the purpose for which it was founded. That purpose being to give at risk

young men and young women a chance to succeed where the traditional school system has failed them.

Every speaker at the revocation spoke of the great job that the MLD Academy is doing in educating the children who would otherwise be lost in the regular school system. There was not a single speaker in opposition to the existence of the school. Rec 875-893. Yet, this did not matter to Superintendent, Don McLaurin and his puppet board.

Even after the Lee County school, Board was forced to accept and recognize the right of the school to exist and reluctantly agreed to become MLD's sponsor, it promptly fabricated reasons to attack the continued existence of the school. They found baseless reasons to try to get this Court to acquiesce in its attempt to revoke the school's charter. Judge Kittrell rejected those baseless allegations. That effort failed.

In hopes of finally being able to pay full attention to its students, the MLD Academy sought refuge with the South Carolina Public Charter School District. That organization too has sought to wrongfully revoke its charter. The SCPCSD has trumped up reasons to bring the MLD Academy before this Court.

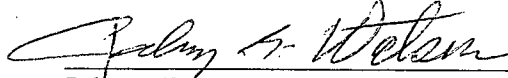
None of the alleged reasons to revoke MLD's charter are sanctioned by the Charter School Act or by the state of federal notions of due process. This Court should reverse the District decision to revoke the charter of MLD Academy because:

1. the District failed to hold the revocation hearing within the time frame outlined in the Charter School Act. MLD was not given 60 days to prepare for the revocation hearing,
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. The Board acted as both the accused and the judge.

The Mary L. Dinkins Academy therefore requests that the revocation of its charter by the District be overturned as violative of the South Carolina Charter School Act and that the SCPCSD Board be ordered to grant MLD a full 10 year charter as required under the Charter School Act.

Respectfully submitted,



Johnny E. Watson,
Attorney for Mary L. Dinkins
Higher Learning Academy

September 17, 2012
Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

FROM THE SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No.: 2012-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD), ... APPELLANT

v.

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

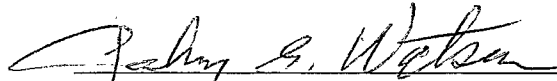
CERTIFICATE OF SERVICE

I, Johnny E. Watson, Attorney for the MLD school, hereby certify that I have served the individual named below with a copy of the document described herein by delivering it to his office located at 1727 Hampton Street City of Columbia, State of South Carolina, 29201, on the date listed herein below:

PERSON SERVED: Karl S. "Butch" Bowers
Attorney for the SCPCSD

DOCUMENT: Brief of the Appellant

DATE SERVED: September 17, 2012


Johnny E. Watson, Document Server

Columbia, South Carolina

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SC ADMIN. LAW COURT

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October 29, 2012

The Honorable Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
1205 Pendleton St.
#224
Columbia, SC 29201

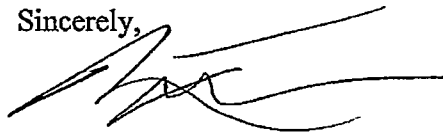
Re: Mary L. Dinkins Higher Learning Academy v.
South Carolina Public Charter School District.
Docket No. 12-ALJ-30-281-AP

Dear Ms. Shealy:

Enclosed for filing is Return Brief of Respondent in the matter referenced above. Please file the original and return a clocked copy to us.

Thank you.

Sincerely,



M. Todd Carroll
Attorney

MTC/tm
Enclosures

cc: Johnny E. Watson, Esquire (w/ encl.)

FILED

OCT 29 2012

SC ADMIN. LAW COURT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case.....	1
Standard of Review.....	3
Arguments and Authorities	4
I. The District's decision to revoke MLD's charter was supported by substantial evidence in the record.	4
A. MLD's academic performance showed undeniable signs of regression.....	5
B. MLD violated South Carolina law by awarding a high school diploma to at least one student who had not acquired sufficient credits.....	6
II. The Charter Schools Act provides all necessary safeguards to comply with procedural due process.....	7
III. The District held MLD's revocation hearing within the time frame established by the Charter Schools Act.	9
IV. MLD's opening brief does not establish any other basis for reversing the District's revocation decision.	10
Conclusion	11

TABLE OF AUTHORITIES

Cases

<i>Porter v. S.C. PSC</i> , 333 S.C. 12, 507 S.E.2d 328 (1998)	4
<i>Ross v. Med. Univ. of S.C.</i> , 328 S.C. 51, 492 S.E.2d 62 (1997)	9
<i>Sea Island Youth Build Charter Sch. v. Charleston County Sch. Dist.</i> , No. 08-ALJ-30-0436-AP, 2008 SC ALJ LEXIS 378 (Dec. 31, 2008)	4

Statutes

S.C. Code Ann. § 1-23-380(5)	3
S.C. Code Ann. § 59-40-110(A)	10
S.C. Code Ann. § 59-40-110(C)	4
S.C. Code Ann. § 59-40-110(C)(1)	3, 5
S.C. Code Ann. § 59-40-110(C)(2)	3, 5
S.C. Code Ann. § 59-40-110(C)(3)	3
S.C. Code Ann. § 59-40-110(C)(4)	3, 7
S.C. Code Ann. § 59-40-110(D)	8, 10
S.C. Code Ann. § 59-40-110(F)	8
S.C. Code Ann. § 59-40-110(H)	8

Regulations

S.C. Code Ann. Regs. 43-234(I)(A)	6
---	---

Constitutional Provisions

S.C. Const. art. I, § 22	8
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STATEMENT OF ISSUES ON APPEAL

According to MLD's opening brief, this case presents four issues for the Court's review:

1. Undisputed evidence showed that MLD's academic performance had regressed under all of South Carolina's standardized measures. Undisputed evidence also showed that MLD had awarded a high school diploma to at least one student who had not accumulated enough credits to earn a diploma. Was there evidence in the record to sustain the District's decision to revoke MLD's charter?
2. Does the Charter Schools Act provide schools with procedural due process during revocation proceedings?
3. Did the District comply with the timeline prescribed by the Charter Schools Act when revoking MLD's charter?
4. Did the District properly consider its evaluation of MLD's academic performance when it decided to revoke MLD's charter?

STATEMENT OF THE CASE

The Mary L. Dinkins Higher Learning Academy ("MLD") is a charter school within the South Carolina Public Charter School District ("District"). MLD became a member of the District in August 2010 after an apparently difficult stint as a member of the local Lee County School District.

After the District performed routine evaluations of MLD, it became clear that the school was failing to satisfy its obligations under the charter agreement, particularly its primary obligation to educate students. Across the board, MLD significantly regressed in its academic measures. Moreover, the school's own records demonstrated that it had

awarded at least one high school diploma to a student who had not earned sufficient credits.

On March 12, 2012, the District put MLD on notice that the school's charter stood to be revoked effective at the end of the 2011-12 school year. (R. pp. 850-51.) Attached to that letter was a summary of MLD's deficiencies with respect to meeting academic objectives. (R. p. 852.) MLD requested a hearing on the revocation issue, so the District wrote MLD a letter outlining the procedures that would be followed at a revocation hearing. (R. pp. 855-56.) At MLD's counsel's request, the District postponed the revocation hearing to "ensure proper preparation time." (R. p. 857.)

On April 19, 2012, the District held a hearing on the possible revocation of MLD's charter. (R. pp. 873-1094.) Witnesses from both the school and from the District staff testified and were subject to cross-examination. At the request of MLD's counsel, the District suspended those proceedings and agreed to hold open the record so that MLD's counsel could include additional materials. On April 30, 2012, counsel for MLD submitted additional materials for inclusion in the record.

On May 3, 2012, the District resumed the hearing. After considering all of the testimony and documentary evidence presented, the District's Board publicly voted to revoke MLD's charter.

On June 11, 2012, MLD filed a "Request for a Contested Hearing" with this Court. (R. pp. 3-5.) The parties then filed cross-motions with the Court: the District moved to dismiss MLD's initial filing, and MLD moved for a show-cause order asking the Court to stay any actions directed toward the school. The Court resolved those motions at a hearing on July 27, 2012, and the appellate briefing followed. (R. p. 52.)

STANDARD OF REVIEW

The South Carolina Charter Schools Act provides that “[a] charter must be revoked or not renewed by the sponsor if it determines that the charter school” did any of the following:

- “committed a material violation of the conditions, standards, or procedures provided for in the charter application”;
- “failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application”; or
- “violated any provision of law from which the charter school was not specifically exempted.”

S.C. Code Ann. §§ 59-40-110(C)(1), -110(C)(2), & -110(C)(4). On appeal, this Court may reverse or modify a decision of the State Public Charter School District to revoke a charter only if the decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Id. § 1-23-380(5). Under this deferential standard of review, which gives great weight to the informed decision of the school board, the 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.” *Sea Island Youth Build Charter Sch. v.*

Charleston County Sch. Dist., No. 08-ALJ-30-0436-AP, 2008 SC ALJ LEXIS 378, at *12 (Dec. 31, 2008).

On appellate review, the critical inquiry is whether the District's decision is based on "substantial evidence contained in the whole record." *Id.* at *13. In this regard, the South Carolina Supreme Court has explained:

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. Substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding.

Porter v. S.C. PSC, 333 S.C. 12, 20-21, 507 S.E.2d 328, 332 (1998). As discussed below, the District's ruling to revoke MLD's charter easily withstands scrutiny under this deferential standard.

ARGUMENTS AND AUTHORITIES

I. The District's decision to revoke MLD's charter was supported by substantial evidence in the record.

There cannot be any legitimate dispute that the District's revocation decision was supported by evidence—overwhelming evidence at that—in the record. The Charter Schools Act does not give school districts discretion with respect to the revocation decision when a charter school violates its charter or the law. *See* S.C. Code Ann. § 59-40-110(C) (describing situations under which "[a] charter must be revoked") (emphasis added). Here, there are undisputed violations of both, and the District's decision to revoke MLD's charter is unassailable.

A. MLD's academic performance showed undeniable signs of regression.

First, the Charter Schools Act directs a sponsoring school district to revoke a school's charter if it fails to make reasonable academic progress based on the criteria set forth in the charter agreement. *Id.* § 59-40-110(C)(2). MLD's charter indicates that it will measure academic progress against the State's standardized tests. (R. pp. 73-74.)¹ But MLD has failed to demonstrate any academic progress under any measure. For instance:

- MLD met only one out of twenty-two academic objectives under the Adequate Yearly Progress standards from 2006 through 2011. (R. pp. 838, 852.)
- Between 2009 and 2011, the number of MLD students who passed both sections of the High School Assessment Program dropped from 55.6% to 16.7%. (R. pp. 836, 852.)
- Between 2009 and 2011, the number of MLD high school students who passed end-of-course exams dropped from 16% to 5.3%. (R. p. 852.)
- Between 2009 and 2011, the number of MLD middle school students who passed the English/Language Arts section of the Palmetto Assessment of State Standards test dropped from 27.2% (and from 45% in 2010) to 21%. (R. pp. 837, 852.)
- Between 2009 and 2011, the number of MLD elementary students who passed the Math section of the Palmetto Assessment of State Standards test dropped from 46.1% to 14.3%. (R. pp. 837, 852.)

In addition to this staggering level of deteriorating academic performance, the school clearly has a reckless approach to administering its examinations. As the chart on Page 3 of the District's revocation order summarizes, MLD permitted twelve students to take the end-of-course examinations for classes in which they were not enrolled, but it also failed to administer an end-of-course examination to the vast majority of students

¹ Failing to meet these academic standards also amounts to a violation of MLD's charter agreement, which is an additional basis for revocation under South Carolina Code § 59-40-110(C)(1).

who were actually enrolled in those classes. (R. pp. 835, 870.) No one at MLD has ever explained how such an incredible situation could have even happened. In any event, the District's decision to revoke MLD's charter based on its failure to make reasonable academic progress is indisputably supported by clear evidence in the record.²

B. MLD violated South Carolina law by awarding a high school diploma to at least one student who had not acquired sufficient credits.

Second, undisputed evidence shows that MLD awarded at least one student a high school diploma without that student earning a sufficient number of credits in required classes. South Carolina Regulation 43-234(I)(A) requires students to earn twenty-four credits in specific courses in order to earn a high school diploma. However, at least one student to whom MLD gave a diploma earned only twenty-two credits according to his "MLD Higher Learning Academy Official School Transcript." (R. p. 824.) This is a clear violation of law, and the Charter Schools Act requires revocation for this additional

² MLD's opening brief relies heavily on an alleged prior decision of this Court in a different case when opposing the District's analysis of the "reasonable academic progress" issue. (See Br. of Appellant at 3-8, 12, 14-17 (citing *Lee County Sch. Bd. of Trs. v. Mary L. Dinkins Higher Learning Acad.*, Case No. 07-ALJ-30-597-AP (undated, unsigned order)) (copy included in Record at R. pp. 679-95).) Assuming that this unsigned order actually decided that case, it is irrelevant here for two straightforward reasons:

- (1) The South Carolina Public Charter School District was not a party to that case. Necessarily, then, the Court's prior statements do not trigger the "law of the case" doctrine here, as MLD incorrectly asserts on Page 8 of its opening brief.
- (2) The revocation decision there was based on MLD's failure to satisfy Adequate Yearly Progress goals in its very first year of operation. (R. p. 691.) The Court held that the law requires charter schools to show "reasonable progress," and there is simply no way to measure "progress" with only one year of data. (R. pp. 691-92.) That is a far cry from the facts of this case, where the District evaluated multiple years of data and found that MLD's academic indicators had dropped across the board over several years.

Accordingly, MLD's near-singular reliance on that prior ruling is misplaced.

reason. See S.C. Code Ann. § 59-40-110(C)(4) (providing that a school district “must” revoke a school’s charter if the school has “violated any provision of law from which the charter school was not specifically exempted”).

Despite MLD’s extensive discussion of subjective factors that it argues indicate academic progress and its feigned surprise about graduating students who had not qualified for a high school diploma, the record is replete with indisputable evidence to support the District’s findings that MLD was not showing reasonable academic progress, that it had violated its charter agreement, and that it had violated South Carolina law. The District’s determination of these facts is entitled to significant deference under the Administrative Procedures Act. Accordingly, its decision to revoke MLD’s charter should be affirmed.

II. The Charter Schools Act provides all necessary safeguards to comply with procedural due process.

In addition to challenging the District’s factual findings on appeal, MLD also asserts that the Charter Schools Act “is not constitutional in its provision which allows a charter school sponsor [to] be both the accuser and finder of fact in a charter revocation hearing under [S]ection 59-40-110(C) of the South Carolina Charter School[s] Act.” (Br. of Appellant at 30–31.) Notably, MLD does not cite any authority for this argument—no case, no statute, no constitutional provision, nothing—relying instead on a Wikipedia article (for which it does not provide any citation information, and which would be inadmissible hearsay in any event) and a law review article that generally discusses recusal of judges.

MLD’s failure to base its arguments on any actual legal authority is no surprise, as the Charter Schools Act structures the process for conducting revocation proceedings

consistent with the State Constitution's mandate that any judicial or quasi-judicial decision by an administrative agency is without effect unless there is (1) "due notice," (2) "an opportunity to be heard," and (3) "the right to judicial review." S.C. Const. art. I, § 22.

The Charter Schools Act provides each of these procedural safeguards. *See, e.g.*, S.C. Code Ann. § 59-40-110(D) (requiring written notification that describes the potential grounds for revocation "in reasonable detail" prior to any revocation decision); *id.* § 59-40-110(F) (permitting a school to request a hearing prior to revocation of its charter); *id.* § 59-40-110(H) (vesting the right to appeal an adverse decision to the Administrative Law Court). And the District honored each of these safeguards in this case. (*See, e.g.*, R. pp. 850-52 (notice of possible revocation letter to MLD with accompanying evidence of academic measures); R. pp. 855-56 (letter explaining procedures to be followed during revocation hearing); R. p. 857 (letter to MLD moving hearing date in order to ensure MLD had adequate time to prepare for the hearing); R. pp. 873-1094 (transcript of revocation hearing); R. pp. 35-37 (order of this Court treating MLD's filing as a notice of appeal).) Any due process objection here is an empty one.

Nor is there any merit to MLD's general allegation that it is "inherently unfair" for a state agency to serve as "the accuser" and the "judge." (Br. of Appellant at 31.) Article I, Section 22 of the State Constitution, of course, guarantees that the same person cannot serve "for both prosecution and adjudication." But that is certainly not what happened here.

As the transcript makes clear, District staff presented evidence during the hearing, but none of the members of the District's Board of Trustees—the individuals who

actually voted on the revocation decision—had any involvement with the evidentiary presentation or the investigation underlying the staff's testimony. The South Carolina Supreme Court has held that Article I, Section 22, is satisfied where, as here, an agency's staff performs an investigatory function while its governing board serves as the ultimate decision-maker. *See, e.g., Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 68–70, 492 S.E.2d 62, 72 (1997) (holding that a university president had not violated Article I, Section 22, when he investigated an employee, terminated that employee, and then testified against the employee at a hearing before the university's Faculty Hearing Committee because the president did not make the ultimate decision on the employee's grievance appeal).³

If this were not the case, the entire structure of South Carolina's agencies would crumble. The LLR, for instance, uses its staff to "investigate" issues associated with professional licenses, while the agency's occupational licensing boards retain ultimate authority over licensing decisions. Other agencies operate similarly. If the law were as MLD suggests it is, the State's administrative agencies would be rendered inoperable. Accordingly, the Court should reject MLD's argument on this point.

III. The District held MLD's revocation hearing within the time frame established by the Charter Schools Act.

MLD's third argument for reversal alleges that the District did not comply with the timeline for revocation established by the Charter Schools Act. (Br. of Appellant at 32–33.) The school's argument—which is styled more as a baseless personal attack on the District's Board Chairman than an actual legal argument—is simply wrong.

³ In *Ross*, the Court further explained that even if the university staff had improperly been involved in the decision-making process, any such error was harmless and would have been cured by the fact that an appellate process existed. 328 S.C. at 70, 492 S.E.2d at 72–73.

The Charter Schools Act provides that a school district must give a charter school at least sixty days notice before a charter is finally revoked and the school is closed. S.C. Code Ann. § 59-40-110(D). Here, the District notified MLD on March 12, 2012, that MLD's charter may be revoked effective on the last day of classes for the 2011-12 school year, which is a far greater time period than the sixty-day minimum notice established by the Charter Schools Act. (R. p. 851.) MLD's argument on this issue should fail as a result.

IV. MLD's opening brief does not establish any other basis for reversing the District's revocation decision.

Finally, MLD presents the Court with a grab bag of three other arguments that it claims should result in reversal. The first two—namely, that MLD's charter agreement was not for ten years, and that MLD's charter was "provisional" (Br. of Appellant at 33-34)—have nothing to do with the District's revocation decision, which is the sole issue before the Court. Accordingly, these arguments are irrelevant to this appeal.

MLD's third argument in this series claims that the District "did not do an audit of MLD" and that the revocation should be reversed as a result. (*Id.* at 35.) But the Charter Schools Act only requires school districts to do an "annual evaluation" of the factors outlined in Section 59-40-110(C), and it directs districts to use the "annual evaluation results" when making a revocation determination. S.C. Code Ann. § 59-40-110(A).

The District followed this provision when making the revocation decision in this case. In fact, the District attached to its notice-of-revocation letter a summary of "Accountability Data" that the District assembled as part of its evaluation of MLD. (R. p. 852.) MLD's assertion that the District did not comply with its statutory obligations is incorrect, and the Court should reject MLD's final argument as a result.

CONCLUSION

The Charter Schools Act requires school districts to revoke the charters of schools that do not show academic progress, that violate their charter agreements, or that violate the law. Undisputed evidence shows that MLD has done all three of these revocation-triggering events. Despite the school's protestations—which are styled more as completely baseless personal attacks against the District's Board members, and which should be absolutely rejected by the Court—the District's decision here was based on unbiased, standardized testing that exposed MLD's academic performance to be regressing at an alarming rate, as well as the fact that the school's own records showed that it had violated the law governing high school diplomas.

Moreover the District reached this decision after giving MLD all of the procedural safeguards required by due process, including (1) postponing the revocation hearing at the request of MLD's counsel and (2) holding the record open so that MLD could provide the District with evidence that the school failed to bring to its own revocation hearing. Against this backdrop, the District respectfully submits that its decision to revoke MLD's charter should be affirmed, and that any stay over that decision should be lifted.

SIGNATURE PAGE ATTACHED

Respectfully submitted,

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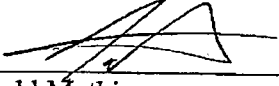
PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice, LLP, Attorneys for Respondent, South Carolina Public Charter School District, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the following address(es):

PLEADING: RETURN BRIEF OF RESPONDENT

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By: 
Todd Mathis

Columbia, South Carolina
October 29, 2012

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