

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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SC Court of Appeals

Volume IV

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

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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 Motion 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 9.20.2).....	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

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

REPLY BRIEF OF APPELLANT

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SC ADMIN. LAW COURT

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STANDARD OF REVIEW.....	2
ARGUMENTS AND AUTHORITIES.....	4
I. The District's decision to revoke MLD's Charter was not supported by substantial evidence in the record.....	4
A. MLD's academic performance did not show undeniable signs of regression	4
B. MLD did not violate South Carolina law by awarding a high school diploma to any student who had not acquired sufficient credits	5
II. The Charter School Act does not provide all necessary safeguards to comply with procedural due process	6
III. The District did not hold MLD's revocation hearing within the frame established by the Charter School Act.	7
IV. The Brief of the Appellant clearly established several basis for reversing the District's revocation decision.	8
CONCLUSION.....	9

TABLE OF AUTHORITIES

CASES

Ross v. Univ. of S. C., 328 S.C. 51, 492 S.E.2d 62 (1997)	7
---	---

STATUTES

S.C. Code Annot. 59-40-110	1
S.C. Code Annot. 59-40-110 (A).....	3, 9
S.C. Code Annot. 59-40-110 (C).....	1, 2, 4
S.C. Code Annot. 59-40-110 (D).....	8
S.C. Code Annot. 59-40-50 (B).....	8

REGULATIONS.

No Regulations cited.

STATEMENT OF ISSUES ON APPEAL

- 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

The Mary L. Dinkins Higher Learning Academy takes several exceptions/clarifications to the Statement of the case as outlined in the Brief of the Respondent as follows:

A. As to the District's assertion that "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." It is clear that the problems that MLD had with the Lee County School District were caused by the Lee County School District. Lee County School Board's actions caused The Superintendent of the South Carolina Public School District, Dr. Wayne Brazzle, to write a letter chastising the Lee County School District for its action. (see Exhibit A.).

B. MLD denies that it "was failing to satisfy its obligations under the charter

agreement, particularly its primary obligation to educate students". Witness after witness spoke of the improved abilities of the MLD students that could be clearly seen in the community. The improvement in reading ability meant that the students could read in Sunday school where many could not do so prior to attending the MLD Academy.

C. Moreover, no student graduated who had not earned sufficient credits.

D. The South Carolina Charter School District clearly did not follow the law when it gave notice of its revocation decision on March 12, 2012 and held the revocation hearing on April 19, 2012. It did not have the benefit of the required annual audit nor did it allow the minimal 60 days preparation time for the hearing to the MLD Academy. Further, the so called resumption of the hearing on May 3, 2012 was merely a meeting of their Board; The hearing was not resumed in any formal sense.

STANDARD OF REVIEW

The District Board correctly stated the standard of review of the charter school act as being that:

"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.

Further, the Board correctly stated the appeal standard this Court must apply if determining whether to overturn the decision of the Board as follows:

On appeal, this Court may reverse or modify a decision of the South Carolina charter Public School District (SCPCDS) 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 record as a whole; or**
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.**

In addition, the District Board correctly stated the substantial evidence rule which is based on the Court's review of the record as a whole. However, the District Board misapplied the law to the facts of this case.

Judge Kittrell has stated that, "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. There was no annual evaluation as the law requires before revoking a school's charter.

Judge Kittrell further found that, "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.

ARGUMENTS AND AUTHORITY

- I. The District's decision to revoke MLD's charter was not supported by substantial evidence in the record.

The brief of the Respondent gives no facts to support its bare assertion that the District's decision was supported by evidence in the record. It points to no facts in the record. The statement is a mere statement of aspects of the law at issue with no application to the facts of this case.

- A. MLD's academic performance did not show signs of regression.

Section 59-40-110(C) specifically defines the grounds for which a charter can be revoked. The act of students from impoverished backgrounds, most of whom are on the free lunch program and who have little available help at home scoring less on final exams than other schools with students from largely nuclear family homes with educated parents and available help at home is not a ground enumerated in the statute for revoking a school's charter.

Because of the MLD student's background each new group test very badly initially. Through time, patience and a dedicated staff MLD's students perform as well as students anywhere in South Carolina at graduation. MLD is the only charter school to have 100% of its senior class graduate and all are in college or other continued learning and growth situations.

The District asserts that MLD "failed to meet or make reasonable progress, as defined in the charter application:". As proof of that assertion the Respondent's Brief states:

- i. "MLD indicated that it will measure academic progress against the State's standardized tests." MLD has done exactly that. Those initial scores are a part of the reason for this

case.

- ii. "MLD failed to demonstrate academic progress under any measure." MLD's graduation rate in its senior class is proof of the falsity of that assertion as stated above. Every community member who chose to speak told of the amazing accomplishments of MLD as reflected in their Sunday school classes and well as the attention given to the students who would fall through the cracks at the traditional schools. They would largely become the dropouts and drags on society. That MLD is changing the outlook for those students is the consensus of the community.
- iii. The specific responses to the allegations have been outlined in the initial Brief of the Appellant.
- iv. MLD permitted twelve students to take end-of-course examinations for classes in which they were not enrolled, but it failed to administer an end-of-course examination to the vast majority of students who were actually enrolled in those classes.

As for as the end-of-the-course test, all of the students that were scheduled to take the test in April of 2011 took the test. MLD did not have 61 students enrolled, they only had 18 in the entire 9th through 11th grade. The district at no point addressed any concerns until the hearing and they, not MLD, are responsible for ordering all test material from the state.

- B. MLD violated South Carolina Law by awarding a high school diploma to at least one student who had not acquired sufficient credits.

The statement that MLD violated South Carolina Law by awarding a high school diploma to at least one student who had not acquired sufficient credits is clearly incorrect. The Brief of the Respondent refers us to page R. p. 824. That student earned 27 credit hours. The Academic Summary block shows the alleged 22 hours. However, simple addition of the detailed Academic Record Credits would show the 27 hours actually earned. The wrong number was transferred to the summary block.

There is therefore no violation of the law in actuality. However, even if there were such a violation, I question the shutting down of every school that may make that mistake one time if the remedy is automatic revocation. Think of the implication for every high school, middle school and elementary school.

I don't think the public would allow all of the students to be punished so severely.

II. The Charter School Act does not provide all necessary safeguards to comply with procedural due process.

MLD did not cite any authority for the proposition that The Charter School Act does not provide all necessary safeguards to comply with procedural due process because this is a case of first impression.

MLD does not question the ability of the Charter School to provide due process in the situation where a school district seeks to revoke the charter of a charter school that it sponsors in which the South Carolina Public Charter School District is the referee. There, the District is presumable neutral. Due process is thereby accorded the parties.

However, in this case the District is the accuser. They are the ones who made the decision, through its Board, to revoke MLD's charter. To have them hear the case, direct the

creation of the Record in the Case and make the decision as to the meritorious party is clearly unfair. They indicated what outcome they wanted when they made the accusations.

Mr. McLaurin, the Board Chairman and presiding official at the hearing, even sent out press releases foreshadowing the demise of the school. There was not a semblance of fairness in the conduct of the hearing.

The Chairman, Mr. McLaurin, interrupted the hearing at will for consultations with their attorney who was prosecuting the case without including the attorney for the Appellant in the discussions.

That part of the act is easily remedied by letting the ALC or some other agency be the arbiter when the District is the accuser as in this case and allow that agency to build the Record on Appeal.

In the Ross case cited by the Respondent the president was not both the accuser and the ultimate decision maker so the process was deemed fair. That is not the case here. Here, the District is the accuser, the judicial arbiter and the finder of fact.

In none of the examples cited by the Respondent about other investigators and prosecutors for various agencies did the investigator/prosecutor also act as the decision maker as in this case. This process was inherently unfair to MLD and its students, the parents of those students and the community as a whole and produced the inherently unfair result in this case. This is a clear violation of the due process of the Appellant and a clear clear violation of the law.

III. The District did not hold MLD's revocation within the time frame established by the Charter Schools Act.

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."

On March 12, 2012 MLD received notification from the District that its charter was being revoked.

On April 19, 2012 the District held the revocation hearing.

On May 3, 2012 the District voted to revoke the MLD charter,

On May 16, 2012 the District issued its revocation order.

The action of the Board was final on May 3, 2012. The Board therefore violated the provisions of section 59-40-110 (D) in terminating the MLD charter without the required 60 days notice.

V. There are other reasons for reversing the District's revocation decision.

The District erred in granting MLD a provisional charter when such a charter is not authorized in the law. The District cannot choose to implement parts of the Charter School Act and change its provisions at its disgression. The Appellant therefore stands by its original arguments. The Respondent has shown no reason for not following the statute. They gave no case law as they accused me of not providing in their Brief.

It clearly matters when a school is given a provisional charter in lieu of the full charter authorized by the act. It exposes the school to heightened scrutiny that the other schools do not have to endure.

Further, Section 59-40-50 (B) states that "A charter school must: ... (3) adhere to the

same financial audits, audit procedures, and audit requirements as are applied to public schools;”.

Section 59-40-110 (A) states, “The annual evaluation results must be used in making a determination for nonrenewal or revocation.

Annual evaluations cannot be done before the year has ended if the result of the year's accomplishments are to be measured

CONCLUSION

The District’s brief has failed to put forth any lawfully acceptable reason for revoking the charter of the Mary L. Dinkins Higher Learning nAcademy.

A. MLD has committed no material violation of the conditions, standards or procedures provided for in the charter school application. The community MLD serves came out in overwhelming support of the efforts and accomplishments of the school. The District has made no direct connection to any specific charter application provision but has relied on vague and undirected accusations.

B. MLD has not failed to make reasonable progress, as defined in the charter school application, towards pupil acheivement standards identified in the charter application. The school test results used did not provide a true picture of the school as the later testing did. Such test results are not relatable initially to pupil at other schools because of the gross background differentials.

As indicated previous MLD has made progress, based on the individual growth of the students. MLD Map data (the test that was mandated and ordered by the SCPCSD) shows that MLD students made 87% gains in Math and 84% gain

ELA. MLD did not enter into a contract with the SCPCSD until May of 2010 and began its first year July 1, 2010. While under the Lee County school district from the very beginning MLD had to endure harassment, underfunding, and mistreatment. These actions lead MLD all the way to the State Supreme Court and a Civil lawsuit against Lee County for failing to provide funding such as Special Education, Title One and etc. The reason SCPCSD was created was to provide refuge to charter schools in districts with hostile sponsors. However, the SCPCSD has become hostile as well. Their data must be based on current data from the time MLD entered into a contract with them, not while MLD was in hostile Lee County. Lee County would have been responsible for addressing any concerns MLD would have acquired from 2006 to June 30, 2010. When coming to the SCPCSD, MLD and all other charters in its district were told that 2010-11 would be a base year for the charters. The charters were only receiving \$1800 per child and therefore the SCPCSD requested 20 million dollars from the state legislation so that these students could receive adequate funding beginning the fiscal year of 2011-12. In a meeting(after the SCPCSD January 2012 board meeting where the MLD staff was told they were doing a great job) the director and MLD board met with the Superintendent, Dr. Brazell and during that meeting they were told by the superintendent that "We have to do something with these children of poverty".

At no time was MLD given an annual evaluation which would have shown that:

1. MLD was only with the district for one school term and the 2012 comparative data shows that MLD out scores all of Lee County School schools but one. It also shows that it out scored seven of the SCPCSD schools for 2012.
2. MLD no longer has High School Students. Over half of the students that took the HSAP in 2011 were special education students.
3. MLD was only with the SCPCSD for the school term beginning in 2010-11; the data for 2011-12 shows an increase in scores in both Math and ELA. Even though MLD doubled their population of disadvantage children. This is evidenced by both the 2012 PASS scores and the 2012 MAP scores.
4. MLD had a 100% graduation rate. All of the students graduating in May 2011 passed the HSAP test and the average SAT score was 1050. SCPCSD's graduation rate is 15%.

All of MLD nine graduates in May of 2011 had all of its requirements. Dr. Wayne Brazell the superintendent of the SCPCSD issued the diplomas. The SCPCSD did not indicate which child they had a problem with. The only child we could figure out was Darryl S. Jeko transcripts that was emailed to the SCPCSD Title One Coordinator, Tracy Bryant. This data was ask for the night before a State Title One review (not a graduate review) only reflected his grades to his eleventh grade year. However, by the time they came for the State Title One review came all transcripts were corrected to include his twelfth grade year which would have given him 26 units more than enough to graduate. Just to note this review under false pretense was

done during the schools spring break. At no point has the State Department of Education which supposedly conducted the review contacted MLD to ask for any clarifying information from this review in April of 2012. All of the data in power school indicates all students had the adequate number of units. Again, at no point did the SCPCSD ask for any clarifying information or brought up any concerns until the day of the hearing.

C. MLD has not failed to meet generally accepted standards of fiscal management. This often used test of a school's viability was not used here as MLD has been certified to be in good health financially. Rec 238.

D. MLD has not violated any provision of law from which it was not specifically exempted. The District erroneously interpreted the data in the record. The student they allege had 27 credit hours when only 24 credit hours are needed to graduate. However, even had one student had erroneously been allowed to graduate, that is no reason to revoke the charter of the entire school and punish all of the remaining students of the school.

E. On the record as a whole, this Court may reverse or modify a decision of the South Carolina charter Public School District (SCPCDS) because it can easily find that:

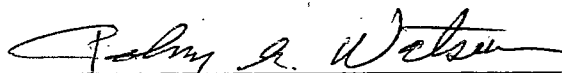
1. **There was a violation of constitutional or statutory provisions when the District conducted the inherently unfair hearing when it acted as the accuser, judge and finder of fact in the case;**

2. The District acted in excess of the statutory authority of the agency when it gave MLD only a provisional charter which is not authorized by the Charter School Act;

3. The recocation was not made upon unlawful procedure when the District failed to give MLD proper notice or preparation time;
4. The revocation was made upon or was affected by other error of law when the District wrongly accused MLD of graduatine a student with only 22 credit hours when the student actually had 27 credit hours;
5. That the revocation was wrong because it was clearly erroneous in view of the reliable, probative, and substantial evidence on the record as a whole when the evidence clearly show that MLD students were accomplishing great things in the opinion of all who spoke at the hearing; or
6. That the recocation was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion when the District Board chairman sent out press relerases foreshawdong the demise of the MLD Academy and other high free lunch programs.

The decision of the District should therefore be reversed and MLD should be granted a full 10 year charter that would allow it to continue its work in giving hope to the students overlooked at the traditional schools. Respectfully submitted

By:



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Dated: November 12, 2012

CERTIFICATE OF SERVICE

I, Bernell Brown, assistant to Johnny E. Watson, Attorney for the Mary L. Dinkins Higher Learning Academy (MLD), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below:

PERSON SERVED: Butch Bowers
Attorney for the SCPCSD
1727 Hampton Street
Columbia, South Carolina 29201

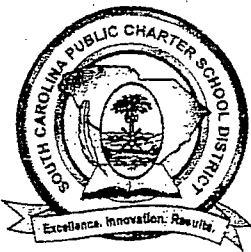
DOCUMENT: Reply Brief of the Appellant

DATE SERVED: November 12, 2012

Bernell Brown
Bernell Brown, Document Server

Columbia, South Carolina
Date: November 12, 2012

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SC ADMIN. LAW COURT



South Carolina
Public Charter School District

November 3, 2011

Board of Trustees

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Chairman

✓ Mrs. Linzie Staley,
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Kathleen Bounds
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Dr. Ronald Epps

✓ Mrs. Laura Getty
Mrs. Terrye Seckinger

✓ Tom Siler

Superintendent
Wayne Brazell, Ph.D.

Board of Trustees and Superintendent
Lee County School District
521 Park Street
Bishopville, SC 29010

Regarding: Mary L. Dinkins Higher Learning Academy Charter School

Dear Board Members and Superintendent Dr. Cleo Richardson,

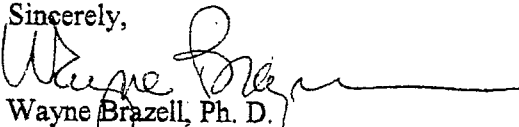
As the Superintendent of the South Carolina Public Charter School District, I continue to observe a general lack of cooperation on the part of the staff of the Lee County School District with respect to the court-sponsored agreement between Mary L. Dinkins Higher Learning Academy Charter School and the Lee County School District.

While the most recent incidents regarding the refusal to transport public school students are especially egregious, these incidents are part of a much longer and broader list of problems that the school has encountered in its working relationship with the Lee County School District staff. Shortcomings have included blocking access to voice and Internet service for the school over an extended period, forcibly removing students from the cafeteria while those students were eating during regular meal times, and blocking the administration of the school from the normal and routine use of the thirty-three renovated but empty classrooms in the Dennis Intermediate School building. Most recently, the administration of the school has noted that the cafeteria workers no longer have access to hot water, making the preparation of some student meals problematic. I feel that on numerous occasions such actions have compromised or placed at risk the physical well-being of the public school students attending the school.

No doubt as Board members of a school district, you can understand my concern regarding these problems. I assume that you likewise share my interest in seeing these matters resolved with all possible haste so that the quality of free public education being provided to the public school students of Mary L. Dinkins Higher Learning Academy Charter School is not adversely affected by the actions or lack of actions arising from the Lee County School District Board and superintendent.

The administration of the South Carolina Public Charter School District will continue to monitor the conditions and circumstances relevant to the agreed upon arrangements between the Lee County School District and the school. It is my hope that you will take a personal and professional interest in resolving these problems immediately and unequivocally.

Sincerely,


Wayne Brazell, Ph. D.
Superintendent, SCPCSD

cc: Constance Barnes, Education Associate, SC Dept. of Education
Benita Dinkins-Robinson, Exec. Director, MLD Higher Learning Academy

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EXHIBIT A

Rec-1175

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Mary L. Dinkins Higher Learning Academy,

Case No. 12-ALJ-30-281-AP

Appellant,

VS.

South Carolina Public Charter School
District,

Respondent.

RESPONDENT'S MOTION TO LIFT
STAY AND FOR EXPEDITED
CONSIDERATION

The South Carolina Public Charter School District respectfully requests that the Court lift the automatic stay that is in place over this appeal. Since the Court ordered a stay in this matter, the Appellant has engaged in a litany of apparent improprieties that have drawn the attention of various state and federal agencies, but which the Public Charter School District has been powerless to address. The Court should not force the District to remain helpless while a school under its supervision engages in potentially reckless conduct that may imperil children and deceptively drain public coffers.

PROCEDURAL BACKGROUND

This case is pending before the Court in its appellate capacity. The issue before the Court is whether the South Carolina Public Charter School District's revocation of the Appellant's charter agreement was proper under the Charter Schools Act.

At the outset of this appeal, the Public Charter School District attempted to continue its oversight responsibilities over the Appellant pending resolution of this case. In response to the Public Charter School District's efforts to continue governing a school within its jurisdiction, the Appellant filed a "Motion for Immediate Restraining Order or

FILED

FEB 19 2013

Ex Parte TRO” and a “Rule to Show Cause” with this Court. The Court heard argument on these issues on July 27, 2012, and enforced the automatic stay provision of Rule 34, SCALCR. The Public Charter School District now moves for an order lifting that stay.

STANDARD OF REVIEW

Rule 34, SCALCR, specifically authorizes the Court to lift the automatic stay that attaches to matters on appeal from agency decisions. Whether to enforce or lift a stay is within the Court’s discretion. *See, e.g., Midlands Util., Inc. v. S.C. DHEC*, 287 S.C. 483, 487, 339 S.E.2d 862, 864 (1986) (holding that decisions regarding a stay are “within the discretion of the Circuit Judge”).

ARGUMENT

The Public Charter School District commenced revocation proceedings against the Appellant almost one year ago. Since those proceedings began, the District attempted to work with the Appellant time and again to accommodate various delays in the revocation process that the Appellant requested, including rescheduling a hearing before the agency and suspending another so that the Appellant could compile evidence that it had failed to prepare for the revocation hearing.

This matter came to the Court on appeal in June 2012. In July 2012, the Court issued an order confirming that Rule 34’s automatic stay applied to this case. Since that point, the Appellant has taken advantage of the Court’s ruling and has operated as if it is not subject to any oversight or answerable to any governing authority. Its behavior potentially puts children and public resources in great peril. For example:

- **False Head-Counts:** While this appeal has been pending, personnel at the school have reported to staff members of the Public Charter School District that the Appellant may have had children attending a daycare (in Sumter) and children attending a private school (also in Sumter) transported into the Appellant’s

facilities (which, by the terms of the charter, must be in Lee County) so that the Appellant could set up fake classrooms for purposes of misleading representatives from the State Department of Education when they conducted student head-counts for purposes of confirming state and federal per-pupil funding.

- **Constantly Relocating the School:** The District has also become aware that the Appellant has repeatedly relocated its school—bouncing among at least four facilities in Bishopville and Sumter—without providing any notice to the District or to the State Department of Education. The District has further been notified that the Appellant sometimes places students in up to three different facilities at one time. It has done so without obtaining certificates of occupancy and in violation of its charter, which provides that the school must be in Lee County.

Additionally, the District has recently learned that the Appellant has again relocated its students to a church in Sumter. In this regard, on January 16, 2013, personnel from the State Department of Education's Office of School Facilities and the State Department of Transportation attempted to conduct a site visit at this church to determine its suitability for use as a school. No one from the Appellant showed up for that visit, but the Office of School Facilities identified numerous safety issues that require immediate attention, including blocked exits and locks on doors that were not code compliant.

- **Mingling Appellant's Students with Non-Students:** In January, personnel from the South Carolina Department of Social Services notified the District that a parent with a child at the "All About Kids" daycare center in Sumter reported to DSS that a "facility"—which, by all accounts, is the Appellant—had moved its students into the daycare without notifying anyone: parents, the District, the Department of Education, the Department of Social Services, no one.
- **Non-Certified Teachers:** The South Carolina Department of Education has confirmed that approximately 60% of the Appellant's teaching staff does not have the proper certifications. The District has attempted to determine whether the Appellant's speech-language pathologist is properly certified, but the Appellant has not responded to the District's written requests for this information. Additionally, both the State Department of Education and the District have verified that the Appellant's special education teacher is not certified to provide special-education services to the Appellant's students with disabilities.
- **Failure to Submit Data for Federal Programs and Compliance:** The State Department of Education's Office of Federal and State Accountability has attempted to conduct "monitoring visits" of the Appellant to ensure compliance with federal Title I and Title III programs. The Public Charter School District requested that the Appellant provide the documentation needed to ensure compliance, but the Appellant has refused to provide these materials. Additionally, the Appellant has failed to provide the District with data necessary for the District to complete a submission to the Office of Civil Rights.

- **Failure to Submit Data for State Programs:** The State Department of Education requires certain student data to be submitted at specific points in the school year, but the Appellant has failed to provide this data.
- **Improper Reimbursements:** The Appellant's bookkeeper has reported to the District that the Appellant's administrators have been seeking reimbursements for inappropriate expenditures.

Upon information and belief, the totality of this misconduct has drawn the attention of various federal and state agencies. Meanwhile, the Public Charter School District—the agency that is supposed to have direct oversight over the Appellant—has been handcuffed by the automatic stay.

Respectfully, the Court should lift the automatic stay so that the District can perform the duties it is charged to undertake with respect to protecting students and public dollars. As things currently stand, the automatic stay forces the District to continue distributing money to the Appellant, which is apparently using those funds to place children in potential peril. This injustice should not be permitted to linger.

Alternatively, the District respectfully requests that the Court resolve the pending appeal on an expedited basis. Briefing closed in mid-November 2012, and the issues are fully joined for the Court's consideration.

CONCLUSION

Rule 34's automatic stay provision is designed to preserve the status quo pending an appeal, not to allow an appellant to engage in unregulated and unauthorized behavior until its case is finally resolved. But the Appellant here is abusing this rule to the detriment of the children under its care and to the detriment of the State's education system. Its misconduct should not be allowed to persist. Accordingly, the Public Charter

School District respectfully requests that the Court lift the automatic stay and that it resolve this appeal on an expedited basis.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: Butch Bowers

Karl S. Bowers, Jr.

SC Bar No. 16141

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M. Todd Carroll

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1727 Hampton Street

Columbia, South Carolina 29201

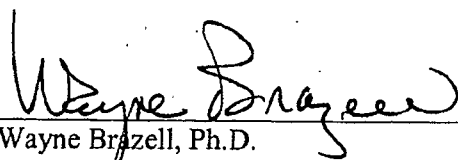
(803) 454-6504

Attorneys for the South Carolina Public Charter School
District

February 11, 2013
Columbia, South Carolina

VERIFICATION

I, Wayne Brazell, Superintendent of the South Carolina Public Charter School District, do swear and testify under penalty of perjury that I have reviewed the contents of the Respondent's Motion to Lift Stay and for Expedited Considered and that, upon information and belief, the contents therein are true to the best of my knowledge.


Wayne Brazell, Ph.D.

Sworn to before me this 11th day of February, 2013


Notary Public for the State of South Carolina

My Commission Expires: 3/20/2017

FILED

FEB 11 2013

SC ADMIN. LAW COURT

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: RESPONDENT'S MOTION TO LIFT STAY
AND FOR EXPEDITED CONSIDERATION**

PARTIES SERVED: **Johnny Watson**
 PO Box 2305
 Columbia, SC 29202

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

Todd Mathis

Columbia, South Carolina
February 11, 2013

FILED

FEB 11 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

RETURN TO RESPONDENT'S MOTION TO LIFT STAY
AND FOR EXPEDITED CONSIDERATION

Johnny E. Watson, Sr., Esquire

Watson Law Firm
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Post Office Box 2305

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Counsel for Appellant

Karl S. Bowers, Jr, Esquire

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1127 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

Counsel for Respondent

FILED

FEB 21 2013

STATEMENT OF THE CASE

The Mary L. Dinkins Higher Learning Academy (MLD) respectfully request that this Court deny Respondent's Motion to lift the automatic stay that is in place in accordance with the Rules of this Court during the pendency of this appeal. MLD denies that it has engaged in any improprieties in the operation of its charter school. However, MLD will show that the Respondent has engaged in a series of violations of the automatic stay in this case by engaging other agencies along with itself to investigate and harass the Appellant in violation of the automatic stay in this case. This motion is another attempt by the Respondent to shortcut the Court's procedures and should be denied.

PROCEDURAL HISTORY

This case is pending before this Court in its appellate capacity as indicated by the Respondent. The issues before the Court are:

- 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);
- II. 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?

There is no doubt the Court will rule in this matter as expeditiously as possible. This Court has previously ruled that the automatic stay should be in effect as agreed by the parties to this action.

STANDARD OF REVIEW

Rule 34 of the Rules of Procedure for the Administrative Law Court stays the final decision of an agency. In this case it stayed the decision of the Respondent, SCPCSD, revoking the charter of the Appellant. The effect of the stay was ruled upon by this Court when this Court issued its order dated July 30, 2012 in which the Respondent agreed to refrain from taking any further action to enforce the Decision from which this appeal is taken. The Respondent should therefore await the Decision of this Court and not re-litigate this issue.

ARGUMENTS

The Respondent has continued to violate the automatic stay imposed by this Court from the very beginning and continues to do so either directly or indirectly. Prior to this Court's order of July 30, 2012 in this case, the Respondent illegally withheld funds from the school which it agreed to release at the last court hearing. In addition to its continuation of withholding funds from MLD the SCPCSD has taken action or has caused the following actions to be taken against MLD by various state agencies. The Respondent has taken the following actions against the Appellant:

- a. Withheld \$150,000 of Title One funding after the State Department of Education (David Boison and his assistant) did an official head count on September 18, 2012.
- b. Not provided \$100,000 for K4 students.

- c. Submitted numerous articles to discredit this school after this Court instructed them not to do anything to grossly affect the school (Exhibit A).
- d. Caused SLED to initiate a criminal investigation of the school based on false allegations (Exhibit B).
- e. Affected the schools food serve program. Causing the school a \$150,000 shortage in food service receipts.
- f. Caused DSS to investigate the school based on false allegations (Exhibit C).

As to the District's assertion that it has attempted to work with MLD, nothing could be further from the truth. The district refused MLD's attorney's request to allow additional preparation time due to a change in counsel.

Further, the Appellant would show as to:

1. **Alleged False head count.** This is a mere allegation based on hearsay with no corroboration. MLD was using both state approved sites in Sumter where the students were housed because the LEE County School District issued an eviction. The students were placed in a safe environment after both Lee County and the SCPCSD conspired to have MLD evicted from the facility it was using in Lee County. MLD's attorney requested the assistance of the SCPCSD to stay in its facility in Bishopville but the SCPCSD offered no assistance. There are numerous facilities in Lee County that are controlled by the Lee County School District but they would not make any facility available to MLD despite state law requiring that such vacant

or under used facilities be made available to the charter schools. The South Carolina Public Charter school District never required or did an official head count.

2. Alleged Constantly relocating. As previously stated the school has been under constant distress and abuse by both districts. The Lee County School gave the school 24 hours and evicted them during the middle of the school year. The charter states that the school must serve LEE County students, not where they must be located. MLD is part of a statewide charter school district that allows them to serve students throughout the state. Mrs. Clark of the State Department of Education visited both of the Sumter sites on August 16, 2012. Both of those sites are already approved by other state agencies to include Department of Social Services, Department of Transportation and the State Fire Marshall.

As to the meeting on January 16, 2013, MLD's Board chairman, George Williams, was present. All of the needed safety requirements for this church have been rectified.

3. Alleged Mingling Students: MLD currently rents some space from "All About Kids". MLD and All About Kids' students are totally separate. If this is a concern the SCPCSD should use its power to get Lee County to make its surplus space available to MLD as state law promotes. MLD is preparing another facility as well.

4. Alleged Non-Certified Teachers: With all the numerous deliberate cuts in funds MLD tried to maintain its staff. 80% of the staff was initially certified for the 2012-2013 school. The Respondent has deliberately raided MLD for staff since its revocation decision and placed some of MLD's qualified teachers elsewhere. Their actions created the problem they now complain of.

5. Alleged Failure to Submit Data for Federal Programs and Compliance: No data has been requested except for vague requests to MLD's accounting firm for FOI data which seem to be part of a witch hunt (Exhibit D). MLD will provide whatever documents are needed. The only documentation requested so far was for special education and Mr. Vamishi Rup came to the site on February 6, 2013 to retrieve it.

6. Alleged Failure to Submit Data for State Program: See response 5 above.

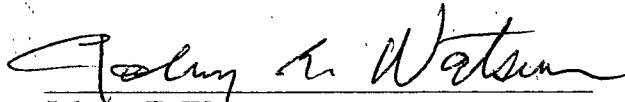
7. Alleged Improper Reimbursements: This is another unsubstantiated allegation. Still it merely asserts that someone **sought** not received inappropriate reimbursements. All reimbursements are approved by the MLD Board of Directors.

CONCLUSION

The District's Motion has failed to put forth any lawfully acceptable reason for revoking the charter of the Mary L. Dinkins Higher Learning Academy or for lifting the stay. It has therefore sought to damage and dismantle the school through other means. It has places valuable employees of the school elsewhere. It has tampered with the insurance coverage of the school's employees, it has cause numerous state agencies to undergo active criminal and civil investigations of the Appellant and it has and continues to withhold funds in violation of the stay in effect. MLD respectfully request that the Respondent's Motion be dismissed and that the Respondent be ordered to pay the Appellants attorney's fees and costs in responding to this Motion of the Respondent.

Respectfully submitted

By:



Johnny E. Watson

S. C. Bar 5967

E-mail: watsonlawfirm@sc.twcabc.com

2715 Edgewood Avenue (29204)

P. O. Box 2305

Columbia, South Carolina 29202

Columbia, South Carolina

Dated: February 21, 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

Don McLaurin, Chairman

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

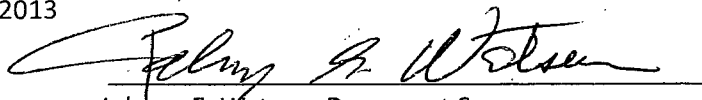
CERTIFICATE OF SERVICE

I, Johnny E Watson, Attorney for the Mary L. Dinkins Higher Learning Academy (MLD), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below:

PERSON SERVED: Butch Bowers
Attorney for the SCPCSD
1727 Hampton Street
Columbia, South Carolina 29201

DOCUMENT SERVED: Return to Respondent's Motion to Lift Stay and For Expedited Consideration

DATE SERVED: February 21, 2013


Johnny E. Watson, Document Server

Columbia, South Carolina
Date: February 21, 2013

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7

SC ADMIN. LAW COURT

Rock Hill Herald Online

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Longtime Clover schools' leader Barbara Parrish dies

SC charter school district seeking more money

Published: January 15, 2013

By Seanna Adcox — Associated Press

COLUMBIA — The superintendent of South Carolina's statewide charter school district asked legislators Tuesday for an additional \$12 million just to keep up with his growing student population and some legal tweaks to improve his district's performance.

Wayne Brazell said he'd like \$9.5 million on top of that, to also increase per-pupil spending by \$500, but his first priority is the \$12 million. Without it, he said, his schools could be in serious financial trouble.

"We'd have to cap growth," he told a House panel that will draft the 2013-14 state budget.

Brazell leads charter schools that choose to organize under the statewide district and therefore get no money from local property taxes. The five-year-old district's online schools receive \$3,712 per student from the state, while its "brick-and-mortar" schools receive \$5,262 per student.

Charter schools are public schools that must meet all state and federal standards but receive flexibility and are governed by a board of parents, educators and community leaders. Charter schools that organize under their local elected school board get local property taxes. But the statewide district was created because some local boards were hostile to their creation.

Ten new schools are approved to open in the statewide district this fall, though several may not make it. Between those that do open and growth in current schools, Brazell expects an additional 3,800 students next school year. Currently, 11,600 students attend the district's 18 schools — six of them fully online.

Brazell attributed the district's poor performance grade to dropouts, particularly in the online high schools.

The district received a D overall on its report card. Individually, three schools received an A, two received a B, two received a C and four received an F. Six others were too new to get an accountability grade. Additionally, the charter for a school that received a D is being revoked, amid allegations of fraudulent diplomas and financial discrepancies.

No virtual school received higher than a C.

A total of 14,000 students were enrolled in online schools at some point last school year, but the year closed with 8,000, Brazell said.

"Many are already considered dropouts when they transfer in," he said. "They have almost no chance of graduating on time."

He said some local school districts are using his online schools as a de facto alternative school, giving

A

<http://www.heraldonline.com/2013/01/15/4546074/sc-charter-school-district-seeking.html> 2/21/2013

students the option of expulsion or enrolling in one of his district's schools. That way, they aren't reflected in the home district's graduation rate.

Brazell said that, as public schools, his schools can't turn down students for enrollment unless they've already been expelled elsewhere.

Rep. Kenny Bingham, the panel's chairman, said something needs to change.

"What I'm not in favor of is charter schools becoming a dumping ground for all at-risk students," said Bingham, R-Cayce. The poor performance could make future funding of the schools a problem, he added.

Brazell said he's seeking flexibility to not count students for graduation purposes who transfer in and then leave in less than 30 or 45 days. Some stay less than a week, he said.

"I can empathize with schools who are trying to find something that could work for these students," he said. However, "virtual schools are just not the place for at-risk students."

Rep. Rita Allison agreed, saying that success in online schools requires self-motivation.

Brazell also wants legislators to change state law to allow his district to more quickly force closure when needed.

Mary L. Dinkins Charter School in Bishopville should have closed last year, he said. The district's board voted to revoke its charter last spring, but the Administrative Law Court allowed it to remain open until a final hearing. Meanwhile, there's very little oversight, Brazell said.

Six other charter schools in the statewide district are on probation – two for not meeting the needs of students with disabilities, three for abysmal academic performance, and a sixth for both poor performance and financial problems. If they don't improve, their charters could be revoked next year, Brazell said.

He said the probationary status shows the district is holding schools accountable.

"We're living up to our promise," he said. "I hate it. I wish we didn't have six on probation, but we're sending a clear message."

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Gala planned to raise money for technology in Rock Hill schools

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Longtime Clover schools' leader Barbara Parrish dies

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RE: article from item on sled

Friday, July 27, 2012 7:04 AM

From: "Jade Anderson" <janderson@theitem.com>

To: "Benita Dinkins", <benitadinkins@yahoo.com>

Happy Friday.

SLED asked to investigate charter school

Posted: Thursday, July 19, 2012 6:00 am | Updated: 12:00 am, Thu Jul 19, 2012.

SLED asked to investigate charter school BY JADE ANDERSON janderson@theitem.com The Item

Legal trouble continues to mount for one Bishopville school.

"When we think there is improper use of funds and improper awarding of diplomas, there is a concern," said Wayne Brazell, superintendent of the S.C. Public Charter School District. "We will work in tandem with both SLED and the S.C. Department of Education authorities to pursue any legal recourse against anyone who worked at or for MLD who violated state laws."

His district's board voted July 12 to immediately stop funding to Mary L. Dinkins Higher Learning Academy, a Wednesday news release stated. The board has also asked the S.C. Law Enforcement Division and the state Department of Education to investigate the personnel of the school regarding the issuance of fraudulent diplomas and an inordinate number of other academic and financial discrepancies. The referrals to legal authorities come after routine monitoring by the district office revealed problems at the school that necessitated more extensive reviews over a period of several months, the release states.

This is not the first clash between the charter school district and the academy. In spring of 2012, the board revoked the school's charter because of lack of academic progress and operational concerns, Brazell said.

"We're not funding them for the upcoming year unless we are told by the court system to do so, which indeed could happen," he said. "We are treating them like a revoked school, but we will certainly do whatever we're told (by the courts)."

MLD Director Benita Dinkins-Robinson said the state charter school district is "grasping for straws."

"The judge has already ruled a stay in this case," she said. "So that means the status of the school can't change. We plan to open right here at Dennis (Intermediate School) on Aug. 6."

As of 4 p.m. Wednesday, Brazell said he had not seen this court order.

Ennis Bryant, principal consultant for the school, said he is also hopeful the school will be able to continue in the fall.

"I haven't seen their press release so I can't really comment on it," he said. "I do know about it, and I can't say much because it's under litigation. But I will say that I hope we will be able to stay open. There's a lot of good things happening at the school - all you have to do is to listen to the parents and their testimonies."

The education department has begun its investigation, but no details are available at this time, said Fritz E. Mason, spokesperson for the S.C. Department of Education.

Each public charter school in the state agrees to operate under a charter, which is a legal contract between the governing board of every school and the authorizing office, the release states. Authorizers of public charter schools in South Carolina, such as the S.C. Public Charter School District, are required by the state charter school law to revoke a charter if the authorizer determines the school committed a material violation of the conditions, standards or procedures of the charter; failed to meet or make reasonable progress toward academic achievement standards identified in the charter; failed to meet generally accepted fiscal management standards; or violated any provision of the law from which public charter schools are not specifically exempt.

The academy was originally opened under the Lee County School District, but the school transferred to the statewide district under a probationary arrangement about two years ago. That school district and the academy have also had disagreements with the latest being a notice earlier this month to evict the academy from Dennis, which is owned by the Lee County School District. Jeff Long, spokesperson for Lee County School District, said the court date for that eviction hearing is tentatively scheduled for Aug. 3.

B-1

Rec-1192

"It's a matter for the S.C. charter school association now, and they are taking the steps they believe are necessary," said Sanya Moses, chairwoman for the Lee County School District Board of Trustees. "It's no secret that there has been a struggle since MLD's inception. Our main concern now is servicing the children and getting back on track come August. For the parents that are looking for options, consider Lee County schools. We have great things going on here."

Dinkins-Robinson has contended the academy, which has about 160 students, only needs the use of the middle school for a few months as the plan is to break ground on a new school at 4 p.m. Saturday at a site on Pinchum Sly Road near Bishopville.

"We have some reserve funding in place, and we have three or four community partners," she said. "We're going to continue to do God's will."

If the school is shut down, it would be the second school under the statewide charter district and in the tri-county to do so. Young Entrepreneurial Vocational Academy was located in Summerton and closed in 2009. Brazell said its enrollment was too small to be financially viable.

Randy Burns contributed to this article.

Reach Jade Anderson at (803) 774-1250.

Jade Anderson
Education Reporter
The Item
Sumter, S.C.
janderson@theitem.com
(803) 774-1250

From: Benita Dinkins [mailto:benitadinkins@yahoo.com]

Sent: Thursday, July 26, 2012 7:09 PM

To: Jade Anderson

Subject: article from item on sled

Please email me this article.

B-2

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Date: Friday, September 7, 2012 4:00 PM**From:** Williams, Gianna <gmwilliams@sled.sc.gov>**To:** watsonlawfirm@sc.twcbc.com**Subject:** SLED Case Number 32-12-0080**Size:** 16 KB

Mr. Watson, per our conversation this afternoon, the following items are requested for the investigation into the Mary L. Dinkins Higher Learning Academy (MLDHLA):

- How many kids were enrolled at MLDHLA during the 2011-2012 school year, with a break down by grade, and the number in each grade?
- How many kids are currently enrolled at MLDHLA, with a break down by grade, and the number in each grade?
- How do students come to MLDHLA as opposed to other public schools?
- Do the students pay tuition to MLDHLA? Do they pay any fees for the school, such as enrollment fees?
- How is MLDHLA funded?
- How are meals at MLDHLA funded, and what are the requirements for students to receive meals at MLDHLA?
- Does MLDHLA get state/federal funding; if so what is that based on?
- What grants have MLDHLA received? Who is the grantee and what are/were the terms and conditions of the funding?
- Who is in charge of applying for state/federal funding? Who is generally in charge of managing money for MLDHLA?

B-3

Rec-1194

- All funding and accounting records for MLDHLA is requested.
- How many staff members were at MLDHLA during the 2011-2012 school year, and how many staff members are currently at MLDHLA (please include contact information for all). What are the minimum requirements for staff members?
- How are salaries for staff members at MLDHLA paid?
- What staff may access student records? How many have authorization to change those records (as opposed to simply viewing those records)?
- Records for MLDHLA from Powerschool, and the student records and transcripts for the graduating class for the 2011-2012 school year are requested.
- Transcripts generated by MLDHLA and presented to the SC Public Charter School District as part of the state audit in April 2012 are requested.
- Does MLDHLA have a policy on maintaining a minimum grade average for students? If so, what is that minimum and are grades changed to reflect that minimum if the student's actual grade falls below that?
- Has anyone ever changed a student's actual grade or misrepresented transcript information (grades or classes taken)?

Thank you again for your time, and I look forward to hearing from you.

Special Agent Gianna M. Williams

*Midlands
Region*

SC Law Enforcement Division

*P.O. Box
21398*

*Columbia
SC 29221*

803-609-8367 - Cell

B-4

Rec-1195

803-896-7250 - Office

803-896-7259 - Fax

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B-5

Rec-1196

DSS

Serving Children and Families

LILLIAN B. KOLLER, J.D.
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

November 5, 2012

Wayne Brazell, Ph. D., Superintendent
SC Public Charter School District
3710 Landmark Drive, Suite 201
Columbia, South Carolina 29204

Re: Mary L. Dinkins Academy

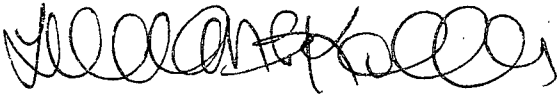
Dear Dr. Brazell:

Thank you for your letter, dated October 22, 2012, regarding William Thomas Academy and All About Kids. As you know, we do not have regulatory authority over charter schools, including Mary L. Dinkins Academy Charter School. However, there are some classes at William Thomas Academy in which children are enrolled who are under the mandatory school age, and these classrooms are therefore licensed by the Department of Social Services. In addition, All About Kids is a licensed facility which we monitor and inspect regularly.

We accepted the report anonymously and investigated the potential regulatory concerns cited in your letter. After inspecting both facilities, we cited a regulatory deficiency during our visit to All About Kids. We are following up with that facility to ensure that they resolve the issue and that they are in compliance with all child care regulations.

I hope this helps to clarify your concerns regarding potential regulatory violations at these two facilities. If you have any additional concerns, please feel free to contact Ms. Leigh Bolick, Director of Child Care Services, at 803-898-7134.

Sincerely,

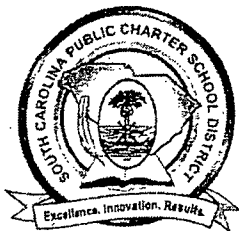


Lillian B. Koller, J.D.
State Director

LBK:mbi

cc: Mr. Butch Bowers
The Honorable Shirley C. Robinson
Mr. Johnny Watson
Dr. Mick Zais
Ms. Shelly Kelly
Ms. Gianna M. Williams
The Honorable Philip D. Owens
The Honorable Grady A. Brown
The Honorable Gerald Malloy
Ms. Leigh Bolick
Ms. Cynthia Lara

C-1



South Carolina Public Charter School District

Oct. 22, 2012

Board of Trustees

Don McLaurin,
Chairman

Mrs. Linzie Staley,
Vice Chairman

Kathleen Bounds
Secretary

Dr. Ronald Epps

Mrs. Terrye Seckinger

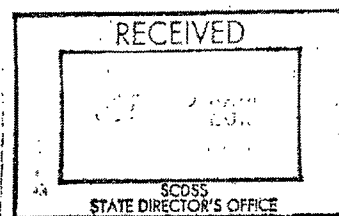
Reese Boyd

Superintendent
Wayne Brazell, Ph.D.

Lillian Koller
State Director, South Carolina Department of Social Services
P. O. Box 1520
Columbia, SC 29202-1520

Re: Mary L. Dinkins Academy

Dear Lillian:



As the Superintendent of the South Carolina Public Charter School District ("SCPCSD"), I was directed by the District's Board of Directors, at its October 11, 2012 meeting, to report to the Department certain activities and conditions that have been alleged to the District and its staff, which appear to represent an existing and ongoing threat to the health, physical safety, and well-being of children who have been entrusted to the care of Mary L. Dinkins Academy Charter School ("MLD Academy") in Bishopville, South Carolina.

As background, SCPCSD is the state-wide school district vested with authority for approving and authorizing charter schools throughout South Carolina. MLD Academy is a charter school previously authorized by the District, but whose charter was revoked after a lengthy review and hearing before the SCPCSD Board on May 16, 2012. Subsequently, MLD Academy appealed the charter revocation to the South Carolina Administrative Law Court ("ALC"). The ALC issued an Order on July 30, 2012, staying the revocation, and further directing SCPCSD from taking any further action to enforce the revocation. MLD has continued to operate under the authority of such Order since that time.

Notwithstanding the above, however, and the District's desire to comply with the orders and directives of any court, we do not believe the ALC Order of July 30, 2012, relieves or shields us from our obligations as "mandatory reporters" with respect to issues involving eminent threat to the health, safety, or well-being of children.

Specifically, the District has received reports, from a well-informed and credible source within MLD, of the following:

- (1) It has been alleged that numerous students have been placed in two facilities in Sumter County without the knowledge and approval of either the South Carolina Department of Education ("SCDE") or the SCPCSD. The two facilities are "All About Kids Daycare" and "William Thomas Academy." The charter for MLD, even if it were recognized by the SCPCSD, does not allow the school to place students in either of these unapproved facilities, and the administration of MLD never submitted a request to amend its charter to allow placement of students at either facility. Reports of the conditions and operations at these facilities raise significant concerns as to whether children there are being adequately supervised, cared for, or fed, and – significantly – the District has never inspected or approved either of these facilities.

3710 Landmark Drive, Ste 201
Columbia, SC 29204
Phone: 803-734-8322
Fax: 803-734-8325
www.sccharter.org

C-2

Rec-1198

(2) It has further been alleged that students from "All About Kids Daycare" and "William Thomas Academy" have been transported from Sumter to the MLD Academy facility in Bishopville under false pretenses, and perhaps without the knowledge of the parents of the children involved. It has been alleged that on September 18, 2012, students were taken from Sumter to Bishopville and placed in "classrooms" that had been arranged to provide the appearance that these students were using those classrooms and would typically be there on any given school day. On that day, September 18, 2012, SCDE officials visited MLD Academy to conduct a student head-count for the purposes of confirming state and federal per-pupil funding. To our knowledge, SCDE officials were not informed at any time that these additional students were actually being educated at a site in Sumter and not in Bishopville. It has further been alleged that one of the MLD Academy teachers from Sumter was told that her students were being transported to Bishopville for testing but that no such testing took place while the students were there. I would further note that no vehicles or other means of transportation which may have been used by MLD Academy to transport students to and from the Bishopville facilities have been inspected or reviewed by SCPCSD staff.

(3) Finally, the allegations that we have received raise significant concerns with respect to the provisioning of breakfast and lunch for students, the lack of supervision of students at both the Sumter and Bishopville locations, improper notification or lack of notification of parents regarding student trips, and sanitation concerns at the Bishopville facility.

I would further note that the information that SCPCSD received was unsolicited. We are simply responding herein to new and additional information that has been reported to us. We believe the information goes beyond the purview of the pending charter revocation appeal and whether MLD Academy is entitled to retain its charter. We believe that the report we have received details credible information related to an immediate and ongoing threat to the health, physical safety, and well-being of those children entrusted to MLD Academy.

It is our understanding that those who report instances or threats of child endangerment, abuse or neglect may be entitled to have their identity protected. On that basis, we have not disclosed herein the identity of the individual who has brought the above allegations to our attention. We have that information, however, and we will be pleased to share it with the Department in the appropriate circumstances.

Regards,

Wayne Brazell

Wayne Brazell, Ph. D.
Superintendent, SCPCSD

Cc: Butch Bowers, Attorney at Law
Shirley C. Robinson, Administrative Law Judge
Johnny Watson, Attorney at Law
Mick Zais, Ph. D., Superintendent, South Carolina Department of Education
Shelly Kelly, General Counsel, South Carolina Department of Education
Gianna M. Williams, Special Agent, Midlands Region, South Carolina Law Enforcement Division
Philip D. Owens, Representative, South Carolina House of Representatives
Grady A. Brown, Representative, South Carolina House of Representatives
Gerald Malloy, Senator, South Carolina Senate

C-3

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Mary L. Dinkins Higher Learning
Academy,

Appellant,

vs.

South Carolina Public Charter School
District,

Respondent.

Case No. 12-ALJ-30-281-AP

REPLY IN SUPPORT OF
RESPONDENT'S MOTION
TO LIFT STAY

The South Carolina Public Charter School District files this reply simply to clarify the record in response to the unsubstantiated factual assertions in the MLD Academy's return brief, and states as follows:

- **No Funding Withheld:** The District has provided MLD with all of the funding to which it is entitled, given that Rule 34's automatic stay is currently in place. It has not unlawfully withheld any funding, as incorrectly asserted on Pages 3 and 4 of the school's return brief.
- **No Bad Newspaper Articles:** The District has not "submitted numerous articles to discredit this school," as alleged on Page 4 of the return brief. Indeed, the lone document attached to the school's brief in support of this incorrect statement is an Associated Press story recounting the District Superintendent's statements to the General Assembly when seeking additional funding for the District. Nothing in that article purports to "discredit" the school.
- **Investigations by Other Agencies:** Other state and federal agencies have duties with respect to public funds, protecting children, and the education system. The fact that the school's behavior has caused other agencies to investigate matters within their respective jurisdictions only supports the District's motion to lift the automatic stay.
- **False Head-Counts:** The District's concerns about the school taking steps to create false head-counts of students for purposes of misleading officials with respect to per-pupil funding allocations stem from statements made to the District by one of the school's own staff members. As a matter of law, those statements are not hearsay, as claimed by the school. See Rule 801(d)(2), SCRE (providing

that an "admission by party-opponent" is "not hearsay"). And as a practical matter, those statements are certainly a legitimate basis for serious concern.

- **Relocating the School:** The school does not rebut any of the District's concerns about it habitually relocating without notice. Instead, the school blames the Lee County School District for the school's facilities issues, and it inexplicably states that it is entitled to use vacant facilities of public school districts. The law, however, provides exactly the opposite: "Nothing in this section requires the owner of a building on the list [of vacant and unused buildings owned by school districts] to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant." S.C. Code Ann. § 59-40-170.

At bottom, the District stands by the arguments in its opening brief. Nothing in the school's return brief legitimately undercuts or mitigates the serious student-safety and fiscal concerns that the District (and other state and federal agencies, apparently) has with respect to the school's conduct while this case has been pending before the Court. Accordingly, for the reasons stated in the District's opening brief, as well as those contained herein, the District respectfully requests that the Court lift the automatic stay that is in place over this matter. Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: Butch Bowers

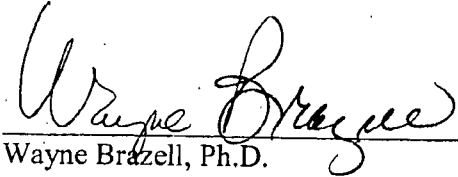
Karl S. Bowers, Jr.
SC Bar No. 16141
butch.bowers@wcsr.com
M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wcsr.com
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the South Carolina Public Charter School
District

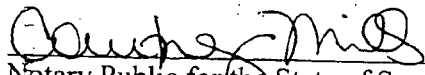
February 27, 2013
Columbia, South Carolina

VERIFICATION

I, Wayne Brazell, Superintendent of the South Carolina Public Charter School District, do swear and testify under penalty of perjury that I have reviewed the contents of the Reply in Support of Respondent's Motion to Lift Stay and that, upon information and belief, the contents therein are true to the best of my knowledge.


Wayne Brazell, Ph.D.

Sworn to before me this 27th day of February, 2013


Notary Public for the State of South Carolina

My Commission Expires: 3/12/2018

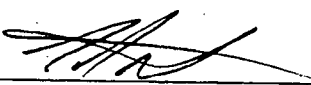
PROOF OF SERVICE

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):

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO LIFT STAY

PARTIES SERVED: **Johnny Watson**
 PO Box 2305
 Columbia, SC 29202

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

Todd Mathis

Columbia, South Carolina
February 27, 2013

December 12, 2012

The Honorable Shirley C. Robinson
Administrative Law Judge
Edgar Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Mary L. Dinkins Higher Learning Academy v. South Carolina Public Charter School
District
Case No. 12-ALJ-30-281-AP

Dear Judge Robinson:

We represent the South Carolina Public Charter School District in the above-referenced case, which is an appeal pending before Your Honor. If the Court believes a hearing is necessary to resolve this appeal, we respectfully request that such a hearing be held on an expedited basis.

As the Court is aware, the Mary L. Dinkins Higher Learning Academy is a charter school in the State Public Charter School District. The District revoked the Academy's charter in May 2012 after a public hearing. The Academy has appealed that revocation decision, and it asked this Court to issue a show cause order to ensure that nothing happened to the Academy while this appeal was pending. The Court will recall that the parties appeared before Your Honor on July 27th to discuss the propriety of issuing a stay while this appeal was pending.

Since that hearing, the District has been informed that the Academy has allegedly engaged in numerous post-revocation improprieties, including (a) placing students in facilities in *Sumter* without providing notice to either the District or the State Department of Education of this switch, which by the terms of its charter is required to operate in *Bishopville*; (b) shuttling in children from a Sumter daycare and a Sumter private school (apparently without any parental permission or even parental awareness) and setting up fake classrooms for purposes of deceiving representatives from the State Department of Education when conducting student head-counts for purposes of confirming state and federal per-pupil funding; (c) relocating the Academy to two buildings (again, in *Sumter*, not *Bishopville*) for which it does not have a certificate of occupancy; and (d) according to the Academy's financial bookkeeper, reimbursing the Academy's lead administrator for questionable expenditures.

The Honorable Shirley C. Robinson
December 12, 2012
Page 2

In order to rein in what appears to be a rapidly-deteriorating situation that includes putting students in potential peril, the District respectfully asks the Court to consider this matter at its earliest convenience.

Thank you in advance for your consideration of this letter. Please let us know if we can provide the Court with any additional information or materials.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script, appearing to read "Butch Bowers".

Karl S. Bowers, Jr.

cc: The Honorable Jana E. Cox Shealy
Johnny E. Watson, Sr., Esq.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT
Honorable Shirley C. Robinson, Judge, Administrative Law Court

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

NOTICE OF MOTION AND MOTION TO INSTATE STAY

Johnny E. Watson, Sr., Esquire

Watson Law Firm
2715 Edgewood Avenue
Post Office Box 2305

Columbia, South Carolina 29202
(803) 400-1600

Counsel for Appellant

Karl S. Bowers, Jr, Esquire

Womble Carlyle Sandbridge
Rice, LLP
1727 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

Counsel for Respondent

FILED

MAR 28 2013

SC ADMIN. LAW COURT

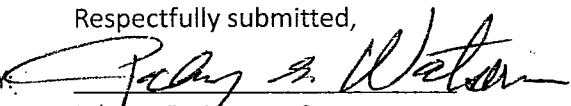
STATEMENT OF MOTION

PLEASE TAKE NOTICE that the above-named Appellant, by and through its counsel, undersigned, will move before the Honorable Shirley C. Chisolm, Judge of the Administrative Law Court, State of South Carolina, immediately, or as soon as this matter may be heard, for an Order instating a stay in the enforcement of its order upholding the Respondent's revocation of the Appellant's charter based on the statutory and common laws of this state, the Rules of Court procedure and the following facts:

- A. There is an appeal of the revocation of the charter of the Mary L. Dinkins Higher Learning Academy (MLD) by the South Carolina Public Charter School District (District) and the subsequent upholding of the Respondent's decision by this Court,
- B. The failure to institute a stay in the enforcement of this court's decision will result in irreparable harm to the Appellant and its students and render the appeal in this case moot. All actions against MLD by the District or its surrogates should therefore be stayed until the matter is resolved by the South Carolina Court of Appeals (see attached affidavit of Mr. George Williams, MLD Board Chairman),
- C. MLD is presently midway through its spring semester and irreparable harm will be done to the students and the school unless the this Court's decision is stayed pending resolution of its appeal, and
- D. The Respondent will not be harmed by staying the decision of this Court.

Respectfully submitted,

BY


Johnny E. Watson, Sr.
Attorney at Law, SCB# 5967
P. O. Box 2305 (29202)
2715 Edgewood Avenue
Columbia, South Carolina 29204
(803) 400-1600 Phone
(803) 400-1200 Fax

watsonlawfirm@sc.twcabc.com

FILED

MAR 28 2013

Columbia, South Carolina
Dated: March 28, 2013

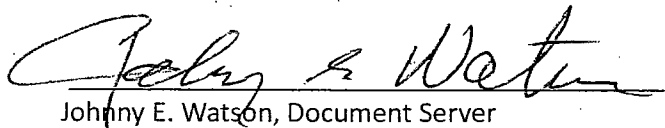
CERTIFICATE OF SERVICE

I, Johnny E Watson, Attorney for the Mary L. Dinkins Higher Learning Academy (MLD), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below or by delivering said document by hand to the address below:

PERSON SERVED: Butch Bowers
Attorney for the SCPCSD
1727 Hampton Street
Columbia, South Carolina 29201

DOCUMENT SERVED: **NOTICE OF MOTION AND MOTION TO INSTATE STAY**

DATE SERVED: March 28, 2013


Johnny E. Watson, Document Server

Columbia, South Carolina
Date: March 28, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE ADMINISTRATIVE LAW
COURT OF SOUTH CAROLINA

MARY L. DINKINS HIGHER
HIGHER LEARNING ACADEMY,

DOCKET #: 12-ALJ-30-281-AP

APPELLANT,

AFFIDAVIT OR GEORGE WILLIAMS
MLD BOARD CHAIRMAN

V.

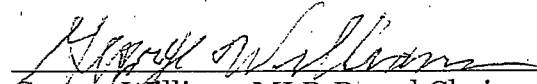
SOUTH CAROLINA PUBLIC
CHARTER SCHOOL DISTRICT,

RESPONDENT.

PERSONALLY appeared before me, George Williams, who being first duly sworn, deposes and says that the following is based upon his own personal knowledge and/or belief:

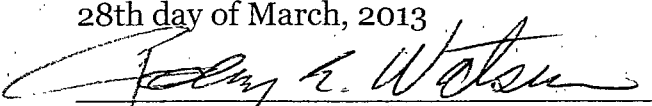
1. I am the Chair of MLD Higher Learning Academy.
2. Currently, MLD Higher Learning Academy has approximately 140 students and 30 employees and contractors.
3. The failure of this Court to instate a stay against enforcement of its decision to revoke the charter of the MLD Academy during the pendency of the appeal in the instant case would effectively close the school and render the appeal moot. The school would not be able pay its staff, transport the students to and from the school, uphold its contracts with its vendors and suppliers of pay its legal fees and costs in this action.
4. The resulting closing would also affect the employees health and medical benefits and leave them unemployed.

FURTHER AFFIANT SAYETH NAUGHT.


George William, MLD Board Chairman

SWORN TO BEFORE ME this

28th day of March, 2013


Notary Public for S-C
My commission expires: 1-23-2016

5

STATE OF SOUTH CAROLINA)
) IN THE ADMINISTRATIVE LAW
) COURT OF SOUTH CAROLINA
COUNTY OF RICHLAND)

MARY L. DINKINS HIGHER)
HIGHER LEARNING ACADEMY,) DOCKET #: 12-ALJ-30-281-AP
)

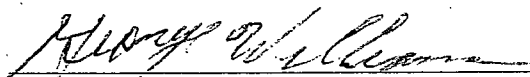
APPELLANT,)
) VERIFICATION OF GEORGE WILLIAMS
) MLD BOARD CHAIRMAN
)

V.)
)

SOUTH CAROLINA PUBLIC)
CHARTER SCHOOL DISTRICT,)
)

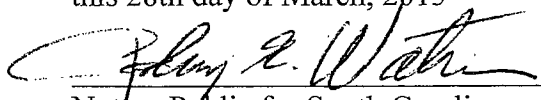
RESPONDENT.)
)
)

PERSONALLY APPEARED BEFORE ME, GEORGE WILLIAMS, MLD Board
Chairman, who, being first duly sworn, deposes and says: that he is the Chairman of the Board of
the Appellant, and that he has read the foregoing Notice of Motion and Motion and knows that
allegations contained therein to be true except as to those allegations which may be alleged upon
information and belief, and as to those, he believes them to be true.



GEORGE WILLIAMS, MLD BOARD
CHAIRMAN

Sworn and subscribed before me
this 28th day of March, 2013



Notary Public for South Carolina
My Commission Expires: 1-23-2016

FILED

MAR 28 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Mary L. Dinkins Higher Learning
Academy,

Appellant,

vs.

South Carolina Public Charter School
District,

Respondent.

Case No. 12-ALJ-30-281-AP

RETURN IN OPPOSITION
TO MOTION TO STAY

The South Carolina Public Charter School District respectfully opposes the Academy's motion to stay the effect of this Court's Order affirming the District's revocation of the Academy's charter. Simply put, the District should not be required to continue pouring scarce public resources into an enterprise that has refused any measure of accountability, that is subject to numerous federal and state investigations, and that has unambiguously failed its students.

ARGUMENTS AND AUTHORITIES

South Carolina law makes clear that filing a notice of appeal does not stay the enforcement of an order from the executive branch of government. *See, e.g.*, S.C. Code Ann. § 1-23-380(2) (providing that, except in certain inapplicable instances, "the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision") (emphasis added); *id.* § 1-23-600(H)(5) ("A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.") (emphasis added); *id.* § 1-23-610(A)(2) (providing that, except in certain inapplicable instances, "the serving and filing

of the notice of appeal does not itself stay enforcement of the administrative law judge's decision") (emphasis added); Rule 241(b)(11), SCACR ("A list of some, but not all, of the exceptions to the general rule [of an automatic stay] is: Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600(G)(5).") (emphasis added).¹

Rule 241(c)(2), SCACR, identifies only two grounds for circumventing this established rule: when a stay is necessary (a) "to preserve jurisdiction of the appeal" or (b) "to prevent a contested issue from becoming moot." Neither of these is at risk here.

Regarding the former, there is nothing to suggest that denying the Academy's request for a stay would in any way negate the appellate court's jurisdiction. The Academy does not make such an argument in its motion, nor is the District aware of anything that would disrupt the appellate court's jurisdiction if this Court refuses to issue a stay.

Regarding the latter, the Academy argues that failing to stay this Court's Order will "render the appeal in this case moot" because the school will be forced to close. ("Statement of Motion" at 2; Aff. of George Williams ¶ 3.) This is not so. For one, the school has continued its operations after the Court issued its March 1st Order, a circumstance that completely undercuts the Academy's argument.

¹ The provisions of the Administrative Procedures Act cited in Rule 241(b)(11), SCACR, have been renumbered since the Appellate Court Rule was amended in 2007 to exempt administrative appeals from the automatic stay. Despite being renumbered, these statutory provisions have not been substantively changed.

Further, even without a stay in place, the Academy can seek to operate as a charter school under the supervision of a different public school district.² Or the Academy could seek accreditation as a private school through the South Carolina Independent School Association. Either of these options would allow the school to continue operating while the appeal is pending, but neither option would force the District to continue dumping hundreds of thousands of public dollars and other resources into a school that refuses to be supervised and whose behavior has caused federal and state agencies to open investigations into its conduct.

As the Court is aware, and as reiterated in the attached affidavit, the Academy has refused to provide records of its finances, students, and personnel to the District. Because of the school's willful refusal to disclose any information, the District has no idea how much cash the Academy has on hand, to whom it owes money, or even how many students attend the school. The Academy has habitually relocated its students among various facilities in Lee and Sumter Counties without notice to either the District or the State Department of Education. In fact, the Academy is currently placing children in a building that the State Department of Education has determined to have life safety and zoning concerns. This incredible misconduct has caused, at a minimum, the South Carolina Law Enforcement Division, the Office of Inspector General within the United States Department of Education, and the South Carolina Department of Social Services to investigate the Academy.

² For example, the Academy could seek admittance into the Sumter County School District, as the Academy has apparently moved (without any advance notice to or any approval from any governing body) its students and facilities from Lee County to Sumter County.

At bottom, Rule 241(c)'s limited circumstances for staying enforcement of a decision by the executive branch are wholly inapplicable here. There is no legal basis for enabling the Academy's misconduct by requiring the District to continue funding the school while this appeal is pending by issuing a stay, and the Court should deny the Academy's motion accordingly.

CONCLUSION

Staying enforcement of the Court's Order would only embolden the Academy to continue ignoring the law, ignoring the District, and ignoring the State Department of Education, and to obtain even more public resources to enable its misconduct. The Administrative Procedures Act and the Rules of Appellate Procedure reject the Academy's position that a stay is needed or permitted here. The District, therefore, respectfully submits that the Court should deny the Academy's motion.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: _____

Karl S. Bowers, Jr.
M. Todd Carroll
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for the South Carolina Public Charter School
District

April 3, 2013
Columbia, South Carolina

Exhibit

Affidavit of Dana Cooper Reed,
Director of Compliance for the
State Public Charter School District

Mary L. Dinkins Higher Learning
Academy,

Appellant,

VS.

South Carolina Public Charter School
District,

Respondent.

1. I am over the age of 18 and give this statement voluntarily and based on my own personal knowledge, except those matters herein that are stated on information and belief, which I believe to be true.

3. During the Appellant's time as a member of the South Carolina Public Charter School District, the District's staff has repeatedly requested information about the Appellant's students and the school's financial state. The Appellant repeatedly ignores the District's requests for information. When the Appellant does provide information, the information is typically incomplete and late.

Rec-1217

school's financial records. That request was also ignored, and the District received no response to it.

5. Upon information and belief, the Appellant has relocated students among, at least, four separate facilities in Lee County and Sumter County. The Appellant did not provide me or anyone else at the District with any notice prior to or even after it relocated its students. I have also learned that the Appellant is currently locating its students in a church in Sumter County. The State Department of Education's Office of School Facilities inspected this property on February 13, 2013, and identified a myriad of life safety concerns as well as an incompatible zoning use. Upon information and belief, the Appellant continues to locate students at that site and operate a school in an area where a school is not a permitted use.

6. The school's bookkeeper has notified the District of attempts by the Appellant's officials and employees to seek reimbursements for improper purchases.

7. Upon information and belief, the Appellant has improperly kept and maintained its student records, such that verifiable transcripts of student coursework and attendance are virtually nonexistent.

8. Because of the Appellant's conduct, the District does not know how many students are enrolled in the Appellant's school. Neither does the District know how much money the Appellant has on hand or how much (or to whom) the Appellant owes money. However, at least one of the Appellant's creditors has contacted the District in an attempt to collect monies owed.

Further Affiant sayeth not.

Dana C. Reed

Dana Cooper Reed

Sworn to and subscribed before me this 2 day of April, 2013

Rahel H. Cooper

Notary Public for the State of South Carolina

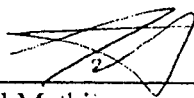
My Commission Expires: 3/20/2017

CERTIFICATE OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice LLP, attorneys for South Carolina Public Charter School District do hereby certify that I have served all parties in this action with a copy of the pleading hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading: **Return in Opposition to Motion to Stay**

Parties Served: Johnny E. Watson
2715 Edgewood Avenue
Columbia, SC 29204



Todd Mathis

April 3, 2013

APR 10 2013

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Mary L. Dinkins Higher Learning Academy,)
)
Appellant,)
)
v.)
)
South Carolina Public Charter School)
District,)
)
Respondent.)
)

Docket No. 12-ALJ-30-0281-AP

ORDER

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Notice of Motion and Motion to Instate Stay filed by the Mary L. Dinkins Higher Learning Academy ("Appellant") on March 28, 2013. The Appellant is requesting that this Court stay the enforcement of an Order issued by this Court on March 1, 2013. In the Order, this Court affirmed the decision of the South Carolina Public Charter School District's ("Respondent") Board of Trustees to revoke Appellant's charter. The Respondent filed a Return opposing the Motion on April 3, 2013.

For the reasons set forth herein below, this Court denies Appellant's Motion to Instate Stay.

DISCUSSION

Potential Mootness of Appeal

S.C. Code Ann. § 1-23-610(A)(2) (2012) provides in pertinent part: "Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. ... Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms." Also, see Bakala v. Bakala, 352 S.C. 612, 631, 576 S.E.2d 156, 166 (2003) ("An order that is not automatically stayed remains enforceable while pending appeal unless the party seeks a stay."). Furthermore, Rule 241(c)(2), SCACR, provides that the determination of whether to grant a stay in matters such as this should be based upon whether "such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Indeed, "[t]he purpose of a supersedeas is to stay proceedings in order to preserve the status quo pending the

determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” Graham v. Graham, 301 S.C. 128, 130, 390, 470 S.E.2d 469 (Ct. App. 1990) (ellipses and internal citation omitted); see also 4 C.J.S. Appeal and Error § 528 (2012) (“[I]t is an abuse of discretion to deny supersedeas where a refusal to supersede the judgment would deny the right to any appeal.”).

In this case, Appellant argues that if the Court does not stay the enforcement of its Order, it would be forced to close thereby rendering its appeal moot.¹ However, from all indications, the Appellant continues to operate the charter school, and as noted by the Respondent in the Return to Appellant’s Motion, the Appellant has options available to it that will allow the Appellant to continue operating while their appeal is pending.² Even if Appellant finds itself in the position where it must cease operating, if the appeal is successful, there is nothing that would prevent Appellant from reopening the school.

Irreparable Harm

This Court is also not persuaded by Appellant’s argument that the Court’s failure to stay the enforcement of its Order will result in irreparable harm to Appellant and the students it serves. A party seeking a stay pending appeal must also demonstrate “irreparable injury in the absence of a stay.” 4 C.J.S. Appeal and Error § 528. In support of its argument on this issue, the Appellant simply states “MLD is presently midway through its spring semester and irreparable harm will be done to the students and the school unless [the] this Court’s decision is stayed pending resolution of the appeal.” While the Court recognizes that there is a real possibility that Appellant may lack the financial resources to continue operating while it awaits the outcome of the appeal, the students it serves will not be left without any recourse. See, S.C. Const. Art. XI § 3 (“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State....”).

In sum, the Appellant has failed to establish that denial of a stay will render its appeal moot or that irreparable harm would result from a denial of a stay of the March 1, 2013 Order.

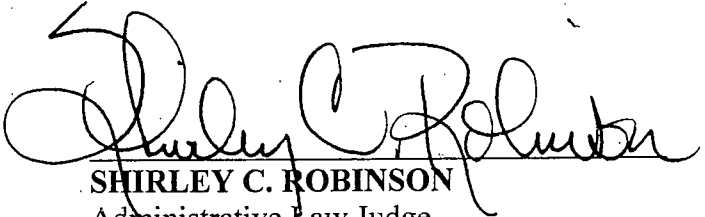
¹ On March 14, 2013, the Appellant filed an appeal of the March 1, 2013 Order with the South Carolina Court of Appeals.

² Respondent notes that the Appellant can seek to operate as a charter school under the supervision of a different school district, or it could seek accreditation as a private school through the South Carolina Independent School Association.

ORDER

THEREFORE, IT IS HEREBY ORDERED that Appellant's Motion to Instate Stay is
DENIED.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 10th, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the interagency
Mail Service addressed to the party(ies) or their attorney(s).

This 10 day of April 2013

By: Jeesh A. Henderson
Judicial Law Clerk

The South Carolina Court of Appeals

Mary L. Dinkins Higher Learning Academy, Appellant,

v.

South Carolina Public Charter School District,
Respondent.

Appellate Case No. 2013-000525

ORDER

Appellant has filed a petition to reinstate this appeal and a request for a thirty day extension to serve and file Appellant's initial brief and designation of matter. Within thirty days, Appellant shall serve and file Appellant's initial brief and designation of matter. Upon receipt of the brief and designation or the expiration of thirty days, this court will act upon Appellant's petition to reinstate.


FOR THE COURT

Columbia, South Carolina

FILED

SF 6/10/13

cc:

Johnny Elliot Watson, Sr.

Karl Smith Bowers, Jr.

Alan McCrory Wilson

STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

NOTICE OF APPEAL

Johnny E. Watson, Sr., Esquire

Watson Law Firm
2715 Edgewood Avenue

Post Office Box 2305

Columbia, South Carolina 29202
(803) 400-1600

Counsel for Appellant

Karl S. Bowers, Jr, Esquire

Womble Carlyle Sandbridge
Rice, LLP

1127 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

Counsel for Respondent

FILED

MAR 14 2013

SC ADMIN. LAW COURT

RECEIVED

MAR 14 2013

SC ADMIN. LAW COURT

RECEIVED

MAR 14 2013

SC Court of Appeals

STATEMENT OF ISSUES ON APPEAL

The Appellant, Mary L. Dinkins, Higher Learning Academy, hereby gives notice of appeal from the judgment of the South Carolina Administrative Law Court, Honorable Shirley C. Robinson, presiding, in the above action.

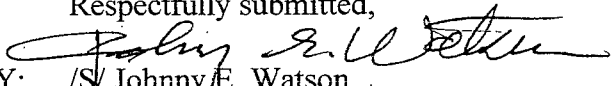
~~Notice of Appeal is made subsequent to Order of Judgment entered on March 1, 2013 and received on 3rd day of March, 2013.~~

~~Appellant's exceptions to the judgment of the Administrative Law Judge are set forth as follows:~~

- I. The Administrative Law Judge erred when she held 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. The Administrative Law Judge erred she failed to hold that the South Carolina Charter Act is unconstitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976);
- III. The Administrative Law Judge erred when she held that the revocation hearing by the District was held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) and
- IV. The Administrative Law Judge erred when she held that the South Carolina Charter School District did not violate other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

Respectfully submitted,

BY:


/s/ Johnny E. Watson

Johnny E. Watson, Sr.

Attorney at Law, SCB# 5967

P. O. Box 2305 (29202)

2715 Edgewood Avenue
Columbia, South Carolina 29204

(803) 400-1600 Phone
(803) 400-1200 Fax

watsonlawfirm@sc.twcbc.com

Columbia, South Carolina
Dated: March 14, 2013

CERTIFICATE OF SERVICE

I, Johnny E. Watson, of 2715 Edgewood Avenue (29204), P. O. Box 2305, Columbia, South Carolina 29202, hereby certify that I have served the individual named below with a copy of the documents described herein by depositing the documents in the United States mail, postage prepaid (and via fax) and sent the same to them at the addresses listed herein below:

PERSON SERVED:

Mr. Alan Wilson

South Carolina Attorney General
1000 Assembly Street

Columbia, South Carolina 29202
(803) 734-3970

Karl S. Bowers, Jr, Esquire

Womble Carlyle Sandbridge
Rice, LLP

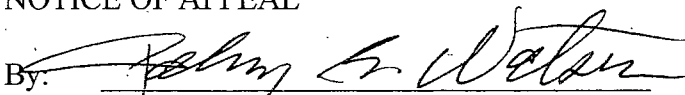
1127 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

DOCUMENT SERVED:

NOTICE OF APPEAL

By:


JOHNNY E. WATSON

Columbia, South Carolina
Date: March 14, 2013

RECEIVED

MAR 14 2013

SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 15, 2013

Mr. Johnny Elliot Watson, Sr.
PO Box 2305 (29202)
2715 Edgewood Avenue 29204
Columbia SC 29204

Re: Mary L. Dinkins Higher Learning v. SC Public Charter School District
Appellate Case No. 2013-000525

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Karl Smith Bowers, Jr.
Alan McCrory Wilson
Jana E. Shealy



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 15, 2013

Mr. Johnny Elliot Watson, Sr.
PO Box 2305 (29202)
2715 Edgewood Avenue 29204
Columbia SC 29204

Re: Mary L. Dinkins Higher Learning v. SC Public Charter School District
Appellate Case No. 2013-000525

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- A proof of service showing that a copy has been served on the Administrative Law Court has not been provided as required by Rule 203(e), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Karl Smith Bowers, Jr.
Alan McCrory Wilson

STATE OF SOUTH CAROLINA
COURT OF APPEALS

RECEIVED
MAR 25 2013

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 12-ALJ-30-281-AP

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

AMENDED CERTIFICATE OF SERVICE

Johnny E. Watson, Sr., Esquire

Watson Law Firm
2715 Edgewood Avenue

Post Office Box 2305

Columbia, South Carolina 29202
(803) 400-1600

Counsel for Appellant

Karl S. Bowers, Jr, Esquire

Womble Carlyle Sandbridge
Rice, LLP

1127 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

Counsel for Respondent

AMENDED CERTIFICATE OF SERVICE

I, Johnny E. Watson, of 2715 Edgewood Avenue (29204), P. O. Box 2305, Columbia, South Carolina 29202, hereby certify that I have served the individuals/organizations named below with a copy of the documents described herein and sent/delivered the same to them at the addresses listed herein below by the method designated below:

PERSON SERVED:

Mr. Alan Wilson
South Carolina Attorney General
1000 Assembly Street

Columbia, South Carolina 29202
(803) 734-3970

Karl S. Bowers, Jr, Esquire
Womble Carlyle Sandbridge
Rice, LLP
1127 Hampton Street
Columbia, S. C. 29201
(803) 454-6504

METHOD OF SERVICE:

By depositing the documents in the
United States mail, postage prepaid.

DOCUMENT SERVED:
NOTICE OF APPEAL

DATE SERVED:
March 25, 2013

PERSON SERVED:

Clerk of Court
South Carolina Administrative Law Court
1205 Pendleton Street
Columbia, South Carolina 29201

METHOD OF SERVICE:

Hand Delivery to the address above.

DOCUMENT SERVED:
NOTICE OF APPEAL

METHOD OF SERVICE:

Hand Delivery to the address
above.

DOCUMENT SERVED:
NOTICE OF APPEAL

DATE SERVED:
March 14, 2013

RECEIVED

MAR 25 2013

SC Court of Appeals

By:


JOHNNY E. WATSON

Columbia, South Carolina
Date: March 25, 2013

**STATE OF SOUTH CAROLINA
COURT OF APPEALS**

Case No. 2013-000525

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

**NOTICE OF MOTION AND MOTION TO REINSTATE APPEAL
AND TO ALLOW 30 DAYS FROM SUCH ORDER REINSTATING
APPEAL TO FILE INITIAL BRIEF AND DESIGNATED MATERIAL TO
BE INCLUDED IN THE RECORD ON APPEAL**

Johnny E. Watson, Sr., Esquire

Watson Law Firm
2715 Edgewood Avenue
Post Office Box 2305

Columbia, South Carolina 29202
(803) 400-1600

Counsel for Appellant

Karl S. Bowers, Jr, Esquire

Womble Carlyle Sandbridge
Rice, LLP
1727 Hampton Street

Columbia, S. C. 29201
(803) 454-6504

Counsel for Respondent

RECEIVED

26 JUN 2013

SC Court of Appeals

STATEMENT OF MOTION

PLEASE TAKE NOTICE that the above-named Appellant, by and through its counsel, undersigned, will move before the Presiding Judge of the South Carolina Court of Appeals, State of South Carolina, immediately, or as soon as this matter may be heard, for an Order reinstating its appeal and extending the time for it to file its initial brief and designated material to be included in the record on appeal based on the statutory and common laws of this state, the Rules of Appellate procedure and the following facts:

- A. The Mary L. Dinkins Higher Learning Academy (MLD) is a charter school whose charter was revoked by the Respondent and that decision was upheld by the Honorable Shirley C. Chisolm of the South Carolina Administrative Law Court in its decision dated March 1, 2013,
- B. The Appellant timely filed its Notice of Appeal on March 14, 2013,
- C. The attorney for the Appellant, below signed, believed that the initial brief and designated material to be included in the record on appeal or its request to extend the time for filing such documents would be April 24, 2013 after the allowed 10 days to order any applicable transcripts and allowed 30 days to file the brief after receipt of the transcript if one existed,
- D. The attorney for the Appellant sought and received permission for a 30 days extension from the attorney for the Respondent to file the initial brief and designated material to be included in the record on appeal (exhibit A).
- E. Prior to filing its motion for the extension of time to file the initial brief and designated material to be included in the record on appeal the attorney for the Appellant received the Order of dismissal (exhibit B).

[Inbox](#) > Read Messagewatsonlawfirm@sc.twcbc.com | [Log Out](#)**Inbox (13)****Drafts (4)**

Sent Mail

Deleted Items (9)My Folders [\[hide\]](#)

ADMIN LAW COURT

BUTCH BOWERS

Client Emails

CMECF

DANTWAN

david henley

FMCT JUDGE MCLIN

HR BLOCK (1)

Junk Mail

MARGARET

MLD Academy

MLD Emails

NEWSPAPER

NORTON ANTIVIRUS

SC BAR NEWS

SHIQUANA

SLED

YORK COUNTY

Date: Thursday, April 18, 2013 3:19 PM**From:** Carroll, Todd <Todd.Carroll@wcsr.com>**To:** watsonlawfirm@sc.twcbc.com <watsonlawfirm@sc.twcbc.com>, Bowers, Butch <Butch.Bowers@wcsr.com>**Subject:** RE: SC Public Charter School District v. MLD Academy**Size:** 8 KB

Move to: Drafts

Johnny,

Thanks for the email. As far as the proposed order to Judge James goes, we cannot agree to the changes proposed by your board. If they won't agree to our draft, we will need to revisit this with the Court.

As far as the extension to the Court of Appeals goes, I'm glad to consent, and you may represent to the Court that we consulted and that I consent to the proposed 30-day extension for the brief and the designation of record.

Also, please copy both Butch and me on future emails. It'll help ensure a timely response. Thanks,

Todd

-----Original Message-----

From: watsonlawfirm@sc.twcbc.com [watsonlawfirm@sc.twcbc.com]

Sent: Thursday, April 18, 2013 1:51 PM

To: Carroll, Todd

Subject: RE: SC Public Charter School District v. MLD Academy

Todd:

Greeting! What is the stste of the Lee County Order. I have not heard from you since my fax on Friday.

Also, I will file a motion for a 30 extention to file the initial brief and designated record. Would like to say in the motion that I consulted you and you consented.

let me know on both counts ASAP.

Thanks

johnny

---- "Carroll wrote:

> Judge James,

>

> We wanted to update Your Honor on the status of the settlement order. Mr. Watson and I have spoken on the telephone, and I understand that he is revisiting the order with the school's board of directors. We anticipate submitting a joint proposed order to the Court at the beginning of next week.

>

> Thank you again for your time and consideration in this case, and
> please do not hesitate to call on us if we can provide the Court with
> any additional information. Have a good weekend,

>

> Todd

>

> Todd Carroll

You are using 81% of
your mailbox (90 MB out
of 110 MB)

EXHIBIT A

Rec-1236

The South Carolina Court of Appeals

Mary L. Dinkins Higher Learning Academy, Appellant,

v.

South Carolina Public Charter School District,
Respondent.

Appellate Case No. 2013-000525

The Honorable Shirley C. Robinson
Trial Court Case No. 2012ALJ300281AP

ORDER

Appellant has failed to timely order the transcript or serve and file the appellant's initial brief, as required by Rules 207 and 208 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Johnny Elliot Watson, Sr.
Karl Smith Bowers, Jr.
Alan McCrory Wilson

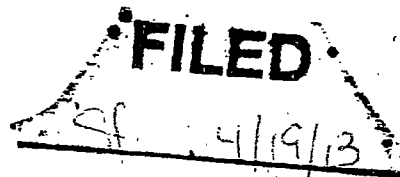
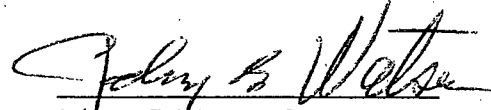


EXHIBIT B

F. The Respondent is not prejudiced by extending the time for filing the initial brief and designated material to be included in the record on appeal as evidenced by its grant of the requested extension as requested.

Respectfully submitted,

BY:



Johnny E. Watson, Sr.
Attorney at Law, SCB# 5967
P. O. Box 2305 (29202)
2715 Edgewood Avenue
Columbia, South Carolina 29204
(803) 400-1600 Phone
(803) 400-1200 Fax

watsonlawfirm@sc.twcabc.com

Columbia, South Carolina

Dated: April 22, 2013

CERTIFICATE OF SERVICE

I, Johnny E Watson, Attorney for the Mary L. Dinkins Higher Learning Academy (MLD), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below or by delivering said document by hand to the address below:

PERSON SERVED:

Butch Bowers
Attorney for the SCPCSD
1727 Hampton Street
Columbia, South Carolina 29201

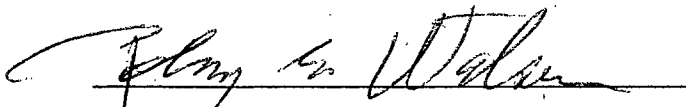
RECEIVED

APR 23 2013

SC Court of Appeals

DOCUMENT SERVED: **NOTICE OF MOTION AND MOTION TO REINSTATE APPEAL AND TO ALLOW 30 DAYS FROM SUCH ORDER REINSTATING APPEAL TO FILE INITIAL BRIEF AND DESIGNATED MATERIAL TO BE INCLUDED IN THE RECORD ON APPEAL.**

DATE SERVED: April 22, 2013



Johnny E. Watson, Document Server

Columbia, South Carolina

Date: April 22, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2013-525

Mary L. Dinkins Higher Learning Academy,..... Appellant,

v.

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

RETURN IN OPPOSITION TO MOTION TO REINSTATE APPEAL

The South Carolina Public Charter School District opposes the Appellant's Motion to Reinstate Appeal. At its core, this appeal asked the Court to review the Administrative Law Court's determination that evidence in the record supported the District's decision to revoke the Appellant's charter to operate as a charter school for failing to make reasonable academic progress, as directed by South Carolina Code § 59-40-110(C)(2). An agency's decision, of course, is to be given deference, and the evidence was uniform that the Appellant had failed to demonstrate academic progress under any measure while operating as a charter school. (See Order of the Administrative Law Court at 10-15 (Mar. 1, 2013) (copy attached as Exhibit A) (cataloguing the Appellant's myriad undisputed failings with respect to academic progress).)

Notwithstanding the dubious merits of the appeal, the Appellant has ignored the Appellate Court Rules' guidelines for perfecting its appeal. Rule 207(b)(1), SCACR, requires an appellant to order "a transcript of the entire proceedings before the administrative tribunal" within ten days of serving its notice of appeal, and to copy

counsel and this Court's clerk on all correspondence associated with that request. Similarly, Rules 208(a)(1) and 209(a) direct an appellant to file its opening brief and designation of matter within thirty days after receipt of the transcript or, if none is ordered, within thirty days after serving the notice of appeal. Here, not only has the Appellant missed the deadline to order a transcript of the July 27, 2012, hearing before the Administrative Law Court, it has apparently still not even ordered this transcript.¹

In this case, the notice of appeal was filed and served on March 14, 2013. The deadline for ordering a transcript, therefore, was March 25, 2013 (as March 24th fell on a Sunday). As of the date of this filing, the District is not aware of anything to indicate that the Appellant ever ordered a transcript from the Administrative Law Court, nor has the Appellant ever moved for an order extending this deadline. The Appellant's Motion to Reinstate does not attempt to explain the one-month lapse in satisfying a necessary component of perfecting an appeal.

Importantly, Rule 208(a)(4) directs dismissal when a party misses these deadlines:

Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.

Rule 260(a), in turn, provides that a case should only be reinstated "upon good cause shown." Nothing in the Motion to Reinstate Appeal suggests that there is any "good cause" for the Appellant's failure to perfect its appeal.

¹ Even if a transcript was not needed here—which is not the case, as Judge Robinson held a hearing on July 27, 2012, in this matter—the deadline for filing the Appellant's opening brief would have been April 15, 2013 (as April 13th fell on a Saturday). The Appellant sought the District's consent to extend this non-existent deadline on April 18th—three days late under the best scenario for the Appellant—but it did not even bring this request to the Court's attention until April 22nd—three days after the Court dismissed the appeal.

The South Carolina Supreme Court has explained that the Appellate Court Rules “are not mere technicalities,” and that the failure to follow them “justifie[s]” dismissal of an appeal. Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). This Court has echoed Henning’s sentiment. Forner v. Butler, 319 S.C. 275, 277 n.1, 460 S.E.2d 425, 427 n.1 (Ct. App. 1995). In this regard, the Supreme Court has held it appropriate to dismiss an appeal where a party misses an essential deadline. See, e.g., Roberts v. LaConey, 375 S.C. 97, 100, 650 S.E.2d 474, 475 (2007) (holding that because the party objecting to a special referee’s report had not filed a brief, “we hereby dismiss his exceptions”) (citing Rule 208(a)(4), SCACR). The Court should follow this authority here, particularly when the Appellant has not offered any justification for ignoring the very first step in perfecting the appeal once this Court’s jurisdiction has attached.

Nor is the Appellant correct when it argues that reinstating the appeal will not prejudice the District. The State Public Charter School District has scarce resources to allocate among its constituent schools. In May 2012, after a full merits hearing, the District revoked the Appellant’s charter, but the Appellant has managed to further deplete the District’s resources for nearly an additional year through procedural delays. This time, though, it has no excuse for ignoring the rules and deadlines, nor does it offer any “good cause” for reinstating this case. The District needs finality with respect to its roster of schools for the upcoming academic year, and it will be prejudiced in both its finances and its reputation if this appeal is reinstated and the Appellant is allowed to further delay a final decision in this matter.

CONCLUSION

At bottom, the Appellate Court Rules unambiguously direct an appeal to be dismissed when an appellant misses deadlines for perfecting its appeal, and they authorize reinstatement of an appeal only when the appellant demonstrates "good cause" for its delays. Because the Appellant does not even attempt to offer an explanation for why it has never ordered a transcript—the very first step of the appellate process after noticing an appeal—the District respectfully opposes the Appellant's Motion to Reinstate its appeal.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: Butch Bowers

Karl S. Bowers, Jr.

SC Bar No. 16141

butch.bowers@wcsr.com

M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wcsr.com

1727 Hampton Street

Columbia, South Carolina 29201

(803) 454-6504

Attorneys for the South Carolina Public Charter School
District

April 24, 2013
Columbia, South Carolina

Exhibit A

Order from the Administrative Law Court
Affirming District's Decision

FILED

MAR 01 2013

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Mary L. Dinkins Higher Learning Academy,	)	Docket No. 12-ALJ-30-0281-AP
	)	
Appellant,	)	
	)	
v.	)	ORDER
	)	
South Carolina Public Charter School	)	
District,	)	
	)	
Respondent.	)	
	)	

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"). Appellant Mary L. Dinkins Higher Learning Academy ("MLD") filed an appeal with the ALC on June 11, 2012, seeking review of the South Carolina Public Charter School District Board of Trustees' ("Board") decision dated May 16, 2012. In its decision, the Board revoked MLD's charter based upon violations of state law, as well as material violations of its charter.

After a review of the Record and careful consideration of the parties' arguments, the Court affirms the Board's decision to revoke MLD's charter.

BACKGROUND

A. Procedural Background

MLD submitted its initial charter school application, dated May 31, 2004, with the Lee County School District ("Lee County"). While under Lee County's sponsorship, the parties were engaged in continuous litigation. In 2007, Lee County sought to revoke MLD's charter based upon alleged violations of state law and the charter school application. In that case, the administrative law judge affirmed the State Board's Order, finding that MLD did not violate state law or its charter school application.¹ MLD subsequently left the sponsorship of Lee County and became a charter school member of the Respondent South Carolina Public School

¹ See Lee County Sch. Bd. of Trs. v. Mary L. Dinkins Higher Learning Acad., 07-ALJ-30-0597-AP, (S.C. Admin. Law Ct. Aug. 14, 2008). Appellant was the Respondent in that appeal; however, the Respondent South Carolina Public Charter School District was not a party to the 2007 action.

Charter District ("District") on August 12, 2010, on probationary status. On August 15, 2011, the District informed MLD that it was being placed on academic probation due to substandard academic performance.

On February 23, 2012, MLD was informed by the District that it was considering recommending revocation of MLD's charter to the Board. This decision was based upon MLD's academic performance, as well as deficiencies in the areas of compliance and finance. On March 12, 2012, the District notified MLD that the Board, during its monthly meeting, moved to revoke MLD's charter commencing with the 2012-2013 school year "for material violation of the charter application and failure to meet or make reasonable academic process." The Board based its decision upon the following: an independent audit revealed significant financial deficiencies; MLD failed to make reasonable academic progress; MLD failed to meet 100% of its academic goals; and, MLD failed to adhere to the accounting, auditing, and reporting procedures set forth in its charter application. MLD subsequently filed a request for a hearing before the Board concerning the notice of revocation. By letter dated March 27, 2012, MLD was notified that the hearing would take place on April 12, 2012. The letter also informed MLD of the procedures to be followed at the hearing.

On March 30, 2012, the Board notified MLD that the hearing had been rescheduled for April 19, 2012, at MLD's request, to "ensure proper preparation time." The Board held the hearing on April 19, 2012. Both parties presented evidence and witnesses. Near the conclusion of the revocation hearing, MLD's counsel requested that the Board suspend the hearing so that MLD may supplement the record with additional information. The Board agreed to hold the record open until April 30, 2012. The Board further agreed to reconvene on May 3, 2012, and vote on the revocation issue.

The Board resumed the hearing on May 3, 2012. After considering all the testimony and evidence presented, as well as the applicable law, the Board voted to revoke MLD's charter. Based upon the Board's decision, MLD filed an appeal with the ALC on June 12, 2012.

Following the notice of appeal, the parties filed cross-motions with the Court: the Board moved to dismiss MLD's appeal, and MLD filed a motion asking the Court to stay any actions directed toward the school. By order dated July 24, 2012, the Court denied the Board's motion to dismiss. In its order, the Court also ruled that the automatic stay provided under ALC Rule 34 was applicable to this matter. On July 25, 2012, MLD filed a Rule to Show Cause motion

alleging the Board's violation of the automatic stay imposed under ALC Rule 34. A hearing on MLD's motion was held on July 27, 2012. After receiving arguments from the parties, the Court accepted an agreement between the parties whereby MLD agreed to withdraw its motion, and the Board agreed to refrain from taking any further action to enforce the revocation of MLD's charter.

B. Factual Background

In MLD's charter application, MLD proposed to offer "an academically challenging, developmentally appropriate, experiential, holistic, child-centered education to all young people." The application stated a number of specific provisions outlining MLD's operations and its student achievement goals. In its order, the Board noted pertinent provisions of the charter application, as related to the revocation proceeding:

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 its students to '[r]ead, write, and communicate effectively.'"
3. "MLD's charter agreement states that it will teach its 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.'"

In its decision, the Board determined that MLD had committed violations of state law and of its charter application, making revocation appropriate pursuant to § 59-40-110(C)(4). Specifically, the Board found that MLD failed to make progress towards adequately educating its students, violated state law, and violated its charter:

1. Over a six-year period, MLD has met only one out of twenty-two AYP [Adequate Yearly Progress] academic objectives.
2. In 2011, only one student passed any EOC [end-of-course] examination. Fifty-four out of sixty-one students were never given an EOC examination in classes that required such a test.
3. The percentage of MLD students who passed the HSAP [High School Assessment Program] test fell from 55.6% in 2009 to 16.7% in 2011.

4. From 2010 to 2011, the percentage of MLD elementary students who met the state's standards for mathematics, as measured through the PASS [Palmetto Assessment of State Standards] test, dropped from 32.4% to 14.3%. In this same time period, the percentage of MLD middle school students who met the state's standards for English and language arts dropped from 45% to 21%.

5. At the revocation hearing, MLD's chief administrative official acknowledged that the school had not met at least one of the academic standards set forth in the school's charter agreement.

6. S.C. Code Ann. Regs. 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 when the student had only earned twenty-two of the required credits.

JURISDICTION AND STANDARD OF REVIEW

The Act provides for the creation and establishment of charter schools in South Carolina. Section 59-40-60 of the Act provides that "[a]n approved charter application constitutes an agreement, and the terms must be the terms of a contract between the charter school and the sponsor," that "[t]he contract between the charter school and the sponsor shall reflect all agreements regarding the release of the charter school from school district policies," and that "[a] material revision of the terms of the contract between the charter school and the approving board may be made only with the approval of both parties." See also James Acad. of Excellence v. Dorchester County Sch. Dist. Two, 376 S.C. 293; 299-300, 657 S.E.2d 469, 472 (2008).

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.

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 state in reasonable detail 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. Id. A school may appeal the final decision of the sponsor to revoke a charter to this Court pursuant to § 59-40-90.

Appellate review by this Court of a final decision of the Board is governed by the standards set forth in § 1-23-380 of the South Carolina Code. See S.C. Code Ann. § 59-40-90 (providing that appellate review of decisions of the South Carolina Public Charter School District be consistent with the standards provided in §§ 1-23-380(B) and 1-23-600(D)); S.C. Code Ann. § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in § 1-23-380 for judicial review of a final agency decision). Section 1-23-380 provides that this Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." § 1-23-380(5). However, pursuant to § 1-23-380(5), this Court:

may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (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.

Under this standard of review, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." Hull v. Spartanburg County Assessor, 372 S.C. 420, 424, 341 S.E.2d 909, 911 (Ct. App. 2007) (quoting Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). Moreover, "[t]he 'possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'" Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm., 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). Further, "a

judgment upon which reasonable men might differ will not be set aside.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). Finally, “the decision of the agency should be affirmed unless it is clearly erroneous in view of the substantial evidence in the record, is arbitrary or capricious, or is affected by other error of law.” Wilson v. State Budget & Ctrl. Bd., 374 S.C. 300, 305, 648 S.E.2d 310, 312 (Ct. App. 2007).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting Law v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). An abuse of discretion occurs when a factual ruling is without evidentiary support. Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Sharp v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999).

ISSUES ON APPEAL

1. Did the Board violate MLD’s due process rights by serving in prosecutorial and adjudicatory capacities during the revocation process?
2. Did the Board violate MLD’s due process rights regarding the time limits set forth in the Act?
3. Did the Board err in its decision to revoke MLD’s charter pursuant to § 59-40-110?
4. Did the Board violate other provisions of the Act in its decision to revoke MLD’s charter?

DISCUSSION

A. Roles of the District

MLD argues that the 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” held pursuant to § 59-40-110(C). To the extent MLD challenges the constitutionality of the Act, an administrative law judge does not have the authority to declare a statute unconstitutional. Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“ALJs are an agency of the executive branch of government and must follow the law as written

until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.”). To the extent MLD challenges the constitutionality of the hearing procedures as applied to MLD’s hearing, the Court concludes MLD’s due process rights were not violated in this matter.

More specifically, the procedures utilized by the Board did not violate MLD’s right to due process. The requirements of procedural due process which apply in a hearing affecting an individual’s property or liberty interest generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful manner, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to judicial review. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 636 S.E.2d 598 (2006). See also Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires adequate notice; adequate opportunity for a hearing; the right to introduce evidence; and the right to confront and cross-examine witnesses). Due process is flexible and calls for such procedural protections as the particular situation demands. Id.

Article I, § 22 of the state’s Constitution also prohibits an individual from being subject to the same person for both prosecution and adjudication. S.C. Const. Art. I, § 22 (“No person shall be . . . subject to the same person for both prosecution and adjudication; . . .”). Having reviewed the Record, District staff investigated the allegations against MLD and ultimately presented such evidence to the Board during the revocation hearing. The Board did not have any involvement with the evidentiary presentation or the investigation underlying the staff’s testimony. There is no due process violation where an administrative 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, 492 S.E.2d 62 (1997) (holding that a university president had not violated Article I, § 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).

Moreover, even if the Board had violated MLD’s due process rights in this matter regarding its role during the hearing, such error was harmless as MLD is entitled to judicial review of the Board’s decision. See Ross, 328 S.C. at 70, 492 S.E.2d at 72-3 (stating that a constitutional violation occurring by an individual’s dual capacity participation in administrative

hearing may be cured where there is an adequate appeal process).

B. Notice

MLD next argues that the revocation hearing before the Board was not held within the time limits set forth under the Act. MLD received notice of the proposed termination on February 23, 2012, and the hearing was held on April 19, 2012, approximately 56 days later. MLD argues that the Board failed to comply with § 59-40-110(D) because the hearing was held less than sixty (60) days after notice was received by MLD. In response, the Board argues that it complied with the time requirements set forth in § 59-40-110(D). More specifically, the Board asserts that the 60 days' notice refers to the date the school is closed, not the date of the revocation hearing.

Section 59-40-110 provides for the following:

At least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action. The notification shall state the grounds for the proposed action in reasonable detail. Termination must follow the procedure provided for in this section.

§ 59-40-110(D). However, § 59-40-110(F) provides additional guidance regarding the revocation process:

The charter school's governing body may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or termination of the charter. Failure by the school's governing body to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the school's governing body of the hearing date. The sponsor shall conduct a hearing before taking final action. The sponsor shall take final action to renew or not renew a charter by the last day of classes in the last school year for which the charter school is authorized.

The cardinal rule of statutory construction is to give effect to the intent of the legislature. S.C. Coastal Conservation League v. S.C. Dep't of Health and Env'tl. Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). "When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 42, 659 S.E.2d 125, 127 (2008).

See also Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005) (“The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose.”). Further, “[a] statute should not be construed by concentrating on an isolated phrase.” S.C. State Ports Authority v. Jasper County, 368 S.C. 388, 397, 629 S.E.2d 624, 629 (2006).

In reading these sections together, it is apparent that the Board’s interpretation of the statute is correct. Section 59-40-110(F) requires a charter school to request, in writing, a hearing before its sponsor within 14 days of receiving the revocation notice from the sponsor. Once a timely hearing request is made, “the sponsor shall give reasonable notice to the school’s governing body of the hearing date. The sponsor shall conduct a hearing before taking final action.” *Id.* This subsection does not specify the time period in which the hearing must be conducted. Rather, the hearing will be convened once the sponsor has given “reasonable notice” to the charter school. The 60-day time period in § 59-40-110(D) refers to the actual revocation of the charter – i.e., the closing of the school – and not the time period before the hearing is scheduled once the charter school receives notice of the proposed revocation. Here, MLD was notified on February 23, 2012, of the proposed revocation. The effective date of the revocation was the end of the school year, well beyond the 60-day time frame mandated in § 59-40-110(D).

Because the Board has complied with the time frame set forth in § 59-40-110(D), the Court will not overturn the Board’s decision as urged by MLD.

C. Substantial Evidence

MLD next argues that the Board erred in revoking its charter pursuant to § 59-40-110 because “[t]he record is devoid of any showing of any material violation of any condition, standard or procedure provided for in the . . . Act.” In response, the Board argues that there is overwhelming evidence in the Record to support its decision. Specifically, the Board asserts that MLD awarded a high school diploma to at least one student who had not acquired sufficient credits, in violation of state law, and that MLD failed to make reasonable academic progress based upon the criteria set forth in the charter agreement.

1. High School Diploma

In its decision, the Board determined that MLD had awarded a high school diploma to a student who had not earned sufficient credits to receive the diploma. In response, MLD asserts that it is not aware of any student that was awarded a high school diploma without earning

sufficient credits. MLD further asserts that if the diploma was incorrectly awarded to the student, it was "an oversight."

S.C. Code Ann. Regs. 43-234(I)(A) requires students to earn twenty-four credits in specific courses in order to earn a high school diploma from the state of South Carolina. Under the Act, a violation of law requires revocation of the school's charter. See § 59-40-110(C) (stating that a school district must revoke a school's charter if the school has violated any provision of law which the charter school was not specifically exempted). Here, the Board determined that MLD awarded a high school diploma to a student that earned 22 credits, 2 credits less than the requirement under the above regulation. However, in reviewing the Record, it appears this student in fact earned 27 credits. Specifically, it appears that the calculation of total earned credits is incorrect: the student earned 22 credits at the end of the third year, but earned an additional 5 credits in the fourth year. Those 5 credits were not added to the total earned credits. Further, the student's grade point average ("GPA") also supports this conclusion: the student's GPA from the third year is 3.00, and the GPA from the fourth year is 2.5. In the academic summary, the student's cumulative GPA is 2.68, and as such, it appears to include the student's GPA from the fourth year. Therefore, it appears that the student's grades from the fourth year were calculated into the cumulative GPA, but the credits earned from the fourth year were not included in the cumulative credits earned. There is simply no evidence in the Record to support the Board's conclusion that MLD incorrectly awarded a high school diploma to this student; rather, it appears there is a scrivener's error on the student's transcript.²

2. Reasonable Academic Progress

MLD next argues that the Record does not support the Board's determination that MLD failed to make reasonable academic progress based on the criteria set forth in the charter agreement and in violation of § 59-40-110(C)(2). As support for its decision, the Board noted the following: 1) MLD met 1 out of 22 academic objectives under the AYP standards from 2006 through 2011; 2) between 2009 and 2011, the number of MLD students who passed both sections of the HSAP dropped from 55.6% to 16.7%; 3) between 2009 and 2011, the number of MLD high school students who passed EOC examinations dropped from 16% to 5.3%; 4) between 2009 and 2011, the number of MLD middle school students who passed the English/Language

² Additionally, the student's total earned credits also appear to meet the specific course requirements as provided for in S.C. Code Ann. Regs. 43-234(I)(A).

Arts section of the PASS test dropped from 27.2% to 21%; and, 5) between 2009 and 2011, the number of MLD elementary students who passed the Math section of the PASS test dropped from 46.1% to 14.3%.

The Board also asserts that MLD permitted 12 students to take EOC examinations for classes in which they were not enrolled, yet failed to administer an EOC examination to students actually enrolled in those classes. Finally, the Board asserts that MLD's charter states that it will measure academic progress against the State's standardized tests. Because MLD failed to meet those academic standards, the Board argues this is a violation of MLD's charter, and thus, is an additional basis for revocation of the charter under § 59-40-110(C)(1).

In reviewing the Record, the Court concludes that MLD has committed a material violation of the conditions set forth in its charter, and MLD has failed to make reasonable progress toward pupil achievement as provided under §§ 59-40-110(C)(1) and (2).

a. Adequate Yearly Progress

AYP (Adequate Yearly Progress)			
	# Objectives MET		# Objectives NOT MET
	Attendance/ Participation	Academic	
2011	4	0	7
2010	7	1	3
2009	7	0	2
2008	7	0	2
2007	5	0	4
2006	7	0	6

The Record reflects that MLD only met 1 academic objective under the AYP standards from 2006 through 2011. MLD argues that it is unfair to use data from years when MLD was not operating under the District's sponsorship, especially when "previous years have been addressed by [the ALC] in prior litigation. Notably, the prior decisions of administrative judges are not binding upon one another. See 73A C.J.S. Public Administrative Law and Procedures § 292 ("While one administrative law judge (ALJ) may look to another's decisions for guidance, administrative decisions are not binding on other administrative law judges."). Even if this Court

excluded data from prior years, the Court would reach the same conclusion. For years 2009 through 2011, MLD met 1 out of 10 academic objectives. This is clearly evidence of MLD's failure to make reasonable progress toward pupil achievement. In its brief, MLD states, for the years 2009 through 2011, it has met 18 out of 21 objectives. However, MLD includes attendance/participation objectives within its calculation. While attendance and participation are important, the "pupil achievements" referenced in § 59-40-110(C) refer to academic standards, and not attendance objectives.

b. HSAP (High School Assessment Program)

HSAP			
% Second Year Students Passing Both Subtests			
	MLD	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	16.7	61.4 (S)	49.6
2010	14.3	59.6 (L)	52.5
2009	55.6	57.1 (L)	57.0

The Record further reflects that between 2009 and 2011, the number of MLD students who passed both sections of the HSAP dropped from 55.6% to 16.7%. MLD does not dispute the drastic drop in passage rate; rather, MLD asserts that most of its students who took the HSAP test in 2011 were special education students. However, there is nothing in the Record to substantiate MLD's claim. Even if MLD's assertion is correct, its' charter does not state that MLD was initiated or operates for the benefit of special education students. Nor does it delineate standards between special education students and other students. MLD's passage rates have significantly decreased within the past three years. Further, there is a marked disparity between MLD's passage rates when compared to similarly-situated schools.

c. High School EOC Examinations

High School EOC Examinations % Students Scoring 70% or Above			
	MLD	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	5.3	55.5 (S)	32.1
2010	21.4	39.4 (L)	33.2
2009	16.0	37.8 (L)	33.5

The Record also reflects that between 2009 and 2011, the number of MLD students who passed EOC examinations dropped from 16% to 5.3%. In comparison, schools with a similar poverty level averaged a 32.1% passage rate for the year 2011, and schools within the District averaged a 55.5% passage rate for the year 2011. Again, MLD's passage rates significantly dropped within the past three years, and there is a large disparity between similarly-situated schools.

The Board also determined that MLD permitted 12 students to take an EOC examination for classes in which they were not enrolled, and MLD also failed to administer an EOC examination to students who were actually enrolled in those specific classes:

Class	Students Enrolled	Enrolled Students who took an EOC	Enrolled Students who passed an EOC	Non-Enrolled Students who took an EOC	Non-Enrolled Students who passed an EOC
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 I	12	3	1	1	0

MLD does not dispute that this situation occurred. Rather, MLD disputes the total number of EOC examinations administered by MLD. While the students enrolled in the classes may overlap, the Record supports the Board's determination that MLD did not require each enrolled student to take an EOC examination. Further, MLD permitted non-enrolled students to take an EOC examination. It would be difficult, if not impossible, for MLD to measure if students were making reasonable academic progress or meeting the goals of the charter school if MLD was not requiring the students to take EOC examinations. MLD has neither stated why this situation occurred nor how MLD can measure a student's progress if no examinations are administered.

d. PASS/PACT (Palmetto Assessment of State Standards)

PASS/PACT						
% Students Scoring Met or Above						
	English/Language Arts			Math		
	MLD Elem/Middle	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty	MLD Elem/Middle	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	50.0/21.0	73.3 (S)	65.8/45.0	14.3/21.1	60.1 (S)	60.6/47.9
2010	44.2/45.0	43.4 (L)	64.5/47.4	32.4/11.2	37.4 (L)	57.5/45.4
2009	38.5/27.2	42.4 (L)	64.2/49.9	46.1/14.3	35.9 (L)	57.2/48.0
2008	29.4/14.3	49.0 (L)	68.6/50.7	23.5/16.7	47.0 (L)	62.8/51.6

In consideration of the Record, it is abundantly clear that MLD's academic performance decreased dramatically between the years of 2009 and 2011. Between 2009 and 2011, the number of MLD middle school students who passed the English/Language Arts section of the PASS test dropped from 27.2% (and from 45% in 2010) to 21%. Like the analysis above, there is a large disparity between MLD's rates and those of similarly-situated schools. While MLD's passage rate averaged 21% in 2011, the District has a 73.3% passage rate, and schools with a similar poverty level as MLD averaged a 45% passage rate.

During the same time frame, the number of MLD elementary students who passed the Math section of the PASS test dropped from 46.1% to 14.3%. The District's rate was 60.1% during 2011, and schools with a similar poverty level as MLD averaged a 60.6% passage rate.

While MLD made small gains in other areas, overall, MLD's scores across the board have remained consistent on two bases: the scores have significantly dropped or there is a marked disparity between MLD and other comparable schools.

In reviewing the Record, there is substantial evidence to support the Board's finding that MLD failed to make reasonable progress towards its academic goals, requiring revocation of MLD's charter pursuant to the Act.

D. Other Violations

Finally, MLD argues that the Board violated other provisions of the Act in its decision to revoke MLD's charter: 1) by granting MLD a "provisional charter"; and 2) by failing to conduct an annual audit of MLD for the 2010-2011 and 2011-2012 school years.

1. Renewal of Charter

MLD argues that the Board violated the Act by granting a "provisional charter" to MLD rather than a charter with a duration of 10 years, as set forth in § 59-40-110:

A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation.

§ 59-40-110(A). In reviewing the Record, MLD's argument has no merit. MLD was initially granted a charter under the sponsorship of Lee County. In 2010, upon agreement of the parties, MLD transferred its charter to become a member under the sponsorship of the District. "The terms of an approved charter application become the terms of the agreement between the parties. James, 376 S.C. at 299, 657 S.E.2d at 472 (2008) (citing § 59-40-60(A)). Further, "a material revision of the terms of the agreement requires the approval of both parties." Id. In the agreement between MLD and the District, MLD was permitted to operate under the District for one year before a decision was made regarding MLD's application for a renewal.³ MLD was aware of the terms of the agreement. It cannot choose now to dispute the terms of the contract.

³ See also S.C. Code Ann. § 59-40-115 ("A charter school may terminate its contract with a sponsor before the ten-year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor without review from the Charter School Advisory Committee.). In this matter, MLD agreed to dissolve its sponsorship under Lee County. MLD subsequently applied to become a member of the District. Section 59-40-115 provides that MLD "may seek application for the length of time remaining on its original contract." (emphasis added). However, the statute does not require the new sponsor to accept the charter school for the remainder of time under the previous contract.

C.A.N. Enterprises, Inc. v. S.C. Health and Human Services Finance Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense.").

2. Annual Evaluation

MLD next argues that the Board violated the Act by failing to conduct an audit of MLD for the 2010-2011 and 2011-2012 school years, and as such, the Board's decision to revoke MLD's charter should be overturned. The Court disagrees. As noted above, § 59-40-110(A) only requires that a sponsor annually evaluate the conditions set forth in § 59-40-110(C) before using those evaluation results when making a determination for nonrenewal or revocation of a charter. The District did this. The March 12, 2012 revocation notice specifically informed MLD that the District has "monitored and evaluated MLD's academic, compliance, fiscal, and operational performance since the time MLD entered the District." These are the same factors specified in § 59-40-110(C). Moreover, in its revocation notice to MLD, the District attached a summary of "Accountability Data" used by the District in its evaluation of MLD. The Accountability Data is based on "Education Accountability Act Annual Report Cards" published on the South Carolina Department of Education's Website. (emphasis added). As evidenced by the Record, the District complied with its statutory obligations under the Act regarding its revocation determination. Accordingly, the Court will not overturn the Board's decision as urged by MLD.

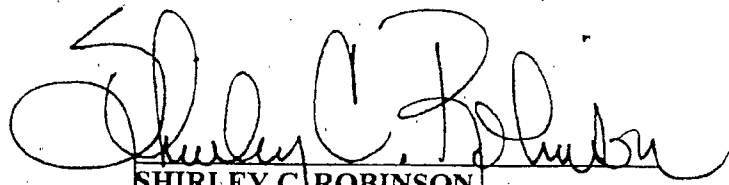
Having reviewed the entire Record, and carefully considered the arguments presented by the parties, the Court concludes that there is substantial evidence in the Record to support the Board's final determination in this matter.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the Board of Trustee's decision dated May 16, 2012, is **AFFIRMED**.

AND IT IS SO ORDERED.

March 1st, 2013
Columbia, South Carolina


SHIRLEY C. ROBINSON
Administrative Law Judge

Page 16 of 16

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).
This 1 day of March 2013
By: Leeb A. Henderson

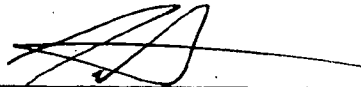
Rec-1258

CERTIFICATE OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice LLP, attorneys for South Carolina Public Charter School District do hereby certify that I have served all parties in this action with a copy of the pleading hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Pleading: **Return in Opposition to Motion to Reinstate Appeal**

Parties Served: Johnny E. Watson
2715 Edgewood Avenue
Columbia, SC 29204



Todd Mathis

April 25, 2013

FILED

MAR 01 2013

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Mary L. Dinkins Higher Learning Academy,)

Docket No. 12-ALJ-30-0281-AP

Appellant,)

v.)

ORDER

South Carolina Public Charter School
District,)

Respondent.)

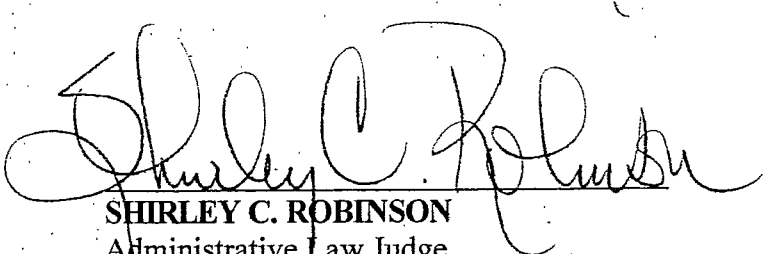
An Appeal in this matter was filed with this Court by the above Appellant on June 11, 2012. Pursuant to Rule 34 of the Rules of Procedure for the Administrative Law Court, the "filing of an appeal from the final decision of an agency shall stay the final decision of that agency...". On February 11, 2013, the above Respondent filed a Motion requesting that the Court lift the automatic stay and also requested expedited consideration of the issues on appeal. The Appellant filed a Return to Respondent's Motion on February 21, 2013. Inasmuch as this Court's review of the Appeal was nearing completion, no ruling on the Motion was issued.

Having reviewed the issues in the Appeal, and having issued a final decision in the Appeal, I find that the Respondent's Motion is rendered moot. "This Court will not pass on moot or academic questions or make an adjudication where there remains no actual controversy." *Fabian's Uptown Charleston, Inc. v. South Carolina Tax Commission*, 247 S.C. 164, 146 S.E.2d 608 (citing *C.I.T. Corporation v. Corley*, 196 S.C. 339, 13 S.E.2d 440).

IT IS THEREFORE ORDERED that the Respondent's Motion to Lift Stay and for Expedited Consideration shall be, and hereby is, **DISMISSED**.

AND IT IS SO ORDERED.

March 1st, 2013
Columbia, South Carolina


SHIRLEY C. ROBINSON
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of March, 2013

By: Yeebhi Henderson

STATE OF SOUTH CAROLINA
COURT OF APPEALS

Case No. 2013-000525

Mary L. Dinkins Higher Learning Academy (MLD).....Appellant,

V.

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

**REPLY TO RESPONDENT'S RETURN TO APPELLANT'S
NOTICE OF MOTION AND MOTION TO REINSTATE APPEAL AND TO
ALLOW 30 DAYS FROM SUCH ORDER REINSTATING APPEAL TO
FILE INITIAL BRIEF AND DESIGNATED MATERIAL TO
BE INCLUDED IN THE RECORD ON APPEAL**

Johnny E. Watson, Sr., Esquire

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Counsel for Appellant

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(803) 454-6504

Counsel for Respondent

REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO APPELLANT'S MOTION TO
REINSTATE APPEAL

This appeal involves issues that are very important to the State of South Carolina. The core issue is whether a charter school's charter can be revoked merely because the students of the charter school in question fail to make score that are equal to the scores of students of other charter schools when the students from the charter school in question come from a largely free lunch background and the students to whom they are compared come from much more advantaged backgrounds.

In this case every speaker from the public at the revocation hearing spoke in favor of the continued existence to the Mary L. Dinkins Academy. Pastors pointed out that they can now better teach the children at their Sunday Schools because they come to Sunday school able to read because of the Mary L. Dinkins Academy. There was not a single speaker from the public who spoke in opposition to the continued existence of the Mary L. Dinkins Academy yet the Respondent ignored their wishes and revoked the charter of the Appellant school.

Also, the school has the overwhelming support of the parents of the children who attend the Mary L. Dinkins Academy. Those parents have endured and continue to endure threats of reprisal from the administrators of the South Carolina Public Charter School District but continue to send their children to the Appellant school because they know that the school best serves the needs of their children who were being overlooked by the public schools of Lee County.

The Appellate Courts of South Carolina have long favored the resolution of cases on the merits. In this case, there was a real question as to whether any records were needed from the Administrative Law Courts for this appeal since no hearings were held and the case was decided on the submission of the attorneys without oral argument. Counsel for the Appellant sought clarification from personnel at this court as to when the initial submissions were due and was told to file the motion for the extension of time. The Appellant's counsel sought and received permission from counsel for the Respondent to

extend the briefing time by 30 days. Within a day of the discussion with court personnel and the attorney for the Respondent the notice of dismissal arrived.

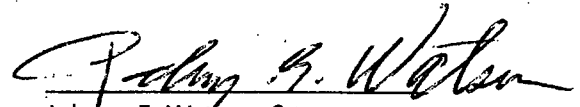
Also, the issue of the Constitutionality of the provision in the South Carolina Public Charter School Act which allows the District to serve as both the prosecutor in the charter school revocation hearing and the judge is clearly unfair and of questionable legality and needs to be addressed.

CONCLUSION

The ends of justice and the lives of the students of the Mary L. Dinkins demand that this Court reinstate this appeal to address the important issues presented herein.

Respectfully submitted,

BY:



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2715 Edgewood Avenue
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watsonlawfirm@sc.twcabc.com

Columbia, South Carolina
Dated: May 6, 2013

CERTIFICATE OF SERVICE

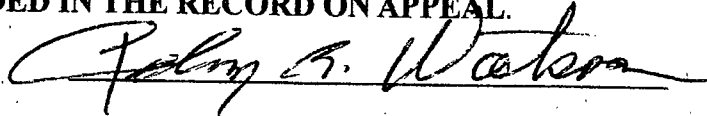
I, Johnny E Watson, Attorney for the Mary L. Dinkins Higher Learning Academy (MLD), hereby certify that I have served the individual named below with a copy of the document described herein by depositing it in the U. S. Mail, postage prepaid, to the person named at the address listed herein below or by delivering said document by hand to the address below:

PERSON SERVED:

Butch Bowers
Attorney for the SCPCSD
1727 Hampton Street
Columbia, South Carolina 29201

DOCUMENT SERVED: **REPLY TO RESPONDENT'S RETURN TO APPELLANT'S NOTICE OF MOTION AND MOTION TO REINSTATE APPEAL AND TO ALLOW 30 DAYS FROM SUCH ORDER REINSTATING APPEAL TO FILE INITIAL BRIEF AND DESIGNATED MATERIAL TO BE INCLUDED IN THE RECORD ON APPEAL.**

DATE SERVED: May 5, 2013



Johnny E. Watson, Document Server

Columbia, South Carolina

Date: May 5, 2013

MAR 01 2013

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT****SC ADMIN. LAW COURT**

Mary L. Dinkins Higher Learning Academy,)

Docket No. 12-ALJ-30-0281-AP

Appellant,)

v.)

ORDERSouth Carolina Public Charter School
District,)

Respondent.)

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"). Appellant Mary L. Dinkins Higher Learning Academy ("MLD") filed an appeal with the ALC on June 11, 2012, seeking review of the South Carolina Public Charter School District Board of Trustees' ("Board") decision dated May 16, 2012. In its decision, the Board revoked MLD's charter based upon violations of state law, as well as material violations of its charter.

After a review of the Record and careful consideration of the parties' arguments, the Court affirms the Board's decision to revoke MLD's charter.

BACKGROUND**A. Procedural Background**

MLD submitted its initial charter school application, dated May 31, 2004, with the Lee County School District ("Lee County"). While under Lee County's sponsorship, the parties were engaged in continuous litigation. In 2007, Lee County sought to revoke MLD's charter based upon alleged violations of state law and the charter school application. In that case, the administrative law judge affirmed the State Board's Order, finding that MLD did not violate state law or its charter school application.¹ MLD subsequently left the sponsorship of Lee County and became a charter school member of the Respondent South Carolina Public School

¹ See *Lee County Sch. Bd. of Trs. v. Mary L. Dinkins Higher Learning Acad.*, 07-ALJ-30-0597-AP, (S.C. Admin. Law Ct. Aug. 14, 2008). Appellant was the Respondent in that appeal; however, the Respondent South Carolina Public Charter School District was not a party to the 2007 action.

Charter District ("District") on August 12, 2010, on probationary status. On August 15, 2011, the District informed MLD that it was being placed on academic probation due to substandard academic performance.

~~On February 23, 2012, MLD was informed by the District that it was considering~~ recommending revocation of MLD's charter to the Board. This decision was based upon MLD's academic performance, as well as deficiencies in the areas of compliance and finance. On March 12, 2012, the District notified MLD that the Board, during its monthly meeting, moved to revoke MLD's charter commencing with the 2012-2013 school year "for material violation of the charter application and failure to meet or make reasonable academic process." The Board based its decision upon the following: an independent audit revealed significant financial deficiencies; MLD failed to make reasonable academic progress; MLD failed to meet 100% of its academic goals; and, MLD failed to adhere to the accounting, auditing, and reporting procedures set forth in its charter application. MLD subsequently filed a request for a hearing before the Board concerning the notice of revocation. By letter dated March 27, 2012, MLD was notified that the hearing would take place on April 12, 2012. The letter also informed MLD of the procedures to be followed at the hearing.

On March 30, 2012, the Board notified MLD that the hearing had been rescheduled for April 19, 2012, at MLD's request, to "ensure proper preparation time." The Board held the hearing on April 19, 2012. Both parties presented evidence and witnesses. Near the conclusion of the revocation hearing, MLD's counsel requested that the Board suspend the hearing so that MLD may supplement the record with additional information. The Board agreed to hold the record open until April 30, 2012. The Board further agreed to reconvene on May 3, 2012, and vote on the revocation issue.

The Board resumed the hearing on May 3, 2012. After considering all the testimony and evidence presented, as well as the applicable law, the Board voted to revoke MLD's charter. Based upon the Board's decision, MLD filed an appeal with the ALC on June 12, 2012.

Following the notice of appeal, the parties filed cross-motions with the Court: the Board moved to dismiss MLD's appeal, and MLD filed a motion asking the Court to stay any actions directed toward the school. By order dated July 24, 2012, the Court denied the Board's motion to dismiss. In its order, the Court also ruled that the automatic stay provided under ALC Rule 34 was applicable to this matter. On July 25, 2012, MLD filed a Rule to Show Cause motion

alleging the Board's violation of the automatic stay imposed under ALC Rule 34. A hearing on MLD's motion was held on July 27, 2012. After receiving arguments from the parties, the Court accepted an agreement between the parties whereby MLD agreed to withdraw its motion, and the ~~Board agreed to refrain from taking any further action to enforce the revocation of MLD's~~ charter.

B. Factual Background

In MLD's charter application, MLD proposed to offer "an academically challenging, developmentally appropriate, experiential, holistic, child-centered education to all young people." The application stated a number of specific provisions outlining MLD's operations and its student achievement goals. In its order, the Board noted pertinent provisions of the charter application, as related to the revocation proceeding:

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 its students to '[r]ead, write, and communicate effectively.'"
3. "MLD's charter agreement states that it will teach its 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.'"

In its decision, the Board determined that MLD had committed violations of state law and of its charter application, making revocation appropriate pursuant to § 59-40-110(C)(4). Specifically, the Board found that MLD failed to make progress towards adequately educating its students, violated state law, and violated its charter:

1. Over a six-year period, MLD has met only one out of twenty-two AYP [Adequate Yearly Progress] academic objectives.
2. In 2011, only one student passed any EOC [end-of-course] examination. Fifty-four out of sixty-one students were never given an EOC examination in classes that required such a test.
3. The percentage of MLD students who passed the HSAP [High School Assessment Program] test fell from 55.6% in 2009 to 16.7% in 2011.

4. From 2010 to 2011, the percentage of MLD elementary students who met the state's standards for mathematics, as measured through the PASS [Palmetto Assessment of State Standards] test, dropped from 32.4% to 14.3%. In this same time period, the percentage of MLD middle school students who met the state's standards for English and language arts dropped from 45% to 21%.

5. At the revocation hearing, MLD's chief administrative official acknowledged that the school had not met at least one of the academic standards set forth in the school's charter agreement.

6. S.C. Code Ann. Regs. 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 when the student had only earned twenty-two of the required credits.

JURISDICTION AND STANDARD OF REVIEW

The Act provides for the creation and establishment of charter schools in South Carolina. Section 59-40-60 of the Act provides that "[a]n approved charter application constitutes an agreement, and the terms must be the terms of a contract between the charter school and the sponsor," that "[t]he contract between the charter school and the sponsor shall reflect all agreements regarding the release of the charter school from school district policies," and that "[a] material revision of the terms of the contract between the charter school and the approving board may be made only with the approval of both parties." See also James Acad. of Excellence v. Dorchester County Sch. Dist. Two, 376 S.C. 293, 299-300, 657 S.E.2d 469, 472 (2008).

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.

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 state in reasonable detail 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. Id. A school may appeal the final decision of the sponsor to revoke a charter to this Court pursuant to § 59-40-90.

Appellate review by this Court of a final decision of the Board is governed by the standards set forth in § 1-23-380 of the South Carolina Code. See S.C. Code Ann. § 59-40-90 (providing that appellate review of decisions of the South Carolina Public Charter School District be consistent with the standards provided in §§ 1-23-380(B) and 1-23-600(D)); S.C. Code Ann. § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner as prescribed in § 1-23-380 for judicial review of a final agency decision). Section 1-23-380 provides that this Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." § 1-23-380(5). However, pursuant to § 1-23-380(5), this Court:

may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (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.

Under this standard of review, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." Hull v. Spartanburg County Assessor, 372 S.C. 420, 424, 341 S.E.2d 909, 911 (Ct. App. 2007) (quoting Kearse v. State Health and Human Servs. Fin. Comm'n, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)). Moreover, "[t]he 'possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'" Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995) (quoting Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm., 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)). Further, "a

judgment upon which reasonable men might differ will not be set aside.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). Finally, “the decision of the agency should be affirmed unless it is clearly erroneous in view of the substantial evidence in the record, is ~~arbitrary or capricious, or is affected by other error of law.~~” Wilson v. State Budget & Ctrl. Bd., 374 S.C. 300, 305, 648 S.E.2d 310, 312 (Ct. App. 2007).

“‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting Law v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). An abuse of discretion occurs when a factual ruling is without evidentiary support. Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Sharp v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999).

ISSUES ON APPEAL

1. Did the Board violate MLD’s due process rights by serving in prosecutorial and adjudicatory capacities during the revocation process?
2. Did the Board violate MLD’s due process rights regarding the time limits set forth in the Act?
3. Did the Board err in its decision to revoke MLD’s charter pursuant to § 59-40-110?
4. Did the Board violate other provisions of the Act in its decision to revoke MLD’s charter?

DISCUSSION

A. Roles of the District

MLD argues that the 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” held pursuant to § 59-40-110(C). To the extent MLD challenges the constitutionality of the Act, an administrative law judge does not have the authority to declare a statute unconstitutional. Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“ALJs are an agency of the executive branch of government and must follow the law as written

until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation.”). To the extent MLD challenges the constitutionality of the hearing procedures as applied to MLD’s hearing, the Court concludes MLD’s due process rights were not violated in this matter.

More specifically, the procedures utilized by the Board did not violate MLD’s right to due process. The requirements of procedural due process which apply in a hearing affecting an individual’s property or liberty interest generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful manner, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to judicial review. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 636 S.E.2d 598 (2006). See also Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires adequate notice; adequate opportunity for a hearing; the right to introduce evidence; and the right to confront and cross-examine witnesses). Due process is flexible and calls for such procedural protections as the particular situation demands. *Id.*

Article I, § 22 of the state’s Constitution also prohibits an individual from being subject to the same person for both prosecution and adjudication. S.C. Const. Art. I, § 22 (“No person shall be . . . subject to the same person for both prosecution and adjudication; . . .”). Having reviewed the Record, District staff investigated the allegations against MLD and ultimately presented such evidence to the Board during the revocation hearing. The Board did not have any involvement with the evidentiary presentation or the investigation underlying the staff’s testimony. There is no due process violation where an administrative 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, 492 S.E.2d 62 (1997) (holding that a university president had not violated Article I, § 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).

Moreover, even if the Board had violated MLD’s due process rights in this matter regarding its role during the hearing, such error was harmless as MLD is entitled to judicial review of the Board’s decision. See Ross, 328 S.C. at 70, 492 S.E.2d at 72-3 (stating that a constitutional violation occurring by an individual’s dual capacity participation in administrative

hearing may be cured where there is an adequate appeal process).

B. Notice

MLD next argues that the revocation hearing before the Board was not held within the ~~time limits set forth under the Act.~~ MLD received notice of the proposed termination on February 23, 2012, and the hearing was held on April 19, 2012, approximately 56 days later. MLD argues that the Board failed to comply with § 59-40-110(D) because the hearing was held less than sixty (60) days after notice was received by MLD. In response, the Board argues that it complied with the time requirements set forth in § 59-40-110(D). More specifically, the Board asserts that the 60 days' notice refers to the date the school is closed, not the date of the revocation hearing.

Section 59-40-110 provides for the following:

At least sixty days before not renewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action. The notification shall state the grounds for the proposed action in reasonable detail. Termination must follow the procedure provided for in this section.

§ 59-40-110(D). However, § 59-40-110(F) provides additional guidance regarding the revocation process:

The charter school's governing body may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or termination of the charter. Failure by the school's governing body to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the school's governing body of the hearing date. The sponsor shall conduct a hearing before taking final action. The sponsor shall take final action to renew or not renew a charter by the last day of classes in the last school year for which the charter school is authorized.

The cardinal rule of statutory construction is to give effect to the intent of the legislature. S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). "When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 42, 659 S.E.2d 125, 127 (2008).

See also Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005) (“The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose.”). Further, “[a] statute should not be construed by concentrating on an isolated phrase.” S.C. State Ports Authority v. Jasper County, 368 S.C. 388, 397, 629 S.E.2d 624, 629 (2006).

In reading these sections together, it is apparent that the Board’s interpretation of the statute is correct. Section 59-40-110(F) requires a charter school to request, in writing, a hearing before its sponsor within 14 days of receiving the revocation notice from the sponsor. Once a timely hearing request is made, “the sponsor shall give reasonable notice to the school’s governing body of the hearing date. The sponsor shall conduct a hearing before taking final action.” Id. This subsection does not specify the time period in which the hearing must be conducted. Rather, the hearing will be convened once the sponsor has given “reasonable notice” to the charter school. The 60-day time period in § 59-40-110(D) refers to the actual revocation of the charter – i.e., the closing of the school – and not the time period before the hearing is scheduled once the charter school receives notice of the proposed revocation. Here, MLD was notified on February 23, 2012, of the proposed revocation. The effective date of the revocation was the end of the school year, well beyond the 60-day time frame mandated in § 59-40-110(D).

Because the Board has complied with the time frame set forth in § 59-40-110(D), the Court will not overturn the Board’s decision as urged by MLD.

C. Substantial Evidence

MLD next argues that the Board erred in revoking its charter pursuant to § 59-40-110 because “[t]he record is devoid of any showing of any material violation of any condition, standard or procedure provided for in the . . . Act.” In response, the Board argues that there is overwhelming evidence in the Record to support its decision. Specifically, the Board asserts that MLD awarded a high school diploma to at least one student who had not acquired sufficient credits, in violation of state law, and that MLD failed to make reasonable academic progress based upon the criteria set forth in the charter agreement.

1. High School Diploma

In its decision, the Board determined that MLD had awarded a high school diploma to a student who had not earned sufficient credits to receive the diploma. In response, MLD asserts that it is not aware of any student that was awarded a high school diploma without earning

sufficient credits. MLD further asserts that if the diploma was incorrectly awarded to the student, it was "an oversight."

S.C. Code Ann. Regs. 43-234(I)(A) requires students to earn twenty-four credits in ~~specific courses in order to earn a high school diploma from the state of South Carolina.~~ Under the Act, a violation of law requires revocation of the school's charter. See § 59-40-110(C) (stating that a school district must revoke a school's charter if the school has violated any provision of law which the charter school was not specifically exempted). Here, the Board determined that MLD awarded a high school diploma to a student that earned 22 credits, 2 credits less than the requirement under the above regulation. However, in reviewing the Record, it appears this student in fact earned 27 credits. Specifically, it appears that the calculation of total earned credits is incorrect: the student earned 22 credits at the end of the third year, but earned an additional 5 credits in the fourth year. Those 5 credits were not added to the total earned credits. Further, the student's grade point average ("GPA") also supports this conclusion: the student's GPA from the third year is 3.00, and the GPA from the fourth year is 2.5. In the academic summary, the student's cumulative GPA is 2.68, and as such, it appears to include the student's GPA from the fourth year. Therefore, it appears that the student's grades from the fourth year were calculated into the cumulative GPA, but the credits earned from the fourth year were not included in the cumulative credits earned. There is simply no evidence in the Record to support the Board's conclusion that MLD incorrectly awarded a high school diploma to this student; rather, it appears there is a scrivener's error on the student's transcript.²

2. Reasonable Academic Progress

MLD next argues that the Record does not support the Board's determination that MLD failed to make reasonable academic progress based on the criteria set forth in the charter agreement and in violation of § 59-40-110(C)(2). As support for its decision, the Board noted the following: 1) MLD met 1 out of 22 academic objectives under the AYP standards from 2006 through 2011; 2) between 2009 and 2011, the number of MLD students who passed both sections of the HSAP dropped from 55.6% to 16.7%; 3) between 2009 and 2011, the number of MLD high school students who passed EOC examinations dropped from 16% to 5.3%; 4) between 2009 and 2011, the number of MLD middle school students who passed the English/Language

² Additionally, the student's total earned credits also appear to meet the specific course requirements as provided for in S.C. Code Ann. Regs. 43-234(I)(A).

Arts section of the PASS test dropped from 27.2% to 21%; and, 5) between 2009 and 2011, the number of MLD elementary students who passed the Math section of the PASS test dropped from 46.1% to 14.3%.

~~The Board also asserts that MLD permitted 12 students to take EOC examinations for~~ classes in which they were not enrolled, yet failed to administer an EOC examination to students actually enrolled in those classes. Finally, the Board asserts that MLD's charter states that it will measure academic progress against the State's standardized tests. Because MLD failed to meet those academic standards, the Board argues this is a violation of MLD's charter, and thus, is an additional basis for revocation of the charter under § 59-40-110(C)(1).

In reviewing the Record, the Court concludes that MLD has committed a material violation of the conditions set forth in its charter, and MLD has failed to make reasonable progress toward pupil achievement as provided under §§ 59-40-110(C)(1) and (2).

a. Adequate Yearly Progress

AYP (Adequate Yearly Progress)			
	# Objectives MET		# Objectives NOT MET
	Attendance/ Participation	Academic	
2011	4	0	7
2010	7	1	3
2009	7	0	2
2008	7	0	2
2007	5	0	4
2006	7	0	6

The Record reflects that MLD only met 1 academic objective under the AYP standards from 2006 through 2011. MLD argues that it is unfair to use data from years when MLD was not operating under the District's sponsorship, especially when "previous years have been addressed by [the ALC] in prior litigation. Notably, the prior decisions of administrative judges are not binding upon one another. See 73A C.J.S. Public Administrative Law and Procedures § 292 ("While one administrative law judge (ALJ) may look to another's decisions for guidance, administrative decisions are not binding on other administrative law judges."). Even if this Court

excluded data from prior years, the Court would reach the same conclusion. For years 2009 through 2011, MLD met 1 out of 10 academic objectives. This is clearly evidence of MLD's failure to make reasonable progress toward pupil achievement. In its brief, MLD states, for the years 2009 through 2011, it has met 18 out of 21 objectives. However, MLD includes attendance/participation objectives within its calculation. While attendance and participation are important, the "pupil achievements" referenced in § 59-40-110(C) refer to academic standards, and not attendance objectives.

b. HSAP (High School Assessment Program)

HSAP			
% Second Year Students Passing Both Subtests			
	MLD	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	16.7	61.4 (S)	49.6
2010	14.3	59.6 (L)	52.5
2009	55.6	57.1 (L)	57.0

The Record further reflects that between 2009 and 2011, the number of MLD students who passed both sections of the HSAP dropped from 55.6% to 16.7%. MLD does not dispute the drastic drop in passage rate; rather, MLD asserts that most of its students who took the HSAP test in 2011 were special education students. However, there is nothing in the Record to substantiate MLD's claim. Even if MLD's assertion is correct, its' charter does not state that MLD was initiated or operates for the benefit of special education students. Nor does it delineate standards between special education students and other students. MLD's passage rates have significantly decreased within the past three years. Further, there is a marked disparity between MLD's passage rates when compared to similarly-situated schools.

c. High School EOC Examinations

High School EOC Examinations % Students Scoring 70% or Above			
	MLD	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	5.3	55.5 (S)	32.1
2010	21.4	39.4 (L)	33.2
2009	16.0	37.8 (L)	33.5

The Record also reflects that between 2009 and 2011, the number of MLD students who passed EOC examinations dropped from 16% to 5.3%. In comparison, schools with a similar poverty level averaged a 32.1% passage rate for the year 2011, and schools within the District averaged a 55.5% passage rate for the year 2011. Again, MLD's passage rates significantly dropped within the past three years, and there is a large disparity between similarly-situated schools.

The Board also determined that MLD permitted 12 students to take an EOC examination for classes in which they were not enrolled, and MLD also failed to administer an EOC examination to students who were actually enrolled in those specific classes:

Class	Students Enrolled	Enrolled Students who took an EOC	Enrolled Students who passed an EOC	Non-Enrolled Students who took an EOC	Non-Enrolled Students who passed an EOC
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 I	12	3	1	1	0

MLD does not dispute that this situation occurred. Rather, MLD disputes the total number of EOC examinations administered by MLD. While the students enrolled in the classes may overlap, the Record supports the Board's determination that MLD did not require each enrolled student to take an EOC examination. Further, MLD permitted non-enrolled students to take an EOC examination. It would be difficult, if not impossible, for MLD to measure if students were making reasonable academic progress or meeting the goals of the charter school if MLD was not requiring the students to take EOC examinations. MLD has neither stated why this situation occurred nor how MLD can measure a student's progress if no examinations are administered.

d. PASS/PACT (Palmetto Assessment of State Standards)

PASS/PACT						
% Students Scoring Met or Above						
	English/Language Arts			Math		
	MLD Elem/Middle	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty	MLD Elem/Middle	District S=SCPCSD L=Lee Co	Schools w/Similar Poverty
2011	50.0/21.0	73.3 (S)	65.8/45.0	14.3/21.1	60.1 (S)	60.6/47.9
2010	44.2/45.0	43.4 (L)	64.5/47.4	32.4/11.2	37.4 (L)	57.5/45.4
2009	38.5/27.2	42.4 (L)	64.2/49.9	46.1/14.3	35.9 (L)	57.2/48.0
2008	29.4/14.3	49.0 (L)	68.6/50.7	23.5/16.7	47.0 (L)	62.8/51.6

In consideration of the Record, it is abundantly clear that MLD's academic performance decreased dramatically between the years of 2009 and 2011. Between 2009 and 2011, the number of MLD middle school students who passed the English/Language Arts section of the PASS test dropped from 27.2% (and from 45% in 2010) to 21%. Like the analysis above, there is a large disparity between MLD's rates and those of similarly-situated schools. While MLD's passage rate averaged 21% in 2011, the District has a 73.3% passage rate, and schools with a similar poverty level as MLD averaged a 45% passage rate.

During the same time frame, the number of MLD elementary students who passed the Math section of the PASS test dropped from 46.1% to 14.3%. The District's rate was 60.1% during 2011, and schools with a similar poverty level as MLD averaged a 60.6% passage rate.

While MLD made small gains in other areas, overall, MLD's scores across the board have remained consistent on two bases: the scores have significantly dropped or there is a marked disparity between MLD and other comparable schools.

~~In reviewing the Record, there is substantial evidence to support the Board's finding that MLD failed to make reasonable progress towards its academic goals, requiring revocation of MLD's charter pursuant to the Act.~~

D. Other Violations

Finally, MLD argues that the Board violated other provisions of the Act in its decision to revoke MLD's charter: 1) by granting MLD a "provisional charter"; and 2) by failing to conduct an annual audit of MLD for the 2010-2011 and 2011-2012 school years.

1. Renewal of Charter

MLD argues that the Board violated the Act by granting a "provisional charter" to MLD rather than a charter with a duration of 10 years, as set forth in § 59-40-110:

A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation.

§ 59-40-110(A). In reviewing the Record, MLD's argument has no merit. MLD was initially granted a charter under the sponsorship of Lee County. In 2010, upon agreement of the parties, MLD transferred its charter to become a member under the sponsorship of the District. "The terms of an approved charter application become the terms of the agreement between the parties. James, 376 S.C. at 299, 657 S.E.2d at 472 (2008) (citing § 59-40-60(A)). Further, "a material revision of the terms of the agreement requires the approval of both parties." Id. In the agreement between MLD and the District, MLD was permitted to operate under the District for one year before a decision was made regarding MLD's application for a renewal.³ MLD was aware of the terms of the agreement. It cannot choose now to dispute the terms of the contract.

³ See also S.C. Code Ann. § 59-40-115 ("A charter school may terminate its contract with a sponsor before the ten-year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor without review from the Charter School Advisory Committee.). In this matter, MLD agreed to dissolve its sponsorship under Lee County. MLD subsequently applied to become a member of the District. Section 59-40-115 provides that MLD "may seek application for the length of time remaining on its original contract." (emphasis added). However, the statute does not require the new sponsor to accept the charter school for the remainder of time under the previous contract.

C.A.N. Enterprises, Inc. v. S.C. Health and Human Services Finance Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense.").

2. Annual Evaluation

MLD next argues that the Board violated the Act by failing to conduct an audit of MLD for the 2010-2011 and 2011-2012 school years, and as such, the Board's decision to revoke MLD's charter should be overturned. The Court disagrees. As noted above, § 59-40-110(A) only requires that a sponsor annually evaluate the conditions set forth in § 59-40-110(C) before using those evaluation results when making a determination for nonrenewal or revocation of a charter. The District did this. The March 12, 2012 revocation notice specifically informed MLD that the District has "monitored and evaluated MLD's academic, compliance, fiscal, and operational performance since the time MLD entered the District." These are the same factors specified in § 59-40-110(C). Moreover, in its revocation notice to MLD, the District attached a summary of "Accountability Data" used by the District in its evaluation of MLD. The Accountability Data is based on "Education Accountability Act Annual Report Cards" published on the South Carolina Department of Education's Website. (emphasis added). As evidenced by the Record, the District complied with its statutory obligations under the Act regarding its revocation determination. Accordingly, the Court will not overturn the Board's decision as urged by MLD.

Having reviewed the entire Record, and carefully considered the arguments presented by the parties, the Court concludes that there is substantial evidence in the Record to support the Board's final determination in this matter.

ORDER

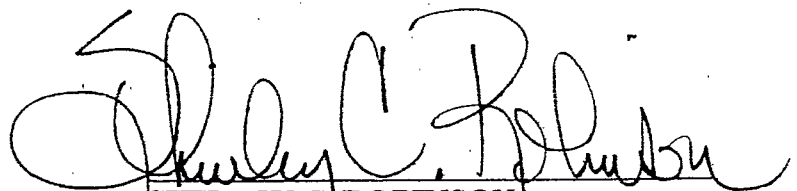
Based upon the foregoing, it is hereby **ORDERED** that the Board of Trustee's decision dated May 16, 2012, is **AFFIRMED**.

AND IT IS SO ORDERED.

March 1st, 2013
Columbia, South Carolina

Rec-1280

Page 16 of 16

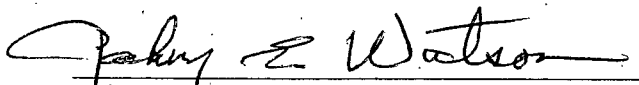

SHIRLEY C. ROBINSON
Administrative Law Judge

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 1 day of March 2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellant Court Filings.:


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