

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

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN SHE DETERMINED THAT MLD'S DUE PROCESS WAS NOT VIOLATED IN ANY MANNER?
- II. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN SHE DETERMINED THAT THE BOARD COMPLIED WITH THE TIME FRAME SET FORTH IN § 59-40-110(D) WHEN IT REVOKED MLD'S CHARTER?
- III. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN SHE DETERMINED THAT 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 CHARTER SCHOOL ACT?
- IV. DID THE ADMINISTRATIVE LAW JUDGE ERR WHEN SHE DETERMINED THAT THE BOARD DID NOT VIOLATE OTHER PROVISIONS OF THE CHARTER SCHOOL ACT IN REVOKING MLD'S CHARTER?

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (“ALC” or “Court”) pursuant to S. C. Code Ann. §§ 59-40-10 et seq., the South Carolina Charter Schools Act of 1996 (“Act”). The Mary L. Dinkins Higher Learning Academy's School Board (“MLD Board”) filed an appeal with the ALC on June 11, 2012, seeking review of the South Carolina Public Charter School District Board’s (“Charter School Board”) decision dated May 16, 2012. Rec 867. In its decision, the Charter School Board revoked the charter of Mary L. Dinkins Higher Learning Academy (“MLD Academy”).

In its June 11, 2012 filing the MLD attorney filed an appeal and captioned the filing a “Request for a Contested Hearing”. Rec 3. The SCPCSD Board, after its May 16, 2012 decision, started taking steps to put its revocation decision into effect by issuing various press releases and taking other steps to close the MLD Academy. Rec 14. Thereafter on July 9, 2012 the attorney for the MLD Academy filed a Notice of Motion and Motion for Immediate Restraining Order or Exparte TRO seeking to stop the school closing actions of the SCPCSD's Board. Rec 9. On July 11, 2012 the attorney for the SCPCSD Board filed a Motion to Dismiss the appeal of the MLD Academy because it was captioned a contested hearing and not an appeal. Rec 18.

On July 24, 2012 Judge Shirley C. Robinson of the Administrative Law Court issued her order denying the motion of the SCPCSD Board. Rec 35. On the same day as the Court’s order was issued, the attorney for the MLD Academy filed his Return to Appellee's Motion to Dismiss which proved to be moot in light of this Court’s dismissing the motion of the SCPCSD Board. Rec 30.

On July 25, 2012 the MLD attorney filed a Rule to Show Cause due to the continued actions of the SCPCSD Board to take steps to put its May 16, 2012 order in effect even though this appeal is still pending by moving forward with its school closing actions. Rec 38.

On July 27, 2012 this Court held a hearing on the MLD Board's motion for a TRO. During the hearing the parties agreed that the SCPCSD Board would abide by the automatic stay provided by the ALC's rules and stop taking actions to close the MLD Academy until the appeal is resolved. This included the requirement that the SCPCSD

continue funding the Appellant school. Administrative Law Judge Shirley C. Robinson thereafter issued her order dated July 30, 2012 containing the agreement of the parties regarding their respective motions. Rec 52.

The Appellant filed its brief with the ALC on September 17, 2012. The Respondent filed its responsive brief on October 29, 2012 and the Appellant filed a Reply Brief on November 13, 2012..

After considering the filings of the parties, on March 1, 2013 Administrative Law Judge Shirley C. Robinson issued her order upholding the decision to revoke the charter of the Appellant, Mary L. Dinkins Academy without oral argument by the parties.

This appeal ensued.

ARGUMENTS

I. The South Carolina Charter Act is not constitutional in its provision which allows a charter school sponsor be both the accuser and finder of fact in a charter revocation hearing under section 59-40-110 (C) of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

A. Standard of Review.

A fundamental constitutional guarantee is that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty or property.

The constitutional guarantees due process of law, found in the Fourteenth and Fifteenth to the U. S. Constitution, and corresponding parts of the South Carolina constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property.

In the criminal context the right to a fair trial by an impartial jury is guaranteed in the Sixth Amendment of the U. S. Constitution.

It is fundamental to the American Scheme of Justice that conflicts are presided over and decided by **impartial judges and juries**. The law is rife with cases involving the right to trial of a criminal defendant by an impartial judge and jury. However, there is a distinct absence of case involving impartial judges and juries in a civil context. Yet, one would be hard pressed to find anyone who does not feel that all proceedings should be before an impartial judge and jury. Please see two articles addressing the issue for your review. The first article is a Wikipedia article on Judicial disqualification and the other is a Valparaiso University Law Review Article, Volume 28 Number 2, pp 543-561.

B. Discussion of the Issue.

The Mary L. Dinkins Academy was not afforded due process of law when the Respondent decided to revoke its charter. If the act creating charter schools in South Carolina is deemed constitutional or the Administrative Law Judge does not have the power to declare a statute unconstitutional, as Judge Robinson asserts, this case should be reversed on the unfair application of that law in this case which resulted in the Appellant being afforded procedural due process in a sham proceeding. The judge in this case, Mr. Don McLaurin, the chairman of the board of the Respondent, South Carolina Public Charter School District and boss of the Superintendent of the school district, Mr. Wayne Brazzle, presided over the hearing. MLD was given procedural due process but was substantive due process.

The superintendent of the Respondent, South Carolina Public Charter School District, to wit: Mr. Don McLaurin, orchestrated a campaign with the assistance of the district superintendent, Wayne Brazzle, to discredit MLD. Mr. McLaurin then presided

over an unfair revocation hearing with a predetermined outcome where the board he chairs voted to revoke MLD's charter.

The South Carolina Public Charter School District was created by the General Assembly in § 59-40-220 (A) of the South Carolina Code of Laws (1976).

That act provided:

That The South Carolina Public Charter School District must be governed by a board of trustees consisting of not more than eleven members, § 59-40-230 (A),

That The South Carolina Public Charter School District must be housed in the State Department of Education, § 59-40-220 (C),

That The South Carolina Public Charter School District Board of Trustees shall annually elect a chairman and other officers, as it considers necessary from among its membership. § 59-40-230 (C). That chairman is now Mr. Don McLaurin who has served as chairman since the 2008-2009 school year..

That The South Carolina Public Charter School District Board of Trustees shall have the power to hire and fire the superintendent of the district who may have staff as needed. § 59-40-230 (E)(12). The superintendent is now Dr. Wayne Brazzle. He was hired by and reports to superintendent Don McLaurin and/or the board he chairs. They are housed, when Mr. McLaurin is in Columbia, in the same building and work closely together on a regular basis.

That to become a charter school an applicant must successfully apply for charter school status with the Charter School Advisory Committee whose members are appointed by the State Board of Education, § 59-40-70.

That a charter must be revoked or not renewed by the **sponsor** if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedure provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or
- (4) violated any provision of law from which the charter school was specifically exempted. § 59-40-110 (C).

That the charter school may request a hearing on the revocation decision and the sponsor shall conduct a hearing before taking final action. § 59-40-110 (F).

The SCPCSD gave MLD a sham hearing and revoked MLD's charter on April 19, 2012 using prong (2) above. *See revocation order.*

In this case, the close working relationship of the superintendent, Mr. Wayne Brazzle and his boss resulted in a collaborative effort to revoke the charter of the Appellant, Mary L. Dinkins Academy. The resulting effect in this case is that the sponsor of the Appellant, the South Carolina Public Charter School District (the District aka SCPCSD), the Respondent herein, determined that it would not renew MLD's charter and the Respondent served as both the prosecutor, and trier of fact at the revocation hearing on April 19, 2012. Rec 893,901-902,907,912.

The case was prosecuted by Mr. Karl "Butch" Bowers and his associates as attorneys for the South Carolina Charter School District representing the superintendent Mr. Wayne Brazzle.

The case was presided over by the chairman of the board of the South Carolina Public Charter School District, Mr. Don McLaurin, who was represented by Mr. Karl “Butch” Bowers and his associates.

During breaks in the proceedings the Board, the superintendent and Mr. Karl “Butch” Bowers and his associates conferred in ex parte fashion without including the attorney for the Appellant. Rec 893.

In her decision Judge Robinson stated “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.** “

MLD respectfully disagrees. Judge Robinson cited 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). In Ross the university president did not sit on the Faculty Committee that heard the case and made the decision as Mr. McLaurin did in this case. The Court

correctly showed that MLD was afforded procedural due process **but the proceedings were a sham with a predetermined** outcome.

The SCPCSD Board, lead by its chairman, Mr. Don McLaurin, is charged with conducting a hearing on the revocation issue and making a finding for or against revocation. However, the board, under the leadership of its chairman Don McLaurin, are the very ones who are seeking to revoke the charter of MLD. The outcome of the hearing is predetermined. No matter what information was presented at the hearing they had already made a decision. This is evidenced by the fact that no one not on the staff of the school district testified against MLD. Every public speaker spoke positively about MLD and championed the good work MLD was doing with its students yet their wishes were completely ignored. Rec 875-892,984-988,944-1004.

MLD is a school that has been under the auspices of the Respondent sponsor for only a year and a half at the time the revocation proceedings began. It has 141 students and along with its faculty and staff. The administrators, staff, and parents are very enthusiastic in their support for the school. **The school was founded to take those students most at risk for dropout and change their direction so that they may graduate and become good productive citizens.** MLD's recent group of student graduates proves that they are accomplishing their goals.

However, Mr. McLaurin and the board measure their success heavily on the outcome of certain tests. MLD students come from such deprived home backgrounds that they are expected to test poorly in their initial years at the school.

Unlike so many other schools whose charter were under threat of non-renewal by the Respondent, MLD was on sound financial footing and paid all of its bills in a timely manner.

MLD has been in litigation for its entire existence. That has taken valuable resources away from the school yet the school continues to thrive with the unqualified support of the parents whose children attend the school.

To discredit MLD with the community. School District personnel published news releases continuously announcing their intent to revoke the charter of the school. Rec 911.

In order for there to be a fair hearing the judge has to be neutral. There was no pretense of neutrality by the chairman of the SCPCSD Board, Mr. Don McLaurin. During the breaks Mr. McLaurin consulted with the attorneys for the Appellee without the attorney for the Appellant being present. That is clearly prejudicial and unethical. REC 893.

It is so important that the record in the case be made before a neutral official because of the high threshold needed to overcome the decision below. We know that the law admonishes the reviewer that "In applying this scope of review, the reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." When the trier of fact is clearly biased as is the case here the process becomes inherently unfair.-

This Court should therefore be able to hear the case anew with the full capability to determine the facts and not rely on the record below or dismiss the Respondent's case.

This is especially true when the trier of fact constantly cut off the presentation of evidence in the making of the record. Rec 886 (McLaurin cut off Ms. Haney), Rec 892 (McLaurin cuts off Mr. Sutton) Rec 39 (McLaurin cutoff atty. Watson).

Further, the trier of fact, the SCPCSD Board, was being represented by the attorney for the SCPCSD and the trier of fact made objections and sided with their attorney constantly. Rec52-57. Justice requires that this appeal not be limited to the record made below but a hearing De novo should be held before the Administrative Law Judge.

Judge Robinson stated that "...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).

That conclusion is not supported by the record. Mr. McLaurin, through his attorney, was involved at every stage and helped orchestrate the campaign against MLD.

Mr. McLaurin was not copied on any of the letters to MLD from the superintendent during the revocation process even though he copied individuals all the way up to the Secretary of Education. Rec 848,849,851. There was no need to do so because Mr. McLaurin was intimately involved in the revocation process.

II. The revocation hearing by the District was not held within the time limits imposed under the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

A. Standard of Review.

Section 59-40-110 (D) states, “At least sixty days before not reviewing or terminating a charter school, the sponsor shall notify in writing the charter school's governing body of the proposed action.”

B. Discussion of the Issue.

A reading of the record as a whole reveals that the SCPCSD's Board is dominated by its chairman, to wit: Superintendent Don McLaurin. He rushed every speaker through their presentation as if the hearing was a nuisance to him. It was a mere formality that would allow him to get to his predetermined outcome of revoking the MLD school charter. Rec 873-1062. The entire hearing was a sham to reach Mr. McLaurin's predetermined outcome. None of the board member, other than Mr. McLaurin, participated actively at the “informal” revocation hearing.

On March 27, 2012 The Superintendent of the SCPCSD, Dr. Wayne Brazzell, wrote a letter to the Executive Director of the MLD Academy informing her of the SCPCSD Board's Decision to revoke the MLD Charter with a copy of the letter to the Chairman of the MLD Board, Mr. George Williams. The letter gave only about two weeks notice for the revocation hearing with a revocation hearing date of April 12, 2012. Rec 855-856. At the request of MLD's prior attorney the hearing was rescheduled for April 19, 2012. Rec 857. I thereafter on April 17, 2012 requested the allowance of at least 60 days as required by the Charter School Act. Rec 858-860. That request was

denied (Rec 861) and the revocation hearing was held on April 19, 2012 in violation of the Charter School Act. Rec 864.

My request for a continuance at the start of the revocation hearing was also summarily rejected. Rec 895.

This is a clear violation of the statute. The revocation should therefore be denied.

III. The Charter of the Mary L. Dinkins Higher Learning Academy was not lawfully revoked under section 59-40-110 of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976).

A. **Standard of Review.** SECTION 59-40-30. Intent of the General Assembly.

(A) In authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers and community members to take responsible risks and create new, innovative, and more flexible ways of educating children in the public school system. The General Assembly seeks to create an atmosphere in South Carolina's public school systems where research and development in producing different learning opportunities are actively pursued and where classroom teachers are given the flexibility to innovate and the responsibility to be accountable. As such, the provisions of this chapter should be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.

(B) It is the intent of the General Assembly that the creation of this chapter encourages cultural diversity, educational improvement, and academic excellence.

Further, it is not the intent of the General Assembly to create a segregated school system but to continue to promote educational improvement and excellence in South Carolina.

That a charter must be revoked or not renewed by the **sponsor** if it determines that the charter school:

- (1) committed a material violation of the conditions, standards, or procedure provided for in the charter application;
- (2) failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application;
- (3) failed to meet generally accepted standards of fiscal management; or
- (4) violated any provision of law from which the charter school was specifically exempted. § 59-40-110 (C).

The ALC has authority to review the final order of the State Board as an appeal under § 1-23-380(5), which provides for reversal only if its findings are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (e) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise or discretion.

In applying this scope of review, the reviewing court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005).

This Court reviews the findings of the School Board to determine if its findings of fact or conclusions of law are based on substantial evidence contained in the whole record. The South Carolina Supreme Court in Porter v. South Carolina Public Service

Commission, 333 S.C. 12, 20-21, 507 S.E.2d 328, 332 (1998) defined the substantial evidence standard of review:

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. Substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence. Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding.

The Supreme Court found "[t]his deferential standard of review does not mean, however, the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." *Id.* at 21, 507 S.E.2d at 332. Further, the agency "must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record." *Id.* "An administrative body must make findings, which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Id.* And if "material facts are in dispute, the administrative body must make specific, express findings of fact." *Id.*"

B. Discussion of the Issue.

The Mary L. Dinkins Academy embodies what the legislature wanted to achieve. **The legislature did not mean for test scores to determine the viability of a charter school or it would have stated such.** MLD takes the most at risk students and mentors them through the educational process to graduation. Judge Robinson's decision is not supported by the evidence in record as a whole.

Judge Robinson wrote in her order that "... 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

Judge Robinson found that MLD **had not** awarded a high school diploma to any student who had not acquired sufficient credits, in violation of state law. She determined that, “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.”

The accusation that MLD graduated students in violation of the law is thus unfounded.

2. Reasonable Academic Progress

The record as a whole does not support Judge Robinson's decision. Judge Robinson further noted that “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). “

She found that:

a. Adequate Yearly Progress

The Record reflects that MLD only met 1 academic objective under the AYP standards from 2006 through 2011.

b. HSAP (High School Assessment Program)

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%.

c. High School EOC Examinations

The Record also reflects that between 2009 and 2011, the number of MLD students who passed EOC examinations dropped from 16% to 5.3%.

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

In consideration of the Record, it is abundantly clear that MLD's academic performance decreased dramatically between the years of 2009 and 2011.

She Stated that, "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."

If the MLD students failed every exam but showed individual growth from year to year that is reasonable growth as to the individual then that is not a lawful ground for revocation;

MLD never agreed that their students would do well on all tests. In fact MLD students came in so far behind the students of most other charter schools that to compare the initial scores of the MLD students to the scores of students of some of the other charter schools like the Governor's School would be like comparing apples and oranges. Yet, that is what the district did.

In a prior order involving MLD and LEE County and student test scores Judge Kitrell of the Administrative Law Court wrote about this same issue and the same Appellant in a prior revocation attempt by Lee County that

:“Pupil Achievement Standards and the Annual Report Card

The School Board asserts that there is substantial evidence in the record to support its determination that MLD Academy materially violated the Application in that its instruction and curriculum implementation failed to meet pupil achievement standards specified in the Application as measured by its 2006 Annual School Report Card¹ and it did not meet the adequate yearly progress (“AYP”) established in the No Child Left Behind Act of 2001 (“NCLB”), 20 U.S.C.A. § 6301, et seq. Further, it asserts that the State Board, in reversing this finding, erred in substituting its judgment for that of the School Board because it ignored the School Board’s reliance on specific findings from the 2006 Annual Report Card.

Section 59-40-110(C)(2) provides that a charter must be revoked or not renewed by the sponsor if the sponsor determines that the charter school “failed to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application.” In the Application, MLD Academy stated that it expected its students’ yearly progress would meet the AYP established in NCLB²

¹ On its Annual Report Card issued for the 2006 school year, MLD Academy received “Unsatisfactory” scores in its “Absolute Rating” and “Improvement Rating.” Further, the Report Card stated that they did not meet adequate yearly progress. (R. at 327-333). Based upon this report card, the School Board determined that MLD Academy materially violated its charter because its “instruction and curriculum implementation failed to meet pupil achievement standards specified in the charter school application.”

² NCLB provides that each state plan shall demonstrate what constitutes adequate yearly progress of the state and of all public elementary schools toward enabling all public elementary and secondary school students to meet the state’s student academic achievement standards. 20 U.S.C.A. § 6311(b)(2)(B).

and agreed to use as an indicator of student achievement those testing models utilized by the District, which were primarily PACT. However, MLD Academy qualified that assertion by stating that it would “adhere to all federal guidelines with regard to the amount of time that schools have in order for students to be performing at the required grade level.” (R. at 637). In fact, NCLB does not require that all students reach proficiency until 2013-2014. 20 U.S.C.A. § 6311(b)(2)(F).

In its Order, the State Board noted that although MLD Academy did not meet AYP, as evidenced by its 2006 Report card, it did meet seven of the thirteen objectives that applied to it. Further, it commented that it is unreasonable to expect every school to reach AYP in its first year because it takes time for students to reach the goals of NCLB. Additionally, it noted that under the federal guidelines regarding Title I schools and AYP, there is no legal implication for those schools not meeting AYP for one year because a school must fail to make AYP for two consecutive years before becoming “newly identified.”³ (R. at 16). Therefore, in its order the State Board found it unreasonable to use the first year’s report card rating as a trigger for revocation. It remarked that such rating should be used as the “base” from which improvement and failure can be determined and that an “[a]nalysis of subsequent year’s report cards will allow a clearer view of how that school is performing.” (R. at 16).

Additionally, the State Board noted that a charter school’s application contains timelines for meeting long-term performance goals and the requirements of NCLB. Furthermore, at the time of the Application, MLD Academy anticipated that there would be children in need of assistance and that it would take time for the students to be assisted sufficiently to reach a point of proficiency, or the federal standard. In fact, in its Application MLD Academy stated that it “aim[ed] to provide a net for those students who have previously or are in danger of falling behind,” and that it would provide tutoring

South Carolina determines adequate yearly progress through established, annual measurable objectives.

The annual measurable objectives are evaluated each school year and each school receives a South Carolina Annual School Report Card.

3 The Court takes note, as did the State Board, that MLD Academy is not a Title I school. However, it finds these guidelines are helpful in analyzing the arguments presented with regard to AYP as established in NCLB.

during lunch and after school, extra assignments, and computer-based instruction to assist students who performed below acceptable levels of proficiency on PACT. (R. at 637).

It is apparent to this Court that the State Board read the record carefully and noted the many difficulties, struggles and problems the parties had working with each other. The creation of the charter school would take funds away from School District which it could use in its public schools, and there is a history of litigation involving the parties, including the issue of the grant of the original charter which was ultimately decided by the South Carolina Supreme Court. This court has reviewed the record carefully and also is aware of the funding issues MLD Academy had to overcome. Therefore, the Court finds that the State Board correctly addressed this issue and adopts its analysis. The School Board misapplied § 59-40-110(C) which amounted to an error of law, as Section 59-40-110(C)(2) does not require a charter school to meet its stated pupil achievement standards, only that “reasonable progress” be made. Accordingly, the decision of the State Board with regard to this issue is affirmed. REC ____.

As to Judge Kitrell's findings, Judge Robinson noted “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.”).

However, it is also the law that “Generally, the decisions and orders of an administrative agency must be regarded as legal and correct. Ilene Rogers, et al vs. SCDHEC, et al (Docket Number 97-ALJ-07-0102-CC).

The SCPCSD Board has shown no lawful ground for revoking MLD's charter since MLD became a school in the district in August 2010.

(1) MLD committed no material violation of the conditions, standards, or procedure provided for in the charter application; The record is devoid of any showing of any material violation of any condition, standard or procedure provided for in the Charter School Act. The record shows that MLD has taken every step required of it by the

SCPCSD. It employed SCPCSD's consultant who testified, at great personal risk, to the great strides the MLD students were making. REC 994-1001. It revamped its entire school, including hiring an entirely new staff after its first year in the district.

(2) MLD did not fail to meet or make reasonable progress, as defined in the charter application, toward pupil achievement standards identified in the charter application. MLD's Director clearly outlined the objectives of the parties when MLD came under the sponsorship of the SCPCSD and the achievement by MLD of those objectives. REC 42-45.

(3) MLD clearly met generally accepted standards of fiscal management in its accounting as demonstrated by the report of its accountant with no countervailing statement by any other accounting professional; Further, the financial audit of MLD for the school year ending June 30, 2011, done by the Certified Public Accounting firm of Petway, Mills and Pearson, PA, that does audits for several district schools, found that, "... Our opinion is considered a clean audit opinion in that we found the financial statements as presented to us to be in conformity with generally accepted accounting principles and to fairly state financial position....". Rec 866.

The SCPCSD's letter of March 12, 2012 informing MLD of its revocation decision has 7 bullets/allegations. Rec 850. They do not mirror the allegations in the SCPCSD's revocation decision. Rec 867. MLD's Director, gave a detailed response to each of those allegations. They are in the record. Rec 929-944. The responses clearly shows that the allegations are baseless. However, the responses did not matter because

the SCPCSD had made its decision and the hearing was only a formality. The responses were not given any weight by the non-neutral board.

Dr. McLaurin believes that students at all of the charter schools should show a certain acceptable range of scores on state mandated tests. To him, and hence the board, that is the sole measure of a schools worth. It does not matter that MLD and other schools with students that are almost 100% free lunch students and come from homes where there is little or not help are severely handicapped when it comes to getting the students to perform well on standardized tests. It does not matter that the students are light years ahead of where they would otherwise be without MLD and other similarly situated schools. The final test scores are all that matters to them. MLD only had one full year in the district.

Nonetheless, specific responses to the allegations in the SCPCSD Board 's May 16, 2012 Decision are as follows:

As to the Findings of fact by the board that:

1. As a condition of entering the District, MLD agreed to show a high degree of academic progress.

Response: There is a copy of the Charter of the Mary L. Dinkins Higher Learning Academy in the Record on Appeal. Rec-53. The stated Goals of the Academy are that each student who completes MLD Higher Learning Academy will be able to:

- a. Read, write and communicate effectively,
- b. Use mathematics, science, the arts and computers effectively,
- c. Define, analyze and solve problems from a global point of view,
- d. Study and work effectively and

- e. Demonstrate personal and social and civic responsibility. Rec-59.

That charter was supplemented by the “Considerations for MLD Higher Learning Academy Charter School to transfer to the South Carolina Public Charter School District ...” document, Rec-844. Statement #2 of those considerations state, “... SCPCSD will expect a high degree by reasonable amount of specific academic growth by students as part of the renewal process.”

There is no doubt that that consideration has been achieved. A reading of the opening statements of all of the non-party witness clearly state the academic growth of the students.

- a. Reverend Wells spoke of the vast improvement of the children who attend his church who were MLD students. Without MLD his church had trouble teach the children in Sunday school because many could not read. MLD helped to eliminate that problem in his church. Rec 875-878.

- b. Mr. Ennis Bryant spoke of how MLD turned “kids in a shell” into leaders, how MLD addressed the whole family as well as the child, how MLD eliminated generational problems of the families. Rec 878- 882.

- c. Dr. Shelia Haney spoke of her commitment to teach the students, how she tutors the students and deplored the way MLD has been treated by Lee County and the SCPCSD and how MLD still serve the rejected and disadvantaged students. Rec 883-887.

- d. Pastor Sutton spoke of the greater opportunity MLD affords its students. How MLD serves the troubled and poor students (black and white) and achieved a 100% graduation rate for its senior class. Rec 887-892.

e. Superintendent McLaurin, in his press release, said “Of particular concerns are the needs of **at-risk students who have chosen these schools in large numbers.**”. Rec 921, lines 6-8. The reason parents choose MLD is that MLD is making a difference where the public schools of Lee County are failing these students. The schools that do well on the standard test do not have a high percentage of free lunch students as MLD does.

Clearly MLD has met that objective by any measurable standard.

The Memorandum of Agreement between the parties provided MLD will do the following:

- a. The Measures of Academic Success (MAP) Assessment will be give three times throughout the year to all 3-12 grade students under district supervision. MLD will pay for the installation and support costs for this assessment.
- b. MLD will provide access to classroom, professional development, and student records to SCPCSD staff on an on-going basis.
- c. MLD will make monthly written reports to the SCPCSD Superintendent on the general academic progress of the school and on the progress of individual students.
- d. MLD will use a district-approved outside consultant to review data, provide training, and make recommendations to improve the school. All correspondence between the consultant and MLD must be copied to SCPCSD. MLD will pay for all costs related to the use of consultants.
- e. MLD will prepare and implement a report on improving the esthetics of the building. This includes, but is not limited to, landscaping the grounds, significantly improving the “street appeal” of the building, and adding art work to the inside of the building to improve the sense of the building being a school. All improvements should be made with school or donated funds.
- f. MLD will prepare a comprehensive report for renewal hearing in May 2011 and make copies of the report available to Board Members at least one week before the hearing. The report will include improvements made to the building, an update on the quality of teaching at the school, an update on the financial standing of the school, and a thorough report on the academic progress made at the school. Although no decision has been

made at the time of the execution of this Agreement, MLD recognizes and understands that the hearing that will be held on or about May 2011 could result in the non-renewal of its Charter and that they would have appellate rights provided under the South Carolina Charter School Act.

g. MLD agrees to accept the status of probation in the district without appeal and to be bound by the terms of this Agreement, with the understanding that the school will have a hearing for a ten year charter renewal on or about May 2011.

h. The SCPCSD agrees to work with the MLD as a school in full standing while they complete the probationary period through May 2011. Rec-845.

MLD has completed all of the requirements outlined in this agreement as stated in the district May board meeting. Rec 914-915.

2. MLD's charter agreement states that it will teach students to “[r}ead. Write, and communicate effectively”.

Response: As indicated by the district’s own consultant, Patricia Smith, and the MLD Executive Director, most of MLD’s students come to the school 2 to 5 grade levels behind. According to that same district consultant, most students scored between a 1 and 2 on her state given Domini Assessment test. However, MLD data shows that 84% of its students made gains in the areas of ELA and Reading Comprehension using the Measures of Academic Success (MAP) Assessment that was required by this district. This test allows one to see the individual growth of each child. Rec 915.

3. MLD's charter agreement states that it will teach it's students to “[u]se mathematics, science, the arts and computers effectively.”

Response: Respectfully, MLD data shows that 87% of its students made gains in the areas of Math using the Measures of Academic Success (MAP) Assessment. The current 2012 PASS data also shows that overall MLD made a 17.68 gain in Math and a 22.15 gain in Science. Rec 918.

4. MLD's charter agreement states that it will teach its students to, “[a]cquire, integrate, and apply essential knowledge from the core academic disciplines,”.

Response: In order to ensure that MLD was implementing all of South Carolina State Standards they did the following:

a. At the end of the academic year, 2010-2011, MLD, with the benediction of the District, MLD restructured its school, replacing almost every teacher and reducing the school from a K-12 to K-8. In essence, MLD became a new school. There has not been a complete school year since the changes were implemented to weigh the impact of the restructuring. Further, MLD graduated 100% of its senior class and all of the graduates have gone on to greater things, including the fact that most of them are in college. Rec 889.

b. MLD also welcomed, at the District’s request, a consultant to assist them in enhancing the academic performance at the school. The district’s consultant is on staff three days a week. The District (state) consultant, along with the curriculum coordinator, was responsible for making sure that teachers implement all standards at each grade level. MLD has also contracted two additional state approved consultants in the areas of math and science.

c. In addition, MLD has instituted after school programs and Saturday school. These programs are intended to bring most of the students, who come from very poor backgrounds and in most cases many grade levels below, to grade levels.

5. MLD's charter agreement states that it will incorporate the “South Carolina Academic Standards for all subjects” to “identify the goals that our students will achieve at each grade level,”.

Response: Mary L. Dinkins Higher Learning Academy (MLD) is in its seventh year of operation but is barely eighteen months into its relationship with the South Carolina Public Charter School District (District). During its seven years of existence, MLD has gone through a tumultuous history combating massive injustice from the Lee County School District which culminated in multiple trips on Appeals and one to the Supreme Court of South Carolina just to maintain its existence. As a result of this tumultuous relationship with Lee County School District, MLD decided to join the South Carolina Public Charter School District eighteen months ago. MLD has shown gain as evidenced by the 2012 test scores which were not available because the revocation hearing took place prior to the end of the school year. 60 percent of the students met or scored exemplary in at least one area on the PASS and 80 percent of students made individual gain on the same test. As indicated, previous the Measures of Academic Success (MAP) Assessment for the 2011-12 school year shows that 84% of the student made gain in ELA and 87% made gain in Math.

6. Over the past six years, MLD has met one Annual Yearly Progress (“AYP”) academic objective out of twenty-two, or 4.5% of its AYP academic objectives over the time frame.

Response: MLD was under the direction of the South Carolina Charter School District for eighteen (18) months not six years. However, record shows the following:

<u>AYP for MLD</u>	<u>AYP for Lee County</u>
2009: 7 / 9 (77%)	2009: 12 / 21 (57%)
2008: 7 / 9 (77%)	2008: 11 / 19 (57%)
2007: 5 / 9 (55%)	2007: 11 / 19 (57%)
2006: 7 / 13 (53%)	2006: 11 / 21 (52%)

The following data was presented to the South Carolina Charter School Board at their May 2011 meeting and they agreed that MLD was meeting its goals:

Mt Pleasant Middle 13 out of 13 Objectives Met (100%), Met AYP
Mary L. Dinkins Charter 7 out of 9 Objectives Met (77%), Not Met AYP
Lower Lee Elementary 10 out of 13 Objectives Met (76%), Not Met AYP
Bishopville Primary 10 out of 13 Objectives Met (76%), Not Met AYP
Dennis Intermediate 9 out of 13 Objectives Met (69%), Not Met AYP
West Lee Elementary 9 out of 13 Objectives Met (69%), Not Met AYP
Lee Central High 7 out of 13 Objectives Met (53%), Not Met AYP
Dennis Middle 9 out of 17 Objectives Met (52%), Not Met AYP

We feel that this district is out of touch of reality in failing to realize that when working with at risk student one must look at the individual growth of the students, Rec 931, as indicated by the State Department of Education's request to the United States Department of Education for a waiver from the No Child Left behind act which would make AYP void in South Carolina. However, as the evidence shows, MLD was number two in Lee County. The new reports for 2012 also indicates that MLD out scored every school in Lee County but one even in spite of being constantly under the harassment by the Lee County School Board as well as the SCPCSD's board. Rec 909-911 (Dr. Brazzle's letter to Lee County read into record). Imagine what MLD can accomplish if MLD's Director were allowed to devote her time and attention to the school and not be in court as she has for the school's entire existence.

Also in 2010-11, the charter district stated in its January 2012 meeting that this

district and its schools were under funded so that 2011-12 would be our base year. MLD only received a base of \$2,100 per child.

7. In May 2011, sixty-one students at MLD were enrolled in classes that require an end-of-course (“EOC”) exam. However, only seven students enrolled in those courses took an EOC exam. Twelve additional students who were not enrolled in those courses took an EOC exam. No one at MLD has explained why so many students who were enrolled in those courses failed to take an EOC exam or why students who were not enrolled in those courses did take an EOC exam. Nevertheless, eighteen of nineteen students who took an EOC exam failed. The breakdown of these scores is as follows:

<u>Course</u>	<u>Students Enrolled</u>	<u>Enrolled Students who took an EOC</u>	<u>Enrolled students who passed an EOC</u>	<u>Non-Enrolled Students who took an EOC</u>	<u>Non-Enrolled Students who passed an EOC</u>
Algebra I	20	1	0	0	0
Biology	10	0	0	0	0
Physical Science	11	3	0	6	0
United States History	8	0	0	5	0
English	12	3	1	1	0
<u>Totals</u>	<u>61</u>	<u>7</u>	<u>1</u>	<u>12</u>	<u>0</u>

Response: In May of 2011, MLD only had 16 students in grades 9 through 11 not 61 students. All of the students that were required to take the test did. MLD’s test coordinator works directly with the district test coordinator to ensure that all students who are suppose to take the right test do. The district test coordinator is the only person

who can order state tests. As indicated by the director, at no point was this issue or concern brought to school until the hearing of April 2012.

8. In 2009, 55.6% of MLD's students who took the High School Assessment Program ("HSAP") passed both sections of the test. In 2010 and 2011, this percentage dropped to 14.3% and 16.7%, respectively.

Response: Please note under the direction and approval of the South Carolina Public charter school MLD is currently not serving high school students. This change in the charter was done in May of 2011. Most of the students who took the HSAP test in 2011 were special education students. MLD was not under the direction of the South Carolina Public Charter School but in Lee County which from the onset created a hostile environment. Initially MLD, attracted students that were on level and/or gifted. However, after continuous harassment, abuse and uncertainty to the organization goal of just being a school of choice, MLD became known as the "Healing Grace" of the community. The school as evidence by the testimony began serving students that were 2 to 5 grade levels behind.

9. In 2010, 45% of MLD's middle school students met the English/Languish Arts standards of the Palmetto Assessment of State Standards ("PASS") test. In 2011, this percentage dropped to 21%. In 2011, only 21.1% of MLD's middle school students met the Mathematics standards for the test.

Response: In January of 2012, MLD met with the South Carolina Public Charter Board of Directors and informed them that the students that MLD was now attracting were coming into the school two to five grade levels behind as evidenced by the District's state consultant and their required assessment. MLD also stated that they have

implemented strategies that would ensure individual growth of the students but only about 15% of the students were coming in able to pass a state test. They also stated that children of poverty are disadvantage as indicated by the South Carolina Department of Education website and need additional resources to be successful. At that meeting the district stated that all schools would be given a chance to succeed because of the 2010-11 school year the district was under funded so 2011-12 would be our base year.

10. In 2010, 32.4% of MLD's elementary students met the Mathematics standards of the PASS test. In 2011, this percentage dropped to 14.3%. In 2011, 50% of MLD's elementary students met the English/Language Arts standards of the test.

Response: See response to item 8.

11. One of MLD's high school graduates was awarded a diploma despite having only twenty-two course credits.

Response: After its first academic year with the District, MLD graduated all of its twelfth graders which, upon information and belief, was the only high school among the District's schools to accomplish such a feat. In fact, it may be the only public school in the state that had a 100 percent graduation rate. All of the nine graduates passed the state HSAP assessment and all of this students had all required units. The district never indicated which student had a discrepancy and the first time this concern was mention was at the hearing. 8 out of the 9 students were accepted into college and the average SAT score was 1080. The South Carolina Public Charter's School overall graduation rate was only 15% for 2011 school year. MLD's graduation rate was by far the highest in this district. Therefore, the end result is that even though this students come drastically behind, with assistant and guidance, MLD is producing graduates and leaders which is in

the spirit of the charter. The director State that Lee County 2012 current valedictorian is a product of MLD. Testimony made the Director and the principal consultant show that MLD's program has saved many students that might have dropped out. 78% of the graduates were African American Males. The school's population has also doubled from 2010-11 to 2011-12.

As to the SCPCSD's Conclusions of Law, the following response is provided:

CONCLUSIONS OF LAW

1. South Carolina Code § 59-40-110(C) authorizes a sponsoring school district to revoke or not renew the charter that “commit[s] a material violation of the conditions, standards, or procedure provided for in the charter application”; that “fail[s] to meet or make reasonable progress, as defined in the charter application, towards pupil achievement standards identified in the charter application”, or that “violates[s] any provision of the law from which the charter school was not specifically exempted,”

Response: This is merely a statement of the law which provides no application to the instant case.

2. Under any reasonable interpretation of the Charter School Act or understanding of MLD'S charter agreement, MLD's record of student test scores cannot support the continued operation as a school District. Under any metric – AYP Testing, EOC testing HSAP testing or PASS testing – MLD has failed to make progress towards adequately educating its students:

Response: The SCPCSD has been comparing apples and oranges and wondering why they are not the same. Rec 920-930. By any measure MLD students are light years ahead of where they were when they came to MLD. For the most part they would

comprise the dropouts if they were in a regular failed school system such as the public school system of Lee County. To look at raw test scores of the students of MLD as the sole measure of the value of the school is wrong.

Further, MLD students were not given an opportunity to take the PASS test before the revocation letter was sent out. Rec 930. Also, the PASS test has been largely discredited and is no longer used by the State Department of Education. Rec 940.

- Over a six-year period, it has met only one of twenty-two AYP academic objectives.

Response: MLD has only been with this district for 18 months. This district can not use previous data from another district to revoke a charter. It must rely on the year and a half they are responsible for since issuing the MLD charter which started in 2010-11. The previous years have been addressed by Judge Kittrell in the prior litigation. They have not even allow for a full two years to determine whether or not there would be a growth in assisting these children under their direction.

- In 2011, only one student passed any EOC examination, and – for no apparent reason – fifty-four out of sixty-one students were never given an EOC examination in classes that required such test.

Response: MLD had only 16 high school students that would have taken the test in 2011. MLD no longer has high school students under the blessing of this district. There seems to be an error in the data.

- The percentage of MLD students who passed the HSAP exam fell from 55.6% in 2009 to 16.7% in 2011.

Response: As indicated previously, MLD is now attracting at-risk students that come from disadvantage homes. Most of these students are two to five grade levels behind.. Also, note that half of these students who took the test in 2011 were receiving special educational services. Again, note that in the May 2011 meeting the board allowed MLD to be more focused and alter the charter to allow them to serve students in grades K4 through 8th grade instead of K4 through 12th grade.

- From 2010 to 2011, the percentage of MLD elementary students who met the state's standards for mathematics, as measured through the PASS test, dropped from 32.4% to 14.3%. In the same time period, the percentage of MLD students who met the state's standards for English and language arts dropped from 45% to 21%.

When questioned at the April 19, 2012 hearing in this matter, Benita Dinkins-Robinson -- the chief administrative official with MLD -- conceded that the school had not met at least one of the academic standards set forth in the school's charter agreement. Under these circumstances, the District concludes that the revocation is appropriate under South Carolina Code § 59-40-110(C)(1) and (C)(2).

Response: The director and all of the others who testified clearly stated that based on the individual growth of students the school has met all of the objectives. The director and the state curriculum coordinator indicated that the school was attracting students that were two to five grade levels behind. The school has to work with the students that they are given. Again, MLD has only been with this district for 18 months before they hastily made this decision to revoke. The district did not even allow for two years to show a comparison. The district only looked at one set of data. The district did not even used

the data from the assessment tool that they ordered MLD to purchase. That data showed that MLD made 87% gain in Math and 84% gain in ELA in one year.

The SCPCSD decision went on to add “When questioned at the April 19, 2012 hearing in this matter, Benita Dinkins-Robinson – the chief administrative official with MLD – conceded that the school had not met at least one of the academic standards set forth in the school's charter agreement. Under these circumstances, the District concludes that revocation is appropriate under South Carolina Code §§ 59-40-110(C)(1) and (C)(2).”.

Response: After outlining the deprivation of funds and other atrocities perpetrated on MLD by its prior sponsor, the Lee County School Board, Ms. Dinkins-Robinson went of to say “And according to our Title 1 visit, which was just last Thursday, the reviewer stated that we implemented five out of six strategies of the turnaround model.”. That is an 83.33 success rate. If all of the charter schools were revoked for missing one of their objectives, I dare say the Mr. McLaurin and his entire staff would be out of work as there would be no charter schools.

3. South Carolina Regulation 43-234(I)(A) requires students to earn twenty four specific course credits in order to be awarded a high school diploma. MLD awarded at least one student a high school diploma even though the student had only earned twenty-two of the required credits. The District concludes that this violation of state law also makes revocation appropriate under South Carolina Code § 59-40-110(C)(4).

Response: MLD knows of no student who was awarded a diploma without the required twenty four hours. That allegation has been debunked by Judge Robinson.

IV. The South Carolina Charter School District violated other provisions of the South Carolina Charter School Act (South Carolina Code of Laws Annotated 1976) in its decision to revoke the charter of the Mary L. Dinkins Higher Learning Academy?

Standard of review”

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” ... “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Eagle Container v. County of Newberry, 336 S. C. 611, 622 S. E. 2d 733 (S. C. App. 2005).

A1. Discussion of nthe Issue – Renewal of Charter

Section 59-40-110 of the Charter School Act states, “A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section.”.

The Charter School Act requires a sponsor to grant a charter school a full 10 years charter. There is no provision in the law for any charter of lesser duration. The SCPCSD violated the provisions of the law when it purported to grant the Mary L. Dinkins Academy a provisional charter. Rec 844, 845. This is a clear violation of a statutory provision.

When questioned as to the authority to grant a charter for less than 10 years the attorney for the Respondent said “Mr. Watson, your clients agreed to it. That's the authority. There is nothing in the law that – in the Charter School Act prevents it....”, REC ____.

Judge Robinson ruled that MLD “cannot choose now to dispute the terms of the contract”. However, no one is free to change the law simply by agreement between the parties. MLD's contract should be reinstated for at least the duration of its charter with Lee County.

Further, Section 59-40-80 states, “A sponsor may conditionally authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates such authority is necessary for to meet the requirements of this chapter.

The Charter School Act does not allow for the sponsorship of a charter school on a conditional basis where that charter school already exist as an operating charter school and has in place its space, equipment, facilities and personnel as the Mary L. Dinkins Academy did when it came under the sponsorship of the South Carolina Public Charter School District. The provision in the agreement of the parties that purportedly admitted the MLD on a provisional basis is clearly contrary to the law. This is a clear violation of a statutory provision.

A2. **Discussion of the Issue - Annual Evaluation**

Section 59-40-110 states, “... The sponsor **annually shall evaluate** the conditions outlined in subsection (C). The evaluation results **must** be used in making a determination for nonrenewal or revocation.”.

This is another part of the Charter School Act where the law is clear. It clearly states that “The evaluation results **must** be used in making a determination for nonrenewal or revocation.”

Judge Robinson wrote that "... § 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."

The only evidence in the record of an evaluation taking process is that statement by the district in that March 12, 2012 letter. No evaluation results was ever done save for the district looking into the data the schools put in Powerpoint. Rec 59.

There was no annual evaluation on which the district based its revocation decision. MLD was never told of the test score comparison stated in the district's revocation letter before the revocation hearing and was not evaluated in any way. In Judge Robinson's view all a sponsor has to do is state that we do our job so because we exist we are constantly evaluating our schools. So if we say we have evaluated the conditions required in the statute that is all that is required. That would be the same as having no audit requirement at all as was the case here.

The SCPCSD did not do an audit of MLD for the 2010-2011 or for the 2011-2012 school year as required by the Charter School Act. Rec 934-935. In fact, the revocation hearing and revocation decision were done while the school year was still in progress this year. This is clearly contrary to the law. The revocation must be denied on that ground alone.

The Charter school act mandates that the annual audit must be used in making the determination. That provision is not discretionary.

Further, the financial audit of MLD for the school year ending June 30, 2011, done by the Certified Public Accounting firm of Petway, Mills and Pearson, PA, found that, "... Our opinion is considered a clean audit opinion in that we found the financial statements as presented to us to be in conformity with generally accepted accounting principles and to fairly state financial position....". Rec 866.

The revocation should be denied on this ground alone.

CONCLUSION

Mary L. Dinkins Higher Learning Academy (MLD) is in its seventh year of operation but is barely eighteen months into its relationship with the South Carolina Public Charter School District (District). During its seven years of existence, MLD has gone through a tumultuous history combating massive injustice from the Lee County School District which culminated in multiple trips on Appeals and one to the Supreme Court of South Carolina just to maintain its existence. As a result of this tumultuous relationship with Lee County School District, MLD decided to join the South Carolina Public Charter School District eighteen months ago. When MLD joined The District, it was placed on probation.

MLD and the district supplemented the agreement that MLD had with Lee County with their "Considerations for MLD Higher Learning Academy Charter School to transfer to the South Carolina Public Charter School District from Lee County Schools for the

2010/2010 School Year." REC 844. **The district's own compliance director, to wit: Ms. Dana Reed, testified under oath that the "goals were vague and not measurable". REC 1007.**

Also, the district and MLD agreed that the students would show reasonable academic progress but **MLD specified the growth of individual students not growth as compared to other schools.** No one disputes that the students have in

fact been showing amazing individual growth even if that growth is still below the norm for some other schools such as the governor's school and other schools where the students come from a more affluent background.

During MLD's initial year with the District, it served students K through 12. After its first academic year with the District, **MLD graduated all of its twelfth graders which, upon information and belief, was the only high school among the District's schools to accomplish such a feat.** In fact, it may be the only public school in the state that had a 100 percent graduation rate. Also, at the end of the academic year, 2010-2011, MLD, with the benediction of the District, restructured its school, replacing almost every teacher and reducing the school from a K-12 to K-8. In essence, MLD became a new school. A school that has never been measured.

MLD also welcomed, at the District's request, a consultant to assist them in enhancing the academic performance at the school. During the District Board meeting at the beginning of August of 2011, MLD was placed on academic probation along with three other schools with stringent recommendation to demonstrate academic progress by the end of the school 2011 - 2012. It was as a result of those instructions that MLD took the actions stated above of replacing teachers and altering its programs.

The District, which has the responsibility of overseeing the academic, physical and operational health of the school, asked that MLD get a consultant which MLD has been paying for throughout this year. The district's consultant is on

staff three days a week. MLD has also contracted two additional state approved consultants in the areas of math and science. In addition, MLD has instituted after school programs and Saturday school. These programs are intended to bring most of the students, who come from very poor backgrounds and in most cases many grade levels below, to grade levels. Despite the continuous harassment and injustice to the students and staff of MLD by the local district our students continue strive for excellence.

MLD has seen progress in its students using the MAP assessment program which we procured based on the District's recommendation. These results have demonstrated progress across the board that our students have made over time through out the school year. These results gave MLD hope that its students will perform better during state testing at the end of the year and demonstrate more academic progress relative to other schools as well. The students have yet to be tested because the district stopped providing all services to MLD after Judge Robinson issued her decision,

On January 13, 2012, MLD received a letter of *caution* from The District indicating that MLD's data for input to the **district's federal audit** was tardy; even though MLD submitted its audit data within the extended time frame provided by the District of January 20, 2012. The audit data did not reveal any mismanagement or misappropriation of funds. In fact it was an unqualified audit.

On February 23, 2012 the District sent a letter which seems to indicate that the federal audit data revealed significant deficiencies in the area of finance. The

letter further indicated that there was a “*significant departure from State and Federal requirements for record keeping and documentation for Title I.*”

MLD disagrees with the assessment that it violated any Title I requirements. All Title I documents **for FY-11** were completed and forwarded to the District in a timely manner and MLD attached documentation that was forwarded to the District at that time. Furthermore, a review of the audit data failed to indicate any deficiencies regarding record keeping and documentation for Title I eligibility.

There is a distinction between maintaining documentation to support verification for applications for Child Nutrition, CFDA No. 10.55 and 10.559 as specifically cited in Audit Finding 11-1 and Title 1. As a matter of record, on page 37 of our FY-11 Audit (last paragraph of the COMPLIANCE section), the auditor noted – with the exception of “verification of approved applications for free and reduced meals” MLD “**complied, in all material respects, with the compliance requirements** referred to above that could have a direct and material effect on each of its major federal programs for the year ending June 30, 2011.”

A SCPCSD letter also indicated as one of the deficiencies “the failure to maintain properly designed financial management system in which duties are properly segregated, clear instructions are provided for purchasing decisions, and competitive bidding is documented”.

MLD has in place and has maintained properly designed financial management system. The system has always been part of the school’s procedures and that continues to date. The system clearly distinguishes the duties and provides clear instructions regarding

reduced price meals, adequate steps have been taken since August of last year to ensure that said documentations are properly maintained.

Furthermore, the SCPCSD indicated that MLD's probationary status was due to poor academic performance as well as continued deficiencies in the areas of compliance and finance.

That was the first time MLD's Board was informed that its probationary status has been based on what was described as "continued deficiencies in the areas of compliance and finance." MLD's Board has not received any letter indicating that MLD has continuously been deficient in the area of compliance and finance. The MLD Board would request that if there has been any correspondence prior to the Reed Letter indicating that that our probationary status was based on continued deficiencies in the areas of compliance and finance we would like a copy. No such letter has been produced to date.

MLD cherishes its relationship with the District and takes its responsibilities of educating the children seriously. MLD takes these matters seriously and if there are deficiencies as indicated above please let us know. Also, steps have been taken to assist students in performing better this academic year and this Board is confident that with all that has been done to assist MLD students, they are performing better on the tests and will perform better on the year end testing.

The Mary L. Dinkins Academy opened its doors officially in September 2005. It had to fight all of the way to the South Carolina Supreme Court to have the Lee County School Board accept its right to exist. It has never been able to give its complete

purchasing and decision making. There is no requirement for competitive bidding for Charter Schools in the South Carolina Public Charter School Act and hence, that is not required. Furthermore, we spoke with the auditor, Phyllis Pearson, and her reference to “competitive bids” or a “competitive bid process” was in the vein of best practices. Any inference by your office that this element is in any way mandatory is incorrect.

The second allegation that seems to tie in with Title I indicates that there is a failure to maintain documentation to support verification of application approval for free and reduced priced meals. MLD acknowledges that during a period year, as some staff were transitioning in and out of the school, most of the documentation were not properly maintained, however, since the beginning of this academic year, MLD has maintained complete and through records of everyone involved in the Child Nutrition Program, CFDA No. 10.55 and 10.559.

What is most telling and appalling to the MLD Board is the fact that when the District received and reviewed MLD’s federal audit data and realized that there were some noted deficiencies MLD was treated as a pariah but every audit of the District’s schools seem to have some noted deficiencies as well. The District in its role as sponsor did not call the school to inquire if it lacked properly designed financial management system in which duties are properly segregated. The District also did not inquire from MLD if it had documentation to support the free and reduced price meals, and if it did not, what steps have been taken to correct the problem. In this case, fortunately, most of the things indicated herein are in place and in the case of documentation for free and

attention to the purpose for which it was founded. **That purpose being to give at risk young men and young women a chance to succeed where the traditional school system has failed them.**

Every speaker at the revocation spoke of the great job that the MLD Academy is doing in educating the children who would otherwise be lost in the regular school system. There was not a single speaker in opposition to the existence of the school. Rec 875-893. Yet, this did not matter to Superintendent, Don McLaurin and his board.

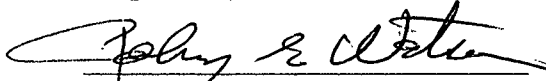
In hopes of finally being able to pay full attention to its students, the MLD Academy sought refuge with the South Carolina Public Charter School District. That organization too has sought to wrongfully revoke its charter. **There is a misunderstanding between the parties as to measurement of the academic growth of the students. MLD's focus is on the growth of individual student which will result in growth of the entire school.**

None of the alleged reasons to revoke MLD's charter are sanctioned by the Charter School Act or by the state of federal notions of due process. This Court should reverse the District decision to revoke the charter of MLD Academy because:

- 1.the District failed to hold the revocation hearing within the time frame outlined in the Charter School Act. MLD was not given 60 days to prepare for the revocation hearing,
- 2.The revocation hearing was a sham proceeding with a predetermined outcome,
- 3.None of the reasons put forth for the revocation meet the requirements of the Charter School Act,
- 4.There was no neutral judge of the facts. The Board acted as both the accused and the judge.

The Mary L. Dinkins Academy therefore requests that the revocation of its charter by the District be overturned as violating the South Carolina Charter School Act and that the SCPCSD Board be ordered to grant MLD a full 10 year charter as required under the Charter School Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johnny E. Watson", written over a horizontal line.

Johnny E. Watson,
Attorney for Mary L. Dinkins
Higher Learning Academy

February 11, 2014
Columbia, South Carolina