THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINSTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No.: 10-ALJ-30-0631-AP
Court of Appeals Tracking Number: 212001

Palmetto Youth Academy Charter School, ...Respondent,

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. **The Administrative Law Court's finding that the District's decision is erroneous in light of the substantial evidence in the record on appeal controls this Court's review of the issue**:

   a. *The ALC's unappealed ruling, that substantial evidence does not support the District's revocation of PYA's charter based on PYA's alleged failure to meet general accepted standards of fiscal management, is an additional sustaining ground for affirming the Administrative Law Court's decision.*
   b. *If reviewable, the ALC correctly found that the District's ruling that PYA failed to meet generally accepted standards of fiscal management was erroneous in light of substantial evidence in the record.*

II. **The Administrative Law Court correctly determined that the District acted in an arbitrary and capricious manner and abused its discretion by revoking PYA's charter.**

STATEMENT OF THE CASE

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

The Charter Schools Act of 1996 (the "Act") grants the District the right to annually evaluate a charter school.[2] Based on this evaluation, the District may revoke a school's charter if it determines that the school: (1) committed a material violation of its charter provisions; (2) failed to meet or make reasonable progress toward student achievement; (3) failed to meet generally accepted standards of fiscal management; or (4) violated any provision of law. *See* S.C. Code Ann §59-40-110(C). At the end of each

[1] S.C. Code Ann. § 59-40-110(A) (Supp. 2011).
[2] S.C. Code Ann § 59-40-110 (Supp. 2011).

academic year of PYA's existence (2005-2006; 2006-2007), the District has authorized PYA to continue operating. Pursuant to section 59-40-110(B)(2) of the South Carolina Code (Supp. 2011), PYA provided the District with financial statements that disclosed the costs of administration, instruction, and other spending categories for its charter. (R. pp. 64-73). As part of the District's financial management requirements, it is required to ensure performance of an independent audit each year. This audit process requires the District to compile financial records from all its component units, or District schools. During the first two years of PYA's existence, PYA's financial submissions to the District, and from the District to the auditor, were met with general approval as indicated in the District's audits for the 2005-2006 and 2006-2007 academic years. (R. p. 14, lines 189-192 pp. 60-72, pp. 305 - 392). During those years the District received an unqualified or favorable review from its auditors. (R. p. 14, lines 189-192, pp. 390-391).

Consonant with its usual practice, PYA submitted its Financial Statement in the approved format to Mr. Luther Rabon, the District's financial manager, on December 9, 2008 for the 2007-2008 academic year. Shortly thereafter, Rabon contacted PYA regarding concerns of District's auditor, Mr. Butch Whiddon of Baird & Company, CPAs, LLC. (R. pp. 42-44). This contact was the first time the District notified PYA that the documents they had submitted were inadequate. PYA explained to the District that they were under the impression that a complete audit was not required. PYA believed that an audit was not required because of information garnered from the State Department of Education ("SDE") regarding audits for schools that receive less than five hundred thousand ($500,000) dollars in funding. (R. p. 43, line 1489 – p. 44, line 1493). PYA sent the District the correspondence wherein SDE conveyed this information. (R. p.

44, lines 1509-1514). Upon receipt of the information, the District confirmed that PYA had received said information; however, the District indicated that the information was sent out in error by the SDE. (R. p. 44, lines 1504-1533).

The District also indicated that the reason why PYA was required to perform an independent audit was due to the fact that it was now being considered a "component unit" of the District, which it had not been previously considered. Consequently, the District instructed PYA to have an independent audit completed for 2007-2008 school year.

Due to time constraints and lack of resources caused by a tight budget and sporadic disbursement of funds by the District, PYA was unable to complete its financial statement by March 17, 2009 despite their diligent efforts. On March 17, 2009, Whiddon submitted a qualified (unfavorable) opinion as to the District audit. (R. p. 52) As a result of the qualified opinion, the District decided to revoke PYA's charter because of the qualified opinions affect on the District's ability to perform some of its functions. (R. pp. 4, 6).

Subsequently, PYA retained Kelly-Moser Consulting, LLC (Kelley-Moser), a financial management firm, to assist in preparing its documents for an audit. (R. p. 34, lines 1057-1060). After retaining Kelley-Moser, the District, without consulting PYA, took a $10,000.00 portion of PYA's allocation and retained Elliott Davis, LLC, (Elliot Davis) to perform an independent audit for the fiscal year 2007-2008. (R. p. 19 lines 412-432, pp. 35-36 lines 1136-1166). PYA provided Elliott Davis with all the necessary information to complete the audit. (R. p. 34). Specifically, PYA provided Elliot Davis with boxes of documents and corroborating evidence prepared by Kelly-Moser in

preparation of such an audit. (R. p. 34). The boxes of materials were brought into the hearing as part of the record. PYA was surprised to receive a letter from Elliot Davis, indicating that they were terminating their professional relationship with PYA effective January 25, 2010, due to a lack of information from PYA and because they felt uncomfortable (R. pp. 5, 50). However, Elliot Davis and the District never reallocated the Ten Thousand ($10,000.00) Dollars in funds that were taken from the school to perform said audit.

On March 20, 2010, the District voted to revoke PYA's charter, effective at the end of the 2009-2010 school year. (R. p. 4). The District cited PYA's failure to meet generally accepted standards of fiscal management as the reason for its revocation and cited to Elliott Davis' termination letter in support thereof. (R. p. 4). On March 30, 2010, PYA timely requested a hearing before final action was taken on the status of its charter. On May 20, 2010, the District confirmed its decision to revoke the charter of PYA and issued a letter regarding their decision on June 1, 2010. (R. p. 3). The District's order indicated that it based PYA's revocation on subsection three of section 59-40-110(C), alleging PYA failed to meet generally accepted standards of fiscal management.

PYA timely filed a notice of intent to appeal with the Administrative Law Court ("ALC"), and on August 19, 2010, the Honorable Shirley C. Robinson was assigned to the case. The parties presented oral arguments to the ALC on April 18, 2012. (R. p. 74). Judge Robinson issued an order on May 4, 2012, reversing the decision of the District to revoke PYA's charter. (R. pp. 74-81). In its order, the ALC found that the District had the authority to revoke PYA's charter under section 59-40-110(C)(3), but it disagreed

with PYA's argument that the District erred in terminating PYA's charter based on a material breach of its charter. (R. p. 79). In addressing PYA's second and third arguments on appeal, the ALC found that the District's decision was erroneous in light of the substantial evidence in the record, was arbitrary and capricious, and characterized by an abuse of discretion. (R. pp. 79-82). The District appeals the ALC's order herein.

BACKGROUND ON CHARTER SCHOOL ACT

The General Assembly enabled the creation of charter schools and provided its purpose in section 59-40-20 of the South Carolina Code (Supp. 2011). When compared with other statutory schemes, the Act contains a rare expression of the General Assembly's intent in enacting this legislation:

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

S.C. Code Ann. § 59-40-30 (Supp. 2011) (emphasis added).

An application to start a charter school must be submitted to the school's proposed "sponsor." "Sponsor" is statutorily defined as either the South Carolina Public Charter School District Board of Trustees or "the local school board of trustees in which the charter school is to be located . . . from which the charter school applicant requested

its charter and which granted approval for the charter school's existence." S.C. Code Ann. § 59-40-40(4) (Supp. 2011). If the application is approved, the approved application constitutes a contract between the charter school and its sponsor. S.C. Code Ann. § 59-40-60(A) (Supp. 2011). The Act is explicit in its use of contractual language to describe the relationship between a sponsor and a charter school. *See* S.C. Code Ann. § 59-40-60(A) (Supp. 2011).

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

It is also universally held in the common law that:

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

17A Am. Jur. 2d *Contracts* § 557 (2004). South Carolina common law recognizes and applies the above-quoted authorities. *See Gibbs v. G.K.H., Inc.,* 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993) (noting that in order to warrant a repudiation, a breach

must be so fundamental and substantial as to defeat the purpose of the contract); *see also Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 276, 440 S.E.2d 364, 366-67 (1994) (noting that the majority of courts hold that to justify forfeiture, the breach of a commercial lease must be material, serious, or substantial).

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

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

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

STANDARD OF REVIEW

This case involves the appeal of an ALC decision reversing a District's decision to revoke a school's charter. The ALC reversed a decision made by an administrative agency of the state, a school district, on appeal to it. Judicial review of decisions of a school district are subject to review under the provisions of section 1-23-380(5) of the

South Carolina Code (Supp. 2011). This section provides that decisions of the administrative agency are reversible only if there is a finding that the 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.

The appellate review of an ALC order must be confined to the record. S.C. Code Ann. § 1–23–610(B) (Supp. 2011). Under section 1–23–610(B), the appellate court may affirm or remand the case for further proceedings. Additionally, the appellate court may reverse or modify the decision of the ALC for any reason articulated in section 1-23-610(B). The decision of the ALC should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law. *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles,* 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the [ALC] and is more than a mere scintilla of evidence." *Id.* at 605, 670 S.E.2d at 676.

ARGUMENTS

I. The Administrative Law Court's finding that the District's decision is erroneous in light of the substantial evidence in the record on appeal controls this Court's review of the issue.

a. The ALC's unappealed ruling, that substantial evidence does not support the District's revocation of PYA's charter based on PYA's alleged failure to meet general accepted standards of fiscal management, is an additional sustaining ground for affirming the Administrative Law Court's decision.

Appellant failed to appeal the ALC's holding that the District's decision is erroneous in light of the substantial evidence in the record on appeal. Therefore, this holding is the law of the case and should be affirmed on appeal.

Section 1-23-380(6) of the South Carolina Code enables the ALC to reverse the decision of an administrative agency for six separate and distinct reasons. Two such reasons include reversing agency decisions that are (1) erroneous in view of the reliable, probative and substantial evidence in the whole record or (2) arbitrary and capricious or characterized by an abuse of discretion or clearly an unwarranted exercise of discretion. § 1-23-380(6)(e)-(f). In its order reversing the District's decision to revoke PYA's charter, the ALC noted that PYA was raising three issues on appeal. (R. pp. 78-79). The ALC addressed PYA's second and third arguments on appeal under one section. Therein, the ALC agreed with both of PYA's separate arguments that "the District's decision was erroneous in light of the substantial evidence in the record, is arbitrary and capricious, and characterized by an abuse of discretion." (R. p. 79).

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 346,

692 S.E.2d 900, 903-04 (2010), reh'g denied (May 14, 2010). In the case of *Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 420 n. 1, 472 S.E.2d 253, 255 n. 1 (1996), the South Carolina Supreme Court explained that the two issue rule is applicable in situations not involving a jury. There, it explained:

> It should be noted that although cases generally have discussed the "two issue" rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts. For example, if a court directs a verdict for a defendant on the basis of the defenses of statute of limitations and contributory negligence, the order would be affirmed under the "two issue" rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Id.

In its brief to this Court, the District raised only one issue: "Was the Administrative Law Court justified in its conclusion that the School District had acted in an arbitrary and capricious manner and exercised abuse of discretion when it revoked the charter of PYA?" (App. Br. pp. 3, 4-10). The District did not appeal the ALC's ruling that the substantial evidence in the record on appeal did not support a finding that PYA was not in compliance with generally accepted standards of financial management. On this issue the ALC determined that "there is no statute or regulation that defines what constitutes generally accepted standards of fiscal management." (R. p. 80, lines 19-20). Furthermore, the ALC found that: "Although the School District argues that failure to complete an independent audit would constitute failure to meet generally accepted standards of fiscal management, the School District's own actions prevented-or at a minimum, hindered-Appellants' ability to ensure that an independent audit was completed." (R. p. 80, lines 21-24).

Therefore, this Court should affirm the decision of the ALC based on its unappealed finding that the District's decision to revoke Respondent's charter is not supported by the substantial evidence in the record on appeal. Consequently, a consideration of whether the District acted in an arbitrary and capricious manner and exercised abuse of discretion when it revoked the charter of PYA is not necessary. However, to the extent this Court deems it necessary to consider, the ALC's decision should be affirmed.

b. If reviewable, the ALC correctly found that the District's ruling that PYA failed to meet generally accepted standards of fiscal management was erroneous in light of substantial evidence in the record.

The District determined that PYA failed to meet generally accepted standards of fiscal management. There is no statutory nor regulatory definition of what constitutes "generally accepted standard of fiscal management." Further, there is no evidence that the funds appropriated to PYA were used for purposes other than those for which they were allocated. The District claims that a failure to perform an external audit would constitute failure to meet generally accepted standards of fiscal management.[3]

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[3] In its brief, the District maintains that the ALC reverses itself by holding that the District had the right to revoke PYA's charter based on section 59-40-110 (C)(3) but then reverses itself by holding that the District's actions were arbitrary, capricious, and characterized by an abuse of discretion. (*See* App. Br. p. 9). Such statements are nothing more than red herrings. In its order addressing Appellant's first argument on appeal to it, the ALC noted that the District had the ***authority*** to revoke PYA's charter under section 59-40-110(C)(3), distinguishing it from subsection (1) of 59-40-110(C) which authorizes a sponsor to revoke a charter when a school commits a material breach of its charter. As outlined in section 59-40-110(C) and reiterated by both parties, a sponsor may revoke a charter for four separate reasons. There is a clear distinction between authority to take action and evidence or legal standards to support a decision based on that authority or ability. Thus, by finding that the District's decision was supported by neither substantial evidence in the record nor a legal standard, the ALC was not "splitting the baby" but determining as a matter of law that the District erred in acting on its statutory authority.

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

To put the financial history into perspective, during its first two years of existence, PYA forwarded the District a breakdown of all its financial allocations and disbursements. (R. pp. 14, 69-73). After receiving PYA's financial allocations and disbursements, the District included PYA's financials in their audit to the SDE without any criticisms or consequences. (R. p. 14, lines 203-212). The District became concerned with PYA's submission of its financial statements only after the District received an unfavorable review in its audit for the fiscal year 2008-2009.

When PYA forwarded the District its financial allocations and disbursements in 2009, the District refused to accept its submissions and claimed PYA was required to perform an independent audit. In response, PYA informed the District of its understanding that it was not required to perform an independent audit because it receives less than Five Hundred Thousand ($500,000) Dollars in funding. (R. p. 43, line 1489 – p. 44, line 1528). PYA then forwarded a letter dated March 31, 2009, from the SDE wherein the SDE communicated to PYA that it was not required to undergo an independent audit. (R. pp. 43-44, 56-57). The District then contacted the SDE, and the SDE confirmed that it sent PYA incorrect information in error. (R. p. 44 line 1521 – p. 45, line 1538). At that time it was too late for the PYA to complete an audit.

Additionally, for a small school that functions on a stringent budget, generating fifteen to twenty thousand dollars to complete an audit in the middle of the year is a difficult mission.

The District then took it upon itself to perform the audit by cutting Ten Thousand ($10,000.00) Dollars in funds that were allocated to PYA and paid Elliot Davis, without consulting PYA, to perform the audit. (R. p. 19, lines 412-432). As indicated above, Elliot Davis claims it did not receive enough information from PYA and felt uncomfortable performing the audit but nevertheless failed to return the Ten Thousand ($10,000.00) Dollars given to it by the District from PYA's fund allocation. However once the District gave PYA's funds to a firm of its choice, the onus was on the District to ensure that the audit was performed. Accordingly, when Elliot Davis failed to perform an audit as required, it was due to the District's failure and not PYA's failure. In any event, the audit for PYA has now been completed by another firm, retained and paid for by PYA.

Therefore by failing to articulate what constitutes generally accepted standards of fiscal management and by assuming the responsibility to ensure the performance of the audit, the District cannot now criticize PYA for failing ensure that an independent audit be performed. (R. p. 45). In that regard, the Superintendent of the District could not cite to a statute or regulation defining "accepted standards of fiscal management." (R. p. 45, lines 1540-1557). Additionally, there is absolutely no evidence in the record that PYA has mismanaged the funds allocated to it to be used for educational purposes. On this issue, the ALC determined that:

> Elliot Davis concluded that [PYA] had commingled funds with another entity. However, had either Elliott Davis or the School District made even

> a cursory inquiry, they could have learned that [PYA] and the separate entity, Palmetto Youth Services, were one in the same. Thus, any concern regarding the possibility of commingling of [PYA]'s money with another entity was meritless.

(R. pp. 80-81). No evidence demonstrates that PYA failed to meet generally accepted standards of fiscal management, as properly found by the ALC. To the extent that "generally accepted standards of fiscal management" means completion of a yearly audit, it was actually the District who failed to complete the audit-the District removed Ten Thousand ($10,000.00) Dollars from PYA's funding, acquiring an auditor of its choosing, and failed to ensure that the audit was completed. Therefore, this Court should affirm the ALC's decision to reverse the District's decision to revoke Respondent's charter because it is unsupported by substantial evidence in the whole record.

II. The Administrative Law Court correctly determined that the District acted in an arbitrary and capricious manner and abused its discretion by revoking PYA's charter

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

Additionally, when the District deemed it was vital to retain an independent auditor, it used PYA's funds to retain a company of its choosing. Further, from the District's own admission, Elliott Davis only visited PYA to gather facts for the audit and failed to complete the audit but kept Ten Thousand Dollars in fees (PYA's funds) because it felt uncomfortable going forward with an audit. (R. p. 33, line 1041 – p. 34,

line 1092). Elliot Davis could have completed its task and given PYA a qualified audit; thus, the District's audit would have been unaffected. However, the District's retained auditor failed to complete the task that has now been completed by another auditor using the same documents that were provided to Elliott Davis. Unfortunately, due to the District's actions, PYA has now paid two auditors for one audit. To blame the school for a failure that emanates from the District's own actions is an abuse of discretion.

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp. v. S.C. Dept. of Health & Env't Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002) (internal citation omitted). Here, no statute or regulation defined "generally accepted standard of fiscal management." In other words, there was no objective test for PYA to either pass or fail. In fact, based on information provided to it from the SDE as well as its past dealing with the District, PYA's submission of financial information to the District met any applicable definition. Admittedly, the District revoked PYA's charter based on its receipt of an unfavorable review for its audit of the 2008-2009 fiscal year. Therefore, the District's decision was arbitrary and capricious because it was not based on an objective standard but was in response to an unfavorable audit it received. *See Peterson Outdoor Adver. v. City of Myrtle Beach*, 327 S.C. 230, 236, 489 S.E.2d 630, 633 (1997) *citing Schloss Poster Adv. Co. v. City of Rock Hill,* 190 S.C. 92, 2 S.E.2d 392 (1939) (finding city's denial of permit arbitrary because no objective standards guided the decision; instead, the decision was based on the unfettered will of the city); *see also Peterson Outdoor Adver. v. City of Myrtle Beach*,

327 S.C. 230, 236, 489 S.E.2d 630, 633 (1997) ("The CAB failed to apply any of the specific criteria of the CAB Ordinance in reaching its conclusion to deny the applications, thus rendering its decision arbitrary and an abuse of discretion."). Accordingly, the ALC correctly reversed the District's decision to revoke PYA's charter on the basis that it was arbitrary and capricious, characterized by an abuse of discretion, and clearly an unwarranted exercise of discretion. *See* 16 S.C. Jur. Appeal and Error § 124 ("Abuse of discretion means that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of a party, and therefore amounted to an error of law."); 16 S.C. Jur. Appeal and Error § 124 (the exercise of judicial discretion also will be disturbed if it deprives a party of a substantial right to which the party is entitled under the law).

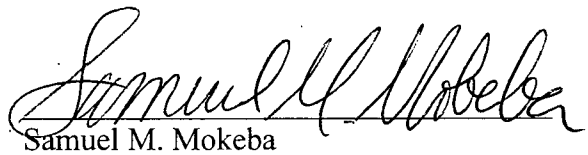
CONCLUSION

There are obvious reasons for there being a history of litigation between charter schools and school districts because districts allege that charter schools take funds away from them. Arguably, a school district is already biased well before an investigation of a school begins. Such biases could lead, and PYA believes in the instant matter did lead, to an arbitrary and capricious decision by the District.

There is currently no case law interpreting the statutory terms at issue here. Whether one is for or against the charter school movement, the South Carolina legislature clearly intended to support the alternative school choice based on the clear language in the statutes. Therein, the legislature stated that "the provisions of [the Charter School Act] ***should be interpreted liberally*** to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals,

and diversity of public education." S.C. Code Ann. § 59-40-30 (Supp. 2011) (emphasis added). PYA asks the court of appeals to carefully consider all the evidence in the record before it, or lack thereof, and uphold the ALC's decision.

For the reasons set forth herein, PYA hereby respectfully requests that this Court affirms the ALC's order.



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September 10, 2012.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINSTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No.: 10-ALJ-30-0631-AP
Court of Appeals Tracking Number: 212001

Palmetto Youth Academy Charter School, ...Respondent,

v.

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

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Ida M. Thomas, Legal Assistant to Samuel Mokeba, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served the below named attorney for Appellant with **Final Brief of Respondent** via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to the following address:

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Ida M. Thomas

September 11, 2012