

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

RECEIVED

Jan 28 2022

SC Court of Appeals

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Roger M. Young, Circuit Court Judge

Appellate Case No.: 2021-001414

Charleston Advancement Academy High School,

Appellant,

v.

South Carolina Public Charter School District,

Respondent.

**APPELLANT'S RETURN TO RESPONDENT'S
MOTION TO DISMISS**

TURNER & CAUDELL, LLC

Tyler R. Turner, S.C. Bar No. 78447
Mary Allison Caudell, S.C. Bar No. 101187

tturner@turnercaudell.com
macaudell@turnercaudell.com

914 Richland Street, Suite A-101
Columbia, South Carolina 29201
(803) 898-9708

MCKENNA SNYDER, LLC

Carolyn N. Flynn, Esq.
cflynn@mckennalawllc.com

350 Eagleview Blvd., Suite 100

Exton, PA 19341
(610) 524-8454

Attorneys for Appellant Charleston Advancement Academy
High School

Appellant, Charleston Advancement Academy High School (“CAA” or the “School”), by and through its undersigned counsel, hereby submits this Return to Respondent’s Motion to Dismiss filed on January 18, 2022.

I. INTRODUCTION

This case arises out of the actions of the South Carolina Public Charter School District (the “District” or “Respondent”) under the leadership of former Superintendent Elliott Smalley against Charleston Advancement Academy High School, a South Carolina public charter school with a mission to serve at-risk students and help them graduate from high school. On December 20, 2019, CAA filed a Complaint against the District asserting claims for breach of contract and violation of due process and seeking damages CAA incurred when the District wrongly usurped CAA’s statutory and contractual authority to govern the school. As mentioned in the District’s Motion to Dismiss, the District’s illegal actions caused \$859,142.41 in legal exposure to CAA to its former out-of-state, for-profit education management company, Acceleration Academies. CAA also filed a declaratory judgment claim seeking declaration of CAA’s statutory rights under South Carolina law.

On December 3, 2021, CAA filed this appeal of the Circuit Court’s Order granting the District’s Motion to Dismiss for errors of law pertaining to subject matter jurisdiction and the civil liability of the District. Although CAA does not agree with the Circuit Court’s finding that the South Carolina Administrative Law Court has exclusive jurisdiction over CAA’s claims seeking damages for breach of contract and violation of due process and a declaratory judgment, CAA simultaneously filed a proceeding in the South Carolina Administrative Law Court to assert those claims against the District should this Court determine the South Carolina Administrative Law Court has exclusive jurisdiction over CAA’s claims for damages and a declaratory judgement against the District. CAA is not seeking a review of the Circuit Court’s Order in the South Carolina Administrative Law Court.

The District's Motion to Dismiss this appeal should be denied because the Circuit Court's Order granting the District's Motion to Dismiss is a final decision that is ripe for review by this Court, and this Court has jurisdiction over CAA's appeal of the Circuit Court's Order.

II. PROCEDURAL AND FACTUAL BACKGROUND

CAA is a public charter school and a nonprofit corporation organized under the South Carolina Charter Schools Act of 1996 (the "Act") and the South Carolina Nonprofit Corporation Act (the "Nonprofit Act"), which is governed by an independent and autonomous Board of Directors. The District is a charter school sponsor, as defined in the Act, and created by the South Carolina Legislature in S.C. Code Ann. § 59-40-220.¹ The relationship between CAA and the District is governed by the Act, CAA's charter application, which constitutes an agreement between CAA and the District under Section 59-40-60(A) of the Act, and the charter contract between CAA and the District, which defines the rights and responsibilities of the school and the District.

CAA also entered into an agreement with Acceleration Academies, LLC ("AA") in which AA agreed to provide certain educational and operational services to CAA, including developing and implementing a security plan to ensure the safety of all students and personnel. The agreement between CAA and AA stated that "[i]n the event that a danger to student health, safety, or welfare exists, *at the sole discretion of [CAA], this Agreement may be terminated immediately.*" (emphasis added).

In or around October 2019, CAA's Board of Directors learned that AA failed to appropriately address and disclose to the CAA Board two dozen safety violations on CAA's

¹ In June 2021, the Legislative Audit Council released its review of the District in which it evaluated the District across several areas, including accountability, the District's relationship with the South Carolina Department of Education, and others. The Legislative Audit Council's review primarily focused on the District's performance under former Superintendent Elliott Smalley's leadership. The Legislative Audit Council identified several areas of concern and issued recommendations for the District. The Legislative Audit Council's report can be accessed here: <https://lac.sc.gov/reports/reports-agency-1-z/scpcsd-2021>.

campus, which CAA leased from Trident Technical College. CAA's Board met on October 31, 2019, and unanimously voted to accept a notice of termination submitted by AA and to immediately terminate CAA's contract with AA for just cause pursuant to Section 4.6(O) of its charter contract with the District. Section 4.6(O) of CAA's charter contract with the District required CAA's contract with AA to contain a provision that permits CAA to terminate its contract with AA immediately "where the health and safety of students is a concern." The charter contract between CAA and the District is attached as **Exhibit One**.

On November 14, 2019, CAA presented its proposed Charter Amendment Request removing AA to the District's Board of Trustees and outlined the steps the CAA Board had taken to replace the services previously provided by AA. At the conclusion of the presentations, the District's Board voted to "[d]eny amendment and to maintain status quo until CAA presents a plan showing [its] ability to immediately implement all activities in the charter with the District contract and EMO." Specifically, the District's Board demanded that AA continue operating at CAA despite the CAA Board's vote to terminate its contractual agreement with AA immediately for safety reasons.

Thereafter, CAA's Board began receiving threatening letters from the District's Superintendent and the District's Board Chair. Specifically, CAA received three letters between November 21, 2019 and December 5, 2019, attempting to impose sanctions short of revocation on CAA. The letters dated November 21, 2019, December 2, 2019, and December 5, 2019, are attached as **Exhibit Two**.

The District held a special-called meeting at CAA's request on December 13, 2019. At the meeting, the CAA Board requested the District's Board support the CAA Board's authority to exercise its statutory, contractual, and fiduciary responsibilities to govern the operation of CAA, avoid substantial disruption, ensure the safety and welfare of CAA's at-risk student population, and comply with the State of South Carolina's Safe Schools Climate Act. Additionally, CAA

asked the District's Board to affirm several statements regarding CAA's rights and responsibilities as a public charter school. Not only did the District decline to affirm any of the CAA Board's statutory and contractual rights, but the District mandated that AA continue providing services at CAA's campus, affirmed the District's purported authority over CAA's employment and contractual matters, and restated the District's intent to illegally withhold federal and state funding from CAA.

On December 20, 2019, CAA filed a Complaint against the District in the Charleston County Court of Common Pleas. CAA filed amended pleadings on January 23, 2020. The District filed its Motion to Dismiss CAA's Amended Complaint on February 13, 2020.

On October 26, 2021, a hearing was held on the District's Motion to Dismiss before the Honorable Roger Young. On November 3, 2021, Judge Young granted District's Motion to Dismiss based, in part, on the determination that the Circuit Court lacked subject matter jurisdiction to hear CAA's claims because the Legislature granted the Administrative Law Court exclusive jurisdiction to hear appeals of final decisions of a charter school sponsor. Judge Young's Order dismissing CAA's claims for damages is attached as **Exhibit Three**. On December 3, 2021, CAA filed this appeal of the Circuit Court's Order. Although CAA does not agree with the Circuit Court's finding that the South Carolina Administrative Law Court has exclusive jurisdiction over CAA's claims for breach of contract, violation of due process, and declaratory judgment, CAA simultaneously filed a proceeding in the Administrative Law Court attempting to assert those claims against the District in an effort to preserve CAA's right to timely pursue those claims in the event our State's appellate courts determine the South Carolina Administrative Law Court has exclusive jurisdiction over CAA's claims for damages and a declaratory judgment. The District's Motion to Dismiss in this Court followed.² For the reasons set forth below, CAA respectfully

² The District filed a Motion to Dismiss CAA's proceeding in the Administrative Law Court one day after filing this motion. The District asserts as part of its basis for dismissal in the Administrative Law Court that the Administrative Law Court lacks jurisdiction to hear the matter.

requests this Honorable Court to deny the District's Motion to Dismiss.

III. STANDARD OF REVIEW

The right to appeal is a jurisdictional matter that an appellate court may determine as a matter of law. *Levi v. Northern Anderson Cty. EMS*, 409 S.C. 374, 379, 762 S.E.2d 44, 47 (Ct. App. 2014) (quoting *Dorothy J. Pierce Family Mineral Trust v. Jorgenson*, 816 N.W.2d 779, 781 (N.D. 2012); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856 (Ct. App. 2010)). A matter is ripe for appellate review when a court enters an order that discontinues the action. S.C. Code Ann. § 14-3-330(2)(a).

In considering a motion to dismiss under Rule 12(b)(8), the appellate courts apply the same standard of review as the circuit courts. *Capital City Inc. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). The appellate court may “determine whether there is another action involving the same parties, claims (or subject matter), and remedies as a matter of law.” *Id.* at 100, 674 S.E.2d at 528.

IV. ARGUMENT

CAA's appeal of the circuit court's order to dismiss its Complaint is properly before this Court and should be allowed to proceed.

A. The Matter is Ripe for Appellate Review By This Court.

CAA appeals the Circuit Court's Order granting the District's Motion to Dismiss CAA's Amended Complaint in its entirety. The Circuit Court erred in granting the District's Motion to Dismiss by incorrectly applying and interpreting applicable law. Specifically, CAA appeals the Circuit Court's finding that it lacked subject matter jurisdiction to hear CAA's breach of contract and due process claims for damages and CAA's claim for a declaratory judgment. CAA also appeals the Circuit Court's finding that a charter school sponsor may not be held civilly liable for its acts or breaches against a charter school that contracts with the sponsor. CAA argued these issues before the Circuit Court in opposing the motion to dismiss, and thus, has preserved these

issues for appellate review. The Circuit Court's Order dismissing CAA's Amended Complaint discontinued the action, which makes the matter ripe for appellate review. Accordingly, the District's Motion to Dismiss this appeal should be denied.

**B. The Matter Pending Before The Administrative Law Court
Between CAA And The District Should Not Preclude This Court
From Hearing This Appeal.**

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure permits dismissal of an action if "another action is pending between the same parties for the same claim." S.C. R. Civ. P. 12(b)(8). This Court has stated that Rule 12(b)(8) must be interpreted "narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate." *Capital City*, 382 S.C. at 106, 674 S.E.2d at 532.

After entry of the Circuit Court's Order dismissing CAA's claims, CAA timely appealed the Order to this Court for review. This Court is the only court with jurisdiction to hear appeals from the circuit court. *See* S.C. Code Ann. § 14-8-200(a). Specifically, CAA seeks review of the circuit court's rulings that it lacked jurisdiction over CAA's claims against the District and that the District is immune from being sued in civil court, among others.

Despite CAA's disagreement with the trial court's ruling that the South Carolina Administrative Law Court has exclusive jurisdiction over CAA's claims for breach of contract, violation of due process, and declaratory judgment, simultaneous with the filing of this appeal, CAA filed a Notice of Appeal of the District's actions asserting these claims in the Administrative Law Court to preserve its right to timely pursue such claims should this Court determine jurisdiction for CAA's legal claims exclusively lies with the Administrative Law Court. CAA did not appeal the Circuit Court's Order to the Administrative Law Court, as asserted by the District.

In reviewing the actions of the District with regard to CAA, the Administrative Law Court is limited to affirming, reversing, modifying, or remanding the District's actions. S.C. Code Ann.

§ 1-23-380(5). While the determination of the Administrative Law Court may have some impact on CAA’s breach of contract and due process claims, it cannot determine whether the District breached its contract with CAA or award damages. *See Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109, 115 (Ct. App. 2002) (“The question is not whether the permit would have been granted but whether Thomas Sand was damaged . . .”). Moreover, the Administrative Law Court may not reverse or modify a ruling of the circuit court. Because only this Court may review orders of the Circuit Court, the matter pending before the Administrative Law Court between CAA and the District should not preclude this Court from reviewing the Circuit Court’s Order dismissing CAA’s breach of contract and due process claims under Rule 12(b)(8), SCRCPP. Likewise, CAA should not be deemed to have waived its right to appeal by filing a matter with the Administrative Law Court to preserve its legal claims for breach of contract violation of due process and declaratory judgment under applicable statutes of limitations, pending appeal of the Circuit Court’s Order on subject matter jurisdiction. For these reasons, the District’s Motion to Dismiss should be denied.

V. CONCLUSION

For the reasons stated above, Appellant prays that this Honorable Court deny Respondent’s Motion to Dismiss.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: 

Tyler R. Turner, S.C. Bar No. 78447

Mary Allison Caudell, S.C. Bar No. 101187

tturner@turnercaudell.com

macaudell@turnercaudell.com

914 Richland Street, Suite A-101

Columbia, South Carolina 29201
(803) 898-9708

MCKENNA SNYDER, LLC

By: s/ Carolyn N. Flynn
Carolyn N. Flynn, Esq., Pennsylvania Bar No. 201238
cflynn@mckennalawllc.com

350 Eagleview Blvd., Suite 100
Exton, PA 19341
(610) 524-8454
Admitted *Pro Hac Vice*

Attorneys for Appellant Charleston Advancement Academy
High School

Other Counsel of Record:

Erik T. Norton, Esq., S.C. Bar No. 073860
erik@hmp-law.com
(803) 345-3353
Harrell Martin & Peace, PA
135 Columbia Avenue
Chapin, SC 29036
Attorneys for Respondent

January 28, 2022

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Roger M. Young, Circuit Court Judge

Appellate Case No.: 2021-001414

Charleston Advancement Academy High School,

Appellant,

v.

South Carolina Public Charter School District,

Respondent.

PROOF OF SERVICE

We hereby certify that we have served the Respondent, South Carolina Public Charter School District, the Appellant's Return to Respondent's Motion to Dismiss in the above-captioned matter by electronic mail and U.S. Mail on January 28, 2022 to the below-named parties at their address of record:

Erik T. Norton, Esq.
erik@hmp-law.com
Harrell Martin & Peace, PA
135 Columbia Avenue
Chapin, SC 29036

TURNER & CAUDELL, LLC

By: 

Tyler R. Turner, S.C. Bar No. 78447
Mary Allison Caudell, S.C. Bar No. 101187

tturner@turnercaudell.com
macaudell@turnercaudell.com

914 Richland Street, Suite A-101
Columbia, South Carolina 29201
(803) 898-9708

MCKENNA SNYDER, LLC

By: s/ Carolyn N. Flynn
Carolyn N. Flynn, Esq., Pennsylvania Bar No. 201238
cflynn@mckenalawllc.com

350 Eagleview Blvd., Suite 100
Exton, PA 19341
(610) 524-8454
Admitted *Pro Hac Vice*

Attorneys for Appellant Charleston Advancement
Academy High School

Columbia, South Carolina
January 28, 2022

EXHIBIT ONE

Charter School Contract

Section One: Introduction and Recitals

*This Contract is made and entered into between **Charleston Acceleration Academy** (the "School"), a public charter school organized as a nonprofit corporate entity, and the **South Carolina Public Charter School District** (the "Sponsor"), from which the School requested its Charter and which granted approval for the School's Charter. School and Sponsor may be collectively referred to as the "Parties."*

- 1.1 Reference to the South Carolina Charter Schools Act.** *WHEREAS, the South Carolina General Assembly has enacted the South Carolina Charter Schools Act, S.C. Code Ann. §§59-40-10, and following, for certain purposes as enumerated in S.C. Code Ann. §59-40-20.*
- 1.2 Reference to the submission date of the charter application.** *WHEREAS, on February 1, 2017, an Application was submitted by the planning committee of the School for formation of a public charter school as a school of the Sponsor.*
- 1.3 Reference to approval date.** *WHEREAS, on May 20, 2017, the Sponsor approved the School's charter application and granted the School a charter ("Charter") for an initial term of ten years; NOW THEREFORE, in consideration of the foregoing recitals and the mutual understandings and covenants contained herein, the Parties agree as set forth below.*
- 1.4 Reference to previous agreement(s).** *The Charter and the Charter application along with all attachments and exhibits thereto, as may be amended by written agreement of the Parties, are incorporated into this agreement by reference.*

Section Two: Establishment of School

- 2.1 Term.** *In accordance with S.C. Code Ann. §59-40-110(A), the term of the Charter is ten years, beginning on July 1, 2017. This Contract is effective as of the date of execution and shall terminate on June 30, 2027, unless terminated sooner pursuant to Section 12.3, 12.4, or 12.5 of this Contract.*
- 2.2 Legal status.** *The School is incorporated as a South Carolina non-profit corporation. The School shall continue to operate as a South Carolina non-profit corporation during the term of this contract and shall assure that its operation is in accordance with its articles of incorporation and by-laws. The School shall notify the Sponsor promptly of any change in its corporate status.*

The School is organized and maintained as a separate legal entity from the Sponsor for all purposes of this Contract. Pursuant to S.C. Code Ann. §59-40-40 (4), the Sponsor is the School's Local Education Agency (LEA) and the School is a school within that LEA. As such, unless otherwise provided in the Charter School Act, the School is exempt from all provisions of state law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations. Notwithstanding the above, the School must comply with all Sponsor policies and procedures,

as amended from time to time consistent with state law, the Charter and this Agreement, as well as all federal statutes and regulations applicable to public schools.

- 2.3 Pre-opening conditions.** *In order to operate during the 2018-2019 school year, the School must satisfy all of the Pre-Opening Conditions within the timelines set forth in the attached Pre-Opening Conditions Checklist, which is incorporated herein by reference. In addition, the School must participate in a pre-opening/preparedness visit by SCPCSD staff to assist with determination of the School's readiness to open. These timelines may be modified only by written agreement of the Parties.*

The Parties agree that failure to comply with the conditions and timelines outlined in the Pre-Opening Conditions Checklist or failure to participate in the pre-opening visit constitutes a material breach of the Agreement and is grounds for revocation of the Charter.

Section Three: Sponsor/School Relationship

3.1 Sponsor responsibilities, roles, powers, and performance expectations.

Pursuant to S.C. Code Ann. §59-40-40 (4), the Sponsor is the School's Local Education Agency (LEA) and the School is a school within that LEA, in accordance with the South Carolina Charter School Act of 1996.

A. Oversight and monitoring. *In accordance with S.C. Code Ann. § 59-40-55, the Sponsor shall:*

- i. adopt national industry standards of quality charter schools and shall authorize and implement practices consistent with those standards;*
- ii. monitor, in accordance with the terms of the Contract, the performance and legal/fiscal compliance of the School to include collecting and analyzing data to support ongoing evaluation according to the Contract;*
- iii. conduct or require oversight activities that enable the Sponsor to fulfill its responsibilities outlined in the law, including conducting appropriate inquiries and investigations, only if those activities are consistent with the law, adhere to the terms of the contract, and do not unduly inhibit the autonomy granted to public charter schools;*
- iv. collect in accordance with S.C. Code Ann. 59-40-140(H), an annual report from the School and submit the report to the South Carolina Department of Education (SCDE) by the date set forth by the SCDE;*
- v. notify the School of perceived problems when its performance or legal/fiscal compliance is unsatisfactory and provide a reasonable opportunity for the school to remedy the problem, unless the problem warrants immediate revocation and revocation timelines apply;*
- vi. take appropriate actions and exercise sanctions short of revocation in response to deficiencies in School performance or legal/fiscal compliance. These actions or sanctions may include requiring the School to develop and execute a corrective action plan within a specified timeframe;*
- vii. determine whether the School's Charter merits renewal, non-renewal, or*

revocation; and

- viii. *permanently close the School at the conclusion of the school year should the School receive the lowest performance level rating as defined by the federal accountability system for three consecutive years in accordance with 59-40-110(E).*

B. Access to records and right to review and inspect. *The Sponsor has the right to inspect and review all School records established and maintained in accordance with the provisions of this Contract, State Board of Education (SBE) policies and regulations, and federal and state statutes, laws and regulations. The School has a duty to cooperate in making such School records and other information available in a timely manner upon request from the Sponsor. School records shall be open to inspection and review at no cost to the Sponsor and notwithstanding whether the School paid for the records or data included in the records. No formal request, including but not limited to requests pursuant to the Freedom of Information Act (FOIA) or the Family Educational Rights and Privacy Act (FERPA), shall be required. Sponsor is an authorized user of all student records, including but not limited to all documents covered by FERPA. Information that must be made available for review and inspection includes, but is not limited to, the following:*

- i. *School records including but not limited to student cumulative files, policies, and files related to special education and related services;*
- ii. *Financial records;*
- iii. *Records related to School's educational program including but not limited to curriculum, testing, discipline, special education, student life, extracurricular activities and the like;*
- iv. *Personnel records, including but not limited to evidence of credentials and qualifications;*
- v. *Evidence that criminal background checks of all school personnel have been conducted prior to hiring;*
- vi. *School's operations, including, but not limited to, health, safety and occupancy requirements; and*
- vii. *The Sponsor may make announced or unannounced visits to inspect the facility, interview personnel, or otherwise fulfill its oversight responsibilities.*
- viii. *Sponsor shall ensure the privacy and protection of all the records and information made available pursuant to this section, including but not limited to, private student information protected under FERPA. School acknowledges that Sponsor has a legitimate educational interest in the records and information of students enrolled at School.*

C. Access to data and information. *The Sponsor shall timely provide the School with access to any data and information pertaining to the School that it receives from the State or other sources, including but not limited to test scores, federal and state accountability data, special education data, student enrollment data, and funding information.*

3.2 School responsibilities, roles, powers, and performance expectations

The School must fulfill all duties and may exercise all powers as set forth in S.C. Code Ann. §59-40-50(B), which is incorporated herein by reference. As part of fulfilling its duties and in order to enable the Sponsor to carry out its oversight and monitoring responsibilities, the School agrees to the following:

- A. **Records.** *The School agrees to comply with all federal, state, and Sponsor record-keeping requirements including those pertaining to students, governance, and finance. This includes maintaining up-to-date information about enrolled students in the Sponsor's student information system (SIS). In addition, the School shall ensure that records for students enrolling in other schools are transferred in a timely manner. Financial records shall be posted in accordance with the South Carolina Accounting Handbook, the Funding Manual, and the South Carolina Audit Guide published by the SCDE and reconciled at least monthly.*

- B. **Access to records.** *The School shall maintain all records, including but not limited to those referenced in this Section and Section 3.1(B) of this Contract, at the School. School records shall be open to inspection, audit and review upon request by Sponsor and at no cost to Sponsor (except for the reasonable cost of copying if required by Sponsor), and except as may be limited by applicable state and federal laws, statutes and regulations.*

- C. **Notification provided to the Sponsor.** *The School shall as soon as reasonably practical, and in no event longer than ten days, provide written notice to the Sponsor (and other appropriate authorities) in the following situations:*
 - i. *The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law;*
 - ii. *Any complaints filed against the School by or with any governmental agency or in any court of law;*
 - iii. *Conditions that may cause it to vary from the terms of this Contract, applicable Sponsor requirements, federal, and/or state laws, statutes, and regulations;*
 - iv. *Any circumstance requiring the lockdown of the School or the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the School facility;*
 - v. *The arrest of any members of the board of the School or School employees for a crime punishable as a felony or any crime related to the misappropriation or theft of funds;*
 - vi. *Misappropriation of funds;*
 - vii. *An alleged default on any obligation, which shall include debts for which payments are past due by sixty (60) days or more;*
 - viii. *Any change in its corporate status with the South Carolina Secretary of State's Office as a non-profit corporation;*
 - ix. *Any material change in insurance coverage;*
 - x. *Any change to the membership of the board or any changes to officers and*

directors;

- xi. *Any change to school administration; and*
- xii. *Any changes in the by-laws of the nonprofit corporation.*

- D. Academic achievement.** *In accordance with S.C. Code Ann. §59-40-111(F), the School, as an Alternative Education Campus (AEC), shall be held to all applicable state and federal accountability standards along with the performance standards and expectations as defined in the Charter and Contract, as measured by performance frameworks or similar models as may be adopted by the Sponsor which take in to account the School's specialized mission and student population with comparisons to any nationally normed data with similar subsets of students and is included in the School's annual report, and school report card as compiled by the Education Oversight Committee. In accordance with SBE Regulation 43-601, as may be amended from time to time, the school also shall demonstrate pupil achievement and progress towards the accomplishments of the School's achievement standards.*
- E. Indemnification.** *Pursuant to S.C. Code Ann. §59-40-60(F)(15) and SBE Regulation 43-601, the School shall assume the liability for the activities of the School and agrees to indemnify and hold harmless the Sponsor, its servants, agents, and employees from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property or otherwise that arises out of the act, failure to act, or negligence of the School, its agents and employees, in connection with or arising out of the activity of the School.*
- F. Insurance.** *The School must maintain liability insurance in accordance with S.C. Code Ann. §59-40-60(F)(16) and SBE Regulation 43-601. A current Certificate of Insurance shall be provided upon request by Sponsor.*
- G. Compliance reporting.** *As set forth in S.C. Code Ann. §59-40-50(B), the School shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all statewide public schools. Accordingly, the School shall timely provide to the Sponsor any reports necessary and reasonably required for the Sponsor to meet its oversight and reporting obligations. Required reports include, but are not limited to, those listed below and must be in the form required by Sponsor.*
- i. *The School shall annually provide the District with an Annual Report by December 31. In accordance with S.C. Code Ann. §59-40-140(H), the report shall include all information required by the Sponsor and/or the SCDE and shall include, at a minimum: 1) the number of students enrolled in the School from year to year; 2) the success of students in achieving the specific educational goals for which the School was established; 3) an analysis of achievement gaps among major groupings of students in both proficiency and growth; 4) the identity and certification status of the teaching staff; 5) the financial performance and sustainability of the School; and 6) School board performance and stewardship, including compliance with applicable laws.*
 - ii. *The School shall provide the District with a copy of its annual independent audit by the due date as determined by the Sponsor.*
 - iii. *The School shall maintain accurate and up-to-date student records in the SIS as determined by the Sponsor. Data supplied to the Sponsor shall fulfill all federal and state reporting requirements and deadlines. Data and documents submitted to the Sponsor shall be in formats compatible with those used by the Sponsor*

and approved by the Sponsor. The School shall employ or contract for appropriately qualified staff to maintain student records in the SIS. Said staff shall participate in data management training provided by the Sponsor and demonstrate competencies in data management as prescribed by the Sponsor.

- iv. *By June 15th of the first calendar year of operation and each subsequent calendar year, the School shall provide the Sponsor with a school calendar setting forth the days the School will be in session.*
- v. *By July 1st each calendar year, the School shall provide the Sponsor with its emergency/safety plan and submit the report required by the Department of Health and Environmental Control (DHEC) at the same time it is submitted to DHEC and in accordance with DHEC timelines.*

H. Electronic communications and data management systems. *The School shall adhere to the Sponsor's acceptable use policy to access Sponsor network resources.*

Section Four: Governance

- 4.1 Governance.** *The School's articles of incorporation and by-laws shall not conflict with the School's obligation to operate in a manner consistent with this Contract and the Charter. Similarly, the policies of the School's governing board shall provide for governance of the operation of the School in a manner consistent with this Contract and the Charter.*
- 4.2 Governing board.** *The School's governing board shall operate in accordance with the School's articles of incorporation and by-laws. The School shall ensure that the governing board membership is consistent with the requirements outlined in S.C. Code Ann. §59-40-50(B)(9). Additionally, the School, in accordance with S.C. Code Ann. §59-40-155(A), shall ensure that within one year of taking office, all persons elected or appointed as members of its board shall successfully complete an orientation program in the powers, duties, and responsibilities of a board member including, but not limited to, topics on policy development, personnel, instructional programs, school finance, school law, ethics, and community relations.*
- 4.3 Transparency.** *In accordance with S.C. Code Ann. §59-40-50(B)(10), both the School and its governing board shall be subject to the Freedom of Information Act. In addition, the governing board of the School shall notify the Sponsor in writing of any regular meeting of the board at least forty-eight (48) hours prior to the date on which such meeting is to occur and shall conduct all meetings consistent with the Freedom of Information Act. The School shall also ensure that its governing board adopts and strictly enforces a conflict of interest policy and that all board policies, meeting agendas, minutes, and related documents are readily available for public inspection.*
- 4.4 Conflict of interest.** *The School's governing board shall be required to adopt a conflict of interest policy and a code of ethics consistent with South Carolina Code of Laws, Chapter 13, Title 8. The conflict of interest policy and the code of ethics must provide that an individual is prohibited from serving as a member of the charter school board of directors if: (i) the individual, an immediate family member, or the individual's partner is a full or part owner or principal with, or employee of, a for-profit or non-profit entity or independent contractor with whom the charter school contracts, directly or indirectly, for professional services, goods, or facilities; or (ii) an immediate family member is an employee of the School.*
- 4.5 Parental, educator, and community involvement.** *The School shall ensure parental, educator, and community involvement in accordance with the Charter. The School shall also ensure that its governing board consists of at least 50% of its members elected by parents and*

employees of the school as required by S.C. Code Ann. §59-40-50(B)(9).

4.6 Contracting with an Education Management Organization (EMO) or Charter Management Organization (CMO). *The School may contract with an EMO or CMO approved by the District board of trustees to provide certain services to the School. The School may do so provided that the Contract between the School and the EMO/CMO must be approved in advance by Sponsor and must comply with the following requirements:*

- A. *No provision of the EMO/CMO contract shall interfere with the charter school board's duty to exercise its statutory, contractual and fiduciary responsibilities governing the operation of the School;*
- B. *No provision of the EMO/CMO contract shall conflict with the School's Charter, this Contract, Sponsor policy at the time the EMO/CMO contract was entered into, or state and federal statutes, laws and regulations;*
- C. *The EMO/CMO contract shall not restrict the charter school board from waiving its governmental immunity or require a charter school board to assert, waive or not waive its governmental immunity;*
- D. *The EMO/CMO Contract must provide that all funds received by the school belong to the school and not the EMO/CMO;*
- E. *The EMO/CMO contract must provide that the financial, personnel, educational and student records pertaining to the School are the School's property, must be maintained or readily available in a timely manner (physically or virtually) at the School's physical location, and are subject to disclosure pursuant to the provisions of South Carolina's Freedom of Information Act;*
- F. *The EMO/CMO Contract must provide that any equipment, materials and supplies purchased by the EMO/CMO for use by School (excluding EMO/CMO equipment, materials, and supplies) are property of the School, and the EMO/CMO shall not charge any added fees or other costs related to procurement of such equipment, materials or supplies; provided however, that the School may lease equipment from the EMO/CMO or purchase equipment from the EMO/CMO on credit as long as any lease or credit arrangement is recorded as a liability in the School's accounting records.*
- G. *The EMO/CMO Contract must identify any curriculum or educational materials for which the EMO/CMO claims ownership or proprietary rights;*
- H. *The EMO/CMO Contract must include a provision identifying any deficit credits or other expenditure of funds that may be required to be repaid by the School as indebtedness by School to the EMO/CMO and that such deficit credits or funds to be repaid represent indebtedness by the School to the EMO/CMO and are not income to the School or to Sponsor;*
- I. *The EMO/CMO contract must not require the repayment of deficit credits as a condition of renewal, or promise to forgive deficit credits as a condition of renewal, and must provide that the issuance of deficit credits require the agreement of the School;*
- J. *The EMO/CMO Contract must state that the CMO is not a third party beneficiary of the Charter or the School's contract with Sponsor;*
- K. *The EMO/CMO Contract must provide that School's board will select and retain an independent accounting firm to perform an annual financial audit.*

- L. *The EMO/CMO Contract must require that all EMO/CMO records related to School be available to School's independent auditor and must require the EMO/CMO to cooperate with School's independent auditor.*
- M. *The EMO/CMO Contract must contain insurance and indemnification provisions outlining the coverage the EMO/CMO will obtain, which shall be separate from and in addition to the insurance purchased by School as set forth in the Charter Application and as required by S.C. Code Ann. § 59-40-190.*
- N. *The EMO/CMO Contract shall provide that the marketing plan provided by the EMO/CMO is approved by the Governing Board.*
- O. *The maximum term of the EMO/CMO Contract must not exceed the term of the Charter, and must provide that the EMO/CMO Contract automatically terminates upon revocation or termination of the Charter. The EMO/CMO Contract must contain a provision permitting the School to terminate the contract due to unsatisfactory performance by the EMO/CMO. The EMO/CMO Contract must also contain a provision permitting the School to terminate the contract on the grounds that School's governing board has determined that a superior curriculum-EMO/CMO alternative is available and such curriculum-EMO/CMO alternative has been approved by a proper amendment to the Charter and this Charter School Contract. The EMO/CMO Contract must provide that termination be made in a manner that is least disruptive to students and at least 90 days' notice must be provided prior to termination except where the health and safety of students is a concern. The EMO/CMO Contract shall not require advance notice of termination or non-renewal that exceeds 180 days' notice.*
- P. *The EMO/CMO must provide information to the Board regarding any loan or other financial arrangement, including the issuance of deficit credits, before the School incurs any financial obligation to the EMO/CMO, and the Board must present this information to the Sponsor for review.*
- Q. *The Governing Board must develop and implement an annual evaluation process by which School evaluates the EMO/CMO using specific academic performance measures aligned with the Charter, Sponsor policy and federal and state performance standards. The process must include methods for addressing unsatisfactory performance.*
- R. *The EMO/CMO Contract must include a provision requiring the School to maintain sufficient funds in its budget for at least the following: independent legal counsel, an independent auditor, and sufficient funds to hire staff or other consultants necessary to oversee the performance of the School.*
- S. *If the EMO/CMO is related by common ownership to an entity that owns or controls the facilities, the EMO/CMO Contract must include a provision that (1) provides a procedure to ensure that the amount paid for rent or to financing a facilities purchase is a fair market price throughout the life of the EMO/CMO Contract; (2) provides that any lease will include an option to purchase on terms that are competitive and fiscally advantageous to the School; (3) provides that the lease or purchase of the facilities may continue, at the School's option, beyond termination of the EMO's/CMO's services; and (4) provides for an appropriately competitive procedure for procuring any design or construction services related to the facilities.*

Section Five: Operation of School and Waivers

5.1 Operational powers. *The School must limit operations to activities within the scope of the*

mission set forth in its articles of incorporation and the Charter.

- 5.2 **Transportation.** *If providing or contracting for transportation, the School will comply with all state safety requirements for buses and all state safety and training requirements for drivers.*
- 5.3 **Food services.** *If providing or contracting for food services, the school will comply will comply with all applicable state health and safety requirements.*
- 5.4 **Rehabilitation and Related Services.** *[Not Applicable]*
- 5.5 **Waivers.** *[Reserved]*

Section Six: School Enrollment and Demographics

- 6.1 **School grade levels.** *In accordance with its Charter, which is expressly incorporated by reference, the School will serve students in grades 9-12 for its first year of operation and for the remainder of its charter. The School shall not be permitted to modify the grade levels it serves without prior written approval of the Sponsor.*
- 6.2 **Student demographics.** *School demographics are expected to be similar to that of the local school district in which the School is located or of the targeted student population as set forth in the Charter, differing by no more than twenty percent.*
- 6.3 **Maximum and minimum enrollment.** *The School may not exceed the projected enrollment as set forth in the Charter without express written permission of Sponsor. The Sponsor may limit enrollment to less than the projected enrollment amount based on available funding or school performance.*
- 6.4 **Eligibility for enrollment.** *The School has been granted the status of AEC pursuant to S.C. Code Ann. §59-40-111(A0(2). As an AEC, the School may limit enrollment to only those students it intends to serve, namely students with very specific educational and/or medical criteria covered by an individual education program. The School shall admit students in accordance with S.C. Code Ann. §59-40-111 and as permitted or required by state and federal statutes, laws and regulations.*
- 6.5 **Enrollment procedures, priority enrollment, and dates of the enrollment period.** *The School shall follow enrollment procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws and regulations. In accordance with S.C. Code Ann. §59-40-55(A)(10), the School shall notify the Sponsor of its enrollment procedures and dates of its enrollment period no less than sixty (60) days prior to the first day of each enrollment period.*
- 6.6 **Admission policies and procedures, including lottery procedures.** *The School shall follow the admission and lottery procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws, regulations, and Sponsor policy. Any decision to deny admission to a student may be appealed to the Sponsor, as set forth in §59-40-50(C)(1).*
- 6.7 **Discipline and expulsion procedures.** *The School shall follow discipline and expulsion procedures as set forth in the Charter and as permitted or required by state and federal statutes, laws, regulations, and Sponsor policy.*

Section Seven: Educational Program

- 7.1 Mission.** *The School's mission, as set forth in the Charter, is "to provide a comprehensive education to at-risk students which leads to students' attainment of a diploma, acceptance to college or pursuit of a career, and culminates in each student having positive impact in their community." The School's governing board shall operate the School in a manner consistent with the mission statement. Revisions to the mission statement or general implementation thereof shall be considered a material change to the Charter and Contract and shall require prior written approval of the Sponsor.*
- 7.2 Goals, objectives, and pupil achievement standards.** *The School shall meet the academic performance standards and expectations as defined in the Charter and Contract. Whether the School has met its goals, objectives, and pupil achievement standards, will be determined by the Sponsor's annual evaluation/review of the School, and the implementation of any performance frameworks implemented by the Sponsor and provided to School. The specific form, terms, indicators, metrics, measures, and targets, used in the performance framework and the Sponsor's annual evaluation/review of the School, which shall be disseminated by the Sponsor and will be binding on the School. In addition, components and requirements of the performance framework and annual evaluation/review may be modified or amended from time to time by the Sponsor as long as it is consistent with state law, federal law, the Charter and this Agreement. The Sponsor will solicit input from the School on the performance framework and its components.*
- 7.3 Description of the school's educational program.** *The School shall implement the educational program as outlined in the Charter.*
- 7.4 Curriculum.** *The School shall implement the curriculum outlined in the Charter. The School's curriculum shall meet or exceed any content standards adopted by the SBE and the Sponsor and shall be designed to enable each student to achieve these standards.*
- 7.5 Plan for evaluating pupil achievement and progress.** *The School shall evaluate pupil achievement and progress as outlined in the Charter. Pupil achievement and progress shall be evaluated by the Sponsor in accordance with the Sponsor's annual evaluation/review of the School, the implementation of any performance frameworks implemented by the Sponsor, and industry standards and practices.*
- 7.6 Graduation requirements.** *The School shall comply with state laws and regulations in order to meet requirements for students to earn a State-issued high school diploma.*
- 7.7 Education of students with disabilities.** *The School shall serve students with disabilities as required by state and federal statutes, laws, regulations, and Sponsor policies. The Sponsor is responsible for serving as the Local Education Agency ("LEA") as defined by state and federal statutes, laws and regulations. If, for any reason, it is determined by any competent authority (including but not limited to a duly constituted IEP Team as defined by the Individuals with Disabilities Education Improvement Act ("IDEA")), that the School is not capable of serving a student with disability as required by law, the Sponsor may enter into agreements with third parties, including other school districts, to provide services to the student at the School's expense; provided however, that in no event shall the School's expense exceed the amount of state and federal funds allocated to the school for the student being served by the third party.*
- 7.8 English language learners.** *The School shall provide resources and support to English language learners to enable them to acquire sufficient English language proficiency to progress academically. The School shall adhere to the Sponsor's procedures for identifying, assessing, and exiting English language learners.*

- 7.9 Homeless, Migrant and Foster Care Students.** *The School shall provide staff, resources and support to homeless, migrant and foster care students as required by Sponsor policy, state law and federal law.*
- 7.10 State Mandated Testing.** *The School shall ensure that all requirements for testing mandated by state or federal governments are met for each enrolled student.*

Section Eight: Financial Matters

- 8.1 Budget.** *The School must use the same budget codes as are required of school districts in the State. The budget shall be based on documented SCDE estimated revenues in accordance with the allocations in S.C. Code Ann. § 59-40-140(A)-(C). The School shall establish and maintain a positive ending net asset balance at the end of each fiscal year as evidenced in its audited financial statements as well as adequate operating reserves in order to avoid possible financial hardships. For purposes of calculating the net asset balance, deficit credits shall be included as a liability on the balance sheet of the School. When determining the reserve amount, the School shall take into account such factors as the School's mission and long-term strategy, current and future commitments and day-to-day operating costs. On or before April 30th of each year, the School shall submit to the Sponsor the School's proposed budget for the upcoming school year, with the School's final budget submitted to the Sponsor by July 31st.*
- 8.2 Audits.** *Pursuant to S.C. Code Ann. §59-40-50(B)(3), the School shall adhere to the same financial audits, audit procedures, and audit requirements as are applied to all other public schools. Sponsor may audit School records at any time. In addition, the School shall obtain at its expense and submit to the Sponsor an independent annual audit from a qualified auditing or accounting firm of all financial records. The audit and its findings shall be submitted in hard and electronic copy to the Sponsor by November 1 of each year for inclusion in the Sponsor's report to the SCDE. The School shall provide the Sponsor with contact information of the School's auditor (i.e. name, address, phone numbers and email address).*
- 8.3 Revenues.** *The School shall record revenues in accordance with the South Carolina Department of Education's Accounting Handbook and Funding Manual.*
- 8.4 Disbursement of per pupil revenue.** *The Sponsor shall provide 100 percent of the per pupil state revenues to the School minus the following: no more than two percent of the total state appropriations to cover the costs of overseeing the charter school, as provided by law, and deductions for purchased services and/or expenditures of the charter school that are paid at the Sponsor level.*
- A. *Pursuant to S.C. Code Ann. §59-40-140(B), the District shall receive and distribute state funds to the School as provided by the General Assembly on a monthly basis beginning in July of the School's fiscal year of operations.*
- B. *Pursuant to S.C. Code Ann. §59-40-140(C), the Sponsor shall during the School's fiscal year of operation, as received, and to the extent allowed by federal law, distribute to the School federal funds which are allocated to the Sponsor on the basis of the number of special characteristics of the students attending the School. These amounts must be verified by the SCDE before the first disbursement of funds.*
- C. *Pursuant to S.C. Code Ann. §59-40-140(D), the Sponsor shall distribute within 10 business days after receipt of federal or state categorical aid funds, the proportional share of each categorical fund for which the School qualifies unless the Board of Trustees has voted to revoke or non-renew the School or in any circumstance in which the District has been directed not to distribute the funds by another legislative, administrative or judicial body.*

- 8.5 **Enrollment projections.** *Material changes in the School's enrollment shall be reported to the Sponsor. Any adjustments to enrollment, other than those outlined in the Charter must be presented to the Sponsor for review and approval.*
- 8.6 **Liability.** *Pursuant to S.C. Code Ann. §59-40-190, the Sponsor is not liable for any of the debts of the School.*
- 8.7 **Monthly and quarterly reporting.** *The School shall be responsible for entering a monthly upload of all financial transactions in the format prescribed by the Sponsor by the 10th day of the subsequent month and a yearly upload of the audited adjustments by November 15th. In addition, the School shall be responsible for submitting a quarterly financial statement in the format prescribed by the Sponsor by the 15th day of the month following the end of each quarter. The Parties agree that it is the responsibility of the Sponsor to use any financial information it obtains, including reports and audits, to monitor the fiscal condition and compliance of the school.*
- 8.8 **Non-commingling.** *Assets, funds, liabilities, and financial records of the School shall be kept separate from assets, funds, liabilities, and financial records of any other person, entity or organization.*
- 8.9 **Accountability.** *Financial Resources are to be allocated, expended, and accounted for in accordance with accounting practices specified in the Financial Accounting Handbook, Funding Manual, the Audit Guide, and the Pupil and Staff Accountability Manual.*
- 8.10 **Contracting, encumbrances and borrowing.** *Any contracts and/or leases entered into by the School, entered into after the date this contract is signed shall contain the following sentence: "No indebtedness of any kind incurred or created by the School shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the School shall involve or be secured by the faith, credit or taxing power of the State or its political subdivisions." The School shall not extend the faith and credit of the Sponsor to any third person or entity. The School acknowledges that it has no authority to enter into a Contract that would bind the Sponsor, and the School's authority to contract is limited by the same provisions of law that apply to the Sponsor. Unless otherwise agreed in writing by the Sponsor, each contract or legal relationship entered into by the School will include the following provisions: a) The contractor acknowledges that the School is not an agent of the Sponsor, and accordingly contractor expressly releases the Sponsor from any and all liability under this agreement. b) Any financial obligations of the School arising out of the agreement are subject to annual appropriation by the Sponsor.*
- 8.11 **Loans.** *No loans may be made by the School to any person or entity for any purpose.*
- 8.12 **Gifts and donations.** *Awards, grants or gifts may be accepted by the School and its governing body to the extent allowed by S.C. Code Ann. §59-40-140(F) and (G). The School shall report to the Sponsor in its annual audit report all gifts, donations, or grants it receives in accordance with S.C. Code Ann. § 59-40-50(B)(3) and §59-40-140(G).*
- 8.13 **Non-appropriation of funds.** *The Sponsor's funding obligations under this Contract will be from year-to-year only and will not constitute a multiple fiscal year direct obligation of the Sponsor. The Sponsor's obligation to fund the School will terminate upon non-appropriation of funds for that purpose by the General Assembly for any fiscal year, any provision of this Contract to the contrary notwithstanding. The Parties further agree that the Sponsor has not irrevocably pledged and held for payment sufficient cash reserves for funding the School at or*

above the current year per pupil allocation or for providing services described herein for the entire term of the Contract.

- 8.14 Inventory of fixed assets.** *The School shall arrange for an inventory of fixed assets, including furniture and equipment utilized by the school in its operations and including the identity of the owner of the furniture and equipment. The inventory shall include the purchase price and serial number of all fixed assets. The inventory shall occur annually. The School shall ensure that its lead administrator maintains the inventory on file in his/her office. The School shall provide a copy of the furniture and equipment inventory to the Sponsor's Finance Office for accounting purposes.*
- 8.15 Expenditure of Federal Program Funds.** *The School shall follow District, state and federal policies regarding the expenditure of federal program funds. The School shall operate its federal programs as required by the Office of Management and Budget (OMB) for federal award programs entitled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as the Super Circular) codified at 2 CFR 200.*

Section Nine: Personnel

- 9.1 Employee and contractor status.** *The School shall adopt and implement personnel policies to address, among other topics, the hiring, evaluation, and termination of employees, terms of employment and compensation consistent with the provisions of the Charter. All employees will be employees of the School, and not the Sponsor. All employees will be employees at will, subject to SBE Reg 43-601(III)(M). All employee discipline decisions will be made by the School. Other terms of the employment relationship shall be described in an Employee Handbook, as set forth in the Charter.*
- 9.2 Background checks.** *The School shall establish and implement procedures for conducting background checks (including a check for a criminal record) of all employees and contractors to the extent required by applicable law, rules, and regulations. No teacher or administrator with a criminal record that would ordinarily preclude such individuals from obtaining a teacher license or from public school employment will be employed at the School or contracted with to provide services at the School.*
- 9.3 Staff evaluation procedures.** *The School shall employ procedures for the evaluation of staff as outlined by the Charter and required by state and federal statutes, laws and regulations.*
- 9.4 Grievance and termination procedures.** *The School shall adopt the procedures for employment and dismissal of teachers set forth in its Charter application and consistent with the requirements set forth in SBE Regulation 43-601(III)(M). The School shall include language in any employee handbooks and teacher contracts providing that the provisions of Article 5, Chapter 25, Title 59 of the South Carolina Code (Teacher Employment and Dismissal Act) do not apply to the employment and dismissal of teachers at the School.*
- 9.5 Certification.** *In accordance with S.C. Code Ann. §59-40-50 (B)(6), the School shall hire or contract for at least one administrative staff member certified or experienced in the field of school administration. Pursuant to S.C. Code Ann. §59-40-50 (B)(5) and SBE Reg 43-601 II (H), the School's teachers of core academic areas shall be certified in their respective areas or hold a bachelor's or graduate degree in those areas.*
- 9.6 Non-discrimination.** *It shall be the policy of the School to make all decisions regarding recruitment, hiring, promotion, and all other terms and conditions of employment without regard to race, color, creed, religion, sex, national origin, age, disability, or other factors which cannot lawfully be the basis for an employment decision. The School shall follow all federal and state statutes, laws, and regulations regarding non-discrimination and enact specific policies and*

procedures consistent with those statutes, laws, and regulations. The School shall post on its website and any document it publishes for public consumption the name of the School employee to whom inquiries regarding the non-discrimination policies shall be made and the following notice: "The (name of the School) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups." For further information on federal non-discrimination regulations, including Title IX, individuals may contact the Assistant secretary for Civil Rights at OCR.DC@ed.gov or call 1-800-421-3481.

Section Ten: Service Contracts with the Sponsor

10.1 Direct costs. *Not applicable.*

10.2 Sponsor services. *Not applicable.*

Section Eleven: Facilities

11.1 Facility. *The School shall ensure that it maintains facilities in compliance with all applicable local, state, and federal laws and regulations, including but not limited to those relating to accessibility and student safety. The School shall satisfy all permit, life, safety, and inspection requirements of the SCDE/Office of School Facilities (OSF).*

11.2 Construction, renovation, and maintenance of facilities. *The School shall be responsible for the construction, renovation, and maintenance of the facilities in accordance with the latest edition of the South Carolina School Facilities Planning and Construction Guide. The School shall obtain prior approval of the OSF for all work to facilities. The School shall also obtain an inspection and the approval of the OSF before occupancy and use.*

Section Twelve: Charter Renewal, Revocation, Automatic Closure, and School-Initiated Closure

12.1 Renewal timeline and process. *Pursuant to S.C. Code Ann. §59-40-110 (B), the School shall submit a charter renewal application to its sponsor one hundred and twenty calendar days before the end of the school year for term of the charter contract. The Parties agree that this language in the statute regarding the timing of submissions of renewal applications is ambiguous and is insufficient for the Parties to determine when the Legislature intended for the application to be submitted. Therefore, the School agrees to submit its Renewal Application by January 1, 2027. Sponsor will provide written notice of its decision to revoke or not renew on or before March 1, 2027. The School may request a hearing with regard to a decision not to renew the Charter within fourteen (14) days of receipt of the notice of non-renewal. After receipt of a timely request for a hearing, the Sponsor shall schedule a hearing before taking final action. The Sponsor shall take final action to renew or not renew a Charter by the last day of classes in the last school year for which the charter school is authorized. If the School fails to submit the renewal application by January 1, 2027, then the School agrees that the Charter will expire on June 30, 2027, and the School will dissolve in accordance with Section 59-40-120 upon expiration of the Charter on June 30, 2027. The dates outlined in this section are subject to amendment to comply with any future statutory changes to the South Carolina Charter School Act of 1996.*

12.2 Renewal application content. *The renewal application must contain (1) a report on the progress of the School in achieving the goals, objectives, pupil achievement standards, and other terms of the initially approved charter application; (2) a financial statement that discloses the costs of administration, instruction, and other spending categories for the School that is understandable to the general public and that allows for comparison of these costs to other*

schools or other comparable organizations, in a format required by the SBE; and 3) any proposed material changes to the Charter or Contract to be implemented in the next ten year charter term. The format of the renewal application shall be provided to the School by the Sponsor at least one year before the renewal application is due or by the date prescribed by the Sponsor of the year in which the application is due. The Sponsor may modify this format, but shall not do so prior to seeking input from the School. Failure to submit a renewal application is deemed to be conclusive evidence that the School has agreed to closure.

- 12.3 Criteria for renewal, nonrenewal, and revocation.** *The Sponsor must revoke or not renew the School's Charter for any of the grounds provided by S.C. Code Ann. §59-40-110 (C), as they exist now, or may be amended. In accordance with S.C. Code Ann. §59-40-110(D), the Sponsor may summarily revoke the School's Charter if it determines that the School poses an imminent threat of harm to the health or safety of students, or both, based on documented and clear and convincing data.*
- 12.4 Criteria for automatic closure.** *S.C. Code Ann. §59-40-110(E) is not applicable to the School, as an AEC, so long as it serves fifty percent or more students with disabilities or is otherwise designated as an AEC. If the School is no longer an AEC, in accordance with S.C. Code Ann. §59-40-110(E), the School shall automatically and permanently close at the conclusion of the school year in which the School first becomes subject to automatic closure for receiving the lowest performance level rating as defined by the federal accountability system for three consecutive years. The determination of closure is final and the School does not have the right to a notice or a hearing if the criteria for automatic closure is met.*
- 12.5 Revocation/nonrenewal and hearing procedures.** *In accordance with S.C. Code Ann. §59-40-110(F), at least sixty days before not renewing or terminating a charter school, the Sponsor shall notify in writing the School board of the proposed action. The notification shall specify the grounds for the proposed action in reasonable detail. Pursuant to S.C. Code Ann. §59-40-110(H), the School board may request in writing a hearing before the sponsor within fourteen days of receiving notice of nonrenewal or revocation of the Charter. Failure of the School board to make a written request for a hearing within fourteen days must be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the School board of the hearing date. The Sponsor shall conduct a hearing before taking final action. The Sponsor shall take final action to renew or to revoke a Charter by the last day of classes in the last school year for which the charter school is authorized.*
- 12.6 School-initiated dissolution.** *Pursuant to S.C. Code Ann. §59-40-115, the School may terminate its contract with the Sponsor before the ten-year term of contract if both Parties agree to the dissolution. Should the School choose to terminate this Contract before the end of the Contract term, it may do so in consultation with the Sponsor at the close of any school year and upon written notice to the Sponsor given at least ninety days before the end of the school year. The School shall make every effort to provide notice of ten months to the Sponsor to allow families to take advantage of any available school choice enrollment dates.*
- 12.7 Return of property.** *Pursuant to S.C. Code Ann. §59-40-120, upon dissolution of the School, the School assets may not inure to the benefit of any private person. Any assets obtained through restricted agreements with a donor through awards, grants, or gifts must be returned to that entity. All other assets shall become the property of the Sponsor. Dissolution shall be deemed to occur as of the effective date of revocation or non-renewal as determined by the vote of the District Board, without regard to any appeal that may follow the District Board's vote.*

Section Thirteen: General Provisions

- 13.1 Entire agreement/amendments.** *This Agreement constitutes the entire agreement between the Parties and all prior representations, understandings, and discussions are merged herein and superseded and cancelled by this Contract. Pursuant to S.C. Code Ann. §59-40-60(C), a material revision of the terms of the contract between the School and the Sponsor may be made only with the approval of both Parties and must be documented in a writing signed by both Parties.*
- 13.2 Non-assignment.** *Neither party to this Contract shall assign or attempt to assign any rights, benefits, or obligations accruing to the party under this Contract unless the other party agrees in writing to any such assignment.*
- 13.3 Governing law and enforceability.** *This Contract shall be governed and construed according to the laws and regulations of the State of South Carolina, as amended from time to time. If any provision of this Contract or any application of this Contract to the School is found contrary to law, such provision or application shall have effect only to the extent permitted by law.*
- 13.4 No waiver.** *The Parties agree that no assent, express or implied, to any breach by either of them of any one or more of the provisions of this Contract shall constitute a waiver of any other breach.*
- 13.5 No third-party beneficiary.** *The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the Sponsor and the School. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Contract that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.*
- 13.6 Notice.** *Any notice required or permitted under this Contract shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgement of receipt) or three days after mailing when sent by certified mail, postage prepaid to the respective addresses set forth below. Either party may change the address for notice by giving written notice to the other party.*
- Notice to the Sponsor shall be sent to: Superintendent, South Carolina Public Charter School District, 3710 Landmark Drive, Suite 201, Columbia, SC 29204.*
- Notice to the School shall be sent to: Ms. Nadine Deif, Chair, Next Step, {insert mailing address}*
- 13.7 Severability.** *The terms of this Contract are severable. In the event that any of the provisions are determined to be unenforceable or invalid for any reason, the remainder of the agreement shall remain in effect, unless mutually agreed otherwise by the Sponsor and the School.*
- 13.8 Authority to enter into contract.** *The School expressly affirms that the signatories on its behalf who sign below have the authority to enter into this Contract on behalf of the School and that the board of directors of the School has duly approved this Contract. The School shall provide a copy of its written resolution to the Sponsor authorizing the School to enter into this Contract.*
- 13.9 Delegation.** *The School shall not delegate any of its rights, obligations, or responsibilities to any third party.*

Intending to be legally bound hereby, the parties hereby execute the foregoing Charter School Contract this ____12__ day of ____February____, 2018, with an effective date of _____.

Signed April 11, 2018 (CW)

2018.

<p>SOUTH CAROLINA PUBLIC CHARTER SCHOOL DISTRICT</p> <p>By: _____ _____</p> <p>Its: <u>Superintendent</u> _____</p>	<p>CHARLESTON ACCELERATION ACADEMY</p> <p>By: _____ Nadine Deif / <u>[Signature]</u></p> <p>Its: _____ Nadine Deif/ Chairperson _____ _____</p>
--	--

Attachment

Pre-Opening Conditions

EXHIBIT TWO



Superintendent:
Elliot Smalley

Board of Trustees:
John Payne, Chair
Cyndi Mosteller, Vice Chair
Kathleen Bounds, Secretary
Keith Callicutt, PhD
Kip D. Miller
Teresa Pope, PhD
Beth Purcell

November 21, 2019

Elizabeth Moffly
Board Chair
Charleston Acceleration Academy
North Charleston: Trident Tech Campus
7000 Rivers Avenue, Building 100
North Charleston, SC 29406

Dear Ms. Moffly,

I am writing in follow up to the SCPCSD's Board of Trustees ruling last Thursday, November 14, 2019. As you know, the SCPCSD Board of Trustees declined the CAA request to amend its Charter at last Thursday's meeting. The SCPCSD Board further required that CAA maintain the status quo regarding the services being provided at the school pending approval of a charter amendment by the SCPCSD Board that (1) addresses each of the services being provided by the EMO in the Charter and (2) submits a security plan approved by Trident Tech or makes other facility arrangements. The services provided by the EMO are set forth both in the Charter and in the contract between the school and the EMO. If a complete plan has been submitted by December 15, 2019, the charter amendment will be placed on the agenda for consideration at the January SCPCSD board meeting.

In addition to its current material non-compliance with the Charter, Staff believes that terminations of employees without cause and other changes to the programming and staffing at CAA violates the SCPCSD Board's requirement, as a sanction short of revocation, for CAA to maintain the status quo until an amendment is approved.

In order to add clarity to this requirement and avoid any further violations, the SCPCSD requires CAA to do the following as part of the sanction short of revocation in order to ensure the status quo is maintained:

1. SCPCSD staff must be included in any scheduling or CAA board meetings or subcommittee meetings so that SCPCSD staff may attend. Your charter contract requires that you provide 48 hours notice to the SCPCSD of any board meeting, and you have routinely failed to meet this obligation. Therefore, you must consult

with the SCPCSD as part of the scheduling process until a Charter amendment is approved. The SCPCSD contact for scheduling will be Taylor Fulcher, SCPCSD Chief of Staff at tfulcher@sccharter.org.

2. No CAA employee may be terminated without prior consultation with the SCPCSD. CAA employees may not be terminated without cause until the Charter is amended absent SCPCSD approval. Any employees terminated *without cause* after Thursday, November 14, 2019 must be reinstated and paid by CAA for any days missed. Any employees terminated after the November 14, 2019 board meeting and prior to this correspondence must be reinstated until the SCPCSD has been consulted to insure the dismissal was not in retaliation for participation at the SCPCSD board meeting and is not adversely impacting services to students.
3. No changes to the CAA education programming or day-to-day operations may be made, either in content or implementation, without prior approval in writing from the SCPCSD staff. Any changes made after Thursday, November 14, 2019 must be rescinded and the status quo as of Thursday, November 14, 2019 restored.
4. No changes to any service listed in CAA's contract with AA may be made without prior approval in writing from the SCPCSD staff.
5. No further distributions of state per pupil funding will be released to the school by the SCPCSD until a charter amendment is approved. The SCPCSD will release funds only for specific line item expenditures requested and approved by CAA through its current financial services vendor, Prestige Financial, upon approval by the SCPCSD. CAA must provide a list of all contested line items for the October and November 2019 Acceleration Academy invoices by November 26, 2019 as well as a list of any documentation it contends as missing, with a verification by Prestige Financial that such line items should not be paid and/or the requested documentation is needed for payment.
6. CAA staff members may not be prevented from communicating with the EMO.
7. This correspondence is to be distributed to all CAA staff members. Any violations of these terms should be reported directly to Taylor Fulcher, SCPCSD Chief of Staff at tfulcher@sccharter.org.

Finally, CAA has failed to respond completely to the SCPCSD request for information explaining how the board term of Amy Mims was shortened from two years to one year in accordance with either the CAA by-laws or South Carolina law. Other irregularities have been alleged regarding the appointments and/or elections of all board members with the exception of Ms. Deif. Therefore, **by December 15, 2019**, the SCPCSD requires that CAA submit:

1. A narrative description with citations to its own by-laws and South Carolina law setting forth the basis for shortening the term of Elizabeth Mims;

2. A narrative description of the election or appointment process for each current board member except Nadine Deif;

3. All documents related in any way related to the reduction of Ms. Mims' term, specifically including but not limited to any board meeting minutes, formal resolutions, contracts with third parties (not law firms) regarding the CAA board election process; by-law changes, notices, email correspondence by or between board members and email correspondence sent to or from any CAA board member and the Alliance and specifically excluding any correspondence or documents covered by attorney-client privilege or the attorney work product related to CAA's work with John Reagle or his law firm; along with all related documentary evidence such as meeting minutes, employee and parent notices, and any written advice or contract with the Alliance, supporting the proper election or appointment; and

4. All documents demonstrating that employees received proper notice as to the elections or appointments of all board members other than Ms. Deif.

This is the second request for supplemental information to support CAA's initial response to allegations that the CAA board is not properly constituted and its actions this Fall have been improper and/or *ultra vires*.

If you have any questions regarding this correspondence, I can be reached at 803-960-9670.

Best,

Elliot



Elliot Smalley, Superintendent, SCPCSD

cc: SCPCSD Board of Trustees

CAA Board of Trustees

CAA Staff

SCPCSD Staff

Erik Norton, Esq.

John Reagle, Esq.

Joey Wise, AA

David Sondstrom, Esq. AA

David Fuance, Prestige Financial



Superintendent:
Elliot Smalley

Board of Trustees:
John Payne, Chair
Cyndi Mosteller, Vice Chair
Kathleen Bounds, Secretary
Keith Callicutt, PhD
Kip D. Miller
Teresa Pope, PhD
Beth Purcell

December 2, 2019

Elizabeth Moffly
Board Chair
Charleston Acceleration Academy
North Charleston: Trident Tech Campus
7000 Rivers Avenue, Building 100
North Charleston, SC 29406

RE: Sanctions Short of Revocation

Dear Ms. Moffly,

I am again writing in follow up to the SCPCSD's Board of Trustees ruling on Thursday, November 14, 2019 and my correspondence from November 21, 2019. Despite multiple chances, CAA continues to disregard both the SCPCSD Board's directive and my clarifying instructions to you. As a result, the SCPCSD is left with no recourse but to issue sanctions short of revocation in accordance with the Charter Schools Act.

By way of example of CAA's non-compliant actions, since November 14, 2019, CAA has continued to make substantial changes to day-to-day programming without consulting with the District, including changes to the discipline policy that does not appear to be research-based or designed to effectively address either the security or academic concerns of CAA students. Further, CAA failed to include SCPCSD staff in scheduling a board meeting as directed, and then at that board meeting changed its school name and website without consulting with the District. Even though CAA still has not paid Acceleration Academies undisputed amounts owed for this academic year, AA hired Erin Franey after CAA terminated her to perform basic school functions such as assisting students with ACT applications and special education meetings/documentation. Interim data provided and District staff observations indicate that the actions of the CAA board are impacting student learning negatively. In addition, the failure to pay undisputed amounts owed to Acceleration Academies in a timely manner could impact CAA financially.

The SCPCSD believes that the actions of CAA's Board amount to a breach of its Charter, Contract, the South Carolina Charter Schools Act of 1996, and a breach of its fiduciary duty to

CAA. Further, pending the review of additional documentation provided, the actions of CAA's Board or individual board members may be considered *ultra vires* actions outside the scope of the CAA Board's authority or based on the illegal constitution of the CAA Board.

As a result, the SCPCSD issues the following sanctions short of revocation:

1. All actions of the CAA Board that have been implemented at CAA since November 14, 2019 shall be rescinded until and unless approved by the SCPCSD Board of Directors.
2. The SCPCSD will manage the Acceleration Academy contract until and unless the SCPCSD Board of Directors approves an amendment to the CAA Charter that will bring CAA into compliance with the Charter Schools Act.
3. Erin Franey is to resume all duties she held as of November 14, 2019. CAA is responsible for the costs associated with Ms. Franey pursuant to the CAA-AA contract. CAA is free to continue utilizing Bob Bohnstengel as a consultant, at its option and at its expense, but Mr. Bohnstengel may not exercise any authority over staff or students. Ms. Franey must communicate in a timely manner with Mr. Bohnstengel regarding any reasonable requests for information by Mr. Bohnstengel so that he can advise the CAA Board regarding needed changes to the CAA Charter.
4. If the CAA Board or Mr. Bohnstengel purports to fire any CAA staff member without written permission from the SCPCSD, Acceleration Academy may be authorized to hire the employee directly to perform the prior scope of services at CAA's expense in accordance with the CAA-AA contract.
5. The SCPCSD will manage the disbursement of CAA state and federal funds in consultation with Prestige Financial until and unless the SCPCSD Board of Directors approves an amendment to the CAA Charter that will bring CAA into compliance with the Charter Schools Act.
6. The CAA Board may not spend any further state or federal funds in its bank accounts without prior written permission from the District.
7. The CAA Board is not permitted to take any further action related to the operations of the school until it provides all information required in the November 21, 2019 letter and the SCPCSD Board of Trustees authorizes the CAA Board to take further action.

If you have any questions regarding this correspondence, I can be reached at 803-960-9670. The timing and remedy to this situation is entirely in your control, as was the decision to immediately terminate the AA contract. You were informed at the November 14 board meeting that the staff and board would act on a request to amend the charter as quickly as you could provide it to us. The SCPCSD Board has even had a special called board meeting on another school request since that time, but you have not yet even provided an amended charter with all AA services replaced for staff to review. Our offer to work with you expeditiously still stands, and we look forward to

your timely response to our request for information by December 15, 2019 as set forth in my letter to you dated November 21, 2019.

Best,

Elliot

A handwritten signature in black ink, appearing to read "E. Smalley". The signature is stylized with a long horizontal stroke at the beginning and a vertical stroke at the end.

Elliot Smalley, Superintendent, SCPCSD

cc: John S. Payne, Chairman, SCPCSD Board of Trustees
Erik Norton, Esq.
Taylor Fulcher, Chief of Staff, SCPCSD
Vashaunta Harris, COO, SCPCSD
Catherine Watt, Director of Charter Development, SCPCSD
John Reagle, Esq.
John Bohnstengel, CAA
David Fuanca, Prestige Financial



Superintendent:
Elliot Smalley

Board of Trustees:
John Payne, Chair
Cyndi Mosteller, Vice Chair
Kathleen Bounds, Secretary
Keith Callicutt, PhD
Kip D. Miller
Teresa Pope, PhD
Beth Purcell

December 5, 2019

Elizabeth Moffly
Board Chair
Charleston Acceleration Academy
North Charleston: Trident Tech Campus
7000 Rivers Avenue, Building 100
North Charleston, SC 29406

Dear Ms. Moffly,

It has been brought to my attention that you and other members of the Charleston Acceleration Academy (CAA) Board have been informing others that the letter dated December 2, 2019 from Superintendent Smalley issuing sanctions short of revocation is unenforceable. Please be assured that as Chairman of the South Carolina Public Charter School District Board of Trustees, I find it necessary to inform you that Superintendent Smalley has the full authority granted by this Board to issue the aforementioned sanctions short of revocation and expect your Board to adhere to any and all requirements set forth in the December 2, 2019 correspondence which have full force and effect.

I also find it imperative to reiterate to you and the CAA Board that the SCPCSD is now managing the Acceleration Academy (AA) contract with CAA until and unless the SCPCSD Board of Directors approves an amendment to the CAA Charter that will bring CAA into compliance with the Charter Schools Act. Additionally, the SCPCSD is now managing the disbursement of all CAA state and federal funds in consultation with Prestige Financial until and unless the SCPCSD Board of Directors approve the amendment mentioned above. The CAA Board is therefore precluded from spending any further state or federal funds in its bank accounts without prior written permission from the SCPCSD.

I remind you that the SCPCSD believes that the actions of CAA's Board amount to a breach of its Charter, Contract, the South Carolina Charter Schools Act of 1996, and a breach of its fiduciary duty to CAA. Further, pending the review of additional documentation provided, the actions of CAA's Board or individual board members may be considered *ultra vires* actions outside the scope of the CAA Board's authority or based on the illegal constitution of the CAA Board.

I strongly advise you to adhere to all requirements as set forth by the SCPCSD.

Sincerely,

A handwritten signature in cursive script, appearing to read "John L. Payne".

John Payne, Chair, SCPCSD Board of Trustees

cc: SCPCSD Board of Trustees
CAA Board of Trustees
CAA Staff
SCPCSD Staff
Erik Norton, Esq.
John Reagle, Esq.
Joey Wise, AA
David Sundstrom, Esq. AA
David Fuanca, Prestige Financial



Superintendent:
Elliot Smalley

Board of Trustees:
John Payne, Chair
Cyndi Mosteller, Vice Chair
Kathleen Bounds, Secretary
Keith Callicutt, PhD
Kip D. Miller
Teresa Pope, PhD
Beth Purcell

December 5, 2019

Nadine Deif
Charleston Acceleration Academy
North Charleston: Trident Tech Campus
7000 Rivers Avenue, Building 100
North Charleston, SC 29406

Dear Ms. Deif:

I received your letter dated December 6, 2019. Please allow me to summarize the situation as I perceive it. CAA terminated its contract with AA effective immediately without consulting the District and with no plan to replace the services of AA in place. This was a breach of CAA's charter. On November 14, 2019, the SCPCSD Board provided the CAA Board an opportunity to correct the breach rather than revoking the charter by presenting a plan to provide the services required by the CAA Charter to be provided by CAA. During the interim period, the SCPCSD Board required that the CAA Board maintain the status quo, making no changes to the programming at CAA without further permission from the SCPCSD. To date, CAA has failed to submit a plan to replace the services required to be provided by AA in the CAA charter and has blatantly disregarded the SCPCSD Board's requirement, as a sanction short of revocation, to maintain the status quo until the SCPCSD Board approves the plan to replace the services required to be provided by AA in the Charter. The SCPCSD has no position regarding the arbitration between AA and CAA, except to note that CAA still has not identified a single transaction it believes was improper by AA and Prestige has indicated it has the necessary backup at this point for the CAA board to approve (or disapprove) the transactions.

It is not debatable that CAA has failed to comply with the sanction short of revocation levied by both the SCPCSD Board and Staff, which has authority to issue such sanctions. Less than twenty-four hours after the November 14 SCPCSD Board meeting, CAA terminated Erin Franey without cause (though later purportedly amending the termination to be for cause), and then admitted to District staff that no one had been hired to complete the tasks within Ms. Franey's job scope. CAA then prohibited Ms. Franey from entering campus after AA hired her to perform the functions CAA was not, and then placed Dan Miller on administrative leave. As a result, CAA now has only one administrator when the Charter requires two certified administrators for the co-located campuses. On top of all of this, your letter is written on the letterhead of a school

not sponsored by the SCPCSD, indicating that perhaps you have changed the name of the school without permission and perhaps to a name that is not permissible at all. Your letter also identifies yourself as the board chair when the last information provided to the SCPCSD Board was that Elizabeth Moffly would be Board Chair as of mid-November. Even if Ms. Moffly resigned as board chair, it is unclear how you would be back in the position of Board Chair after just completing your term without any election. Given all of this, it is not clear whether you are writing on behalf of CAA, the CAA board of directors, or some other entity all together. It is also not clear whether you have the authority of the CAA board to take the actions on site that may result in further legal exposure to CAA and/or its board members by individual employees, students and the SCPCSD.

Your allegation that anyone at the District is “taking orders” from the EMO is untrue, insulting and defamatory. “Taking steps to continue its ongoing transition to local management,” which you admit to doing, is not maintaining the status quo. Instead, CAA’s actions are the very definition of altering the status quo to implement a plan without SCPCSD approval. Your claim that CAA was “confused” is not credible - no one at CAA has made any effort to consult with SCPCSD staff or this Board prior to implementing any of the unallowable changes, even after multiple letters from the District explaining that what you are doing is improper.

Your request for a special-called board meeting is granted. It will be held at 10:00 am Friday morning, December 13, 2019 at the District office. Every member of the CAA Board is expected to be present in person unless allowed to be in attendance by telephone or excused for good cause shown. If a CAA board member needs to be excused, he or she may contact me directly to discuss the situation. Mr. Bohnstengel may appear by telephone so that he can be present on campus, though I understand he regularly leaves to teach his college course anyway.

To reiterate, the CAA Board must operate the school exactly as it was operating as of November 14, 2019. The CAA Board is prohibited from preventing Acceleration Academies from performing its functions required by the Charter in any way. CAA may not prevent Erin Franey, Dan Miller or anyone else from accessing the property or student records to fulfill their job functions unless it is approved by the SCPCSD staff first. No other changes may be implemented to transition new plan unless the SCPCSD staff approves it first.

Finally, I want to be exceedingly clear on this point. There is no guarantee at all that the SCPCSD will approve the new plan that the CAA Board submits. The SCPCSD Board has never approved the CAA Board to locally manage the school without a management organization, and it is the CAA Board’s burden to prove to the SCPCSD Board that it should be entrusted to do so. Many questions remain about the program CAA’s Board is proposing to implement. The SCPCSD Board will carefully consider that program prior to allowing an amendment to implement a program that might be materially different than what was originally approved. In the meantime, SCPCSD is committed to ensuring that students continue to receive services and staff providing those services are compensated, regardless of which entity employs them.

I look forward to seeing you on Friday morning, December 13, at 10:00 am at the District office in Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Payne". The signature is fluid and cursive, with the first name "John" being the most prominent.

John Payne, Chair, SCPCSD Board of Trustees
jpayne@sccharter.org

cc: SCPCSD Board of Trustees
CAA Board of Trustees
CAA Staff
SCPCSD Staff
Erik Norton, Esq.
John Reagle, Esq.
Joey Wise, AA
David Sundstrom, Esq. AA
David Fuance, Prestige Financial

EXHIBIT THREE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Charleston Advancement Academy High)
 School,)

C.A. No. 2019-CP-10-6592

Plaintiff,)
)
)

ORDER

vs.)
)
)

South Carolina Public Charter School)
 District)

Defendant.)
)
)

This matter is before the Court on Defendant’s Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6). A hearing was held on this motion on October 2, 2021 via WebEx. Both Plaintiff and Defendant were represented by counsel at the hearing. After considering the written submissions of the parties and the arguments of counsel, Defendant’s Motion is **GRANTED** for the reasons set forth below.

LEGAL STANDARD

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* at 395, 645 S.E.2d at 247–48 (quoting Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

The proper procedure for raising lack of jurisdiction is to file a motion to dismiss. Woodard v. Westvaco Corp., 319 S.C. 240, 450 S.E.2d 392 (1995). In some circumstances, affidavits and

other evidence outside the pleadings may be considered in support of a motion to dismiss based on lack of jurisdiction. Swicegood v. Thompson, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020). However, in the present case, no affidavits or evidence outside the pleadings is needed.

DISCUSSION

Plaintiff Charleston Advancement Academy (“CAA”) is a public charter school. Defendant South Carolina Public Charter School District (“District”) is a sponsor of public charter schools. As a sponsor, the District granted a charter to CAA to operate as a charter school in South Carolina. The operations of CAA and District, and the relationship between them, is governed by the South Carolina Public Charter School Act of 1996, S.C. Code Ann. § 59-40-10 to -240 (the “Act”).

The Act requires the District to monitor and oversee operations of CAA for compliance with the Act and other state and federal laws. The Act requires the District to notify CAA of noncompliance, require corrective actions, issue sanctions short or revocation or revoke the CAA’s charter in certain situations.

CAA’s Amended Complaint asserts three causes of action against the District: (1) Breach of Contract; (2) Violation of Due Process; and (3) Declaratory Judgment. CAA alleges it incurred damages because the District made rulings against it that infringed on its authority to terminate a private management company with whom it contracted. The District asserts that the Act does not provide this Court jurisdiction over Plaintiff’s claims. By prior Order, this Court denied Plaintiff’s Motion for Temporary Restraining Order based on lack of jurisdiction. While the Order denying the Motion for Temporary Restraining Order is not binding in this circumstance, at least part of the reasoning in the Order is persuasive and equally applicable at the motion to dismiss stage.

Four sections of the Act bear directly upon District’s argument. First, Section 59-40-90 provides that a charter school may challenge any final decision of the District in the Administrative

Law Court. Second, Section 59-40-40(4) defines sponsors like the District as “Local Education Agencies” or “LEAs,” which are subject to oversight and authority of the State Educational Agency, the South Carolina Department of Education. See, generally, 34 CFR 76; 34 CFR 81. Third, Section 59-40-140 provides authority for the South Carolina Department of Education to fine District in certain circumstances if it withholds funds from a charter school. Fourth, Section 59-40-190(C) states that the District is immune from civil liability “with respect to all activities related to the charter school they sponsor.”

The four sections of the Act cited above preclude any possibility of jurisdiction in this Court. Section 59-40-90 provides exclusive jurisdiction to the Administrative Law Court for any challenge to a sponsor’s final decision by a charter school. Further, actions by the sponsor that are subject to federal grants or administrative processes of the State Department of Education are subject to the State Department of Education adjudicative processes, which would not be subject to challenge in this Court. Finally, the Act’s provisions immunizing sponsors from civil liability further indicate the Legislature’s intent to prevent sponsors like the District from being sued in civil court.

Therefore, I find that this Court lacks jurisdiction over the subject matter at issue in Plaintiff’s complaint. Because I find the Court does not have jurisdiction, the Court does not need to address the remaining grounds asserted in the Motion to Dismiss.

CONCLUSION

For all of the foregoing reasons and all reasons stated on the record at the hearing on this motion, the District’s motion is **GRANTED**, and Plaintiff’s Amended Complaint is **DISMISSED**.

IT IS SO ORDERED.

Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

November __, 2021.
Charleston, South Carolina.



Charleston Common Pleas

Case Caption: Charleston Advancement Academy High School VS South Carolina
Public Charter School District
Case Number: 2019CP1006592
Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2021-11-03 11:47:30 page 5 of 5