STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High School, Appellant, v. South Carolina Public Charter School District, Respondent.	Docket No. 21-ALJ-30-0506-AP **ORDER GRANTING MOTION TO DISMISS**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion to Dismiss (Motion) filed by the South Carolina Public Charter School District (District or Respondent) on January 18, 2022. This case originally came before this Court pursuant to an appeal filed by Charleston Advancement Academy High School (Appellant) on December 3, 2021. The District now moves to dismiss the appeal before this Court pursuant to Rule 38 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) on the following grounds: "(1) this Court does not have jurisdiction to hear an appeal from an order of the Circuit Court and (2) to the extent the Court does have jurisdiction, the appeal is untimely because it was filed more than two years after the decision by the District that is at issue." Appellant filed a Response to the Motion (Response) on January 28, 2022, in which it asserts the Motion "should be stayed until our State's appellate court(s) decide whether the South Carolina Administrative Law Court has exclusive jurisdiction over [Appellant]'s claims against the District for breach of contract and violation of due process, for which [Appellant] seeks damages, and [Appellant]'s claim for declaratory judgment relief." Thereafter, the District filed a Reply in Support of Motion to Dismiss (Reply) asserting that because Appellant clarified it was not appealing the Circuit Court Order, "the only remaining issue for the motion to dismiss is the timeliness of the appeal." Based upon my review of the parties' filings and arguments, I grant the Motion for the reasons discussed below.

BACKGROUND

Appellant is a public charter school and a nonprofit corporation organized under the South Carolina Charter Schools Act of 1996 (the Act), as amended, and the South Carolina Nonprofit Corporation Act of 1994 (Nonprofit Act), as amended. The District is a charter school sponsor, as defined by the Act, and created by the South Carolina General Assembly in section 59-40-220 of the South Carolina Code (2020). The District is governed by a volunteer board of trustees comprised of seven members. *See* S.C. Code Ann. § 59-40-230(A). Under the Act, an approved charter application and the subsequent contract between a charter school and District constitute a contractual agreement between the charter school and District. *See* § 59-40-60(A) & (B). Charter schools sometimes choose to contract with management companies, known as Education Management Organizations or EMO's, to provide certain services to the school. In this case, Appellant entered into an agreement with an EMO, Acceleration Academies, LLC (AA) in which AA agreed to provide certain educational and operational services to Appellant, including developing and implementing a security plan to ensure the safety of all students and personnel. Thereafter, Appellant became dissatisfied with the services of AA and terminated the management contract as of October 31, 2019. AA then filed for arbitration alleging wrongful termination on November 3, 2019.

On November 14, 2019, at a regularly scheduled public meeting, Appellant requested to amend its charter to remove AA. The District's Board of Trustees denied the amendment request and ruled that Appellant "must maintain the status quo regarding the services provided at the school pending approval by the SCPCSD Board of an amendment that (1) addresses each of the services provided by the EMO in the Charter and (2) submits a security plan approved by Trident Tech or makes other facility arrangements." The District's Board of Trustees reiterated its ruling in written correspondence to Appellant dated November 21, 2019, December 2, 2019, and December 5, 2019.

Afterwards, on December 20, 2019, Appellant filed a complaint against the District in the Charleston County Court of Common Pleas seeking an injunction and monetary damages. Appellant filed amended pleadings on January 23, 2020. Appellant then filed a Motion for Temporary Restraining Order. On February 13, 2020, the District filed a Motion to Dismiss Appellant's amended complaint. By Order dated February 26, 2020, Judge Bentley D. Price denied Appellant's Motion for Temporary Restraining Order on the basis that the Circuit Court did not have jurisdiction. Specifically, Judge Price ruled, "Section 59-40-90 of the [Charter] Act

requires any challenge to a final decision of the District be made to the Administrative Law Court." On March 16, 2020, the arbitrator found Appellant wrongfully terminated the EMO's contract and awarded AA damages in the amount of $859,142.41.[1]

Thereafter, on October 26, 2021, a hearing was held before the Honorable Roger Young on the District's Motion to Dismiss. Judge Young granted the District's Motion to Dismiss in an order dated November 3, 2021, based, in part, on the determination that the circuit court lacked subject matter jurisdiction to hear Appellant's claims because the ALC has exclusive jurisdiction to hear appeals of final decisions of a charter school sponsor. Appellant then filed a Notice of Appeal with this Court on December 3, 2021.[2] In its Notice of Appeal, Appellant began by stating it was appealing the actions of the District which began on November 14, 2019 but then later stated it was filing this appeal "pursuant to an Order by the Honorable Roger M. Young, Sr., in the Charleston County Court of Common Pleas dated November 3, 2021." The letters from the District's Board of Trustees dated November 21, 2019, December 2, 2019, and December 5, 2019, were attached as part of Appellant's Notice of Appeal in this Court but Appellant did not attach the Order by Judge Young.

DISCUSSION

This Court has subject matter jurisdiction to hear the appeal of a decision of the District. S.C. Code Ann. § 56-40-90 (2020) ("A final decision of the school district or a public or independent institution of higher learning sponsor may be appealed by any party to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D)."); S.C. Code Ann. § 1-23-600 (Supp. 2021); *see Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) ("Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." (internal quotation marks and citation omitted)). Thus, the issue remaining is the timeliness of Appellant's appeal.

Pursuant to SCALC Rule 33, the notice of appeal "shall be filed with the Court and a copy served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of receipt of the decision from which the appeal is taken." Additionally, section 1-23-

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[1] This arbitration award was affirmed by the United States District Court for the Western District of North Carolina, the Fourth Circuit Court of Appeals, and certiorari was denied by the Supreme Court of the United States.

[2] Appellant simultaneously filed a Notice of Appeal with the South Carolina Court of Appeals, which is still pending as of the date of this Order.

380(1) of the South Carolina Code (2021) provides "[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered." However, pursuant to SCALC Rule 3(B), "[f]or good cause shown, the administrative law judge may extend or shorten the time to take any action, **except as otherwise provided by rule or law."** (emphasis added).

The District argues Appellant's appeal should be dismissed because Appellant failed to seek judicial review within the required procedural timeframes. However, it is unclear what specific timeframe was contravened because the Notice of Appeal does not identify any decision of the District which is the subject of the appeal nor does it identify any date upon which it claims to have received the decision. Nevertheless, Appellant attached three letters from the District's Board of Trustees and, if any of these decisions are a decision or the decisions Appellant intends to appeal, the Notice of Appeal was filed nearly two years later, making it untimely. Moreover, Appellant admits it is appealing actions taken by the District in 2019; consequently, Appellant concedes that its Notice of Appeal is untimely.

Appellant nonetheless argues it had good cause for filing a Notice of Appeal against the District in this Court outside of the prescribed timeframes for three reasons.[3] First, the District did not issue a final decision that could be appealed to this Court under the Administrative Procedures Act. Second, section 59-40-90 of the Charter Schools Act of 1996 does not confer exclusive jurisdiction of all matters that may arise between a charter school and its sponsor to the Administrative Law Court, and further, by incorporating section 1-23-380 and section 1-23-600 by reference, does not preclude charter schools from pursuing other legal or equitable means of redress. Third, Appellant believed that its claims seeking damages for breach of contract and violation of due process and seeking a declaratory judgment were not "wrongs for which the administrative scheme was designed to redress." (quoting *Capital City Ins. Co., v. BP Staff, Inc.*, 382 S.C. 92, 103, 674 S.E.2d 524, 530 (Ct. App. 2009)).[4] For these reasons, Appellant asserts

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[3] Appellant also requests the Court stay this Motion until the appellate court determines if this Court has exclusive jurisdiction over its claims against the District. However, Appellant clarified in its Response that it is appealing the Circuit Court's Order to the South Carolina Court of Appeals, and not the actions taken by the District. Thus, the appellate court's determination has no bearing on the matter before this Court as it is reviewing whether the Circuit Court has jurisdiction to hear Appellant's claims.

[4] To the contrary, as a "court of record," the Administrative Law Court has the authority, within its respective jurisdiction, to determine a declaratory judgment action. *See* S.C. Code Ann. § 15-53-20 (2005) ("Courts of record

good cause exists for this Court to extend timeframe to file its appeal beyond the deadline described in SCALC Rule 33. The District argues the "statutory deadline for [Appellant] to file [its] appeal cannot be extended" and "[Appellant] wholly ignores the statute in its response." It further argues "even if [Appellant] could request to extend the filing deadline, it has failed to show good cause for missing the deadline."

Here, Appellant is appealing actions taken by the District in November 2019 but attaches three letters dated November 21, 2019, December 2, 2019, and December 5, 2019. No matter which letter Appellant was appealing, it was required to file its appeal with this Court at least in January 2020, thus making this appeal almost two years late.[5] *See* § 59-40-90; § 1-23-380(1); SCALC Rule 33. Importantly, Appellant concedes its Notice of Appeal is statutorily untimely but nonetheless requests that the Court extend the time period because it can show good cause for filing it untimely. However, Appellant is mistaken that SCALC Rule 3(B) can extend the time for filing a notice of appeal. Timely service of the notice of appeal is a jurisdictional requirement, and this Court does not have the discretion to extend the time to file the notice of appeal. *Hill v. S. C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended . . . ."). Indeed, it is well-established that an appellate body may not extend the time to appeal. *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011); *see also Burnette v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision

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within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."); S.C. Code Ann. § 1-23-500 (Supp. 2021) (The Administrative Law Court "is an agency and a court of record within the executive branch of the government of this State."). Furthermore, "[n]otwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for . . . equitable relief pursuant to Section 1-23-630." S.C. Code Ann. § 1-23-600(F) (Supp. 2021).

[5] The Court notes that it cannot determine whether these are final decisions by the District or if they are interlocutory orders. Section 1-23-380 provides "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a **final decision** in a contested case is entitled to judicial review pursuant to this article and Article 1." S.C. Code Ann. § 1-23-380. Indeed, "[a] fundamental rule of appellate procedure is that a judgment or order must usually be final before it can be appealed." *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 355 (Ct. App. 2004). As the United States Supreme Court has noted, "[p]ermitting piecemeal, prejudgment appeals, we have recognized, undermines 'efficient judicial administration' and encroaches upon the prerogatives of [lower] court judges, who play a 'special role' in managing ongoing litigation." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (citing *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981)). Neither party addressed this issue; nonetheless, because I find Appellant's appeal to be untimely, there is no need to address it.

of an administrative agency). The South Carolina Supreme Court has set forth that a court must dismiss an appeal where the appellant fails to serve a party with the notice of appeal in a timely manner. *See Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E. 2d 535 (1987) (applying the appellate court rules and dismissing the case for failure to timely the serve a notice of intent to appeal); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying the appellate court rules and finding a lack of jurisdiction for failure to timely serve a notice of intent to appeal). SCALC Rule 38 further provides, in relevant part, "[u]pon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals."

Because Appellant's appeal was untimely, this Court does not have jurisdiction over this case and the District's Motion must be granted. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.,* if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); SCALC Rule 38.

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED**, and that this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

February 10, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Perez
Judicial Law Clerk

February 10, 2022
Columbia, South Carolina