

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High School,

Appellant,

vs.

South Carolina Public Charter School District,

Respondent.

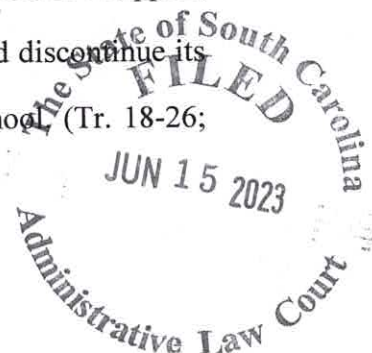
Docket No. 23-ALJ-30-0163-AP

**APPELLANT CHARLESTON
ADVANCEMENT ACADEMY HIGH
SCHOOL'S MOTION FOR A STAY AND
PETITION AND MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION
FOR A STAY**

Appellant, Charleston Advancement Academy High School, ("CAA" or "the School"), by and through its undersigned counsel, moves for a stay of the Final Decision of Respondent, the South Carolina Public Charter School District (the "District") Board of Trustees (the "District Board"), revoking CAA's charter effective June 30, 2023, until CAA's appeal of the District Board's Final Decision can be fully decided. The basis for CAA's motion for a stay is set forth herein.

I. STATEMENT OF THE CASE

CAA is an "Alternative Education Campus" as defined in § 59-40-111 of the South Carolina Charter Schools Act. (CAA Exh. 05, pp. 2, 11, 13, 42; Payne Tr. 97.) CAA is designed to serve a unique group of at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school. (CAA Exh. 05, pp. 3, 13; Payne Tr. 97; Combs Tr. 206.) CAA has fulfilled its mission and led approximately 200 at-risk students, who had previously dropped out of school or were at-risk of dropping out of school, to the attainment of high school diploma so that those graduates can better themselves and their community. (CAA Exh. 05, pp. 2, 4; CAA Exh. 37; Tucker Tr. 184; Combs Tr. 208.) If CAA is forced to close and discontinue its good work, many or most of CAA's students will likely not complete high school. (Tr. 18-26;



Combs Tr. 239-240.)

In October 2019, it was brought to the attention of CAA by the landlord of one of its campuses, Trident Technical Collage (“TTC”), that there had been numerous criminal incidents on CAA’s TTC campus during the immediately preceding weeks. (CAA Exh. 20, pp. 53-55; Combs Tr. 212-214.) TTC was so deeply concerned by the nature, severity, scope, breadth, and depth of the criminal activity on CAA’s campus – some of which included allegations of weapons, violence, narcotics, and sexual misconduct - it informed CAA that if the situation was not remedied, and quickly, CAA, would be evicted from TTC’s campus. (CAA Exh. 20, pp. 53-55; Combs Tr. 212-214.) Prior to being notified by TTC of this issue, the members of CAA’s Board were unaware of the situation. (Combs 212-214.)

At the time, CAA’s campuses were managed by an Education Management Organization (“EMO”), Acceleration Academies (“AA”) a private, out-of-state, Chicago-based, for-profit organization, whose job it was to develop and implement a security plan to ensure the safety of all students and personnel at CAA. (Combs 210-214.) Upon investigation, CAA quickly determined that AA was utterly failing at its job without apparent reason or justification, in that it was not implementing proper, if any, security on CAA’s TTC campus, thereby putting at substantial risk CAA’s students, faculty, and staff. (Combs 210-214.) Deeply concerned for the safety and welfare of its students, faculty and staff – as mentioned some of the criminal activity included alleged weapons, violence, and sexual misconduct - CAA confronted AA over the situation, whereupon AA promptly terminated its EMO contract with CAA effective 180 days later. (CAA Exh. 20, p: 57.) Nevertheless, because AA’s failure to provide property security and adhere to its contractual obligations was so egregious, because CAA’s concerns for the safety, welfare and security of its faculty, staff and students was substantial, and because AA seemed unrepentant over the situation, CAA terminated the EMO agreement with AA for cause effective immediately. (Combs Tr. 210-214.)

As required by its charter contract with the District (“Charter Contract”) and by State law, CAA submitted a charter amendment request to the District seeking to remove AA from CAA’s charter application. (CAA Exh. 01; CAA Exh. 05; CAA Exh. 06; Combs Tr. 217-218.) CAA’s charter amendment request was sscheduled to be considered by the District at its regular monthly meeting on November 14, 2019. (CAA Exh. 25 pp. 1-2; Combs Tr. 217-218.)

Unbeknownst to CAA until years later, on and potentially before November 12, 2019, while CAA was in the process of terminating AA for cause, AA’s founders and principals, Joseph Wise (“Wise”) and David Sundstrom (“Sundstrom”), and the District’s Superintendent and legal counsel, Elliot Smalley (“Smalley”) and Erik T. Norton (“Norton”), were secretly, surreptitiously, improperly, and illegally conspiring, plotting, and scheming (1) to have the District require CAA continue paying AA to manage CAA’s school against CAA’s will, despite AA’s failure to keep TTC and CAA students and staff safe on CAA’s campus, and (2) to assist AA to establish a new charter school in close proximity to CAA’s campus for the purpose of stealing CAA’s at-risk students and the tens of millions of public dollars that follow them, thereby destroying CAA. (CAA Exh. 20, pp. 57-58; Combs Tr. 220 – 222, 228-229, 238.)¹

Two days later, on November 14, 2019, the District Board considered CAA’s charter amendment request to remove AA from its charter application for cause immediately for student safety, health, and welfare concerns. (CAA Exh. 20 pp. 53-55; CAA Exh. 25, pp. 1-2; Combs Tr. 218, 238.) Shockingly (at the time), the District Board simultaneously heard a proposal from AA and Sundstrom and then directed CAA to “maintain the status quo,” which meant that the District required CAA to continue paying AA to manage CAA’s school against CAA’s will, consistent with and just as secretly planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 25, pp. 3-

¹ The first evidence of the conspiracy, scheme, and plot between Wise, Sundstrom, Smalley, and Norton is the November 12, 2019 email referenced herein. (CAA Exh. 20, pp. 57-58.) That said, exactly when the conspiracy began is unknown to CAA. It may have been on or around November 12, 2019, but it may well have begun before that. If this motion to stay is not granted, it is quite possible that no one but the participants in the conspiracy will ever know when the conspiracy commenced, what led to it, and what motivated each participant to participate in it.

6; Combs Tr. 219-220.) Almost immediately thereafter, Norton – seemingly without District Board approval – withheld CAA’s state funding in violation of the South Carolina Charter Schools Act expressly for AA’s benefit in connection with an upcoming arbitration dispute between CAA and AA related to CAA’s termination of AA. (CAA Exh. 24.) The District Board’s “maintain the status quo” directive on November 14, 2019, ultimately resulted in CAA being ordered to pay AA an additional \$859,142.41 in public funds in a North Carolina arbitration action between CAA and AA, just as Wise, Sundstrom, Smalley, and Norton planned and intended. (CAA Exh. 29; CAA Exh. 20, pp. 57-58; Combs Tr. 219-221, 238.)

In April 2020, the District approved a “fast-track” charter application for a new AA school (now known as “Lowcountry Acceleration Academy” or “LAA”) that would be located two miles from CAA’s campus, serve the same grade levels and at-risk students as CAA, and be perfectly positioned to steal CAA’s staff and students, just as Wise, Sundstrom, Smalley, and Norton secretly planned and intended. (CAA Exh. 31, pp. 3, 6-7; CAA Exh. 20, pp. 57-58; Combs Tr. 220-221; 230-233, 238.) A primary difference in how LAA and CAA operate is that LAA sends eighty-five percent (85%) of its revenue to AA, its EMO, founded and operated by Wise and Sundstrom, and CAA sends none of its revenue to AA, Wise, or Sundstrom. (CAA Exh. 31, p. 56; CAA Exh. 05, p. 4; Thom Tr. 148; Combs Tr. 234.) Over the last three and a half years, Norton and others have acted repeatedly to redirect CAA’s students and public funds to AA, for the benefit of Wise and Sundstrom, as described more fully herein.²

A charter school’s revenue is generated by the charter school’s student enrollment. (CAA Exh. 01; Thom Tr. 136; Combs Tr. 221-222.) When the 2022-2023 school year began, AA’s new charter school that was set up to steal CAA’s students, LAA, was hundreds of students short of the enrollment projections in LAA’s charter. (CAA Exh. 20, pp. 57-58; CAA Exh. 31, p. 103; Thom

² Wise and Sundstrom reportedly have a long history in South Carolina and in other states of compensating individuals who can influence the expenditure of public funds in their favor or in favor of their entities, which include Education Research and Development Institute (ERDI) and Atlantic Research Partners (ARP). (CAA Exh. 30, Combs Tr. 222-229.)

Tr. 146; Tucker Tr. 193; Combs Tr. 233.) Therefore, LAA's revenue was far less than anticipated. (CAA Exh. 01, CAA Exh. 31 p. 103.) Under LAA's charter, as approved by the District, eighty-five percent (85%) of LAA's revenue goes to AA, founded and operated by Wise and Sundstrom. (CAA Exh. 20, pp. 57-58; CAA Exh. 31, p. 56; Thom Tr. 148; Combs Tr. 234.) Because AA takes eighty-five percent (85%) of LAA's revenue, and because LAA's revenue is based on LAA's student enrollment, AA, Wise, and Sundstrom have a significant financial interest in LAA increasing its student enrollment, which in turn, increases AA's revenue. (CAA Exh. 31, p. 56, 103; Thom Tr. 136; Combs Tr. 221-222.) Accordingly, it is urgently important to the coconspirators, including Wise, Sundstrom, Smalley, and Norton, that CAA's charter be revoked as soon as possible, thereby eliminating competition for CAA's students and funds, which the coconspirators expressly seek to have diverted to LAA for the benefit of AA. (CAA Exh. 20, pp. 57-58.) All of the events and actions taken to revoke CAA's charter have been in furtherance of the improper, immoral, and illegal conspiracy, plot, and scheme devised and entered into by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 20, pp. 57-58.)

LAA serves at-risk students in grades 9-12, just like CAA. (CAA Exh. 31, pp. 3, 6-7; Combs Tr. 233.) LAA's campus was established two miles from CAA's campus so that it could steal CAA's staff as students, in furtherance of the conspiracy, plot, and scheme of Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 20, pp. 57-58; CAA Exh. 31, pp. 3, 6-7; Combs Tr. 220-221; 230-233, 238.) When the 2022-2023 school year began, LAA was hundreds of students short of its enrollment projections, while CAA was serving approximately 400 at-risk students in grades 9-12. (Thom Tr. 137, 146; Tucker Tr. 193; Combs Tr. 208, 233.)

In the days, weeks, months, and years leading up to January 19, 2023, the District never communicated any potential revocation of CAA's charter to CAA. (Payne Tr. 83, 87; Combs Tr. 238.) In District Superintendent Neeley's most recent annual evaluation of CAA in June 2022, the District did not impose any sanctions against CAA, require any corrective action of CAA, or

mention potential revocation of CAA's charter. (CAA Exh. 07; Payne Tr. 90.) The District has never evaluated CAA's performance pursuant to the Alternative Education Campus statute, § 59-40-111(F). (CAA Exh. 01; Payne Tr. 101-106; Askew Tr. 165-167; Tucker Tr. 187-188.) The District has never required CAA to develop and execute a corrective action plan. (CAA Exh. 01; Payne Tr. 84-86; Tucker Tr. 182.) The District has never implemented a revocation review process with CAA, as identified in District policy and utilized with other charter schools. (CAA Exh. 01; District Exh. 10, p. 47; Payne Tr. 84, 94-97; Tucker Tr. 183.) Prior to January 19, 2023, the District never mentioned or suggested to CAA that CAA's charter might be at risk of revocation.³ (Payne Tr. 83, 87; Combs Tr. 238.)

On January 19, 2023, the District Board held its regular board meeting. (CAA Exh. 9, CAA Exh. 10.) The District previously informed CAA that CAA's request to transfer its charter to another sponsor would be considered by the District Board at that meeting. (District Exh. 10, p. 40-41; CAA Exh. 9.) Prior to addressing CAA's transfer request on January 19, 2023, the District Board went into executive session with Norton for fifty-seven minutes to discuss CAA. (CAA Exh. 9, CAA Exh. 10, 00:11:20 – 01:08:10; Payne Tr. 87-88.) Neither CAA nor any member of the public was invited into the executive session. (CAA Exh. 10, 01:08:00 – 01:08:10; Payne Tr. 87-88.) Upon returning to open session, the District Board denied CAA's request to transfer its charter to another sponsor and then made a surprise motion to revoke CAA's charter.⁴ (CAA Exh. 10, 02:02:40 – 02:04:00; Payne Tr. 87.) After only 4 minutes of public discussion by the District Board, the District Board voted to revoke CAA's charter. (CAA Exh. 10, 2:03:00 - 02:06:55; Combs Tr. 238.) Neither the District Superintendent nor the District staff has ever made a recommendation to revoke CAA's charter. (CAA Exh. 07; CAA Exh. 08; CAA Exh. 10; Payne

³ CAA does not believe that Superintendent Neeley was a participant in the conspiracy, plot, and scheme between Wise, Sundstrom, Smalley, and Norton. At this time, CAA is unaware of any District Board member being directly involved in the conspiracy; rather, CAA believes that some of the District Board members have been led by and have acted at the encouragement of Norton, as described herein.

⁴ Of course, had the transfer request been granted, it would have eliminated Norton's ability to redirect CAA's students and funds to AA, as Wise, Sundstrom, Smalley, and Norton planned and intended. (CAA Exh. 20, p. 58.)

Tr. 87, 106; Thom Tr. 149-150.) Most of the District Board’s public discussion on January 19, 2023, involved District Board members making inaccurate statements about CAA based on incomplete and misleading information contained in and omitted from a “Transfer Request Report” that Norton edited before it was sent to the District Board, as more fully described herein.⁵(CAA Exh. 10, 2:03:00 - 02:06:55; District Exh. 10; Payne Tr. 89; Combs Tr. 237-238.) The District Board violated several laws in making a surprise motion and voting to revoke CAA’s charter on January 19, 2023, including the South Carolina Charter Schools Act and the South Carolina Freedom of Information Act. (CAA Exh. 1; CAA Exh. 3; CAA Exh. 10.) CAA immediately requested an appeal hearing. (CAA Exh. 12.)

On May 11, 2023, the District Board held an appeal hearing to adjudicate its own prior motion and vote to revoke CAA’s charter. (CAA Exh. 10; Tr. 1-334.) Norton represented the District staff at the appeal hearing and argued in both his opening and closing that CAA’s charter must be revoked immediately, despite the District Superintendent and District staff never making any recommendation to revoke CAA’s charter, and despite Norton having *ex parte* communications with the District Board in executive session on January 19, 2023. (CAA Exh. 09; CAA Exh. 10; Tr. 2, 37, 257.) Not surprisingly, solely at the encouragement of the District Board’s general counsel, who was representing the District staff on May 11, 2023, the District Board voted to uphold its own prior action to revoke CAA’s charter, while also denying CAA the opportunity to cross-examine the District Board members who surprisingly moved and voted to revoke CAA’s charter on January 19, 2023. (Tr. 2, 13, 37, 257.) The District Board’s adjudication of its own prior action violated Article I, Section 22 of the South Carolina Constitution, which expressly prohibits the same person from prosecuting and adjudicating an action that deprives a party of liberty and property interests. (CAA Exh. 04.)

⁵ The many relevant omissions from the Transfer Request Reported edited by Norton included CAA’s letter to the District dated December 7, 2021, which explained the reasons for CAA’s transfer request, including the conspiracy between Wise, Sundstrom, Smalley, and Norton to redirect CAA’s staff, students, and funds to AA and destroy CAA. (CAA Exh. 20, pp. 57-58; District Exh. 10, p. 42; Payne Tr. 89; Combs Tr. 220-221.)

On May 12, 2023, CAA filed a Notice of Appeal with this Court and a Motion for Expedited Hearing for Stay on the grounds that (1) the District Board violated constitutional and statutory provisions, including but not limited to Article I, Section 22 of the Constitution of the State of South Carolina, the South Carolina Charter Schools Act, the South Carolina Freedom of Information Act, and South Carolina education laws, (2) the District Board's decision was made upon unlawful procedure, (3) the District Board's decision was affected by other error of law, (4) the District Board's decision was clearly erroneous in view of the reliable, probative, substantial evidence of the whole record, and (5) the District Board's decision was arbitrary, capricious, characterized by abuse of discretion or a clearly unwarranted exercise of discretion. On June 2, 2023, CAA filed an amended Notice of Appeal to include a copy of the District Board's Final Decision, which was issued in late May 2023.

CAA, as an Alternative Education Campus pursuant to S.C. Code Ann. § 59-40-111, and the at-risk students CAA serves, who have previously dropped out of school or are at-risk of dropping out of school completely, will suffer irreparable injury and unusual hardship if the District Board's decision is not stayed and CAA is permanently closed before its appeal can be decided. CAA is likely to prevail on the merits of its appeal because the District Board violated the South Carolina Charter Schools Act, the South Carolina Freedom of Information Act, and Article I, § 22 of the South Carolina Constitution, and because there is a written clandestine profit-driven scheme between Wise, Sundstrom, Smalley, and Norton to redirect CAA's students and public funds to AA and destroy CAA, which Norton and others have been executing for several years, as described herein. The revocation of CAA's charter is being driven by the conspiracy between Wise, Sundstrom, Smalley, and Norton to close CAA down and divert its students and funding to LAA for the benefit of AA, which is not a legally valid reason for revoking CAA's charter.

If CAA's motion for a stay is not granted, CAA will be closed before its appeal can be

fully decided and no one other than the coconspirators will likely ever know the depth, breadth, and scope of the conspiracy or the reasons why the District's former Superintendent and legal counsel would participate in such a scheme. As an Alternative Education Campus under § 59-40-111 of the South Carolina Charter Schools Act, over the last 4 years, CAA has fulfilled its mission and led approximately 200 at-risk students, who had previously dropped out of school or were at-risk of dropping out of school, to the attainment of high school diploma so that those graduates can better themselves and their community. No other South Carolina Alternative Education Campus charter school serving students who have dropped out of school or are at-risk of dropping out of school has graduated as many at-risk students as CAA. If CAA is closed, CAA's at-risk students will lose their best opportunity to attain a high school diploma. Additionally, if CAA is closed and its students enroll at LAA, eighty-five percent (85%) of the public funds that follow CAA's students to LAA will go to AA, founded by Joseph Wise and David Sundstrom, just as Wise, Sundstrom, Smalley, and Norton have secretly planned and executed to date. Moreover, if CAA is closed, CAA will not have an opportunity to fully investigate the secret relationship between Wise, Sundstrom, Smalley, and Norton and their clandestine written plan to redirect CAA's staff, students, and public funds to AA.

II. STATEMENT OF THE FACTS

CAA's Establishment and Purpose as an Alternative Education Campus Charter School

CAA is a South Carolina nonprofit corporation and a public charter school organized and existing under the laws of the State of South Carolina, including the South Carolina Charter Schools Act of 1996, Sections 59-40-10 through 59-40-240, as amended (the "Act") and the South Carolina Nonprofit Corporation Act of 1994, Sections 33-31-101 through 33-31-1708, as amended (the "Nonprofit Act"). (CAA Exh. 01; CAA Exh. 02.) CAA is an Alternative Education Campus ("AEC") as defined by S.C. Code Ann. § 59-40-111 of the Act. (CAA Exh. 05, pp. 2, 11, 13, 42; Payne Tr. 97.) CAA was founded to serve a unique group of high school students who have either

previously dropped out of school or are at risk of dropping out of school. (CAA Exh. 05, pp. 3, 13; Payne Tr. 97; Combs Tr. 206.) Because of CAA's unique purpose, CAA's student population is completely different from almost every other high school in South Carolina. (CAA Exh. 05, pp. 3, 13; Payne Tr. 105-06.) CAA serves students who have their own children, who have suffered physical and emotional abuse, who have been affiliated with gangs, who are homeless, who have substance abuse issues, who have full-time jobs, and who have been out of school for several months or years and enroll at CAA several academic years behind. (Tr. 23; Tucker Tr. 183; Combs Tr. 206-207.) To serve CAA's unique at-risk students, many of whom have previously dropped out of school, CAA offers a year-round schedule, continuous enrollment throughout the year, two campuses, extended school hours to accommodate students' work and family responsibilities, use of three different instructional platforms, 100% certified teachers, and a team of student advocates who support students' social and academic growth. (CAA Exh. 05, pp. 2, 24, 28, 53, Payne Tr. 92-93; Combs Tr. 207.) Most of CAA's students are minorities and come from impoverished households. (District Exh. 10, pp 1-2; Payne Tr. 97.)

CAA's mission is to provide a comprehensive education to its 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 a positive impact in their community. (CAA Exh. 05, pp. 2, 4; District Exh. 10, p. 1; Payne Tr. 101; Tucker Tr. 184.) CAA has completed four school years and has led approximately 200 at-risk students to the attainment of a high school diploma, thereby fulfilling its mission as an AEC charter school under the Act. (CAA Exh. 05, pp. 2, 4; CAA Exh. 37; Tucker Tr. 184; Combs Tr. 208.) CAA currently enrolls approximately 400 at-risk students who have either previously dropped out of school or are at-risk of dropping out of school, many of whom are now on track to attain a high school diploma before reaching the age of 21. (Thom Tr. 137; Combs Tr. 208.) CAA anticipates that twenty (20) or more at-risk students will graduate from CAA in June 2023.

South Carolina Public Charter School District Background and Duties

The District was established by the Act, S.C. Code Ann. § 59-40-220(A), as a public body and a statewide sponsor of charter schools. (CAA Exh. 01.) The District Board members are appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate of the State of South Carolina. (CAA Exh. 01.) The District may contract, sue, and be sued. (CAA Exh. 01.)

The Act includes requirements regarding the District's evaluation of Alternative Education Campuses (S.C. Code Ann. § 59-40-111(F)), the District's duty to utilize corrective actions, sanctions short of revocation, and corrective action plans (S.C. Code Ann. § 59-40-55(B)(8)), the District's obligation to offer charter schools procedures set forth in District policies (S.C. Code Ann. § 59-40-60(B)), the District's duty to comply with the South Carolina Freedom of Information Act (S.C. Code Ann. § 59-40-230(E)(11)), and the South Carolina Constitution's applicability to the Act and the District (S.C. Code Ann. § 59-40-240). (CAA Exh. 01.) Norton serves as the District's outside general legal counsel and has done so since 2013. (CAA Exh. 25, p. 3; CAA Exh. 28; Thom Tr. 148.)

Establishment of CAA and its Relationships with the District and AA

CAA submitted a charter application to the District, which the District approved on May 20, 2017. (CAA Exh. 05; CAA Exh. 06; p. 1.) CAA opened its school at the beginning of the 2018-2019 school year. (CAA Exh. 06, p. 2.) When CAA opened, AA served as CAA's Educational Management Organization ("EMO"). (Combs Tr. 210.) CAA contracted with AA to provide management services to CAA, and AA charged CAA eighty-five percent (85%) of CAA's revenue, which the District approved. (Combs Tr. 210.) When CAA opened and worked with AA, CAA had a good relationship with both the District and AA. (Combs Tr. 211.)

CAA's Termination of AA

In 2019, CAA began "questioning the 85 percent share with Acceleration Academies" and

where the money was going. (Combs Tr. 211.) The CAA Board began requesting information and receipts from AA, but never got the information requested. (Combs Tr. 211.) Then, on October 30, 2019, CAA received a letter from Dr. Mary Thornley, the President of Trident Technical College (“TTC”), CAA’s landlord. (CAA Exh. 20 pp. 53-55; Combs Tr. 212-214.) The letter from Dr. Thornley confirmed two dozen safety violations that occurred on CAA’s campus, including many crimes and arrests. (CAA Exh. 20 pp. 53-55; Combs Tr. 212-214.) In her letter, Dr. Thornley expressed her support of CAA’s mission, but explained that if a significant change did not occur, TTC would have to cancel CAA’s lease at TTC. (CAA Exh. 20 pp. 53-55; Combs Tr. 212-214.) AA was responsible for managing CAA’s on-campus operations at that time, and AA failed to report the safety violations to the CAA Board. (Combs Tr. 212-214.) Because of the student safety issues and AA’s failure to report them to the CAA Board, on November 1, 2019, CAA terminated its contract with AA immediately. (Combs Tr. 212-214.) On November 4, 2019, AA filed an arbitration claim against CAA claiming that CAA had no right to terminate the agreement immediately and that AA was entitled to payment from CAA through April 22, 2020, which amounted to approximately one million additional dollars that AA, and its founders Wise and Sundstrom, were seeking from CAA. (CAA Exh. 29; Combs Tr. 219-220.)

Section 4.6(O) of CAA’s charter contract with the District allows CAA to terminate its EMO for nonperformance immediately when student safety and health are a concern. (CAA Exh. 06; p. 8; Combs Tr. 214.) In addition to notifying AA of CAA’s intent to immediately terminate the contract between them, CAA submitted a charter amendment request to the District seeking to remove AA from CAA’s charter application. (Combs Tr. 217-218.) The District scheduled CAA’s request to remove AA from its charter application to be heard by the District Board at its meeting on November 14, 2019. (CAA Exh. 25, pp. 1-2; Combs Tr. 217-218.) CAA’s termination of AA and proposed removal of AA from CAA’s charter application for student safety and health concerns would have immediately cut off the flow of CAA’s public funds to AA and its founders

and principals, Wise and Sundstrom. (Combs Tr. 218-220.)

Secret Plan to Enrich AA by Wise, Sundstrom, Smalley, and Norton

Unbeknownst to CAA at that time and for several years thereafter, in the days leading up to the District Board's meeting on November 14, 2019, at which CAA's request to remove AA from its charter immediately was to be heard by the District Board, the founders and principals of AA, Wise and Sundstrom, and the District's then-Superintendent and legal counsel, Smalley and Norton, were secretly conspiring, plotting, scheming and formulating plans to enrich AA via the District and a new AA charter school and to destroy CAA. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-222, 228-229, 238.) In an email between Wise, Sundstrom, Smalley, and Norton dated November 12, 2019, with the subject "Attorney-Client Privileged – CAA," Wise immediately made clear to Smalley, Sundstrom, and Norton that the email should be protected from disclosure to others.⁶ (CAA Exh. 20, p. 57.) Wise then confirmed that he had been speaking with Smalley on the telephone about their plans. (CAA Exh. 20, p. 57.) Next, Wise laid out a plan for AA to continue being paid by CAA and issued a directive for Sundstrom to confer with Norton to "add[] another proposal to present to you and your board on Thursday" November 14, 2019 that would involve AA continuing to work at and be paid by CAA after November 14, 2019. (CAA Exh. 20, p. 58.) Wise then presented their ultimate goal: "***We will get well-prepared to present a proposal to be considered for a fast-track charter approval consideration so we can get ready to receive kids and staff when the CAA plan implodes.***" (CAA Exh. 20, p. 58; Combs Tr. 221.)

Thus, two days before CAA was to meet with the District Board to request that AA be removed from CAA's charter for student safety and health concerns, Wise, Sundstrom, Smalley, and Norton were secretly planning for AA to continue being paid by CAA against CAA's will

⁶ This, of course, begs a very important question: why would Wise and Sundstrom believe that an email between them, the founders and principals of AA, and the Superintendent and General Counsel of the District be subject to attorney-client privilege? Is there an attorney-client relationship between them? If so, what for and does that relationship present a conflict of interest? Sundstrom is an attorney and should know when the attorney-client privilege applies. These questions are likely never to be answered if this motion for a stay is not granted.

beyond November 14, 2019, while AA simultaneously fast-track opened a new AA charter school under the District's sponsorship to steal CAA's students and staff. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-222, 238.) The implicit significance of their plan is that public dollars would follow CAA's students from CAA to AA's new charter school. (Thom Tr. 136.) Specifically, the District's Deputy Superintendent of Finance and Operations testified that based on the State funding formula and the number and weightings of CAA's students, CAA currently receives over five million dollars (\$5,000,000.00) annually in revenue, which could be redirected to AA's new school. (Thom Tr. 136-137.) Therefore, over the term of a 10-year charter, CAA's current student population could generate over fifty million dollars (\$50,000,000.00) in revenue for AA's new school. (Thom Tr. 138.) As explained more fully below, AA, founded by Wise and Sundstrom, would be entitled to eighty-five percent (85%) of the revenue generated at AA's new school, designed by Wise, Sundstrom, Smalley, and Norton to steal CAA's students. (CAA Exh. 31, p. 56; CAA Exh. 20, p. 58; Thom Tr. 148; Combs Tr. 234.)

District Board Meeting – November 14, 2019

CAA knew nothing about the secret relationship and plans of Wise, Sundstrom, Smalley, and Norton when CAA arrived to present its charter amendment request to the District Board on November 14, 2019. (CAA Exh. 20, pp. 57-58; CAA Exh. 25 pp 1-2; Combs Tr. 220-221; 228-229.) During the meeting on November 14, 2019, Smalley sat with the District Board as the District Superintendent, and Norton served as the District Board's legal counsel. (CAA Exh. 25, pp. 3-6.) When it was CAA's turn to present its charter amendment request to remove AA for student safety and health concerns, CAA was surprised to see the District give representatives of AA, including Sundstrom, an equal opportunity to present a proposal to the District Board, even though the District had no formal relationship with AA, a private, for-profit, out-of-state, Chicago-based EMO, and CAA was even more shocked when the District ordered CAA to "maintain the status quo," which meant that CAA could not remove AA from its charter for student health and safety

concerns and that CAA was required to continue paying AA to manage its campus against CAA's will. (CAA Exh. 25, p. 3-6; Thom Tr. 139; Combs Tr. 218-220.) During the meeting, the District expressed no concerns about the two dozen safety violations and crimes described in Dr. Mary Thornley's October 30, 2019 letter or TTC's threat to cancel CAA's lease, all of which occurred while AA was managing CAA's operations. (CAA Exh. 20, pp. 53-55; Combs Tr. 212-214.) Based on the secret "attorney-client privileged" email between Wise, Sundstrom, Smalley, and Norton on November 12, 2019, CAA now knows the District Board meeting on November 14, 2019, went exactly as Wise, Sundstrom, Smalley, and Norton planned two days prior. (CAA Exh. 20, p. 58.)

Norton Withholds CAA's Funding In Violation of State Law for AA's Benefit

In AA's arbitration claim against CAA in North Carolina, AA sought approximately One Million Dollars (\$1,000,000.00) from CAA in connection with CAA's attempt to immediately terminate AA for student health and safety concerns. (CAA Exh. 29; Combs Tr. 219-220.) The arbitration was scheduled to be heard in early 2020. (CAA Exh. 29.) In December 2019, Norton, perhaps in coordination with Smalley, informed CAA that the District would be withholding CAA's monthly funding so that it would be available to pay AA at the upcoming North Carolina arbitration. (CAA Exh. 24; Combs Tr. 238.) Norton's withholding of CAA's state funding violated S.C. Code Ann. § 59-40-140(D) of the Act, which requires a sponsor to distribute funding to a charter school within ten business days of the sponsor's receipt of such funds. (CAA Exh. 01; CAA Exh. 24; Combs Tr. 238.) CAA contacted the State Department of Education ("SDE") to report Norton's illegal withholding of CAA's funding for AA's benefit, and the SDE threatened to fine the District for withholding CAA's funds in violation of the Act as a result of Norton's actions. (CAA Exh. 01; CAA Exh. 24.) Only after the SDE threatened to fine the District did Norton relent and release CAA's funding as required by law. (CAA Exh. 01; CAA Exh. 24.)

District's "Maintain the Status Quo" Directive Causes CAA to Pay AA Nearly \$1MM

In March 2020, a North Carolina arbitrator ordered CAA to pay AA \$859,142.41 in South

Carolina taxpayer funds for the time AA continued working at CAA against CAA's will pursuant to the District Board's "maintain the status quo" directive on November 14, 2019. (CAA Exh. 29; Combs Tr. 218-220.) The District's "maintain the status quo" directive was based on a proposal presented by AA on November 14, 2019, as secretly planned in writing by Wise, Sundstrom, Smalley, and Norton on November 12, 2019. (CAA Exh. 20, p. 58; Combs Tr. 218-220.) CAA filed legal action against the District related to its "maintain the status quo" directive. (CAA Exh. 22.) CAA's lawsuit against the District is currently pending before the South Carolina Court of Appeals and briefs have been filed. (CAA Exh. 22.)

AA's New School, LAA

In early 2020, Amy Mims submitted a charter application to the District to fast track open a new AA charter school in the fall of 2020, just as secretly planned by Wise, Sundstrom, Smalley, and Norton to steal CAA's staff and students. (CAA Exh. 31, pp. 1-3, 42; CAA Exh. 20, p. 58; Thom Tr. 144; Combs Tr. 220-221, 231.) Mims represented in LAA's charter application that she served in the capacity of "Founding Committee Chairperson" of LAA. (CAA Exh. 31, p. 2-3; Thom Tr. 144; Combs Tr. 231.) Pursuant to § 59-40-40(7) and § 59-40-60(E) of the Act, the LAA charter committee that Ms. Mims chaired was "the governing body" of LAA and had the power to establish LAA's budget and "contract for services" with entities, such as LAA's EMO, AA. (CAA Exh. 01.) LAA's charter application states that "[t]he Chairperson of the Founding Committee became aware of Acceleration Academies through their national presence and successful programming for disengaged youth." (CAA Exh. 31, p. 56.) Mims, however, had a pre-existing financial relationship with Wise and Sundstrom in Chicago and was previously employed by Atlantic Research Partners, another entity of Wise and Sundstrom, before she became the LAA Founding Committee Chair, as raised by District Trustee Mosteller. (Tr. 247.) The new AA charter school was initially named "Acceleration Education Academy," but subsequently changed its name to "Lowcountry Acceleration Academy" and is at times referred to herein as "LAA." (CAA

Exh. 31; Thom Tr. 143.)

LAA's charter application, as submitted by Mims, stated that LAA would be an Alternative Education Campus located in North Charleston serving "students who have dropped out or who are at risk of dropping out of school" in grades 9-12. (CAA Exh. 31, pp. 3, 6, 8; Thom Tr. 145; Combs Tr. 233.) In other words, LAA was proposing to do exactly what CAA does in the same location as CAA, perfectly positioned to steal CAA's students and the public funds that follow them, just as secretly planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 31, pp. 3, 6, 8; CAA Exh. 20, p. 58; Combs Tr. 220-221; 230-233; 238.) However, there was one significant difference between LAA's and CAA's operational plans moving forward: LAA's charter application stated that "85% [of LAA's revenue] will go to Acceleration Academies," founded by Wise and Sundstrom. (CAA Exh. 31, p. 56; Thom Tr. 148; Combs Tr. 234.) Conversely, CAA was fighting against the District to terminate AA immediately and cut off the flow of public funds to AA. (CAA Exh. 25, p. 1-6.)

The District Board approved LAA's fast track charter application in the spring of 2020, as submitted by Mims. (CAA Exh. 31; Combs Tr. 231.) Soon thereafter, the State Department of Education prohibited the District from allowing the unprecedented fast track opening of LAA in the fall of 2020, and as a result, LAA's opening was pushed back to the fall of 2021. (CAA Exh. 31, p. 103.) A few months after the District approved LAA's charter application, which established that eighty-five percent (85%) of LAA's revenue would be paid to AA, Mims left her position as "Founding Committee Chairperson" of the LAA Board and accepted employment directly with AA as its "Executive Director of Product Development and Partner Success," very likely in violation of the South Carolina Ethics Reform Act, S.C. Code Ann. § 8-13-700 et seq. (CAA Exh. 20, p. 92; Combs Tr. 232-233; Tr. 247.) In sum, Mims was being paid by Wise, Sundstrom, and/or their entities, at a minimum, both before and after Mims submitted LAA's charter application. (CAA Exh. 20, p. 92; Combs Tr. 232-233.)

Norton Testifies for AA and against CAA in NC Arbitration at Sundstrom's Request

In March 2020, AA was still haphazardly managing CAA's campus against CAA's will pursuant to the District's "maintain the status quo" directive on November 14, 2019, despite the fact that Wise, Sundstrom, Smalley, and Norton were secretly conspiring to set up a new AA school, LAA, two miles away to steal CAA's staff and students and funnel eighty-five (85%) of the public funds that follow those students to AA. (CAA Exh. 20, p. 58; CAA Exh. 31; Combs Tr. 220-221; 238.) When COVID arrived in March 2020, AA shut down CAA's technology programs completely so that CAA could not operate its educational programs for the benefit of its at-risk students. (CAA Exh. 28; Combs Tr. 234-235.)

CAA filed legal claims against AA seeking, among other things, injunctive relief so that CAA could utilize its technology programs to educate its at-risk students during the pandemic.⁷ In response, AA filed counterclaims against CAA seeking more public funds from CAA. (CAA Exh. 28.) The dispute between CAA and AA ultimately landed in a second arbitration in North Carolina, which took place in March 2022. (CAA Exh. 28.) During the North Carolina arbitration between CAA and AA, Sundstrom, who served as legal counsel for AA, called the District's legal counsel, Norton, as a witness for AA. (CAA Exh. 28; Combs Tr. 235.) Norton appeared and testified in support of AA, a private, for-profit, out-of-state EMO, whose founders he was conspiring with to set up a new AA school to steal CAA's staff, students, and funds. (CAA Exh. 28; CAA Exh. 20, pp. 57-58; Combs Tr. 220-221, 238). Norton testified against CAA, a South Carolina Alternative Education Campus public charter school serving at-risk students and sponsored by the District. (CAA Exh. 28; Combs Tr. 220-221, 238.)

Superintendent Neeley's Annual Evaluation of CAA in June 2022

The District's current Superintendent, Chris Neeley, and CAA have enjoyed a cordial and

⁷ The South Carolina Circuit Court granted CAA's request for a Temporary Restraining Order against AA and required that AA "Turn all of the school programs back on, so that the students can access them." Case No. 2020-CP-1001762, Order filed April 9, 2020.

professional relationship. (CAA Exh. 07; CAA Exh. 08; District Exh. 10, p. 40-41; Payne Tr. 91-92, 106; Combs Tr. 246.) Superintendent Neeley performed the District's most recent annual evaluation of CAA in June 2022. (CAA Exh. 07; Payne Tr. 90.)

In the June 2022 annual evaluation, Superintendent Neeley correctly noted that CAA was in compliance with teacher certification requirements, demographic requirements, sustainable fund balance and cash on hand standards, and special education requirements. (CAA Exh. 07; Payne Tr. 91-92.) It appeared to CAA that some of the information included in the annual evaluation was incomplete or inaccurate. (CAA Exh. 08; Payne Tr. 91-92.) For example, the annual evaluation did not mention that CAA is an Alternative Education Campus under § 59-40-111 of the Act, Superintendent Neeley did not evaluate CAA's performance as set forth in § 59-40-111(F) of the Act, and some of the graduation data, academic data, and student expenditure data in the evaluation was inaccurate. (CAA Exh. 07; CAA Exh. 08; Payne Tr. 91-92; Askew Tr. 165-167; Tucker Tr. 188.) However, Superintendent Neeley concluded the June 2022 annual evaluation of CAA with the following positive words about CAA's work:

Together, the District and your school have accomplished a great deal and are confident in more accomplishments next year by working cooperatively and collaboratively. The District looks forward to continuing the communications regarding the areas of improvement for both the school and District and hope to hear from you if you believe there are other areas of growth or improvement for your school or the District that we should add to this agenda. Thank you for putting kids first and for all the work you do for South Carolina families every day!

(CAA Exh. 07.) Superintendent Neeley's most recent annual evaluation of CAA did not issue sanctions against CAA or require CAA to develop and execute a corrective action plan, and Superintendent Neeley's most recent evaluation of CAA most certainly did not mention any potential revocation of CAA's charter. (CAA Exh. 07; Tucker Tr. 182.) Superintendent Neeley has never discussed the revocation of CAA's charter with CAA or made any recommendation to revoke CAA's charter. (CAA Exh. 10; Payne Tr. 87, 106; Thom Tr. 149-150; Combs Tr. 238.)

CAA's Response to Superintendent Neeley's Annual Evaluation

CAA responded in writing to Superintendent Neeley's most recent annual evaluation of CAA on August 22, 2022. (CAA Exh. 08; Payne Tr. 91; Thom Tr. 123.) Initially, CAA thanked Superintendent Neeley for recognizing that CAA was in compliance with teacher certification requirements, demographic requirements, sustainable fund balance and cash on hand standards, and special education requirements. (CAA Exh. 08; Payne Tr. 91-92.) Additionally, CAA commented on information in Superintendent Neeley's evaluation that was incomplete or inaccurate. (CAA Exh. 08; Payne Tr. 91.) For example, CAA clarified that CAA's graduation rate had increased every year and approximately tripled since CAA terminated its former EMO, AA. (CAA Exh. 08; Payne Tr. 91.) CAA noted that it had increased spending on student services, specifically with money that was no longer being paid to its former EMO, AA. (CAA Exh. 08; Payne Tr. 91.) CAA explained that its audit was submitted 8 days late because the CAA Board Chair's father passed away in Egypt the day before CAA's auditor sent her CAA's audit, and she traveled to Egypt immediately and was unable to review and submit the audit until she returned to the United States. (CAA Exh. 08; Thom Tr. 129-130.) Importantly, CAA's letter also explained the purpose of CAA's fund balance, stating that CAA was saving for "long-term initiatives, such as the development of a permanent school facility to serve our students." (CAA Exh. 08; Thom Tr. 123-124.) Superintendent Neeley did not express any disagreement with CAA's letter dated August 22, 2022. (Payne Tr. 92; Thom Tr. 123-124.)

CAA's Transfer Request

In 2021, CAA fortuitously discovered the secret plot between Wise, Sundstrom, Smalley, and Norton to redirect CAA's staff, students, and funds to AA and to destroy CAA. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-221.) Because of the secret relationship between the District's legal

counsel, Norton, and Wise and Sundstrom, and Norton's continuous adverse treatment of CAA since CAA's termination of AA, amongst other things, CAA requested a transfer of its charter from the District to Limestone University and the Limestone Charter Association (collectively "Limestone") in December 2021, after Limestone was established and hired a Superintendent, and again on September 30, 2022. (District Exh. 10, p. 42.) On November 4, 2022, Superintendent Neeley responded in writing to CAA to schedule the District Board's hearing of CAA's transfer request and to describe the procedures for the hearing. (District Exh. 10, pp. 40-41; Payne Tr. 95.) Superintendent Neeley provided CAA with a copy of the District's Transfer Policy, as approved and adopted by the District Board. (District Exh. 10, pp. 40-41, 47; Payne Tr. 94.) Significantly, the District's Transfer Policy states that "Schools under revocation review or occupying the lowest performance level rating as defined by the [District's] performance framework are not eligible to request a transfer out of the District." (District Exh. 10, p. 47; Payne Tr. 94-96.) Superintendent Neeley's letter dated November 4, 2022, did not mention CAA being in "revocation review" or otherwise being ineligible to request a transfer out of the District. (District Exh. 10, pp. 40-41; Payne Tr. 95-96.) The District subsequently scheduled CAA's transfer request to be heard on January 19, 2023, further indicating that CAA was not in a revocation review process or otherwise ineligible to request a transfer out of the District. (CAA Exh. 09; Payne Tr. 94-95.)

LAA's Student Enrollment and Revenue in 2022-2023

A charter school's revenue is based on the number of students enrolled at the charter school. (CAA Exh. 01; Thom Tr. 136; Combs Tr. 221-222.) Accordingly, LAA's revenue is generated based on the number of students enrolled at LAA. (Thom Tr. 136.) Pursuant to LAA's charter application, as approved by the District, LAA's EMO, AA, founded by Wise and Sundstrom, takes eighty-five percent (85%) of LAA's revenue. (CAA Exh. 31, p. 56; Thom Tr. 148; Combs Tr. 234.) Therefore, the gross amount of money that AA receives from LAA is based on the number

of students enrolled at LAA. (CAA Exh. 31, p. 56; Thom Tr. 136.)

LAA's charter application projects that LAA will serve 500 students in grades 9-12 during the 2022-2023 school year. (CAA Exh. 31, p. 103; Thom Tr. 146; Tucker Tr. 193; Combs Tr. 233.) However, LAA's most recent State Report Card states that LAA serves only 170 students. (Tucker Tr. 193; Combs Tr. 233.) Therefore, AA's revenue from LAA is drastically less than anticipated by the individuals with AA who prepared and submitted AA's charter application to the District, Mims and likely Wise and Sundstrom. (CAA Exh. 31, pp. 2-3, 17, 56, 60, 103; Tucker Tr. 193; Combs Tr. 233.)

Conversely, CAA serves approximately 400 at-risk students in grades 9-12. (Thom Tr. 137; Combs Tr. 208.) According to the District's Deputy Superintendent of Finance and Operations, who has never made a recommendation to revoke CAA's charter, CAA's students generate over five million dollars (\$5,000,000.00) annually in revenue. (Thom Tr. 136-137.) Therefore, over the span of a 10-year charter, CAA's current student population could generate over fifty million dollars (\$50,000,000.00) in revenue, not a single penny of which is currently paid to AA, Wise, or Sundstrom. (CAA Exh. 05, p. 4; Thom Tr. 138.)

Wise, Sundstrom, Smalley, and Norton secretly conspired, planned, and schemed to establish LAA's campus near CAA's campus, and for LAA to serve the same grade levels and at-risk students as CAA, so that LAA could steal CAA's staff and students and the public funds that follow them for AA's benefit, as expressly laid out in the purported "attorney-client privileged" email between them on November 12, 2019. (CAA Exh. 20, pp. 57-58; CAA Exh. 31 pp. 1-3, 6, 56; Combs Tr. 220-222, 238.) As of the fall of 2022, AA, Wise, Sundstrom, Smalley, and/or Norton had redirected \$859,142.41 of CAA's money to AA, withheld CAA's state funding in violation of State law for AA's benefit, wrongfully and illegally shut down CAA's technology programs during the pandemic without justification, asserted legal claims against CAA seeking additional public funds, and, in Norton's case, testified as a witness for AA and against CAA in a

North Carolina arbitration at Sundstrom's request. (CAA Exh. 20, pp. 57-58; CAA Exh. 25 p. 5; CAA Exh. 29; CAA Exh. 24; CAA Exh. 28; Combs Tr. 219-221, 234-235, 238.) However, because of Norton's adverse actions, CAA was seeking a transfer away from the District, and despite their many efforts, Wise, Sundstrom, Smalley, and Norton had not accomplished their ultimate conspiratorial goal of redirecting CAA's students and funds to AA. (CAA Exh. 20, p. 58; District Exh. 10, p. 42.) Specifically, CAA was serving approximately 400 at-risk students, LAA was serving only approximately 170 students, hundreds less than projected in LAA's charter application, and if CAA's transfer request were granted, Wise, Sundstrom, Smalley, and Norton's plot to enrich AA would be unsuccessful. (CAA Exh. 31, p. 103; Thom Tr. 137; Tucker Tr. 193; Combs Tr. 208, 233.)

If CAA were closed, however, CAA's students and the revenue they generate could be immediately redirected to LAA, just as secretly planned by Wise, Sundstrom, Smalley, and Norton in their "attorney-client privileged" email regarding CAA. (CAA Exh. 20, p. 58; Combs Tr. 220-221.) AA, founded by Wise and Sundstrom, would receive from LAA 85% of the revenue generated by those students pursuant to LAA's charter application, as approved by the District, represented by Norton. (CAA Exh. 31, p. 56; Thom Tr. 148.) CAA's students currently generate over Five Million Dollars annually, which would amount to over Fifty Million Dollars (\$50,000,000.00) during the term of a ten-year charter. (Thom Tr. 137-138.) Eighty-Five percent (85%) of Fifty Million Dollars (\$50,000,000.00) exceeds Forty-Two Million Dollars (\$42,000,000.00). (CAA Exh. 31, p. 56; Thom Tr. 137-138; 148.) Thus, AA and its founders, Wise and Sundstrom, have an enormous financial interest in CAA being closed by the District and CAA's students enrolling at LAA, as secretly planned by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 20, p. 58.) However, Wise and Sundstrom, acting alone, lack the ability to carry out CAA's closure. (CAA Exh. 01; Tr. 37, 257.)

The District's Transfer Request Report

Prior to the District Board's meeting on January 19, 2023, the District staff created a Transfer Request Report related to CAA for the District Board's consideration on January 19, 2023. (District Exh. 10; Payne Tr. 88-89.) According to the testimony of District Deputy Superintendent John R. Payne, Norton edited the Transfer Request Report before it was sent to the District Board for consideration. (Payne Tr. 89.) The Transfer Request Report, as edited by Norton, was filled with inaccurate and inapplicable information. (Payne Tr. 98-106; Askew Tr. 157-161, 165-167, 176; Tucker Tr. 187-188, 194.)

For example, The Transfer Request Report edited by Norton did not include any evaluation of CAA pursuant to the Alternative Education Campus statute, S.C. Code Ann. § 59-40-111(F). (CAA Exh. 1; District Exh. 10; Payne Tr. 102-103, 105; Askew Tr. 165-167; Tucker Tr. 188.) The AEC statute, § 59-40-111(F), requires that CAA, as an AEC, be evaluated (1) according to academic performance standards and expectations established by written agreement between the sponsor and the school (i.e. the goals in CAA's charter) that take into account the school's specialized mission and student population, (2) with comparisons to nationally normed data with similar subsets of students (i.e., in this case, comparisons with alternative education campuses that serve high school students who have dropped out of school or are at risk of dropping out of school). (CAA Exh. 01.)

The Transfer Request Report, as edited by Norton, focused on a 4-year cohort graduation rate, a metric which does not align with CAA's mission of serving students who have dropped out of school, often for several months or years prior to enrolling at CAA. (Dist. Exh. 10 p. 3; Payne Tr. 98-101; Askew Tr. 162, 165-166, 176; Tucker Tr. 194.) Further, CAA's data expert testified that it appeared the District miscalculated CAA's 4-year cohort graduation rate because the District did not remove transfer students, as required by the Every Student Succeeds Act (ESSA). (Askew Tr. 157-161.) Significantly, the District Transfer Request Report edited by Norton omitted any

calculation of the following graduation rate goals that are included in CAA’s charter and that are closer to being aligned with CAA’s mission:

“Measure 10: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the four-year adjusted cohort to either graduate or re-enroll the following year.”

Measure 11: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the five-year adjusted cohort to either graduate or re-enroll the following year.”

(CAA Exh. 05, p. 43; District Exh. 10; Payne Tr. 101-104; Tucker Tr. 187-188.) Specifically, District Deputy Superintendent Payne testified that the Transfer Request Report edited by Norton included no calculation of students who re-enrolled at CAA the following year and no calculation of the five-year cohort graduation rate. (District Exh. 10; pp. 8-9; Payne 103-104.) Instead, the Transfer Request Report edited by Norton inaccurately calculated a 4-year cohort graduation rate, which is not aligned with CAA’s mission of serving at-risk students who have dropped out of school, often for several months or years prior to enrolling at CAA. (District Exh. 10, p. 3; CAA Exh. 37; CAA Exh. 38-42; Payne 98-101; Askew Tr. 162, 165-166, 176; Tucker Tr. 194.)

Additionally, the Transfer Request Report edited by Norton was completely absent of any comparison of CAA to alternative education campuses that serve similar subsets of at-risk, drop-out, high school students. (District Exh. 10; Payne Tr. 105; Askew Tr. 167; Tucker Tr. 187-188.) At the revocation hearing on May 11, 2023, Norton attempted to question Deputy Superintendent John Payne about national comparison data to overcome this significant deficiency and noncompliance, but Payne’s testimony was not tailored to alternative education campuses focused on serving at-risk, drop out students in grades 9-12, and Payne neglected to name a single comparison school for CAA. (Payne Tr. 61-65; Payne 105-106; Askew Tr. 165, 167.) Moreover, the District has never provided any documentation to CAA comparing CAA’s performance with other alternative education campuses that serve high school students who have previously dropped out of school or were at-risk of dropping out of school. (District Exh. 10; Tucker Tr. 188; Combs

Tr. 239.) In summary, the District has never compared CAA to schools that serve similar subsets of students (in this case, students in grades 9-12 who have dropped out of school), as required by the Act's AEC evaluation statute, § 59-40-111(F). (CAA Exh. 01; Payne Tr. 105-106; Askew Tr. 165, 167; Tucker Tr. 187-188; Combs Tr. 239.)

The Transfer Request Report edited by Norton also omitted extremely relevant information CAA previously provided to the District in a manner that was highly prejudicial to CAA. (District Exh. 10; CAA Exh. 08.) As an example, the Transfer Request Report edited by Norton included Superintendent Neeley's June 2022 annual evaluation of CAA, which as discussed *supra*, contained incomplete and inaccurate statements regarding CAA's graduation rate and CAA's expenditures on student services. (District Exh. 10, pp. 16-19; Payne Tr. 91-92.) That information was corrected in CAA's uncontested response to Superintendent Neeley dated August 22, 2022. (CAA Exh. 08; Payne Tr. 91-92.) However, the Transfer Request Report edited by Norton for consideration of the District Board on January 19, 2023, inexplicably omitted CAA's August 2022 response to Superintendent Neeley's annual evaluation. (District Exh. 10; Payne Tr. 92.)

Further, the Transfer Request Report edited by Norton stated that CAA "**did not meet** the submission of a timely audit" with no further explanation. (District Exh. 10, p. 2; Thom Tr. 129.) CAA's August 22, 2022 letter to Superintendent Neeley explained that CAA's audit was submitted eight days late because the CAA Board Chair's father passed away in Egypt, and the CAA Board Chair was traveling to Egypt when CAA's auditor sent her the audit. (CAA Exh. 08; Tr. 129-130.) Upon the Chair's return to the United States, she immediately reviewed and submitted CAA's audit. (CAA Exh. 08; Thom Tr. 129-130.) However, that information was completely omitted from the Transfer Request Report edited by Norton for consideration of the District Board on January 19, 2023. (District Exh. 10; Thom Tr. 128-131.)

Moreover, the Transfer Request Report edited by Norton stated that CAA had a cash balance and a fund balance of over three million dollars as of June 30, 2022. (District Exh. 10, pp.

10-11; Thom Tr. 122.) However, the Transfer Request Report completely omitted information CAA previously communicated to the District about how CAA intended to use those funds. (District Exh. 10, pp. 10-11; Thom Tr. 122-123.) For example, CAA's August 2022 response to Superintendent Neeley expressly stated that CAA was saving for "long-term initiatives, such as the development of a permanent school facility to serve our students." (CAA Exh. 08; Thom Tr. 123.) The omission of such information from the Transfer Request Report that was sent to the District Board for consideration on January 19, 2023, was highly prejudicial to CAA, as discussed in more detail below. (CAA Exh. 08; CAA Exh. 10; Thom Tr. 127-128.)

Perhaps most significantly, the Transfer Request Report, as edited by Norton, specifically omitted CAA's December 7, 2021 letter to the District setting forth the reasons for CAA's transfer request, including the collusive secret plot and scheme between Wise, Sundstrom, Smalley, and Norton to steal CAA's staff, students, and public funds for AA's benefit. (District Exh. 10, p. 42.) The December 7, 2021 letter from CAA to the District outlining the collusive scheme between Wise, Sundstrom, Smalley, and Norton was attached to and expressly incorporated in CAA's September 30, 2022 letter requesting a transfer. (District Exh. 10, p. 42.) However, the District's Transfer Request Report edited by Norton completely omitted the December 7, 2021 letter outlining the clandestine scheme between Norton, Wise, Sundstrom, and Smalley, likely because Norton was attempting to hide it from the District Board. (District Exh. 10, p. 42.) Incredibly, the 54 page Transfer Request Report edited by Norton did not mention (i) the names Wise, Sundstrom, Smalley, or Acceleration Academies, (ii) Norton's secret relationship with them, or (iii) the covert scheme between Wise, Sundstrom, Smalley, and Norton to redirect CAA's resources to AA, *despite that being the primary basis of CAA's transfer request*, as stated in CAA's letter requesting a transfer dated December 7, 2021, which was attached to and expressly incorporated in CAA's letter requesting a transfer dated September 30, 2022, but mysteriously omitted from the Transfer Request Report edited by Norton. (District Exh. 10, p. 42.)

The District Board's Meeting on January 19, 2023⁸

The District Board posted an agenda for its meeting on January 19, 2023. (CAA Exh. 09.) Included on the District Board's meeting agenda were requests from two charter schools to transfer away from the District to another sponsor. (CAA Exh. 09, p. 2, Sec. IX (C) & (D).) The District previously confirmed with both schools, one of which was CAA, that their transfer requests would be heard by the District Board on January 19, 2023. (District Exh. 10, p. 40-41; CAA Exh. 09, p. 2.) The District Board's agenda items for both schools' transfer requests were "Action on [school's name] charter." (CAA Exh. 09, p. 2.) The District Board's posted meeting agenda did not include the word "revocation" or any variation thereof anywhere on the agenda. (CAA Exh. 09; Combs Tr. 236.)

When the meeting began, the District Board approved the meeting agenda. (CAA Exh. 25, p. 9; CAA Exh. 10.) No District Board member made any motion to amend the agenda to include revocation of any school's charter as an action item based on a finding that exigent or emergency circumstances exist and upon a two-thirds vote of the District Board, as would be required by the South Carolina Freedom of Information Act, Section 30-4-80(A). (CAA Exh. 03; CAA Exh. 10.) Accordingly, "revocation" did not appear anywhere on the District Board's January 19, 2023 meeting agenda as originally posted or as approved by the District Board on January 19, 2023. (CAA Exh. 09; CAA Exh. 10; Combs Tr. 236.)

After approving the meeting agenda, the District Board and its legal counsel, Norton, went into executive session for fifty-seven minutes to discuss CAA. (CAA Exh. 09; CAA Exh. 10, 00:11:20 – 01:08:10; Payne Tr. 87-88.) The District Board and Norton did not invite any representatives of CAA or any member of the public into the executive session. (CAA Exh. 10, 01:08:00 – 01:08:10; Payne Tr. 87-88.) Fifty-seven minutes later, the District Board and Norton

⁸ No representatives of Smith Robinson law firm were present at the District Board meeting on January 19, 2023; the District was represented only by Norton at the January 19, 2023 meeting. (CAA Exh. 25, p. 9.)

reemerged to open session and took up the action items on the meeting agenda. (CAA Exh. 10.)

After approving a charter amendment for a second new AA school and then denying another charter school's request to transfer its charter away from the District, the District Board addressed CAA's transfer request. (CAA Exh. 09; CAA Exh. 10) First, Deputy Superintendent John R. Payne presented to the District Board the inaccurate and misleading Transfer Request Report edited by Norton.⁹ (CAA Exh. 10; Payne Tr. 49.) Then the District Board heard a brief presentation from CAA. (CAA Exh. 10.) During deliberations related to CAA's transfer request, the District Board never stated that CAA was in a revocation review process or otherwise ineligible to request a transfer under the District's Transfer Policy. (CAA Exh. 10; District Exh. 10, p. 47; Payne Tr. 84, 94-97; Tucker Tr. 183.) Rather, the District heard CAA's transfer request and then voted to deny it, based on the inaccurate and inapplicable information presented in the Transfer Request Report edited by Norton and the information they received from Norton in executive session or otherwise. (CAA Exh. 10; District Exh. 10.)

After the District Board's vote on CAA's transfer request, as CAA representatives prepared to leave the District Board meeting, District Board Chairman Payne surprisingly asked, "is there any other action that needs to be taken on CAA?" (CAA Exh. 10, 2:02:57.) District Board member Jonathan Butcher, at times reading from a piece of paper in front of him and looking in the direction of Norton for reassurance, stated that he was "very concerned with the reports that were provided today" and then made a surprise motion to revoke CAA's charter. (CAA Exh. 10, 02:03:01 – 02:04:00; Combs Tr. 237.) Mr. Butcher read the reasons for his motion from the sheet of paper in front of him as "the failure to meet the goals in the charter," and "failing to use taxpayer funds for student instruction," while at times looking in the direction of Mr. Norton for assurance. (CAA Exh. 10, 02:03:01 – 02:04:00; CAA Exh. 25, p. 10; Combs Tr. 237.) District Board Chair John Payne seconded the motion to revoke CAA's charter for those reasons and opened the surprise

⁹ Four months later, Deputy Superintendent Payne admitted that he had never visited CAA's campus. (Payne Tr. 82.)

revocation motion for discussion of the District Board. (CAA Exh. 10, 02:04:00 – 02:04:12; CAA Exh. 25, p. 10.)

District Board member Cyndi Mosteller, who did not vote in favor of revocation, immediately commented that the proposed action seemed “hurried.”¹⁰ (CAA Exh. 10, 02:04:15 - 2:04:25.) Chairman Payne made several comments in response to Ms. Mosteller. (CAA Exh. 10.) Initially, Chairman Payne stated, “*This just didn’t start yesterday, this didn’t start last year, it didn’t start the year before, it didn’t start the year before that, it started 4 years ago, so this has been coming.*” (CAA Exh. 10, 02:04:56 – 02:05:08.) CAA attempted to terminate AA four years ago, which is when Wise, Sundstrom, Smalley, Norton, and potentially others, began secretly conspiring, plotting, and scheming to redirect CAA’s students and public funds to AA and destroy CAA without regard for the safety or education of CAA’s students. (CAA Exh. 10; CAA Exh. 20, p. 58; Combs Tr. 237.) Accordingly, Chairman Payne’s statement was accurate – the planned destruction of CAA did start 4 years ago, for AA’s benefit, as secretly planned in writing by Wise, Sundstrom, Smalley, and Norton. (CAA Exh. 10; CAA Exh. 20, p. 58; Combs Tr. 220-221; 237.) However, Chairman Payne’s statement was inconsistent with the following facts:

- (1) The District never mentioned any potential revocation of CAA’s charter to CAA in the days, weeks, months, and years leading up to January 19, 2023;
- (2) The District never evaluated CAA’s performance as required by the AEC law, § 59-40-111(F);
- (3) The District never required CAA to develop and execute a corrective action plan;
- (4) The District never implemented a revocation review process with CAA, as identified in District Board policy and utilized with other schools;
- (5) The District did not issue any sanctions against CAA or require corrective action in

¹⁰ Which – now that we all know of the conspiracy and scheme between Wise, Sundstrom, Smalley, and Norton and their urgent need to revoke CAA’s charter and divert CAA’s students and funds to LAA due to LAA’s failure to attract students – of course it was.

Superintendent Neeley's most recent annual evaluation of CAA;

- (6) The District Board did not receive a recommendation from Superintendent Neeley or District staff to revoke CAA's charter;
- (7) The District Board did not include revocation on its meeting agenda for January 19, 2023; and
- (8) The District Board did not amend its meeting agenda to include revocation based on exigent or emergency circumstances.

(CAA Exh. 07; CAA Exh. 08; District Exh. 10, pp. 40-41, 47; CAA Exh. 09; CAA Exh. 10; CAA Exh. 25, p. 9; Payne Tr. 83, 87, 90, 94-97; Tucker Tr. 182-183; Combs Tr. 238.)

Rather, on January 19, 2023, the District Board spent fifty-seven minutes in a closed executive session with Norton, reviewed an unreliable Transfer Request Report edited by Norton, and then Board member Jonathan Butcher read the reasons for a surprise motion to revoke CAA's charter off a piece of paper in front of him, while at times looking in the direction of Norton for reassurance. (CAA Exh. 10; Combs Tr. 237.)

Next, in response to Ms. Mosteller, Chairman Payne stated, *"This school district has bent over backwards to help this school survive, to the point that we went in and helped them rewrite their charter!"* (CAA Exh. 10, 02:05:11 – 02:05:20.) Nothing could be further from the truth. In making that statement, Chairman Payne neglected to mention:

- (1) That the District's Superintendent and Legal Counsel, Smalley, and Norton, were secretly conspiring with Wise and Sundstrom to redirect CAA's staff, students, and public funds to AA and to destroy CAA;
- (2) That the District refused to allow CAA to remove AA from its charter and directed CAA to "maintain the status quo," thereby costing CAA an additional \$859,142.41 in South Carolina taxpayer funds paid to AA, as planned by Wise, Sundstrom, Smalley, and Norton;

- (3) That the District, at Norton's direction, and without District Board approval, twice withheld CAA's monthly funding in violation of State law, § 59-40-140(D), expressly to preserve those funds for AA the first time and likely to preserve those funds for AA the second time;
- (4) That the District approved a competitive AA charter school to be established two miles away from CAA, perfectly positioned to steal CAA's students and funding, just as secretly planned by Wise, Sundstrom, Smalley, and Norton;
- (5) That the District initially fast-tracked the approval of the competitive AA charter school, as secretly conspired by Wise, Sundstrom, Smalley, and Norton;
- (6) That the District's legal counsel, Norton, testified for AA and against CAA at Sundstrom's request in a North Carolina arbitration between CAA and AA, after AA shut down CAA's technology programs to the detriment of CAA's at-risk students; and
- (7) That the Transfer Request Report edited by Norton and before the Board on January 19, 2023, did not evaluate CAA according to the AEC statute, § 59-40-111(F), or goals in CAA's charter that Chairman Payne expressly acknowledged the District helped write.

(CAA Exh. 10; CAA Exh. 20, pp. 57-58; CAA Exh. 25, pp. 1-6; CAA Exh. 29; CAA Exh. 24; CAA Exh. 22; CAA Exh. 31; CAA Exh. 28; District Exh. 10; Payne Tr. 83, 87, 101-106; Askew Tr. 165, 167; Tucker Tr. 187-188; Combs Tr. 218-221, 231, 233-235, 238-239.)

Then, in further response to Ms. Mosteller, Chairman Payne commented on CAA's fund balance, stating "*If it's not in the classroom, what is it set aside for, nobody has ever told me that.*" (CAA Exh. 10; 02:05:24 – 02:05:47.) Of course, CAA informed the District of the purpose of its fund balance on several occasions, including CAA's August 22, 2022 response to Superintendent Neeley's annual evaluation. (CAA Exh. 08, p. 2; Thom Tr. 123-128.) However, the Transfer Request Report edited by Norton and before the Board on January 19, 2023, inexplicably omitted

CAA's response to Superintendent Neeley's annual evaluation, which stated that CAA's fund balance was set aside to help provide a permanent educational home and classrooms to benefit CAA's students. (CAA Exh. 08, p. 2; District Exh. 10; Thom Tr. 123-128.) Charter schools commonly borrow tens of millions of dollars to build school facilities, the Charleston real estate market is expensive, interest rates are currently high, and money saved on facility debt service payments can be spent on teachers and curriculum. (Thom Tr. 123-128.) The Transfer Request Report edited by Norton hid the purpose of CAA's fund balance from the District Board on January 19, 2023, when Trustee Butcher surprisingly read off a scripted piece of paper following executive session that CAA's charter should be revoked for "failing to use taxpayer funds for student instruction" and Chairman Payne emphasized that CAA's charter should be revoked because no one ever told him what CAA's fund balance was set aside for.¹¹ (CAA Exh. 08; District Exh. 10; CAA Exh. 10; Combs Tr. 237.) Butcher read his motion off a piece of paper and Payne made his comments after spending fifty-seven minutes in executive session with Norton. (CAA Exh. 10; Pay Tr. 87-88.)

With no prior notice to CAA or its community, and after only 4 minutes of public discussion on the surprise motion to revoke CAA's charter, the District Board voted to revoke CAA's charter for the reasons read by Mr. Butcher off a piece of paper after spending fifty-seven minutes in executive session with Norton and reviewing an inaccurate and unreliable Transfer Request Report edited by Norton. (CAA Exh. 09; CAA Exh. 10; CAA Exh. 25, p. 10; Combs Tr. 237.) The District Board did not receive a recommendation from the District Superintendent Neeley or District staff to revoke CAA's charter. (CAA Exh. 10; Payne Tr. 87, 106; Thom Tr. 149-150.)

District Board Chairman Payne's hasty and misinformed comments on January 19, 2023,

¹¹ At the Appeal Hearing on May 11, 2023, Dr. Combs testified that CAA was able to build its fund balance because it was not paying eighty-five percent (85%) of its revenue to an EMO, such as AA. (Combs Tr. 252.)

appear to have been driven by false information he received from Norton or other personal reasons. (CAA Exh. 10; Payne Tr. 106-107.) CAA representatives who were present, Ken Battle and Nadine Deif, asked twice for an opportunity to speak after Butcher made the surprise motion to revoke CAA's charter, and District Board Chairman Payne denied Mr. Battle and Ms. Deif the opportunity to speak on both occasions. (CAA Exh. 10, 02:05:52 – 02:06:00, 02:07:29 – 02:07:46.) In the District Board's four-minute public discussion, not a single District Board member mentioned that CAA is an AEC serving students who have dropped out of school or are at-risk of dropping out of school completely.¹² (CAA Exh. 10, 02:03:00 – 02:06:55.) Not a single District Board member mentioned that CAA has fulfilled its mission and led approximately 200 students to the attainment of a high school diploma so that they can better themselves and their community. (CAA Exh. 10; 02:03:00 – 02:06:55.) Not a single District Board member contemplated what might happen to CAA's at-risk students if CAA were permanently closed. (CAA Exh. 10, 02:03:00 – 02:06:55.)

The District's Petition in the Administrative Law Court

On January 24, 2023, a Petition for Injunctive Relief and for Appointment of Receiver was filed in the Administrative Law Court, just days after the District Board's surprise vote to revoke CAA's charter on January 19, 2023. The alleged purpose of the Petition was to preserve CAA's money, which the District intends to take as of July 1, 2023 and use for whatever purpose the District sees fit, which could include, for example, redirecting those funds to AA, Wise, and Sundstrom via LAA and the second new District-approved AA school, Horry County Acceleration Academy, which on information and belief also sends eight-five percent (85%) of its revenues to AA for Wise and Sundstrom's benefit. (CAA Exh. 09, p. 2.; Combs Tr. 222.) Significantly, the District's Petition was filed in the Administrative Law Court by Norton on January 24, 2023, with

¹² On May 11, 2023, four months after voting to revoke CAA's charter, District Board Chairman Payne admitted that he was just then learning the term "AEC." (Tr. 201.)

no vote of the District Board to do so. (CAA Exh. 25, p. 10.) Michael Thom, the District's Deputy Superintendent of Finance and Operations testified on May 11, 2023, that CAA's annual audits have been clean, and that a reputable, qualified CPA firm manages CAA's finances and has access to and reconciles CAA's bank accounts. (CAA Exh. 14; CAA Exh. 18; Thom Tr. 131-133.) Mr. Thom also testified that he has never criticized CAA for opening additional bank accounts and that he did not know why CAA's opening of additional accounts to collateralize funds in accordance with an auditor's recommendation would have been characterized as a negative in the Petition Norton filed with the Administrative Law Court on January 24, 2023. (Thom Tr. 135-136.)

The Appeal Hearing on May 11, 2023¹³

On May 11, 2023, the District Board adjudicated its own prior motion and vote to revoke CAA's charter on January 19, 2023. (Tr. pp. 2-274.) At the beginning of the appeal hearing, Chairman Payne read from a prepared statement that the revocation action was "brought by the District staff against CAA," which is irrefutably false and directly contradicted Deputy Superintendent Payne's testimony. (CAA Exh. 10; Tr. p. 13; Payne Tr. 87.) Chairman Payne then read from the prepared statement that District Board members would not be questioned as witnesses, despite the District Board moving and voting to revoke CAA's charter on January 19, 2023, without a recommendation to revoke CAA's charter from the District Superintendent or District staff.¹⁴ (Tr. p. 13; Payne Tr. 87.) At the appeal hearing on May 11, 2023, Norton served as legal counsel for the District staff, despite the District Board and Norton meeting *ex parte* in executive session for fifty-seven minutes on January 19, 2023, just before the District Board made

¹³ Curiously, no representatives of Smith Robinson law firm were present at the Appeal Hearing on May 11, 2023; the District staff was represented solely by Norton at the appeal hearing. (Tr. 2.)

¹⁴ CAA named the District Board members as witnesses prior to the appeal hearing on May 11, 2023. The District Board denied CAA's ability to call District Board members as witnesses and greatly limited the amount of time CAA had to present its case at the appeal hearing to a few hours. Given the gravity of potentially closing a public school and eliminating a unique educational option for at-risk students and their families, this is a gross violation of due process.

its surprise motion and voted to revoke CAA's charter. (CAA Exh. 10, Tr. 2.)

District Deputy Superintendent Payne and others testified that the District never offered CAA a corrective action plan or implemented a revocation review process with CAA. (Payne Tr. 84, 86; Tucker Tr. 182-183.) Payne further testified that the District had no communication with CAA about CAA's charter being evaluated for revocation prior to January 19, 2023, when the District Board surprisingly voted to revoke CAA's charter. (Payne Tr. 82-83.) Deputy Superintendent Payne and Deputy Superintendent Michael Thom, the District's only witnesses at the appeal hearing on May 11, 2023, testified that they had never made a recommendation to revoke CAA's charter and that they would be willing to continue working with CAA if the school remained open. (Payne Tr. 87, 106, 109; Thom 149.) Nonetheless, their counsel at the appeal hearing, Norton, argued vehemently to the District Board on May 11, 2023, both in his opening and closing, that CAA's charter must be revoked and CAA must be closed immediately on June 30, 2023. (Tr. 2, 37, 257.) Upon the encouragement and direction of the District Staff's counsel, who is also the District Board's general counsel and who is conspiring with Wise, Sundstrom, and Smalley to destroy CAA to the detriment of its students and redirect CAA's resources to AA, the District Board voted to uphold its own prior motion and vote on January 19, 2023, to revoke CAA's charter. (Tr. 271-273.)

“The District’s” Final Decision

“The District’s” written Final Decision was drafted by Norton after the appeal hearing. The District Board did not meet to consider and approve the written Final Decision. The Final Decision drafted by Norton completely fails to address the following undeniable established facts:

- (1) The surreptitious conspiracy between Wise, Sundstrom, Smalley, and Norton;
- (2) The “Attorney-Client Privileged” email dated November 12, 2019, between Wise, Sundstrom, Smalley, and Norton in which Wise directed Sundstrom to confer with

- Norton about a plan to present to the District Board on November 14, 2019, that would require CAA to continue paying AA against CAA's will;
- (3) The District allowing AA to present such a plan to the District Board two days later when CAA was seeking to remove AA from its charter immediately;
 - (4) The District's directive to CAA on November 14, 2019, after hearing from AA and Sundstrom, to "maintain the status quo," which required CAA to continue paying AA against CAA's will, and which ultimately resulted in CAA being required to pay AA \$859,142.41 in a North Carolina Arbitration;
 - (5) Norton's withholding of CAA's state funding in late 2019, in violation of State law, expressly to preserve funds for AA in connection with the North Carolina arbitration and with no apparent action from the District Board to do so;
 - (6) The State Department of Education's threat to fine the District for Norton's illegal withholding of CAA's state funding for AA's benefit;
 - (7) The "Attorney-Client Privileged" email dated November 12, 2019, between Wise, Sundstrom, Smalley, and Norton in which they confirm a clandestine conspiratorial scheme to fast track open a new AA charter school via the District to steal CAA's staff and students, and the millions of dollars in public funds that follow them, thereby destroying CAA;
 - (8) The District's fast-track approval of AA's new charter school, LAA, to serve the same type of at-risk students as CAA, just two miles from CAA's campus, and to send eighty-five percent (85%) of its revenue to AA, founded by Wise and Sundstrom;
 - (9) LAA's Board Chair having a pre-existing financial relationship with Wise and Sundstrom and then resigning from her board chair position to go to work directly for AA after the District approved eighty-five percent (85%) of LAA's revenue being paid to AA in the charter application she submitted on LAA's behalf;

- (10) AA shutting down CAA's technology programs when COVID arrived, resulting in additional litigation between CAA and AA, in which Norton testified as a witness for AA and against CAA at Sundstrom's request;
- (11) Superintendent Neeley's most recent annual evaluation of CAA including no sanctions or corrective actions related to CAA and concluding with positive remarks about CAA's work;
- (12) CAA's August 22, 2022, response to Superintendent Neeley's evaluation, which corrected and conveyed important information about CAA's academic data, spending on student services, audit submission, and savings for a school facility;
- (13) LAA's student enrollment being hundreds of students short of projections in LAA's charter application at the beginning of the 2022-2023 school year, which determines AA's revenue from LAA;
- (14) Norton's editing of the Transfer Request Report, which included material errors, misinformation, and omissions of information, prior to the January 19, 2023, District Board meeting;
- (15) The lack of "revocation" of any school's charter on the District Board's January 19, 2023, meeting agenda as originally posted or as approved by the District Board on January 19, 2023;
- (16) Norton spending fifty-seven minutes in executive session with the District Board on January 19, 2023, prior to a District Trustee making a surprise motion to revoke CAA's charter, reading the reasons for the motion off a piece of paper, and looking in the direction of Norton while doing so;
- (17) The District Board having only a four-minute public discussion about the revocation of CAA's charter on January 19, 2023, most of which was Board Chairman John Payne's unsupported statements in response to Trustee Mosteller's concerns, as

described herein;

- (18) The District Board voting to revoke CAA's charter on January 19, 2023, with no prior notice to CAA, its community, or the public, and with no recommendation from the District Superintendent or District staff to revoke CAA's charter;
- (19) The District's failure to evaluate CAA pursuant to the AEC evaluation statute, § 59-40-111(F), prior to voting to revoke CAA's charter on January 19, 2023;
- (20) The District's failure to evaluate CAA based on goals in CAA's charter that take into account CAA's specialized mission and student population prior to voting to revoke CAA's charter on January 19, 2023;
- (21) The District's failure to compare CAA's performance with the performance of other alternative education campuses or schools that serve similar subsets of students (i.e. at-risk high school students that have dropped out of school or are at-risk of dropping out of school) prior to voting to revoke CAA's charter on January 19, 2023;
- (22) The District's failure to require CAA to take corrective action or to develop and execute a corrective action plan prior to voting to revoke CAA's charter on January 19, 2023;
- (23) The District's failure to offer CAA a revocation review process as identified in District Policy, prior to voting to revoke CAA's charter on January 19, 2023;
- (24) The District Board prosecuting the revocation of CAA's charter in four minutes on January 19, 2023, and then adjudicating its own prior motion and vote to revoke CAA's charter on May 11, 2023;
- (25) Norton spending fifty-seven minutes in executive session with the District Board on January 19, 2023, to discuss CAA *ex parte*, and then Norton representing the District staff on May 11, 2023, before the District Board, for whom he also serves as general counsel;

(26) On May 11, 2023, District staff witnesses testifying that they had not made any recommendation to revoke CAA's charter and that they would be willing to continue working with CAA if the school were not closed, and Norton nonetheless arguing in his opening and closing that CAA's charter must be revoked and CAA closed immediately on June 30, 2023;

(27) The pre-existing litigation pending before the South Carolina Court of Appeals related to the District's "maintain the status quo" directive for AA's benefit, in which briefs have now been filed;

(Final Decision.)

Additionally, many statements in the findings of fact and conclusions of law in the Final Decision drafted by Norton are inaccurate, incomplete, or misleading and were not in the Transfer Request Report edited by Norton that was before the District Board on January 19, 2023, when the District Board voted to revoke CAA's charter. Statements and suggestions included in the following paragraphs of the "Findings of Fact" in the Final Decision drafted by Norton were not included in the Transfer Request Report or before the District Board on January 19, 2023 and thus could not have been the reason for the District Board's surprise motion and vote to revoke CAA's charter on January 19, 2023: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 26, 27, 28, 29, 32, 47, 48, 49, and 55. Several of the statements were also unreliable: for example, with respect to paragraph 55, upon cross examination, Mr. Thom admitted that many of the numbers included in District Exhibit 38 regarding school expenditures were inaccurate, which can easily be determined by a cursory review of the exhibit. (District Exh. 38; Thom Tr. 118-119.)

Moreover, the "Conclusions of Law" in District's Final Decision fails to apply the evaluation standard in the Alternative Education Campus statute, § 59-40-111(F), to CAA. In fact, the "Conclusions of Law" in the Final Decision drafted by Norton makes no reference at all to the Alternative Education Campus charter school statute.

Finally, in the Final Decision, Norton alleges that CAA’s charter should be revoked because of an “unsatisfactory” rating on its State Report Card.¹⁵ However, in 2022, the District approved AA to replicate LAA in Horry County despite LAA receiving a rating of “unsatisfactory” on its only South Carolina State Report Card.¹⁶ Specifically, LAA received an “unsatisfactory” rating on its only State Report Card for Academic Achievement. LAA received an “unsatisfactory” rating on its only State Report Card for Preparing for Success. LAA received an “unsatisfactory” rating on its only State Report Card for Graduation Rate. LAA received an “unsatisfactory” rating on its only State Report Card for College & Career Readiness. Despite LAA’s comprehensive “unsatisfactory” rating on its only State Report Card, the District approved and is overseeing the replication of LAA in other locations, where on information and belief, AA will take 85% of the revenue from those schools. Norton’s inclusion of CAA’s State Report Card rating as a reason for revoking CAA’s charter and shutting CAA down permanently in “the District’s” Final Written Order that he drafted is clearly a pretext for ulterior motives to benefit AA, and its founders, Wise and Sundstrom, who Norton is conspiring with to redirect CAA’s staff, students, and funds to AA.

In summary, the Final Decision drafted by Norton was not voted on and approved by the District Board, is filled with statements that were not before the District Board on January 19, 2023 when the District Board voted to revoke CAA’s charter after spending fifty-seven minutes in executive session with Norton, and completely fails to address the covert conspiratorial scheme between Norton, Wise, Sundstrom, and Smalley to redirect CAA’s resources to AA, and Norton’s many actions in furtherance of that scheme, as described herein and as addressed extensively with the District since December 7, 2021, when CAA first requested to transfer its charter away from

¹⁵ State Report Card ratings are not tailored to account for alternative education campus charter schools serving at-risk students or the metrics set forth in the AEC evaluation statute, § 59-40-111(F), as described herein. (Tucker Tr. 187-88.) For example, the State Report Card rating system applies the same standards to CAA, an AEC charter school serving at-risk high school students that have previously dropped out of school, and Academic Magnet, a magnet high school for the most academically gifted students in the low country.

¹⁶ Available at <https://screportcards.com/overview/?q=eT0yMDIyJnQ9SCZzaWQ9NDcwMTA2NA>

the District.

CAA Seeks to Learn More about Wise, Sundstrom, Smalley, and Norton's Relationship

As explained herein, CAA's current students could generate over Forty-Two Million Dollars (\$42,000,000.00) in revenue for AA over the term of a 10-year charter if those students enroll at LAA after CAA is closed, as secretly planned in writing by Wise, Sundstrom, Smalley, and Norton. Since the District voted to revoke CAA's charter on January 19, 2023, LAA and AA have been actively recruiting CAA's students to LAA. (Tucker Tr. 193.) CAA seeks to discover what communications exist between Wise, Sundstrom, Smalley, and Norton regarding the funneling of CAA's students and public funds to AA, in addition to the November 12, 2019, email that the District and Norton never disclosed to CAA.

Wise and Sundstrom, and the entities they are associated with, reportedly have a long scandalous history of compensating individuals who can influence the expenditure of public funds in their favor or in favor of their entities, including Educational Research and Development Institute (ERDI) and Atlantic Research Partners (ARP). (CAA Exh. 30; Combs Tr. 222-228.) Wise and Sundstrom's reported history includes controversial activities and transactions in Beaufort County, South Carolina, related to the former Superintendent of the Beaufort County School District. (CAA Exh. 30; Combs Tr. 223-225.) Wise and Sundstrom's reported history also includes controversial activities and transactions in Florida, Tennessee, Ohio, Pennsylvania, Maryland, Louisiana, and Illinois.¹⁷ (CAA Exh. 30.) The Island Packet, Mandy Matney, and other publications have reported on Wise and Sundstrom's long list of controversial activities. (CAA Exh. 30; Combs Tr. 222-228.)

Wise, Sundstrom, Smalley, and Norton secretly conspired, schemed, and planned, under purported "attorney-client privilege" to redirect CAA's, staff, students, and public funds to LAA,

¹⁷ In fact, a former Chicago, Illinois school district Superintendent was convicted and sentenced to five years in federal prison for her involvement with an entity associated with Wise and Sundstrom. (CAA Exh. 30.)

which if successful, would send tens of millions of dollars to AA, Wise, and Sundstrom. (CAA Exh. 20, pp. 57-58.) CAA further knows that Norton acted repeatedly to carry out those plans, as described herein. CAA seeks to discover if Norton and/or Smalley have been or will be compensated for their work in redirecting CAA's public funds to AA. Despite being first informed of the secret relationship and plot between Wise, Sundstrom, Smalley, and Norton on December 7, 2021, in CAA's original transfer request submitted to the District, the District has done absolutely nothing to investigate the secret relationship and clandestine scheme between Wise, Sundstrom, Smalley, and Norton. (District Ex. 10, p. 42.)

To that end, in pre-existing litigation pending before the South Carolina Court of Appeals and the United States District Court for the District of South Carolina, and potentially in forthcoming litigation, CAA seeks to conduct discovery related to Norton's and Smalley's bank records and financial accounts. Moreover, CAA seeks to conduct discovery related to the bank records and financial accounts of entities associated with Norton and/or Smalley. For example, one such entity would include the Norton Law Firm, LLC, a South Carolina for-profit entity organized on June 4, 2022, just months before CAA's charter was surprisingly revoked without a recommendation from the District Superintendent or District Staff and without prior notice to CAA. The Norton Law Firm, LLC is a separate legal entity from Harrell, Martin, & Peace, P.A. The Norton Law Firm, LLC does not appear to be registered with the South Carolina Bar or the Attorney Information System. Norton is listed as the Registered Agent for the Norton Law Firm, LLC. Norton has previously engaged in written "attorney-client privileged" communications with Wise and Sundstrom. (CAA Exh. 20, pp. 57-58; Combs Tr. 220-221.)

In summary, given the clandestine scheme between Wise, Sundstrom, Smalley, and Norton to redirect CAA's public funds to AA, and given Norton's repeated actions thereafter to execute their scheme, CAA intends to conduct discovery related to Norton and Smalley's communications and relationships with Wise and Sundstrom and the entities and individuals they are associated

with. If CAA is immediately closed and CAA's funds are taken by the District, as Norton has repeatedly argued must happen as of June 30, 2023, CAA will have no opportunity to fully investigate Norton's secret relationship with Wise, Sundstrom, and Smalley and their covert scheme and actions to redirect CAA's public funds to AA, founded by Wise and Sundstrom.

What the District is Seeking

The District seeks to have CAA immediately closed, CAA's funds taken by the District, and CAA's ability to pursue its appeal and pre-existing legal claims against the District related to Norton's relationship with Wise and Sundstrom ended before any discovery or investigation into the relationship between Wise, Sundstrom, Smalley, and Norton can occur. The District seeks to have CAA's students enroll at LAA, where AA will take eighty-five percent (85%) of the revenue. This is evidenced by the District's hurried closure of CAA with no evaluation of CAA's performance under the AEC evaluation statute, § 59-40-111(F), no mention of sanctions or revocation in Superintendent Neeley's most recent annual evaluation of CAA, no request that CAA develop and execute a corrective action plan, no implementation of a revocation review process as referenced in the District's Transfer Policy, no recommendation to revoke CAA's charter from District Superintendent Neeley or District staff, no mention of revocation on the January 19, 2023, board meeting agenda, and no reasonable due process provided to CAA. This is further evidenced by Norton's repeated attempts, including in Petitions filed in the Administrative Law Court, to prevent CAA from pursuing its legal claims and discovery beyond June 30, 2023.¹⁸ The District's position may be most succinctly summarized by Norton's statements to this Court on May 5, 2023, when Norton prematurely expressed great concern about CAA reserving funds to challenge the District's presumed revocation (notably, before the appeal hearing took place) beyond June 30, 2023:

¹⁸ For instance, if, as was requested in the Petition filed by Norton, a receiver had been appointed for CAA, there would likely have been no further inquiry into the nefarious conspiracy and activities of Wise, Sundstrom, Smalley, and Norton.

[W]hat they're intending to do is that the school is in fact revoked and we go through the closure protocol, Mr. Turner and Mr. Prichard are gonna [sic] take the position that the school is an independent 501(c)(3), and that million dollars that's in the IOLTA account can be used for the independent 501(c)(3) to continue litigation against the district instead of the funds being returned to the district, even if this Court finds that the revocation order shouldn't be stayed.

...

If you deny the motion to stay, then the school will have to shut down. And at that point, all this prior existing litigation will be moot."

Thus, on May 5, 2023, in this Court, Norton prematurely assumed the District Board's Final Decision (albeit, for good reason considering the District's planned denial of due process to CAA, as described herein) and expressed significant concern about (i) the District Board's decision to revoke CAA's charter being fully appealed, and (ii) the District's actions and Norton's relationships being fully investigated by CAA in pre-existing litigation beyond June 30, 2023. If CAA's charter is revoked and CAA is permanently closed as of June 30, 2023, as Norton has repeatedly argued must happen, CAA's students may drop out of school completely or may enroll at LAA, as secretly planned by Wise, Sundstrom, Smalley, and Norton, and the clandestine scheme to redirect CAA's students and taxpayer funds to AA, Wise, and Sundstrom will be complete and receive no further scrutiny.

CAA's Commitment to its At-Risk Students and Families

CAA has always been and continues to be committed to fulfilling its mission and leading at-risk, drop out students who choose to attend CAA to the attainment of a high school diploma before they reach the age of 21 so that they can better themselves and their community. CAA has led approximately 200 at-risk drop out students to the attainment of a high school diploma, more than any school of its kind in South Carolina. CAA anticipates that twenty (20) or more at-risk students will graduate from CAA in June 2023. CAA and Superintendent Neeley have a cordial relationship, and CAA's administration and Board and the District's administration are willing to continue working together to benefit at-risk students. (Payne Tr. 109; Tucker Tr. 194; Combs Tr.

239.) Should CAA’s motion for a stay be granted, CAA will continue working hard to lead drop out students to the attainment of a high school diploma and fulfill its mission as an Alternative Education Campus pursuant to S.C. Code Ann. § 59-40-111 of the Act.

III. ARGUMENT

The Act states that a “final decision of the school district ... 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). Section 1-23-380(2) provides that “the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision,” but that “the reviewing court may order ... a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.” Rule 65 of the South Carolina Rules of Civil Procedure addresses injunctive relief. The standard for injunctive relief is a familiar one and is met here in full. A party is entitled to a temporary injunction upon establishing (1) irreparable harm, (2) a likelihood of success on the merits, and (3) an inadequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

Additionally, the Act states that “[p]ending resolution of the appeal, the charter school may also move before the Administrative Law Court for imposition of a stay of the revocation ... on the grounds that an unusual hardship to the charter school will result from the execution of the sponsor’s decision.” S.C. Code Ann. § 59-40-110(J).

A. CAA will Suffer Irreparable Harm Absent a Stay.

The South Carolina Court of Appeals has established that the loss of a professional practice or the loss of the existence of a business constitutes irreparable harm. *See Peek v. Spartanburg Regional Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005) (physician’s loss of patient referral base and professional practice constituted irreparable harm) *citing District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000) (“While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens

the very existence of [plaintiff's] business.”).

Absent this Court granting CAA's Motion for a Stay, CAA's Alternative Education Campus charter school will be permanently closed as of the end of the day on June 30, 2023. CAA's at-risk students will likely drop out of school completely. Most or all of CAA's assets will be seized by the District. CAA's 100% certified teachers and employees will retire or move on to other employment. CAA's existence as a charter school will be over (1) before CAA can fully exercise its right to appeal the decision of the District Board to revoke CAA's charter, which was made in violation of the Act, in violation of the South Carolina Freedom of Information Act, and in violation of the South Carolina Constitution, (2) before CAA can fully investigate the secret relationship between Wise, Sundstrom, Smalley, and Norton and their clandestine conspiratorial scheme to redirect CAA's staff, students and public funds to AA via the District and LAA, and (3) before CAA can fully litigate its pending legal claims against the District in state and federal court.

Further, CAA's students will suffer irreparable harm. CAA's purpose is to serve at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school, and CAA's student body is composed of students who have previously dropped out of school or are at-risk of dropping out of school completely. CAA is the only AEC charter school of its type in South Carolina that has led approximately 200 at-risk students to the attainment of a high school diploma so that they can better themselves and their communities. If CAA is closed and its 100% certified teachers and team of student advocates leave, CAA's at-risk students are likely to give up on their education entirely and no longer pursue a high school diploma.

It is axiomatic that the revocation of CAA's charter and the end of CAA's existence as a charter school constitutes irreparable harm to CAA that will have a devastating effect on CAA's at-risk students.

B. CAA is Likely to Prevail on the Merits of its Appeal that the District's Revocation of CAA's Charter Violated the Law.

On November 12, 2019, Wise, Sundstrom, Smalley, and Norton confirmed in writing a clandestine scheme to redirect CAA's public funds to AA. Norton helped Wise and Sundstrom execute that plan by (1) ensuring that the District required CAA to maintain the status quo on November 14, 2019 and continue paying AA against CAA's will, (2) withholding CAA's state funding for AA's benefit in violation of the Act, (3) overseeing the establishment of a competitive AA charter school two miles from CAA's campus that would send 85% of its revenue to AA, (4) testifying for AA and against CAA at Sundstrom's request in a North Carolina arbitration that the District was not a party to, (5) editing the Transfer Request Report before the District Board on January 19, 2023, which presented inaccurate and inapplicable data, provided misinformation, and omitted relevant information in a manner that was highly prejudicial to CAA, (6) not advising the District Board to evaluate CAA's performance using the metrics required by the AEC statute, § 59-40-111(F), (7) allowing the District Board to violate the South Carolina Freedom of Information Act on January 19, 2023, after spending fifty-seven minutes in executive session with the District Board, and (8) allowing the District to deny CAA due process. The District Board's surprise motion and vote to revoke CAA's charter on January 19, 2023, without prior notice to CAA, without exercising duties required by law, and after spending fifty-seven minutes in executive session with Norton, and the subsequent appeal hearing on May 11, 2023, at which the District Board adjudicated its own prior motion and vote to revoke CAA's charter, violated the South Carolina Charter Schools Act, the South Carolina Freedom of Information Act, and the Constitution of the State of South Carolina.

**1. The District Board's Vote to Revoke CAA's Charter Violated
The South Carolina Charter Schools Act.**

The South Carolina Charter Schools Act imposes several requirements on the District, as a sponsor, including:

- (1) mandated evaluation metrics for AEC charter schools, such as CAA, as described in § 59-40-111(F);
- (2) a duty to utilize corrective actions, sanctions short of revocation, and corrective actions plans, as described in § 59-40-55(B)(8); and
- (3) a duty to utilize District policies, unless specifically released in the charter contract, as described in § 59-40-60(B).

The District failed to comply with these requirements prior to the surprise motion and vote to revoke CAA's charter on January 19, 2023.

a. The District did not Comply with the AEC Evaluation Statute.

The Alternative Education Campus statute requires the District to evaluate CAA as an AEC (1) according to academic performance standards and expectations established by written agreement between the sponsor and the school (i.e. the goals in CAA's charter) that take into account the school's specialized mission and student population, (2) with comparisons to nationally normed data with similar subsets of students (i.e., in this case, comparisons with alternative education campuses that serve high school students who have dropped out of school or are at risk of dropping out of school). S.C. Code Ann. § 59-40-111(F). The District has never evaluated CAA under § 59-40-111(F), and the District Board voted to revoke CAA's charter based on metrics not aligned with CAA's mission, without reference to goals that are included in CAA's charter, and without comparisons to schools established to serve high school students that have dropped out of school or are at risk of dropping out of school.

Specifically, the Transfer Request Report before the District Board on January 19, 2023, as edited by Norton, focused on a 4-year cohort graduation rate, a metric which does not align with CAA's mission. An isolated 4-year cohort graduation rate does not align with CAA's mission of leading students who have dropped out of school to the attainment of a high school diploma because those at-risk students are often not attending school for several months or years prior to enrolling at CAA. For example, a student who drops out of a traditional high school during the ninth grade at 14 years of age and enrolls at CAA for the first time at 16 years of age is almost certainly not going to graduate with his or her ninth grade cohort (i.e. the group of students he or she started ninth grade with) because the student has been out of school for two years. However, CAA may be able to lead that student to the attainment of a high school diploma by the time the student reaches the age of 20, which would fulfill CAA's mission and the very purpose of CAA's existence.

Norton has continuously highlighted the 4-year cohort graduation rate metric as a primary reason to revoke CAA's charter. That metric is referenced one time in CAA's amended charter only because the District required it be included in the amended charter *after* the scheme between Wise, Sundstrom, Smalley, and Norton was established. As noted by District Board Chairman Payne on January 19, 2023, the District "helped" rewrite CAA's charter beginning in 2020, which included the District insisting on the inclusion of the two "critical goals" on page 45 of CAA's amended charter, including the one sentence referencing students achieving graduation in four years, despite that metric not aligning with CAA's mission. Unbeknownst to CAA at that time, the District was offering its "help" rewriting CAA's charter *after* the secret plan between Wise, Sundstrom, Smalley, and Norton had been devised to redirect CAA's students and public funds to LAA and AA via the District. Norton now, in the unreliable Transfer Request Report and in a newly created chart on page 6 of the Final Decision, emphasizes the two "critical goals" added to CAA's amended charter at the District's insistence after the covert conspiratorial scheme to kill

CAA was established, as the basis for revoking CAA's charter.¹⁹

Moreover, the Transfer Request Report edited by Norton and the Final Decision of the District Board drafted by Norton omitted any analysis whatsoever of the following graduation goals that are included in CAA's charter:

“Measure 10: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the four-year adjusted cohort to either graduate or re-enroll the following year.”

Measure 11: Percent of students that enrolled in CAA prior to their senior year (as measured by credits attained) that are in the five-year adjusted cohort to either graduate or re-enroll the following year.”

Specifically, the Transfer Request Report and the Final Decision included no analysis of students who re-enrolled at CAA the following year and no analysis of the five-year cohort graduation rate. Thus, the District has not evaluated CAA pursuant to the goals in its charter that, at least to some degree, take into account CAA's mission and specialized student population, as expressly required by the Act's AEC evaluation statute, § 59-40-111(F).

Notably, the example of the student provided above (i.e. the 14 year old who drops out of school, enrolls at CAA at 16 years of age, graduates from CAA at 20 years of age, and thereby fulfills CAA's mission and purpose), would not meet either of the graduation goals (i.e. Measure 10 or 11 above) from CAA's charter because the student (a) didn't graduate with his or her four or five year cohort, and (b) is not returning to CAA the following year (because the student graduated from CAA). In other words, CAA could fulfill its mission and the very purpose of its existence by leading that student to the attainment of a high school diploma, but not meet the goals currently stated in its charter as approved by the District! The AEC evaluation statute, § 59-40-111(F) expressly requires that an AEC be evaluated according to academic performance standards and expectations established by written agreement between the sponsor and the school (i.e. the

¹⁹ The newly created chart with erroneous data on page 6 of the Final Decision was not included in the Transfer Request Report before the District Board on January 19, 2023, and was not before the District Board at the revocation hearing on May 11, 2023. Norton drafted the Final Decision.

goals in CAA's charter) that take into account the school's specialized mission and student population. Accordingly, for CAA to be properly evaluated under the AEC statute, the District and CAA, as the two parties to the charter, each of which participated in writing the charter as acknowledged by District Board Chairman Payne, need to reassess and redefine the goals included in the charter to align with CAA's mission and the unique student population that CAA serves.

Additionally, the Transfer Request Report edited by Norton and the Final Decision drafted by Norton are completely absent of any comparison of CAA to other alternative education campuses that serve similar subsets of at-risk, drop-out, high school students, as required by the AEC evaluation statute, § 59-40-111(F). Such comparisons are necessary because it would be illogical to compare CAA with schools that are not serving at-risk high school students who have dropped out of school for significant periods of time. At the revocation hearing on May 11, 2023, Norton attempted to question Deputy Superintendent John Payne about national comparison data to overcome this significant deficiency by the District, but Payne's testimony was not tailored to Alternative Education Campuses focused on serving at-risk, drop out students in grades 9-12, and Payne neglected to name a single school that the District compared to CAA. Moreover, the District has never provided any documentation to CAA comparing CAA's performance with any other alternative education campuses that serve at-risk, drop out, high school students. Such information was certainly not before the District Board on January 19, 2023, when the District Board made a surprise motion and voted to revoke CAA's charter after only 4 minutes of public discussion. CAA is the only AEC charter school of its type in South Carolina that has led approximately 200 at-risk students to the attainment of a high school diploma, and the District has never compared CAA's performance to schools that serve similar subsets of students (in this case, students in grades 9-12 who have dropped out of school), as required by the AEC evaluation statute, § 59-40-111(F).

Because the District failed to evaluate CAA according to the Alternative Education Campus evaluation statute, § 59-40-111(F), prior to the surprise motion and vote to revoke CAA's

charter on January 19, 2023, CAA is likely to prevail on the merits of its appeal.

b. The District did not require corrective action prior to voting to revoke CAA's charter.

The District has a statutory and contractual duty to utilize corrective action, sanctions short of revocation, and corrective actions plans, as described in § 59-40-55(B)(8) of the Act and Section 3.1(A)(vi) of the charter contract between the District and CAA. The District failed to require CAA to take corrective action or to develop and execute a corrective action plan prior to the surprise motion and vote to revoke CAA's charter on January 19, 2023. Several witnesses, both from the District and CAA, testified that the District never required CAA to develop and execute a corrective action plan prior to the District Board making a surprise motion and vote to revoke CAA's charter after only 4 minutes of public discussion. Superintendent Neeley's most recent annual evaluation of CAA in June 2022 did not impose any sanctions against CAA or require CAA to take any corrective actions.

If the District truly believed that CAA's performance was deficient or that CAA was out of legal compliance, the District was required by statute and contract to utilize corrective action, which District witnesses agreed never happened. Why would the District not want to provide an alternative education campus charter school that was fulfilling its mission and had led approximately 200 at-risk students to the attainment of a high school diploma with an opportunity to take corrective action to cure any apparent deficiencies? Why, on January 19, 2023, did the District instead make a surprise motion to revoke CAA's charter, with no prior notice to CAA, and then vote to revoke CAA's charter after only 4 minutes of public discussion following a fifty-seven minute executive session with Norton? CAA is entitled to answers to these questions and to the District's legal compliance before the District attempts to revoke CAA's charter and close CAA permanently.

c. The District failed to offer CAA the revocation review process noted in District policy.

The Act states that any and “all agreements regarding the release of the charter school from school district policies must be contained in the [charter] contract.” S.C. Code Ann. § 59-40-60(B). Section 2.2 of the charter contract between the District and CAA states “the School must comply with all Sponsor policies...” The charter contract between the District and CAA does not release CAA from the District’s Transfer Policy or the District’s revocation review process. The District Board approved and adopted a Transfer Policy that expressly identifies a revocation review process that the District has utilized with other charter schools. The District’s Transfer Policy states “[s]chools under revocation review or occupying the lowest performance level rating as defined by the SCPCSD performance framework are not eligible to request a transfer out of the district.” Several witnesses, both from the District and CAA, testified that the District never utilized the revocation review process with CAA. Moreover, when CAA requested a transfer to another sponsor, Superintendent Neeley provided CAA with a copy of the District’s Transfer Policy and scheduled the hearing on CAA’s transfer request, further indicating that the Transfer Policy was applicable to CAA and that CAA was not in a revocation review process and ineligible to request a transfer. The District’s failure to apply its own policy and revocation review process to CAA violates § 59-40-60(B) of the Act because CAA has not been released from that policy in the charter contract between the District and CAA. Because the District has failed to comply with its own policy and offer CAA a revocation review process, in violation of § 59-40-60(B) of the Act, CAA is likely to prevail on the merits of its appeal.

2. The District Board’s Vote to Revoke CAA’s Charter Violated The South Carolina Freedom of Information Act.

The District is subject to the South Carolina Freedom of Information Act (the “FOIA”). S.C. Code Ann. § 59-40-230(E)(11). The FOIA requires the District to post an agenda for all

regularly scheduled and special meetings at least twenty-four (24) hours before the meeting. S.C. Code Ann. § 30-4-80(A). Once an agenda is posted, no items may be added to the agenda without an additional twenty-four hours' notice to the public. S.C. Code Ann. § 30-4-80(A). "After the meeting begins, an item upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members presenting and voting and upon a finding by the public body that an emergency or exigent circumstances exists if the item is not added to the agenda." S.C. Code Ann. § 30-4-80(A).

Further, the FOIA expressly describes its purpose: "it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-15.

On January 19, 2023, the District failed to comply with § 30-4-80(A) of the FOIA because "revocation" was not on the agenda as originally posted or as approved by the District Board at the meeting. The District Board posted an agenda for its meeting on January 19, 2023. Included on the District Board's meeting agenda were requests from two charter schools to transfer away from the District to another sponsor. The District had previously confirmed with both schools, one of which was CAA, that their transfer requests would be heard by the District Board on January 19, 2023. The District Board's agenda items for both schools' transfer requests were "Action on [school's name] charter." The District Board's meeting agenda did not include the word "revocation" or any variation thereof anywhere on the agenda. In the days, weeks, months, and years leading up to January 19, 2023, the District never informed CAA that its charter was at risk of being revoked.

When the meeting began, the District Board approved the meeting agenda. No District Board member made any motion to amend the agenda to include revocation of any school's charter as an action item based on a finding that exigent or emergency circumstances exist and upon a two-thirds vote of the District Board, as required by the FOIA, § 30-4-80(A). Accordingly, revocation did not appear anywhere on the District Board's agenda for the January 19, 2023, meeting as originally posted or as approved by the District Board on January 19, 2023.

Moreover, the District failed to comply with the purpose of the FOIA by conducting its public business regarding CAA in executive session on January 19, 2023. After approving the meeting agenda, the District Board and its legal counsel, Norton, went into executive session for nearly an hour to discuss CAA. The District Board and Norton did not invite any representatives of CAA into executive session. Fifty-seven minutes later, the District Board and Norton reemerged to open session. After denying CAA's transfer request, District Board Chairman Payne surprisingly asked "is there any other action that needs to be taken on CAA?" District Board member Jonathan Butcher, reading from a piece of paper in front of him, and at times looking in the direction of Norton for reassurance, stated that he was "very concerned with the reports that were provided today" and then made a surprise motion to revoke CAA's charter, despite revocation not appearing on the agenda. The District Board's surprise motion to revoke CAA's charter was the first time ever the District indicated to CAA that the District was considering revocation of CAA's charter. With no prior notice to CAA, and after only 4 minutes of public discussion by the District Board, the District Board voted to revoke CAA's charter for the reasons read by Mr. Butcher off a piece of paper after spending fifty-seven minutes in executive session with Norton. The public business of CAA's charter revocation was not performed by the District Board in an open and public manner so that citizens, including the CAA community, would be fully advised of the performance of District officials. It was pre-planned and scripted by Norton and some of the District Board members, who may or may not have known about Norton's secret relationship and

clandestine scheme with Wise, Sundstrom, and Smalley.

CAA is likely to prevail on the merits of its appeal because the District failed to comply with the letter, purpose, and spirit of the FOIA in voting to revoke CAA's charter by surprise, without prior notice to CAA, without "revocation" on the meeting agenda, and with only four minutes of public discussion after spending fifty-seven minutes in executive session with Norton.

**3. The District Board's Adjudication of its own Sua Sponte Motion
and Vote to Revoke CAA's Charter Violated Article I, Section
22 of The South Carolina Constitution.**

The South Carolina Constitution states that a party shall not be "subject to the same person for both prosecution and adjudication." S.C. Const. Art. I, § 22. The District is a statutorily created public body, governed by a statutorily defined board of trustees. S.C. Code Ann. §§ 59-40-220 & -230. The District and the Act are subject to the South Carolina Constitution. S.C. Code Ann. §§ 59-40-240.

To succeed on a claim for a procedural due process violation, "a plaintiff must show that [it] has a constitutionally protected property or liberty interest, and that [it] was deprived of that interest by the state without due process of law." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). While liberty interests protected by procedural due process have not been explicitly defined, they undoubtedly include "the right of the individual to contract" and "to engage in any of the common occupations of life." *Id.* at 572 (citing *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

CAA has both liberty and property interests in operating a public charter school. The interests include the right to enroll students, receive and spend public funds in furtherance of the school, contract with employees and others, and exercise control over the school's operations. Many of these fundamental liberty and property interests are described in the statutory provisions of the Act and in the charter contract. *See, e.g.*, § 59-40-50(B)(5) (a charter school must hire or

contract for administrative staff and a school leader); § 59-40-50(B)(6) (a charter school must admit all children eligible to attend public school to a charter school, subject to space limitations); and § 59-40-140 (addressing a charter school’s right to receiving funding). Because CAA’s liberty and property interests are authorized by statute and contract, CAA has “more than an abstract need or desire for [them],” rather, as described in *Bd of Regents of State Colls. v. Roth, supra*, CAA has “a legitimate claim of entitlement” to them.

Accordingly, CAA is entitled to procedural due process, including not being “subject to the same person for both prosecution and adjudication,” and the opportunity to be heard before a fair and impartial body. “Partiality exists where, among others, an adjudicator either has *ex parte* information as a result of prior investigation or has developed, by prior involvement with the case, a ‘will to win.’” *Ross v. MUSC*, 328 S.C. 51, 69, 492 S.E.2d 62, 72 (1997).

CAA was subject to the same District Board for both prosecution and adjudication of its revocation action in violation of Article I, Section 22 of the South Carolina Constitution. On January 19, 2023, the District Board went into executive session with Norton for fifty-seven minutes before re-emerging and moving, with no recommendation from the District’s Superintendent or staff, to revoke CAA’s charter. After only 4 minutes of public discussion, the District Board voted to revoke CAA’s charter. The District Board denied CAA representatives the opportunity to speak on the motion to revoke CAA’s charter. There was no revocation report before the District Board on January 19, 2023; rather, there was only an unreliable Transfer Request Report edited by Norton before the District Board received it and the information provided by Norton to the District Board in executive session. The same District Board that *sua sponte* prosecuted the revocation of CAA’s charter on January 19, 2023, while significantly deviating from statutory and contractual requirements, its policies, and its standard practices, on May 11,

2023, adjudicated its own prior motion and vote to revoke CAA's charter. By prosecuting and adjudicating the revocation of CAA's charter, the District Board unconstitutionally denied CAA procedural due process in violation of Article I, Section 22 of the South Carolina Constitution.

Moreover, the District Board received *ex parte* information from Norton on January 19, 2023, and possessed such *ex parte* information on May 11, 2023. Specifically, the District Board met with Norton in executive session for fifty-seven minutes on January 19, 2023, to discuss CAA, just before the District Board made the surprise motion and vote to revoke CAA's charter. No representatives of CAA were invited into the executive session with the District Board and Norton. Then, on May 11, 2023, at the revocation hearing, Norton represented District staff and argued to the District Board that CAA's charter must be revoked. The District Board received *ex parte* information from Norton on January 19, 2023, regarding the revocation of CAA's charter in violation of South Carolina law. *Ross v. MUSC*, 328 S.C. 51, 69, 492 S.E.2d 62, 72 (1997).

Further, both the District Board and Norton had a "will to win" on January 19, 2023 and May 11, 2023. It is now known that Norton is involved in a secret conspiracy with Wise, Sundstrom, and Smalley to redirect CAA's staff, students, and tens of millions of dollars in public funds to AA, via the District and LAA, and Norton had already taken several steps to execute that plan. Norton, as the District's counsel, ushered through LAA's fast track charter application in which LAA proposed to serve the same students at CAA in the same locale as CAA and send eighty-five percent (85%) of its revenue to AA, just as planned by Wise, Sundstrom, Smalley, and Norton. Norton did not address Mims previously being employed by ARP or leaving her position as LAA Board Chair to work directly for AA after the District Board approved LAA's charter application. Norton withheld CAA's funding in violation of State law twice, expressly to preserve funds for AA the first time, and likely to preserve funds for AA the second time. Norton acted both

times without a vote of the District Board to withhold CAA's funds and in violation of § 59-40-140(D), which requires the District to distribute CAA's funds within ten business days. The State Department of Education threatened to fine the District for Norton's first illegal withholding of CAA's funding. At Sundstrom's request, Norton testified for AA and against CAA in a 2022 North Carolina arbitration to which the District was not a party. Additionally, Norton edited the Transfer Request Report before it went to the District Board on January 19, 2023, which presented inapplicable, incomplete, and erroneous information to the District Board. On January 19, 2023, Norton spent fifty-seven minutes in executive session with the District Board, and minutes later in open session a board member read a surprise motion off a piece of paper to revoke CAA's charter while, at times, looking in Norton's direction.

Then, on May 11, 2023, at the appeal hearing, Norton represented the District staff, a party before the District Board. Notably, the District witnesses at the appeal hearing testified that they had never made a recommendation to revoke CAA's charter and that they would be willing to continue working with CAA if the school remained open. Nonetheless, Norton argued vehemently to the District Board on May 11, 2023, both in opening and closing, that CAA's charter must be revoked and CAA closed immediately on June 30, 2023. Based on the testimony of the District witnesses, Norton's position on CAA's charter being revoked and CAA being closed was not the District staff's position, it was Norton's personal position. Norton has an enormous will-to-win and has represented both the District Board and the District staff in the revocation process, in violation of reasonable due process standards.

The District Board also had a will-to-win on January 19, 2023, and May 11, 2023. The District is a defendant in two lawsuits previously filed by CAA related to the District's support of AA to the detriment of CAA. The first lawsuit was filed in 2019 and is currently pending before

the South Carolina Court of Appeals related to the District's "maintain the status quo" directive to CAA, which required CAA to continue paying AA against CAA's will and ultimately resulted in CAA being required to pay AA \$859,142.41 in a North Carolina arbitration. The second lawsuit was filed in The United States District Court for the District of South Carolina in March 2023 challenging several actions by the District, including the Constitutionality of District Board Chairman John Payne serving on the District Board. Payne's unsupported comments about CAA on January 19, 2023, in response to District Board member Cyndi Mosteller, as described herein, made clear his will-to-win. Further, the District will receive CAA's assets if the District Board closes CAA, giving the District Board over three million dollars of incentive to revoke CAA's charter.

Additionally, the District Board, in a prepared statement read by District Board Chairman Payne on May 11, 2023, denied CAA the opportunity to question District Board members at the appeal hearing, despite the District Board *sua sponte* moving and voting to revoke CAA's charter with no recommendation from the District's staff. CAA named all of the District Board members as witnesses before the appeal hearing on May 11, 2023, but the District denied CAA the opportunity to cross examine all of the adverse witnesses who prosecuted the revocation of CAA's charter, a significant due process violation. *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329 (1990) ("Where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.").

For the reasons described herein, CAA has been completely deprived of constitutional due process in connection with the District's revocation of CAA's charter. The District has violated the South Carolina Constitution and due process standards repeatedly, and accordingly, CAA is likely to prevail on the merits of its appeal before the Administrative Law Court, the South

Carolina Court of Appeals, and/or the South Carolina Supreme Court.

4. The District Board's Final Decision was Clearly Erroneous in View of the Reliable, Probative, and Substantial Evidence of the Whole Record, and was Arbitrary, Capricious, and an Abuse of Discretion.

The District's Final Decision completely fails to address the relationship between Wise, Sundstrom, Smalley, and Norton, their scheme to redirect CAA's students and funds to LAA for the benefit of AA, and Norton's many adverse actions against CAA in execution of that scheme, despite extensive evidence and testimony presented at the appeal hearing, as discussed herein. Further, the District's Final Decision includes many statements that were not before the District Board on January 19, 2023, when the District Board voted to revoke CAA's charter after a four-minute public discussion consumed mostly with misinformed comments by District Board Chairman Payne. Moreover, on information and belief, the District Board never called a meeting or met to review, discuss, and approve the District's Final Decision. Rather, Norton drafted the Final Decision and Board Chairman Payne signed it with no vote of the District Board. Substantively and procedurally, the District's Final Decision is clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record and is arbitrary, capricious, and an abuse of discretion.

C. CAA Has No Adequate Remedy at Law.

There is no doubt based on the irreparable harm that CAA and its at-risk students and families face that CAA will have no adequate remedy at law in the absence of a stay. "An adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice as its administration as the remedy in equity." *ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 413-414, 751 S.E.2d 664, 669 (Ct. App. 2013) (internal quotations omitted). It is not enough that there is some remedy at law, but that remedy must be as practical, efficient, and prompt as the

remedy in equity.” *Chisolm v. Pryor*, 207 S.C. 54 56, 35 S.E.2d 21, 24 (1945).

If CAA is permanently closed as of June 30, 2023, a subsequent decision on appeal by this Court, the Court of Appeals, or the Supreme Court in favor of CAA cannot make CAA or its students and families whole from the lost educational opportunities. CAA will lose its at-risk students and the opportunity to educate them and lead them to the attainment of a diploma. CAA’s at-risk students will lose their school, uniquely designed to serve them, and their best opportunity at a high school diploma. CAA will lose its employees and its school facilities. Funding will not be allocated for CAA’s continued existence. Only a stay can stop CAA and its at-risk students from losing their school. A subsequent favorable decision on appeal will not offer CAA a remedy that is as certain, practical, complete, efficient, and prompt as the granting of a stay because CAA’s school will be closed by the time a favorable decision on appeal is obtained.

D. An Unusual Hardship to CAA Will Result from the Execution of the District Board’s Decision.

Separate and apart from the granting of a stay based on showing the elements necessary for injunctive relief, a charter school is also entitled to a stay if “an unusual hardship to the charter school will result from the execution of the sponsor’s decision.” S.C. Code Ann. § 59-40-110(J). As with every charter school revocation, CAA faces irreparable harm including the loss of its school, its students, its employees, and its assets. However, in this distinctive situation, CAA and its students, families, and community also face an unusual hardship because of the unique nature of CAA’s school and its student body. CAA is designated as an “Alternative Education Campus” charter school under § 59-40-111 of the Act, which in and of itself is an atypical designation for charter schools. Even more unique, CAA’s school-specific mission is to serve at-risk high school students who have previously dropped out of school or are at-risk of dropping out of school. Thus, CAA’s student body is made up almost entirely of students who have previously dropped out of

school and/or are at-risk of dropping out of school completely. If CAA is closed and its 100% certified teachers and team of student advocate staff members leave, many of CAA's at-risk students will likely give up on their education entirely and no longer pursue a high school diploma. The number of at-risk students that may end their pursuit of a high school diploma entirely if CAA is closed presents an unusual hardship for CAA, its students, its families, and its community.

Moreover, on information and belief, there has never previously been a pre-planned covert scheme between the District's Superintendent and legal counsel and the founders of a for-profit, out-of-state EMO to redirect students and funds from an existing charter school to a new school approved by the District for the benefit of an EMO. On information and belief, there has never been another circumstance where an EMO seeks to and potentially stands to receive tens of millions of dollars if a charter school is closed. The clandestine conspiratorial scheme between Wise, Sundstrom, Smalley, and Norton under purported "attorney-client privilege," especially in light of Wise's and Sundstrom's reported business dealings in Beaufort, South Carolina, with LAA's Board Chair, Mims, and in several other states, puts CAA in the position of facing a very unusual hardship.

CAA is the only AEC charter school of its type in South Carolina that has led approximately 200 at-risk students to the attainment of a high school diploma so that they can better themselves and their communities. If CAA is closed, CAA's students, who are uniquely at-risk of dropping out of school, will lose the most-proven opportunity they have to obtain a high school diploma. Thus, CAA, its students, and its community face an unusual hardship that can only be cured by the granting of a stay.

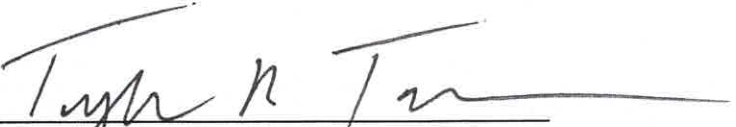
IV. CONCLUSION

For the reasons stated above, CAA respectfully requests that this Court grant its motion for a stay and allow the School to remain open for the 2023-2024 academic year and beyond, as

applicable, pending final resolution of this appeal. CAA will provide such security as the Court deems necessary in support of the stay pursuant to Rule 65(c), SCRPC.

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June 15, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charleston Advancement Academy High)
School,)
)
Appellant,)
)
vs.)
)
South Carolina Public Charter School)
District,)
)
Respondent.)

Docket No. 23-ALJ-30-0163-AP

PROOF OF SERVICE

We hereby certify that we have served Appellant Charleston Advancement Academy High School's Motion for a Stay and Petition and Memorandum of Law in Support of Its Motion for a Stay in the above-captioned matter by electronic mail on June 15, 2023, to the below named parties at their address of record:

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Respectfully submitted,

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