

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
Case No. 2: 23-cv-00964-BHH**

Charleston Advancement Academy High)
School, Nadine Deif, Kenneth Battle,)
Vivian Pettigrew, Dr. Traci Combs,)
Elizabeth Moffly, Lotoya S. Gailliard,)
and Joel Collins)

Plaintiffs,)

vs.)

South Carolina Public Charter School)
District and John Payne.)

Defendants.)

**PLAINTIFFS’ MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION AND
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

PLEASE TAKE NOTICE THAT pursuant to Fed. R. Civ. P. 65, Plaintiffs Charleston Advancement Academy High School (hereinafter referred to as “CAA”), Nadine Deif (hereinafter referred to as “Deif”), Kenneth Battle (hereinafter referred to as “Battle”), Vivian Pettigrew (hereinafter referred to as “Pettigrew”), Dr. Traci Combs (hereinafter referred to as “Combs”), Elizabeth Moffly (hereinafter referred to as “Moffly”), Latoya S. Gailliard (hereinafter referred to as “ Gailliard”), and Joel Collins (hereinafter referred to as “Collins”) (all of the foregoing hereinafter collectively referred to as “Plaintiffs”), by and through their undersigned counsel, hereby move for entry of a temporary restraining order and preliminary injunction enjoining Defendants, South Carolina Public Charter School District and John Payne (hereinafter collectively referred to as the “SCPCSD”) from:

- (1) taking any action or engaging in any proceeding, including, without limitation, initiating and/or pursuing any action, judicial, quasi-judicial and/or administrative, in any forum, including without limitation any court or administrative forum or agencies, to actually or constructively revoke or support the revocation of CAA’s charter or to close CAA until this Court can fully adjudicate the merits of this action so that CAA

- may continue its regular operations, avoid irreparable harm to its at-risk students, and promote the public interest;
- (2) taking any action or engaging in any proceeding that would interfere with CAA’s regular operations, without consent of this Court, until the Court can fully adjudicate the merits of this action;
 - (3) failing to provide funding to CAA as required by law and in a manner consistent with its historical funding of CAA and other charter schools it sponsors until the Court can fully adjudicate the merits of this action; and
 - (4) taking any action which would limit or block any funding to CAA in a manner inconsistent with CAA’s historical funding or the funding of other charter schools it sponsors until the Court can fully adjudicate the merits of this action.

Unless the SCPCSD is immediately enjoined from taking the actions described above, over four hundred (400) at-risk South Carolina high school students and their families, which are served by CAA, will be punished and displaced educationally from their high school, CAA, which was specifically designed and currently operates to serve their unique needs. *See* Schedule D.

CAA is an Alternative Education Campus (hereinafter referred to as an “AEC”) as described in Section 59-40-111, CODE OF LAWS OF SOUTH CAROLINA, 1976, and CAA targets and serves high school students who have previously dropped out of high school or are at-risk of dropping out of school. Compl. ¶¶ 22, 24. In CAA’s first four complete years of operation, CAA has fulfilled its mission and has assisted and supported approximately two hundred (200) at-risk students to the attainment of a high school diploma. Compl. ¶¶ 29, 32. Most of CAA’s at-risk students and graduates are minority races and ethnicities. Compl. ¶¶ 27, 31. As set forth in the Complaint and in this Motion and Memorandum of Law, the SCPCSD’s abrupt and illegal actions to revoke CAA’s charter and close CAA violate federal and state law, including but not limited to Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment

of the United States Constitution, the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Due Process requirements set forth in Article I, Section 22 of the South Carolina Constitution, the South Carolina Freedom of Information Act, and other applicable Constitutional provisions, statutes, and contracts, including CAA's charter contract. *See* Compl.

In support of its motion, the Plaintiffs rely on the Complaint in this matter and this Motion and Memorandum of Law, along with the cases and statutes cited herein and schedules attached hereto, which include Affidavits testifying to the irreparable and immediate harm the SCPCSD's actions have caused and continue to cause. Such irreparable harm will continue and worsen unless the SCPCSD is enjoined from taking the actions described above. Plaintiffs and the hundreds of at-risk students and families served by CAA need equitable relief to maintain the status quo until the merits of this matter are decided, and preliminary relief is in the public interest.

Plaintiffs therefore request this Court immediately enter a temporary restraining order and preliminary injunction enjoining the SCPCSD from taking the actions described above. Plaintiffs will provide such security as the Court deems necessary, if any, in support of the temporary restraining order and preliminary injunction.

I. INTRODUCTION

Plaintiffs filed a Complaint stating claims against Defendants for violations of Title VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Due Process requirements of Article I, Section 22 of the South Carolina Constitution, the South Carolina Freedom of Information Act, and breach of contract, among others, in connection with the SCPCSD's abrupt action to revoke CAA's charter and close CAA. *See* Compl. Plaintiffs file this motion for a temporary restraining order and preliminary injunction pursuant to Rule 65 to prevent irreparable harm to Plaintiffs and the at-risk students and families served by CAA, most of whom are minority races and ethnicities. For the reasons stated herein,

Plaintiffs' motion for a temporary restraining order and preliminary injunction must be granted.

II. STATEMENT OF FACTS

CAA is a South Carolina nonprofit corporation and public charter school located in Charleston County, South Carolina. Compl. ¶¶ 1, 2. CAA is an Alternative Education Campus ("AEC") as defined in Section 59-40-111, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, which forms a part of the South Carolina Charter Schools Act of 1996 (the "Act"). Compl. ¶ 22. CAA's mission is to provide a comprehensive high school education to at-risk students that 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 his or her community. Compl. ¶¶ 23, 30. CAA was founded to serve students who have either already dropped out of high school or are at risk of dropping out of high school. Compl. ¶ 24. CAA implements unique features designed to re-engage at-risk students with education through a supportive environment, including a year-round schedule, two campuses in the Charleston area, continuous enrollment of students throughout the year, extended school hours to accommodate students' work and family responsibilities, use of three different instructional platforms, small teacher to student ratios, and team of student advocates. Compl. ¶¶ 2, 23, 25, 26. Most CAA students and graduates are of minority races and ethnicities. Compl. ¶¶ 27, 31, 32. Many CAA students live in poverty. Compl. ¶¶ 27, 31. In CAA's first four school years, CAA has fulfilled its mission as an AEC and lead approximately 200 at-risk students to the attainment of a high school diploma. Compl. ¶ 32. Having attained their diploma, CAA's graduates are now better prepared to go to college or pursue a career, and ultimately have a positive impact on their community. Compl. ¶¶ 30, 31. CAA currently serves over 400 at-risk students in grades 9-12, many of whom have been re-engaged in education at CAA and are on track to obtain their high school diplomas. Compl. ¶ 33.

CAA is sponsored by the SCPCSD, which approved CAA's charter application in May 2017. Compl. ¶¶ 48 - 51. Upon approval, CAA's charter application constituted an agreement

between CAA and the SCPCSD under the Act. Compl. ¶ 50. Additionally, CAA and the SCPCSD entered into a charter contract that defines the responsibilities and rights of each party. *Compl.* ¶¶ 55, 56; Exhibit A. CAA opened in 2018 and began serving students in the 2018-2019 school year. Compl. ¶ 28. Under Section 59-40-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, and Section 3.1A of the charter contract, the SCPCSD has an ongoing responsibility to notify CAA of any perceived deficiencies in academic achievement and/or financial compliance and to permit CAA a reasonable time to resolve such concerns. Compl. ¶ 57. The SCPCSD responsibility includes exercising sanctions short of revocation and requiring the school to complete a corrective action plan. Compl. ¶ 57. Pursuant to Section 59-40-110(A), the SCPCSD is required to conduct annual evaluations of CAA and use those annual evaluations in deciding whether to revoke the charter of a school it charters. Compl. ¶ 37. Additionally, the SCPCSD has historically utilized a revocation review process that often lasts months or years before taking action to revoke a school's charter, especially in the absence of any imminent threat of harm to the health or safety of students. Compl. ¶ 135. Moreover, the SCPCSD has historically relied on a recommendation from the SCPCSD's Superintendent prior to taking any action to revoke a school's charter. Compl. ¶ 181.

The relationship between CAA and the SCPCSD deteriorated several years ago when CAA sought to terminate its relationship with an out-of-state, for-profit management company, Acceleration Academies (hereinafter referred to as "AA"), and its founders Joseph Wise and David Sundstrom¹. Compl. ¶¶ 75, 80, 90. When CAA first began serving students, CAA was in a contractual relationship with AA in which AA provided management services to CAA in exchange for significant compensation, which the SCPCSD approved in connection with its approval of CAA's charter. Compl. ¶¶ 54, 59, 62, 63.

In October 2019, the CAA Board learned that AA failed to address two dozen safety

¹ Wise and Sundstrom, and entities they have founded, including ERDI, ARP, AA, and others, have been subject to significant media coverage and scrutiny in South Carolina and several other states in connection with their business practices. Compl. ¶¶ 78 - 79; Exhibit D; *See, e.g.*, Schedule I.

violations at CAA's campus located on Trident Technical College's campus. Compl. ¶ 66; Schedule G. Soon thereafter CAA received a letter from the President of Trident Technical College (hereinafter referred to as "TTC") dated October 30, 2019, outlining twenty-four violations that occurred on the portion of TTC's campus leased by CAA and managed by AA, including numerous crimes resulting in arrests, and expressing significant concern and evaluating potential action if the situation was not resolved. Compl. ¶¶ 67 – 68; Exhibit B; Schedule G. Though TTC reaffirmed its support of CAA in the October 30, 2019, letter, it nonetheless threatened to evict CAA if the security issues were not resolved. Compl. ¶ 68; Exhibit B; Schedule G.

In October 2019, the CAA Board voted to immediately terminate its relationship with AA for just cause based on student welfare and safety concerns and violations, including AA's failure to address two dozen safety violations, some of which resulted in arrests, at CAA's campus located at TTC. Compl. ¶ 69. AA contested CAA's decision to immediately terminate the relationship and filed a Demand for Arbitration seeking nearly one million dollars (\$1,000,000.00) in damages from CAA. Compl. ¶ 70.

As a result of CAA's decision to terminate AA, CAA sought to amend its charter with the SCPCSD to replace the services the charter previously described would be provided by AA. Compl. ¶ 71; Schedule C, documents 1, 2, 3. Surprisingly, the SCPCSD inexplicably denied the request and immediately took several actions to support AA, a for-profit, out-of-state, private management company, and to harm CAA, a South Carolina non-profit charter school that the SCPCSD sponsors, including illegally forcing CAA to allow AA to continue operating on CAA's campuses. Compl. ¶¶ 72 - 90; Schedule C documents 2, 3. Such actions include, but are not limited to, the SCPCSD communicating with AA's representatives about CAA without involving CAA or making CAA aware of such communications, the SCPCSD requiring CAA to allow AA to continue managing CAA's campuses and make claims for payment from CAA despite the CAA Board's decision to immediately terminate its contract and relationship with AA, the SCPCSD's

counsel testifying on behalf of AA and against CAA during an arbitration proceeding between CAA and AA in North Carolina, and the SCPCSD approving a new school associated with AA to open less than two miles away from CAA's campus and directly compete with CAA. Compl. ¶¶ 72 - 90; Schedule J, pp. J-0157 – J-0232; J-313 – J-440; J-485 – J-602; J-704 – J-751. The Board Chair of the new AA-associated school approved by the SCPCSD left its Board after a few months to work directly for AA. Compl. ¶ 88; Exhibit E. Because of the SCPCSD's actions, including several adverse communications from Defendant Payne to CAA, the relationship between the SCPCSD and CAA grew strained and resulted in litigation, which is currently pending before the Court of Appeals of South Carolina. Compl. ¶ 90; South Carolina Court of Appeals Clerk's File for Dkt. No. 2021-001414 and 2022-000289; Schedule E.

In September 2022, the CAA Board notified the SCPCSD Board that it was requesting to transfer its charter from the SCPCSD to another statewide charter school sponsor. Compl. ¶ 104; Exhibit H. The SCPCSD Superintendent notified CAA that the SCPCSD Board would hear and consider CAA's request to transfer its charter at the SCPCSD Board's meeting on January 19, 2023. Compl. ¶ 108; Exhibit I. As required of a public body under the South Carolina Freedom of Information Act, the SCPCSD published an agenda for its January 19, 2023, Board meeting, and an action item was listed on the agenda as "Action on Charleston Advancement Academy's Charter." Compl. ¶¶ 111 – 113; Exhibit J; Schedule C, pp. C-001 through C-002. The exact same language was used on the agenda to address another school's request to transfer its charter away from the SCPCSD and to another sponsor. Compl. ¶ 114; Schedule C, pp. C-004 through C-006.

At its meeting on January 19, 2023, the SCPCSD Board first went into an executive session with the SCPCSD's counsel for almost two hours to discuss CAA. Compl. ¶ 115; Schedule C, document 6. After returning to open session, the SCPCSD Board heard from SCPCSD staff and CAA representatives regarding CAA's request to transfer its charter to another sponsor. Compl. ¶¶ 116, 117; Schedule C, document 6. The SCPCSD Board thereafter voted to deny CAA's request

to transfer CAA's charter to another sponsor. Compl. ¶ 117; Schedule C, document 5, 6.

After the vote to deny CAA's request to transfer its charter, as CAA prepared to leave the meeting, Payne surprisingly and unexpectedly asked his fellow SCPCSD Board members if any other actions needed to be taken with regard to CAA. Compl. ¶ 118; Schedule C document 6. Another SCPCSD member abruptly moved to revoke CAA's charter. Compl. ¶ 119. Payne quickly seconded the motion and then opened the motion to the SCPCSD Board for discussion. Compl. ¶ 120; Schedule C, documents 5, 6. One SCPCSD Board member stated that she felt the motion to revoke was "hurried;" however, Payne immediately retorted that the issue had been coming for years. Compl. ¶ 121; Schedule C, document 5, 6. The SCPCSD Board then voted to revoke CAA's charter in a 6-1 vote, with the entire process taking less than five minutes. Compl. ¶¶ 124, 126; Schedule C, document 5, 6. Payne twice denied the CAA Board members and administrator who were present the opportunity to speak regarding the SCPCSD Board's abrupt motion and subsequent vote to revoke CAA's charter. Compl. ¶¶ 123, 125; Schedule C document 3. The SCPCSD Board meeting on January 19, 2023, including the surprise motion to revoke CAA's charter, the SCPCSD Board's brief discussion, and the SCPCSD Board's vote to revoke CAA's charter, was captured on video with audio. Compl. ¶ 127; Schedule C document 6.

Revocation of CAA's charter was not listed as an action item on the SCPCSD Board's January 19, 2023, meeting agenda, and the SCPCSD Board took no action to amend its agenda to include an action item for revocation, as required by Section 30-4-80(A) of the South Carolina Freedom of Information Act. Compl. ¶¶ 128 - 129; . Exhibit J; Schedule C, documents 4, 5, 6. Though there were numerous communications between CAA and SCPCSD during the weeks leading up to the January 19, 2023, meeting of the SCPCSD Board discussing CAA's transfer request, including phone calls, e-mails, letters, and text messages, none of SCPCSD's communications to CAA regarding the January 19, 2023, SCPCSD Board meeting stated, indicated, intimated, implied, or even suggested that the SCPCSD Board would consider revoking

CAA's charter. Compl. ¶ 130; Exhibit I. The SCPCSD's most recent annual evaluation of CAA did not in any way convey that the SCPCSD was evaluating revocation of CAA's charter. Compl. ¶¶ 93 – 96, 102-103, 131, 132; Exhibit F. After CAA responded to the most recent evaluation of CAA to correct inaccurate information, the SCPCSD did not respond. Compl. ¶¶ 97 – 101; Exhibit G. The SCPCSD Superintendent did not make a recommendation to the SCPCSD Board to revoke CAA's charter. Compl. ¶ 133. The SCPCSD did not conduct a revocation review process with CAA or require CAA to develop and execute a corrective action plan. Compl. ¶¶ 132, 134. The SCPCSD Board's vote to revoke CAA's charter deviated significantly from the SCPCSD's historical actions in assessing and voting on revocation, especially when compared to charter schools that are not AECs and that serve predominantly white student populations. Compl. ¶ 181.

By letter dated January 23, 2023, the SCPCSD Board officially notified CAA of its decision to deny CAA's transfer request and to revoke CAA's charter. Compl. ¶ 137, Exhibit K. The SCPCSD Board's letter cited CAA's failure to achieve its charter goals, specifically its stated graduation rate and credit attainment goals, as a reason for revocation. Compl. ¶¶ 138, 139, Exhibit K. The letter from the SCPCSD Board also noted CAA's fund balance of \$3,452,637 as a "relevant fact" supporting its decision to revoke. Compl. ¶141, Exhibit K. However, the SCPCSD evaluated CAA's graduation rate based on inapplicable and inaccurate data and the SCPCSD evaluated CAA's academic performance without making comparisons to state or nationally normed data for similar subsets of students (i.e. students who have dropped out of high school or are at-risk of dropping out of high school), as required by § 59-40-111 of the Act. Compl. ¶ 140. Since opening, CAA has graduated nearly 200 at-risk students, most of whom are minority races and ethnicities. Compl. ¶¶ 29, 32.

Upon information and belief, the SCPCSD utilizes drastically different procedures and evaluation methods for schools it sponsors that are not AECs and that serve predominantly white student populations. Compl. ¶ 145. For example, the SCPCSD Board did not revoke the charter

for NEXT School, a charter school previously located in Greenville, South Carolina, that was not an AEC and that served a student population that was approximately 89.6% white. Compl. ¶ 148. Upon information and belief, the NEXT School had significant performance deficiencies and underwent multiple revocation review processes with the SCPCSD over several years.² Compl. ¶ 149. Further, upon information and belief, other schools sponsored by the SCPCSD that are not AECs and that serve predominantly white student populations are not meeting stated charter goals, and the SCPCSD Board has not spontaneously voted to revoke the charters of those schools. Compl. ¶ 151. Finally, upon information and belief, no other school sponsored by the SCPCSD has been threatened with revocation for maintaining a healthy fund balance.³ Compl. ¶ 152. Notably, since ending its contractual relationship with AA, CAA reduced significant administrative costs and overhead and saved funds for the future purchase of a school facility in the Charleston area that can serve as a permanent home for the School and provide educational stability for CAA's at-risk students. Compl. ¶¶ 99, 100, 143.

Pursuant to the Act, the CAA Board timely requested a hearing before the SCPCSD Board in connection with the SCPCSD Board's *sua sponte* decision to revoke CAA's charter. Compl. ¶ 154. At its meeting on February 9, 2023, the SCPCSD Board voted to schedule CAA's revocation hearing for May 11, 2023. Compl. ¶ 156, Exhibit K; Schedule C, documents 7, 8, 9. However, the same SCPCSD Board that *sua sponte* voted to revoke CAA's charter on January 19, 2023, will adjudicate CAA's revocation hearing on May 11, 2023. Compl. ¶ 158. The SCPCSD Board has not explained to CAA what opportunity, if any, CAA will have to cross-examine the SCPCSD Board members at the revocation hearing the SCPCSD Board members are adjudicating. Compl. ¶ 218.

² NEXT School voluntarily relinquished its charter and closed at the end of the 2021-2022 school year. Compl. ¶ 150.

³ To the contrary, the SCPCSD has praised other schools, especially those that serve predominantly white student populations, for maintaining healthy fund balances. Compl. ¶ 153.

Significantly, both the SCPCSD and AA stand to benefit financially from the revocation of CAA's charter. Compl. ¶¶ 159 - 164. Specifically, the SCPCSD will be entitled to CAA's assets if CAA's charter is revoked, and the AA-affiliated school that the SCPCSD allowed to open less than two miles from CAA's campus will seek to enroll CAA's students and will receive federal and state funding associated with the enrollment of those students. Compl. ¶¶ 160 - 162. On information and belief, most of that funding will go to AA and its founders Wise and Sundstrom.⁴ Compl. ¶ 162. Further, the SCPCSD likely hopes and desires that CAA will be unable to prosecute the pre-existing litigation between CAA and the SCPCSD following the revocation of CAA's charter. Compl. ¶ 163.

Moreover, after abruptly voting to revoke CAA's charter, the SCPCSD immediately filed a Petition in the Administrative Law Court to Appoint a Receiver over CAA's property and assets, despite CAA's receipt of clean audits for both Fiscal Year 2021 and Fiscal Year 2022, which CAA previously submitted to the SCPCSD. *See* South Carolina Administrative Law Court filings in Case no. 23-ALJ-30-0027-IJ; Schedule F, p. F-001. Counsel for Defendant SCPCSD filed the Petition in the Administrative Law Court on January 24, 2023, without a vote from the SCPCSD Board and without consulting with CAA's counsel before filing the motion. Schedule C, documents 4,5, 6.

In CAA's first four complete years of operation, CAA has fulfilled its mission as an AEC and lead approximately 200 at-risk students to the attainment of a high school diploma. Compl. ¶¶ 30 - 33. The majority of CAA's students and graduates are of minority races and ethnicities. Compl. ¶¶ 27, 31, 151, 165, 171, 178, 183, 184. CAA currently serves over 400 at-risk students, many of whom have been re-engaged in education at CAA and are on track to obtain their high school diplomas. Compl. ¶ 33. In the absence of immediate preliminary injunctive relief, hundreds

⁴ AA's agreements with public schools often provide that AA is entitled to 85% of the school's revenues. Compl. ¶ 161.

of South Carolina at-risk high school students, and their families, most of whom are minority races and ethnicities, will be punished and educationally displaced from their high school to the detriment of those students, their families, and their communities. Compl. ¶¶ 165, 184.

III. LEGAL STANDARD

Preliminary injunctive relief is within the sound discretion of the trial court and is subject to review only for an abuse of discretion. *See Di Biase v. SPX Corp.*, 872 F.3d 224, 229 (4th Cir. 2017); *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520 (2000) (citing *Fuller-Ahrens P'ship v. S.C. Dep't of Highways & Pub. Transp.*, 311 S.C. 177, 182, 427 S.E.2d 920, 923 (Ct. App. 1993)). A preliminary injunction shall be granted when the moving party establishes entitlement to the relief sought. *Di Biase v. SPX Corp.*, *supra* at 230 (citing *Fed. Leasing, Inc. v. Underwriters at Lloyd's*, 650 F.2d 495, 499 (4th Cir. 1981)).

IV. ARGUMENT

Immediate injunctive relief is necessary in order to stop the irreparable harm occurring to CAA and the hundreds of South Carolina families and at-risk students served by CAA. In determining whether to grant injunctive relief prior to trial, the Court must consider four factors: (1) the plaintiff's likelihood of success on the merits of the underlying dispute between the parties; (2) the likelihood that the plaintiff will suffer irreparable harm if the injunction is not issued; (3) whether the balance of equities tips in the plaintiff's favor; and (4) whether preliminary relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 374, 172 L.Ed.2d 249, 259 (2008); *Di Biase v. SPX Corp.*, *supra* at 230. A strong showing of a likelihood of irreparable injury substantially lessens the plaintiffs' need to demonstrate the likelihood of success on the merits. *Md. Undercoating Co. v. Payne*, 603 F.2d 477, 481 (4th Cir. 1977). Likewise, the strong likelihood of success on the merits reduces the need to meet the other requirements. *Id.*

A. Plaintiffs Are Likely To Prevail On The Merits Of Their Claims Because The SCPCSD Board's Abrupt Vote To Revoke Plaintiff's Charter And Close Plaintiff's School Violated Federal And State Laws.

The SCPCSD Board's abrupt vote to revoke CAA's charter and close CAA's school violated federal law and the law of the State of South Carolina, including (1) Title VI of the Civil Rights Act of 1964, (2) the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, (3) the Due Process Clause of the Fourteenth Amendment of the United States Constitution and due process requirements set forth in Article I, Section 22 of the Constitution of the State of South Carolina, (4) the South Carolina Freedom of Information Act (hereinafter referred to as "FOIA"), (5) the Dual Office Holding Prohibition contained in S.C. Const. Art. XVII, § 1A of the South Carolina Constitution, and (6) the South Carolina Charter Schools Act and CAA's Charter Contract.

1. *Defendant SCPCSD violated Title VI of the Civil Rights Act of 1964.*

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program of activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Title VI itself prohibits intentional discrimination and expressly authorizes federal agencies to promulgate rules and regulations to effectuate its provisions. 42 U.S.C. § 2000d-1. The United States Department of Education has adopted regulations implementing Title VI that prohibit recipients of federal funding from utilizing practices that have the effect of discriminating on the basis of race, color, or national origin. 34 C.F.R. 100. The United States Supreme Court has held that "Title VI reaches unintentional, disparate-impact discrimination as well as deliberate racial discrimination." *Guardians Ass'n v. Civil Serv. Cmty. of City of N.Y.*, 463 U.S. 582, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983). Following a 1999 Third Circuit decision, *Cureton v. NCAA*, 198 F.3d 107 (3rd Cir.

1999), the United States Department of Education clarified in its Title VI implementing regulations that for local education agencies and public school districts receiving federal funds, among others, all of their programs and operations are subject to the non-discrimination requirements of Title VI and its implementing regulations. 34 CFR 100.13(g).

In this case, Plaintiffs are highly likely to prevail on the merits. The revocation practices utilized by the SCPCSD Board toward CAA constituted intentional discrimination or have a disparate impact on CAA's at-risk minority students. Intentional discrimination under Title VI may be shown through circumstantial evidence including the following: the historical background of the decision, the sequence of events leading to the decision, the defendant's departures from its normal procedures or substantive conclusions, and relevant legislative or administrative history. *Sylvia Dev. Corp. v. Calvert City*, 48 F.3d 810, 819 (4th Cir. 1995) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–268, 97 S.Ct. 555, 563 – 565, 50 L.Ed.2d 450, 461 - 463 (1977)). Plaintiffs asserting Title VI claims may also put forth evidence of a “consistent pattern” of actions of decision-makers that have a disproportionate negative impact on minorities as compared to non-minorities. *Id.* A plaintiff asserting a Title VI disparate impact claim may show that a facially neutral practice had an adverse and disparate impact upon a protected class of people. *Campaign for Fiscal Equity v. State*, 719 N.Y.S.2d 475, 541, 187 Misc.2d 1, 100 (N.Y. Sup.Ct. 2001).

The SCPCSD is a recipient of federal funding and is subject to Title VI's nondiscrimination mandates. In the sequence of events leading to the SCPCSD Board's surprise vote to revoke CAA's charter, the SCPCSD violated state notification and open meeting laws. Specifically, “revocation” of CAA's charter was not listed as an action item on the SCPCSD Board's January 19, 2023, meeting agenda, and the SCPCSD Board took no action to amend the agenda to include an action item for revocation, as required by Section 30-4-80(A) of the FOIA. Accordingly, CAA and its community, most of whom are minority races and ethnicities, had no notice that the SCPCSD

Board would be considering a vote to revoke CAA's charter on January 19, 2023.

Additionally, the SCPCSD Board significantly deviated from its typical assessment practices in abruptly voting to revoke CAA's charter. Under the Act, a sponsor may act summarily to revoke a school's charter only where there is "an imminent threat of harm to the health or safety of students, or both, based on documented and clear and convincing data." Section 59-40-110(D). Otherwise, the SCPCSD is required under the Act and CAA's charter contract to notify the school of concerns, allow the school a reasonable opportunity to remedy any concerns, and if necessary, exercise sanctions short of revocation, such as by requiring the school to complete a corrective action plan. The SCPCSD has made a practice of issuing sanctions short of revocation to schools it sponsors; indeed, when it considers revoking a school's charter, it typically conducts a revocation review process, which often lasts months or years. Depending on the results of that revocation review process, if the school is unable to remedy the perceived problems, the SCPCSD Superintendent may make a recommendation to the SCPCSD Board to revoke a school's charter. Additionally, the Act requires the SCPCSD to conduct an annual evaluation of charter schools and use that evaluation in considering whether to revoke a school's charter. An annual evaluation typically notes if revocation is being considered. In this instance, there was no imminent threat of harm to the health or safety of CAA's students.⁵ To the contrary, CAA is often the most stable and safe entity in its students' lives. Further, the SCPCSD did not mention any potential revocation in its most recent annual evaluation of CAA, and the SCPCSD did not express any concern with CAA's response to its most recent annual evaluation. The SCPCSD did not engage in a revocation review process with CAA or require CAA to develop and execute any corrective action plan.

⁵ Ironically the apparent catalyst that seems to have set in motion SCPCSD's illegal, unjustified, inexplicable, pernicious, arbitrary, and capriciously punitive conduct toward CAA was CAA's decision to terminate its relationship with AA for just cause based on student welfare and safety concerns as a consequence of AA's failure to perform its duties under the Agreement. Specifically, it was AA's failure to provide proper security on CAA's TTC campus, particularly AA's ignoring two dozen safety violations, some of which resulted in arrests. However, instead of amending CAA's charter to remove AA, the SCPCSD illegally demanded that CAA permit AA to continue operating on CAA's campus. Apparently the SCPCSD is not the least bit concerned for the health or safety of CAA's students.

Additionally, the SCPCSD Superintendent offered no recommendation to revoke CAA's charter. Thus, the SCPCSD Board significantly deviated from its typical assessment practices in abruptly voting to revoke CAA's charter.

Moreover, under Payne's leadership, the SCPCSD Board has a pattern of revocation actions that have a disproportionately negative impact on minority students and families when compared to non-minority students and families. For example, upon information and belief, the SCPCSD engaged in multiple revocation review processes over the course of several years with NEXT School, a school with a predominantly white student population that is not designated as an AEC, and the SCPCSD Board never spontaneously voted to revoke NEXT School's charter despite significant performance deficiencies. In comparison, the last time the SCPCSD revoked the charter of a school it sponsored was when it revoked the charter of Quest Leadership Academy in 2019, a charter school with a student population that was 95.8% African American. The SCPCSD Board, chaired by Payne, did not offer Quest a revocation review process similar to the ongoing revocation review process that was offered to NEXT School. Further, other non-AEC schools sponsored by the SCPCSD that serve a predominantly white student population have not met stated charter goals, and the SCPCSD Board has not abruptly voted to revoke the charters of those schools.

The revocation practices utilized by the SCPCSD Board in voting to revoke CAA's charter have had an adverse and disparate impact on CAA's at-risk students, who are predominantly students of minority races and ethnicities. Clearly, Plaintiffs are likely to prevail on the merits of their Title VI claim.

2. ***The SCPCSD's actions violated the Equal Protection Clause of the Fourteenth Amendment.***

The Fourteenth Amendment of the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend XIV § 1. Plaintiffs have a right to equal protection of the laws as provided by the Fourteenth

Amendment and protected under 42 U.S.C. § 1983. Specifically, Plaintiffs have a right to equal educational opportunities funded, in part, through federal funding, and Plaintiffs have a right to the protections granted by Title VI of the Civil Rights Act of 1964. By deviating from historical revocation assessment practices and voting abruptly to revoke Plaintiff’s charter and close Plaintiff’s school, as more fully described above, Defendant deprived Plaintiffs of rights granted to them under the Fourteenth Amendment and Title VI, specifically the equal protection of the laws. Accordingly, Plaintiffs are likely to prevail on the merits of their 42 U.S.C. § 1983 claim.

3. ***The SCPCSD Board violated the Due Process Clause of the Fourteenth Amendment and Due Process Requirements Mandated by the South Carolina Constitution.***

The Fourteenth Amendment of the Constitution of the United States of America provides “nor shall any State deprive any person of life, liberty, or property without due process of law.”

Article I, Section 22 of The Constitution of the State of South Carolina provides:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly

(emphasis added).

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, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548, 559 (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, 43 S.Ct. 625, 628, 67 L.Ed. 1042, 1048 (1923)).

Plaintiffs have both liberty and property interests in operating as and attending a public charter school. These interests include the ability to attend the school, enroll students, receive, and

spend 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 statutory provisions in the Act and in the charter contract. *See, e.g.*, Section 59-40-50(B)(5), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (a charter school must hire or contract for administrative staff and a school leader); Section 59-40-50(B)(6), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (a charter school must admit all children eligible to attend public school to a charter school, subject to space limitations); Section 59-40-140, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (addressing a charter's school right to receiving funding). Because Plaintiffs' liberty and property interests are authorized by statute and contract, Plaintiffs have "more than an abstract need or desire for [them];" rather, as described in *Bd. of Regents of State Colls. v. Roth, supra*, Plaintiffs have "a legitimate claim of entitlement" to these liberty and property interests.

Accordingly, Plaintiffs are entitled to procedural due process, including 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).

In this instance, Plaintiffs were not given notice of the SCPCSD Board's potential action to revoke CAA's charter at the SCPCSD Board meeting on January 19, 2023, and Deif, Battle and a CAA administrator who were present at the SCPCSD Board meeting were expressly denied the opportunity to be heard on the revocation action by Payne, as captured on video. Schedule C, documents 4, 5, 6. Additionally, given that the SCPCSD Board had almost no substantive discussion in open session prior to voting to revoke CAA's charter, and given that the SCPCSD Board spent nearly two hours in executive session to discuss CAA with the SCPCSD's counsel,

Erik T. Norton, Esq., immediately prior to the surprise vote in open session to revoke CAA's charter, it is reasonable to assume that the SCPCSD Board received *ex parte* information (perhaps including false information) regarding CAA. See Schedule C, document 6.

Further, the SCPCSD seeks to deprive Plaintiffs of their liberty and property interests by denying Plaintiff the opportunity to be heard by a fair and impartial body at the proposed forthcoming hearing before the SCPCSD Board. Specifically, the SCPCSD has offered Plaintiff the opportunity to be heard by the same body, the SCPCSD Board, chaired by Payne that *sua sponte* abruptly voted to revoke CAA's charter after significant deviation from its standard practices, as described herein, after meeting in executive session for almost two hours with its counsel regarding CAA, and after refusing to give CAA board members and administrators who were present the opportunity to speak. See Schedule C, document 6. What little discussion did occur among SCPCSD Board members in open session prior to voting to revoke CAA's charter clearly signals the bias against CAA held by SCPCSD Board members, and especially Payne. See Schedule C, document 6. Payne remarked, without providing any specifics or background or any facts to support his statement, that revocation of CAA's charter had been "coming" for years in response to push back from one member that the motion seemed "hurried." See Schedule C, document 6. Payne's statement is completely inconsistent with the SCPCSD's failure to mention revocation in CAA's most recent annual evaluation, failure to conduct a revocation review process with CAA, failure to require CAA to develop and execute a corrective action plan, failure to rely on a recommendation from the SCPCSD Superintendent to revoke CAA's charter, and failure to even include "revocation" on the January 19, 2023, SCPCSD Board meeting agenda. See Schedule C, documents 4, 5, 6.

Moreover, the SCPCSD is currently an adverse party in pre-existing litigation with CAA

related to CAA's termination of AA, in significant part based on Payne's prior adverse actions toward CAA, thereby giving the SCPCSD Board a "will to win" at the proposed forthcoming revocation hearing. Furthering the SCPCSD Board's partiality, the SCPCSD is entitled to CAA's property and assets if the SCPCSD Board decides to revoke CAA's charter.⁶ On January 24, 2023, the SCPCSD's counsel took adverse action against CAA by filing a Petition in the Administrative Law Court to appoint a receiver over CAA's property and assets. Schedule F, F-001. The SCPCSD's counsel took such action without a vote of the SCPCSD Board at its meeting on January 19, 2023, and without contacting CAA's counsel prior to filing the Petition.⁷ See Schedule C, document 6. Perhaps most significantly, the SCPCSD has not informed CAA whether CAA will have the opportunity to cross-examine the SCPCSD Board members at the proposed revocation hearing, which the SCPCSD Board members are adjudicating. Even if CAA is provided the opportunity to cross-examine its adjudicator, such cross-examination would not serve to promote the SCPCSD Board acting as a fair and impartial adjudicative body, which is why the South Carolina Constitution expressly prohibits CAA from being subject to the same person for prosecution and adjudication. S.C. CONST. art I, § 22.

Accordingly, the SCPCSD has violated Plaintiffs' due process rights. For the reasons stated herein, CAA is likely to prevail on the merits of its Constitutional due process claims.

4. ***The SCPCSD Violated the South Carolina Freedom of Information Act in Voting to Revoke Plaintiff's Charter.***

CAA is likely to succeed in proving that the SCPCSD Board's vote to revoke CAA's charter at its meeting on January 19, 2023, without placing "revocation" of CAA's charter as an

⁶ CAA currently has several million dollars of property and assets.

⁷ It is unclear at this time whether the SCPCSD or its representatives have been in communication with AA, Wise, or Sundstrom regarding these matters. A representative of AA was present at the SCPCSD Board meeting on January 19, 2023.

action item on its agenda, violated FOIA. “The essential purpose of FOIA is to protect the public from secret government activity.” *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 8–9, 760 S.E.2d 785, 789 (2014). Indeed the very purpose of FOIA, as stated in Section 30-4-15, is 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.” Section 30-4-15. To reach this goal, public bodies are required to post an agenda for any regularly scheduled or special meetings on its website and in a place accessible to the public at the public body’s office or meeting place at least twenty-four hours prior to the meeting. *Id.* Section 30-4-80(A). Once an agenda is posted, the public body may not add items to the agenda without an additional twenty-four hours’ notice. *Id.* If the meeting has begun, Section 30-4-80(A) provides:

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 present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda.

Id. The SCPCSD is a public body pursuant to the Act and is subject to the requirements of the FOIA.

SCPCSD Superintendent Neeley notified CAA by letter dated January 4, 2023, that the SCPCSD Board would consider CAA’s request to transfer its charter at its meeting on January 19, 2023. Compl. ¶ 108; Exhibit I. Thereafter, the SCPCSD posted an agenda for the SCPCSD Board’s January 19, 2023, meeting, which listed as an action item, simply “Action on Charleston Advancement Academy Charter.” Compl. ¶¶ 111 - 113; Exhibit J; Schedule C, document 4. The SCPCSD used the exact same language on its agenda to describe another school’s request to transfer its charter away from the SCPCSD to a different sponsor. Compl. ¶ 114; Exhibit J; Schedule C, document 4. After voting to deny CAA’s transfer request, Payne then unexpectedly and surprisingly asked if any other actions needed to be taken with regard to CAA. Another

SCPCSD Board member immediately made a motion to revoke CAA’s charter, which Payne quickly seconded. Schedule C, document 6. After only three minutes of SCPCSD Board discussion in open session, the motion passed 6-1. Schedule C, document 6. The SCPCSD Board did not include “revocation” of CAA’s charter on its posted agenda. Compl. ¶ 128; Exhibit J; Schedule C, document 4. Moreover, the SCPCSD Board did not vote to amend its agenda to add revocation of CAA’s charter after its January 19, 2023, meeting began. Compl. ¶ 129 Schedule C, document 6. The SCPCSD Board voted and acted on an item, revocation, that was not included on its agenda. Schedule C, document 4. The SCPCSD Board’s failure to include revocation of CAA’s charter as an action item on its meeting agenda constitutes a violation of FOIA, especially when CAA received no inkling, hint, suggestion, intimation, or insinuation from the SCPCSD that revocation of its charter was imminent. CAA, therefore, is likely to succeed on the merits of its claim that the SCPCSD Board violated the FOIA in voting to revoke CAA’s charter without notice to CAA or its community, without including “revocation” of CAA’s charter on its publicly posted agenda, and without amending its agenda by a two-thirds vote of its members based on exigent or emergency circumstances to add “revocation” of CAA’s charter after its meeting began, as required by the FOIA.

5. ***Defendant Payne is serving as SCPCSD Board Chair in violation of the Prohibition on Dual Office Holding Contained in the South Carolina Constitution.***

S.C. CONST. art. XVII, § 1A prohibits dual office holding, stating, “No person may hold two offices of honor or profit at the same time” A public officer has been described as “[o]ne who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent” *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). In determining whether a person holds a public office, courts may also consider whether the person’s public duties are defined by law. *See id.* at 764. When a person in public office accepts a subsequent public office, he is said to have vacated the first public office held.

Walker v. Harris, 170 S.C. 242, 242, 170 S.E. 270, 272 (1933) (“[W]here a person holding one office of trust or profit is elected or appointed to another such office, and qualifies in the latter capacity, he thereby vacates the first office to which he was elected or appointed, and lawfully holds the second office as an officer de jure.”).

The SCPCSD is a statutorily created entity and public body. Section 59-40-220(A). Membership on the SCPCSD Board is described in the Act as well as the duties of the SCPCSD Board, stated to include “the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State . . . except that the [SCPCSD] may not . . . issue bonds, or levy taxes.” *Id.* Section 59-40-230(A)(3). Payne, as member and chairman of the SCPCSD Board, is tasked with exercising powers of the SCPCSD as a public body, such as allocating state funding to charter schools it sponsors, applying for federal grants, and sponsoring charter schools. Payne’s membership on the SCPCSD Board therefore constitutes a public office for purposes of the dual office holding prohibition.

Payne also serves as the city manager for the City of Darlington, a position he has held since July 2021. Compl. ¶ 44. The City of Darlington uses the council-manager form of municipal government described in Sections 5-13-10 through -100 of the South Carolina Code of Laws. Compl. ¶ 45. In the council-manager form of government, the city manager serves as the “head of the administrative branch of the municipal government.” Section 5-13-90. Compl. ¶ 46. As city manager of the City of Darlington, Payne is empowered by state law to hire and dismiss municipal employees, prepare the municipality’s budget and financial reports, and to “perform such other duties as may be prescribed by law.” Compl. ¶ 47. Payne’s public duties as city manager of the City of Darlington, then, are defined by Section 5-13-90 of the South Carolina Code. Undoubtedly, the citizens of the City of Darlington are concerned with the performance of Defendant Payne’s duties as city manager. For these reasons, it is likely that Payne’s position as city manager is also a public office; therefore, Payne has violated the prohibition on dual office holding contained in

the South Carolina Constitution by serving simultaneously as the Chairman of the SCPCSD Board and as the city manager for the City of Darlington.⁸

6. ***Defendants are in Breach of Plaintiff's Charter Contract.***

CAA is likely to succeed in its breach of contract claim against Defendants because CAA can prove that the SCPCSD materially breached the charter contract by not notifying the school of perceived concerns and allowing CAA a reasonable time to correct such concerns or placing CAA on a corrective action plan. To succeed on a claim for breach of contract, a plaintiff must prove the existence of a binding contract between the parties, the breach of or unjustified failure to perform that contract by defendant, and damages as a direct and proximate result of such breach. *Agape Senior Primary Care, Inc. v. Evanston Ins. Co.*, 304 F. Supp. 3d 492, 497 (D.S.C. 2018); *see also Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Under the Act, a charter application becomes an agreement between the charter school and the sponsor once it is approved. Section 59-40-60(A). Additionally, charter schools and sponsors are required by the Act to enter into a separate charter contract that describes the roles and responsibilities of each party. Section 59-40-60(B).

CAA submitted a charter application to the SCPCSD, which the SCPCSD approved on May 20, 2017. Thereafter, CAA and the SCPCSD executed a charter contract on April 11, 2018, pursuant to the Act. Section 3.1(A) of the charter contract between CAA and the SCPCSD states, in pertinent part, that the SCPCSD **shall**:

Notify the School of perceived problems when its performance or legal/fiscal compliance is unsatisfactory and provide a reasonable opportunity for the school to remedy the problem, unless the problem warrants immediate revocation and revocation timelines apply; take appropriate actions and exercise sanctions short of

⁸ At the SCPCSD counsel's request, the South Carolina Office of the Attorney General issued an opinion on November 22, 2022, overruling its earlier opinions and stating that Payne's position as City Manager for the City of Darlington would not constitute an office for purposes of dual office holding. The Attorney General's logic was deeply flawed and based in part on an illogical and misplaced attempt to distinguish statutory "responsibilities" from statutory "duties." *Opinion on dual office holding (Trustee for the South Carolina Charter School District Board of Trustees and City Manager for the City of Darlington)*, 2495 Op. S.C., Att'y Gen. 2022.

revocation in response to deficiencies in School performance or legal/fiscal compliance. These actions or sanctions may include requiring the School to develop and execute a corrective action plan within a specified timeframe;

Compl. ¶ 57; Exhibit A, § 3.1(A)(v–vi.)

Prior to the SCPCSD Board voting to revoke CAA’s charter at its meeting on January 19, 2023, the SCPCSD did not notify CAA of concerns that it believed warranted revocation of CAA’s charter or place CAA on a corrective action plan for any such concerns. In its letter dated January 23, 2023, formally notifying CAA of its decision to revoke CAA’s charter, the SCPCSD Board cited concerns with CAA’s attainment of its charter goals, specifically related to graduation rate and student credit attainment, and CAA’s high fund balance as reasons for revocation. By letter dated June 14, 2022, SCPCSD Superintendent Neeley presented results of the SCPCSD’s annual review of CAA, which included only general concerns about CAA’s graduation rate and the amount of funds dedicated to student services. Compl. ¶¶ 92 – 96; Exhibit F. These appeared to CAA to be misplaced concerns based on inapplicable and inaccurate data, which former CAA director, Wayne Stevens, communicated to Superintendent Neeley by letter on August 22, 2022. Compl. ¶¶ 97 – 101; Exhibit G. Mr. Stevens explained that CAA’s graduation rate had increased and that by ending its relationship with its previous EMO, CAA could reinvest that money in instructional and student services. Compl. ¶¶ 97 – 101; Exhibit G. CAA was also able to save money for long-term investments, including a permanent facility space for the school. Compl. ¶¶ 97 – 101; Exhibit G.

Superintendent Neeley’s June 14, 2022, letter in no way conveyed to CAA that it needed to implement a corrective action plan to address academic or fiscal concerns; it certainly did not indicate that CAA would be at risk of having its charter revoked for any academic or fiscal concerns. Moreover, the SCPCSD did not respond to CAA’s letter dated August 22, 2022, which indicated to CAA that the SCPCSD did not disagree with CAA’s response. The SCPCSD’s failure to notify CAA of any of the academic or fiscal concerns as bases for revoking CAA’s charter prior

to the SCPCSD's abrupt decision to revoke CAA's charter is a direct and material breach of Section 3.1(A) of the SCPCSD's contract with CAA. As a result of the SCPCSD's breach, CAA now finds itself in the dire situation of facing permanent closure of its school when it was not given the opportunity to correct any alleged deficiencies or concerns beforehand. The SCPCSD's actions have damaged CAA's reputation and goodwill in the community and have created significant disruptions for its students, families, and staff. CAA irrefutably has a high likelihood of success on the merits of its underlying breach of contract claim against Defendants.

B. Plaintiffs Will Suffer Irreparable Harm Without Injunctive Relief.

Plaintiffs can demonstrate that they will suffer immediate and irreparable harm if this Court does not enjoin the Defendants from revoking CAA's charter, closing CAA's school, and interfering with CAA's regular operations. In seeking a preliminary injunction, a plaintiff must show that "irreparable injury is *likely* in the absence of an injunction" and not merely a possibility. *Winter v. Nat. Res. Def. Council, Inc.*, *supra* at 22, 129 S.Ct. at 375, 172 L.Ed.2d at 353 (emphasis in original) (citing *Los Angeles v. Lyons*, 461 U.S. 95, 103, 103 S.Ct. 1660, 1666, 75 L.Ed.2d 675, 682 (1983)).

The SCPCSD Board's unexpected and surprising vote to revoke CAA's charter has already caused significant harm to CAA's at-risk students, families, staff, and Board. Schedule G. For example, since the SCPCSD Board's vote on January 19, 2023, to revoke CAA's charter, CAA has seen one of its board members and multiple staff members resign from their positions. Schedule G. Such resignations impact the educational program and services CAA delivers to its at-risk students and their families, most of whom are minority races and ethnicities. Schedule G. It is also reasonable to assume that the SCPCSD Board's vote to revoke CAA's charter has discouraged an unknown number of at-risk students from enrolling at CAA and discouraged an unknown number of potential employees from applying for employment with CAA. Schedule G. Further, news of the SCPCSD Board's surprising and abrupt decision has caused significant

damage to CAA's public image and goodwill. Schedule G. For example, the sponsor to which CAA seeks to transfer its charter has already been provided, through several channels, with false information about CAA in connection with the SCPCSD's vote to revoke CAA's charter. Schedule G. Additionally, and most significantly, CAA's at-risk students who have re-engaged in their education at CAA after dropping out of high school or considering dropping out, face significant uncertainty with their educational future, which could lead them to disengage from their education once again. If CAA is forced to close, it is likely gone forever. Schedule G.

Moreover, transferring to another similar charter school, such as the one operated by AA in the vicinity of CAA's campus, is not an option for many students. *See* Schedule D; Schedule G. CAA provides an environment more conducive to the success of its students than the other alternative education schools in the Charleston area. *See* Schedule D; Schedule G. If CAA is forced to close, one or more of its students is likely to drop out of high school and abandon his or her pursuit of a high school diploma. *See* Schedule D; Schedule G.

The SCPCSD's undisguised intent is and has been to do everything in its power to force CAA to close. It began with the SCPCSD's bewildering and inexplicable November 2019 decision to deny CAA's request to amend its charter and has continued through today, as the SCPCSD has recently begun withholding CAA's funding in violation of State law. Schedule B; Schedule G; Schedule H, p. H-011.

The following actions are emblematic of the SCPCSD's manifest nefarious, illegal, and unjust intent to eliminate CAA:

1. In October 2019, the CAA Board discovered that AA failed to address safety violations at CAA's TTC campus. After receiving TTC's October 30, 2019, letter expressing significant concerns over the number of criminal incidents on its campus and threat to terminate its lease with CAA if the situation is not swiftly resolved, the CAA Board voted to immediately terminate its relationship with AA for just

cause based on student welfare and safety.

2. AA contested CAA's decision to immediately terminate their relationship and filed a Demand for Arbitration seeking nearly one million dollars (\$1,000,000.00) in damages from CAA.
3. After terminating its agreement with AA, CAA sought to amend its charter to replace the services provided by AA, which the SCPCSD denied⁹.
4. Forcing CAA to permit AA to continue operating on its campuses despite CAA's termination of its agreement with AA and its desire to amend its charter with the SCPCSD to eliminate AA from it.
5. The SCPCSD's inexplicable, immediate, and ongoing assistance to AA to the detriment of CAA following the SCPCSD's denial of CAA's charter amendment request. Schedule J.
6. The SCPCSD has since sponsored a new competing school associated with AA located less than two miles away from CAA's campus which it continues to support despite the fact that the AA-sponsored school appears to be floundering.¹⁰
7. The SCPCSD's actions, including several adverse communications from Payne to CAA, caused the relationship between the SCPCSD and CAA to deteriorate and ultimately resulted in litigation, which is currently pending before the Court of

⁹ In a high twist of irony, SCPCSD now spuriously and speciously contends that it is concerned that CAA has too much money - \$4,000,000.00 - which it is not spending. Schedule B; Schedule C, document 6. As the argument goes, SCPCSD contends that it is simply acting "prudently to safeguard taxpayer funds." Schedule B, p. B-002. This, of course, conveniently ignores the fact that prior to its termination of AA, CAA was spending eighty-five (85%) percent of its funds on an underperforming management company, specifically, AA. Schedule G. What makes the SCPCSD's claim related to CAA's having too much money so patently preposterous is that the SCPCSD improperly and illegally impeded CAA's attempts to terminate AA despite the fact that the SCPCSD had no authority to do so. The obvious reason that CAA now has additional funds is that CAA's funds are no longer being squandered on an underproductive management company. The SCPCSD's stated claim of concerns for taxpayer funds is, to be charitable, insincere, at best, and its seemingly incestuous relationship with AA is quite troubling.

¹⁰ So much for the SCPCSD's disingenuous concerns for taxpayer money.

Appeals of South Carolina. South Carolina Court of Appeals Clerk's File for Dkt. No. 2021-001414 and 2022-000289; Schedule E.

- 8.** The SCPCSD's January 19, 2023, otherwise incomprehensible denial of CAA's transfer request; needless to say, the SCPCSD cannot revoke CAA's charter if it no longer sponsors CAA.
- 9.** The SCPCSD's abrupt, illegal, unjustified, and inexplicable decision to terminate CAA's charter immediately following its denial of CAA's transfer request at its January 19, 2023, meeting without warning to CAA following a lengthy Executive Session five weeks after CAA filed its briefs in the South Carolina Court of Appeals.¹¹ Schedule E.
- 10.** The filing of a meritless action in the South Carolina Administrative Law Court seeking appointment of a receiver – which the Administrative Law Court itself doubts it has the authority to do – and for an injunction. Schedule F.
- 11.** The SCPCSD's Board's rejection of a compromise against the public recommendation of its counsel. Schedule C, document 9; Schedule F, document F-021, F-022.
- 12.** The SCPCSD's recent decision, without legal authority or justification, to withhold CAA's funds.¹²
- 13.** Expression of an unequivocal intent and expectation that the SCPCSD will deny CAA's appeal of the SCPCSD's illegal January 19, 2023, revocation of CAA's

¹¹ Having by that time had an opportunity to evaluate the merits of CAA's legal positions in the suits pending in state court, the SCPCSD is likely now justifiably concerned that the lower courts' decisions will be overturned and both matters remanded where the SCPCSD will have no choice but to answer for its sins.

¹² The SCPCSD has already been castigated by the South Carolina Department of Education for doing this once before and warned not to do it again. Schedule H, document H-001. The South Carolina Department of Education has recently been made aware of the SCPCSD's most recent illegal transgression. Schedule H, document H-011. Presumably the SCPCSD keeps the money that it withholds from CAA.

charter unambiguously communicated in the SCPCSD's counsel's communication to CAA's counsel of April 3, 2023. Schedule B.

- 14.** The SCPCSD's decidedly contrived and manufactured grounds for illegally and unjustifiably withholding CAA's funds.¹³ Schedule B.

Extinguishing a charter school that it sponsors when confronted by the charter school for the SCPCSD's wrongdoing is the first page of the SCPCSD's playbook; it is the SCPCSD's standard operating procedure; it is plan A. Whenever - as here - the SCPCSD feels threatened by a charter school that is in the process of exposing the SCPCSD's illegal behavior and which seeks to have the SCPCSD held accountable for its malevolent and corrupting conduct, the SCPCSD simply takes steps to annihilate its antagonist. That is what it seeks to do here¹⁴. The SCPCSD's counsel copying Payne, the SCPCSD's Board Chair, who will be one of the individuals ruling on CAA's appeal of the SCPCSD's January 19, 2023, vote to terminate CAA's charter, on the April 3, 2023, communication is irrefutable evidence that the decision to deny the appeal has already been made well before CAA has an opportunity to be heard.

Moreover, the curious and apparently cozy relationship between the SCPCSD and AA cannot be overlooked as a potential, if not primary reason, why the SCPCSD would want to eliminate CAA entirely¹⁵. There are a lot of questions the answers to which may help explain the

¹³ There is nothing to substantiate any of the SCPCSD's stated reasons. Of substantial consequence is the SCPCSD's glaring omission of any alleged malfeasance by CAA in regard to its handling of taxpayer funds, or any funds for that matter. There is a simple explanation for why no such allegation has been leveled by the SCPCSD against CAA: CAA has not misappropriated, misused, or misdirected any of the funds entrusted to it. In fact, in CAA's most recent audit report – a copy of which was provided to the SCPCSD, as were previous CAA audit reports – gives no indication or even hint, suggestion or insinuation that CAA has misappropriated, misused, or misdirected any of its funds. This has been the case with all of CAA's previous audit reports as well. If anything, CAA has been prudent and frugal with its funding, as evidenced by the fact that it has not wastefully spent its money just because it has it, which the SCPCSD ludicrously claims to find objectionable.

¹⁴ Just imagine how streamlined the judicial system would become if every matter were resolved if the defendant simply eliminated the plaintiff shortly after suit was filed. How wonderfully efficient. True judicial economy!

¹⁵ As observed in late 2019 by a journalist discussing a scandal involving SUPES Academy - now owned by Joseph Wise and David Sundstrom – and a prior Chicago School District CEO Barbara Byrd-Bennett, which

predicament in which CAA now finds itself. All of these questions center around what appear on the surface to be a problematic and unnaturally close relationship between the SCPCSD and AA. For instance, why did the SCPCSD deny CAA's request to amend its charter to remove AA, which by any objective standard was, to be kind, underperforming at an annual cost to CAA of eighty-five percent of its annual funding? Why did the SCPCSD illegally compel CAA to permit AA to continue operating on CAA's campuses? Why did the SCPCSD assist AA in its quest to recover almost \$1,000,000.00 from CAA instead of supporting and assisting CAA, a public school sponsored by the SCPCSD, in the arbitration proceedings?¹⁶ Why is the SCPCSD concerned that CAA is preserving rather than spending taxpayer dollars? Why is the SCPCSD supporting a struggling AA sponsored school located a mere two miles from CAA's campus as CAA continues to successfully fulfill its mission of aiding at-risk students in obtaining high school diplomas? Why did the SCPCSD deny CAA's transfer request? Why is the SCPCSD so intent on displacing hundreds of largely minority and socio-economically disadvantaged at-risk students by forcing CAA to shut its doors? Why does the SCPCSD have what seems to be a double standard, one for charter schools it sponsors that have a student body populated predominately by minority and socio-economically disadvantaged students and another for charter schools it sponsors that have a student body populated predominately by non-minority and non-socio-economically disadvantaged students? The SCPCSD's aforementioned inscrutable actions take on heightened significance when juxtaposed against - if media accounts are to be believed - AA's apparent

ultimately resulted in the latter's conviction and sentencing to prison time for accepting bribes and kickbacks from the company that ran SUPES and PROACT: "Anyone who thought this story was an anomaly would be mistaken. Similar conflicts of interest among private superintendent search firms, their associated consulting companies, and their handpicked school leaders have plagued multiple school districts across the country." Schedule I, p. I-010. This article was published slightly more than a month before CAA terminated its relationship with AA and less than sixty days before the SCPCSD denied CAA's charter amendment request and illegally forced CAA to allow AA to continue operating on CAA's campuses. Coincidence?

¹⁶ All in, this ended up costing CAA well in excess of \$1,000,000.00. Schedule J, p. 1088. The SCPCSD's conduct in connection with AA's arbitration proceeding against CAA belies the SCPCSD's newly concocted factitious position that it is simply concerned for taxpayer funds.

troubling history of public corruption.

It is certainly not implausible that the SCPCSD would want, in fact, need, to have CAA meet a swift ending before CAA can further probe the afore stated matters, which CAA intends to do during the course of this litigation as well as in the litigation currently pending in the South Carolina State Court system.¹⁷ It may well be that this is little more than “tilting at windmills,” – the SCPCSD may have plausible and above board reasons for its actions - but CAA, its constituents - including its students, faculty and the parents of its students - and the public at large, are all entitled to answers. Failure to grant the requested relief will allow the SCPCSD to skip off without having to answer these very significant and serious questions, which may well have a plausible explanation, but that will not be known if the SCPCSD is permitted to kill CAA before discovery commences. This Court should not allow this to happen!

The situation presented is unusual in this case in that the defendant has the power to determine the very existence of the plaintiff. This Court cannot permit the SCPCSD to terminate CAA or cut off its funding and eliminate CAA’s ability to continue in its good work and its investigation of the circumstances that are driving the SCPCSD’s actions. Rather, the Court must grant the requested relief and enter an injunction as requested and allow this matter to proceed to trial so that the merits can be decided. The failure to grant the requested relief is a de facto dismissal of this action.

If injunctive relief is not granted, Plaintiffs and CAA’s constituents, especially its students, will face the irreparable harm of the permanent and disastrous closure of CAA before this Court can fully adjudicate the merits of this action. Schedule G. The closure of CAA would result in irreparable harm to it, its governing board, its employees, its community, and most importantly, its at-risk minority students and families. Schedule G. Specifically, CAA’s at-risk students,

¹⁷ As further noted during his discussion of the Byrd-Bennett scandal referenced in footnote 15, *supra*: “As in the Byrd-Bennett scandal, school officials who get caught in this web risk public humiliation, criminal investigation, and potential jail time, while the businesses that perpetuate this hidden arrangement continue to flourish and grow.” Schedule J, p. I-001.

families, and community will be deprived of a school that provides an educational program specifically designed to serve at-risk students and that has already led approximately 200 at-risk students to the attainment of a diploma, which ultimately culminates in those students being better prepared to have a positive impact in their community. Schedule G. The impending closure of CAA places CAA's students at significant risk of not fulfilling their educational capabilities, attaining a high school diploma, and positively impacting their community. Schedule D; Schedule G. In summary, Plaintiffs will suffer extraordinary and irreparable harm if injunctive relief is not granted. Schedule G.

C. Defendants Will Experience No Or Minimal Adverse Repercussions If Injunctive Relief Is Granted, Tipping The Balance Of Equities In Favor Of Plaintiffs.

Conversely, Defendants will suffer little or no harm if a preliminary injunction is issued. An injunction will not materially interfere with the day-to-day, normal operations of the SCPCSD, and the SCPCSD's employees will not experience loss of employment. Rather, an injunction will serve to maintain the status quo. Defendants will operate as usual and as was anticipated prior to January 19, 2023, thereby tipping the balance of equities strongly in favor of Plaintiffs.

D. Not Depriving Hundreds Of South Carlina At-Risk Students And Families Access To The School Of Their Choice That Is Specifically Designed And Operated To Serve Their Unique Needs Until The Merits Of This Case Can Be Decided Is Within The Public Interest.

The public interest is best served by allowing CAA to continue addressing the needs of its at-risk, minority student population and preventing potentially discriminatory practices by the SCPCSD. Since it opened, CAA has successfully graduated nearly 200 at-risk students who otherwise would likely not have attained their high school diploma. Most of CAA's graduates are minorities and many come from impoverished households. CAA has re-engaged hundreds of other students who either have dropped out of high school or were at risk of dropping out of their previous school, and CAA currently provides these students with a unique model designed to create a pathway to become a high school graduate. Further, CAA provides personal and emotional

support to its students, in addition to academic support, so that CAA's students can manage and overcome obstacles in their personal lives that may be hindering their academic success. Closing CAA and removing the support it provides its students would be devastating to these young people, their families, and their community. Therefore, it is in the public interest for CAA to continue operating until the Court can fully adjudicate the merits of this action.

The public has a vested interest in preventing discrimination in all its forms, especially discrimination that is executed by the State and its political subdivisions, and in ensuring public bodies engage in actions that are just and that do not infringe on the rights of others. As discussed herein, the Defendants' abrupt action to revoke CAA's charter significantly departed from the revocation assessment procedures used by the SCPCSD Board for schools that are not designated as AECs and that serve predominately white students.¹⁸ The result of Defendants' actions disproportionately affects minority students. In an effort to ensure that state actors utilize procedures that are applied equally to all persons, it is in the public interest to allow CAA to continue providing valuable educational services to the at-risk, minority students it serves pending a decision on the merits of its underlying causes of action.

V. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that this Honorable Court grant their motion for a Temporary Restraining Order and Preliminary Injunction.

¹⁸ The SCPCSD's disparate treatment of schools that serve students of predominantly minority races and ethnicities versus schools that are not designated as AECs and serve predominately white students was fully on display as recently as the SCPCSD's most recent monthly board meeting on March 9, 2023. Schedule C, document 10.

Respectfully submitted,

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April 7, 2023
Columbia, South Carolina

PROOF OF SERVICE

I certify that I have served *Plaintiffs' Motion For Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support Thereof on Defendants, South Carolina Public Charter School District and John Payne*, on all counsel of record through the United States District Court for the District of South Carolina's PACER system on April 7, 2023.

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