

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

Charleston Advancement Academy High )  
 School, )

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

Plaintiff, )

vs. )

**[Proposed] ORDER DENYING  
 PLAINTIFF’S MOTION FOR  
 TRO AND PRELIMINARY  
 INJUNCTION**

South Carolina Public Charter School )  
 District )

Defendant. )

This matter is before the Court on Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction. A hearing was held on this motion on February 12, 2020 at the Charleston County Courthouse. Both Plaintiff and Defendant were represented by counsel at the hearing. After considering the written submissions of the parties and the arguments of counsel, Plaintiff’s motion is **DENIED** for the reasons set forth below.

**LEGAL STANDARD**

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Resources v. Bcs Life Ins. Co.*, 627 S.E.2d 687, 367 S.C. 540 (S.C. 2006). The remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* A plaintiff must prove three elements to receive the drastic remedy of a preliminary injunction: “(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law.” *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 365-67, 709 S.E.2d 639, 642 (2011).

## FINDINGS OF FACT

1. Plaintiff Charleston Advancement Academy f/k/a Charleston Acceleration Academy (“School”) is a charter school authorized by Defendant South Carolina Public Charter School District (“District”) pursuant to the South Carolina Public Charter Schools Act of 1996, S.C. Code Ann. § 15-40-10 to -240 (the “Act”).

2. School’s Board voted to terminate the contract with its management company effective immediately on or about October 31, 2019.

3. School’s charter required the management company to provide specified educational and operational services in order to educate students attending School.

4. School did not notify District or seek District approval for an amendment to the charter to replace the services provided by management company prior to the School Board’s vote to immediately terminate the management company on or about October 31, 2019.

5. On the District’s November 14, 2019 regularly scheduled meeting of the District Board of Trustees, School appeared before the District Board of Trustees to seek a charter amendment.

6. The School presented statements to the Board of Trustees in public session and answered questions posed by the District Board of Trustees. However, the School did not present a complete amended charter removing the management company.

7. The District Board of Trustees voted to deny the amendment until a complete charter was presented and required the School to maintain the status quo as it existed as of November 14, 2019 until the District Board of Trustees could consider a complete amendment request.

8. Following the November 14, 2019 District board meeting, the School made several changes, including implementation of a new administrative structure, policies and procedures, school name, by-laws and other changes to the operations of the school.

9. The District sent three letters to the School between November 21, 2019 and December 5, 2019 notifying the School that the changes it was making violated the District Board's requirement that the School maintain the status quo – compliance with the existing charter – and imposed certain sanctions to bring the School into compliance.

10. By letter dated December 6, 2019, the School asked for a meeting with the District Board to discuss these letters, and the District Board granted the School's request.

11. During a special-called public meeting on December 13, 2019, the District Board heard from the School and affirmed its decision to maintain the status quo until a charter amendment was submitted by the School and approved by the District Board.

12. Simultaneous with the proceedings between the School and District, the management company filed arbitration against the School on or about November 3, 2019.

13. The School voluntarily appeared in the arbitration.

14. The arbitrator ruled on January 6, 2020 that the Parties should maintain the status quo, but that the status quo should be maintained as of October 23, 2019, prior to the School's vote to terminate the management contract.

15. The School filed this action seeking a TRO and Preliminary Injunction seeking to enjoin the District from exercising sanctions short of revocation by (1) withholding money from the School and (2) exercising control over the School's contracts and property.

16. The School held a graduation on December 18, 2019 and continues uninterrupted operations at this time.

## CONCLUSIONS OF LAW

17. Section 59-40-90 of the Act requires any challenge to a final decision of the District be made to the Administrative Law Court.

18. The Legislature amended the Act in 2006 to remove jurisdiction of appeals from sponsor decisions from the Circuit Court to the Administrative Law Court. *See* 2006 Act No. 274.

19. School's requests for injunction challenge decisions made by the District.

20. Therefore, the Act divests this Court of jurisdiction to decide this motion.

21. Further, Section 59-40-140 of the Act grants the South Carolina Department of Education ("Department") the authority, through its administrative processes, to determine if the District improperly withholds funds from a charter school and fine the District if necessary to obtain improperly withheld funds on behalf of a charter school. The Department did not take any administrative action against the District in this case, even though School reported the issue to the Department and the Department exercised jurisdiction over the issue.

22. Even if this Court did have jurisdiction, School failed to meet its burden of proof to support its motion. The School has not shown the lack of an adequate remedy at law, that it is likely to succeed on the merits or that it is suffering immediate, irreparable harm. *Strategic Resources*, 627 S.E.2d at 687, 367 S.C. at 540 (movant for injunctive relief has burden of proving stated elements).

23. First, the School does not allege that the District is withholding any funding at this time or is in violation of any Department ruling, instead pointing to the threat that the District might do so in the future. However, as noted above, Section 59-40-140 of the Act specifies a statutory remedy for the School if it were to claim the District is withholding funds in violation of the Act in the future.

24. Moreover, the Act requires the District to “supply” or “provide” funds to the School for operations within a specified time, not physically transfer the funds with no oversight or restriction. *See* S.C. Code Ann. § 59-40-55, -140.

25. Therefore, because the Department has authority to enforce the Act’s funding requirements and the Act does not state funds must be physically transferred by a certain time, the School has an adequate remedy at law, is unlikely to succeed on the merits and is not suffering irreparable harm.

26. Second, the Act permits the District to issue sanctions short of revocation for violations of the charter or the Act by School. *See* S.C. Code Ann. § 59-40-55(B)(8).

27. The Act requires a charter school to identify management company responsibilities in the charter, and therefore requires the charter school to seek a charter amendment if it terminates the management company to identify how and by whom those responsibilities previously assigned to the management company will be provided. *See* S.C. Code Ann. § 59-40-60(F)(8).

28. The School violated the Act and its charter by failing to obtain an approved charter amendment and approved replacement services prior to termination of the management agreement.

29. By requiring the School to maintain the status quo as of November 14, 2019, the District Board required only that the School comply with the existing, unamended charter until an amended charter with appropriate replacement services for students was approved.

30. The District acted within its statutory authority by issuing sanctions short of revocation when the School made changes altering the status quo without identifying approved replacement services after November 14, 2019.

31. The District provided the School notice and the opportunity to be heard at public hearings on November 14, 2019 and December 13, 2019, consistent with the requests made by the School to amend its charter and for clarification regarding the sanctions issued.

32. Section 59-40-90 of the Act provides that a charter school must appeal any final decision of the District to the Administrative Law Court. The School did not file an appeal to the Administrative Law Court.

33. Therefore, because the Act allows the District to issue sanctions short of revocation through a specified administrative process including the right to appeal by the School, the School is not without an adequate remedy at law, is not likely to succeed on the merits, and is not suffering irreparable harm.

34. Finally, because an injunction is issued at equity, the School must have clean hands to obtain injunctive relief. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). The School does not have clean hands in this case. The School violated the terms of the Act and its charter by terminating the management company without an approved amended charter. The School also did not maintain the status quo as required by the District Board and delayed submitting a complete request for an amended charter to the District Board of Trustees for at least three months after voting to terminate the management company.

**CONCLUSION**

For all of the foregoing reasons and all reasons stated on the record at the hearing on this motion, the School's motion is denied.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Bentley Price  
Circuit Court Judge

February \_\_\_\_, 2020  
Charleston, South Carolina.



Charleston Common Pleas

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

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766