

August 30, 2021

VIA E-MAIL

Charter Institute at Erskine Board of Directors

c/o Sarah Timmons, Esq.
Timmons Law Firm
25 Delano Drive, Suite E
Greenville, SC 29601

Re: Oceanside Collegiate Academy

Dear Ms. Timmons:

As you know, our law firm represents Oceanside Collegiate Academy (“OCA”) and its governing Board of Directors (the “OCA Board”). The purpose of this correspondence is to provide written notice to the Charter Institute at Erskine (the “Institute”) Board of Directors (the “Institute Board”) of OCA’s intent to appeal the six findings of noncompliance recently made by the Institute’s administration in letters dated June 25, 2021, and August 20, 2021,¹ along with the legal and factual basis for OCA’s appeal. I do not know if the Institute Board is represented by independent counsel, so I would respectfully request that as counsel for the Institute’s administration, you forward this letter to the Institute Board and ask them to inform me if I should direct my future correspondence elsewhere.

Under the Charter Schools Act of 1996, as amended (the “Act”), OCA and the Institute have a contractual relationship, and the Institute has a duty to monitor OCA’s legal compliance. S.C. Code Ann. § 59-40-10 et seq. OCA is appealing findings by the Institute’s administration that OCA acted unlawfully because those findings are inconsistent with factual events and applicable law for the reasons set forth herein. OCA respectfully requests that the Institute Board overturn the erroneous findings of unlawfulness made by the Institute’s administration.

Although OCA is appealing the findings of unlawfulness made by the Institute’s administration and any conclusion by the Institute’s administration that “corrective action” is needed because of noncompliance with applicable laws, OCA has no objection to continuing to perform or implementing any of the following practices or actions:

¹ The letters sent on behalf of the Institute’s administration, and the OCA Board’s letters dated July 8, 2021 and August 16, 2021 are attached hereto as **Exhibit A**.

- (1) Notifying the Institute of OCA Board meetings (OCA's regular Board meeting schedule has always been posted on OCA's website and available to the public in compliance with the South Carolina Freedom of Information Act (the "FOIA"));
- (2) Providing virtual video access to OCA Board meetings (OCA offered virtual access at its most recent Board meeting in response to requests from OCA parents);
- (3) Recording OCA Board meetings and making the recordings available to those unable to attend (OCA's Board meetings have always been open to the public for viewing and recording in compliance with the FOIA, S.C. Code Ann. § 30-4-90(c));
- (4) Providing detailed written minutes of Board meetings (OCA's Board meeting minutes have always been kept in accordance with the FOIA and posted on OCA's website);
- (5) Participating in Board Training (OCA Board members have received voluntary and statutorily required Board trainings in compliance with the Act, S.C. Code Ann. § 59-40-155);
- (6) Approving Board policies that comply with law and do not unduly inhibit the autonomy granted to public charter schools, as set forth in the Act (the OCA Board has legally approved Board policies and will consider any proposed amendments the Institute desires to make, with the understanding that the OCA Board has statutory autonomy to govern its school in compliance with the law and its charter);
- (7) Approving contracts that comply with law and do not unduly inhibit the autonomy granted to public charter schools, as set forth in the Act (the OCA Board has legally approved contracts, some of which have also been reviewed and approved by the Institute's Board in connection with OCA's charter; the OCA Board will consider any suggestions the Institute desires to make, with the understanding that OCA may have a legal obligation to comply with existing contractual obligations, and with the understanding that the OCA Board has statutory autonomy to govern its school in compliance with the law and its charter);
- (8) OCA will gladly provide a copy of the deed showing OCA's ownership of its property to anyone who requests it (the OCA Board provided a copy of the deed showing ownership of its property to the Institute's administration on August 16, 2021, in response to a request from the Institute's administration);
- (9) Continue to engage an auditor to perform annual audits of OCA's finances and produce audit reports, to the extent anonymous allegations from the Institute's administration do not prohibit the performance of an audit or the production of an audit report without a disclaimer or qualified opinion, which would unjustly damage OCA's reputation and OCA's ability to access capital markets (OCA has

engaged a qualified CPA audit firm and received clean audits for several consecutive years);

- (10) Review and evaluate any legal analysis or finding that Gray Collegiate Academy's ("GCA") EB-5 school facility financing, including the establishment of a limited partnership to pay employees of Pinnacle Charter School Management Group ("Pinnacle"), violated applicable law, and assess whether any alleged violations of law associated with GCA's EB-5 school facility financing can be remedied by action of the OCA Board, which was not involved at all in GCA's EB-5 school facility financing. At this time, the OCA Board has not seen any legal analysis or finding that any aspect of GCA's EB-5 school facility financing, including the establishment of a limited partnership to pay Pinnacle employees, was unlawful. Nonetheless, the OCA Board has been informed that GCA, Pinnacle, and the bankers, developers, public finance lawyers, and other parties involved in GCA's EB-5 school facility financing are working to resolve any potential questions with GCA's facility financing related to Pinnacle employees who serve on OCA's staff;
- (11) OCA will be glad to communicate with any investigative agency regarding GCA's EB-5 school facility financing, with the understanding that the OCA Board was not involved at all in GCA's EB-5 school facility financing and has almost no knowledge of the details or documents associated with GCA's facility financing. Additionally, OCA has confirmed orally and in writing with the State Inspector General, Brian Lamkin, that OCA is not currently under investigation with any investigative agency, including but not limited to the Immigration and Customs Enforcement Agency and the South Carolina Department of Revenue. In fact, OCA has never been contacted by any investigative agency.
- (12) OCA does not object to participating in group discussions with the Institute and OCA's auditor; and
- (13) OCA will gladly consider any suggestions from the Institute related to OCA's website, with the understanding that OCA has statutory autonomy to manage its website in accordance with the law and its charter.

OCA hereby appeals the following erroneous findings of unlawfulness made by the Institute's administration:

- (1) **In its letter dated June 25, 2021, the Institute's administration erroneously alleged that OCA was in breach of its charter for failing to submit its FY20 audit. In fact, OCA's auditor, Elliott Davis, has refused to release OCA's FY20 audit because of the Institute administration's pending "anonymous report of suspected fraudulent or corrupt conduct by Pinnacle."**

As background, OCA, like almost every other charter school in the State of South Carolina and in compliance with its charter, has authorized the engagement of third-party accountants to manage OCA's day-to-day finances. The OCA Board holds regular monthly meetings, open to the public, to review OCA's financial reports and consider and act on financial matters. The Board votes on financial matters in open session during its board meetings, and the Board's votes are reflected in the Board's meeting minutes, which are posted on OCA's website and available to the public. Each year, the OCA Board retains an independent third-party CPA audit firm to audit OCA's finances. OCA's audits are also posted on OCA's website and available to the public. OCA has received clean audits for several consecutive years.

In the summer of 2020, the OCA Board retained Elliott Davis, a well-qualified independent CPA audit firm, to audit OCA's FY20 finances. OCA provided financial records to and answered questions from Elliott Davis in connection with the FY20 audit. OCA also informed Elliott Davis that the Institute's administration reported receipt of an "anonymous report of suspected corrupt or fraudulent conduct by Pinnacle" in May of 2020. In the fall of 2020, just before Elliott Davis finalized OCA's audit report, Elliott Davis informed OCA that it could not release OCA's audit report because of the anonymous allegations of "suspected corrupt or fraudulent conduct by Pinnacle" pending from the Institute's administration. To be clear, Elliott Davis did not inform OCA of any potential corrupt or fraudulent conduct by Pinnacle discovered in connection with OCA's FY20 audit, but Elliott Davis was not willing to release OCA's FY20 audit report with anonymous allegations against Pinnacle pending from the Institute's administration. On November 13, 2020, before the FY20 audit was due, the OCA Board wrote a letter to the Institute's administration communicating Elliott Davis's position in writing to the Institute.

A few months passed, and in February 2021, the Institute inquired again about the status of OCA's FY20 audit. The OCA Board revisited the status with Cindy Brams, a shareholder at Elliott Davis. Ms. Brams consulted internally with others at Elliott Davis and responded in writing a few days later. On February 19, 2021, Ms. Brams wrote:

We have consulted internally regarding the request made by CIE for us to issue our audit report on the financial statements of Oceanside Collegiate Academy (OCA) for year ended June 30, 2020. As you are aware, we have communicated with the Board of Directors of OCA that until the allegations of fraud were resolved, we would be unable to issue our report.

...

In order for us to move forward with issuing the audit report, we will need to have assurance in writing from CIE that ... CIE is not aware of any fraudulent activities, conduct or violation of any laws or regulations as it relates to the School or Pinnacle Charter Schools Management Group, LLC.

If CIE is able to provide that information to us in writing, then we will consider the issue resolved and will be able to move forward with issuing our audit report.

Please let us know if you have any questions.

Cindy

OCA once again communicated Elliott Davis's position on the release of OCA's FY20 audit to the Institute's administration. In follow up conversations, the Institute's administration inquired whether OCA's audit could be released with a disclaimer opinion. The OCA Board informed the Institute's administration that a disclaimer or qualified opinion was not consistent with the OCA Board's understanding of the audit work performed by Elliott Davis, would harm OCA's reputation, and would damage OCA's ability to access low-cost capital and unnecessarily waste taxpayer dollars. Given that the Institute's administration had not provided OCA with any evidence of corrupt or fraudulent conduct by Pinnacle in nearly a year since receiving the anonymous report, OCA requested that the Institute's administration provide the information needed by Elliott Davis to release OCA's FY20 audit and resolve this issue.

The Institute's administration never provided the information needed by Elliott Davis to release OCA's FY20 audit. Then, in June 2020, the Institute's administration alleged that OCA was in breach of its charter contract for failing to submit its FY20 audit.

Over the last 15 months, the OCA Board has provided extensive documentation to the Institute's administration regarding OCA's finances in connection with the Institute administration's investigation of Pinnacle, including several letters and voluminous document productions in December 2020 and May 2021 in response to requests from the Institute's administration. The OCA Board does not know if the Institute's administration is currently alleging that Pinnacle engaged in corrupt or fraudulent conduct at OCA. If the Institute's administration is not currently making such an allegation against Pinnacle in connection with OCA, the Institute's administration should provide Elliott Davis with the information it needs to release OCA's FY20 audit and resolve this issue. If the Institute's administration is alleging that Pinnacle engaged in corrupt or fraudulent conduct at OCA, the Institute's administration should state that allegation clearly in writing and provide any evidence the Institute's administration has to support that allegation to OCA so that the OCA Board can review it.

The OCA Board has not taken any action to prevent the release of OCA's FY20 audit. The OCA Board has been responsive and communicative with both Elliott Davis and the Institute's administration regarding the allegations from the Institute's administration that are preventing the release of OCA's FY20 audit.

Given that facts, as set forth in detail herein, the Institute administration's finding that OCA is in breach of its charter contract for failing to release the FY20 audit is erroneous. In fact, it is the Institute administration's anonymous allegations of suspected fraudulent and corrupt conduct by Pinnacle, which appear to date to be unsupported by evidence, that have caused Elliott

Davis to withhold OCA's FY20 audit. Accordingly, the OCA Board respectfully requests that the Institute Board overturn any finding or allegation that the OCA Board has acted unlawfully in connection with OCA's FY20 audit.

- (2) In its June 25, 2021 letter, the Institute's administration disregarded mandatory legal authority and erroneously found that OCA failed to comply with racial composition requirements set forth in the South Carolina Charter Schools Act.**

As background, under the Act, OCA is a public school open to all students in the State, subject to space limitations. OCA has a significant waitlist of students who want to attend OCA. Each fall, OCA conducts a random public lottery for student admissions, pursuant to the Act.

In reaching its finding that OCA is not in compliance with the Act's racial composition requirements, the Institute's administration completely disregarded plain language in the Act and judicial opinions issued by the United States Court of Appeals for the Fourth Circuit, the United States District Court for the District of South Carolina, and the Supreme Court of South Carolina, which were provided to the Institute's administration in OCA's correspondence dated July 8, 2021.

Under the Act, racial composition compliance is a two-step analysis. First, one must assess whether the racial composition of a charter school's enrollment reflects that of the local school district in which the charter school is located or that of the targeted student population of the local school district that the charter school purposes to serve, to be defined by the Act as differing by no more than twenty percent from that population. S.C. Code Ann. § 59-40-50(B)(7) (noting that "[t]his requirement is also subject to the provisions of Section 59-40-70(D)). Second, in the event that a charter school's enrollment differs from the local school district or targeted student population by more than twenty percent, the sponsor is required to consider the school's recruitment efforts and the racial composition of the applicant pool in determining whether the charter school is operating in a non-discriminatory manner. S.C. Code Ann. § 59-40-70(D).

With respect to the first step of the racial composition analysis under the Act, OCA's racial composition is almost identical to the fifteen public schools in its local school district. As background, Charleston County has eight constituent school districts within the Charleston County School District ("CCSD"). Each constituent district in Charleston County has a constituent district Board of Trustees that assigns students to non-magnet local schools, considers and determines student transfer requests, hears and decides student discipline appeals, and informs the CCSD Board of Trustees of the well-being of the constituent district's schools.

In *United States v. Charleston Cty. Sch. Dist.*, 960 F.2d 1227 (4th Cir. 1992), a decision regarding racial desegregation remedies, the United States Court of Appeals for the Fourth Circuit upheld the decision of the United States District Court for the District of South Carolina and found that the racial composition of a school's student enrollment should not be

evaluated from the perspective of CCSD as a whole, but rather from the perspective of the constituent district in Charleston County in which the school is located.

By way of background, prior to 1951, Charleston County had twenty-one independent school districts within the county and the schools within these districts operated under a dual system. In 1951, the South Carolina General Assembly consolidated the twenty-one districts into eight districts. These eight districts varied in size and population and all followed natural geographic patterns unique to Charleston County. The schools within these eight districts existed as totally separate entities until 1967. Thereafter, the General Assembly created the CCSD, which encompassed all of Charleston County; however, the eight school districts continued their existence and are now labeled as constituent districts.

In 1981, the United States filed an action against the CCSD alleging violations under the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the District of South Carolina found, among other things, that the established eight constituent districts are valid and that the CCSD is not a single district. Similarly, on appeal, the United States Court of Appeals for the Fourth Circuit found that the inquiry of whether the schools of Charleston County are in compliance with their affirmative duty to eliminate all vestiges of dual schooling must be focused on each constituent district. *Id.* 960 F.2d at 1233. The Fourth Circuit Court of Appeals affirmed that the racial makeup of student enrollment should not be evaluated from the perspective of the CCSD as a whole, but from the racial makeup of the constituent district in which the school is located. *Id.* 960 F.2d at 1232.

OCA is located in Constituent District 2-Mount Pleasant. Within Constituent District 2, there are fifteen traditional public schools. Based on OCA's 45-day count from the 2020-2021 school year, approximately 7.03% of OCA's students are African-American and 84.9% are white. In comparison, the 45-day count for Constituent District 2 shows that approximately 8.69% of Constituent District 2's students are African-American and 82.48% are white.² (Racial Demographic Spreadsheets attached as **Exhibit B.**)

Therefore, when OCA's racial composition is compared to racial composition of Constituent District 2 schools, as required by federal law, OCA is well within the 20% variance described in the Act. In fact, OCA's racial demographics are almost identical to the racial demographics of the collective fifteen public schools in Constituent District 2-Mount Pleasant. Accordingly, further analysis regarding OCA's racial composition under the Act is unnecessary because OCA complies with the 20% variance permitted in the Act. Accordingly, the Institute administration's finding that OCA is not in compliance with racial composition requirements should be overturned.

Moreover, even if a school is outside the twenty percent variance described in the Act, before reaching a finding of noncompliance, a sponsor is statutorily required to comply with

² The Institute's letter dated June 25, 2021 only mentions these two races and does not analyze any other races. OCA serves students of several races and complies with racial composition requirements for all races.

§ 59-40-70(D), which states that the sponsor must conduct a fact-based determination regarding the school's recruitment efforts and the racial composition of the school's applicant pool. S.C. Code Ann. § 59-40-70(D). The Supreme Court of South Carolina has held that § 59-40-70(D) exempts charter schools from the twenty percent requirement if they are not operating in a racially discriminatory manner. *Beaufort Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 353 S.C. 24, 28, 576 S.E.2d 180, 182 (2003). Further, the Supreme Court of South Carolina held that § 59-40-70(D) requires "a fact-based determination regarding discrimination rather than mandating a straightforward racial quota." *Id.* 353 S.C. at 28, 576 S.E.2d at 182.

On March 8, 2021, Mr. Rudrapati, Institute Director, sent an email to OCA's Board Chair and Vice Chair stating the Institute would now like to re-focus on OCA's racial composition issue because OCA was "failing to meet the statutory standard provided in the S.C. Charter Schools Act." Mr. Rudrapati stated that "S.C. Code 59-40-50(7) [*sic*] requires that the racial composition of the School's enrollment differ by no more than twenty percent from that population of the local school district in which the charter school is located." Thereafter, with no further inquiry of OCA, the Institute's administration issued a Notice of Noncompliance to OCA on June 25, 2021, citing "S.C. Code 59-40-50 (7) [*sic*]." In reaching its conclusion, the Institute's administration failed to cite S.C. Code Ann. § 59-40-70(D) or the Supreme Court's interpretation of the Act's requirements, and the Institute failed to conduct a fact-based determination regarding OCA's recruitment efforts or the racial composition of OCA's applicant pool. Instead, in its June 25, 2021, letter, the Institute's administration attempted to mandate a straightforward racial quota, which is in strict violation of the Act and the Supreme Court of South Carolina's holding regarding an authorizer's duties under the Act with respect to racial composition.

Had the Institute's administration inquired of the OCA Board prior to issuing a notice of non-compliance, the OCA Board would have gladly shared with the Institute's administration OCA's recruitment efforts and demographic data regarding OCA's applicant pool and admissions process. For example, OCA's Principal attended diversity training, OCA has a diversity coordinator on staff, OCA conducts direct marketing in diverse neighborhoods, OCA's Principal promoted OCA during interviews on WWVZ 93.3, and an OCA Board member and staff member visited all the AME churches in Mount Pleasant as part of the school's efforts to recruit a diverse student population. Moreover, OCA has a waiting list of over 400 students and conducts a random public lottery for student enrollment, as required by the Act. Accordingly, any change in the racial demographics at OCA from year to year is a direct result of OCA's random public lottery for student admissions, which is expressly required by the Act and which OCA has no discretion to change. OCA is not legally permitted to utilize affirmative action on the basis of race in admitting students to OCA. OCA has always and continues to welcome for consideration any proposed student recruitment strategies that the Institute or others may want to offer.

In June 2021, the South Carolina General Assembly Legislative Audit Council ("LAC") issued a Review of the South Carolina Public Charter School District. The Institute is mentioned many times in the LAC's Review. The LAC, like the Supreme Court of South Carolina, recognized that a local educational agency cannot require schools to have a certain demographic composition. Additionally, the LAC's Review indicates that the Institute's administration

informed the LAC that the Institute has an accountability metric for whether a school meets the statutory 20% standard, as well as two other related metrics:

- If the school is not meeting the 20% requirement for racial composition, has the school developed and executed a robust plan to meet the requirement?
- Is the minority group(s) at the school that is not meeting the racial composition performing better than that of the local school district?

In its correspondence to the OCA Board of Directors, the Institute's administration failed to ask the OCA Board of Directors for information related to the above-referenced metrics, which it appears the Institute's administration represented to the LAC it utilizes in evaluating racial composition. In fact, the Institute's administration did not even mention these metrics in its conclusory noncompliance letter to OCA dated June 25, 2021.

By reaching a finding of noncompliance before conducting the statutorily required fact-based analysis, the Institute's administration violated OCA's due process rights and made an arbitrary and capricious determination that OCA is not in compliance with the Act in violation of the Institute's own duties and responsibilities under the Act.

Because OCA complies with the 20% variance described in the Act, because the Institute's administration failed to conduct a fact-based determination related to OCA's recruitment efforts and the racial composition of OCA's applicant pool, and because the Institute's administration attempted to mandate a straightforward racial quota in violation of the Act, OCA respectfully requests that the Institute Board overturn the Institute administration's finding that OCA is not in compliance with racial composition requirements set forth in the Act.

- (3) In its June 25, 2021, letter, the Institute's administration erroneously declared that OCA is in "Emergency Fiscal Watch" which the Institute's administration has no authority to declare under State law, and which is inconsistent with the facts.**

Under State law, only the State Superintendent of Education has statutory authority to declare "Fiscal Watch." S.C. Code Ann. § 59-20-90. The OCA Board has not been contacted by State Superintendent Molly Spearman nor has the OCA Board been informed that State Superintendent Spearman has delegated her statutory authority to declare "Fiscal Watch" to the Institute's administration.

Moreover, the facts do not support such a finding. OCA's audits are clean. OCA has continuously cooperated with its auditor to provide documents and communicate positions between the auditor and the Institute's administration. Additionally, OCA has confirmed orally and in writing with the State Inspector General, Brian Lamkin, that OCA is not under investigation by the State Inspector General. (Communications between OCA and Brian Lamkin attached as **Exhibit C**). OCA has also confirmed orally with Mr. Lamkin that OCA is not under investigation with any investigative agency, including but not limited to the Immigration and Customs

Enforcement Agency and the South Carolina Department of Revenue. In fact, OCA has never been contacted by any investigative agency.

- (4) In its August 20, 2021, letter, the Institute’s administration erroneously found that the OCA Board unlawfully failed to manage Pinnacle because several years ago Pinnacle inadvertently allocated OCA funds for lobbying fees incurred by Pinnacle.**

As previously explained, consistent with its charter, OCA has authorized the engagement of third-party accountants to manage OCA’s day-to-day finances. The OCA Board holds regular monthly meetings, open to the public, to review OCA’s financial reports and consider and act on financial matters. The Board votes on financial matters during open session of its Board meetings, and the Board’s votes are reflected in the Board’s meeting minutes, which are posted on OCA’s website and available to the public. Each year, the OCA Board retains an independent third-party CPA audit firm to audit OCA’s finances. OCA’s audits are posted on OCA’s website and available to the public. OCA has received clean audits for several consecutive years.

The OCA Board very recently discovered that several years ago, between 2016 and 2018, before the Institute became OCA’s sponsor, \$27,835.00 in school funds were inadvertently allocated by Pinnacle to pay a lobbying firm that worked for Pinnacle. The OCA Board never considered or voted to approve this allocation of funds. Upon recently discovering this issue, the OCA Board became appropriately concerned and immediately brought the issue to Pinnacle’s attention. Pinnacle reviewed the information, acknowledged their administrative error from several years ago, apologized profusely to the OCA Board, and immediately reimbursed OCA in full for the prior inadvertent allocation.

In summary, the OCA Board recently learned of an administrative error made by Pinnacle several years ago and immediately addressed the issue with Pinnacle. The issue was immediately resolved, funds were reimbursed to OCA, and OCA suffered no financial harm.

Errors happen in every organization. This is a great example of how a governing Board that is not responsible for the day-to-day operations of a school should act to immediately address and resolve a day-to-day administrative error made by another organization. The Institute administration’s finding that the OCA Board unlawfully managed Pinnacle should be overturned by the Institute Board because OCA retains separate CPA firms to manage and audit OCA’s finances, and OCA immediately addressed and resolved this issue upon discovering it.

- (5) In its August 20, 2021, letter, the Institute’s administration erroneously found that the OCA Board unlawfully failed to manage Pinnacle in connection with Gray Collegiate Academy’s EB-5 financing.**

The EB-5 school facility financing at issue relates to another school, GCA, not OCA. The OCA Board had absolutely no involvement with GCA’s EB-5 school facility financing, including the establishment of a limited partnership to pay Pinnacle employees, a minority of

whom work on OCA's staff. The OCA Board does not possess and has not been provided with or reviewed any contracts or documentation related to GCA's EB-5 school facility financing. The OCA Board has never been contacted by the GCA Board regarding GCA's EB-5 school facility financing. The OCA Board has never been contacted by the developer, bankers, lawyers, or other parties involved in GCA's EB-5 school facility financing.

To properly issue a legal noncompliance finding against OCA or sanction the OCA Board in connection with GCA's EB-5 school facility financing, including the establishment of a limited partnership to pay Pinnacle employees, the Institute would need to do the following:

- (1) Reach a finding, based on factual evidence, applicable law, and legal analysis, that GCA's EB-5 school facility financing was unlawful; and
- (2) Reach a finding, based on factual evidence, applicable law, and legal analysis, that the OCA Board had a duty to prevent GCA from engaging in the unlawful EB-5 school facility financing, breached its duty, and that OCA's breach caused GCA to engage in the unlawful EB-5 school facility financing.

To the best of OCA's knowledge, the Institute's administration has not done any of the things described above. If the Institute's administration has done any of the things described above, OCA has not been provided with notice of the Institute administration's legal analysis or findings of unlawfulness related to GCA's EB-5 school facility financing or been given an opportunity to respond to any such legal analysis or findings.

For example, the Institute's administration has not provided the OCA Board with citations to any federal or state law that the Institute's administration alleges was violated by GCA's EB-5 facility financing. Further, the Institute's administration has not provided the OCA Board with documents related to GCA's EB-5 facility financing, even though the Institute has access to such documents and a statutory duty to monitor GCA's legal compliance, as GCA's charter school sponsor.

Additionally, because the OCA Board suspects that the Institute Board might be informed otherwise by the Institute's administration, please note again that the OCA Board has confirmed orally and in writing with the State Inspector General, Brian Lamkin, that OCA is not under investigation by the State Inspector General. (*See Exhibit C*). OCA has also confirmed orally with Mr. Lamkin that OCA is not under investigation with any investigative agency, including but not limited to the Immigration and Customs Enforcement Agency and the South Carolina Department of Revenue. In fact, OCA has never been contacted by any investigative agency.

Accordingly, for the reasons set forth herein, the Institute Board should overturn the finding of the Institute's administration that the OCA Board failed to comply with applicable law in connection with GCA's EB-5 facility financing.

- (6) **In its August 20, 2021, letter, the Institute’s administration erroneously found that the OCA Board unlawfully failed to manage Pinnacle because OCA paid Pinnacle’s subcontractors for services OCA was already paying for as part of the management fee.**

Initially, the Institute’s administration makes no reference in its letter dated August 20, 2021, to the specific services this finding addresses, which is a significant due process violation (i.e. OCA is entitled to notice of the allegations of unlawfulness against it). Based on prior allegations from the Institute’s administration, OCA can only assume that the Institute’s administration is referring to OCA’s payments for fiscal and human resource services that are separate and apart from the management fee.

The OCA Board and Pinnacle entered into a Management Agreement (“Agreement”) in September 2015 under which Pinnacle provides educational and administrative services to OCA. (Agreement attached as **Exhibit D**). The services provided by Pinnacle to OCA include curriculum, instruction, special education, extra-curricular and co-curricular programs, personnel management, facility operations and maintenance, business administration, payroll, public relations, budgeting, financial reporting, maintenance of financial and student records, admissions, student hearings, academic progress reports, rules and procedures, parent satisfaction forms, and financing arrangements. A description of the services is set forth in the Agreement.

In exchange for the services provided by Pinnacle to OCA, pursuant to Section 4.1 of the Agreement, OCA is required to pay Pinnacle a management fee, and pursuant to Section 4.2 of the Agreement, OCA is additionally required to reimburse Pinnacle for all costs in providing such services as authorized in OCA’s annual budget.

As background, the services provided by Pinnacle to OCA are generally similar to the services provided by other educational management organizations to other charter schools sponsored by the Institute. Additionally, the total fees and costs charged by Pinnacle to OCA are generally similar to the total fees and costs charged by other educational management organizations to other charter schools sponsored by the Institute on a per-student basis. The gross total fees and costs charged by Pinnacle to OCA are substantially less than the gross total fees and costs charged by several other educational management organizations to charter schools sponsored by the Institute.

In the fall of 2017, OCA transferred its existing charter to the Institute. In doing so, OCA submitted its charter application to the Institute Board for consideration and approval. OCA’s charter application included (1) a copy of the Agreement between OCA and Pinnacle, as described herein, and (2) a 10-year budget plan showing a projected management fee and separate costs for contracted fiscal and human resources services. (Budget plan attached to OCA’s charter attached as **Exhibit E**).

On November 3, 2017, the Institute Board met and considered OCA’s charter application. At the meeting, the Institute’s administration made a public recommendation to

approve OCA's charter application, which included the Agreement between OCA and Pinnacle and the 10-year budget plan showing separate payments by OCA for the management fee, contracted fiscal services, and contracted human resources. The Institute Board then voted to approve OCA's charter application, including the Agreement between OCA and Pinnacle and the budget plan, at which point the charter application became a contractual agreement between OCA and the Institute pursuant to the Act. S.C. Code Ann. § 59-40-60(A) ("An approved charter application constitutes an agreement between the charter school and the sponsor.").

Therefore, OCA and the Institute have contractually agreed that OCA will pay Pinnacle a management fee and also pay Pinnacle's costs for contracted fiscal services and human resource services. Consistent with its charter, as approved by the Institute Board, since November 2017, the OCA Board has voted in open session at its Board meetings to approve annual budgets that include separate payments for the management fee, fiscal services, and human resource services.

The Institute's administration is now perplexingly taking the position that the OCA Board is acting unlawfully by making separate payments for a management fee, fiscal services, and human resource services, even though by doing so, OCA is complying with (1) the contractual Agreement between OCA and Pinnacle, and (2) the approved charter application between the OCA Board and the Institute Board. The Institute's administration's finding of unlawfulness with respect to these payments is erroneous and should be overturned by the Institute Board.

CONCLUSION

The OCA Board, with the support of Pinnacle, governs and operates one of the best charter schools in state of South Carolina. Under the OCA Board's governance, OCA has produced outstanding academic results since its inception, received positive ratings on State Report Cards, helped students obtain millions of dollars collectively in college scholarships, received clean audits by a very reputable CPA audit firm for several consecutive years, maintained a healthy fund balance, and is fully enrolled with a significant waitlist of students who want to attend OCA. OCA's academic results, fiscal results, and reputation have been nothing short of outstanding. Without legal justification, the Institute's administration is now intentionally manipulating OCA parents with false information, defaming OCA Board members and others, conspiring to remove OCA Board members from their offices, and publicly threatening in the Post & Courier to close the school.

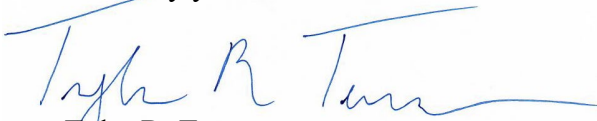
The Institute Board should overturn the erroneous findings of unlawfulness made by the Institute's administration for the reasons set forth herein. Based on the facts described herein and several factual events that have not been described herein, which the Institute Board may or may not be aware of, OCA believes it has several very strong legal claims against the Institute's administration and the Institute Board. The OCA Board's causes of action include, at a minimum, defamation, civil conspiracy, gross negligence, tortious interference with contractual relations, breach of contract, violations of due process, and negligent supervision of the Institute's

administration.³ The OCA Board of Directors has shown remarkable patience with the conduct displayed by the Institute's administration, and the OCA Board appreciates that the Institute Board is now agreeing to hear from the OCA Board.

The OCA Board looks forward to the appeal hearing and requests that the Institute Board send the time, date, location, and procedures that will be utilized at the appeal hearing to my attention. The OCA Board also seeks confirmation from the Institute Board that the Institute Board will retain an independent court reporter to transcribe the appeal hearing, with such transcription to become part of the legal record. Given the volume and complexity of the factual and legal issues, the OCA Board would request that it be provided at least 90 minutes to present its appeal. The OCA Board does not plan to present longer than necessary but wants to ensure that it has adequate time to cover the factual and legal issues involved. Lastly, if the Institute Board is represented by independent legal counsel, I would greatly appreciate you providing me with his or her contact information.

With kind regards, I am

Sincerely yours,



Tyler R. Turner
tturner@turnercaudell.com

/sws

Enclosures

c: OCA Board of Directors
Mary Allison Caudell, Esq.

³ The OCA Board sent letters to the Institute Board and the Erskine College Board of Trustees (the "Erskine Board") in December 2020 to express its concerns with the Institute administration's conduct and discuss several related issues. (Copies of letters sent by the OCA Board to the Institute Board and Erskine Board are attached hereto as **Exhibit F**.) Neither the Institute Board nor the Erskine Board responded to the OCA Board.