

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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3 KIN DAH LICHI'I OLTA', Inc., a non-profit  
4 corporation, operating  
5 KIN DAH LICHI'I OLTA', a charter school

**No. 14F-FSRV-003-BCS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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9 **HEARING:** March 18, 2014. The record was kept open until April 2, 2014, for  
10 the filing of the court reporter's transcript with the Office of Administrative Hearings.

11 **APPEARANCES:** The Arizona State Board for Charter Schools was  
12 represented by Assistant Attorney General Kim Anderson. Kin Dah Lichi'i Olta', Inc.,  
13 operating Kin Dah Lichi'i Olta', a charter school, was represented by its attorney, R.  
14 Gehl Tucker, Esq.

15 **ADMINISTRATIVE LAW JUDGE:** Brian Brendan Tully

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17 **FINDINGS OF FACT**

- 18 1. The Arizona State Board for Charter Schools ("Board") is authorized to execute  
19 charter contracts for the purpose of establishing charter schools in Arizona.
- 20 2. Kin Dah Lichi'i Olta' ("School") is a charter school authorized to operate under  
21 the sponsorship of the Board. The School operates pursuant to a charter  
22 contract between Kin Dah Lichi'i Olta', Inc., a non-profit corporation ("Charter  
23 Holder") and the Board. The School has a board ("School Board") whose  
24 members are elected by the Navajo community. The School Board is the main  
25 decision and policy maker for the School.
- 26 3. Ronald Aria and Linda Youvella are the Charter Representatives and persons  
27 authorized to act on behalf of the Charter Holder.
- 28 4. The School began operating in the 1999-2000 school year and it is currently  
29 authorized to serve students in grades 7-8.  
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- 1 5. The School is located east of Ganado, Arizona on the Navajo Nation in the  
2 community of Kinlichee. The School reports an average daily membership of  
3 approximately 37 students for the 2013-2014 school year.
- 4 6. The Arizona Department of Education annually compiles achievement profiles  
5 for all Arizona charter schools and school districts. The Arizona Department of  
6 Education's assignment of an achievement profile is based upon academic  
7 progress measured on students' performance on standardized State testing and  
8 on proficiency. A school can earn a letter grade of A, B, C, D, or F. A letter  
9 grade of D demonstrates a below average level of performance by a school.
- 10 7. On or about September 9, 2013, the Arizona Department of Education notified  
11 the Board that the School had been assigned an achievement profile letter grade  
12 of F.
- 13 8. By letter dated September 12, 2013, the Board notified the Charter Holder that  
14 the School had been assigned an achievement profile letter grade of F by the  
15 Arizona Department of Education. The Charter Holder was advised that the  
16 Board would make a determination "whether to restore or revoke the charter . . .  
17 based upon evidence of the [Charter Holder's] performance in accordance with  
18 the performance framework adopted by the Board, including the [Charter  
19 Holder's] submission of demonstration of sufficient progress toward the Board's  
20 expectations."<sup>1</sup> The Charter Holder was advised that it had to submit a  
21 Demonstration of Sufficient Progress ("DSP") for the School.
- 22 9. On or about September 13, 2013, School Board members were informed that the  
23 School had been assigned an achievement profile letter grade of F.
- 24 10. In November 2013, the School Board received a full report on the status of the  
25 School.
- 26 11. On December 9, 2013, the Board voted to issue a Notice of Intent to Revoke the  
27 Charter Holder's charter to operate the School on the basis of the School's  
28 2012-2013 achievement profile designation as an F school and its failure to  
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30 <sup>1</sup> See Board's Exhibit 2C at Bates stamp BCS00062.

1 meet or demonstrate sufficient progress toward the Board's performance  
2 expectations as set forth in the Board's Academic Performance Framework.

3 12. On December 27, 2013, the Board issued the "Arizona State Board for Charter  
4 Schools' Notice of Intent to Revoke Charter and Notice of Hearing." The matter  
5 was forwarded to the Office of Administrative Hearings, an independent agency,  
6 for an evidentiary hearing.

7 13. At the hearing, the Board presented its case through the testimonies of DeAnna  
8 Rowe, the Board's Executive Director, and Steve Sarmento, a program and  
9 project specialist in the Board's Department of Accountability. The Board also  
10 presented 20 exhibits.

11 14. The School and Charter Holder presented their case through the testimonies of  
12 Theresa Serapiglia, Ph. D., a consultant for the School, Ora James, the School's  
13 present principal, and Christine Wallace, a School Board member. The School  
14 and Charter Holder also presented 31 exhibits.

15 15. The Arizona Department of Education assigns an achievement profile based on  
16 academic growth and on students' performance on standardized State testing.  
17 Presently, a school is assigned a letter grade of A, B, C, D, or F. Prior to the  
18 assignment of letter grades, the Arizona Department of Education used the  
19 following legacy labels: (i) Excelling; (ii) Highly performing; (iii) performing; (iv)  
20 Underperforming; or (v) Failing to meet the standards.

21 16. The School's achievement profile for the 2010-2011 school year was an  
22 underperforming profile.

23 17. The School's achievement profile for the 2011-2012 school year was the letter  
24 grade D. The letter grade of D means that the School demonstrated a below  
25 average level of performance.

26 18. Ms. Rowe testified that the following occurs if a school receives an  
27 underperforming profile and two letter grades of D:

28 After a school has received three letter grade of a D or a  
29 combination in the transition phase of an underperforming  
30 profile, and then two letter grades of a D, the Department  
then determines whether or not that letter grade of a D

1 should be reassigned to something else and could be  
2 assigned a letter grade of an F.<sup>2</sup>

3 19. The School's achievement profile for the 2012-2013 school year was initially a  
4 letter grade of D, but the Arizona Department of Education assigned the School  
5 a letter grade of F.

6 20. In determining whether to restore a failing charter school to acceptable  
7 performance or to revoke a charter school's charter, Ms. Rowe explained that  
8 the Board established a DSP process that affords such a charter school an  
9 opportunity to demonstrate progress toward the Board's academic performance  
10 expectations. The Board created a performance framework for measuring the  
11 performance of its charter schools. Ms. Rowe testified that "[t]he purpose of the  
12 framework is to communicate the academic expectations of the Board to inform  
13 stakeholder<sup>3</sup> of the expectations of the charter holders in the Board's portfolio  
14 that would provide them an opportunity to . . . it lays out the academic  
15 expectations and provides the measurable objectives which must be met."<sup>4</sup>

16 21. The Board uses the following three indicators to evaluate a charter school's  
17 academic performance for grade school students: (i) Student progress over time  
18 with a measurement of growth; (ii) Student achievement or proficiency; and (iii)  
19 The A through F letter grade profile.

20 22. The results of a charter school's performance within each of the indicators are  
21 then incorporated into a graph called an academic dashboard.

22 23. A charter school's overall level of performance is established as follows: (i)  
23 Exceeds standard; (ii) Meets standard; (iii) Does not meet standard; or (iv) Falls  
24 far below standard.

25 24. The School's overall level of performance for the 2011-2012 academic year was  
26 "Does not meet standard" and its overall level of performance for the 2012-2013  
27 academic year was "Falls far below standard." The evidence of record

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29 <sup>2</sup> Transcript of Record at 27.

30 <sup>3</sup> Ms. Rowe testified that the term "stakeholder" referred to "charter authorized representatives."

<sup>4</sup> See Board's Exhibit 1 "Arizona State Board for Charter Schools Academic Performance Framework and Guidance."

1 established that the School failed to meet the Board's academic performance  
2 expectations.

3 25. Mr. Sarmiento was part of the Board's team that was assigned to review the DSP  
4 document submitted by the School and Charter Holder. An initial evaluation was  
5 conducted by Board staff on November 14, 2013.

6 26. Mr. Sarmiento also participated in the site visit to the School on or about  
7 November 21, 2013, which was conducted after the initial evaluation. Board  
8 staff, representatives of the Charter Holder, and school leaders participated in  
9 the site visit. Mr. Sarmiento testified that "[t]he purpose of the site visit to, first,  
10 an opportunity to verify the information that's provided in the [DSP], and also an  
11 opportunity for the [Charter Holder] to provide additional documentation and  
12 evidence to address areas that were evaluated as not acceptable in the initial  
13 evaluation."<sup>5</sup> The Charter Holder and School are then given 48 hours after the  
14 site visit to submit additional documentation to the Board, and the Charter  
15 Holder and School did so.

16 27. On November 29, 2013, a second evaluation was then performed by Board staff.  
17 Board staff found all measures "Not Acceptable."

18 28. The evidence of record established that the School and Charter Holder failed to  
19 demonstrate the implementation of a sustained improvement plan that includes  
20 evidence that the School is making adequate growth based on the School's  
21 median growth percentiles in Math and Reading both School-wide and for the  
22 lowest performing students.<sup>6</sup>

23 29. The weight of credible evidence established that the School and Charter Holder  
24 failed to demonstrate the implementation of a system supported by analysis of  
25 data to evaluate and revise curriculum aligned to the Arizona College and  
26 Career Ready Standards ("Standards") that contributes to increased student  
27 growth in Math and Reading both School-wide and for the lowest performing  
28 students. The School and Charter Holder failed to demonstrate or evidence

29 <sup>5</sup> Transcript of Record at 79.

30 <sup>6</sup> The references to "the lowest performing students" means the bottom 25% of students.

ongoing evaluation and revision of the implemented curriculum and analysis of data.

30. The School and Charter Holder failed to demonstrate the implementation of a comprehensive assessment system for Math and Reading based on clearly defined performance measures aligned with the curriculum and instructional methodology that includes data analysis and instructional decisions based on results collected from multiple assessments that contributes to increased student growth in Math and Reading both School-wide and for the lowest performing students. The School and Charter Holder failed to demonstrate an analysis of data or evidence of instructional planning or realignment of instruction based on analysis of data.

31. The School and Charter Holder failed to demonstrate the implementation of a professional development plan that included follow-up and monitoring strategies supported by analysis of data and specific to professional development topics that contribute to increased student growth in Math and Reading. The School and Charter Holder failed to demonstrate or evidence follow-up to professional development, including classroom observations for monitoring of instructional practices related to professional development topics.

32. The School and Charter Holder failed to demonstrate the implementation of a sustained improvement plan that includes evidence that the School is increasing its proficiency rates on the state assessment in Math and Reading overall and by subgroups<sup>7</sup> to be on par with corresponding statewide average proficiency rates.

33. The School and Charter Holder failed to demonstrate the implementation of a system supported by analysis of student data to evaluate and revise curriculum aligned to the Standards that contribute to increased student proficiency on the state assessment in Math and Reading or to increased student proficiency to expected performance levels on the state assessment in Math and Reading for subgroups. The School and Charter Holder failed to provide evidence of

ongoing evaluation and revision of the implemented curriculum and analysis of data.

34. The School and Charter Holder failed to demonstrate the implementation of a comprehensive assessment system for Math and Reading based on clearly defined performance measures aligned with the curriculum and instructional methodology that includes data analysis and instructional decisions based on results collected from multiple assessments that contribute to increased student proficiency in Math and Reading or to increased student proficiency to expected performance levels in Math and Reading for subgroups. The School and Charter Holder failed to demonstrate its analysis of data for evidence of instructional planning or realignment of instruction based on analysis of data.
35. The School and Charter Holder failed to demonstrate the implementation of a professional plan that included follow-up and monitoring strategies supported by analysis of data and specific to professional development topics that contribute to increased student proficiency in Math and Reading or to increased student proficiency to expected performance levels in Math and Reading for subgroups. The School and Charter Holder failed to demonstrate or evidence follow-up to professional development including classroom observations for monitoring of instructional practices related to professional development topics.
36. Dr. Serapiglia earned her Ph.D. in curriculum and instruction from Penn State University. Dr. Serapiglia provides consulting services in the areas of curriculum, instruction, assessment, and professional development.
37. Dr. Serapiglia started working with the School in June 2013. Dr. Serapiglia had been contacted by Ms. Jones, the School's principal, for assistance.
38. Dr. Serapiglia testified that the first thing undertaken was a review of the data, such as the student achievement scores. She and School officials studied the AIMS results over several years to determine the strength and weaknesses of the School's students on the AIMS.

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<sup>7</sup> The term "subgroups" is defined as English Language Learner students, Free and Reduced Lunch eligible students, and students with disabilities as compared to similar schools.

- 1 39. Dr. Serapiglia stated that she and School officials studied the curriculum that  
2 they had at the time and discovered that the curriculum was not to the Common  
3 Core<sup>8</sup> standards.
- 4 40. Dr. Serapiglia and School officials developed a plan of action. One goal was to  
5 revise and update the curriculum to match the new Common Core standards.  
6 Another goal was to develop a professional development plan.
- 7 41. The School purchased the entire Prentice Hall instructional materials for reading  
8 and math for 7<sup>th</sup> and 8<sup>th</sup> grade students. Prentice Hall was selected because its  
9 materials teach to the Common Core.
- 10 42. There was a large-scale staff development in June 2013. Dr. Serapiglia testified  
11 that she and School officials planned to have another large-scale staff  
12 development in June 2014 to review the curriculum again.
- 13 43. Ora James is the current principal of the School since March 2013. She had  
14 previously served as the School's principal in 2005, 2006, 2007, 2008, and  
15 2009.
- 16 44. When Ms. James returned to the School, she discovered that it was  
17 underperforming.
- 18 45. Ms. James worked with Dr. Serapiglia to improve the School's performance.
- 19 46. Ms. James testified that recently the School was recently evaluated by North  
20 Central Accreditation, whose staff visited and evaluated the School. North  
21 Central Accreditation rated the School as outstanding and renewed its  
22 accreditation to 2019.
- 23 47. Christine Wallace is an elected School Board member. She has served on the  
24 School Board for five years. Ms. Wallace's main profession is working with the  
25 Navajo Nation government as a public information officer.
- 26 48. Ms. Wallace testified that the School Board and she discovered that the School  
27 had received a grade of F from the Arizona Department of Education in  
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30 <sup>8</sup> In Arizona, the Common Core standards are referred to as the Arizona College and Career Ready Standards.

1 September 2013. Neither she nor the other Board members were aware of the  
2 School's poor academic profiles for the prior two years.

3 49. Ms. Wallace gave a historical accounting of the School. The current school was  
4 first funded through the Bureau of Indian Affairs and it was a boarding school.  
5 The original school was built in 1932. It has been in the community of Kinlichee  
6 since 1932. In 1999, the school got additional funding to build a new school to  
7 replace the old school.

8 50. Ms. Wallace testified that the School has always been a historical part of the  
9 Kinlichee community. Ms. Wallace stated that losing the School would be a  
10 historical loss to the community. Ms. Wallace explained that closing the School  
11 would result in children having to move to attend school in other remote  
12 locations.

13 51. There is no performance data for the School for the school year 2013-2014  
14 because the AIMS test is given in April 2014. Therefore, the Arizona  
15 Department of Education will not assign the School an academic profile grade  
16 until August or September 2014 for that school year.

17 **CONCLUSIONS OF LAW**

18 1. Pursuant to A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has  
19 the burden of proof in this matter. The standard of proof is by a preponderance  
20 of the evidence.<sup>9</sup>

21 2. Charter schools are established by contract between a sponsor and a public  
22 body, private person or private organization to provide learning that will improve  
23 pupil achievement.<sup>10</sup>

24 3. The Arizona Department of Education compiles an annual achievement profile  
25 for each public school and school district.<sup>11</sup>

26 4. Pursuant to A.R.S. § 15-241(H), the achievement profile used to determine a  
27 school and school district classification uses a letter grade system as follows: (i)  
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29 <sup>9</sup> See A.A.C. R2-19-119(A).

30 <sup>10</sup> See A.R.S. §§ 15-101(4), 15-181(A), and 15-183(B) and (C).

<sup>11</sup> See A.R.S. § 15-241(A).

1 A school or school district assigned a letter grade of A shall demonstrate an  
2 excellent level of performance; (ii) A school or school district assigned a letter  
3 grade of B shall demonstrate an above average level of performance; (iii) A  
4 school or school district assigned a letter grade of C shall demonstrate average  
5 level of performance; (iv) A school or school district assigned a letter grade of D  
6 shall demonstrate below average level of performance; and (v) A school or  
7 school district assigned a letter grade of F shall demonstrate a failing level of  
8 performance.

9 5. A.R.S. § 15-241(U) provides that if a charter school is assigned a failing level of  
10 performance, then the charter school's sponsor must either take action to restore  
11 the charter school to acceptable performance or revoke the charter school's  
12 charter.

13 6. A.R.S. § 15-183(R) provides that a charter school's sponsor must ground its  
14 action in evidence of the charter holder's performance in accordance with the  
15 performance framework adopted by the sponsor.

16 7. Pursuant to A.R.S. § 15-183(I)(3), a sponsor may revoke a charter at any time if  
17 the charter school breaches one or more provisions of its charter or if the  
18 sponsor determines that the charter holder has failed to meet or make sufficient  
19 progress toward the academic expectations set forth in the performance  
20 framework.

21 8. The evidence of record established that the School and Charter Holder failed to  
22 meet the academic expectations set forth in the Board's performance framework.  
23 It is undisputed that the School underperformed for three consecutive school  
24 years. However, it is unclear if the School and Charter Holder have made  
25 sufficient progress toward the academic expectation set forth in the Board's  
26 performance framework. The Administrative Law Judge concludes that any  
27 action taken by the Board against the Charter Holder's charter should wait until  
28 the Arizona Department of Education issues its academic performance grade for  
29 the School for the 2013-2014 school year. The evidence of record established  
30 that since the Arizona Department of Education issued the academic

1 performance grade of F to the School in 2013, the School and Charter Holder  
2 have undertaken steps to remediate the School's performance. If the Arizona  
3 Department of Education issues the School an academic performance grade of  
4 D or F for the 2013-2014 school year, then the revocation of the charter is  
5 deemed appropriate. However, an academic performance grade of A, B, or C for  
6 the 2013-2014 school year would evidence successful remediation of the  
7 School's failing level of performance. The evidence of record does not support  
8 the School and Charter Holder's desired outcome of allowing them 18 months to  
9 successfully remediate performance given the three consecutive years of under  
10 performance.

11 **RECOMMENDED ORDER**

12 Based on the foregoing, it is recommended that the charter issued to Charter  
13 Holder to operate the School be revoked on the effective date of the Order entered in  
14 this matter.

15 It is further recommended that the revocation of the charter be stayed until the  
16 Arizona Department of Education issues its academic performance grade for the  
17 School for the 2013-2014 school year. If the School receives a grade of A, B, or C for  
18 the 2013-2014 school year, then the above-provided charter revocation shall not take  
19 place and this matter shall be closed. If the School receives a grade of D or F for the  
20 2013-2014 school year, then the charter shall be revoked immediately upon the Board  
21 receiving notice of the underperformance grade by the Arizona Department of  
22 Education.

23 *In the event of certification of the Administrative Law Judge Decision by the*  
24 *Director of the Office of Administrative Hearings, the effective date of the Order shall be*  
25 *five (5) days from the date of the certification.*

26 Done this day, April 22, 2014.

27  
28 /s/ Brian Brendan Tully  
29 Administrative Law Judge  
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Transmitted electronically to:  
DeAnna Rowe, Executive Director  
State Board for Charter Schools