

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

No. 10F-RV-001-BCS

CESAR CHAVEZ LEARNING
COMMUNITY, INC. (a
non-profit corporation)

ADMINISTRATIVE LAW JUDGE

and

DECISION

CESAR CHAVEZ MIDDLE SCHOOL and
AZTLAN ACADEMY (charter schools).

HEARING: December 7, 8, and 9, 2009. Record closed on March 1, 2010.

APPEARANCES: Assistant Attorney General Kim Anderson for the Arizona State Board for Charter Schools; Malcom Ryder, Esq. for Cesar Chavez Learning Community, Inc., Cesar Chavez Middle School and Aztlan Academy.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. On June 28, 2000, Cesar Chavez Learning Community, Inc. ("CCLC"), previously known as Project YES, Inc. d/b/a/ Project YES Middle School, LLC, a nonprofit corporation organized under the laws of the State of Arizona, entered into a Charter Contract (the "Charter Contract") with the Arizona State Board for Charter Schools (the "Board") pursuant to which the charter (the "Charter") issued to CCLC by Higley Unified School District No. 60 ("Higley") to operate a charter school was transferred to the Board and the Board became the sponsor of CCLC. See Exhibit 1.
2. Under the Charter Contract, CCLC currently operates Cesar Chavez Middle School (the "Middle School") and Aztlan Academy (the "High School") as charter schools in Tucson, Arizona (collectively, the "Schools"). The Middle School is currently authorized to serve students in 6th through 8th grades. The High School is currently authorized to serve students in ninth through twelfth grades. The classes at the

1 Schools are combined (for example, the 6th, 7th and 8th grades in Animal Science and
2 the ninth and tenth grades in Literature II).

3 3. The Charter Contract was signed by Sister Judy Bisignano ("Sister Bisignano")
4 as the Charter Representative and person authorized to sign for CCLC. The Charter
5 Contract includes CCLC's Articles of Incorporation, Application, and prior contract with
6 Higley, which are fully incorporated into and are part of the Charter Contract.

7 4. In 2005, the Board issued a Notice of Intent to Revoke the Charter of the
8 Schools based, in part, on the Schools' failure to provide a comprehensive program of
9 instruction aligned to the Arizona's Academic Standards (the "Standards"). In lieu of
10 proceeding to charter revocation hearing, the Schools entered into an agreement with
11 the Board containing the finding that the Schools had breached their charter contract
12 and A.R.S. § 15-183(E) when they failed to demonstrate provision of a comprehensive
13 program of instruction. See Exhibit 32; TR 1 at 275:16-23.

14 Alignment with Arizona Academic Standards

15 5. CCLC is required to provide a comprehensive program of instruction that is in
16 alignment with the Standards. The Standards are prescribed by the Arizona State
17 Board of Education and identify what students need to know and be able to do in
18 specific content areas (e.g., reading, writing, mathematics, science, social studies) by
19 grade level. The Standards consist of Strands, Concepts and Performance Objectives.
20 See A.R.S. § 15-183(E)(3) and the Charter Contract (Exhibit 1).

21 6. All public schools (including charter schools) are required to submit annual
22 declarations to the Arizona Department of Education ("ADE") affirming the adoption of
23 a curriculum aligned with the Standards.

24 7. In April 2009, CCLC submitted its Declarations of Curricular & Instructional
25 Alignment to the Arizona Academic Standards. See Exhibit 29. Pursuant to those
26 Declarations, CCLC avowed that it had adopted a curriculum that was aligned with the
27 Standards for the 2008-2009 school year and that it had adopted an evaluation system
28 that assessed whether its teachers were integrating the Standards into their
29 instructional practices.

30 8. On May 13, 2009, DeAnna Rowe ("Ms. Rowe"), Executive Director of the Board,
and other Board staff conducted a site visit at the Schools. The site visit was

1 conducted as part of CCLC's ten-year review and, additionally, to evaluate the Schools'
2 implementation of a program of instruction aligned to the Standards. TR 1 at page
3 90:lines 4-10.¹ Ms. Rowe has extensive experience in public education, including high
4 school teaching experience and background, and experience in curriculum and the
5 Standards. Ms. Rowe, who also has a Master's degree in curriculum and instruction,
6 conducted on-site observations in various classrooms at the Schools, spoke with
7 teachers and administration, and reviewed lesson plans, student work and class
8 schedules submitted by CCLC during the site visit. TR 1 at 195-196:18-23 and at 199-
9 200:23-6.

10 9. Ms. Rowe concluded that CCLC did not provide evidence that it was providing a
11 comprehensive program of instruction aligned to the Standards. TR 1 at 200:7-18.
12 More specifically, Ms. Rowe determined that CCLC did not differentiate its instruction
13 for the different grade levels of High School language arts (English) classes, Middle
14 School Animal Science, and Middle School Social Studies. Further, Ms. Rowe found
15 that there was no evidence that showed the implementation of an adopted math
16 curriculum and no evidence that the curriculum of CCLC's Middle School and High
17 School Project-Based Classes, Middle School Animal Science, and Middle School
18 Social Studies were aligned to the Standards.

19 10. By letter dated June 4, 2009, Ms. Rowe memorialized her site visit findings and,
20 as to the School's program of instruction, requested "documentation that demonstrates
21 compliance." See Exhibit 6 at page 5.

22 11. In response, on June 26, 2009, CCLC submitted to the Board curricular
23 materials pertaining to the Schools' 2008-2009 program of instruction, entitled
24 "Evidence of a Comprehensive Program of Instruction."

25 12. On July 13, 2009, the Board voted to issue a Notice of Intent to Revoke the
26 Charter of CCLC. TR 1 at 207-208:25-5.

27 13. On July 22, 2009, the Board issued to CCLC a Notice of Intent to Revoke
28 Charter. In that Notice, the Board alleged: (i) CCLC breached its Charter Contract and
29 state law when it failed to provide a comprehensive program of instruction aligned to the

30 ¹ "TR 1" refers to the transcript from the December 7, 2009 hearing.

1 Standards; (ii) CCLC breached its Charter Contract and state law when it failed to
2 provide an instructional program that met for a total of at least 1,068 hours for its
3 seventh and eighth grade students; (iii) CCLC breached its Charter Contract and
4 federal law when it failed to provide evidence that its teachers were "highly qualified"
5 under the No Child Left Behind Act (20 U.S.C. § 6301 *et seq.*); (iv) CCLC breached its
6 Charter Contract and state law when it failed to accurately and timely report student
7 attendance and student level data to the Arizona ADE; (v) CCLC breached its Charter
8 Contract and state law when it failed to provide teacher rosters requested by the Board;
9 (vi) CCLC breached its Charter Contract and federal law when it failed to verify the
10 identity of and eligibility to work for all employees and to complete and retain an
11 Employment Eligibility Verification Form ("I-9 Form") for all employees; and (vii) CCLC
12 breached its Charter Contract and state law when it failed to timely submit the
13 appropriate remittance of employee and employer contributions to the Arizona State
14 Retirement System ("ASRS").

15 14. Pursuant to a Notice of Hearing issued by the Board on July 22, 2009, the
16 matters alleged in the Notice of Intent to Revoke Charter were scheduled for hearing on
17 December 7, 8 and 9, 2009 before the Office of Administrative Hearings, an
18 independent state agency.

19 15. At a meeting with CCLC on July 22, 2009, Ms. Rowe discussed the documents
20 that CCLC could provide to demonstrate that its students had received a
21 comprehensive program of instruction aligned to Standards for the 2008-2009 school
22 year (i.e., grade books, lesson plans, report cards, etc.). TR 1 at 209-210:14-6.

23 16. By letter dated August 10, 2009, the Board requested CCLC to submit evidence
24 that it had provided a comprehensive program of instruction at the Schools aligned to
25 the Standards for each grade level and content area. See Exhibit 13 at 1.

26 17. On September 4, 2009, CCLC submitted to the Board curricular materials for the
27 month of August 2009.

28 18. By letter dated October 16, 2009, the Board provided CCLC with its findings
29 from its review of the submitted materials and again requested that CCLC provide
30 evidence of its implementation of a comprehensive program of instruction aligned to
the Standards. See Exhibit 41

High School Language Arts (English)

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19. At the May 13, 2009 site visit, Ms. Rowe observed student activities, reviewed lesson plans, and spoke with the teacher of the High School's language arts (English) instruction (Literature I for 9th graders and English Literature for 9th and 10th graders). Ms. Rowe concluded that there was no evidence that CCLC was providing a comprehensive program of instruction aligned to the Standards for its High School language arts (English) classes because it had failed to demonstrate the implementation of a differentiated curriculum for the different grade levels. TR 1 at 202-206:13-11.

20. On June 26, 2009, CCLC submitted to the Board lesson plans of the instruction provided to its High School language arts (English) students during the 2008-2009 school year. TR 1 at 206-207:12-1. Upon evaluating the materials provided by CCLC, Ms. Rowe did not alter the conclusions she arrived at from the May 13, 2009 site visit. TR 1 at 207:4-9.

21. On September 4, 2009, CCLC submitted material to the Board pertaining to the High School language arts (English) program provided to its students during the first several weeks of the 2009-2010 school year. TR 1 at 212:5-14. Ms. Rowe evaluated the material and concluded that CCLC had not made progress in moving forward with providing differentiated instruction to its 9th and 10th graders. TR 1 at 212-213:15-1.

22. In mid-November 2009, the Board received Exhibit FF, which contained High School English curricular materials for August through mid-September of the 2009-2010 school year. See Exhibit FF at High School English. Ms. Rowe evaluated the materials and concluded that CCLC continued to fail to differentiate the instruction being provided to its 9th and 10th graders. TR 1 at 214:5-21.

23. CCLC's witness, Mike Dunbar ("Mr. Dunbar"), an independent contractor for teligentCHARTER, a consulting company hired by CCLC in late August 2009 to November 16, 2009, testified as to instances in which he disagreed with Ms. Rowe's findings contained in Exhibit 41 that CCLC's September 4, 2009 High School English materials did not contain evidence of the Performance Objectives stated in the lesson plans. However, CCLC did not present any evidence to rebut Ms. Rowe's conclusion that CCLC failed to provide a comprehensive program of instruction in English because

1 it had failed to differentiate its 9th and 10th grade curriculum in the 2008-2009 and
2 2009-2010 school years.

3 24. Mr. Dunbar agreed that he did not see evidence of differentiation in the
4 instruction and assessment of 9th and 10th graders in the High School English lesson
5 plans of August 17 through August 27, 2009 contained in Exhibit FF. TR 2 at 426:3-9
6 and 20-22².

7 High School Chemistry

8 25. On June 26, 2009, CCLC submitted to the Board lesson plans of the instruction
9 provided to its High School Chemistry students during the 2008-2009 school year. TR
10 1 at 220:10-25. Upon comparing the Standards covered in the lesson plans with the
11 Standards required to be covered in High School Chemistry, Ms. Rowe found that
12 approximately 40% of the content that should have been covered was not incorporated
13 into the Chemistry lesson plans. Ms. Rowe concluded that CCLC did not provide a
14 comprehensive program of instruction aligned to the Standards in Chemistry. TR 1 at
15 221:1-25.

16 26. On September 4, 2009, CCLC submitted to the Board a 2009-2010 bell
17 schedule to the Board. The schedule did not list Chemistry as a subject being offered
18 in the 2009-2010 school year and no High School Chemistry curricular materials were
19 included in the submission. See Exhibit 14; TR 1 at 222:7-25.

20 27. In mid-November 2009, the Board received Exhibit FF, which contained High
21 School Chemistry lesson plans and grade books for August 17 through mid-September
22 of the 2009-2010 school year. See Exhibit FF at High School Chemistry. Ms. Rowe
23 evaluated the material and concluded that there were instances in which Chemistry
24 students were provided the same labs, assignments and tests as the Biology students.
25 TR 1 at 223-224:12-16.

26 28. Sister Bisignano testified that, following the departure of the Biology teacher on
27 the first day of the 2009-2010 school year, she converted one of the three Biology
28 classes into a Chemistry class and, until she could write the lesson plans for

29 ² "TR 2" refers to the transcript from the December 8, 2009 hearing.
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1 Chemistry, instruction on the scientific method was covered by both the Biology and
2 Chemistry students. TR 2 at 488:1-25 and 489:8-13.

3 29. CCLC did not present any evidence to rebut Ms. Rowe's conclusion that CCLC
4 failed to provide a comprehensive program of instruction aligned to the Standards in
5 Chemistry in the 2008-2009 school year.

6 High School Mathematics

7 30. At the May 13, 2009 site visit, Ms. Rowe observed classes and spoke with the
8 teachers of two High School Algebra classes at CCLC. Ms. Rowe concluded that the
9 curriculum was not consistently being implemented, finding that the same content was
10 not being taught at the same time, the teachers did not have access to the same
11 resources, and the teachers were not communicating with each other as to what was
12 being taught. TR 1 at 227-228:5-3.

13 31. On June 26, 2009, CCLC submitted to the Board curricular material of the
14 instruction provided to its High School mathematics students during the 2008-2009
15 school year. Ms. Rowe evaluated the material and concluded that CCLC failed to
16 provide evidence that its lesson plans had been implemented or were consistent
17 between the two different teachers teaching the same High School Algebra course. TR
18 1 at 228-229:5-13.

19 32. On September 4, 2009, CCLC submitted material to the Board pertaining to the
20 High School mathematics program provided to its students during the first two weeks of
21 the 2009-2010 school year. TR 1 at 229:20-23 and 230:2-9. Ms. Rowe evaluated the
22 material and concluded that CCLC failed to provide evidence that what its lesson plans
23 and curriculum map stated would be covered during that time period had, in fact, been
24 covered. TR 1 at 231:6-11.

25 33. In mid-November 2009, the Board received Exhibit FF, which contained High
26 School mathematics curricular materials for the first month of the 2009-2010 school
27 year. Ms. Rowe evaluated the materials and concluded that they were inconsistent with
28 those provided in September 2009. TR 1 at 232:10-24.
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1 34. Mr. Dunbar testified that, while employed by the Board as Academic Program
2 Specialist, he participated in the May 13, 2009 site visit at CCLC. TR 2 at 428:15-20.
3 He testified that he "interviewed teachers and tried to gain evidence that there was a
4 curriculum that was aligned to the state [S]tandards [a]nd, frankly, didn't find any." TR
5 at 429:2-5.

6 35. Mr. Dunbar testified as to instances in which he disagreed with Ms. Rowe's
7 findings contained in Exhibit 41 that CCLC's September 4, 2009 High School
8 geometry, AIMS Prep Algebra, and Algebra lesson plans did not contain evidence of
9 the Performance Objectives identified in the lesson plans. However, CCLC did not
10 present any evidence to rebut Ms. Rowe's conclusion that CCLC failed to demonstrate
11 that it had provided the instruction identified in its lesson plans and curriculum maps
12 submitted for the 2009-2010 school year. Nor did CCLC present any evidence to rebut
13 Ms. Rowe's conclusion that CCLC failed to demonstrate implementation of lesson
14 plans or consistency in its High School algebra curriculum in the 2008-2009 school
15 year.

16 Middle School Science

17 36. On June 26, 2009, CCLC submitted to the Board curricular material of the
18 instruction provided to its Middle School science students during the 2008-2009 school
19 year. TR 1 at 236:15-24. Ms. Rowe evaluated the material provided and concluded
20 that CCLC did not provide a program of instruction aligned to the Standards to its
21 Middle School Animal Science students during the 2008-2009 school year and that its
22 instruction incorporated only two of the six Strands of the Standards required for Middle
23 School science. TR 1 at 236-238:25-21.

24 37. On September 4, 2009, CCLC submitted material to the Board pertaining to the
25 Middle School science program provided to its students during the first two weeks of
26 the 2009-2010 school year. TR 1 at 239:4-18. Ms. Rowe evaluated the material and
27 concluded that CCLC had failed to differentiate its instruction for its different grade
28 levels and had failed to provide evidence that what its lesson plans and curriculum map
29 stated would be covered during that time period had, in fact, been covered. TR 1 at
30 241-245:2-1.

1 38. In mid-November 2009, the Board received Exhibit FF, which contained Middle
2 School science materials for the first month of the 2009-2010 school year. TR 1 at
3 245-246:20-4. Ms. Rowe evaluated the materials and determined that CCLC
4 continued to fail to demonstrate the implementation of differentiated curriculum for its
5 6th, 7th and 8th grade science students and that the students were not being taught the
6 appropriate skill level required for the grade level. TR 1 at 246:5-17 and 247:3-9.

7 39. CCLC did not present any credible evidence to rebut Ms. Rowe's conclusions
8 that it did not provide a program of instruction aligned to the Standards to its Middle
9 School Animal Science students during the 2008-2009 school year. Nor did CCLC
10 present any evidence to rebut Ms. Rowe's conclusions that it continued to fail to
11 demonstrate the implementation of a differentiated curriculum for its 6th, 7th and 8th
12 grade science students in the 2009-2010 school year and, further, that the students
13 were not being taught the appropriate skill level required for the grade level.

14 High School Project-Based Learning

15 40. At the May 13, 2009 site visit, Ms. Rowe observed the High School's Project-
16 Based Learning ("PBL") classes, spoke with the teachers and concluded that, while
17 students in those classes were awarded a high school credit for core content area(s),
18 CCLC failed to provide documentation showing that any of the PBL classes were a
19 comprehensive course that would warrant the awarding of a graduation credit in the
20 core content area(s). TR 1 at 247-248:12-14.

21 41. On June 26, 2009, CCLC submitted to the Board curricular material of the
22 instruction provided to its High School PBL students during the 2008-2009 school year.
23 TR 1 at 248-249:17-1. Ms. Rowe evaluated the material and concluded that it was
24 insufficient to support the awarding of a credit for a core content graduation
25 requirement. TR 1 at 249:2-13.

26 42. On September 4, 2009, CCLC submitted material to the Board pertaining to the
27 High School PBL classes provided to its students during the first month of the 2009-
28 2010 school year. TR 1 at 249:19-22 and 250: 1-3. Ms. Rowe evaluated the material
29 and concluded that the classes were not aligned to the Standards to support awarding
30 a credit in a core content area. TR 1 at 250:6-16.

1 43. In mid-November 2009, the Board received Exhibit FF. No new materials were
2 provided pertaining to the High School PBL classes. TR 1 at 251:9-13.

3 44. CCLC did not present any credible evidence to rebut Ms. Rowe's conclusions
4 that the High School PBL classes were not comprehensive courses that warranted the
5 awarding of a graduation credit in the core content area(s) in the 2008-2009 school
6 year. Nor did CCLC present any credible evidence to rebut Ms. Rowe's conclusions
7 that it continued to fail to demonstrate that its High School PBL classes were aligned to
8 the Standards to support awarding a credit in a core content area in the 2009-2010
9 school year.

10 Middle School Project-Based Learning

11 45. At the May 13, 2009 site visit, CCLC failed to provide documentation showing
12 that the Middle School PBL classes provided all of the appropriate content for a
13 required core content course such as English, Reading or Math. TR 1 at 251-252:14-3.

14 46. On June 26, 2009, CCLC submitted to the Board curricular material of the
15 instruction provided to its Middle School PBL students during the 2008-2009 school
16 year. TR 1 at 252:4-11. Ms. Rowe evaluated the material provided and concluded that
17 it did not evidence that the PBL classes satisfied a comprehensive course or content
18 area for middle school classes. TR 1 at 252-253:16-4.

19 47. Ms. Rowe evaluated additional material submitted by CCLC to the Board on
20 September 4, 2009 regarding the 2009-2010 school year and in mid-November in
21 Exhibit FF and concluded that it continued to fail to evidence that the Middle School
22 PBL classes provided comprehensive instruction in any core content area. TR 1 at
23 253-254:10-14.

24 48. CCLC did not present any credible evidence to rebut Ms. Rowe's conclusions
25 that CCLC failed to provide evidence that its Middle School PBL classes provided all of
26 the appropriate content for a required core content course in the 2008-2009 school
27 year. Nor did CCLC present any credible evidence to rebut Ms. Rowe's conclusions
28 that it continued to fail to demonstrate that its Middle School PBL classes provided
29 comprehensive instruction in any core content area in the 2009-2010 school year.

30 Middle School Mathematics

1 49. At the May 13, 2009 site visit, lesson plans for the Middle School mathematics
2 were not available for review. TR 1 at 254:16-21.

3 50. On June 26, 2009, CCLC submitted to the Board curricular material of the
4 instruction provided to its Middle School mathematics students during the 2008-2009
5 school year. TR 1 at 254:22-25. Ms. Rowe evaluated the material and concluded that
6 it did not evidence implementation of the lesson plans or that the performance
7 objectives identified were being taught or assessed. TR 1 at 255:6-20. Documentation
8 of student work or assessments completed by the students was not provided. TR 1 at
9 255:16-18.

10 51. On September 4, 2009, CCLC submitted material to the Board pertaining to the
11 Middle School mathematics instruction provided to its students during the 2009-2010
12 school year. Ms. Rowe evaluated the material and concluded that the performance
13 objectives identified by CCLC in its curriculum maps, lesson plans, and documentation
14 to be covered in August 2009 were not, in fact, covered during that month. TR 1 at
15 256-257:18-6.

16 52. In mid-November 2009, the Board received Exhibit FF, which contained Middle
17 School mathematics materials for August and September 2009. Ms. Rowe evaluated
18 the material pertaining to the Middle School mathematics program and concluded that
19 it failed to demonstrate that CCLC had implemented a program of instruction aligned to
20 the Standards. TR 1 at 257:7-24.

21 53. CCLC did not present any credible evidence to rebut Ms. Rowe's conclusions
22 that CCLC failed to provide evidence of the implementation of its 2008-2009 Middle
23 School mathematics lesson plans or that the performance objectives identified in those
24 lesson plans were being taught or assessed. Nor did CCLC present any credible
25 evidence to rebut Ms. Rowe's conclusions that it continued to fail to demonstrate the
26 implementation of a program of instruction aligned to the Standards for its Middle
27 School mathematics in the 2009-2010 school year.

28 Middle School Social Studies

29 54. At the May 13, 2009 site visit, Ms. Rowe had discussions with the Middle School
30 social studies instructor and reviewed the class schedule. From the information
obtained, Ms. Rowe concluded that instruction was not differentiated for 6th, 7th and 8th

1 grade social studies students and that the appropriate content required under the
2 Standards for a middle school social studies class was not being provided. TR 1 at
3 258-260:17-7.

4 55. On June 26, 2009, CCLC submitted to the Board curricular materials of the
5 instruction provided to its Middle School social studies students during the 2008-2009
6 school year. TR 1 at 260:11-22. Ms. Rowe evaluated the material and concluded that
7 CCLC did not provide a comprehensive social studies curriculum aligned to the
8 Standards. TR 1 at 260-261:23-14.

9 56. On September 4, 2009, CCLC submitted material to the Board pertaining to the
10 Middle School social studies program provided to its students during the first month of
11 the 2009-2010 school year. TR 1 at 261-262:21-6. Ms. Rowe evaluated the material
12 and concluded that, for 7th and 8th grade American history, not all material and
13 performance objectives identified in curriculum map were covered. TR 1 at 262-
14 263:19-6. No material was provided for 6th grade social studies. TR 1 at 262:17-18.

15 57. In mid-November 2009, the Board received Exhibit FF, which contained Middle
16 School social studies curricular materials for the first month of the 2009-2010 school
17 year. Ms. Rowe evaluated the material and concluded that, although CCLC had stated
18 that 6th grade social studies was not scheduled to begin until second semester
19 (January 2010), student rosters for 7th and 8th grade social studies also contained the
20 name of 6th grade students. See Exhibit R at 1; TR 1 at 263-264:18-13. Also, for
21 some students, the material provided conflicting attendance information. TR 1 at 264-
22 266:18-12.

23 58. CCLC did not present any credible evidence to rebut Ms. Rowe's conclusions
24 that CCLC failed to differentiate its 6th, 7th and 8th grade social studies curriculum and
25 failed to provide a comprehensive Middle School social studies curriculum aligned to
26 the Standards in the 2008-2009 school year. Nor did CCLC present any credible
27 evidence to rebut Ms. Rowe's conclusions that it failed to cover the material and
28 performance objectives identified in its curriculum map in the 2009-2010 school year.

29 59. Ms. Rowe acknowledged that CCLC did provide some evidence of student work
30 (Exhibit 34A). However, Ms. Rowe testified that she was looking for samples of
everything CCLC did during the first couple weeks of school to show that each of the

1 performance objectives was covered and CCLC did not show that the lesson plans
2 were implemented. TR 3 at 565-568:14-5.³

3 60. Based on the above, the Administrative Law Judge finds that CCLC failed to
4 provide a comprehensive program of instruction aligned to the Arizona Academic
5 Standards.

6 Instructional Program Hours

7 61. A.R.S. § 15-901(A)(2)(b)(i) and the Charter Contract require that CCLC provide
8 at least 1,068 hours of instruction each year to its 7th and 8th grade students.

9 62. As part of the site visit on May 13, 2009, Andrea Leder ("Ms. Leder"),
10 Government and Financial Services Manager for the Board, examined CCLC's School
11 Calendar and class schedules. That analysis revealed that CCLC was not meeting the
12 minimum hours of instruction requirement for its seventh and eight grades. CCLC fell
13 242.08 hours short of the 1,068 hours of instruction requirement for the 2008-2009
14 school year. See Exhibit 5.

15 63. On May 19, 2009, the Board received a copy of a May 15, 2009 letter from
16 CCLC to parents/guardians of its 7th and 8th grade students offering "a unique summer
17 program for our 7th and 8th graders in the month of June 2009" that would "focus on our
18 beautiful Grand Canyon." In the letter, CCLC stated it was "strongly encouraging all of
19 our 7th and 8th grade students to participate." See Exhibit 7.

20 64. By letter dated June 4, 2009, the Board advised CCLC that in the event CCLC
21 intended that the summer program supplement the shortfall of instruction hours
22 through the school calendar year, the summer program was not sufficient to do so.
23 See Exhibit 6. Ms. Leder testified that the information contained in CCLC's May 15,
24 2009 letter (Exhibit 7) did not change her determination of the 242.08 hours shortfall
25 because participation in the program was not mandatory for 7th and 8th grade students,
26 CCLC did not extend the last day of instruction on its school calendar from May 21st to
27 June 25, 2009, the conclusion of the summer program and there was no indication that
28 the summer program would include the subject matter that was missed during the
29 school year because of the shortfall of instructional hours. TR 1 at 98-99:21-19.

30 _____
³ "TR 3" refers to the transcript from the December 9, 2009 hearing.

1 65. While CCLC's May 15, 2009 letter to parents/guardians of its seventh and eighth
2 grade students stated that "[t]here will be lots of hands on science, history and art
3 projects with focused time for Language Arts and math" in the summer program, Sister
4 Bisignano testified that the summer program was focused on science. See Exhibit 7;
5 TR 2 at 483:16 and 515:8-12.

6 66. On June 26, 2009, CCLC submitted additional material to the Board in which it
7 accepted the Board's calculations of the shortfall in instructional hours but stated that
8 the Board failed to count CCLC's "homeroom period and extended retreats as viable
9 instructional hours." CCLC provided a copy of character building program materials
10 used during its "homeroom period." CCLC's materials also included a statement that
11 "thirty-six of forty-four seventh and eighth grade students (81%) attended summer
12 school for a total of 138 instructional hours." See Exhibit 9 at 1 and 6. CCLC did not
13 provide information to the Board regarding the "extended retreats" that CCLC alleges
14 were provided to its seventh and eighth grade students during the 2008-2009 school
15 year to warrant adding in that time to its instructional hours. TR 1 at 102:22-25. Nor
16 did CCLC amend its School Calendar through ADE for the 2008-2009 school year to
17 reflect a change in its last day of instruction for its seventh and eighth grade students
18 from May 21, 2009 to June 25, 2009,. See Exhibit 8; TR 1 at 107:10-14.

19 67. Ms. Leder re-calculated CCLC's instructional hours to include homeroom and
20 passing time to first period. That analysis revealed that CCLC had still not met the
21 minimum hours of instruction requirement for its 7th and 8th grades. CCLC fell 151.58
22 hours short of the 1,068 hours of instruction requirement for the 2008-2009 school
23 year. See Exhibit 10.

24 68. Based on the foregoing, the Administrative Law Judge finds that CCLC failed to
25 provide an instructional program that met a total of at least 1,068 hours for its 7th and
26 8th grade students in the 2008-2009 school year.

27 69. On July 22, 2009, CCLC submitted a Daily Schedule and School Calendar for
28 the 2009-2010 school year. See Exhibit 11. Ms. Leder analyzed these documents.
29 That analysis revealed that CCLC was not meeting the minimum hours of instruction
30 requirement for its 7th and 8th grades required by statute and the Charter Contract.

1 CCLC fell 48.08 hours short of the 1,068 hours of instruction requirement for the 2009-
2 2010 school year. See Exhibit 12.

3 70. By letter dated August 10, 2009, the Board advised CCLC of the continuing
4 shortfall in the hours of instruction that was required for its 7th and 8th grade students in
5 the 2009-2010 school year. CCLC was requested to "provide evidence of an amended
6 schedule and calendar that demonstrates that Cesar Chavez Middle School will be
7 providing the minimum number of hours of instruction to its students during the 2009-
8 2010 school year." See Exhibit 13 at 3.

9 71. Based on information and further clarification provided by CCLC on November
10 17, 2009, Ms. Leder determined that CCLC was providing more than the requisite
11 number of hours of instruction required for its 7th and 8th grade students in the 2009-
12 2010 school year. TR 1 at 116-117:12-3.

13 72. CCLC raised a concern that the May 13, 2009 site visit occurred approximately
14 one week prior to the scheduled close of the school year and, thus, there was
15 insufficient time to address the hours of instruction deficiency. However, evidence was
16 presented that established that CCLC had an opportunity for CCLC to address this
17 issued by extending the school year and providing summer school courses and that
18 CCLC did not extend the school year or provide summer school courses sufficient to
19 count towards student instructional hours.

20 "Highly Qualified" Teachers

21 73. The No Child Left Behind Act of 2001 (20 U.S.C. § 6301 *et seq.*) and the
22 Charter Contract require that CCLC's teachers of core academic subjects (English,
23 reading or language arts, mathematics, science, foreign languages, civics and
24 government, economics, arts, history, and geography) must be "highly qualified." For
25 charter schools, "highly qualified" means that these teachers hold a bachelor's degree
26 and have demonstrated subject matter competency in each of the core academic
27 subjects taught. 20 U.S.C. § 7801(23).

28 74. To teach a single core academic subject to a 6th grade student, the teacher must
29 have demonstrated subject matter competency through having achieved one of the
30 following: (i) Passed the Elementary Education Subject Knowledge AEPA (Arizona
Educator Proficiency Assessment); (ii) Earned a minimum of 100 points on the AZ

1 HOUSSE for Elementary Teachers prior to June 30, 2007 (documentation required⁴);
2 (iii) Earned a minimum of 100 points on the AZ HOUSSE for Veteran Teachers
3 Returning to the Profession (documentation required); or (iv) Highly Qualified Teacher
4 Reciprocity (documentation required).

5 75. To teach a single core academic subject to a student in grades seven through
6 twelve, the teacher must have demonstrated subject matter competency through
7 having achieved one of the following: (i) Passed the AEPA Subject Knowledge Test in
8 the core academic subject area being taught; (ii) Hold an advanced degree in the core
9 academic subject area being taught; (iii) Hold National Board Certification in the core
10 academic subject area being taught; (iv) A degree with a major or 24 credit hours in the
11 core academic subject area being taught; (v) Earned a minimum of 100 points on the
12 AZ HOUSSE for middle, junior high, high school, Visual Arts or Music Teachers prior to
13 June 30, 2007 (documentation required); (vi) Earned a minimum of 100 points on the
14 AZ HOUSSE for Veteran Teachers returning to the Profession – middle, junior high,
15 high school, Visual Arts, Music (documentation required); or (vii) Highly Qualified
16 Teacher Reciprocity (documentation required).

17 76. A school and its teachers must complete an Arizona Highly Qualified Attestation
18 (“HQ Attestation”) Form setting forth the manner in which a teacher of a core academic
19 area meets the highly qualified teacher requirements. TR 1 at 33:9-13. There are
20 separate HQ Attestation Forms for a teacher of elementary grades and for a teacher of
21 middle and high school grades. (TR 1 at 33:18-21.) Teachers teaching more than one
22 core content area must complete an HQ Attestation Form for each core content area.
23 TR 1 at 70:8-15. The HQ Attestation Forms are specific to the core content area,
24 grade level, and manner in which the teacher claims to demonstrate subject matter
25 competency. TR 1 at 71:9-10.

26 ⁴ Satisfactory documentation for the AZ HOUSSE Rubric is: for years of experience claimed, a resume or
27 copies of the teacher’s prior teaching contracts; for coursework claimed, a transcript from a university or
28 community college reflecting a passing score in the courses that relate to the content area; for
29 professional development and activities related to the content area, documentation reflecting professional
30 development specific to the content area (e.g., a certificate that specifically lists the content date); for
related service, documentation from the school to support the claims (e.g., a letter or documentation from
the superintendent or principal); and for award, presentations and publications, a certificate, award or
other evidence. (TR1 at 38-39:17-9 and at 56-57:14-21.)

1 77. CCLC's School Calendar and class schedules obtained by Board staff at the
2 May 13, 2009 site visit reflected that Jill Hroza ("Ms. Hroza") was teaching mathematics
3 to middle school students and that Veronica (Vero) Galaz Antonio ("Ms. Antonio") was
4 teaching language arts to 6th, 7th and 8th grade students in May of the 2008-2009
5 school year. See Exhibit 4 at 1. Lesson Plans for August 31 through September 11,
6 2009 that were provided by CCLC reflect that Ms. Hroza was teaching mathematics to
7 High School students in the 2009-2010 school year. See Exhibit FF at H.S. Algebra
8 Prep.

9 78. In its Preliminary Corrective Action Plan dated July 25, 2009, CCLC stated that
10 Ms. Hroza and Ms. Antonio were not yet highly qualified for the 2009-2010 school year.

11 One of the not yet HQ teachers is waiting for her AEPA scores; the
12 other teacher will take the AEPA in August, 2009. These teachers are:

- 13 a. Jill Hroza, our middle school math teacher. Jill took
14 the AEPA exam in early July, 2009 and is waiting for
15 the results of this test.
- 16 b. Veronica "Vero" Antonio, a part-time middle school
17 English teacher, will take the AEPA on 8-22-09. . . .

18 Exhibit 25 at 3, ¶ 3.

19 79. Ms. Hroza took and subsequently passed the AEPA Subject Knowledge Test in
20 Middle Grades Mathematics on July 11, 2009. See Exhibit BB at 18.

21 80. In her 2009-2010 Elementary HQ Attestation Form, signed November 16, 2009,
22 Ms. Hroza stated that she would be taking the Elementary Education Subject
23 Knowledge AEPA on November 21, 2009 and that she was a Non-Highly Qualified
24 Teacher for sixth grade. See Exhibit BB at 19-21.

25 81. Ms. Antonio took and subsequently passed the AEPA Subject Knowledge Test in
26 Middle Grades Language Arts/Reading on August 22, 2009. (TR1 at 58:10-14.) In her
27 2009-2010 HQ Attestation Form dated September 1, 2009, Ms. Antonio attested that
28 she met the subject matter competency requirement to teach English to grades six
29 through eight because she had earned a minimum of 100 points on the AZ HOUSSE
30 for Veteran Teachers Returning to the Profession. See Exhibit 37B.

82. By letter dated October 16, 2009, Ms. Rowe advised CCLC that additional
documentation was needed to support the highly qualified determination for Ms.
Antonio; specifically, an attestation form for elementary (6th grade), a copy of the AZ

1 HOUSSE that documents Ms. Antonio's name and date of origin, and documentation
2 verifying how the points were determined for each column identified on the AZ
3 HOUSSE document. See Exhibit 41 at 3. Included in CCLC's Exhibit BB was a 2009-
4 2010 HQ Attestation Form dated November 10, 2009 in which Ms. Antonio attested
5 that she met the subject matter competency requirement to teach English to grades six
6 through eight because she had earned a minimum of 100 points on the AZ HOUSSE
7 for Elementary Teachers prior to June 30, 2007. No supporting documentation was
8 included with the HQ Attestation Form. See Exhibit BB at 9. The documentation
9 requested by Ms. Rowe in her letter of October 16, 2009 was not provided by CCLC
10 prior to the hearing. TR 1 at 272:1-11.

11 83. Marilyn Gardner ("Ms. Gardner") is a Program Specialist at the ADE, Highly
12 Qualified Professionals Unit, whose duties include monitoring Arizona district and
13 charter schools for their compliance with the highly qualified teacher requirements of
14 the No Child Left Behind Act. TR 1 at 31-32:20-19. Ms. Gardner evaluated Ms.
15 Hroza's 2009-2010 HQ Attestation Forms and documents contained in CCLC's "Proof
16 of HQ" Exhibit BB (pages 16-21) and concluded that Ms. Hroza was not highly qualified
17 to teach mathematics to 6th, 7th or 8th grade students at CCLC in the 2008-2009 school
18 year and is not highly qualified to teach mathematics to High School students at CCLC
19 in the 2009-2010 school year. TR 1 at 47:16-22; 49:4-8; TR 1 at 71:11-15.

20 84. CCLC's witness, Lindsay Puccetti ("Ms. Puccetti"), Client Relations Director of
21 teligentCHARTER, a consulting company hired by CCLC in late August 2009, testified
22 that Ms. Hroza was not highly qualified to teach mathematics to 7th and 8th grade
23 students during the 2008-2009 school year. TR 2 at 397-398:12-2 and 398-399:19-4.
24 Ms. Puccetti also testified that Ms. Hroza was not highly qualified to teach 6th grade in
25 the 2008-2009 school year. TR 2 at 398:12-17.

26 85. Ms. Gardner evaluated Ms. Antonio's 2009-2010 HQ Attestation Forms and
27 documents contained in CCLC's "Proof of HQ" Exhibit BB (pages 9-10) and in the
28 Board's Exhibit 37B. Ms. Gardner concluded that Ms. Antonio was not highly qualified
29 to teach language arts to 6th, 7th or 8th grade students at CCLC in the 2008-2009 school
30 year. TR 1 at 59:5-9.

1 86. Based on the foregoing, the Administrative Law Judge finds that CCLC
2 permitted Ms. Hroza and Ms. Antonio to teach core academic subjects to Middle
3 School students in the 2008-2009 school year when they were not highly qualified to
4 do so.

5 87. Sister Bisignano teaches Middle School science, High School biology, and High
6 School chemistry. See Exhibits W and FF at Middle School Grades 6-8 Science, at
7 High School Biology and at High School Chemistry. Based on her review of transcripts
8 contained in Exhibit 37A in September 2009, Ms. Gardner was not able to make a
9 determination as to whether Sister Bisignano was highly qualified. TR 1 at 59:1-12.
10 Determining that the transcripts seemed a little irregular, Ms. Gardner stated that it was
11 customary to look at original transcripts. TR 1 at 60-63:14-5.

12 88. By letter dated October 16, 2009, Ms. Rowe advised CCLC that an evaluation
13 of Sister Bisignano's transcripts could not be completed by ADE due to the condition of
14 the documents and requested original transcripts and an Elementary (6th grade) HQ
15 Attestation Form. See Exhibit 41 at 3. In her 2009-2010 HQ Attestation Form dated
16 September 1, 2009, Sister Bisignano attested that she met the subject matter
17 competency requirement to teach middle school and high school science, biology and
18 chemistry because she had a major or 24 credit hours in the core academic subject
19 area. See Exhibit BB at 7. The original transcripts requested by Ms. Rowe in her letter
20 of October 16, 2009 were not provided by CCLC prior to the hearing. TR 1 at 271:23-
21 25.

22 89. In her 2009-2010 HQ Attestation Form dated November 10, 2009, Sister
23 Bisignano attested that she met the subject matter competency requirement to teach
24 sixth grade because she had earned a minimum of 100 points on the AZ HOUSSE for
25 Elementary Teachers prior to June 30, 2007. No supporting documentation was
26 included with the HQ Attestation Form. See Exhibit BB at 5.

27 90. Ms. Gardner evaluated Sister Bisignano's 2009-2010 HQ Attestation Forms and
28 documents contained in CCLC's "Proof of HQ" Exhibit BB (pages 5-8) and concluded
29 that there was insufficient documentation to support Sister Bisignano's statement that
30 she had earned a minimum of 100 points on the AZ HOUSSE for Elementary
Teachers. TR 1 at 63-64:20-2.

1 91. With respect to Ms. Hroza and Ms. Antonio, the evidence presented established
2 that they were not highly qualified within the meaning of the No Child Left Behind Act
3 as of the May 13, 2009 site visit although they subsequently became highly qualified.

4 92. There was no evidence presented to the Board, despite repeated requests for
5 information and documentation, to establish that Sister Bisignano is highly qualified
6 within the meaning of the No Child Left Behind Act.

7 93. Based on the above, the Administrative Law Judge finds that CCLC failed to
8 prove that Sister Bisignano was highly qualified to teach core academic subjects to
9 Middle School and High School students in the 2009-2010 school year.

10 Student Attendance Reporting

11 94. A.R.S. § 15-185(B) establishes the financial provisions for a charter school that
12 is sponsored by the Board. Because charter schools are funded based on the number
13 of children attending the school, accurate student attendance reporting is extremely
14 important.

15 95. Attendance at a charter school is based on a "student count," which in turn is
16 based on the actual average daily membership or the adjusted average daily
17 membership of the charter school. See A.R.S. § 15-185(B)(2). Actual average daily
18 membership and adjusted average daily membership are determined based on a
19 combination of factors, including the number of students, student attendance,
20 absences and withdrawals. See A.R.S. §§ 15-901 and 15-902.

21 96. During the course of the school year, charter schools are required to report
22 student attendance data to ADE at least once every 20 school days, and to do so
23 electronically through the Student Accountability Information System ("SAIS").⁵ See
24 A.R.S. § 15-1042(H); TR 2 at 386:8-15.

25 97. As part of the site visit on May 13, 2009, Ms. Leder examined CCLC's reporting
26 of student attendance to ADE and concluded that CCLC had failed to report student
27 attendance data electronically to ADE at least once every 20 school days during the
28 2008-2009 school year. TR 1 at 118-119:4-4; See Exhibit 16.

29
30 ⁵ SAIS is the program through which schools electronically transmit student and financial data to ADE.
A.R.S. § 15-1041.

1 98. CCLC did not dispute that it had failed to report student attendance data
2 electronically to ADE at least once every 20 school days during the 2008-2009 school
3 year. CCLC's witness, Ms. Puccetti, testified that Schoolmaster, CCLC's student data
4 management system used to enter its student absence information and upload it to
5 SAIS, shut down during two periods of time during the 2008-2009 school year and that
6 information was lost and had to be reconstructed. TR 2 at 386-388:20-2.

7 99. Based on the foregoing, the Administrative Law Judge finds that CCLC failed to
8 report student attendance data electronically to ADE at least once every 20 school
9 days during the 2008-2009 school year.

10 100. Comparative student attendance data for CCLC from ADE reflected that, as of
11 May 26, 2009, CCLC reported zero absences for their students during the 2008-2009
12 school year. See Exhibits 17A and 17B.

13 101. By letter dated June 4, 2009, as during a follow-up to the site visit, Board staff
14 advised CCLC of its inconsistency in attendance counts and failure to comply with
15 attendance uploads to ADE and requested that CCLC provide copies of teacher
16 marked rosters for all teachers and all grades for the Middle School and High School
17 for the entire school year by Monday, June 25, 2009. See Exhibit 6 at 7.

18 102. On June 8, 2009, CCLC provided partial rosters to the Board for May 13, 2009.
19 See Exhibits 19, 19A, 19B, 19C and 19D; TR 1 at 123:12-23. Ms. Leder compared
20 those rosters against the attendance data CCLC had submitted to ADE and discovered
21 numerous discrepancies in the reporting of absences. By way of example, CCLC
22 reported zero absences at the Middle School and High School for the 2008-2009
23 school year, yet student rosters for homeroom through third period on May 13, 2009
24 alone documented student absences. See Exhibits 17A, 17B, 19, 19A, 19B, 19C and
25 19D. Ms. Leder also sampled six students for whom CCLC's rosters reflected
26 absences for various periods on May 13, 2009, yet CCLC reported to ADE that these
27 students had zero absences during the 2008-2009 school year. TR 1 at 124-127:19-3.

28 103. On July 21, 2009, CCLC made a data correction request to ADE to correct its
29 state aid pursuant to A.R.S. § 15-915 for fiscal year 2008-2009. See Exhibit 20. Such
30 a correction would allow CCLC to submit revised student attendance data to accurately

1 reflect student absence and attendance at the Schools for the 2008-2009 school year.
2 TR 1 at 134:12-23.

3 104. On August 25, 2009, ADE advised CCLC of the steps it must take to complete
4 its data correction request. See Exhibit 21. Ms. Leder testified that, as of November
5 30, 2009, CCLC had failed to take the steps necessary to correct its student
6 attendance and absence data for the 2008-2009 school year. TR 1 at 135-136:12-5.

7 105. Student attendance data reports viewed by Ms. Leder on the ADE website on
8 December 1, 2009 reflected no change in CCLC's report of zero student absences for
9 the 2008-2009

10 106. Although CCLC maintained that it had provided electronically the student
11 attendance data to ADE, CCLC could not explain why it was not reflected on ADE's
12 website. Consequently, there was no credible evidence presented to support CCLC's
13 assertion of the electronic submission of the student attendance data.

14 107. Based on the above, the Administrative Law Judge finds that CCLC failed to
15 accurately and timely report student attendance data to ADE in the 2008-2009 school
16 year.

17 Student Records

18 108. CCLC, as a public body, is required "to maintain all records, including records
19 as defined in section 41-1350, reasonably necessary or appropriate to maintain an
20 accurate knowledge of their official activities and of any of their activities which are
21 supported by monies from the state or any political subdivision of the state." A.R.S. §
22 39-121.01.

23 109. The Charter Contract requires CCLC to hold open for inspection by the Board all
24 records, all documents and files relating to any activity or program provided by CCLC
25 relating to or by its Schools. See Exhibit 1 at 5, ¶ 17A.

26 110. Daily student attendance records must be retained for a period of four years
27 after the fiscal year in which they were created or received. TR 1 at 145:3-10; see also
28 Exhibit DD, *Arizona State Library, Archives and Public Records: General Records*
29 *Retention Schedule for All School Districts and Charter Schools Student Records* at 1
30 of 3.

1 111. By letter dated June 4, 2009, the Board requested that CCLC provide copies of
2 the Middle School's and High School's teacher marked rosters for all grades for the
3 entire school year by June 15, 2009. See Exhibit 6 at 7. CCLC provided the Board
4 with some, but not all, of the rosters requested. TR 1 at 145-146:19-6.

5 112. By letters dated August 10⁶ and October 16, 2009, the Board advised CCLC
6 that the documents it received from CCLC on July 14, 2009 did not contain all of the
7 rosters for the 2008-2009 school year. See Exhibits 13 and 41.

8 113. As of the hearing date, CCLC failed to provide rosters for the months of August
9 2008, September 2008, February 2009, March 2009, and April 2009. TR 1 at 147:18-
10 22.

11 114. Based on the foregoing, the Administrative Law Judge finds that CCLC failed to
12 provide teacher rosters requested by the Board for the 2008-2009 school year.

13 Employment Eligibility Verification

14 115. Employers are required to verify the identity of and eligibility to work for all
15 employees and to complete and retain an Employment Eligibility Verification Form ("I-9
16 Form"). See 8 U.S.C. § 1324a(a)(1)(B)(i), (b)(1)(A) and (b)(3) and the Charter
17 Contract.

18 116. The Instructions for the I-9 Form require employers to record the date
19 employment begins and to sign and date the Certification in Section 2. See Exhibit 22
20 at 1. The Instructions for the I-9 Form also require employers to complete Section 2 by
21 examining evidence of identity and employment authorization within three business
22 days of the date employment begins. *Id.* The Instructions for the I-9 Form also require
23 employees to complete "Section 1 (Employee Information and Verification)" no later
24 than the time of hire, which is the actual beginning of employment. *Id.* The employer
25 is responsible for ensuring that Section 1 is timely and properly completed. *Id.*

26 117. As part of the site visit on May 13, 2009, Ms. Leder examined the personnel
27 files of twenty CCLC employees and found that two files did not contain an I-9 Form
28 and that the I-9 Forms in the remaining eighteen files were incomplete in that the
29 section of the I-9 Form in which an employer certifies the examination of evidence of

30 ⁶ The Board's letter of August 10, 2009 clarified the term "roster" to mean "the mechanism by which daily attendance (present/absent/tardy) is recorded on a class by class basis." See Exhibit 13 at 4.

1 the employee's identity and employment authorization ("Certification in Section 2") had
2 not been completed by CCLC. TR 1 at 138-140:13-10. CCLC did not present any
3 evidence to rebut Ms. Leder's findings.

4 118. By letter dated June 4, 2009, the Board advised CCLC of Ms. Leder's findings
5 and requested to provide documentation demonstrating compliance by June 25, 2009.
6 See Exhibit 6 at 4 and 5.

7 119. On August 3, 2009, the Board received a submission from CCLC containing the
8 statement that "Every teacher and staff member hired for the 2009-10 school year has
9 an immigration file in the school office. Each file contains the teacher's social security
10 card (or pass port), drivers license, I-9 form and finger print clearance card. Alex Neely
11 [an administrative assistant at CCLC] is presently being trained in E-verify." See
12 Exhibit 25 at 5.

13 120. By letter dated August 10, 2009, the Board requested CCLC to provide evidence
14 of the verification of employment eligibility for every employee hired, to include a list of
15 individuals on the payroll and copies of documents that demonstrated verification
16 occurred. See Exhibit 13 at 4.

17 121. On September 4, 2009, CCLC submitted to the Board a "Current Roster of
18 Employees" and copies of the employees' I-9 Forms. See Exhibit 23; TR 1 at 142-
19 143:20-8. Ms. Leder examined the documents and determined that, of the twenty-one
20 employees on the Roster, the I-9 Forms were incomplete for nineteen of them. In one
21 I-9 Form, the Certification in Section 2 was not dated by CCLC. See Exhibit 24 at 2. In
22 the remaining eighteen I-9 Forms, the Certification in Section 2 did not contain the date
23 the employee began employment at CCLC. TR 1 at 143:14-21, see also Exhibit 24 at
24 1. CCLC did not present any evidence to rebut Ms. Leder's findings.

25 122. On or about November 17, 2009, CCLC submitted additional I-9 Forms to the
26 Board in Exhibit V.⁷ Ms. Leder testified that they were not complete. TR 1 at 174:17-
27 19. In the I-9 Form for Ms. Antonio, CCLC had failed to date the Certification in
28 Section 2. TR 1 at 175:2-8; see also Exhibit V. In the I-9 Form for Marjorie Nelson,
29 hired on July 16, 2009, CCLC had failed to ensure that Section 1 was completed no
30

1 later than the time of hire, which was the actual beginning of employment, and failed to
2 complete Section 2 within three business of the date employment began. See Exhibit
3 V. In the I-9 Form for Melody David-Baker, hired August 11, 2009, CCLC had failed to
4 ensure that Section 1 was completed no later than the time of hire, which was the
5 actual beginning of employment, and failed to complete Section 2 within three business
6 of the date employment began. See Exhibit V. CCLC did not dispute these
7 deficiencies. TR 2 at 370-372:20-11.

8 123. CCLC addressed the I-9 form issue by arranging for Ms. Puccetti to conduct
9 training of CCLC personnel on the processes, procedures and timely completion of the
10 I-9s. TR 2 at 372:16-19 and at 373:18-21.

11 124. Based on the above, the Administrative Law Judge finds that CCLC failed to
12 verify the identity of and eligibility to work for all employees and failed to complete and
13 retain an I-9 Form for each employee in the 2008-2009 school year. It is noted that
14 CCLC has taken steps to address this issue and hired a third party contractor to train
15 CCLC staff so that they understand and comply with the I-9 Form requirements. CCLC
16 maintained that this had been accomplished as of the date of the hearing. However,
17 CCLC did not maintain that it had been accomplished within the 90 day time frame that
18 was provided to CCLC to address the violations found by the Board and listed in its
19 Notice of Intent to Revoke Charter.

20 Arizona State Retirement System

21 125. CCLC has been a participant in the ASRS pursuant to A.R.S. § 15-187(C) since
22 February 2001. See Exhibit 27 at 1, ¶ 5.

23 126. A.R.S. §§ 38-735, 38-736 and 38-737 and the Charter Contract require CCLC to
24 withhold retirement contributions at rates prescribed by the ASRS from all
25 compensation paid to CCLC's employees ("employee retirement contributions") who
26 meet the ASRS membership criteria, to match the retirement amounts withheld from
27 those employees' wages ("employer retirement contributions"), and to remit the total
28 employee and employer retirement contributions with a payroll report to the ASRS.

29
30 ⁷ TR 1 at 171:10 incorrectly describes the exhibit as "Exhibit B." The correct exhibit is "Exhibit V."

1 127. Since the beginning of its participation in the ASRS, CCLC has reported that it
2 has employees that meet the ASRS membership criteria. (TR 2 at 343:18-21.)

3 128. A.R.S. § 38-735, Arizona Administrative Code R2-8-122 and the Charter
4 Contract require CCLC to submit payroll reports and the appropriate remittance of
5 employee and employer retirement contributions by the 14th calendar day after the last
6 day of the applicable pay period (pay period ending date). See Exhibit 27 at ¶ 8.

7 129. Marcia Kumamoto ("Ms. Kumamoto"), Contribution Accounting Manager with the
8 ASRS, testified that during the fiscal year ending June 30, 2008, CCLC failed to timely
9 submit payroll reports and employee and employer retirement contributions to the
10 ASRS. See Exhibit 27 at ¶ 9; TR 2 at 345-346:25-3.

11 130. In December 2007, the ASRS requested that ADE deduct \$38,617.44 from state
12 monies payable to CCLC and remit that amount to the ASRS. In March, 2008, the
13 ASRS requested that ADE deduct \$26,705.50 from state monies payable to CCLC and
14 remit that amount to the ASRS. See Exhibit 27 at ¶ 9.

15 131. As of September 18, 2009, CCLC had failed to submit payroll reports and
16 employee and employer retirement contributions for fiscal year 2008 to the ASRS for
17 the period of April 30, 2008 through June 15, 2008 in the estimated amount of
18 \$17,688.44. See Exhibit 27 at ¶ 9.

19 132. Ms. Kumamoto testified that, in December 2009, CCLC submitted the payroll
20 reports for this period, but did not submit the employee and employer retirement
21 contributions. TR 2 at 350-351:24-9.

22 133. As of September 18, 2009, CCLC had failed to submit employee and/or
23 employer retirement contributions for fiscal year 2009 to the ASRS for fifteen payroll
24 periods during June 30, 2008 through May 15, 2009 in the amount of \$78,448.12. See
25 Exhibit 27 at ¶ 10. Ms. Kumamoto testified that no additional employee or employer
26 retirement contributions were subsequently submitted by CCLC for those payroll
27 periods. TR 2 at 351:17-23.

28 134. According to Ms. Kumamoto, CCLC owes the ASRS an estimated arrearage of
29 \$77,000 to \$90,000 for employee and employer retirement contributions for fiscal year
30 2009. (TR 2 at 351-352:25-7.) CCLC's witnesses, Sister Bisignano and Claudina

1 Douglas, Chief Financial Officer for ADI Business Solutions, which was hired by CCLC
2 in April or May 2009, did not dispute that figure. TR 2 at 477:14-17 and at 518:6-11.

3 135. Sister Bisignano testified that she did not know that CCLC was not current in the
4 submission of its employee and employer retirement contributions following the filing of
5 bankruptcy in June 2008. TR 2 at 475:11-17 and at 476:11-21.

6 136. Sister Bisignano testified that CCLC would begin paying its arrearage to the
7 ASRS in January 2010. TR 2 at 477:14-18. However, Ms. Douglas testified that as of
8 the hearing date she had not discussed with CCLC how to handle the arrearage and
9 did not know the feasibility of a six month payment plan to the ASRS but that CCLC
10 would like to begin making payments in January 2010. TR 2 at 519-521 at 19-11.

11 137. CCLC's failure to timely submit payroll reports and the appropriate remittance of
12 employee and employer retirement contributions negatively affects its employees' time
13 of credited service and eligibility for retirement and retirement benefits. See Exhibit 27
14 at ¶ 9 and 12.

15 138. Ms. Kumamoto testified that CCLC is current with its payroll reports and
16 employee and employer retirement contributions for fiscal year 2010. TR 2 at 355:4-6.

17 139. CCLC referred to the bankruptcy that it was in and maintained that it had
18 planned to work out a payment plan as of January 2010. CCLC did not present any
19 explanation as to why a payment plan was not set in place within the above-mentioned
20 90 day cure period after issuance of the Notice of Intent to revoke Charter or as of the
21 date of the hearing. The weight of the evidence of record reflects that it is unclear
22 whether a payment plan is viable.

23 140. Based on the above, the Administrative Law Judge finds that CCLC failed to
24 timely submit payroll reports and the appropriate remittance of employee and employer
25 retirement contributions to the ASRS during the fiscal years ending June 30, 2008 and
26 June 30, 2009.

27 CONCLUSIONS OF LAW

28 1. A.R.S. § 15-183(I) currently provides as follows:

29 3. A sponsor shall review a charter at five year intervals and may revoke a
30 charter at any time if the charter school breaches one or more provisions
of its charter. At least 90 days before the effective date of the proposed
revocation the sponsor shall give written notice to the operator of the

1 charter school of its intent to revoke the charter. Notice of the sponsor's
2 intent to revoke the charter shall be delivered personally to the operator of
3 the charter school or sent by certified mail, return receipt requested, to the
4 address of the charter school. The notice shall incorporate a statement of
5 reasons for the proposed revocation of the charter. The sponsor shall
6 allow the charter school at least ninety days to correct the problems
7 associated with the reasons for the proposed revocation of the charter.
8 The final determination of whether to revoke the charter shall be made at
9 a public hearing called for such purpose.

10 2. A.A.C. R7-5-304 provides in pertinent part:

11 A. The Board may discipline a charter holder for violation of its charter or
12 federal or state laws. In determining the appropriate disciplinary action
13 to take, the Board shall consider the following:

- 14 1. Threat to the health or safety of children;
- 15 2. Whether the charter holder's historical compliance record indicates
16 repeated or multiple breaches of the provisions of its charter or federal
17 or state laws;
- 18 3. Whether the charter holder has failed to meet the academic needs
19 of the children;
- 20 4. Length of time the offense has been occurring;
- 21 5. The charter holder's compliance with and response to staff
22 investigation in providing necessary information and documentation
23 within requested time-frames;
- 24 6. Whether there has been a misuse of funds; and
- 25 7. Any other factor that has a bearing on the charter holder's ability
26 and willingness to operate in compliance with the provisions [⁸] its
27 charter and federal and state laws.

28 3. In this proceeding, the Board bears the burden to prove by a preponderance of
29 the evidence that grounds exist to revoke CCLC's Charter and that revocation is an
30 appropriate remedy. See A.R.S. § 15-183(I)(3); A.R.S. § 41-1092.07(G)(2); Arizona
Administrative Code R2-19-119(B)(1).

4. A preponderance of the evidence is "such proof as convinces the trier of fact
that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
EVIDENCE § 5 (1960).

5. Upon consideration of all of the evidence presented, the Administrative Law
Judge concludes that the Board sustained its burden of proving by a preponderance of

⁸ The rule, should probably be read as "with the provisions of its charter." The term "of" was not inserted.

1 the evidence that CCLC violated Federal and Arizona law and the Charter Contract.

2 The weight of the evidence of record established that CCLC: (i) failed to provide a
3 comprehensive program of instruction aligned to the Standards; (ii) failed to provide an
4 instructional program that met for a total of at least 1,068 hours for its 7th and 8th grade
5 students in the 2008-2009 school year; (iii) permitted teachers to teach core academic
6 subjects even though they were not highly qualified to do so; (iv) failed to accurately
7 and timely report student attendance data for the 2008-2009 school year to ADE; (v)
8 failed to provide teacher rosters requested by the Board; (vi) failed to verify the identity
9 of and eligibility to work for all employees and to complete and retain an Employment
10 Eligibility Verification Form (I-9 Form); and (vii) failed to timely submit the appropriate
11 remittance of employee and employer retirement contributions to the ASRS in fiscal
12 years 2008 and 2009.

13 6. The Board allowed CCLC at least 90 days after the issuance of the Notice of
14 Intent to Revoke Charter to correct the issues identified as supporting the revocation of
15 its charter. A.R.S. § 15-183I(3). CCLC failed to cure most of the deficiencies for which
16 violations of law and the Charter Contract has been found herein.⁹

17 7. CCCL argued that pursuant to A.A.C. R7-5-304, which provides for discipline
18 against a charter holder for violation of its charter or federal or state laws, the Board is
19 to consider enumerated factors. Of those enumerated factors, CCL maintained that
20 only CCLC's acts in response to the Board's request for information and
21 documentation within specified time frames could be considered as a violation. With
22 respect to that factor, CCLC asserted that there were communication difficulties and
23 that CCLC attempted to provide the Board with the documentation requested.

24 8. CCLC has previously been subject to a Notice of Intent to Revoke its Charter in
25 2005 based, in part, on the Schools' failure to provide a comprehensive program of
26 instruction aligned to the Standards. CCLC asserts that, if the Board believed that the
27 terms of the Consent Agreement were not complied with, it could have gone through
28 the 20 day notice provisions for breach of the Consent Agreement rather than bringing

29 ⁹ The evidence demonstrated that CCLC did, ultimately, bring itself into compliance with the hours of
30 instruction requirement for its 7th and 8th grade students for the 2009-2010 school year, that it was current
with its ASRS requirements for the 2010 fiscal year, and that it had taken corrective action through training
to address the Form I-9 issues to ensure future compliance.

1 the instant matter before the Office of Administrative Hearings. While the Board had
2 discretion, the terms of the Consent Agreement do not mandate that the Board take
3 such action.

4 9. CCLC argued that, by failing to bring an action based on breach of the Consent
5 Agreement, the Administrative Law Judge can infer that CCLC has complied with the
6 Consent Agreement. This matter does not involve as a determinative issue whether
7 the 2005 Consent Agreement was breached. Additionally, there is no language in
8 either the Consent Agreement or any provision of law or legal authority cited by CCLC
9 that precludes the Board from bringing the instant matter including allegations of failing
10 to provide a comprehensive program of instruction.

11 10. CCLC maintained that it is a "performing" school and its charter should not be
12 revoked. However, that argument does not diminish or negate the number and
13 serious nature of the violations of Federal, State Law and failure to comply with the
14 terms of the Charter Contract, as found above.

15 11. Although CCLC declared in April 2009 that its curriculum was in fact aligned
16 with the Standards, CCLC failed to provide a program of instruction aligned with the
17 Standards. Such conduct demonstrates either an inability or unwillingness by CCLC to
18 comport with statewide educational requirements.

19 12. CCLC's failure to provide the minimum hours of instruction to its 7th and 8th
20 grade students in the 2008-2009 school year evidences a lack of accountability, and
21 deprived those students of hours of education to which they were lawfully entitled.

22 13. CCLC's failure to ensure that its teachers of core academic subjects in the
23 2008-2009 school year were "highly qualified" under the No Child Left Behind Act
24 demonstrates either an inability or unwillingness by CCLC to comport with national
25 educational requirements. Such failure is exacerbated by CCLC permitting a teacher
26 who was identified as not highly qualified to teach mathematics to 6th, 7th and 8th grade
27 students in the 2008-2009 school year and then permitting the same teacher to teach
28 mathematics to High School students in the 2009-2010 school year, even though she
29 was not highly qualified to do so.

30 14. At the time of hearing, CCLC owed an estimated \$77,000 to \$90,000 to the
ASRS. Sister Bisignano's representations that CCLC would begin paying its arrearage

1 to the ASRS in January 2010 conflict with the testimony of CCLC's business service
2 provider that, as of the hearing date, she had not discussed with CCLC how to handle
3 the arrearage and did not know the feasibility of a six month payment plan to the
4 ASRS.

5 15. In view of CCLC's numerous and substantial violations of statute and its Charter
6 Contract, and its failure to have corrected most of the problems associated with the
7 reasons for the proposed revocation of its Charter, the Administrative Law Judge
8 concludes that, pursuant to A.R.S. §§ 15-183(I)(3), CCLC's Charter should be revoked.

9 **ORDER**

10 Based on the above, the Charter Contract between the Board and CCLC shall be
11 revoked on the effective date of the Order entered in this matter.

12 Done this day, March 18, 2010.

13
14 /s/ Lewis D. Kowal
15 Administrative Law Judge
16

17 Transmitted electronically to:
18 DeAnna Rowe, Executive Director
19 State Board for Charter Schools
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