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Firm State Bar No. 14000

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Attorneys for the Arizona State Board for Charter Schools

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA

In the Matter of: **ALLSPORT ACADEMY**, a nonprofit corporation, operating **ALLSPORT ACADEMY,** a charter school.	No. 13F-FSRV-001-BCS **ARIZONA STATE BOARD FOR CHARTER SCHOOLS' PRE-HEARING MOTION TO LIMIT THE PARTICIPATION OF CORPORATE REPRESENTATION UNDER RULE 31 OF THE RULES OF THE ARIZONA SUPREME COURT** (Honorable Thomas Shedden)

Pursuant to Rule R2-19-106 of the Arizona Administrative Code and the Order Setting Filing Deadlines, the Arizona State Board for Charter Schools ("the Board") submits its Pre-Hearing Motion to Limit the Participation of Corporate Representation Under Rule 31 of the Rules of the Arizona Supreme Court to restrict the participation of Moses Montoya, Raquel Montoya or anyone else acting as a representative of Allsport in this matter to providing testimony as witnesses unless s/he satisfies the requirements of Ariz. R. S. Ct. 31(d)(11).

Background

Allsport Academy ("Allsport") is a non-profit corporation organized under the laws of the state of Arizona. In its Corporation Annual Report & Certificate of Disclosure filed June 4, 2012, Allsport identified Moses Montoya and Raquel Montoya as its officers and directors[1]. Allsport also identified Raquel Montoya as its Statutory Agent. *See* Exhibit A attached hereto.

On June 24, 2013, Allsport Academy was served with the Notice of Intent to Revoke Charter and Notice of Hearing ("Notice") filed in this matter which stated the following with regard to Arizona Supreme Court Rule 31.

> **YOU ARE FURTHER NOTIFIED** that appearance in an administrative proceeding is considered the practice of law, which under most circumstances may only be undertaken by an active member of the Arizona State Bar. Ariz. R. S. Ct. 31(a)(2)(A)(3) and (b). Under Ariz. R. S. Ct. 31(d)(11):
>
> > Unless otherwise specifically provided for in [Ariz. R. S. Ct. 31], in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter, such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

[1] Allsport's 2013 Corporation Annual Report & Certificate of Disclosure was due on June 17, 2013.

Notice at 13-14. By letter to Allsport Academy dated August 1, 2013, undersigned counsel referenced this provision of the Notice and requested as follows:

> I am not aware that Allsport Academy has retained counsel in this matter and, therefore, have directed this correspondence to you. The Notice also advises you of Rule 31(a) and (b), Rules of the Arizona Supreme Court, in which appearance in an administrative proceeding is considered the practice of law, which under most circumstances may only be undertaken by an active member of the Arizona State Bar. Under Rule 31(d)(11) of the Rules of the Arizona Supreme Court:
>
>> Unless otherwise specifically provided for in [Ariz. R. S. Ct. 31], in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter, such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.
>
> If you are proceeding to hearing and the corporate entity Allsport Academy is not represented by an attorney in this matter, please advise me of the status of Allsport Academys' authorization of a representative under Rule 31(d)(11) of the Rules of the Arizona Supreme Court. Specifically, the name of the "full-time officer" or "employee" whom Allsport Academy has "specifically authorized to represent it in the [above-referenced administrative proceeding and whose] representation is not the person's primary duty to [Allsport Academy], but secondary or incidental to other duties relating to the management or operation of [Allsport Academy and who] is not receiving separate or additional compensation (other than reimbursement for costs) for such representation," as well as a copy of Allsport Academy's authorization (e.g., Board minutes, Board resolution, etc…) to that effect.

To date, undersigned counsel has not received a response to this request. Undersigned counsel made further inquiry to Allsport today, but did not receive a response as of the time of the filing of this Motion.

Argument

As a corporation, Allsport must be represented before the Office of Administrative Hearings by a licensed attorney or by a full-time officer or employee, subject to the requirements of Ariz. R. S. Ct. 31(d)(11). It is the position of the Board that if Moses Montoya, Raquel Montoya or anyone else appears in this matter for Allsport, unless the requirements of Ariz. R. S. Ct. 31(d)(11) have been satisfied, s/he may not appear as a representative of Allsport in these proceedings.

Conclusion

For these reasons, the Board respectfully requests an Order limiting the participation of Moses Montoya and Raquel Montoya, or anyone else acting as a representative of Allsport, to providing testimony as a witness unless the requirements of Ariz. R. S. Ct. 31(d)(11) are satisfied.

DATED this 20th day of August, 2013.

THOMAS C. HORNE
Attorney General

/s/ Kim S. Anderson
Kim S. Anderson
Assistant Attorney General

COPY of the foregoing Motion filed electronically this 20th day of August, 2013 with:

Office of Administrative Hearings
http:www.azoah.com

COPY of the foregoing Motion mailed electronically this 20th day of August, 2013 to:

Allsport Academy charter school
Attention: Charter Representative Moses Montoya
moses5555@aol.com

Allsport Academy
Attention: Statutory Agent Raquel Montoya
rmontoya@allsportacademy.org

DeAnna Rowe
Executive Director
Arizona State Board for Charter Schools
Deanna.Rowe@asbcs.az.gov

By kim anderson
P0012013001456/3498132

EXHIBIT A

E-FILED

STATE OF ARIZONA CORPORATION COMMISSION
CORPORATION ANNUAL REPORT & CERTIFICATE OF DISCLOSURE

03916615

DUE ON OR BEFORE 06/17/2012 **FILING FEE** $10.00

PLEASE READ ALL INSTRUCTIONS. The following information is required by A.R.S. §§10-1622 & 10-11622 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. §§10-121(A) & 10-3121(A). YOUR REPORT MUST BE SUBMITTED ON THIS ORIGINAL FORM. Make changes or corrections where necessary. Information for the report should reflect the current status of the corporation.

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1. ALLSPORT ACADEMY
6211 E SPEEDWAY
TUCSON, AZ 85712

Business Phone: _____ (Business phone is optional.)
State of Domicile: ARIZONA **Type of Corporation:** NON-PROFIT

2. Statutory Agent: RAQUEL MONTOYA
Mailing Address: 6211 E SPEEDWAY
City, State, Zip: TUCSON, AZ 85712

Statutory Agent's Street or Physical Address:
Physical Address:
City, State, Zip: AZ

ACC USE ONLY	
Fee	$ 10.00
Penalty	$ 0.00
Reinstate	$ 0.00
Expedite	$
Resubmit	$

If appointing a new statutory agent, the new agent MUST consent to that appointment by signing below. Note that the agent address must be in Arizona.

I, (individual) or We, (corporation or limited liability company) having been designated the new Statutory Agent, do hereby consent to this appointment until my removal or resignation pursuant to law.

_____
Signature of *new* Statutory Agent

_____
Printed Name of *new* Statutory Agent

3. **Secondary Address:**

(Foreign Corporations are REQUIRED to complete this section).

4. CHARACTER OF BUSINESS

EDUCATIONAL

Received: 06/04/2012 11:10

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Corporations Divis

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5. CAPITALIZATION: (For-profit Corporations and Business Trusts are REQUIRED to complete this section.)

Business trusts must indicate the number of transferable certificates held by trustees evidencing their beneficial interest in the tr estate.

5a. Please examine the corporation's original Articles of Incorporation for the amount of shares authorized.

Number of Shares/Certificates Authorized | Class | Series Within Class (if any)

5b. Review all corporation amendments to determine if the original number of shares has changed. Examine the corporatio minutes for the number of shares issued.

Number of Shares/Certificates Issued | Class | Series Within Class (if any)

6. SHAREHOLDERS: (For-profit Corporations and Business Trusts are REQUIRED to complete this section.)

List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% benefi interest in the corporation.

NONE

7. OFFICERS

Name: MOSES A MONTOYA
Title: CHAIRMAN
Address: 5045 #2 E. GLLENN ST.
TUCSON, AZ 85712
Date Taking Office: 06/21/2009

Name: RAQUEL MONTOYA
Title: SECRETARY
Address: 5045 #2 E. GLENN ST.
TUCSON, AZ 85712
Date Taking Office: 06/21/2009

Name:
Title:
Address:
Date Taking Office:

Name:
Title:
Address:
Date Taking Office:

8. DIRECTORS

Name: RAQUEL MONTOYA
Address: 5045 #2 E. GLENN ST.
TUCSON, AZ 85712
Date Taking Office: 06/17/2009

Name: MOSES A MONTOYA
Address: 5045 #2 E. GLENN ST.
TUCSON, AZ 85712
Date Taking Office: 06/17/2009

Name:
Address:
Date Taking Office:

Name:
Address:
Date Taking Office:

http://images.azcc.gov/scripts/cgi/dwispart2.pl?COMMAND=4&SESSIONID=6PeLkA49... 8/20/2013

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9. FINANCIAL DISCLOSURE (A.R.S. §10-11622(A)(9))
Nonprofits – If your annual report is due on or before September 25, 2008, you must attach a financial statement (e.g. income/expense statem balance sheet including assets, liabilities). If your nonprofit annual report is due after September 25, 2008, a financial statement is not requir Cooperative marketing associations must in all cases submit a financial statement. All other forms of corporations are exempt from filin financial statement no matter what date the annual report was due.

ONLY NONPROFIT CORPORATIONS MUST ANSWER THIS QUESTION:

9A. MEMBERS (A.R.S. §10-11622(A)(5)) This corporation DOES ☐ DOES NOT ☒ have membe

10. CERTIFICATE OF DISCLOSURE (A.R.S. §§ 10-202(D), 10-3202(D), 10-1822(A)(8) & 10-11822(A)(7))

A. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or holds more tha 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporatio been:

1. Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven y period immediately preceding the execution of this certificate?
2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
3. Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period immedat preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:
   (a) fraud or registration provisions of the securities laws of that jurisdiction, or
   (b) the consumer fraud laws of that jurisdiction, or
   (c) the antitrust or restraint of trade laws of that jurisdiction?

One box must be marked: YES ☐ NO ☒

If "YES" to A, the following information must be submitted as an attachment to this report for each person subject to one or more of actions stated in items 1 through 3 above.

1. Full birth name.
2. Full present name and prior names used.
3. Present home address.
4. All prior addresses for immediately preceding 7 year period.
5. Date and location of birth.
6. The nature and description of each conviction or judi action; the date and location; the court and public ager involved; and the file or cause number of the case.

B. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or holds over 20% the issued and outstanding common shares, or 20% of any other proprietary, beneficial or membership interest in the corporation, serv in any such capacity or held a 20% interest in any other corporation on the bankruptcy or receivership of that other corporation?

One box must be marked: YES ☐ NO ☒

If "YES" to B, the following information must be submitted as an attachment to this report for each corporation subject to the statement above.

(a) Name and address of each corporation and the persons involved.
(b) State(s) in which it: (i) was incorporated and (ii) transacted business.
(c) Dates of corporate operation.

11. STATEMENT OF BANKRUPTCY OR RECEIVERSHIP (A.R.S. §§ 10-1523 & 10-11623)

A. Has the corporation filed a petition for bankruptcy or appointed a receiver? One box must be marked: YES ☐ NO ☒

If "Yes" to A, the following information must be submitted as an attachment to this report:

1. All officers, directors, trustees and major stockholders of the corporation within one year of filing the petition for bankruptcy or the appointment of a receiver. If a major stockholder is a corporation, the statement shall list the current president, chairman of the board of directors and major stockholders of such corporate stockholder. "Major stockholder" means a shareholder possessing o controlling twenty per cent of the issued and outstanding shares or twenty per cent of any proprietary, beneficial or membership interest in the corporation.
2. Whether any such person has been an officer, director, trustee or major stockholder of any other corporation within one year of th bankruptcy or receivership of the other corporation. If so, for each such corporation give:
   (a) Name and address of each corporation;
   (b) States in which it: (i) was incorporated and (ii) transacted business.
   (c) Dates of operation.

12. SIGNATURES: Annual Reports must be signed and dated by at least one duly authorized officer or they will be rejected.
I declare, under penalty of perjury, that all corporate income tax returns required by Title 43 of the Arizona Revised Statutes have be filed with the Arizona Department of Revenue. I further declare under penalty of perjury that I (we) have examined this report and I certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name MOSES A. MONTOYA Date 06/04/2012

Signature MOSES A. MONTOYA

Title CHAIRMAN

(Signator(s) must be duly authorized corporate officer(s) listed in section 7 of this report.)

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