IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: **John Hancock Academy, Inc. (an Arizona nonprofit corporation),** **Applicant**	**No. 13F-AP-001-BCS** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: May 7, 2013; the record closed on August 12, 2013

APPEARANCES: Reed Gaddie appeared on behalf of Applicant John Hancock Academy, Inc. Assistant Attorney General Kim Anderson represented the Arizona State Board for Charter Schools.

ADMINISTRATIVE LAW JUDGE: Sondra J. Vanella

John Hancock Academy, Inc. ("JHA") appeals the Arizona State Board for Charter Schools' ("Board") February 11, 2013 decision (1) not to approve its application to establish a charter school and (2) to deny JHA a charter based on the Board's determination that JHA is not sufficiently qualified to operate a charter school. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Background

1. Charter schools are established by contract ("charter") between a sponsor and a public body, private person, or private organization to provide a learning environment that will improve pupil achievement.[1] An applicant seeking to establish a charter school must submit a written application to a proposed sponsor.[2] The Board is one of several entities that may be a sponsor.[3]

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[1] A.R.S. §§ 15-101(4), 15-181(A), 15-183(B), and 15-183(C).
[2] A.R.S. § 15-183(A); Stipulations of Fact and Law dated May 7, 2013 ("Stipulation"), ¶ 17 at 4.
[3] A.R.S. § 15-183(C).

2. The Board may approve an application to establish a charter school if the application meets the requirements of Title 15, Chapter 1, Article 8 and may approve the charter if the Board determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school.[4]

3. On June 20, 2012, JHA timely submitted in electronic form to the Board an application package to establish a charter school for the 2013-2014 school year.[5]

4. JHA is an Arizona nonprofit corporation consisting of two principals, Delite Gaddie ("Mrs. Gaddie") and her son, Reed Gaddie ("Mr. Gaddie"), who serve as its Board of Directors and Authorized Representatives.[6]

5. A Technical Review Panel ("TRP")[7] conducted a substantive review of JHA's new charter application package ("preliminary application package").[8]

6. The substantive review process consisted of the TRP's review and scoring of the contents of JHA's preliminary application package, using the evaluation criteria contained in the Board's Scoring Rubric, and an in-person interview with Mr. Gaddie.[9]

7. The TRP was comprised of five members: Steve Sarmento, two members with a curriculum background, and two members with a finance or business background.[10] Mr. Sarmento is the Board's Program and Project Specialist and his background includes 15 years of experience in education, including developing curriculum with a particular area of focus in English Language Arts grades kindergarten through eighth, and employment as a curriculum specialist for a charter management organization as part of a national curriculum development team.[11]

8. A "substantively complete" application package meets the following scoring requirements: (1) No evaluation area receives a score of Falls Below the Expectations;

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[4] A.R.S. § 15-183(C)(2); Stipulation, ¶ 18 at 4-5.
[5] Stipulation, ¶ 2 at 2; Transcript 22:20-25, 23:4-6. All transcript references herein are to the official transcript of the May 7, 2013 hearing.
[6] Stipulation, ¶ 1 at 1; Exhibits L1, L2, and L3 at 253; Transcript 27:4-13.
[7] "TRP" means individuals appointed by the Executive Director of the Board who use their expertise in charter school development, curriculum, and finance to assist in the evaluation of a preliminary or revised application package. A.A.C. R7-5-101 and R7-5-203.
[8] Transcript 30:10-14.
[9] Transcript 30:15-31:7.
[10] Transcript 32:11-15.
[11] Transcript 21:7-25.

(2) No more than one evaluation area in each section is scored as "Approaching"; and (3) at least 95 percent of the evaluation areas in each Plan (Educational Plan, Operational Plan, Business Plan) score at the "Meets" level.[12]

9. The TRP concluded that JHA's preliminary application package failed to meet the Board's scoring requirements as follows: (1) More than one scoring area in each section scored "Approaches" and (2) at least 95 percent of the evaluation areas in each section (aka Plan) did not score at the "Meets" level.[13]

10. An in-person interview of Mr. Gaddie was conducted in late October 2012, by the TRP to provide JHA the opportunity to explain the plan presented in its preliminary application package, to address questions the TRP had about JHA's preliminary application package, and to formulate an assessment of the ability of JHA to successfully implement its plan to operate a charter school.[14] In conjunction with the interview, a Results document was generated.[15] The information provided by Mr. Gaddie during the in-person interview did not change the TRP's overall evaluation and scoring of JHA's preliminary application package which was found to be substantively incomplete.[16]

11. On November 20, 2012, the Board provided written notice to JHA of the deficiencies of the preliminary application package, including a copy of the completed Scoring Rubric with the comments of the TRP and the Results from the in-person interview with Mr. Gaddie.[17] The TRP provided to JHA an explanation of its findings. In areas where deficiencies were found, technical assistance and suggestions for improving the application package to meet the Board's evaluation criteria were provided.[18]

12. On December 18, 2012, JHA timely submitted a revised application package to the Board.[19]

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[12] Stipulation, ¶ 3 at 2.
[13] Exhibit B at 012; Exhibit DD at 392.
[14] Transcript 32:16-33:7.
[15] Transcript 33:8-22; Exhibit DD at 393-97.
[16] Exhibit DD at 393-97, Transcript at 33:23-34:1; Stipulation, ¶ 3 at 2.
[17] Stipulation, ¶ 4 at 2; Exhibit DD; Transcript 34:2-8.
[18] Transcript 37:2 to 38:4; Exhibit DD at 373-97.
[19] Stipulation, ¶ 5 at 3.

13. JHA's revised application package was reviewed and scored.[20] The revised application package failed to meet the Board's scoring requirements for the following reasons: (1) More than one scoring area in each section scored "Approaches" and (2) at least 95 percent of the evaluation areas in each section (aka Plan) did not score at the "Meets" level.[21]

14. On January 11, 2013, the Board provided written notice to JHA that its revised application package failed to meet the Board's scoring criteria. The Board included a copy of the completed Scoring Rubric for the revised application package.[22]

15. JHA timely submitted a request that its revised application package be forwarded to the Board for consideration, regardless of its outcome.[23]

16. At its February 11, 2013 meeting, the Board considered JHA's revised application package, the TRP's Scoring Rubric, information obtained through verification and investigation of JHA's background, the Results document generated in conjunction with the in-person interview, a report prepared by Board staff, and the presentation by (and discussion with) Mr. Gaddie.[24]

17. The Board disapproved JHA's application to establish a charter school for the reasons that the revised application package failed to meet the requirements of Title 15, Chapter 1, Article 8 due to:

- a lack of an Education Plan that includes a program of instruction that improves pupil achievement in the target population that meets the Board's criteria as stated in the [TRP] scoring rubric and demonstrated through the responses to [in-person] interview questions;
- a lack of a Writing curriculum aligned to state standards as stated in the [TRP] scoring rubric; and
- a lack of a Business Plan that meets the Board's criteria as stated in the [TRP] scoring rubric.[25]

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[20] *See* Exhibit C at 016-37; Stipulation, ¶ 6 at 3.
[21] Exhibit B at 012; Exhibit EE.
[22] *See* Exhibit EE; Stipulation, ¶ 7 at 3.
[23] A.A.C. R7-5-203(8). Stipulation, ¶ 8 at 3; Exhibit A1.
[24] A.A.C. R7-5-203(10). Transcript 45:2-48:10, 60:18-21; Exhibits A through CC.
[25] Exhibit FF.

18. The Board also denied JHA's request for a charter upon its determination that JHA was not sufficiently qualified to operate a charter school due to Mr. Gaddie's prior operation of a charter school whose charter was revoked in March 1998 by its sponsor, Window Rock Unified School District ("Window Rock"). The revocation was based upon numerous significant and serious violations of its charter and state law. The Board determined that these violations demonstrated that in Mr. Gaddie's previous operation of a charter school there was a lack of accountability and an unwillingness or inability to comply with state statutes and the charter contract. The Board also found that the violations included the charter school's failure to comply with laws relating to health and safety by its failure to comply with Arizona's fingerprinting requirements which affect the safety and welfare of students.[26]

19. By written Notice dated February 14, 2013, JHA was advised of the Board's decision.[27]

20. On March 12, 2013, JHA timely appealed the Board's decision.[28]

Program of Instruction and Pupil Achievement

21. In an application to establish a charter school, the Board requires an applicant to explain how the implementation of its described program of instruction meets the needs of its identified target population, including improving pupil achievement.[29]

22. Mr. Sarmento testified that JHA's preliminary and revised application packages did not meet the Board's Target Population scoring criteria because JHA failed to provide details explaining how its proposed program of instruction would improve pupil achievement in its identified target population.[30]

23. Mr. Sarmento testified that JHA's revised application package failed to provide information on how its proposed program of instruction, currently implemented at an existing charter school (Happy Valley School), would meet the needs of its target population of students eligible for free or reduced lunch (estimated by JHA to be

[26] Exhibit FF.
[27] A.A.C. R7-5-202(E). Stipulation, ¶ 9 at 3; Exhibit FF.
[28] Stipulation, ¶ 10 at 3.
[29] Stipulation, ¶ 12 at 4, Exhibits E and F.
[30] Exhibit C at 016 at section A.2b; Transcript 63:9-20 and 70:21-71:13.

between 10 percent to 40 percent of its school's population) and English Language Learner[31] ("ELL") students (estimated by JHA to be 6 percent of its school's population), which was a significantly larger population than reported to be served by Happy Valley School (students eligible for free or reduced lunch: 14 percent; ELL students: 1 percent).[32]

24. At the in-person interview, Mr. Gaddie did not provide clarification or describe the rationale for how JHA's choice of educational model would meet the needs of its target population of students eligible for free or reduced lunch and ELL students.[33]

Writing Curriculum

25. The charter of a charter school must ensure that it provides a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve.[34]

26. A comprehensive program of instruction means that the program of instruction must align to the Arizona Academic Standards ("Standards").[35]

27. The Board's new charter application requires applicants to submit curriculum samples to demonstrate capacity to provide quality instruction in English Language Arts (Reading and Writing), Mathematics, and Science aligned to their program of instruction and the required Standards.[36]

28. The curriculum samples must provide a summative assessment that accurately measures student mastery of the required Standard for each grade level an applicant seeks to serve and list the criteria required to demonstrate mastery of the Standard.[37]

29. JHA's preliminary and revised application packages did not meet the Board's Curriculum Sample scoring criteria because their curriculum samples for Kindergarten

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[31] "English Language Learner" (also known as "English learner" or "limited English proficient student") means a child who does not speak English or whose native language in not English, and who is not currently able to perform ordinary classroom work in English. A.R.S. § 15-751(4).
[32] Transcript 64:24-69:15; Exhibit F at BCS056.
[33] Transcript 69:16-21.
[34] A.R.S. § 15-183(E)(3); Stipulation, ¶ 13 at 4; Transcript 72:9-11.
[35] Transcript 72:12-17.
[36] Stipulation, ¶ 14 at 4; Exhibit K1-K7; Transcript 73:6-16.
[37] Stipulation, ¶ 15 at 4; Transcript 73:17 -74:18.

Writing did not accurately measure student mastery of the required Standard.[38]

30. Mr. Sarmento explained that JHA's preliminary and revised application packages failed to demonstrate the ability to provide a summative assessment at the appropriate level of rigor to the Standards for Kindergarten Writing.[39]

31. Mr. Sarmento testified that JHA's preliminary and revised application packages' sample summative assessment for Kindergarten Writing presented multiple and inconsistent descriptions of what constituted the assessment and how points would be awarded to students in the summative assessment.[40]

32. JHA was provided an opportunity to revise the Kindergarten Writing curriculum sample based on the technical assistance provided by the TRP in the scoring rubric. However, JHA's revised application package did not include a revised Kindergarten Writing curriculum sample.[41]

33. JHA's revised application package did not meet the Board's Curriculum Sample scoring criteria because JHA's curriculum samples for 1st grade Writing did not accurately measure student mastery of the required Standard.[42]

34. Mr. Sarmento testified that JHA's revised application package's sample summative assessment for 1st grade Writing described a student's annotation of the work of another student instead of assessing a student's writing.[43]

35. JHA's preliminary and revised application packages' sample summative assessment for 2nd grade Writing did not meet the Board's Curriculum Sample scoring criteria because they failed to provide a clearly described summative assessment demonstrating mastery of the required Standard.[44] Mr. Sarmento testified that the rubric states that 80 points is mastery, yet JHA's point system does not allow a student to achieve a score of 80 points, the minimum level of mastery.[45]

36. JHA's preliminary and revised application packages did not meet the Board's

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[38] Transcript 75:25-76:12; Exhibit C:20 at A.6.K.e.
[39] Transcript 76:13-15.
[40] Transcript 76:16-77:21; Exhibit C at 020 at A.6.K.f; Exhibit K1 at 110.
[41] Transcript 75:9-19, Exhibit C at 020 at A.6.K.e and A.6.K.f.
[42] Transcript 78:16-25 and 80:7-8; Exhibit C at 022 at section A.6.1.e.
[43] Transcript 77:22-25; 78:22-25, 79:14-25, 80:1-8; Exhibit C at BCS022; Exhibit K2 at 132-33.
[44] Transcript 80:9-81:10; Exhibit C at 023 at section A.6.2.e.
[45] Transcript 81:17-19.

Curriculum Sample scoring criteria because JHA's curriculum samples for 4th grade Writing failed to provide sufficient detail in listing the criteria required to demonstrate student mastery of the required Standard.[46]

37. Mr. Sarmento testified that JHA's curriculum sample for 4th grade Writing provided a scoring scale and mastery level allowing students to achieve mastery of the Standard without having demonstrated mastery of all components of the required Standard.[47] JHA's 4th grade Writing curriculum sample shows that a student can achieve points in a category unrelated to the standard, thereby allowing a student to score as having achieved mastery, when in fact, they have not.

38. JHA's preliminary and revised application packages did not meet the Board's Curriculum Sample scoring criteria because their curriculum samples for 5th grade Writing failed to provide sufficient detail in listing the criteria required to demonstrate student mastery of the required Standard.[48]

39. Mr. Sarmento testified that JHA's curriculum sample for 5th grade Writing provided a scoring scale and mastery level allowing students to achieve mastery of the Standard without having demonstrated mastery of all components of the required Standard.[49]

40. JHA failed to present any evidence to rebut Mr. Sarmento's testimony and conclusions regarding the insufficiency of the writing samples contained in JHA's preliminary and revised application packages, other than Mr. Gaddie's testimony that his common core standards teacher in Phoenix, Dr. Linda Maltby, who has an expertise in language arts and experience in curriculum development, assisted him in the alignment of the writing templates to the Standards.[50]

41. Mr. Gaddie stated that JHA proposes to use a "form" system, rather than a "grade" system, grouping students by ability rather than grades. Mr. Gaddie asserted that JHA's application was misunderstood and that the questions asked by the TRP

[46] Transcript 81:20-82:16; Exhibit C at 027 at section A.6.4.f.
[47] Transcript 82:17-84:10; Exhibit K5 at 194.
[48] Transcript 84:15-85:13; Exhibit C at 028 at section A.6.5.f.
[49] Transcript 85:14-22; Exhibit C at 028 at section A.6.5.f.
[50] Transcript 132:11-19.

were not appropriate for JHA's educational model.[51] However, the record establishes that JHA's "ability grouping form system" applies its forms to equivalent grades (i.e., "Kindergarten Form: (Equivalent to Kindergarten); Lower Form: (Equivalent to First and Second grades); Middle Form (Equivalent to Third and Fourth grades); Upper Form: (Equivalent to Fifth and Sixth grades)."[52] Further, JHA's charter application references "grades" throughout and provided curriculum samples by grade levels.[53]

42. Mr. Sarmento testified that JHA's revised charter application package failed to meet the Board's scoring criteria and was deemed "Substantively Incomplete" because:

A. More than one scoring area in each section scored "Approaches." Specifically, the Revised Application Scoring Rubric reflects that scoring area A.6.K (Curriculum Samples – Kinder Grades) in Section: Part A (Education Plan) had two scoring areas that scored "Approaches":

i. A.6.K.e (Summative Assessment); and

ii. A.6.K.f (Scoring Scale and Mastery Level)[54]

and

B. It failed the 95 percent Test requiring that at least 95 percent of the scoring areas in each Section (aka "Plan") (Educational Plan, Operational Plan, Business Plan) score at the "Meets" level. JHA's revised charter application package failed to score "Meets" in at least 95 percent of the Scoring areas.[55]

43. Mr. Sarmento testified that JHA's revised charter application package failed to meet the requirements of Title 15, Chapter 1, Article 8 because it lacked an Education Plan that includes a program of instruction that improves pupil achievement and lacked a Writing curriculum aligned to the Standards.[56]

44. Mr. Gaddie testified that JHA's curriculum samples for Reading and Math for grades Kindergarten through Sixth, the Fourth Grade Science curriculum, and the Third

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[51] Transcript, 94:17-24; Exhibit G at 067.
[52] Exhibit G at 067.
[53] Exhibit K1-7.
[54] Exhibit C at 020; C at 021 [see row "A.6.K Total containing "2" in the "A [Approaches]" column]; Transcript 115:17-24.
[55] Exhibit C at 037; Transcript 116:19.
[56] Transcript 20:15-16; 116:24-117:10.

Grade Writing curriculum meet the Board's criteria. Mr. Gaddie further testified that JHA's revised charter application package scored "Meets" in 93 percent of the Scoring areas.

JHA's Qualifications to Operate a Charter School

45. The Board may approve the charter if the Board determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school.[57]

46. The term "sufficiently qualified" is defined as the Board's determination that an applicant's experience, qualifications, current and prior charter compliance, and creditworthiness indicate an ability to implement a charter or operate a charter school.[58]

47. In November 1996, Window Rock entered into a charter school agreement with the Arizona Vocational Technology School, L.L.C. ("AVT") whereby AVT operated charter school Arizona Career and Technology High School ("ACT").[59]

48. Mr. Gaddie was a managing member of AVT in its operation of ACT.[60]

49. On March 19 and 20, 1998, a hearing was held to determine whether there was sufficient factual basis for the revocation of the school charter granted to AVT and ACT by Window Rock.[61]

50. Notice of the hearing was provided to Mr. Gaddie and he attended the hearing.[62]

51. On March 27, 1998, Hearing Officer Patrick M. Dallabetta, Ed.D. issued Findings and Final Recommendations, finding that AVT and ACT were not in substantial compliance with the charter contract between Window Rock and AVT or with provisions of Title 15, Chapter 1, Article 8, A.R.S.[63]

52. Hearing Officer Dallabetta's findings included the following:

> A. ACT did not comply with all federal, state, and local rules, regulations, and statutes relating to health, safety, civil rights, and insurance as required by A.R.S. § 15-183(E)(1).[64]

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[57] A.R.S. § 15-183(C)(2).
[58] A.A.C. R7-5-101.
[59] Exhibit V at 345.
[60] Exhibit V at 345; Exhibit U at 343.
[61] Exhibit V.
[62] Exhibit V at 345-346.
[63] Exhibit V at 361.
[64] Exhibit V at 348.

B. As many as 44 employees of ACT did not have fingerprint checks. ACT management was in substantial noncompliance with its requirement to fingerprint check its employees. "For the record, this is also a serious violation that could effect (sic) the safety and welfare of the students and a serious violation of the law."[65]

C. ACT did not provide a learning environment that would improve pupil achievement.[66]

D. ACT was in substantial noncompliance with the Uniform System of Financial Records and in violation of the Arizona Procurement Law.[67]

E. ACT was in substantial noncompliance with student attendance reporting procedures and that "strong indications are that fraudulent activities could have taken place with regards to attendance reporting."[68]

F. "The evidence provided at the hearing seems to indicate a degree of noncompliance that transcends the basic issues of noncompliance and the contractual obligations of the Charter School operation."[69]

53. Hearing Officer Dallabetta noted in his Findings and Final Recommendations that Mr. Gaddie admitted during the hearing that ACT was not in compliance with statutory requirements or with the terms of its contractual arrangements with Window Rock.[70] Hearing Officer Dallabetta further noted that the responsibility for the issues of noncompliance were the responsibility of the management of AVT and ACT.[71] Hearing Officer Dallabetta recommended that the school charter be revoked by the Governing Board of Window Rock.[72] At its March 30, 1998 meeting, the Governing Board of Window Rock accepted Hearing Officer Dallabetta's recommendation to revoke the

[65] Exhibit V at 350-351.
[66] Exhibit V at 352.
[67] Exhibit V at 353.
[68] Exhibit V at 356.
[69] Exhibit V at 358.
[70] Exhibit V at 357.
[71] Exhibit V at 358.

charter of AVT.[73]

54. At its February 11, 2013 meeting, the Board determined that JHA is not sufficiently qualified to operate a charter school due to Mr. Gaddie's prior operation of ACT, whose charter was revoked in March 1998 by its sponsor, Window Rock, for numerous significant and serious violations of its charter and state law. The Board determined that the violations: (i) evidence a lack of accountability and an unwillingness or inability to comply with state statutes and the charter contract in Mr. Gaddie's previous operation of a charter school; (ii) that the violations also included the charter school's failure to comply with laws relating to health and safety in its failure to comply with Arizona's fingerprinting requirements; and (iii) that those violations in particular affect the safety and welfare of students.[74]

55. At the instant hearing, Mr. Gaddie attempted to re-litigate the matter underlying the revocation of ACT's charter. However, this administrative proceeding is not the appropriate forum in which to do so. Further, the revocation of ACT's charter was not appealed, and therefore, that revocation is a final order.

56. Mr. Gaddie testified about his and his family's history with various charter schools for over thirty years. Mr. Gaddie testified that it is his mother's, not his, application to establish a charter school. However, the record establishes that Applicant is John Hancock Academy, Inc., which is comprised of two directors: Mrs. Gaddie and Mr. Gaddie.[75]

57. Mr. Gaddie testified that his history includes having graduated Valedictorian of his class at his parents' school at 16 years of age. Mr. Gaddie graduated from Mountain States Technical Institute ("Mountain States"). Mr. Gaddie has earned numerous certificates of achievement, letters of recognition, and awards in various industries, including education and curriculum development. Mr. Gaddie taught introductory, intermediate, and advanced courses at Mountain States prior to becoming

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[72] Exhibit V at 361.
[73] Exhibit W at 362.

[74] Transcript 89:21-90:2; Exhibit FF at 422-423.
[75] Transcript 121:10-12; Exhibit L1, L2; Stipulation, ¶ 1 at 1-2.

the Training Director at Mountain States.

58. Mr. Gaddie testified that former students of his parents are having children and approached him about opening a charter school because they wanted their children educated by the Gaddie model of instruction. Mr. Gaddie also testified that his siblings operate the Burke Basic School and Noah Webster School, and that the Happy Valley School was founded by his parents. Mr. Gaddie testified that his parents have educated over 20,000 students and that his father, who is in his 70's, is continuing to teach Math.

59. Mr. Gaddie asserted that information regarding the qualifications of Mrs. Gaddie was not provided to the Board for consideration at its February 11, 2013 meeting.[76] However, the record does not support that contention and establish that the qualifications of Mrs. Gaddie were provided to the Board.[77]

60. Mr. Gaddie testified at length regarding Mrs. Gaddie's qualifications and her experience in the field of education. Mrs. Gaddie has been providing educational experiences for thousands of children since 1970 when she and her husband opened John Hancock Academy in Mesa, Arizona. Mr. Gaddie's parents also formed Happy Valley School approximately 12 years ago. Mrs. Gaddie also assisted with the start-up of Sequoia in 1996, Noah Webster in 1997, and Burke Basic School in 1999.

61. Mr. Gaddie contended that the application at issue is his parents' last opportunity and effort to open a charter school and that he had wanted to dedicate a flagpole to his parents at the school in honor of their contributions to education.

CONCLUSIONS OF LAW

1. In this proceeding, JHA bears the burden to prove by a preponderance of the evidence that the Board acted improperly or contrary to law when it denied JHA's request to establish a charter school.[78] A preponderance of the evidence is "such proof as convinces the trier of fact that the contention is more probably true than not."[79]

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[76] Transcript 172:2-20.

[77] Transcript 28:17-23; 45:8-13; 48:1-4; and 106:13-25; Exhibit L3.

[78] *See* A.R.S. § 15-183(C)(2); A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119(B)(1); *see also Vazanno v. Superior Court,* 74 Ariz. 369, 372, 249 P.2d 837, 838 (1952).

[79] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

2. The Board has discretion to approve an application to establish a charter school and to approve a charter.[80] The Board "may approve the application if the application meets the requirements of [Title 15, Chapter 1, Article 8] and may approve the charter if the [Board] determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school."[81]

3. The weight of the evidence of record establishes that JHA's charter application failed to meet the requirements of Title 15, Chapter 1, Article 8. Consequently, JHA failed to prove by a preponderance of the evidence that the Board's determination to not approve the charter application was improper, contrary to law, or should be reversed.

4. Further, the use of the word "may" in the language of A.R.S. § 15-183(C)(2), indicates the Legislative intent that even if the Board approved JHA's application, the Board had discretion to approve or not approve the charter, and it was within the "sole discretion" of the Board to determine whether JHA was sufficiently qualified to operate a charter school.[82] The Board appropriately considered Mr. Gaddie's prior charter history in making that determination.

5. Mr. Gaddie's previous operation of a charter school whose charter was revoked for numerous significant and serious violations of its charter and state law supports the Board's concerns as to his accountability and willingness to comply with state statutes governing the operation of a charter school and, in particular, statutes that affect the safety and welfare of students. JHA's attempt to re-litigate the revocation of ACT's charter demonstrates an inability to accept responsibility for the reasons for such revocation.

6. The weight of the evidence of record established that JHA failed to sustain its burden of proving by a preponderance of the evidence that the Board's determination to deny JHA's request for a charter was improper, contrary to law, or should be reversed.

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[80] A.R.S. § 15-183(C)(2).
[81] A.R.S. § 15-183(C)(2).
[82] *See The Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 168-69, 962 P.2d 230,

ORDER

It is ordered that the Board's decision to not approve JHA's application to establish a charter school and to deny a charter to JHA is affirmed.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five (5) days from the date of that certification.

Done this day, August 21, 2013.

/s/ Sondra J. Vanella
Administrative Law Judge

Transmitted electronically to:

DeAnna Rowe, Executive Director
State Board for Charter Schools

242-43 (Ct. App. 1998); A.R.S. § 15-183(C)(2).