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STATE OF ARIZONA

OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: **JOHN HANCOCK ACADEMY, INC.** **(**an Arizona non-profit corporation), Applicant	No. 13F-AP-001-BCS **ARIZONA STATE BOARD FOR CHARTER SCHOOLS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Honorable Sondra J. Vanella)

The Arizona State Board for Charter Schools ("Board") hereby files its Proposed Findings of Fact, Conclusions of Law and Order in the above-captioned matter pursuant to Administrative Law Judge Sondra J. Vanella's May 8, 2013 Order Holding Record Open.

John Hancock Academy, Inc. ("Hancock" or "Applicant") appeals the Board's February 11, 2013 decision (1) not to approve Hancock's application to establish a charter school; and (2) to deny Hancock a charter based on the Board's determination that Hancock 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.

PROPOSED FINDINGS OF FACT

A. BACKGROUND

1. An applicant seeking to establish a charter school must submit a written application to a proposed sponsor. A.R.S. § 15-183(A). (May 7, 2013 Stipulations of Fact and Law, ¶ 17 at page 4). The Board is one of several entities that may be a sponsor. A.R.S. § 15-183(C).

2. A.R.S. § 15-183(C)(2) provides that 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. (May 7, 2013 Stipulations of Fact and Law, ¶ 18 at pages 4-5).

3. On June 20, 2012, Hancock timely submitted an application to establish a charter school for the 2013-2014 school year in electronic form to the Board. (May 7, 2013 Stipulations of Fact and Law, ¶ 2 at page 2; Testimony of Steve Sarmento, 22:20-25, 23:4-6 and 20[1]).

[1] All transcript/line references throughout are to the official transcript of the May 7, 2013 hearing.

4. Applicant is an Arizona nonprofit corporation consisting of two principals, Delite and Reed Gaddie, who serve as its Board of Directors and Authorized Representatives. (May 7, 2013 Stipulations of Fact and Law, ¶ 1 at page 1; Exhibits L1, L2 and L3:BCS253[2]; Testimony of Steve Sarmento, 27:4-13).

5. A Technical Review Panel ("TRP")[3] conducted a substantive review of Applicant's new charter application package ("preliminary application package"). (Testimony of Steve Sarmento, 30:10-14). The substantive review process consisted of the TRP's review and scoring of the contents of the Applicant's preliminary application package, using the evaluation criteria contained in the Board's Scoring Rubric, and an in-person interview with Applicant. (Testimony of Steve Sarmento, 30:15 to 31:7; May 7, 2013 Stipulations of Fact and Law, ¶3 and page 2).

6. The TRP conducting the substantive review of Hancock's preliminary application package was composed of five members: Steve Sarmento, two members with a curriculum background, and two members with a finance or business background. (Testimony of Steve Sarmento, 32:11-15). Steve 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

[2] All Board exhibit page number references throughout are to the numbers located in the lower right corner of the document that begin with "BCS".

[3] "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.

employment as a curriculum specialist for a charter management organization as part of a national curriculum development team. (Testimony of Steve Sarmento, 21:7-25).

7. A "substantively complete" application package meets the following scoring requirements: (1) No evaluation area receives a score of Falls Below the Expectations; and (2) No more than one evaluation area in each section is scored as "Approaching"; and (3) at least 95% of the evaluation areas in each Plan (Educational Plan, Operational Plan, Business Plan) score at the "Meets" level. (May 7, 2013 Stipulations of Fact and Law, ¶ 3 at page 2).

8. Based on its review, the TRP concluded that Hancock'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% of the evaluation areas in each section (aka Plan) did not score at the "Meets" level. (Exhibit B:012; Exhibit DD:392).

9. In late October, 2012, members of the TRP conducted an in-person interview of Applicant to provide Applicant the opportunity to demonstrate its understanding of the plan presented in its preliminary application package, to address the TRP's questions regarding Applicant's preliminary application package, and to formulate an assessment of the capacity of Applicant to successfully implement its plan to operate a charter school. (Testimony of Steve Sarmento, 32:16 to 33:7). A Results document was generated in conjunction with the interview. (Testimony of Steve Sarmento, 33:8-22; Exhibit DD:393-397). The information provided by the Applicant during the in-person interview did not change the TRP's overall evaluation and scoring of Applicant's preliminary application package. (Exhibit DD:393-397).

10. Applicant's preliminary application package was found to be substantively incomplete. (Testimony of Steve Sarmento, 33:23 to 34:1; May 7, 2013 Stipulations of Fact and Law, ¶3 at page 2).

11. On November 20, 2012, the Board provided written notice to Applicant 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 Applicant. (May 7, 2013 Stipulations of Fact and Law, ¶ 4 at page 2; Exhibit DD; Testimony of Steve Sarmento, 34:2-8). In areas where the TRP found deficiencies, the TRP provided an explanation of its findings for use by Applicant as technical assistance and suggestions for improving the application package to meet the Board's evaluation criteria. (Testimony of Steve Sarmento, 37:2 to 38:4; Exhibit DD:373-397).

12. On December 18, 2012, Applicant timely submitted a revised application package to the Board. (May 7, 2013 Stipulations of Fact and Law, ¶ 5 at page 3).

13. The revised application package of Applicant was reviewed and scored. (May 7, 2013 Stipulations of Fact and Law, ¶ 6 at page 3; Exhibit C:016-037). The revised 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% of the evaluation areas in each section (aka Plan) did not score at the "Meets" level. (Exhibit B:012; Exhibit EE; Testimony of Steve Sarmento, 39:1-3).

14. On January 11, 2013, the Board provided written notice to Applicant that its revised application package failed to meet the Board's scoring criteria and included a copy of

the completed Scoring Rubric for the revised application package. (May 7, 2013 Stipulations of Fact and Law, ¶ 7 at page 3; Exhibit EE).

15. Applicant timely submitted a request that its revised application package be forwarded to the Board for consideration, regardless of its outcome. A.A.C. R7-5-203(8). (May 7, 2013 Stipulations of Fact and Law, ¶ 8 at page 3; Exhibit A1).

16. At its meeting on February 11, 2013, the Board considered Applicant's revised application package, the Scoring Rubric completed by the TRP, information obtained through verification and investigation of Applicant's background, the written Results of the in-person interview, a report prepared by Board staff, and the presentation by (and discussion with) Applicant. (Testimony of Steve Sarmento, 45:2 to 48:10, 60:18-21; Exhibits A through CC). A.A.C. R7-5-203(10). The Board disapproved Hancock'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[4].

[4] The Board did not include this ground in its Notice of Hearing on Appeal of the Board's Denial of Request for Charter.

(Exhibit FF). Additionally, the Board denied Applicant's request for a charter upon its determination that Applicant was not sufficiently qualified to operate a charter school due to Reed Gaddie's prior operation of a charter school whose charter was revoked in March 1998 by its sponsor, Window Rock Unified School District, for numerous significant and serious violations of its charter and state law. The Board determined that these violations evidence a lack of accountability and an unwillingness or inability to comply with state statutes and the charter contract in Reed Gaddie's previous operation of a charter school, that the violations also included the charter school's failure to comply with laws relating to health and safety, and failure to comply with Arizona's fingerprinting requirements, and that the violations in particular affect the safety and welfare of students. (Testimony of Steve Sarmento, 60:22-25; Exhibit FF).

17. By written Notice dated February 14, 2013, Applicant was advised of the Board's decision. (May 7, 2013 Stipulations of Fact and Law, ¶ 9 at page 3; Exhibit FF). A.A.C. R7-5-202(E).

18. On March 12, 2013, Applicant timely appealed the Board's decision. (May 7, 2013 Stipulations of Fact and Law, ¶ 10 at page 3).

19. The Board alleges that it had cause to disapprove the application of Applicant to establish a charter school and to deny a charter to Applicant on the basis that its charter application failed to meet the requirements of Title 15, Chapter 1, Article 8 and that Applicant is not sufficiently qualified to operate a charter school. The Administrative Law Judge addresses each of the Board's allegations in turn.

B. PROGRAM OF INSTRUCTION AND PUPIL ACHIEVEMENT

20. 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. A.R.S. § 15-101(4), -181(A), -183(B), -183(C); (May 7, 2013 Stipulations of Fact and Law, ¶ 16 at page 4).

21. The Board's application to establish a charter school requires an applicant to provide an explanation of how the implementation of its described program of instruction meets the needs of its identified target population, including improving pupil achievement. (May 7, 2013 Stipulations of Fact and Law, ¶ 12 at page 4; Exhibits E and F).

22. Steve Sarmento testified that Applicant's preliminary and revised application packages did not meet the Board's Target Population scoring criteria because Applicant failed to provide details explaining how its proposed program of instruction will improve pupil achievement in its identified target population. (Exhibit C:016 at section A.2b; Testimony of Steve Sarmento, 63:9-20 and 70:21 to 71:13).

23. Steve Sarmento testified that Applicant'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 Applicant to be between 10 to 40% of its school's population) and English Language Learner[5] ("ELL") students (estimated by

[5] "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).

Applicant to be 6% 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%; ELL students: (1%). (Testimony of Steve Sarmento, 64:24 to 69:15; Exhibit F:BCS056).

24. At its in-person interview, Applicant did not provide clarification or describe the rationale for how its choice of educational model would meet the needs of its target population of students eligible for free or reduced lunch and ELL students. (Testimony of Steve Sarmento, 69:16-21).

C. <u>WRITING CURRICULUM</u>

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. A.R.S. § 15-183(E)(3). (May 7, 2013 Stipulations of Fact and Law, ¶ 13 at page 4; Testimony of Steve Sarmento, 72:9-11).

26. A comprehensive program of instruction means that the program of instruction must align to the Arizona Academic Standards ("Standards"). (Testimony of Steve Sarmento, 72:12-17).

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. (May 7, 2013 Stipulations of Fact and Law, ¶ 14 at page 4; Exhibit K1-K7; Testimony of Steve Sarmento, 73:6-16).

28. The curriculum samples must provide a summative assessment that accurately measures student mastery of the required Standard for each grade level Applicant seeks to serve and to list the criteria required to demonstrate mastery of the Standard. (May 7, 2013 Stipulations of Fact and Law, ¶ 15 at page 4; Testimony of Steve Sarmento, 73:17 to 74:18).

29. Steve Sarmento testified that Applicant's preliminary and revised application packages did not meet the Board's Curriculum Sample scoring criteria because their curriculum samples for Kindergarten writing did not accurately measure student mastery of the required Standard. (Testimony of Steve Sarmento, 75:25 to 76:12; Exhibit C:20 at A.6.K.e).

30. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 76:13-15).

31. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 76:16 to 77:21; Exhibit C:020 at A.6.K.f; Exhibit K1:110).

32. Steve Sarmento testified that Applicant was provided an opportunity to revise the Kindergarten Writing curriculum sample based on the technical assistance provided by the TRP in the scoring rubric, but that the revised application package submitted by Applicant did not

include a revised Kindergarten Writing curriculum sample. (Testimony of Steve Sarmento, 75:9-19, Exhibit C:020 at A.6.K.3 and A.6.K.f).

33. Steve Sarmento testified that Applicant's revised application package did not meet the Board's Curriculum Sample scoring criteria because Applicant's curriculum samples for 1st grade Writing did not accurately measure student mastery of the required Standard. (Testimony of Steve Sarmento, 78:16-25 and 80:7-8; Exhibit C:022 at section A.6.1.e).

34. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 77:22-25; 78:22-25, 79:14-25, 80:1-8; Exhibit C at BCS022; Exhibit K2:132-133).

35. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 80:9 to 81:10; Exhibit C:023 at section A.6.2.e).

36. Steve Sarmento testified that Applicant's preliminary and revised application packages did not meet the Board's Curriculum Sample scoring criteria because Applicant'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. (Testimony of Steve Sarmento, 81:20 to 82:16; Exhibit C:027 at section A.6.4.f).

37. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 82:17 to 84:10; Exhibit K5:194).

38. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 84:15 to 85:13; Exhibit C:028 at section A.6.5.f).

39. Steve Sarmento testified that Applicant'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. (Testimony of Steve Sarmento, 85:14-22 ; Exhibit C:028 at section A.6.5.f).

40. Applicant failed to present any evidence to rebut Mr. Sarmento's testimony and conclusions regarding the insufficiency of the writing samples contained in the preliminary and revised application packages, other than Reed Gaddie's testimony that his common core standards teacher in Phoenix, who has an expertise in language arts and experience in curriculum development, assisted him in the alignment of the writing templates to the Standards. (Testimony of Reed Gaddie, 132:11-19).

41. Reed Gaddie stated that Hancock proposes to use a "form" system, rather than a "grade" system, grouping students by ability rather than grades, and, as a result, Hancock's

application was misunderstood. (Statement of Reed Gaddie, 94:17-24; Exhibit G:067). However, the record establishes that Hancock'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)." (Exhibit G:067). Further, Hancock's charter application references "grades" throughout and provided curriculum samples by grade levels. (Exhibit K1-7).

42. Steve Sarmento testified that Applicant'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 2 scoring areas that scored "Approaches":

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

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

(Exhibit C:020; C:021 [see row "A.6.K Total containing "2" in the "A [Approaches]" column]; Testimony of Steve Sarmento, 115:17-24 and 116:12-16); and

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

the Scoring areas. (Exhibit C:037; Testimony of Steve Sarmento, 116:19).

43. Steve Sarmento, Program and Project Specialist for the Board, testified that Applicant's revised charter application package failed meet the requirements of Title 15, Chapter 1, Article 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. (Testimony of Steve Sarmento, 20:15-16;116:24 to 117:10).

D. APPLICANT'S QUALIFICATIONS TO OPERATE A CHARTER SCHOOL

44. A.R.S. § 15-183(C)(2) provides that 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.

45. By Rule, the Board has defined the term "sufficiently qualified" to mean 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. A.A.C. R7-5-101.

46. In November 1996, the Window Rock Unified School District No. 8 ("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"). (Exhibit V:345).

47. Reed Gaddie was a managing member of AVT in its operation of ACT. (Exhibit V:345; Exhibit U:343).

48. 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. (Exhibit V).

49. Reed Gaddie was provided notice of the hearing and attended the hearing. (Exhibit V:345).

50. On March 27, 1998, Hearing Office Patrick M. Dallabetta, Ed.D issued his 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., and recommending that the charter contract be revoked by Window Rock. (Exhibit V:361).

51. Hearing Officer Dallaberta'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). (Exhibit V: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." (Exhibit V:350-351);
>
> C. ACT did not provide a learning environment that would improve pupil achievement. (Exhibit V:352);
>
> D. ACT was in substantial noncompliance with the Uniform System of Financial Records and in violation of the Arizona Procurement Law. (Exhibit V:353);

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." (Exhibit V:356); and

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." (Exhibit V:358).

52. In his Findings and Final Recommendations, Hearing Officer Dallabetta noted that Reed Gaddie admitted during the hearing that ACT was not incompliance with statutory requirements or with the terms of its contractual arrangements with Window Rock. (Exhibit V:357). Hearing Officer Dallabetta further noted that the responsibility of the issues of noncompliance were the responsibility of the management of AVT and ACT. (Exhibit V:358). Hearing Officer Dallabetta recommended that the school charter be revoked by the Governing Board of Window Rock. (Exhibit V:361).

53. At its meeting on March 30, 1998, the Governing Board of Window Rock accepted the hearing officer's recommendation to revoke the charter of AVT. (Exhibit W:362).

54. At its meeting on February 11, 2013, the Board determined that the Applicant is not sufficiently qualified to operate a charter school due to Reed 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 these violations evidence a lack of accountability and an unwillingness or inability to comply with state statutes and the charter contract in Reed Gaddie's previous operation of a charter school, that the violations also included the charter school's failure to comply with laws relating to

health and safety, and failure to comply with Arizona's fingerprinting requirements, and that these violations in particular affect the safety and welfare of students. (Testimony of Steve Sarmento, 89:21 to 90:2; Exhibit FF:422-423).

55. Reed 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: Delite Gaddie and Reed Gaddie. (Testimony of Reed Gaddie, 121:10-12; Exhibit L1, L2; May 7, 2013 Stipulations of Fact and Law, ¶ 1 at pages 1-2).

56. Reed Gaddie testified that information regarding the qualifications of Delite Gaddie was not provided to the Board for consideration at its meeting on February 11, 2013. (Testimony of Reed Gaddie, 172:2-20). However, the record does not support this. The qualifications of Delite Gaddie were provided to the Board for consideration. (Testimony of Steve Sarmento, 28:17-23; 45:8-13; 48:1-4; and 106:13-25; Exhibit L3).

PROPOSED CONCLUSIONS OF LAW

1. In this proceeding, the Applicant bears the burden to prove, by a preponderance of the evidence that the Board acted improperly or erroneously or abused its discretion when it denied Applicant's request to establish a charter school. *See* A.R.S. § 15-183(C)(2); A.R.S. § 41-1092.07(G)(1); Arizona Administrative Code R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837, 838 (1952). 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).

2. The Board has discretion to approve an application to establish a charter school and to approve a charter. A.R.S. § 15-183(C)(2). 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." A.R.S. § 15-183(C)(2).

3. The weight of the evidence of record establishes that Hancock's charter application failed to meet the requirements of Title 15, Chapter 1, Article 8 and supports the Board's determination that Applicant is not sufficiently qualified to operate a charter school.

4. Even if the Board approved Hancock's application to establish a charter school, the Board still had the discretion to deny a charter contract to Hancock. The language of A.R.S. § 15-183(C)(2) and specifically the use of the word "may" indicate that even if the Board approved Hancock's application it still had discretion to approve or not approve the charter. *See The Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 168-169, 962 P.2d 230, 242-243 (Ct. App. 1998). Moreover, it was within the "sole discretion" of the Board to determine whether Hancock was sufficiently qualified to operate a charter school. A.R.S. § 15-183(C)(2). The Board's consideration of Reed Gaddie's prior charter compliance in making that determination is within the Board's discretion and supported by the Board's Rules.

5. Reed Gaddie's previous operation of a charter school whose charter was revoked for numerous significant and serious violations of its charter and state law raises 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.

6. Upon consideration of all of the evidence presented, the Administrative Law Judge concludes that the Applicant failed to sustain its burden of proving by a preponderance of the evidence that the Board acted improperly or erroneously or abused its discretion when it denied Applicant's request to establish a charter school.

ORDER

It is ordered that the Board's decision to disapprove the application of Applicant to establish a charter school and to deny a charter to Applicant is affirmed.

Signed this 14th day of June, 2013.

THOMAS C. HORNE
Attorney General

/s/ Kim S. Anderson
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COPY of the Proposed Findings of Fact, Conclusions of Law and Order filed electronically this 14th day of June, 2013 with:

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By ksa
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