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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' RESPONSE IN OPPOSITION TO APPLICANT'S MOTION FOR INFORMAL HEARING UNDER HEARINGS ARS 41-1092.07.F.1** (Honorable Judge Sondra J. Vanella)

In response to Applicant's Motion for Informal Hearing under Hearings ARS 41-1092.07.F.1 ("Motion"), the Arizona State Board for Charter Schools ("Board") objects on the basis that the Motion is premature, unclear, and has no basis in law.

Arizona Revised Statutes § 41-1092.07(F)(1) states:

> Unless otherwise provided by law, the following apply:
>
> 1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for

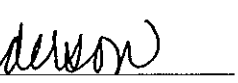
> reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

Under this provision, the formal Rules of Evidence used in the courts are not applied in administrative hearings, and the Administrative Law Judge has more discretion to admit evidence into the record. *See* Brian Brendan Tully, A Brief Overview of the OAH Hearing Process for Parties, Vol 15 (April 2000), http://www.azoah.com/Vol15.html. The conduct of the hearing and the extent to which the formal Rules of Evidence are applied are matters that are in the discretion of the Administrative Law Judge, not counsel for the Board. *See* A.R.S. § 41-1092.07(F)(1)("A hearing *may* be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings" (emphasis added). However, this discretion is most appropriately exercised *during* the hearing, at the time in which evidence is sought to be introduced; not *prior* to the hearing. Applicant's request for a *pre-hearing determination* "that the Assistant Attorney General conduct this Hearing without adherence to the Rules of Evidence required bin (sic) judicial proceedings" and that "the attorney for the State instruct his witnesses to do the same" is not contemplated by A.R.S. § 41-1092.07(F)(1). *See* Applicant's Order Motion for Informal Hearing ARS 41-1092.07.F1 of the Rules of the Arizona Supreme Court. Therefore, Applicant's Motion is premature and has no basis in law.

For the foregoing reasons, the Board respectfully requests that Applicant's Motion for Informal Hearing under Hearings ARS 41-1092.07.F.1. be denied.

DATED this 3rd day of May, 2013.

THOMAS C. HORNE
Attorney General



Kim S. Anderson
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COPY of the Response filed this 3rd day of May, 2013 with:

Office of Administrative Hearings
1400 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing Response emailed and mailed by regular mail this 3rd day of May, 2013 to:

John Hancock Academy, Inc.
Delite Gaddie, Statutory Agent and Authorized Representative
Reed Gaddie, Authorized Representative
152 West 10th Drive
Mesa, AZ 85210
Email: rgad@cox.net

COPY of the foregoing Response emailed this 3rd day of May, 2013 to:

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

By _____
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