

Issue

The Board's remand of the case to the Administrative Law Judge for reconsideration of the matter in light of the new evidence has been denied by the Office of Administrative Hearings. Absent any additional action, the Decision of the Administrative Law Judge will be certified June 14, 2014 in accordance with statute. The Office of Administrative Hearings indicated the Board can achieve the same result by allowing the Decision to be certified and then immediately ordering a limited rehearing of the matter before the Administrative Law Judge based on the new evidence. The Board has received a Motion from the State and a Response from the charter holder that may be considered. Given its previous action in this matter cannot be implemented as intended; the Board may reconsider its options and take alternative action.

Background

On May 14, 2014, Board staff submitted a letter (Appendix A) to the Administrative Law Judge assigned to the case explaining the reason for the Board's rejection of the Decision and request to resubmit the case so that the State may introduce new evidence relevant to the case and the opposing party be allowed to respond.

On May 15, 2014, the Office of Administrative Hearings provided a Minute Entry (Appendix B) stating the Board's request to resubmit the matter for consideration of additional evidence is not an option afforded to the Board under statute.

On May 21, 2014, the Board received a Motion for the Arizona State Board for Charter Schools to Issue a Final Administrative Decision Prior to June 14, 2014 (Appendix C).

On May 29, 2014, the Board received KDLO's Response to Motion for the Arizona State Board for Charter Schools to Issue a Final Administrative Decision Prior to June 14, 2014 (Appendix D).

Board Options

1. Consider the Motion and Response provided.
2. Proceed with its consideration of the Administrative Law Judge Decision in the matter as originally presented.
3. Take no action and allow the Administrative Law Judge Decision to be certified.
4. Take action to allow the Administrative Law Judge Decision to be certified and, upon certification, order a rehearing for the consideration of new evidence related to the Board's Exhibit 3.

APPENDIX A

Arizona State Board for Charter Schools

Physical Address:
1616 West Adams Street, Suite 170
Phoenix, Arizona 85007
Phone: (602) 364-3080
Fax: (602) 364-3089



Mailing Address:
PO Box 18328
Phoenix, Arizona 85009

May 14, 2014

The Honorable Brian Brendan Tully
Office of Administrative Hearings
1400 W Washington St, #101
Phoenix, AZ 85007

RE: No. 14F-FSRV-003-BCS

Dear Judge Tully,

The Board considered the Recommended Decision in this matter at its meeting on May 12, 2014. The Board rejected the decision in its entirety based on the need for the State to introduce new evidence relevant to the case. Because of errors in in the computer code written to calculate the points, there was an error in the Board's Exhibit 3 submitted at the hearing. The Board voted to resubmit the case to the Administrative Law Judge so that the State may introduce the evidence and the opposing party be allowed to respond. The Administrative Law judge can then submit an amended recommended decision based on the entire administrative record, including the new evidence.

Sincerely,

A handwritten signature in blue ink that reads "DeAnna Rowe".

DeAnna Rowe
Executive Director

Attachment: Revised Board Exhibit 3

cc: Gehl Tucker, Attorney for Kin Dah Lichii Olta, Inc.
Kim Anderson, Assistant Attorney General
Cliff Vanell, Office of Administrative Hearings

APPENDIX B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

KIN DAH LICHII OLTA, a non-profit
corporation, operating
KIN DAH LICHII OLTA, a charter school

No. 14F-FSRV-003-BCS

Minute Entry

The Director, having reviewed the document filed May 14, 2014, makes the following
minute entry:

OAH is in receipt of a May 14, 2014 letter, transmitted to it by the Executive
Director for the Arizona State Board for Charter Schools (Board), indicating
that on May 12, 2014, the Board had rejected the Recommended Decision
of the Administrative Law Judge issued in the above-entitled matter, and
resubmitted the matter for the consideration of additional evidence.¹

In this case, A.R.S. § 41-1092.08(B) permits the Board to accept, reject, or
modify a Recommended Decision by five days after the next meeting
subsequent to May 27, 2014. OAH has calculated that date as June 14,
2014.² OAH interprets A.R.S. § 41-1092.08(D) to require that a rejection
be accompanied by the Board's final administrative decision.³

Although the Board has explained its rationale for the rejection of the
Recommended Decision of the Administrative Law Judge, it has not issued
its final administrative decision and provided OAH with such final
administrative decision. Should such final administrative decision not be
received by OAH by June 14, 2014, the Recommended Decision of the
Administrative Law Judge will thereupon be certified as the final

¹ In effect, the Board has set the matter for rehearing. Pursuant to A.R.S. § 41-1092.09(A)(1), a rehearing
must be preceded by an agency's final administrative decision. Pursuant to A.R.S. § 41-1092.08(F), a
final administrative decision subsequent to the transmission of an Administrative Law Judge Decision is
the result of either timely action by the Board or certification by OAH.

² Pursuant to A.R.S. 41-1092.08(D), as the Board meets monthly, unless a Recommended Decision is
sent more than 35 days before a meeting (30 days plus 5 days for mailing), the Board need only act on
the Recommended Decision at its next meeting thereafter. OAH erroneously reflected a due date of May
27, 2014, when transmitting the Recommended Decision on April 22, 2014.

³ A rejection may take the form of adopting some or all of the Administrative Law Judge's findings of fact,
conclusions of law or order and /or substituting its own findings of fact, conclusions of law or order.

1 administrative decision of the Board pursuant to A.R.S. § 41-1092.08(D).

2
3 Done this day, May 15, 2014.

4
5 /s/ Cliff J. Vanell
6 Director

7
8 DeAnna Rowe, Executive Director
9 State Board for Charter Schools
10 PO Box 18328
11 Phoenix, AZ 85009

12 DeAnna.Rowe@asbcs.az.gov

13 Kim S. Anderson, Esq.
14 Attorney General's Office
15 1275 West Washington Street
16 Phoenix, Arizona 85007

17 kim.anderson@azag.gov

18 R. Gehl Tucker, Esq.
19 Samantha B. Kelty, Esq.
20 Linda A. Samuels, Esq.
21 Hufford, Horstman, Mongini, Parnell & Tucker, P.C.
22 120 N. Beaver St.
23 Post Office Box B
24 Flagstaff, AZ 86002

25 gt@h2m2law.com
26 sbk@h2m2law.com
27 Linda@h2m2law.com

28
29 By: Cruz Serrano
30

APPENDIX C

1 THOMAS C. HORNE
2 Firm Bar No. 014000
3 Attorney General

4 Kim S. Anderson (#010584)
5 Assistant Attorney General
6 Education and Health Section
7 1275 West Washington Street
8 Phoenix, Arizona 85007
9 Telephone: (602) 364-0402
10 Facsimile: (602) 364-0700
11 E-mail: kim.anderson@azag.gov

8 **BEFORE THE ARIZONA STATE BOARD**
9 **FOR CHARTER SCHOOLS**

11 In the Matter of:

No. 14F-FSRV-003-BCS

12 **KIN DAH LICH'I OLTA', INC.**, a
13 non-profit corporation, operating
14 **KIN DAH LICH'I OLTA'**, a charter
15 school

**MOTION FOR THE ARIZONA
STATE BOARD FOR CHARTER
SCHOOLS TO ISSUE A FINAL
ADMINISTRATIVE DECISION
PRIOR TO JUNE 14, 2014**

16 Undersigned counsel moves for the Arizona State Board for Charter Schools
17 (“Board”) to issue a final administrative decision in the above-entitled matter prior to
18 June 14, 2014. If the Board fails to issue a final administrative decision prior to June
19 14, 2014, the Office of Administrative Hearings (“OAH”) will certify the Decision of
20 the Administrative Law Judge (“ALJ”) as the final administrative decision of the
21 Board. Both of the parties in the above-entitled matter have requested that the Board
22 make modifications to the Decision.
23
24

25 ///

26 ///

1 **Factual Background**

2 On March 18, 2014, a hearing on the Board’s Notice of Intent to Revoke Charter
3 was held at OAH. On April 22, 2014, the ALJ issued his recommended decision and
4 order (“Decision”). On May 5, 2014, undersigned counsel submitted a Motion to
5 Accept, Reject or Modify the Administrative Law Judge’s Decision and Recommended
6 Order (“Motion”), requesting that the Board make modifications to the Decision. On
7 May 6, 2014, counsel for Kin dah Lichi’i Olta’ submitted a Response. It was the
8 request of *both* parties that the Board modify the Decision. On May 12, 2014, the
9 Board, upon hearing that there was new evidence relating to the matter, immediately
10 rejected the Decision and resubmitted it to OAH for consideration of the new evidence.
11 The Board did not discuss the findings and conclusions contained in the Decision. Nor
12 were the parties provided the opportunity to argue their Motion and Response.
13
14
15

16 On May 15, 2014, OAH issued a Minute Entry advising the Board of the
17 following:

- 18 • A.R.S. § 41-1092.08(B) permits the Board to accept, reject, or modify the
19 Decision
- 20 • Pursuant to A.R.S. § 41-1092.08(D), a rejection of the Decision must be
21 accompanied by the Board’s final administrative decision
- 22 • Pursuant to A.R.S. § 41-1092.09(A)(1), a rehearing must be preceded by the
23 Board’s final administrative decision
- 24 • Pursuant to A.R.S. § 41-1092.08(D), if a final administrative decision is not
25 received by OAH by June 14, 2014, the ALJ’s Decision will be certified as the
26 final administrative decision of the Board

1 **Argument**

2 The Board’s action on May 12, 2014 was based on its assumption that it could
3 “resubmit” the matter to OAH for consideration of the new evidence and for an
4 amended recommended decision. As reflected in OAH’s Minute Entry, such action is
5 not permitted under A.R.S. § 41-1092.08. Accordingly, prior to June 14, 2014,
6 additional action is required by the Board to issue its final administrative decision.
7

8 Arizona Revised Statutes § 41-1092.08(B) permits the Board to review the
9 ALJ’s Decision and accept, reject or modify it. If the Board rejects or modifies the
10 Decision, the Board must timely file with OAH a copy of the ALJ’s Decision with the
11 rejection or modification *and* “a written justification setting forth the reasons for the
12 rejection or modification.” *Id.* A rejection of the Decision must be accompanied by a
13 final administrative decision. A.R.S. § 41-1092.08(D). If the Board fails to take action
14 in a timely manner, OAH will certify the ALJ’s decision as the Board’s final
15 administrative decision. *Id.*
16
17

18 As reflected in the Motion, undersigned counsel has requested modifications to
19 the ALJ’s Decision. As reflected in both the Motion and the Response, *both* parties
20 seek modifications to the ALJ’s recommended order. In its actions on May 12, 2014,
21 the Board did not review the Decision and did not issue a final administrative decision.
22 Nor did the Board allow the parties to present oral argument on the ALJ’s Decision, as
23 afforded by the April 23, 2014 email from the Board’s Executive Director. The
24 opportunity for a rehearing or review is available after the Board has issued its final
25 administrative decision. A.R.S. § 41-1092.09(A)(1).
26

1 **Conclusion**

2 As the sponsor of charter school Kin dah Lichi'i Olta', the Board should conduct
3 a considered review of the ALJ's Decision and issue a final administrative decision.

4 The Board should not, by default, allow the Decision of the ALJ to be certified as the
5 final administrative decision of the Board. Undersigned counsel's Motion should be
6 granted and the matter set for action by the Board prior to June 14, 2014.
7

8 DATED this 21st day of May, 2014.
9

10 THOMAS C. HORNE
11 Attorney General

12 By /s/ Kim S. Anderson
13 Kim S. Anderson
14 Assistant Attorney General

15 COPY of the foregoing Motion submitted
16 electronically this 21st day of May, 2014 to:

17 Arizona State Board for Charter Schools
18 deanna.rowe@asbcs.az.gov

19 R. Gehl Tucker
20 Attorney for Kin dah Lichi'i Olta', Inc.
21 gt@h2m2law.com

22 Samantha B. Kelty
23 Attorney for Kin dah Lichi'i Olta', Inc.
24 sbk@h2m2law.com

25 Linda A. Samels
26 Attorney for Kin dah Lichi'i Olta', Inc.
linda@h2m2law.com

By ksa
P0012013003738/3823748/ksa

APPENDIX D

1 R. Gehl Tucker, No. 022303
Samantha B. Kelty, No. 024110
2 Linda A. Samels, No. 025885
HUFFORD, HORSTMAN, MONGINI, PARNELL & TUCKER, P.C.
3 120 North Beaver Street
Post Office Box B
4 Flagstaff, Arizona 86002
Telephone: (928) 226-0000
5 Facsimile: (928) 779-3621
gt@h2m2law.com
6 sbk@h2m2law.com
linda@h2m2law.com
7 *Attorneys for Kin Dah Lichi 'I Olta', Inc.*

8 **BEFORE THE ARIZONA STATE BOARD**
FOR CHARTER SCHOOLS

No. 14F-FSRV-003-BCS

9
10 In the Matter of:
11 KIN DAH LICHI'I OLTA', Inc. a non-,
profit corporation, operating
12 KIN DAH LICHI'I OLTA', a charter
school

***KDLO'S RESPONSE TO MOTION
FOR THE ARIZONA STATE
BOARD FOR CHARTER SCHOOLS
TO ISSUE A FINAL
ADMINISTRATIVE DECISION
PRIOR TO JUNE 14, 2014***

14 Kin Dah Lichi'i Olta' ("KDLO"), by and through its undersigned counsel, hereby
15 submits its Response to the Motion for the Arizona State Board for Charter Schools to Issue a
16 Final Administrative Decision Prior to June 14, 2014 ("KDLO's Response").

17 KDLO respectfully requests the Arizona State Board for Charter Schools ("Arizona
18 State Board"), in issuing a Final Administrative Decision in this matter, declare a moratorium
19 on the revocation of KDLO's charter and of the charters from High Density Native American
20 Charter schools, for the reasons set forth below.

21 The evidence on which the proposed revocation of KDLO's charter is based is flawed
22 and therefore, the basis for the revocation questionable. At the May 12, 2014 Arizona State
23 Board meeting, KDLO was prepared to present oral argument in opposition to the proposed
24

1 modifications of the Administrative Law Judge’s (“ALJ”) Decision and to request the Arizona
2 State Board impose a moratorium on charter revocations of High Density Native American
3 Charter schools, including KDLO. However, at the May 12, 2014 meeting, the State revealed
4 that its evidentiary record supporting revocation of KDLO’s charter contained errors. In
5 response, the Arizona State Board voted to remand the entire case to the ALJ for re-review,
6 based on corrected evidence to be introduced by the State. [See May 14, 2014 letter from
7 DeAnna Rowe to The Honorable Brian Brendan Tully attached as *Exhibit A.*] Use by the State
8 of flawed evidence to support its proposal for revocation of KDLO’s charter creates several
9 potential claims by KDLO, including violation of its equal protection, which makes all the
10 more prudent a withdrawal of the revocation of its charter.

11 The current proposed revocations continue to exacerbate the disparate impact of the
12 Arizona Department of Education’s (“ADE”) regulations and requirements on High Density
13 Native American Charter schools, including KDLO. This is not a matter of general non-
14 compliance and is distinguishable from other non-performing charter schools. As stated in
15 KDLO’s Response to the State’s Motion to Accept, Reject or Modify the Administrative Law
16 Judge’s Decision and Recommended Order, the disparate impact of current ADE standards
17 have resulted in de facto prohibition of Arizona Native American Charter schools from
18 participating in the Arizona State Charter school system.

19 Revocation of KDLO’s charter renders KDLO’s students without a chance for greater
20 educational opportunities by requiring its students pursue unfavorable options. If KDLO’s
21 charter is revoked, most if not all of its students will be forced to enroll at Ganado Middle
22 School. Ganado Middle School, with a student enrollment of approximately 245 students, is
23 much larger than KDLO. Because of KDLO’s significantly lower student enrollment of 27
24 students, it is in the position of being able to provide intense, individual student attention in

1 smaller class sizes which a larger school is not. Moreover, in the 2013 school year, Ganado
2 Middle School received a letter grade of “D.” [See 2013 Ganado Middle School Report Card
3 attached as *Exhibit B.*] KDLO students would not obtain any academic advantage or benefit
4 whatsoever by transferring from KDLO to a letter grade “D” school. Furthermore, there is no
5 record that Ganado Middle School is implementing changes to improve its academic program;
6 whereas KDLO has demonstrated the changes and improvements it has implemented and solely
7 seeks additional time to realize the effects of its academic improvements.

8 KDLO and other Arizona High Density Native American Charter schools, led by the
9 efforts of Senator Carlyle Begay of the Arizona State Legislature, have been meeting and
10 working together to address improving academic achievement and to create appropriate and
11 challenging academic standards to correct the effects of the disparate impact caused by the
12 current ADE standards. Additional time is needed to implement these changes. A moratorium
13 on the revocation of charters from High Density Native American Charter schools would allow
14 the process for these very important and crucial changes to be completed and the changes
15 implemented.

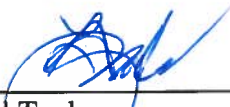
16 The moratorium would not create a precedent which extends to all charter schools, but
17 should be directed only at select charter schools, such as KDLO, which have suffered the
18 effects of disparate impact in order that an opportunity is provided to these schools to correct
19 the disparate impact they have suffered. Likewise, a moratorium on the revocation of charters
20 from High Density Native American Charter schools would ensure these schools continue to
21 provide choice in education as is the policy of this State, and would ensure that the children
22 attending KDLO and the other that High Density Native American Charter schools, are
23 afforded the same choice in education guaranteed by Arizona law to extend to all of Arizona’s
24 children.

HUFFORD, HORSTMAN, MONGINI, PARNELL TUCKER, P.C.
Attorneys at Law
Post Office Box B
120 North Beaver Street
Flagstaff, Arizona 86002
(928) 226-0000

1 WHEREAS, for the foregoing reasons, KDLO respectfully requests the Arizona State
2 Board for Charter Schools, in issuing a Final Administrative Decision, declare a moratorium on
3 the revocation of KDLO's charter and of the charters from High Density Native American
4 Charter schools.

5 RESPECTFULLY SUBMITTED this 29th day of May, 2014.

6
7 HUFFORD, HORSTMAN, MONGINI,
PARNELL & TUCKER P.C.

8
9 
10 _____
11 R. Gehl Tucker
12 Samantha B. Kelty
13 Linda A. Samels

14 **COPY** of the foregoing submitted
15 electronically this 29th day of May, 2014, to
16 each of the following:

17 AZ State Board for Charter Schools
18 c/o Deanna Rowe, Executive Director
19 1616 West Adams, Suite 170
20 Phoenix, AZ 85007
21 deanna.rowe@asbcs.az.gov

22 Kim S. Anderson, Assistant Attorney General
23 Civil Division/Education and Health Section
24 1275 West Washington St.
25 Phoenix, AZ 85007
kim.anderson@azag.gov

26 By: 

Exhibit A

Arizona State Board for Charter Schools

Physical Address:
1616 West Adams Street, Suite 170
Phoenix, Arizona 85007
Phone: (602) 364-3080
Fax: (602) 364-3089



Mailing Address:
PO Box 18328
Phoenix, Arizona 85009

May 14, 2014

The Honorable Brian Brendan Tully
Office of Administrative Hearings
1400 W Washington St, #101
Phoenix, AZ 85007

RE: No. 14F-FSRV-003-BCS

Dear Judge Tully,

The Board considered the Recommended Decision in this matter at its meeting on May 12, 2014. The Board rejected the decision in its entirety based on the need for the State to introduce new evidence relevant to the case. Because of errors in the computer code written to calculate the points, there was an error in the Board's Exhibit 3 submitted at the hearing. The Board voted to resubmit the case to the Administrative Law Judge so that the State may introduce the evidence and the opposing party be allowed to respond. The Administrative Law judge can then submit an amended recommended decision based on the entire administrative record, including the new evidence.

Sincerely,

A handwritten signature in blue ink that reads "DeAnna Rowe".

DeAnna Rowe
Executive Director

Attachment: Revised Board Exhibit 3

cc: Gehl Tucker, Attorney for Kin Dah Lichii Olta, Inc.
Kim Anderson, Assistant Attorney General
Cliff Vanell, Office of Administrative Hearings

Kin Dah Lichii Olta CTDS: 01-87-59-101 | Entity ID: 78841

General | Site Contact | Inspections | Grades | Governing Body | FY Data | Site Visits | Member Campuses | Amendments

Academic Performance

Academic Performance

NO PERMISSION TO EDIT
Kin Dah Lichii Olta

		2012 Small Elementary School (7-8)			2013 Traditional Elementary School (7 to 8)		
1. Growth		Measure	Points Assigned	Weight	Measure	Points Assigned	Weight
1a. SGP	Math	82.5	100	25	39	50	25
	Reading	42	50	25	23	25	25
1b. SGP Bottom 25%	Math	NR	0	0	NR	0	0
	Reading	NR	0	0	NR	0	0
2. Proficiency		Measure	Points Assigned	Weight	Measure	Points Assigned	Weight
2a. Percent Passing	Math	35 / 43	50	7.5	22 / 61.1	25	7.5
	Reading	44 / 69.2	50	7.5	26.8 / 78.1	25	7.5
2b. Composite School Comparison	Math	-6.5	50	7.5	-32	25	7.5
	Reading	25.1	25	7.5	-47.8	25	7.5
2c. Subgroup ELL	Math	NR	0	0	NR	0	0
	Reading	NR	0	0	NR	0	0
2c. Subgroup FRL	Math	35 / 36.4	50	7.5	22 / 51	25	7.5
	Reading	44 / 64.8	50	7.5	26.8 / 70.7	25	7.5
2c. Subgroup SPED	Math	NR	0	0	NR	0	0
	Reading	NR	0	0	NR	0	0
3. State Accountability		Measure	Points Assigned	Weight	Measure	Points Assigned	Weight
3a. State Accountability		D	25	5	F	25	5
Overall Rating		Overall Rating			Overall Rating		
Scoring for Overall Rating 89 or higher: Exceeds Standard <89, but > or = to 63: Meets Standard <63, but > or = to 39: Does Not Meet Standard Less than 39: Falls Far Below Standard		59.38			31.25		
		100			100		



SCHOOL REPORT CARD 2013
Arizona Department of Education
 John Huppenthal Superintendent of Public Instruction
 Research and Evaluation Section
 (602) 542-5151 / reportcards@azed.gov

Ganado Middle School
 Ganado Unified School District

 Highway 264
 Ganado, AZ 86505
 Not Avail

Principal	Not Avail
Entity ID	4727
CTDS	010220103
Grades Served	6 - 8
Students Enrolled	245
Type of School	Regular Facility - In A Unified School District
Office Hours	Not Avail
Number of Instruction hours	Not Avail
Number of Instruction days	180
School Year Start and End	08/05/2013 - 05/23/2014

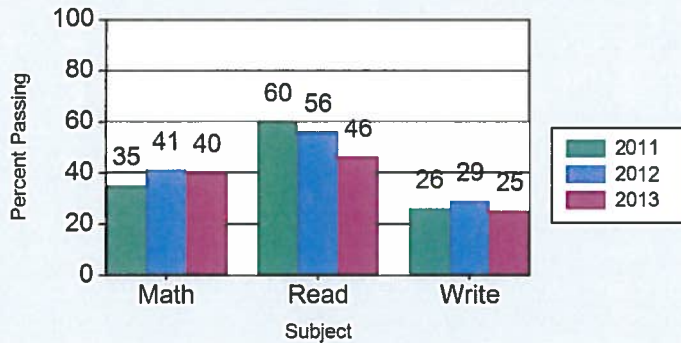
School Mission and Goals

Not Avail

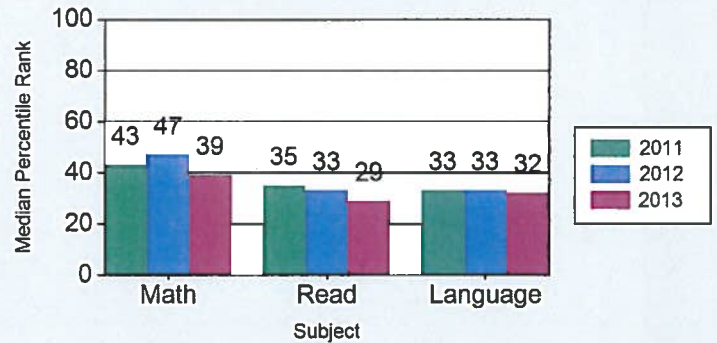
A-F Letter Grade For The School	D
The Federal School Improvement Status	None
The AMO Status For This School	Not Met
The AYP Status For This School	Discontinued

Test Results for Spring 2013

Arizona's Instrument to Measure Standards (AIMS)



Norm Referenced



Measure of Academic Progress (MAP)

Coming Soon

Arizona English Language Learners Assessment (AZELLA)

ELL Reclassification Rate NA

On campus Incidents: No incidents reported
 No comments reported

School Performance Measures

Attendance Rate	93.2%
Promotion Rate**	100.0%
Dropout Rate	0.7%
Four-Year Graduation Rate*	NA
Five-Year Graduation Rate*	NA

* - Graduation Rate does not apply to K-8 Schools
 ** - Promotion Rate is based on self-reported data (October 1 Enrollment and year-end number of students promoted)
 NA - Not Applicable