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**AGENDA ITEM:** Kachina Country Day School, Inc.

At its meeting on July 12, 2010, the Board was provided a [Renewal Executive Summary Report](#) prepared by staff and a [Response prepared by Kachina Country Day School, Inc.](#) (“Kachina”) for its consideration of Kachina’s request for renewal of its charter. At that meeting, the Board denied the request for renewal on the basis that Kachina failed to complete the obligations of its charter and failed to comply with Title 15, Charter 1, Article 8, A.R.S.

Specifically, the Board determined that Kachina, during the term of the contract, failed to meet the obligations of the contract or failed to comply with federal or state law when it:

1. Failed to comply with the fingerprinting requirements in accordance with 15-183(C)(4);
2. Failed to timely submit annual financial audits in accordance with A.R.S. §§ 15-183(E)(6) and 15-914;
3. Failed to comply with State laws regarding Open Meeting Laws;
4. Failed to comply with Federal laws requiring the Charter Holder pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States. 26 U.S.C. § 3401 et seq. (“Internal Revenue Code”);
5. Failed to comply with State laws requiring the Charter Holder to submit Arizona income tax required to be deducted and withheld from the wages of its employees to the Arizona Department of Revenue;
6. Failed to provide a Business Plan that identifies organizational structure of the charter holder;
7. Failed to provide a Business Plan that addresses the fiscal viability of the entity for the continuation of the operation of a charter school; and
8. Failed to comply with State laws regarding its issuance of Extracurricular Activities Tax Credits.

The Board [minutes from the July 12, 2010 meeting](#) pertaining to the Kachina discussion state:

6. Kachina Country Day School, Inc.

Janece Kline, Executive Director, Cristie Kline, Business Manager, and Steve Prahcharov, Principal for Kachina Country Day School, Inc., addressed the Board. Mr. Prahcharov stated the Board had been provided a document in response to the Executive Summary for the school and discussed the acquisition of Stars Prep Academy and its current enrollment and staff. Mrs. Kline stated she was impressed with the diligence of the Board in the renewal process and stated she was the founder of the school and has been the executive director for over 40 years. Mrs. Kline stated that mistakes have been made and that they have learned from the mistakes along the way. Each mistake was attended to and corrective action was proposed and feels like most of the mistakes have been taken care of. Critical issue is that of an outstanding IRS obligation which is a major concern and a result of the financial swamp resulting from taking on Stars Prep Academy. The school is currently working out the problem with the IRS and anticipates being able to complete its obligations to the IRS in the remaining year of the charter. In addressing questions from Mr. Logan related to the IRS matter, Mrs. Kline stated she knew about the problem all along and it began in 2006 when Kachina took over Stars Prep. The school did not take on any IRS obligation of the previous charter, but became delinquent when meeting the other operating expenses. Ms. Cristie Kline stated that after establishing an installment plan, the school entered an offer in compromise and stopped making installment payments while waiting for a response from the IRS. Mrs. Kline confirmed that no further payments were made because they didn’t understand that they were required to do so. With regard to fingerprint clearance card violations, Mrs. Kline stated that the two issues were cleared up. The school had no response as to why it took 6 months of withholding to correct the matter. With regard to all of the previous violations included in the Executive Summary, Mrs. Kline stated that these are small things compared to all of the things the school does well. Mr. Logan stated that the areas of non-compliance are related to statutory requirements and that he would probably have to agree to disagree as to what the small things are. Ms Gifford commented that the Board has the obligation

to look at the totality of the school's relationship with the State. Mrs. Kline provided information that the fingerprint committee was established a few months back. The audit committee was recently created. Mrs. Kline stated that she has recently brought people in to assist with the financial operations of the school and she feels like she has a competent staff in place. Taxes will be paid in the next year and thinks the payment will be approximately \$6000 month for the charter school. In explaining the management structure for the separation of the private school from the charter school, Mrs. Kline stated they have always had a combined audit of both programs with separate payroll and separate budget tracking. This year the auditor suggested separate bank accounts. Mrs. Kline stated the private school has been the cash support for the charter school, but it always comes out on the right side of the ledger. The school board is a policy making board, with Mrs. Kline making recommendations which can be passed or rejected. The principals bring forward the recommendations. Mr. Butler stated that as stewards of state resources, there is a concern over the repeated compliance issues and the number of issues that require State attention.

Ms. Gifford asked Assistant Attorney General Kim Anderson what the appeals process would be if a charter is not granted. Ms. Anderson stated that it would be an appealable agency action and would be similar to the application process. If the Board determines not to grant a renewal, the Board needs to establish a basis for the non-renewal. The information is provided to the renewal applicant and there is an opportunity to appeal the decision through a hearing. The hearing would be held. Ms Gifford asked for confirmation that there is no cure period like there would be for revocation, but rather the appeal would be based on whether the reasons for denying the renewal would be held up. Ms. Anderson confirmed the focus would be on reasons stated for denial and whether there was sufficient information to uphold the decision.

Ms. Alvarado-Hernandez asked for confirmation that the school does not have the funds in reserves to pay the installment payments that were not paid to date. The school confirmed there are no reserves.

#### **MOTION**

Janna Day made a motion stating, based upon a review of the information provided by the applicant and the contents of the application which includes the academic performance, the fiscal compliance, and legal and contractual compliance of the charter holder over the charter term, I move to deny the request for charter renewal and to not grant a renewal contract for Kachina Country Day School, Inc. Specifically, the charter holder, during the term of the contract, failed to meet the obligations of the contract when it failed to comply with federal or state law when it: 1) Failed to comply with the fingerprinting requirements in accordance with A.R.S. §15-183(C)(4); 2) Failed to timely submit annual financial audits in accordance with A.R.S. §§15-183(E)(6) and 15-914; 3) Failed to comply with State laws regarding Open Meeting Laws; 4) Failed to comply with Federal laws requiring the Charter Holder pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States. 26 U.S.C. §3401 et seq. ("Internal Revenue Code"); 5) Failed to comply with State laws requiring the Charter Holder to submit Arizona income tax required to be deducted and withheld from the wages of its employees to the Arizona Department of Revenue; 6) Failed to provide a Business Plan that identifies organizational structure of the charter holder; 7) Failed to provide a Business Plan that addresses the fiscal viability of the entity for the continuation of the operation of a charter school; and 8) Failed to comply with State laws regarding its issuance of Extracurricular Activities Tax Credits. Jake Logan seconded the motion.

**Motion passed unanimously**

On August 9, 2010, Kachina requested a formal hearing to appeal the Board's decision. The hearing is currently set to begin on January 3, 2011.

On December 14, 2010, Kachina was provided notice that the Board will hold a public meeting to receive information regarding the progress of Kachina in addressing the matters identified in the [Notice of Hearing on](#)

[Denial of Request for Renewal of Charter](#) filed in 11F-RV-002-BCS in order for the Board to determine whether it wishes to reconsider its issuance of the Notice or to proceed with the hearing currently set for January 3, 4 and 5, 2011.

Kachina was notified it would have 15 minutes to present information to the Board and that any documentation Kachina would like the Board to have in advance of the meeting must be received in this office by close of business on December 16, 2010. No materials were received.

The Board is not conducting a formal hearing at this time, but is considering whether, based on the information provided, it wishes to proceed with the hearing scheduled in January 2011.

Board Options – Motion Language:

- Based upon the information in the application, academic performance over the charter term, fiscal compliance, and legal and contractual compliance, and additional information provided, I move to approve the renewal application and grant a renewal contract for Kachina Country Day School, Inc.
- I move that the Board allow this matter to proceed to hearing in January as scheduled.

## **KCDS Responses to Reasons for Charter School Renewal Denial**

The staff of Kachina Country Day School (KCDS) would greatly appreciate that you take the time to review this document in support of our Charter Renewal Application being approved. We realize that there is limited time to review this material prior to the Charter School Board Meeting on Monday, July 12 at 9:30 am, but having only received notice of this on Thursday July 8, we have put our responses together as quickly as possible.

The staff of KCDS would like to thank you in advance for reviewing this document and also for your continued support in making our school successful.

KCDS is planning to become a member of the Arizona Schools Charter Association which enables us to liaise with and get support for our school. This is a very positive move for our school and one which will help us improve for the future.

In summary, errors have been made by KCDS staff, but the current administrative team has worked incredibly hard to create a learning environment which is nurturing and productive for our students. With continued support from the Arizona State Board for Charter Schools Staff and new support from the Arizona Charter Schools Association, we know we can continue to improve and provide a wonderful education for our currently enrolled 170 students and their families. To displace our students and families for the 2011/2012 school year would be incredibly traumatic and detrimental to their educational, emotional, and social development.

KCDS was surprised that such drastic action would be taken after 14 years of running a charter school and an upturn in enrollment currently projected to be at 170 for the 2010/2011 school year.

As you are aware, KCDS took over the campus, staff, and students of StarsPrep Academy in November 2006, which involved an incredible amount of work from dedicated KCDS staff and a loss of revenue due to the State Equalization monies already being expended by the StarsPrep staff. After taking over the StarsPrep Academy School with approximately 75 students, KCDS North now has an enrollment of 170 students for the upcoming school year, with an even higher enrollment projected for the 2011/2012 school year. This shows how the school has gone from strength to strength and with your help, this can continue for 15 more years!

Although there is a back log of State and federal taxes still to be paid by KCDS, approximately \$223,000 in taxes (past and current) have been paid in the last year. This shows tremendous effort by KCDS and projections show all tax obligations will be met and completed in full by the end of the 2010/2011 school year.

With an approximate retention rate of 90% for students at KCDS we beg of you to renew our Charter School renewal. If you decide to reject the renewal of the KCDS Charter, an appeal date is respectfully requested.

## **KCDS's Responses to the Obligations Not Met.**

1. Failed to comply with the fingerprinting requirements in accordance with 15-183(C)(4); There have been 4 occurrences where KCDS has not had a valid Fingerprint Clearance Card on file for a staff member. A Fingerprint Clearance Card Committee has been established (Steve Prahcharov & Elaine San Nicolas are the new members of the Fingerprint Clearance Card Committee) to ensure these occurrences do not happen again and all current staff members do have a valid Fingerprint Clearance Card.
2. Failed to timely submit annual financial audits in accordance with A.R.S. §§ 15-183(E)(6) and 15-914;  
A new business manager was brought into KCDS with 20+ years of accounting, budgeting, and financial experience for the 2009/2010 school year to bring all accounting practices in house. Although the audit was submitted late for 2005 & 2006 (external auditing agency), a Submission Committee (Steve Prahcharov & Cristie Kline) has been established to oversee that all reports are completed and submitted in a timely fashion.
3. Failed to comply with State laws regarding Open Meeting Laws;  
KCDS did fail to meet Open Meeting Law prior to 2006 when the current administrative team came into effect. Since this time, all Open Meeting Law has been abided by and Open Meeting Law training was conducted by Attorney Chris Thomas for a period of five years for all KCDS Board Members. These violations took place before the current majority of Board members were at KCDS.
4. Failed to comply with Federal laws requiring the Charter Holder pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States. 26 U.S.C. § 3401 et seq. ("Internal Revenue Code");  
In 2006, Kachina Country Day School began to experience issues with payroll taxes due to it taking on another Charter school mid-year (Stars Prep Academy) that was in danger of closing due to financial difficulties. In addition to paying current payroll taxes of \$112,235, Kachina Country Day School has paid \$111,337.26 from 8/28/2009 through 3/22/2010 to the Internal Revenue Service for prior periods taxes owed against a balance of \$244,891.09. The Charter portion of the amount still owed is 72,927.56 which will be paid at a rate of \$6,000 per month in fiscal year 2010-2011.
5. Failed to comply with State laws requiring the Charter Holder to submit Arizona income tax required to be deducted and withheld from the wages of its employees to the Arizona Department of Revenue;  
Kachina Country Day School has paid \$10,468.13 from 10/8/2009 through 6/30/2010 to the Arizona Department of Revenue against a balance of \$14,478.34.

6. Failed to provide a Business Plan that identifies organizational structure of the charter holder;

The business plan provided identifying the organizational structure of the charter holder was not entirely clear. To clarify:

The Charter Holder **IS NOT** a different entity as was incorrectly stated. The Charter Holder, Dr. Christopher Kline, is the son of the Executive Director and Board Member, Mrs. Janece Kline. Dr. Christopher Kline worked for 15 years at KCDS as a teacher, principal, and Executive Director and was kind enough to be the Charter Holder and is now in an advisory role.

The renewal application stated that “the Board determines any necessary action needed to ensure the academic performance of students” and “the executive director recommends the academic policies of the corporation and directs and prescribes the course of study the school will use.” This is indeed confusing. It should have been clearly stated that although the Executive Director is the expert in Education, Curriculum, and Academic Policies, having founded and developed the school for over 42 years and makes recommendations to the Board, it is the KCDS Board as a whole who approves the courses of study to ensure the academic performance of the students is optimal.

7. Failed to provide a Business Plan that addresses the fiscal viability of the entity for the continuation of the operation of a charter school; and

The 2009-2010 unaudited financial statement reflects a net income of \$281,551. The budget plan submitted for FY 2010-11 reflects net income of \$260,827 as well as FY 2011-2012 reflects fiscal viability of well over \$259,831, therefore, the fiscal viability of the entity for the continuation of operation is strong. Enrollment for fiscal year 2010-2011 is currently at 170 with only 18 KG students, which generates an ADM of approximately 161. This is a 22% increase from the 2009-2010 school year.

8. Failed to comply with State laws regarding its issuance of Extracurricular Activities Tax Credits.

This was an error and an ECA Tax Credit Committee (Steve Prahcharov & Cristie Kline) has been established to ensure this program is run without error. Kachina has resolved directly with the Attorney General’s office with only two ECA Tax Credit donations being impacted and a letter sent to those two donors to the satisfaction of the Attorney General.

NOV 01 2010

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS



In the matter of:

**KACHINA COUNTRY DAY SCHOOL, INC.**  
(a non-profit corporation)

and

**KACHINA COUNTRY DAY SCHOOL – NORTH CAMPUS**  
(a charter school)

No. 11F-RN-002-BCS O.A.H.

**NOTICE OF HEARING ON DENIAL OF REQUEST FOR RENEWAL OF CHARTER**

**YOU ARE HEREBY NOTIFIED** that the Arizona State Board for Charter Schools will conduct a hearing in the above-captioned matter on **January 3, 4 and 5, 2011, beginning at 8:00 a.m.** The hearing will be held before Administrative Law Judge Thomas Sheddon at the Office of Administrative Hearings, an independent state agency, located at 1400 West Washington, Suite 101, Phoenix, Arizona 85007, (602) 542-9826.

This hearing is to determine whether grounds exist to deny the request of Kachina Country Day School, Inc. (“Kachina”) for renewal of its charter pursuant to Arizona Revised Statutes (“A.R.S.”) § 15-183(I)(1) because Kachina has failed to complete the obligations of its charter contract and/or has failed to comply with Title 15, Chapter 1, Article 8, A.R.S.

**I. STATEMENT OF LEGAL AUTHORITY AND JURISDICTION UNDER WHICH THE HEARING IS TO BE HELD AND REFERENCE TO STATUTES AND RULES INVOLVED.**

Charter schools are established by contract (“charter” or “contract”), in part, to provide a learning environment that will improve pupil achievement. A.R.S. §§ 15-101(4), -181(A). The Arizona State Board for Charter Schools (“Board”) is charged, in part, with granting charter

status to qualifying applicants for charter schools and exercising general supervision over the charter schools it sponsors. A.R.S. §§ 15-182(E)(1), (E)(2) and -183(R). A charter establishing a charter school is effective for fifteen years. A.R.S. § 15-183(I)(1).

At least eighteen months before the expiration of the charter of a charter school it sponsors, the Board must notify the charter school that the charter school may apply for renewal. *Id.* A charter school that elects to apply for renewal of its charter must file an application for renewal at least fifteen months before the expiration of its charter. *Id.* In addition to any other requirements of the Board, the application for renewal must include a detailed business plan for the charter school, a review of fiscal audits and academic performance data for the charter school that are annually collected by the Board and a review of the current contract between the Board and the charter school. *Id.* The Board may deny the charter school's request for renewal if, in its judgment, the charter school has failed to complete the obligations of the contract or has failed to comply with Title 15, Chapter 1, Article 8, A.R.S. *Id.* The charter may be renewed for successive periods of twenty years if the Board deems that the school is in compliance with its own charter and Title 15, Chapter 1, Article 8, A.R.S. A.R.S. § 15-183(J). The Board must give written notice to the charter school of its intent not to renew the charter school's request for renewal at least twelve months before the expiration of the charter to allow the charter school an opportunity to apply to another sponsor to transfer the operation of the charter school. A.R.S. § 15-183(I)(1).

On April 14, 2010, Kachina timely submitted an application package to the Board for renewal of its charter. At its public meeting on July 12, 2010, the Board considered and denied Kachina's request for renewal of its charter. On July 14, 2010, the Board gave Kachina timely



written notice of its intent not to renew the charter. A.R.S. § 41-1092.03(A). On August 6, 2010, Kachina timely appealed the Board's decision. A.R.S. § 41-1092.03(B)

## **II. STATEMENT OF MATTERS ASSERTED BY THE BOARD AND BASIS FOR THE BOARD'S DENIAL OF KACHINA'S REQUEST FOR RENEWAL OF ITS CHARTER**

### **A. BACKGROUND**

1. Kachina Country Day School – North Campus (“the School”) is a charter school established pursuant to A.R.S. § 15-181 and sponsored by the Board.

2. The School operates pursuant to a charter between Kachina Country Day School, Inc., a non-profit corporation organized under the laws of the State of Arizona, and the Board, effective June 17, 1996 following Kachina's transfer from the sponsorship of the Arizona State Board of Education on March 9, 2004. Kachina's charter with the Board expires on July 19, 2011<sup>1</sup>.

3. Kachina first began operating a charter school in the 1996-1997 school year. The School first began operating in the 2006-2007 school year. The School is currently authorized to serve students in grades kindergarten through eight.

4. The School is located in Scottsdale, Arizona and reported an estimated enrollment of 163 students for the 2010-2011 school year.

5. If the Board determines at a public meeting that a charter school it sponsors is not in compliance with federal law, with the laws of this state or with its charter, the Board may submit a request to the Arizona Department of Education (“Department”) to withhold up to ten per cent of the monthly apportionment of state aid that would otherwise be due the charter school. A.R.S. § 15-185(H).

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<sup>1</sup> In 1995, Arizona law provided that a charter establishing a charter school was effective for five years. Laws 1994, 9<sup>th</sup> Spec. Sess., Ch. 2, § 2. In 1996, Arizona law was amended to provide that a charter was effective for fifteen years and extended existing charters for an additional fifteen years. Laws 1996, 2<sup>nd</sup> Reg. Sess., Ch. 356, § 5.

6. The charter between Kachina and the Board requires Kachina to abide by all requirements of the charter, as well as state, federal and local laws applicable to the operation of a charter school.

7. The charter between Kachina and the Board provides that the Board may revoke and/or not renew the charter for any violation of the charter, state, federal or local laws, ordinances or rules or regulations or for conditions which threaten the health, safety, or welfare of the students or staff of the charter school or of the general public.

8. At its public meeting on July 12, 2010, the Board considered and denied Kachina's request for renewal of its charter on the basis that Kachina failed to complete the obligations of its charter and failed to comply with Title 15, Chapter 1, Article 8, A.R.S. when it: failed to timely submit annual financial audits in accordance with A.R.S. §§ 15-183(E)(6) and 15-914; failed to comply with Arizona fingerprinting requirements in accordance with A.R.S. § 15-183(C)[5][amending A.R.S. § 15-183(C)(4)(2010)]; failed to comply with state laws regarding Open Meeting Laws; failed to comply with federal laws requiring Kachina to pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States (26 U.S.C. § 3401 *et seq.*); failed to comply with state laws requiring Kachina to submit Arizona tax required to be deducted and withheld from the wages of its employees to the Arizona Department of Revenue; failed to provide a Business Plan in its application for renewal that identifies Kachina's organizational structure; failed to provide a Business Plan in its application for renewal that addresses Kachina's fiscal viability for the continued operation of the School; and failed to comply with state laws regarding the issuance of Extracurricular Activities Tax Credit.

**B. KACHINA FAILED TO COMPLY WITH TITLE 15, CHAPTER 1, ARTICLE 8, A.R.S. AND ITS CONTRACT RELATING TO THE TIMELY SUBMISSION OF ITS ANNUAL FINANCIAL AUDIT**

9. A.R.S. §§ 15-183(E)(6) and -914 and the contract require that Kachina undergo an annual financial statement audit, including the completion of the Uniform System of Financial Records for Charter Schools (“USFRCS”) and procurement compliance questionnaires by an independent certified public accountant.

10. Audit contracts and the completed audit reports for charter schools sponsored by the Board must be approved by the Board. A.R.S. § 15-914 (Laws 1999, 1<sup>st</sup> Spec. Sess., Ch. 4, § 15, ¶ C and D); Arizona Administrative Code R7-5-503.

11. Kachina’s annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2004 were due to the Board by November 15, 2004.

12. Kachina failed to timely submit its annual financial statement audit and USFRCS and procurement questionnaires for the fiscal year ending June 30, 2004 and was placed on the Board’s January 10, 2005 meeting agenda for consideration of the withholding of its state aid under A.R.S. § 15-185(H).

13. Pursuant to A.R.S. § 15-185(H), at its public meeting held on January 10, 2005, the Board determined that Kachina was not in compliance with A.R.S. § 15-183(E)(6) and its charter due to its failure to timely submit its annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2004. The Board submitted a request to the Department to withhold ten per cent of the monthly apportionment of state aid that would otherwise be due Kachina and the Department adjusted the apportionment accordingly.

14. Kachina’s annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2004, which were due to the Board by November 15, 2004, were not submitted to the Board until January 25, 2005.

15. Kachina's annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2005 were due to the Board by November 15, 2005.

16. Kachina failed to timely submit its annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2005 and was placed on the Board's November 28, 2005 meeting agenda for consideration of the withholding of its state aid under A.R.S. § 15-185(H).

17. Pursuant to A.R.S. § 15-185(H), at its public meeting held on November 28, 2005, the Board determined that Kachina was not in compliance with A.R.S. § 15-183(E)(6) and its charter due to its failure to timely submit its annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2005. The Board submitted a request to the Department to withhold ten per cent of the monthly apportionment of state aid that would otherwise be due Kachina and the Department adjusted the apportionment accordingly.

18. Kachina's annual financial statement and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2005 were not submitted to the Board until January 4, 2006.

19. Kachina's annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2006 were due to the Board by November 15, 2006.

20. Kachina failed to timely submit a complete annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2006.

21. Kachina's complete annual financial statement and legal compliance questionnaires for the fiscal year ending June 30, 2006 were not submitted to the Board until November 16, 2006.

22. Kachina failed to complete the obligations of its contract and failed to comply with A.R.S. § 15-183(E)(6) and -914 when it failed to timely submit its complete annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal years ending June 30, 2004, 2005 and 2006.

**C. KACHINA FAILED TO COMPLY WITH TITLE 15, CHAPTER 1, ARTICLE 8, A.R.S. LAWS AND ITS CONTRACT RELATING TO FINGERPRINTING REQUIREMENTS**

23. A.R.S. § 15-183(C)(5) states in pertinent part:

All persons engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist or principal shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. . . . All other personnel shall be fingerprint checked pursuant to section 15-512.

(A.R.S. § 15-183(C)(5), *amending* A.R.S. § 15-183(C)(4)(2010)).

24. Kachina's annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2005 ("FY 2005") found that Kachina was not in compliance with the Arizona's fingerprint law. Specifically, a teacher's aide at Kachina did not have a valid fingerprint clearance card.

25. Kachina failed to respond to the Board's requests for a corrective action plan addressing, in part, Kachina's violation of Arizona's fingerprinting law.

26. Kachina continued to fail to comply with Arizona's fingerprinting law.

27. Pursuant to A.R.S. § 15-185(H), at a public meeting held on May 8, 2006, the Board determined that Kachina was not in compliance with A.R.S. § 15-183(C)(4)(2004) (*amended by* A.R.S. § 15-183(C)(5)[Laws 2010, 2<sup>nd</sup> Reg. Sess., Ch. 332, § 3]) and its charter due to its failure to properly fingerprint staff. The Board submitted a request to the Department to withhold ten per cent

of the monthly apportionment of state aid that would otherwise be due Kachina and the Department adjusted the apportionment accordingly. Kachina's state aid was withheld for six months.

28. Kachina's annual financial statement audit and legal compliance questionnaires for the fiscal year ending June 30, 2009 ("FY 2009") found that Kachina was not in compliance with Arizona fingerprinting requirements for its non-instructional personnel.

29. Kachina failed to complete the obligations of its contract and failed to comply with A.R.S. § 15-183(C)(5)(2010)(*amending* A.R.S. § 15-183(C)(4)(2010) when it failed to properly fingerprint its staff.

**D. KACHINA FAILED TO COMPLY WITH ITS CONTRACT REGARDING COMPLIANCE WITH ARIZONA'S OPEN MEETING LAW**

30. The charter between Kachina and the Board requires that Kachina shall comply with Arizona's Open Meeting Law (A.R.S. § 38-431 to -431.09).

31. Arizona's Open Meeting Law requires that Kachina provide at least 24 hours advance notice of its governing board meetings to its board members and the public, that the notice include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda, and that the agenda be available to the public at least 24 hours before the meeting. A.R.S. § 38-431.02(C) and (G).

32. On June 15, 2004, Kachina entered into a Stipulation and Agreement with the State of Arizona, *ex rel.* Terry Goddard, Arizona Attorney General, ("Stipulation") in which Kachina admitted that its March 6, April 24, and June 12, 2003 board meetings were held in violation of A.R.S. § 38-431.02(G) because an agenda was not prepared 24 hours in advance of the meetings.

33. In the Stipulation, Kachina also admitted that all its board meetings prior to January 2004 were held in violation of A.R.S. § 38-431.02 because there was no notice posted that included the agenda or indicated where an agenda could be obtained.

34. Arizona's Open Meeting Law requires that Kachina's "agendas . . . shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto." A.R.S. § 38-431.02(H).

35. In the Stipulation, Kachina admitted that its board meetings for January through October, 2003 were held in violation of A.R.S. § 38-431.02(H) because none of its agendas gave specific notice of any of the items to be discussed. Specifically, the Kachina board voted on motions at the February 19, 2003, April 16, 2003, May 21, 2003, June 12, 2003, July 10, 2003, September 10, 2003 and October 8, 2003 meetings for which the discussion preceding these motions, and the motions themselves, were not sufficiently described in the agenda. Further, on October 8, 2003, the Kachina board voted to close a school site without placing this decision on the agenda.

36. Prior to 2010, Arizona's Open Meeting Law required that the Kachina board file a statement with the Secretary of State stating where all public notices of their meetings will be posted and to give additional public notice as is reasonable and practicable as to all meetings. A.R.S. § 38-431.02(A)(2003)(*amended by* A.R.S. § 38-431.02(A)[Laws 2010, 2<sup>nd</sup> Reg. Sess., Ch. 88, § 1]).

37. In the Stipulation, Kachina admitted that its board did not have the notice required by A.R.S. § 38-431.02(A)[2003] until November 13, 2003, and that all Kachina board meetings held before that date were held in violation of the Open Meeting Law.

38. Arizona's Open Meeting Law requires that Kachina board meeting minutes shall be available for public inspection three business days after the meeting. A.R.S. § 38-431.01(D).

39. In the Stipulation, Kachina admitted that its board meetings held prior to November 2003 were held in violation of A.R.S. § 38-431.01(D) because the minutes were not available within three business days of the meeting.

40. Kachina failed to complete the obligations of its contract and failed to comply with Arizona's Open Meeting Law (A.R.S. § 38-431 to -431.09) when, in and prior to 2003, it held board meetings for which an agenda was not prepared 24 hours in advance of the meetings, failed to post a notice that included the agenda or indicated where an agenda could be obtained, failed to provide an agenda that listed the specific matters to be discussed, considered or decided at the meeting, failed to file a statement with the Secretary of State stating where all public notices of their meetings would be posted, and failed to make its board meeting minutes available for public inspection three business days after the meeting.

**E. KACHINA FAILED TO COMPLY WITH ITS CONTRACT REGARDING COMPLIANCE WITH FEDERAL PAYROLL TAX REQUIREMENTS AND STATE WITHHOLDING TAX REQUIREMENTS**

41. Federal law requires that Kachina pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States. 26 U.S.C. § 3401 *et seq.* ("Internal Revenue Code").

42. State law requires that Kachina pay taxes required to be deducted and retained from the wages of its employees into the Arizona Department of Revenue. A.R.S. § 43-401 and -412.

43. Kachina's annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2008 found that Kachina was not in compliance with federal payroll tax requirements.

44. Kachina failed to timely respond to the Board's requests for a copy of Kachina's plan with the Internal Revenue Service for payment of the tax arrearage and documentation reflecting that Kachina was current with all of its obligations under the payment plan.

45. As of October 6, 2009, Kachina was in arrears to the Internal Revenue Service for federal payroll taxes in the amount of \$244,891.09.



46. Kachina's annual financial statement audit and USFRCS and procurement compliance questionnaires for the fiscal year ending June 30, 2009 found that Kachina was not in compliance with federal payroll tax requirements and with state withholding tax requirements.

47. On November 17, 2009, the Arizona Department of Revenue ("ADOR") filed a Notice of State Tax Lien against Kachina for state withholding taxes arrearage in the amount of \$11,237.78, including penalties and interest.

48. Kachina failed to comply with 26 U.S.C. § 3401 *et seq.* and its contract when it failed to pay taxes required to be deducted and withheld from the wages of its employees and related taxes into the Treasury of the United States.

49. Kachina failed to comply with A.R.S. §§ 43-401 and -412 and its contract when it failed to pay Arizona tax required to be deducted and retained from the wages of its employees to the ADOR.

**F. KACHINA FAILED TO COMPLY WITH THE REQUIREMENT OF TITLE 15, CHAPTER 1, ARTICLE 8, A.R.S. THAT ITS APPLICATION FOR RENEWAL INCLUDE A DETAILED BUSINESS PLAN IDENTIFYING ITS ORGANIZATIONAL STRUCTURE AND FISCAL VIABILITY FOR CONTINUED OPERATION**

50. The application for renewal must include, among other things, a detailed business plan for the charter school, a review of fiscal audits and academic performance data for the charter school that are annually collected by the Board and a review of the current contract between the Board and the charter school. A.R.S. § 15-183(I)(1).

51. The Board's charter renewal application required Kachina to address its plan for its next charter term through the submission of a detailed business plan addressing Kachina's organizational structure and fiscal viability for the continued operation of a charter school.

52. Kachina's Budget Plan submitted as part of its application package for renewal projects that its revenues will exceed its expenditures in the fiscal year ending June 30, 2010 ("FY 2010") and continuing through the fiscal year ending June 30, 2012 ("FY 2012"). Its FY 2011 and FY 2012 projections are based on an assumed increase in student average daily membership ("ADM") of 27 in FY 2011 and of 20 in FY 2012.

53. While Kachina's ADM increased by approximately 20 from FY 2008 to FY 2009, its ADM increased by only approximately 3.42 between FY 2009 and FY 2010.

54. Neither Kachina's Budget Plan assumptions nor any other area of its renewal application package explains its projected growth in ADM.

55. Kachina's FY2009 financial statements were prepared on a "going concern basis."

The School has suffered reductions in net assets for the past several years and relies on one major related party creditor. Based on these factors, the School's cash flows may not be sufficient to timely satisfy its current liabilities. Management is developing plans to generate unrestricted revenues and to significantly reduce operating costs.

56. Kachina has not demonstrated an ability to continue in a financially sound manner to warrant the renewal of its charter.

57. The Board's charter renewal application required Kachina to illustrate and explain the structure of its organization and its levels of management, and to clearly describe the reporting structure for each level of its corporation, as well as the governance structure and organization of the School.

58. In its application package for renewal, Kachina provided conflicting information regarding its governing body and corporate board, stating "The corporate board is the same as the school's Governing Body" and "The Charter Holder is a different entity to the School's governing body."

59. Kachina's application package failed to provide a description of an organizational structure that supports the ability to maintain the operation of the School in compliance with state and federal law and the charter contract.

60. Kachina failed to comply with the requirement of Title 15, Chapter 1, Article 8, A.R.S. that its application package for renewal include a detailed business plan identifying its organizational structure and fiscal viability for the continued operation of the School.

**G. KACHINA FAILED TO COMPLY WITH ITS CONTRACT REGARDING COMPLIANCE WITH STATE LAW PERTAINING TO EXTRACURRICULAR ACTIVITIES TAX CREDITS**

61. Under A.R.S. § 43-1089.01, an Arizona income tax credit ("ECA Tax Credit") is offered by the Arizona Department of Revenue for donations made to Arizona public schools for extracurricular activities or character education programs in the amount of up to \$200.00 for an individual taxpayer and \$400.00 for married taxpayers filing jointly. *Id.*

62. In 2008, Kachina solicited ECA Tax Credit Donations in letters, fliers and newsletters sent to parents and families of its students. In two of these solicitations, Kachina misrepresented that ECA Tax Credits of up to \$500.00 for an individual taxpayer and \$1,000.00 for married taxpayers filing jointly were available for donations to Kachina.

63. In 2008, there were instances in which, in exchange for ECA Tax Credit Donations, Kachina issued ECA Tax Credit receipts in excess of the statutory limits.

64. Kachina failed to comply with A.R.S. § 43-1089.01 and its contract when it issued ECA Tax Credit receipts in excess of the statutory limits in exchange for ECA Tax Credit Donations.

**III. ORDER**

Based upon all of the foregoing, the Board has cause to find that Kachina has failed to complete the obligations of its contract and/or has failed to comply with Title 15, Chapter 1, Article

8, A.R.S. as set forth herein.

**KACHINA IS HEREBY NOTIFIED** that pursuant to A.R.S. § 15-183(I)(1), the allegations set forth in this Notice, if proved true, provide a basis for the Board to deny the request of Kachina for renewal of its charter to operate Kachina Country Day School – North Campus.

**KACHINA IS FURTHER NOTIFIED** that the Office of Administrative Hearings, on behalf of the Board, will conduct a hearing on the Board’s decision to deny the request of Kachina for renewal of its charter. The hearing will be conducted under the authority of, and in accordance with, Title 41, Chapter 6, Article 10, A.R.S. After the hearing is concluded, the Administrative Law Judge shall submit a written decision to the Board for review pursuant to A.R.S. § 41-1092.08. The Board shall then decide whether to accept, reject or modify the recommended decision and will issue a final administrative decision accordingly.

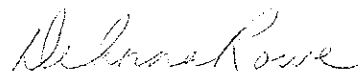
**KACHINA IS FURTHER NOTIFIED** that pursuant to Rule 31(a) and (b), Rules of the Arizona Supreme Court, appearance in an administrative proceeding is considered the practice of law, which under most circumstances may only be undertaken by an active member of the Arizona State Bar. Under Rule 31(d)(11) 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.

**KACHINA IS FURTHER NOTIFIED** that the original of all correspondence and pleadings filed in this matter should be directed to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007, with copies to the Assistant Attorney General at the address listed below.

Persons with a disability may request a reasonable accommodation, such as sign language interpreter, by contacting the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona 85007, (602) 542-9826. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED this 29<sup>th</sup> day of October, 2010.



DeAnna Rowe  
Executive Director  
Arizona State Board for Charter Schools

ORIGINAL filed this  
29<sup>th</sup> day of October, 2010 with:

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007

COPY of the foregoing sent via certified mail,  
return receipt requested, this  
29<sup>th</sup> day of October, 2010 to:

Kachina Country Day School – North Campus  
6602 East Malcomb Drive  
Paradise Valley, AZ 85253  
Attention: Dr. Christopher J. Kline, Charter Representative

Kachina Country Day School, Inc.  
Attention: Janece A. Kline, Statutory Agent  
6602 East Malcomb Drive  
Paradise Valley, AZ 85253

By Roberta Curzy  
971755