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13 **BEFORE THE ARIZONA STATE BOARD**
14 **FOR CHARTER SCHOOLS**

15 In the Matter of:

No. 14F-FSRV-003-BCS

16 **KIN DAH LICH'I OLTA', INC.**, a
17 non-profit corporation, operating
18 **KIN DAH LICH'I OLTA'**, a charter
19 school

**MOTION TO ACCEPT, REJECT
OR MODIFY THE
ADMINISTRATIVE LAW
JUDGE'S DECISION AND
RECOMMENDED ORDER**

20 Pursuant to A.R.S. § 41-1092.08(B), undersigned counsel requests that the
21 Arizona State Board for Charter Schools ("Board") accept, reject or modify the
22 decision of the Administrative Law Judge ("ALJ") in this matter as follows:

23 **FINDINGS OF FACT**

- 24 1. Adopt Findings of Fact Nos. 1 through 5 in their entirety.
- 25 2. Modify¹ Finding of Fact No. 6 as follows:

26 The Arizona Department of Education annually compiles achievement profiles for all Arizona charter schools and school districts. The Arizona Department of Education's assignment of an achievement profile is based, *in part*, upon academic progress measured on students' performance on standardized State testing and on proficiency. A school can earn a letter grade

¹ Proposed language is *italicized*. Language proposed to be removed is ~~stricken~~.

1 of A, B, C, D, or F. A letter grade of D demonstrates a below
2 average level of performance by a school.

3 This modification is requested for the reason that A.R.S. § 15-241 identifies additional
4 school academic performance indicators upon which the Arizona Department of
5 Education assigns annual achievement profiles for Arizona public schools.
6 Specifically, the Arizona measure of academic progress, the results of English language
7 learners tests and, additionally for schools that offer instruction in grades nine through
8 twelve, or any combination of those grades, the annual dropout and graduation rates.

9 This modification is supported by A.R.S. § 15-241(D) and (E).

- 10
11 3. Adopt Findings of Fact Nos. 7 through 14 in their entirety.
12
13 4. Modify Finding of Fact No. 15 as follows:

14 The Arizona Department of Education assigns an achievement
15 profile based, *in part*, on academic growth and on students'
16 performance on standardized State testing. Presently, a school
17 is assigned a letter grade of A, B, C, D, or F. Prior to the
18 assignment of letter grades, the Arizona Department of
19 Education used the following legacy labels: (i) Excelling; (ii)
20 Highly performing; (iii) performing; (iv) Underperforming; or
21 (v) Failing to meet the standards.

22 This modification is requested for the same reasons stated in paragraph 2 above
23 regarding the modification of Finding of Fact No. 6. This modification is supported by
24 A.R.S. § 15-241(D) and (E).

- 25 5. Adopt Findings of Fact Nos. 16 through 36 in their entirety.
26 6. Modify Finding of Fact No. 37 as follows:

Dr. Serapiglia started working with the School in June 2013. Dr.
Serapiglia had been contacted by Ms. *James*, the School's
principal, for assistance.

1 This modification is requested to correct the name of the School's principal. This
2 modification is supported by the testimony of Dr. Serapiglia at TR133:22² and Finding
3 of Fact No. 43.
4

5 7. Adopt Finding of Fact No. 38 in its entirety.

6 8. Modify Finding of Fact No. 39 as follows:

7
8 Dr. Serapiglia stated that she and School officials studied the
9 curriculum that they had at the time and discovered that the
10 curriculum was not *aligned* to the Common Core³ standards. *Dr.*
Serapiglia also stated that the assessments in place at the School
were not aligned to the Common Core.

11 This modification is requested for the reason that it clarifies Dr. Serapiglia's testimony
12 with regard to curriculum alignment at the School. Further, it reflects additional
13 testimony of Dr. Serapiglia that it is related to the first sentence of this Finding of Fact.
14

15 This modification is supported by the testimony of Dr. Serapiglia at TR134:7-16.

16 9. Modify Finding of Fact No. 40 as follows:

17
18 Dr. Serapiglia and School officials developed a plan of action.
19 One goal was to revise and update the curriculum *and the*
School's assessments to match the new Common Core standards.
20 Another goal was to develop a professional development plan.

21 This modification is requested for the reason that it reflects additional testimony of Dr.
22 Serapiglia that is related to the first sentence of this Finding of Fact. This modification
23 also relates to the modification requested in paragraph 8 above regarding Finding of
24

25 _____
26 ² TR refers to the Transcript of Record.

³ In Arizona, the Common Core standards are referred to as the Arizona College and Career Ready Standards.

1 Fact No. 39. This modification is supported by the testimony of Dr. Serapiglia at
2 TR134:20-22.

3 10. Adopt Findings of Fact Nos. 41 through 49 in their entirety.

4 11. Modify Finding of Fact No. 50 as follows:

5
6 Ms. Wallace testified that the School has always been a historical
7 part of the Kinlichee community. Ms. Wallace stated that losing
8 the School would be a historical loss to the community. Ms.
9 Wallace explained that closing the School would result in
children having to move to attend school in ~~other remote~~
different locations.

10 This modification is supported by the testimony of Ms. Wallace at TR221:12-14.

11 12. Adopt Finding of Fact No. 51 in its entirety.

12 **CONCLUSIONS OF LAW**

13 1. Adopt Conclusions of Law Nos. 1 through 7 in their entirety.

14 2. Modify Conclusion of Law. No. 8 as follows:

15
16 The evidence of record established that the School and the
17 Charter Holder failed to meet the academic expectations set
18 forth in the Board's performance framework. It is undisputed
19 that the School underperformed for three consecutive school
20 years. ~~However, it is unclear if the School and Charter Holder~~
~~have made~~ *The evidence of record also establishes that the*
School and the Charter Holder failed to make sufficient
21 progress toward the academic expectations set forth in the
22 Board's performance framework. ~~The Administrative Law~~
~~Judge concludes that any action taken by the Board against the~~
~~Charter Holder's charter should wait until the Arizona~~
~~Department of Education issues its academic performance grade~~
~~for the School for the 2013-2014 school year.~~ The evidence of
23 record established that since the Arizona Department of
24 Education issued the academic performance grade of F to the
25 School in 2013, the School and Charter Holder have undertaken
26 steps to remediate the School's performance. *The evidence of*
record does not, however, establish that the School and Charter

1 *Holder previously undertook steps to remediate the School's*
2 *performance, despite the School and Charter Holder having*
3 *received an academic performance grade of D in the 2011-2012*
4 *school year and an achievement profile of "underperforming"*
5 *for the 2010-2011 school year. The School Board responsible*
6 *for decisions and policies of the School and oversight of the*
7 *academic performance of the School were not aware that the*
8 *School received an F until September 2013 and were not aware*
9 *of the School's poor academic profiles for the prior two years.*
10 ~~If the Arizona Department of Education issues the School an~~
11 ~~academic performance grade of D or F for the 2013-2014 school~~
12 ~~year, then the revocation of the charter is deemed appropriate.~~
13 ~~However, an academic performance grade of A, B, or C for the~~
14 ~~2013-2014 school year would evidence successful remediation~~
15 ~~of the School's failing level of performance. The evidence of~~
16 ~~record does not support the School and Charter Holder's desired~~
17 ~~outcome of allowing them 18 months to successfully remediate~~
18 ~~performance given the three consecutive years of~~
19 ~~underperformance. The Board concludes that the School's and~~
20 ~~Charter Holder's charter is subject to revocation under A.R.S.~~
21 ~~§§ 15-241(U) and -183(I)(3) and that revocation is an~~
22 ~~appropriate remedy.~~

15
16 This modification is requested for the reasons that Findings of Fact Nos. 27 through 35
17 demonstrate that the evidence established that the School and the Charter Holder failed
18 to meet the criteria identified in the Board's academic performance framework (*See*
19 *Board's Exhibit 1 at BCS00043-00048*) to demonstrate sufficient progress toward the
20 Board's academic performance expectations. The School's achievement profile was
21 underperforming for the 2010-2011 school year, a letter grade of D for the 2011-2012
22 school year (demonstrating a below average level of performance), and a letter grade of
23 F for the 2012-2013 school year. Yet, as late as June 2013, the curriculum and
24 assessments in place at the School were not aligned to the Arizona College and Career
25 Ready Standards. Instructional materials, while selected by the School and the Charter
26

1 Holder because they teach to the Arizona College and Career Ready Standards, were
2 not purchased until late June 2013/early July 2013. Despite its purchase of new
3 instructional materials, the evidence established that the Charter Holder failed to
4 demonstrate increased student growth and proficiency both School-wide, for its lowest
5 performing students, and for student subgroups to expected performance levels and
6 failed to demonstrate instructional planning or realignment of instruction based on an
7 analysis of assessment data. The ALJ's recommendation that any action taken by this
8 Board against the charter should wait is based solely on the achievement profile letter
9 grade to be issued by the Arizona Department of Education to the School for the 2013-
10 2014 school year. The Board's academic performance framework is based on the
11 indicators, measures, metrics and targets established by the Board. The achievement
12 profile letter grade issued annually by the Arizona Department of Education is only one
13 indicator of the framework developed by the Board to evaluate its charter schools'
14 overall academic performance. Moreover, the achievement profile letter grade
15 comprises only 5% of the School's performance under the Board's academic
16 performance framework (Dashboard). Further, waiting until the achievement profile
17 letter grade is issued by the Arizona Department of Education to the School for the
18 2013-2014 to take action may interrupt instruction to students who begin their school
19 year at the School. These modifications are supported by Findings of Fact Nos. 2, 16,
20 17, 27-35, 39 (as modified), 40 (as modified), 41, 48, Board Exhibit 1 at BCS 00022
21 and BCS00043-48, Board Exhibit 9 at BCS00155-156, the testimony of Ms. Wallace at
22 TR218:5-10 and 222:9-11, 281:5-8, and A.R.S. §§15-241(U) and -183(I)(3).
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ORDER

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Modify the recommended order of the Administrative Law Judge as follows:

Based on the foregoing, ~~it is recommended~~ *it is ordered* that the charter issued to Charter Holder to operate the School be revoked ~~on the effective date of the Order entered in this matter~~ *effective June 30, 2014.*

~~It is further recommended that the revocation of the charter be stayed until the Arizona Department of Education issues its academic performance grade for the School for the 2013-2014 school year. If the School receives a grade of A, B, or C for the 2013-2014 school year, then the above provided charter revocation shall not take place and this matter shall be closed. If the School receives a grade of D or F for the 2013-2014 school year, then the charter shall be revoked immediately upon the Board receiving notice of the underperformance grade by the Arizona Department of Education.~~

It is further ordered that Charter Holder provide a complete copy of each student's educational record to the student upon request of the student, the student's parent or guardian ad litem, or the student's receiving school, for each student enrolled in the School in the 2013-2014 school year.

Respectfully submitted this 5th day of May, 2014.

THOMAS C. HORNE
Attorney General

By /s/ Kim S. Anderson
Kim S. Anderson
Assistant Attorney General

COPY of the foregoing Motion submitted electronically this 5th day of May, 2014 to:

Arizona State Board for Charter Schools
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COPY of the foregoing Motion mailed electronically this 5th day of May, 2014 to:

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