IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: NEW DESTINY LEADERSHIP CHARTER SCHOOL, a non-profit corporation, in the operation of NEW DESTINY LEADERSHIP CHARTER SCHOOL, a charter school	**No. 13F-RV-002-BCS** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: The hearing was conducted on July 2 and 3, 2013. The record was kept open until July 24, 2013, when the court reporter's transcripts of the hearing were filed with the Office of Administrative Hearings.

APPEARANCES: New Destiny Leadership Charter School was represented by its attorney, Leonidas G. Condos, Esq. The Arizona State Board for Charter Schools was represented by Assistant Attorney General Kim S. Anderson.

ADMINISTRATIVE LAW JUDGE: Brian Brendan Tully

FINDINGS OF FACT

1. The Arizona State Board for Charter Schools ("Board") is authorized to execute charter contracts for the purpose of establishing charter schools in Arizona.
2. New Destiny Leadership Charter School ("School") is a charter school authorized to operate under the sponsorship of the Board. On or about April 1, 2009, New Destiny Leadership Charter School, a non-profit corporation ("Charter Operator") and the Board entered into a "Charter Contract Between Arizona State Board for Charter Schools And New Destiny Leadership Charter School" ("Charter Contract") to operate one school in Phoenix, Arizona to serve students in grades K through 6.
3. The term of the parties' Charter Contract is for 15 years from the first day of operation of the Charter School.
4. The School began to provide instruction to students on August 3, 2009.

5. Paragraph 19 of the Charter Contract provides for the following:

> **Non-Renewal and Termination of the Charter Contract**
> The Arizona State Board for Charter Schools may revoke and/or not renew the Charter Contract, for the Charter Operator's failure to begin providing educational instruction within the timeframe outlined in paragraph 3(G); or for any violation of the Charter Contract, 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 School or of the general public.

6. By letter dated August 7, 2012, the Charter Operator requested that the Board grant it a temporary 12-month suspension of the operation of the School. The Charter Operator advised the Board that the owner of the building housing the School experienced some financial problems and the owner's bank foreclosed on the property. The Charter Operator had a year-to-year lease for the School's location. The Charter Operator's lease terminated on June 30, 2012. The Charter Operator stated that it was not able to identify another location for the School and would not operate for the 2012-2013 school year.

7. The Board has a written policy statement that sets forth its policy concerning the temporary suspension of a charter school's operation.[1]

8. By email dated August 10, 2012, the Board's Director of Charter Accountability, Martha Morgan, Ed.S., wrote to the Charter Representative, Dr. Barbara Tinsley. Ms. Morgan provided a link to the Board's policy. Ms. Morgan advised Dr. Tinsley that the Board needed the following additional items: (i) A plan to resume operation of the School; (ii) Proof that the Charter Operator was fully compliant with the Arizona Corporation Commission ("ACC");[2] and (iii) A description of the state and federal revenues received and any repayment for unearned payments. Ms. Morgan further advised that the Board would consider the request for the temporary suspension at its September meeting if the requested information was timely submitted.

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[1] *See* Exhibit 14.

[2] At the time, the Charter Operator was not in good standing with the ACC for failing to submit the 2012 Annual Report that had been due on May 3, 2012.

9. By email dated September 21, 2012, Ms. Morgan advised Dr. Tinsley that the Board had received information that the Charter Operator was compliant with the ACC and confirmed repayment of state equalization payment to the Arizona Department of Education. However, Ms. Morgan stated that the Board still needed the plan for resuming operation of the School, specifically the following information: (i) " Target date for securing a facility . . .;" (ii) "Target number of student forms collected by the target date for securing a facility that will support the cost of the facility;" and (iii) "General plan . . . for recruiting students."[3]

10. By email dated October 1, 2012, Dr. Tinsley provided the information requested in the September 21, 2012 email to Ms. Morgan.

11. At the hearing, the Board's Executive Director, DeAnna Rowe, testified that after Board staff received the requested information on October 1, 2012, it was too late to prepare the case for presentation to the Board at its October meeting. Therefore, the matter was scheduled for the Board's November meeting.

12. The Charter Operator's annual financial report for the fiscal year ending June 30, 2012 ("FY2012 AFR") was due to the Superintendent of Public Instruction by October 15, 2012.

13. On October 19, 2012, the Board notified the Charter Operator that its FY 2012 AFR had not yet been submitted and provided instructions for its submittal. The Board also advised the Charter Operator that if the FY2012 AFR was not submitted, the Charter Operator would be placed on the Board's November 26, 2012 agenda for possible action.

14. The Charter Operator is required to undergo an annual financial statement audit, including the completion of a legal compliance questionnaire, by an independent certified public accountant.

15. Audit contracts and the completed audit reports for charter schools sponsored by the Board must be approved by the Board.

[3] *See* Exhibit E.

16. The Charter Operator's annual financial statement audit and legal compliance questionnaire for the fiscal year ending June 30, 2012 ("FY2012 audit") were due to the Board by November 15, 2012.

17. On November 16, 2012, the Charter Operator was notified that the Board had not received a complete FY2012 audit from the Charter Operator. The Board further notified the Charter Operator that the Board would address this matter at the next Board meeting on November 26, 2012.

18. At its meeting on November 26, 2012, the Board determined that the Charter Operator was not in compliance with state law and its charter as a result of its failure to submit its FY2012 AFR.[4] Although the Charter Operator was not receiving any monthly apportionment of state aid because it was not operating the School, the Board voted to withhold ten percent of the monthly apportionment of state aid that would be received by the Charter Operator until the FY2012 AFR was submitted.

19. At its meeting on November 26, 2012, the Board also determined that the Charter Operator was not in compliance with state law and its charter as a result of its failure to submit its FY2012 audit.[5] Although the Charter Operator was not receiving any monthly apportionment of state aid because it was not operating the School, the Board voted to withhold ten percent of the monthly apportionment of state aid that would be received by the Charter Operator until the FY2012 audit was submitted.

20. At its meeting on November 26, 2012, the Board denied the Charter Operator's request for a temporary suspension of the School's operation for the 2012-2013 school year.

21. At its meeting on November 26, 2012, the Board directed its Executive Director to negotiate a voluntary surrender of the Charter Contract with the Charter Operator.

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[4] Fiscal year 2012 is the second consecutive year that the Charter Operator has been late in the submission of its AFR.

[5] Fiscal year 2012 is the second consecutive year that the Charter Operator has been late in the submission of its annual financial statement audit and legal compliance questionnaire.

22. By email dated January 3, 2013, Ms. Rowe sent a copy of a Consent Agreement for the Voluntary Surrender and Termination of the Charter Contract for New Destiny Leadership Charter School ("Consent Agreement") to the Charter Operator. The Charter Operator did not execute the Consent Agreement.

23. Board staff contacted the Charter Operator on January 23, 2013, and January 29, 2013, regarding the Consent Agreement, but did not get a response until Board staff received a voice mail message from the Charter Operator on February 4, 2013, stating that it was working with its legal counsel.

24. The matter was placed on the agenda for the Board's February 11, 2013 meeting.

25. At its meeting on February 11, 2013, the Board voted to issue a notice of intent to revoke the charter of the Charter Operator for failure to comply with state law and its charter.

26. On March 18, 2013, the Board issued the "Arizona State Board for Charter Schools' Notice of Intent to Revoke Charter and Notice of Hearing" ("Notice of Intent to Revoke") that set forth the reasons for the proposed revocation of the Charter Contract and gave notice of the evidentiary hearing scheduled before the Office of Administrative Hearings, an independent agency.

27. As of the date of the hearing, the Charter Operator has failed to submit its FY2012 AFR that was due by October 15, 2012 and its FY2012 audit that was due by November 15, 2012.

28. The Charter Operator contends that the Board has been arbitrary and capricious in this matter. The Charter Operator had a lease for the School, but the landlord's bank foreclosed on the property causing the School to close. The Charter Operator followed the Board's policy by requesting in August 2012, a temporary suspension of operations for one year so that a new location for the School could be found. However, the Board did not consider the request until the Board's meeting on November 26, 2012. The Board contends that the Charter Operator was responsible for assuring that the School had a location knowing that the Charter Operator had a year-to-year lease for the School's

location. The Board further contends that the delay in considering the request was due to the Charter Operator's delay in providing information required by the Board's policy. The evidence of record established that the Charter Operator has failed to correct any of the problems associated with the reasons stated in the Notice of Intent to Revoke for the proposed revocation of the Charter Contract.

CONCLUSIONS OF LAW

1. A sponsor may revoke a charter at any time if the charter school breaches one or more provisions of its charter.[6] A.R.S. § 15-183(I)(3) provides that a sponsor shall give a charter operator at least 90 days written notice before the effective date of the proposed revocation of a charter. The notice is required to contain a statement of reasons for the proposed revocation. The charter operator is then given 90 days to correct the problems associated with the reasons for the proposed revocation.
2. Charter Contract provides that the Board may revoke the Charter Contract "for any violation of the Charter Contract, state, federal or local laws, ordinances or rules or regulation . . . ."[7]
3. A.R.S. § 15-183(E)(6) and the Charter Contract subject the Charter Operator to the same financial and electronic data submission requirements as a school district.
4. The Charter Operator violated the provisions of A.R.S. § 15-904 and the Charter Contract by failing to submit its annual financial report for the fiscal year ending June 30, 2012, that was due to the Superintendent of Public Instruction by October 15, 2012.
5. The Charter Operator violated the provisions of A.R.S. §§ 15-183(E)(6) and 15-914 and the Charter Contract by failing to submit its annual financial statement audit and legal compliance questionnaire for FY2012 audit to the Board by November 15, 2012.

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[6] *See* A.R.S. § 15-183(I)(3).
[7] *See* Exhibit 1 at paragraph 19.

6. A.R.S. § 15-183(E)(3) and the Charter Contract require that the Charter Operator provide a comprehensive program of instruction and educational services according to the educational standards established by law

7. A.R.S. §§ 15-341.01 and 15-901(A)(1)(b)(i) and the Charter Contract require that instruction be conducted in the School for sessions totaling at least 180 days each school year and meet for the minimum number of hours of instruction provided by state law for the grades it serves.

8. The Charter Operator breached the Charter Contract and the provisions of A.R.S. §§ 15-183(E)(3), 15-341.01, and 15-901(A)(1)(b)(i) when it failed to provide a comprehensive program of instruction for the requisite number of days and hours provided by state law for the grades it serves for the 2012-2013 school year.

9. The evidence of record established that the Board has the authority, pursuant to A.R.S. § 15-183(I)(3), to revoke the Charter Contract for the Charter Operator's breaches of the Charter Contract and the above-described statutory violations.

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the Board revoke the Charter Contract with the Charter Operator to operate the Charter School on the effective date of the Order entered in this matter.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order shall be five days from the date of the certification.

Done this day, August 13, 2013.

/s/ Brian Brendan Tully
Administrative Law Judge

Transmitted electronically to:

DeAnna Rowe, Executive Director
State Board for Charter Schools