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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA

In the Matter of: **NEW DESTINY LEADERSHIP CHARTER SCHOOL**, a nonprofit corporation, in the operation of **NEW DESTINY LEADERSHIP CHARTER SCHOOL,** a charter school.	No. 13F-RV-002-BCS **ARIZONA STATE BOARD FOR CHARTER SCHOOLS' RESPONSE IN OPPOSITION TO MOTION TO DISMISS** (Honorable Brian Tully)

The Arizona State Board for Charter Schools ("Board") responds in opposition to New Destiny Leadership Charter School's ("New Destiny") Motion to Dismiss. New Destiny's Motion is untimely, assumes facts not in evidence, and has no basis in fact or law.

Memorandum of Points and Authorities

I. <u>New Destiny's Motion is Untimely</u>

On May 10, 2013, a telephonic prehearing conference was held in this matter. The resultant Order Setting Deadline Dates, issued May 10, 2013, required that the parties "shall

comply with the following deadline dates . . . : 2. On or before **June 11, 2013**, the parties may file pre-hearing motions with the Office of Administrative Hearings . . . " *See* Order Setting Deadline Dates dated May 10, 2013. New Destiny's Motion, filed June 17, 2013, is not timely filed in accordance with the May 10, 2013 Order Setting Deadline Dates.[1]

II. The Board Provided New Destiny at Least 90 Days to Correct the Problems Upon Which the Board Proposes to Revoke New Destiny's Charter

Arizona Revised Statutes § 15-183(I)(3)(2012) states in pertinent part as follows:

> A sponsor . . . may revoke a charter at any time if the charter school breaches one or more provisions of its charter. At least ninety days[2] before the effective date of the proposed revocation, the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. . . . The notice shall incorporate a statement of the reasons for the proposed revocation of the charter. The sponsor shall allow the charter school at least ninety days to correct the problems associated with the reasons for the proposed revocation of the charter. The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose.

The Notice of Intent to Revoke Charter and Notice of Hearing ("Notice") filed in this matter clearly identifies the reasons for the proposed revocation of New Destiny's charter. New Destiny first received the Notice on March 23, 2013. *See* Notice of Service by Certified Mail filed April 18, 2013. Applying the 90 day period to the March 23, 2013 date of service, the Board has allowed New Destiny at least 90 days to correct its noncompliance. Moreover,

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[1] The Order Setting Deadline Dates also ordered that "[o]n or before **June 11, 2013**, the parties shall exchange lists of their proposed exhibits and lists of their witnesses for the hearing. A copy of those lists shall also be timely filed with the Office of Administrative Hearings." New Destiny's proposed list of witnesses and exhibits was filed with the Office of Administrative Hearings and provided to the Board on June 12, 2013.

[2] Effective April 5, 2013, the ninety day period was shortened to sixty days. A.R.S. § 15-183(I)(4)(2013), 2013 Ariz. Sess. Laws, 1st Reg. Sess., ch. 68, sec. 1.

prior to the filing of the Notice, the Board repeatedly notified New Destiny of its failure to comply with state law and its charter contract. New Destiny, however, failed to come into compliance. New Destiny was advised by the Board in writing on October 19, 2012 and November 15, 2012 of its failure to timely submit its fiscal year 2012 annual financial report ("AFR"). New Destiny was advised by the Board in writing on November 16, 2012 of its failure to timely submit its fiscal year 2012 financial statement audit and legal compliance questionnaire ("audit"). New Destiny also appeared before the Board on November 26, 2012 and February 11, 2013 regarding its failures to timely submit its fiscal year 2012 AFR and audit. The Board identified New Destiny's failure to provide a comprehensive program of instruction for the requisite number of days and hours provided by state law for the grades it is to serve under its charter contract and included this failure, in addition to the two identified above, in its decision to issue a notice of intent to revoke the charter of New Destiny.

For New Destiny to now argue that that the Board "did not timely identify the issues that risked revocation and did not allow the statutory ninety days to correct the problems associated with the proposed revocation" is without merit, is not supported by the pleadings, and will not be supported by the evidence at hearing.

III. <u>The Board May Revoke a Charter at Any Time if the Charter School Breaches One or More Provisions of Its Charter</u>

The Board may revoke a charter at any time if the charter school breaches one or more provisions of its charter. A.R.S. § 15-183(I). Issuing a notice of intent to revoke the charter is one of several disciplinary actions that the Board may pursue. A.A.C. R7-5-304(B). At its meeting on November 26, 2012, pursuant to the provisions of A.R.S. § 15-185(H), the Board found New Destiny in noncompliance with state law and its charter contract for its failure to timely submit its fiscal year 2012 audit and approved the withholding of 10% of New

Destiny's monthly apportionment of state aid until the audit was submitted. A.A.C. R7-5-304(B)(2). At its meeting on November 26, 2012, the Board additionally found New Destiny in noncompliance with state law and its charter contract for its failure to timely submit its fiscal year 2012 AFR and stated that if New Destiny was currently receiving state funds, the Board would withhold 10% of its monthly state aid apportionment until the AFR was submitted to the Arizona Department of Education. *Id.*

At its meeting on November 26, 2012, the Board found New Destiny in continued noncompliance with provisions of its charter and state law and directed the staff to "work with the charter holder on the terms of a surrender agreement to be considered by the Board at the next regularly scheduled meeting. If such an agreement cannot be reached, staff will provide the Board with documentation to consider a Notice of Intent to Revoke the charter at a future Board meeting."[3] New Destiny admits in its Motion that "New Destiny did not want to surrender its charter contract." *See* Motion at 4:11-12. An agreement could not be reached, New Destiny continued in its failure to submit its fiscal year 2012 AFR and audit, and Board staff subsequently provided the Board with documentation as directed. The Board voted to issue a notice of intent to revoke the charter of New Destiny. A.A.C. 7-5-304(B)(4).

To date, New Destiny has continued in its failure to correct the problems identified in the Notice.

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[3] A.A.C. R7-5-304(B)(3) pertains to a consent agreement "for the resolution of the non-compliance." The Board's direction to its staff was to pursue a "surrender agreement".

For the foregoing reasons, the Board requests that New Destiny's Motion to Dismiss be denied.

Signed this 21st day of June, 2013.

THOMAS C. HORNE
Attorney General

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

COPY of the foregoing Response filed electronically this 21st day of June, 2013 with:

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1400 West Washington Street, Suite 101
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http://www.azoah.com

COPY of the foregoing Response mailed electronically this 21st day of June, 2013 to:

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By ksa
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