STATE OF ARIZONA
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:) No. 13F-RV-002-BCS
)
)
NEW DESTINY LEADERSHIP CHARTER)
SCHOOL, a non-profit corporation;)
in the operation of NEW DESTINY)
LEADERSHIP CHARTER SCHOOL, a charter)
school.)
)
Applicant)
_____)

VOLUME II

HEARING

Phoenix, Arizona
July 3, 2013
8:00 o'clock a.m.

Prepared by:
DEBORAH J. BOYETTE, RPR
Certified Reporter
No. 50507

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WITNESS: Barbara Tinsley

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WITNESS: DeAnna Rowe

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A HEARING was taken upon oral examination by the parties through their respective attorneys before DEBORAH J. BOYETTE, RPR, a Certified Reporter in the State of Arizona, at the OFFICE OF ADMINISTRATIVE HEARINGS, 1400 West Washington Street, Suite 101, Phoenix, Arizona, on the 3rd day of July, 2013, commencing at 8:00 a.m. of said day. Further, this deposition was taken pursuant to the Arizona Rules of Civil Procedure.

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Administrative Law Judge

PROCEEDINGS

July 3, 2013 8:00 a.m.

- - -

ADMINISTRATIVE LAW JUDGE: This is Docket No. 13F-RV-002-BCS, before the Office of Administrative Hearings, State of Arizona, in the matter of New Destiny Leadership Charter School, a nonprofit corporation, and the operation of New Destiny Leadership Charter School, a charter school.

This matter comes on for further hearing today, July 3rd, 2013.

I am Administrative Law Judge Brian Brendan Tully, with the Office of Administrative Hearings.

The parties and counsel are present.

There was a motion to quash subpoenas that were issued on behalf of the respondent.

First of all, those individuals aren't present.

Second of all, my ruling will be that the motion will be granted.

There has been no return of service filed.

Let's continue.

Dr. Tinsley was on the stand, and you were through with your direct, weren't you?

MR. CONDOS: We finished with our direct.

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1 is the reason that no return was filed the basis for the
2 denial?
3 ADMINISTRATIVE LAW JUDGE: The rule says that one
4 of the things you have to do is serve it and do a
5 return.
6 There is no return.
7 MR. CONDOS: We have returns if that will make a
8 difference.
9 ADMINISTRATIVE LAW JUDGE: It's a little late now.
10 The motion was made.
11 The returns weren't filed.
12 MR. CONDOS: That's fine. They were told not to
13 come anyway.
14 ADMINISTRATIVE LAW JUDGE: Okay. If they were told
15 not to come, then --
16 MR. CONDOS: Not by us.
17 MS. ANDERSON: Your Honor, just for clarification,
18 I didn't tell any witness not to come here today.
19 ADMINISTRATIVE LAW JUDGE: That's fine.
20 MS. ANDERSON: I think we're in the middle, about
21 to begin cross-examination of Dr. Tinsley.
22 ADMINISTRATIVE LAW JUDGE: Would you retake the
23 stand, please.
24 You're still under your prior oath or
25 affirmation.

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1 EXAMINATION
2 BY MS. ANDERSON:
3 Q. Good morning.
4 A. Good morning.
5 Q. New Destiny was granted its charter to establish a
6 charter school in January of 2008; is that correct?
7 A. Yes, ma'am.
8 Q. The target start date to establish New Destiny's
9 charter school as provided in the New Destiny's charter
10 application was August 18, 2008, correct?
11 A. Yes.
12 Q. But you weren't able to secure a location to open a
13 school in August of 2008, correct?
14 A. No, we weren't.
15 Q. In December of 2008, you requested that the Charter
16 Board give New Destiny an extension on the length of time for
17 you to sign New Destiny's charter contract?
18 A. Yes.
19 Q. At the time of the request for the extension, New
20 Destiny did not -- had not yet executed its charter contract
21 with the Charter Board, correct?
22 A. Correct.
23 Q. So there was no issue with regard to whether New
24 Destiny was in compliance with its charter contract at the
25 time the extension was granted because there was no charter

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1 contract that had been executed at that time, correct?
2 A. Prior to signing a contract, there are some things
3 that you have to do.
4 Q. My question to you is, that there was no issue at
5 the time whether New Destiny was in compliance with its
6 charter contract at the time that it requested an extension
7 because it had not yet signed its charter contract?
8 A. Yes.
9 Q. Thank you.
10 The charter contract that's Exhibit 1 was entered
11 into between the corporate entity New Destiny Leadership
12 Charter School and the Arizona State Board for Charter
13 Schools, correct?
14 A. Yes.
15 Q. So the holder of the charter is the corporate
16 entity New Destiny Leadership Charter School, correct?
17 A. Yes.
18 Q. Not you as a private person?
19 A. No.
20 Q. New Destiny's first charter location was at 1923
21 East Broadway Road in Phoenix; is that correct?
22 A. Yes.
23 Q. And New Destiny began operating that charter school
24 location in August of 2009, correct?
25 A. Yes.

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1 Q. I believe you stated on direct that because of
2 burst pipes, you moved the charter school to 2454 East
3 Broadway Road, in Phoenix?
4 A. Yes.
5 Q. And was that in January of 2010?
6 A. Yes.
7 Q. I believe it was your testimony on direct
8 examination that you were told in May of 2012 that New
9 Destiny would have to move from its location at 2454 East
10 Broadway; is that correct?
11 A. Yes.
12 Q. The last lease that New Destiny had for the
13 premises at the 2454 East Broadway location ended on June
14 30th, 2012; correct?
15 A. Yes.
16 Q. On what date did New Destiny remove all of its
17 property from the location at 2454 East Broadway Road?
18 A. I think the last day in June.
19 I'm not sure.
20 Before the -- sometime in June, but we were out by
21 June 30th.
22 Q. Was it your testimony on direct examination that
23 you contracted with Anthony Lorenzo in June of 2012 to
24 conduct New Destiny's annual audit?
25 A. Yes.

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1 Q. If you would, please refer to Exhibit DD.
2 A. Yes.
3 Q. This is your -- at the top, it says: Re: 2012
4 Audit, and it's an e-mail from you, dated June 11, 2012, to
5 A. Lorenzo, among other persons?
6 A. Yes.
7 Q. Your statement to Mr. Lorenzo on June 11, 2012, was
8 that yes, New Destiny would like for your company to do our
9 2012 audit, correct?
10 A. That is correct, yes.
11 Q. So if you were telling Mr. Lorenzo in this e-mail
12 that is Exhibit DD that New Destiny would like for his
13 company to do New Destiny's 2012 audit, then the funds for
14 the fees stated by Mr. Lorenzo in this same exhibit must have
15 been available to New Destiny in June of 2012, correct?
16 A. No, they weren't. I was waiting on the --
17 Q. Thank you. You've answered my question.
18 New Destiny didn't set aside any funds during
19 fiscal year 2012 to pay for the fiscal year 2012 audit?
20 A. I was waiting on the funds.
21 Q. Is that a no, you didn't set aside any funds for
22 fiscal year 2012 to pay for --
23 A. I had funds, yes. I was waiting for the funding.
24 Q. Did you have funds -- did you set aside funds
25 during fiscal year 2012 to pay for the 2012 audit?

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1 A. I had additional funds, yes.
2 Q. But you did not have the funds as of June 11 of
3 2012?
4 A. I had some funds that I needed. There were still
5 things we had to do for the school year to pay for.
6 Q. Did you have funds to pay for the 2012 audit?
7 A. Yes.
8 Q. You had funds to pay for the June 2012 audit in
9 June of 2012?
10 A. Yes.
11 Q. And when you e-mailed Mr. Lorenzo, in this Exhibit
12 DD, on June 11, 2012, that you would like for his company to
13 do the 2012 audit, you did not have an audit engagement
14 letter with Mr. Lorenzo's company at that time, correct?
15 A. No.
16 Q. And you did not have an audit engagement letter
17 with Mr. Lorenzo's company until November 2012, correct?
18 A. Correct.
19 Q. Were you expecting to receive State funds in fiscal
20 year 2013 for reimbursement for New Destiny's fiscal year
21 2012 audit expenses?
22 A. Yes.
23 Q. When were you expecting to receive those funds?
24 A. The year before, I had contacted the State on
25 getting funds to do that particular audit, and I was told by

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1 them that it doesn't come until, I think, something like
2 October, she said. I don't remember exactly.
3 And then I was told: You're not going to get them
4 this year either. You're not going to get them until the
5 following year.
6 Q. At some point in time, were you expecting to
7 receive State funds in fiscal year 2013 for reimbursement?
8 A. Yes.
9 Q. And you were expecting to receive those funds at
10 one point in time in October of 2012?
11 A. At some point. I didn't have an exact date.
12 I just knew that you're supposed to get your funds
13 back on that year to get the audit done.
14 Q. You were expecting to receive funds, but you didn't
15 have an exact date on which you thought you would receive
16 those funds?
17 A. No.
18 Q. Are you familiar with the process by which a
19 charter school becomes eligible to receive reimbursement for
20 prior audit expenses?
21 A. Yes, I am.
22 Q. So you know then that reimbursement to a charter
23 school for prior audit expenses is subject to the
24 legislature's appropriation of money for that purpose,
25 correct?

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1 A. No.
2 All I know is --
3 Q. So the answer to my question is: No?
4 A. No.
5 Q. It was your testimony on direct examination that
6 you didn't find out until the Charter Board's February 2013
7 meeting that New Destiny would not receive any State funds in
8 fiscal year 2013 for reimbursement for any prior year's audit
9 expenses; is that correct?
10 A. Yes.
11 Q. Was fiscal year '13 the first year that New Destiny
12 was expecting to receive audit reimbursement funds?
13 A. I had gotten it confused, and had thought it had
14 come the year before.
15 Q. So are you saying that fiscal year 2012 was the
16 first year that New Destiny was expecting to receive audit
17 reimbursement funds?
18 A. I had thought we were going to receive some funds.
19 I had got confused.
20 Q. When did you think you would be receiving funds in
21 2012 for audit reimbursement expenses?
22 A. I don't exactly remember.
23 I just called to check to see if we were going to
24 get funds at that time.
25 I don't remember the exact day.

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1 Q. So then you did not receive funds in fiscal year
2 2012 from the State for audit reimbursement expenses?
3 A. No.
4 Q. New Destiny did not receive reimbursement for any
5 prior audit expenses for a prior fiscal year's either; is
6 that correct?
7 A. That's correct.
8 Q. New Destiny still submitted annual audits for
9 fiscal years prior to 2011, correct?
10 A. Yes.
11 Q. You testified on direct examination that New
12 Destiny could not do its fiscal year 2012 audit because it
13 had shut down its school site and things weren't in one spot
14 to do the audit; is that correct?
15 A. Yes.
16 Q. So at what point in time did things not become in
17 one spot to do the audit?
18 A. When we moved in June, we moved everything into the
19 space.
20 Q. That would have been in June of 2012 that things
21 were not in one spot to do the audit?
22 A. Yes.
23 Q. Is that still the situation today?
24 A. No, it's not.
25 Q. Where are New Destiny's financial records

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1 currently?
2 A. Currently, they are in my garage, and in the
3 storage unit.
4 Q. When New Destiny removed all of its property from
5 its location at 2454 East Broadway Road in June of 2012, you
6 knew that New Destiny's annual audit for fiscal year 2012 was
7 due to the Charter Board by June 15, 2012, correct?
8 A. Yes.
9 Q. You testified on direct examination that at its
10 meeting on November 26, 2012, a Charter Board member
11 expressed concerns that you would not be able to find a
12 school location for the 2013-2014 school year; is that
13 correct?
14 A. Yes.
15 Q. At the meeting on November 26, 2012, you told the
16 Charter Board that you were looking at a location in
17 Chandler; is that correct?
18 A. Chandler and other locations. We were looking in
19 several places.
20 Q. But a possibility that New Destiny would not be
21 able to find a school location for the 2013-2014 school year
22 was not one of the reasons for the Board's denial of New
23 Destiny's request for a suspension of its operations; is that
24 correct?
25 A. Would you say that again, please.

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1 Q. Whether or not New Destiny would be able to find a
2 school location for the 2013-2014 year was not a reason that
3 the Board denied New Destiny's request for suspension of its
4 operations, correct?
5 MR. CONDOS: Objection, Your Honor.
6 I think that calls for speculation as to what was
7 in the Board members' minds at the time they voted on
8 whatever motion was there.
9 ADMINISTRATIVE LAW JUDGE: I'll allow her to answer
10 if she has an answer for it.
11 THE WITNESS: That was said by someone who was
12 sitting on this side of the room and someone who was
13 sitting on this side of the room.
14 BY MS. ANDERSON:
15 Q. That was not stated in the Board's motion. It --
16 A. It wasn't in the Board's motion, but that's what
17 they said to me while I was standing in front of them.
18 The person on this said "We don't think that you
19 are going to be able to find a space," very abruptly.
20 Q. But that was not listed by the Board in its motion
21 as a reason, correct?
22 A. It wasn't listed as a reason, but that's what they
23 said.
24 Q. Thank you. You've answered my question.
25 In fact, New Destiny doesn't have a location in

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1 which to operate its school for the 2013-2014 school year?
2 A. We do not have -- a suspension has not been given
3 to us by the Board.
4 Q. But you also do not have a location to operate your
5 school?
6 A. We have not -- I operate fairly with people.
7 If the Board hasn't done what they're supposed to
8 do --
9 Q. Dr. Tinsley --
10 A. -- then I'm not going to go to the person --
11 Q. Dr. Tinsley, in a meeting with the Charter Board
12 staff on Monday morning, you stated that New Destiny does not
13 have a location to even open for the 2013-2014 school year?
14 MR. CONDOS: We have to object to that.
15 That was an informal settlement conference, and
16 that's privileged as to anything discussed in those
17 conferences.
18 ADMINISTRATIVE LAW JUDGE: Sustained as to those
19 discussions.
20 The question can still be asked.
21 THE WITNESS: I do not have a written lease from
22 anyone at this time.
23 BY MS. ANDERSON:
24 Q. Is it the Assyrian Church that you've been engaging
25 in discussions with as a potential charter school location?

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1 A. I'm sorry?
2 Q. Is it the Assyrian Church that you've been engaging
3 in discussions with as a potential charter school location?
4 A. One of the places I've been talking with.
5 Q. What are the other -- the Assyrian Church location
6 is in Glendale, correct?
7 A. Yes.
8 Q. The location that you testified about yesterday
9 with regard to that they have classrooms there and they have
10 additional property on which to build, was that the Assyrian
11 Church location?
12 A. Yes.
13 Q. That's located at 17334 North 63rd Avenue, correct?
14 A. Yes, I think so.
15 Q. Have you identified the target area from which a
16 charter school location at the Assyrian Church would draw
17 students?
18 A. We have a target population.
19 Q. Do you have a target area?
20 A. Yes.
21 Q. What is that target area?
22 A. The location of where the church is, in that area,
23 we have a target population.
24 Q. Is the area that you're looking to target to obtain
25 students from within a certain distance from the property

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1 location of the Assyrian Church?
2 A. When you're a charter school, you target quite a
3 large area.
4 Q. Would you please refer to Exhibit 1, at Page 156.
5 Would you be using the same forms of advertising,
6 marketing, for the Assyrian Church location that are listed
7 on this Page 156?
8 A. Yes.
9 Q. What have you estimated as the cost for advertising
10 or marketing at that location?
11 A. As I said yesterday, our marketing will change
12 because now that I'm a charter operation, I know there are
13 certain things you need to do.
14 What I have found is we -- more approach of going
15 to places and going to events and having direct contact with
16 people more so than direct mailing and fliers.
17 Those types of things are not as efficient as going
18 and having direct contact with people.
19 Q. But there would be costs associated with
20 advertising and market --
21 A. Yes, there was.
22 Q. Excuse me. Let me finish question just for the
23 court reporter, so there is no overlap over the question and
24 answer.
25 A. I'm sorry.

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1 Q. So there would be a cost for advertising or
2 marketing a new location?
3 A. Yes.
4 Q. Do you currently have the money to cover those
5 costs?
6 A. It's in a savings account.
7 Q. Have you looked into whether there's other public
8 schools near the Assyrian Church location that serve the same
9 grades that Destiny would be serving?
10 A. There's another public school, as well as a child
11 care center.
12 Q. Are you familiar with Challenge Charter School,
13 which is located less than a mile from the Assyrian Church
14 location?
15 A. Chandler?
16 Q. Challenge Charter School.
17 A. Oh, Challenge.
18 No, I am not.
19 Q. Are you familiar with Greenbriar Elementary School
20 located a quarter mile away from the Assyrian Church
21 location?
22 A. No, I'm not.
23 Q. Are you familiar with Highland Lakes School located
24 two miles away from the Assyrian Church location?
25 A. No, I'm not.

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1 Q. You testified on direct examination that you had
2 discussions with the Assyrian Church about financial
3 assistance; is that correct?
4 A. We talked about that, I think.
5 Q. But you haven't produced any writing that would
6 memorialize what, if any, financial assistance it would
7 provide to New Destiny, correct?
8 A. No.
9 MS. ANDERSON: Thank you. I have no further
10 questions.
11 ADMINISTRATIVE LAW JUDGE: Any redirect?
12 MR. CONDOS: I do.
13
14 FURTHER EXAMINATION
15 BY MR. CONDOS:
16 Q. Staying on the subject here of the new possible
17 location, was it the church or was it individuals who talked
18 to you about the possibility of locating there?
19 A. It's an individual.
20 Q. So the church isn't directly involved except as a
21 landmark?
22 A. No.
23 Q. In the charter contract, if you were allowed to
24 open, at the present time, the Attorney General asked you if
25 you were ready to open.

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1 Can you open today?
2 A. No.
3 Q. Is that because we're sitting here without a
4 charter contract and also the question of revocation?
5 A. The revocation is an issue with anyone that I would
6 talk to.
7 Again, I told the Assyrian Church that my contact
8 with the Board did not go the way I expected, and so I just
9 let them know that I'm upfront with what's going on.
10 Q. Now, going back to the question with respect to the
11 auditor.
12 The exhibit that you've submitted and your
13 testimony, who made the first contact with respect to the
14 audit for the 2012 audit?
15 A. Mr. Lorenzo.
16 Q. In that contact, at least, in that e-mail that you
17 have, he made an offer to you -- first of all, he asked if
18 you were going to have him do it, and did he then put a
19 specific price of what it would cost?
20 A. Yes.
21 Q. What was your response, again?
22 A. I said: Yes.
23 Q. Did you feel that there was a meeting of minds with
24 respect to the auditor and the audit?
25 A. Yes, I thought it was settled.

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1 Q. The next thing you were waiting for, was that the
2 letter of engagement that he prepares?
3 A. Yes.
4 Q. Did anybody follow-up from your offices about the
5 letter?
6 A. No, I didn't.
7 Q. Do you know if your business manager did?
8 A. No.
9 Q. You were asked a question about if there were funds
10 available to pay for the audit in June.
11 Was there -- did the school have some funds as of
12 June 30th in the account?
13 A. Yes.
14 Q. And you said that you had to pay other bills.
15 Were there also expenses that you were obligated to
16 pay?
17 A. Yes.
18 Q. Is that what has diminished the funds and the
19 ability to pay, causing you to wait for a check from the
20 State?
21 A. Yes.
22 Q. Do you still desire to open a charter school --
23 keep your charter school open?
24 A. Yes.
25 Q. And do you still feel that the education that you

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1 provided to the children in the three years at your prior
2 location would be the same type of education you would
3 provide to other children at your new location?
4 A. There would be some slight changes according to the
5 population that we're working in.
6 I don't think that the moving to a new location --
7 we would have to be so giving -- I mean, kids don't have
8 underwear, shoes, clothes, you know what I'm saying. Those
9 types of things.
10 There wouldn't be quite so much of that, feeding
11 and making sure they've got everything. It wouldn't be so
12 much social service aspect of it.
13 But the education facility, if you change location,
14 you're not in an impoverished area, usually, the children
15 come with a little more of an educational background and
16 something more to start with, usually.
17 When in an impoverished area, they come in with
18 needs, certain needs.
19 Q. And the location that we're talking about, does it
20 already have a Certificate of Occupancy to be operated as a
21 school?
22 MS. ANDERSON: Objection. Asked and answered
23 yesterday.
24 ADMINISTRATIVE LAW JUDGE: Sustained.
25 MR. CONDOS: No further questions.

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1 ADMINISTRATIVE LAW JUDGE: Thank you.
2 You may step down.
3 THE WITNESS: Thank you.
4 ADMINISTRATIVE LAW JUDGE: You're welcome.
5 New Destiny may call its next witness.
6 MR. CONDOS: We would recall DeAnna Rowe to the
7 stand.
8 ADMINISTRATIVE LAW JUDGE: Good morning.
9 You're still under your prior oath or affirmation.
10
11 EXAMINATION
12 BY MR. CONDOS:
13 Q. Ms. Rowe, does the Board have a mission statement
14 that it has created for its operations?
15 A. It does have a mission statement, yes.
16 Q. Do you know what it is?
17 A. I should.
18 The Board's mission is to improve the educational
19 choices for students in Arizona.
20 I can't recite it word for word this morning. I'm
21 sorry.
22 Q. If I said from your site -- the State Board of
23 Charter School site, that the mission statement is to improve
24 public education in Arizona by sponsoring charter schools
25 that provide quality educational choices.

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1 You paraphrased it pretty well, but would that be
2 accurate?
3 A. That would be accurate, yes.
4 Q. With respect to the termination or revocation of
5 this school's charter, how would that fall into that mission
6 statement?
7 MS. ANDERSON: Objection, relevance.
8 The basis for a revocation is a breach of one or
9 more provisions of a charter contract.
10 It's irrelevant as to the mission of the Charter
11 Board.
12 MR. CONDOS: The purpose of the Charter School
13 Board is to create schools with alternative educational
14 choices.
15 The specific mission is to provide educational
16 choices for improving public education.
17 The contract's purpose is for education. So the
18 contract's purpose that we're talking about revoking,
19 underlying, is education.
20 And consequently, I think, this is a very relevant
21 question as to how it serves both the contractual
22 purpose and the mission purpose of the charter schools.
23 ADMINISTRATIVE LAW JUDGE: I'll allow the executive
24 director to answer to the best of her ability.
25 THE WITNESS: Quality educational options include

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1 the provision of education to students, but also the
2 assurance that the continuation of that education will
3 continue from year to year.
4 There are contractual obligations that speak to the
5 quality of their operations. There are reporting
6 requirements that speak to the quality of their
7 operations, as well as their academic performance.
8 BY MR. CONDOS:
9 Q. So the basis that you feel that the mission
10 statement is not violated is the quality of the institution
11 here at Destiny?
12 A. I believe the Board's actions support its mission
13 to ensure the continuation of quality educational choices.
14 Q. How does it further the continuation of educational
15 choices by revoking this contract?
16 A. Again, this isn't a contract that is currently
17 being fulfilled.
18 And therefore, isn't meeting its obligations;
19 which, therefore, is detrimental to the Board's mission.
20 Q. It's not being fulfilled because?
21 A. It's not open and serving students in accordance
22 with its contract.
23 Q. Is it true that it's not open to students because
24 of malady that occurred to them, not of their own making;
25 No. 1, why they didn't open the school?

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1 A. The school didn't open because it didn't plan in
2 accordance with operations to ensure that it could continue
3 its operations in subsequent years.
4 Q. What kind of planning could they have done to know
5 and to prepare that in the last part of April, first of May,
6 your landlord or someone would come in and say: Your
7 building has been sold and you can't stay here any longer?
8 A. In my mind, when you are looking at a lease that
9 expires at the end of June, you would be looking prior to
10 April or May for some assurance that you would be able to
11 remain in your location or would have an alternate location
12 for the next school year.
13 Q. And if you were assured that you were going to be
14 on a year to year for a while, would that satisfy your
15 assurance that that's what's going to be happening?
16 A. Absolutely not.
17 A year to year is just that, a year to year.
18 Q. A year to year is just that?
19 A. A year to year.
20 Q. Second reason is that the Board has a process where
21 if a school has something like this, they can ask for a
22 suspension for a year.
23 And the school did apply for that process, right?
24 A. That's correct.
25 Q. And then they sat in limbo until November.

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1 At which time, it was the Board that says: We're
2 not going to give you that suspension?
3 A. I don't believe it was in limbo.
4 There were requirements -- there were requests that
5 were made of the charter holder to provide additional
6 information.
7 And when that information was satisfied, it was
8 scheduled for the next available board meeting.
9 Q. How would you describe "limbo"?
10 A. "Limbo" would mean something that where I'm in
11 waiting and the situation is out of my control.
12 Q. They did provide information to you; is that right?
13 A. Over time, yes, they did.
14 Q. And the finalization was in October, first of
15 October?
16 October 5th, we had all the information; is that
17 correct?
18 MS. ANDERSON: Objection, Your Honor.
19 This testimony is cumulative from yesterday's
20 testimony.
21 ADMINISTRATIVE LAW JUDGE: Sustained.
22 BY MR. CONDOS:
23 Q. But it was on November 26 that the Board said:
24 We're not going to renew you.
25 And so consequently, at that particular point,

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1 there was no school that was going to open?
2 A. The Board made no such decision on November 26.
3 Q. On November 26th, they didn't make a decision
4 that: We're not going to allow the suspension to proceed --
5 grant you the suspension?
6 MS. ANDERSON: Again, Your Honor, cumulative.
7 ADMINISTRATIVE LAW JUDGE: Sustained.
8 BY MR. CONDOS:
9 Q. And this particular school had never received a
10 rating from an educational standpoint less than performing
11 throughout its existence, right?
12 A. There was no rating for their third year of
13 operation.
14 So you can't say that it didn't receive a rating of
15 less than performing in its third year because there was no
16 rating in its third year.
17 Q. If there was no rating, they didn't get a negative
18 rating, did they?
19 A. They didn't get a positive or an acceptable rating
20 either.
21 Q. So my question was: They've never received a
22 negative rating from an educational standpoint?
23 A. That wasn't your question.
24 Q. Make it that question, then, if I could.
25 Have they ever received a negative rating from the

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1 Department of Education, superintendent of instruction, or
2 any other entity that they weren't performing or better?
3 A. No.
4 Q. And that was not highlighted to the Board on
5 November 26, was it?
6 MS. ANDERSON: Objection, Your Honor, cumulative.
7 MR. CONDOS: No problem. I'll withdraw it.
8 No further questions.
9 ADMINISTRATIVE LAW JUDGE: Any redirect?
10 MS. ANDERSON: No, Your Honor.
11 ADMINISTRATIVE LAW JUDGE: Thank you.
12 You may step down.
13 New Destiny may call its next witness.
14 MR. CONDOS: Your Honor, at this point, since the
15 subpoenas to the other folks were quashed and we don't
16 have any additional financial explanation to explain the
17 reimbursement process, we would like The Court to -- we
18 attempted to get transcriptions of the relevant
19 hearings, but the appropriate reporters had difficulties
20 deciphering it, even though Ms. Rowe said there has
21 never been an objection to them.
22 We would request The Court to listen to the
23 hearings of November 26th and February 13th.
24 It is not a difficult process, and that's why we're
25 asking The Court to do this.

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1 If one goes to the site for those two meetings on
2 the State Board's website, there's a little arrow. And
3 if you press the arrow, then that recording comes
4 through.
5 We feel that is very important because it is
6 difficult to capture the tenor of the Board and the
7 Board's questions at both of those meetings unless an
8 opportunity is had to listen to it.
9 So we would respectfully request that as additional
10 evidence on our behalf.
11 If we need a formal motion, I guess we would move
12 that the Hearing Officer listen to those two hearings or
13 however else is necessary because we couldn't get a
14 transcription for it.
15 ADMINISTRATIVE LAW JUDGE: Anything else?
16 MS. ANDERSON: Your Honor, the time for the
17 submission of proposed exhibits for the parties has
18 passed.
19 I don't know at what point in time Mr. Condos
20 determined that the recording was inaudible or, in some
21 reason, was unable to be transcribed, but he did not
22 make any such allegation with regard to the February
23 Board meeting.
24 If in fact Mr. Condos's position is that he didn't
25 transcribe it because it was not audible, I don't know

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1 what purpose it's going to serve this body to listen to
2 that same recording.
3 It was not a hearing. They were meetings.
4 The meetings themselves run several hours long.
5 The discussions themselves -- I don't know the length of
6 the particular discussions.
7 In November, there were two separate instances of
8 discussions that the Board had with regard to New
9 Destiny.
10 The first on the agenda -- actually, there may have
11 been three.
12 First on the agenda was pertaining to the annual
13 audit, the second on the agenda was pertaining to their
14 Annual Financial Report, and the third item pertaining
15 to their request for temporary suspension.
16 And in February, I believe, the discussion was
17 limited to the call to the public.
18 It's the Board's position that the time for
19 requesting that this information be considered has
20 passed.
21 If The Court is inclined to listen to these
22 recordings, I would request that all of the agenda items
23 pertaining to New Destiny in November 2012 and February
24 2013 be reviewed as well.
25 ADMINISTRATIVE LAW JUDGE: Mr. Condos, I'm going to

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1 take your avow that the recordings are illegible to the
2 point where they can't be transcribed, so that would
3 appear to not really be helpful in my listening to
4 them.
5 So the motion is going to be denied.
6 Anything else, sir?
7 MR. CONDOS: No, sir.
8 We rest.
9 ADMINISTRATIVE LAW JUDGE: Any rebuttal by the
10 Board?
11 MS. ANDERSON: No, Your Honor.
12 ADMINISTRATIVE LAW JUDGE: Are Counsel ready to
13 give closing statements, or would you like to take a
14 break?
15 MR. CONDOS: If we could, just take a quick break.
16 Too much coffee for me this morning.
17 ADMINISTRATIVE LAW JUDGE: Let's take a 10-minute
18 recess.
19 MR. CONDOS: Thank you.
20 ADMINISTRATIVE LAW JUDGE: You're welcome.
21 Off the record.
22 (Brief recess.)
23 ADMINISTRATIVE LAW JUDGE: Back on the record.
24 I want to review the exhibits.
25 Board's 1 through 17 have been admitted.

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1 The New Destiny Exhibits N, O, P have not been
2 admitted, nor W.
3 Are you withdrawing those exhibits?
4 MR. CONDOS: Yes, we would withdraw them.
5 ADMINISTRATIVE LAW JUDGE: Thank you.
6 Both sides having concluded their respective
7 presentations, we'll now go to closing statements.
8 Ms. Anderson, for the Board.
9 MS. ANDERSON: Thank you, Your Honor.
10 Arizona Revised Statute 15-183(5) states that the
11 Arizona Board for Charter Schools, as any of the
12 statutorily authorized sponsorship charter schools, may
13 revoke a charter at any time if the charter school
14 breaches one or more provisions of its charter
15 contract.
16 The same provision also states that the notice of a
17 sponsor's intent to revoke must incorporate a statement
18 of the reasons for the proposed revocation.
19 Also, that the sponsor shall allow the charter
20 school at least 90 days to correct the problems
21 associated with the reasons for their proposed
22 revocation of the charter.
23 In my opening, I stated that the 2013 legislature
24 brought some changes to the charter school statutes.
25 These changes, among other things, shortened the 90

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1 day time period to correct the problems to 60 days.
2 But this change wasn't effective until April 5th of
3 2013. So for this matter, the Board has operated under
4 the 90-day time period.
5 In any event, even with the changes, the statute
6 remains -- statutory language remains that the Board may
7 revoke a charter at any time if the charter school
8 breaches one or more provisions of its charter.
9 The question to be answered at this hearing is:
10 Did New Destiny Leadership Charter School breach one or
11 more provisions of its charter?
12 And it's the Board's position and that the
13 testimony and the evidence in this case present an
14 unequivocal yes as the answer to that question.
15 Charter schools are subject to the same financial
16 and electronic data submission requirements as a school
17 district.
18 Like a school district, charter schools are
19 required by law and, with charter schools, by their
20 charter contract, to electronically submit a copy of its
21 Annual Financial Report, its AFR to the superintendent
22 of public instruction, by October 15th of each year,
23 which covers the previous fiscal year.
24 As a charter school that instructs students for
25 three years, New Destiny's obligation for the fiscal

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1 year ending June 30, 2012, to electronically submit its
2 Annual Financial Report to the superintendent by October
3 15 was no different than its obligation to do so in
4 fiscal years 2010 and fiscal year 2011.
5 So this wasn't a surprise.
6 New Destiny was -- excuse me.
7 The AFR contains demographic information. It
8 focuses on charter school funds, sources of monies
9 received by the school, for pupil expenditures by the
10 school.
11 And these reports are compiled by the
12 superintendent in public instruction, who then makes
13 report to the legislature and the governor, and is used
14 for consideration of funding for schools.
15 New Destiny was repeatedly reminded by the Charter
16 Board that it had failed to submit its fiscal year 2012
17 AFR.
18 On October 19th, there was an e-mail that included
19 specific instructions by the Board to the school on how
20 to make its submittal.
21 On November 15th of 2012, there was another
22 e-mail.
23 On November 25th, when the school appeared before
24 the Charter Board, the school appeared for a purpose.
25 One of the purposes being that it failed to timely

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1 submit its Annual Financial Report.
2 On February 11, 2013, again they appeared before
3 the Charter Board. And on March 23rd and April 2nd,
4 when New Destiny received the Notice of Intent to Revoke
5 filed in this case.
6 New Destiny was repeatedly advised that as a result
7 of its failure to submit its AFR, its charter was in
8 jeopardy.
9 But even as we sit here today, even in the 90 days
10 since the filing of the Notice of Intent to Revoke, the
11 service of that notice, New Destiny has still not
12 submitted its fiscal year 2012 Annual Financial Report.
13 New Destiny's failure to submit this fiscal year
14 2012 annual report is a breach of its State law and it's
15 a breach of its charter contract.
16 New Destiny did not correct the problem. New
17 Destiny continued to remain in breach.
18 Charter schools are also required, as are district
19 schools, to undergo an annual audit, which includes the
20 completion of a compliance questionnaire, and this is to
21 be done by a certified public accountant.
22 While school districts submit their annual audit
23 and compliance questionnaire to the Arizona Auditor
24 General, charter schools are required to submit their
25 annual audit and compliance questionnaire to their

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1 sponsor; which, in the case of New Destiny, is the
2 Arizona State Board for Charter Schools.
3 The annual audit and compliance questionnaire were
4 due to the Charter Board by the date of November 15th
5 for the prior fiscal year.
6 Both the audit contract and the completed audits
7 have to be approved by the Charter Board.
8 As a charter school that operated for three years,
9 again, this obligation was not a surprise to New
10 Destiny.
11 As it does every year, the Charter Board provided
12 this information and, again, the remainder of the yearly
13 November 15th deadline in its audit guidelines memo.
14 It was posted on the Board's website on June 11 of
15 2012.
16 The Board's processes with regard to the audits and
17 the audit contracts and review of those are provided in
18 the Board's rules and were followed as provided in the
19 Board's rules.
20 Again, New Destiny was repeatedly advised by the
21 Charter Board that its charter was in jeopardy.
22 October 3rd, 2012; November 6, 2012; and November
23 12, 2012, these are all dates that e-mails were provided
24 by the Board to the school regarding its failure to
25 timely submit its annual audit, or a reminder that the

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1 annual audit was due on November 15.
2 On those dates, the Charter Board advised New
3 Destiny that it had not even yet received its audit
4 engagement letters, and that New Destiny would be placed
5 on the November -- the Board's November agenda for
6 disciplinary action if those were not received.
7 New Destiny was reminded again by the Charter Board
8 of its failure to submit its fiscal year 2012 audit and
9 compliance questionnaire on November 16th, by e-mail;
10 November 26, when it appeared before the Charter Board;
11 February 11, when it again appeared before the Charter
12 Board; and also when it was served with the Notice of
13 Intent to Revoke in this case.
14 New Destiny was repeatedly advised that as a result
15 of its failure to submit its annual audit and compliance
16 questionnaire that its charter was in jeopardy.
17 Yet, as we sit here today, New Destiny has still
18 not submitted its annual audit and compliance
19 questionnaire, even in the 90 days since the filing and
20 the service of the Notice of Intent to Revoke.
21 As Ms. Leder testified, the Charter Board -- the
22 annual audit and compliance questionnaire are
23 significant tools used by the Charter Board to monitor
24 their charter schools.
25 New Destiny's failure to timely submit its fiscal

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1 year 2012 audit and compliance questionnaire is a breach
2 of its charter contract.
3 And nor did New Destiny correct the breach, and it
4 remains in breach.
5 Fiscal year 2012 is not the first time that New
6 Destiny was late in submitting its fiscal year Annual
7 Financial Report and its fiscal year audit and
8 compliance questionnaire, and advised that failure to
9 make those timely submissions placed its charter in
10 jeopardy.
11 It was late in submitting its fiscal year 2011
12 Annual Financial Report, and again it was reminded by
13 various correspondence that its failure to timely submit
14 that report in fiscal year 2011 for fiscal year 2011 may
15 result in disciplinary action by the Board.
16 New Destiny was late in submitting its fiscal year
17 2011 annual report and compliance questionnaire, and
18 again the exhibits reflect that New Destiny was reminded
19 of this noncompliance and warned that the Board may take
20 action to withhold funds and/or issue a Notice of Intent
21 to Revoke the charter.
22 In fact, in -- for its fiscal year 2011 annual
23 audit and compliance questionnaire, there was a period
24 of time that funds were withheld from the school for its
25 failure to make that submission.

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1 It's the Board's position that New Destiny's
2 historical failure and the length of time of its failure
3 for fiscal year 2012 to timely submit its annual AFR and
4 annual compliance evidences its unwillingness to comply
5 with the law and to comply with its charter.
6 It was with this historical and current
7 noncompliance that New Destiny came before the Board on
8 November 26, 2012, to request that it now be allowed to
9 suspend its operations, to not provide instruction to
10 students for the 2012-2013 school year.
11 Having secured only a year's lease at its premises
12 at 2454 East Broadway and the foreclosure of its
13 premises, New Destiny was left without a location to
14 operate its school for the 2012-2013 school year.
15 At the Board's meeting on November 26, 2012, and
16 under its authority under ARS 15-185(H), authority to
17 withhold 10 percent of the school's funds for
18 noncompliance, the Board determined that New Destiny and
19 another school were in noncompliance with State law and
20 their charter contract for failure to submit their
21 fiscal year 2012 annual audit and compliance
22 questionnaire, and approved withholding of 10 percent of
23 the school's funding.
24 The thing is, is New Destiny wasn't receiving any
25 funds in November of 2012.

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1 So when the AFR issue came before the Board and New
2 Destiny's failure to submit its Annual Financial Report,
3 the Board indicated, if New Destiny was currently
4 receiving State funds, that it would withhold 10 percent
5 of those monthly funds until the AFR was submitted.
6 A few items on the same agenda after the Board's
7 consideration of New Destiny's failure to timely submit
8 its fiscal year 2012 AFR and audit was New Destiny's
9 request to suspend its operations.
10 The Board is not mandated by law to allow New
11 Destiny or any of the charter schools it sponsors a
12 hiatus from its obligation to educate children.
13 New Destiny, as all public schools, are required to
14 provide an instructional program that meets for the
15 requisite number of days and hours of instruction for
16 each school year.
17 New Destiny's request for a good cause extension
18 was just that; it was a request.
19 The Board considered all of the information that it
20 considers and that it requires of all schools that
21 request a good cause extension.
22 And having considered that information, one of
23 which is the school's current compliance with its
24 charter contract, the Board said no to New Destiny's
25 request to suspend its operations.

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1 The Board directed its staff to work with New
2 Destiny for a surrender of its agreement.
3 And whereby, New Destiny would voluntarily
4 surrender its agreement in lieu of proceeding to having
5 to revoke its charter.
6 The Board said: If you can't reach this agreement,
7 come back before the Board at a later date and we will
8 consider whether we want to issue a Notice of Intent to
9 Revoke the Charter.
10 At that meeting on February 11, 2013, that meeting,
11 New Destiny had still not submitted its 2012 AFR, its
12 2012 audit, and the Board voted to issue a Notice of
13 Intent to Revoke the charter of New Destiny.
14 It seems to be New Destiny's position at this
15 hearing that, well, the Charter Board had considered
16 suspension at the October 12 meeting instead of November
17 of 2012 meeting, that it may have been a different
18 result because it wasn't yet out of compliance with the
19 AFR and the audit submission requirements. This
20 argument doesn't get us anywhere.
21 Not yet out of compliance as of the Board's October
22 2012 meeting doesn't give New Destiny a free pass at the
23 Board's November 2012 meeting, at which time was the
24 date that the Board considered New Destiny's request.
25 When Arizona picks a winning Powerball number on

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1 Saturday night, just because I picked the same numbers
2 on a previous Wednesday night's game doesn't mean I'm
3 entitled to Saturday night's winnings.
4 The evidence in the record has clearly established
5 that New Destiny has breached one or more provisions of
6 its charter and it's failed to correct its
7 noncompliance.
8 New Destiny breached its charter when it failed to
9 timely submit its fiscal year 2012 AFR to the
10 superintendent of public instruction by October 15,
11 2012.
12 New Destiny breached its charter when it failed to
13 timely submit its fiscal year 2012 audit and compliance
14 questionnaire to the Board by November 15 of 2012.
15 New Destiny breached its charter when it failed to
16 provide a comprehensive program of instruction for the
17 requisite number of days and hours of instruction
18 required by State law for the grades it served during
19 the 2012-2013 year.
20 These are significant, and they are serious
21 breaches. They were not corrected.
22 And as a result, it is the position of the Charter
23 Board that New Destiny's charter should be revoked.
24 Thank you.
25 ADMINISTRATIVE LAW JUDGE: Thank you.

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1 Mr. condos.
2 MR. CONDOS: Thank you.
3 Judge, charter schools are still in their --
4 probably, maybe not their infancy anymore, but probably
5 in their toddler stage as far as operations.
6 They just started about three years ago fulfilling
7 the 15 years and started moving towards renewals.
8 So the law has evolved considerably since it was
9 first passed with a little -- about three-quarters of a
10 page section in the statute.
11 Charter school law is really kind of a hybrid. You
12 have the charter school statute itself which creates
13 them as a body, and it creates them through a contract
14 after they've submitted certain applications and certain
15 requirements and have been approved to operate a charter
16 school.
17 It also brings in normal education law, even though
18 they are excluded or exempt from most of the laws that
19 apply to school board districts.
20 Combine that with corporate law that doesn't apply
21 normally in education, nonprofit law, 501(C)(3) tax law,
22 and it's an interesting hybrid.
23 What we're looking at here is different, Your
24 Honor, I would submit than a typical revocation of, say,
25 a license.

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1 This isn't a license. This is a property right
2 what we're talking about here with respect to the
3 charter contract.
4 If someone was coming in here for, say, a medical
5 license with a possible revocation, an accounting
6 license with a possible revocation, a nursing license,
7 then the direct violation of what their duties were has
8 a direct relationship to their professional standard.
9 And so if this is a violation, then it's paramount
10 that, if it affected their operations and duty, then
11 that revocation -- the violation would be sufficient to
12 make the revocation absolute.
13 What we are talking about here is a charter
14 contract. So when we're looking at a contract, it's
15 issued by whatever the sponsoring entity. In this case,
16 it's the State Board for Charter Schools.
17 Whenever you have a contract and you're looking at
18 a contract, you have to take a look at: What is the
19 main purpose of that particular contract? What are we
20 trying to accomplish with that particular contract?
21 In this case, the statutes, the contract, the
22 mission are all pretty much exactly the same.
23 The statute was created and the contract was
24 created in Section 1, Part 1, that says: The contract
25 is executed for the purpose of authorizing the

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1 establishment of a charter school that will provide a
2 learning environment to improve pupil achievement and to
3 provide additional academic choices for parents and
4 pupils.
5 Then we go through the obligations of both the
6 State and the individual people as to whether or not
7 those are necessary to fulfill that contract.
8 Obviously, whenever we have breach of contracts,
9 you have to take a look at the breach, and how severe is
10 the breach, and does it frustrate the purposes of the
11 contract.
12 In this particular matter, there has been no
13 evidence that this school, from an educational
14 standpoint, has done nothing less than performing.
15 And not only performing, performing in a social
16 economic area that is failing as a whole from most of
17 the schools around it.
18 You heard Dr. Tinsley talk about the reaction of
19 parents and students. One parent specifically said:
20 You can't be talking about my child. He was the
21 troublemaker at all times. How are you accomplishing
22 success?
23 Their educational program, the alternative choice
24 for parents, was working with this particular student.
25 We obviously talked about no surprise as far as the

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1 obligations of the contract to New Destiny, but they did
2 have a major surprise.
3 Actually, they had two major surprises.
4 First, they had a flood that they had no
5 involvement with or cause.
6 And they were able to successfully take that
7 educational program, move it to a new site, with no loss
8 of education -- no substantial loss of educational
9 process since they still were performing in that second
10 year.
11 Then, we have another surprise when, all of a
12 sudden, you find out that your building has been sold
13 out from under you.
14 That surprised -- many people in our Valley here
15 and in Phoenix have suffered that surprise, both from a
16 commercial standpoint and from a residential standpoint,
17 because of this mortgage crisis that we have had and the
18 downturn in the economy.
19 Superintendent says, well, you're not really
20 operating your business right if your you're only
21 getting year-to-year leases.
22 That leaves reality on the table. The reality is
23 that the market dictates what's going to happen out
24 there.
25 You heard testimony from Dr. Tinsley that she has

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1 gone over that whole area both before and after the
2 closure trying to find other locations.
3 There's not a lot of locations in the southern
4 Valley that want charter schools in there that want
5 long-term leases.
6 This is the best deal that she could find at the
7 time, including after the flood, where they went through
8 half a year, and had another lease that went through the
9 next year.
10 The charter school movement talks about market
11 driven. And their philosophy is: If you have a good
12 school, people will come. If you don't have a good
13 school, it's eventually going to fail.
14 Market driven is exactly the same thing in the real
15 estate market. This is the only deal they could find.
16 You can't fault them for entering into the only deal
17 they could find.
18 Sure, they wanted a long-term deal, but they
19 couldn't get it from the landlord.
20 When you come in at the first of May, two and a
21 half weeks left of school and you're told you're not
22 going to get another one, it's scramble city, but the
23 school didn't panic.
24 What they did, they did and fulfilled their
25 responsibilities under the contract to the kids and to

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1 the parents.
2 What did they do?
3 When they realized they weren't going to be able to
4 open, they notified the parents.
5 They gave the parents formal withdrawal slips which
6 is needed to go to another school.
7 They gave the parents the kid's educational records
8 so they could take those records to whatever school the
9 kids were going to go to.
10 They fulfilled their educational requirements.
11 That's not even part of the transfer process where
12 you're asking for suspension. That's over and above
13 because that's the right way to do it.
14 They turned around and even though they had
15 submitted an anticipated amount of numbers that they
16 thought they were going to have coming up at the school,
17 they went back to the State and said: We're not going
18 to have these kids.
19 So they withdrew all the numbers out so they
20 wouldn't get any compensation.
21 Unfortunately, the system, as most bureaucratic
22 systems are, is a little slow, and they did receive the
23 August check.
24 What did they do with that? They gave it back.
25 When they realized they were not going to be able

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1 to open the upcoming school, they did the first logical
2 choice, they set up a time to meet with the executive
3 director for the State Board for Charter Schools.
4 Dr. Tinsley went down and met with Ms. Rowe. What
5 do we do? What's our alternatives?
6 At that time, they were told they could do a
7 request for a suspension of the upcoming year of the
8 contract.
9 Sounded okay. They had done that once before
10 because they couldn't find a location at the beginning
11 and they requested that suspension. No hassles. It
12 went through fairly quickly.
13 They were given a list. They were given the items
14 that were there. They formally sent in -- actually,
15 they formally sent in the letter saying that we are
16 withdrawing, and we can't open for the upcoming year,
17 we've done all this, and we would like to have an
18 extension.
19 Then Dr. Morgan from the State Board said: Okay,
20 I've been handed this, this is what we need to do.
21 They responded to that.
22 It wasn't to the satisfaction of the State Board.
23 Said: We need some specifics. How many students do you
24 think you're going to have? When do you think you're
25 going to have a definite date?

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1 Even though they said May 13th, that date was
2 sufficient because if they didn't have a location by May
3 13th, they would have -- they would have come in and
4 said: We don't have a charter school. I guess we have
5 to give the charter back.
6 That's implicit in the statement there.
7 If you're at May 13th and starting the school in
8 August, that is a definite date.
9 But they wanted a specific date, so they came back
10 and gave them specific dates, they gave them specific
11 numbers of children, they gave them what they
12 anticipated for the market, and then started looking for
13 other places.
14 Had a potential place in Chandler, but you can't
15 enter -- again, reality kicks in. You can't enter --
16 the landlord is not going to enter into a contract if
17 you don't have a stream of income that is going to show
18 that money is going to come in.
19 This charter was in limbo because we were waiting
20 for the approval before we could say: Yes, we have a
21 charter contract. We're laying off this year, and it's
22 going start the year after.
23 So basically, they follow the rules, and so the
24 testimony was very clear. When they went in there the
25 first of the year, they were perfectly compliant with

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1 all the rules and regulations and everything that was
2 required of them under contract.
3 August 5th, when they tendered a letter, full
4 compliance. September, they were still in full
5 compliance. October 1, they were still in full
6 compliance.
7 If we look at the date when all the information
8 that was requested by the State Board or for Charter
9 Schools, October 5th, they were in full compliance.
10 They entered to a meeting of the minds with
11 Mr. Lorenzo, who had done their two prior audits, in
12 June, anticipating that the money would come in from the
13 State to cover the audit from the previous years, the
14 reimbursement, and could pay this.
15 They even had some money at that time that they
16 could have paid.
17 The problem is, the rest of the year, you had bills
18 that have accumulated during the school.
19 In fact, you heard testimony that the people
20 themselves, Dr. Tinsley and Mr. Tinsley, put in almost
21 $80,000 to keep this school floating, their own personal
22 commitment.
23 Those bills continue on, but there was no longer
24 any cash flow. So little by little, whatever they still
25 had at the end of June 30th, got eaten up. But still in

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1 anticipation that funds are going to come in.
2 So on October 5th, they received nothing from the
3 State Board for Charter Schools saying that your request
4 is deficient because we anticipate that you're not going
5 to have your audit in.
6 In fact, if they would have received that, it
7 clearly would have been improper.
8 They couldn't do that. So what they did is wait
9 until November 26. At which time, they were in
10 technical violation of the October 15th AFR and the
11 November 15th audit deadline.
12 Prior year, it was sent in. January, it was
13 received, accepted, no problems except for one month
14 withholding, 10 percent, which is what the legislature,
15 through the State Board's request, has created as an
16 incentive to make sure these charter schools realize
17 this is important, you've got to send it in.
18 They don't revoke them immediately when they don't
19 have them in. They usually give them two months before
20 they even go before the Board. That's basically where
21 we are in this situation.
22 If we look at November 26th hearing, you find
23 another abuse of the power of the State Board for
24 Charter Schools.
25 What you find is that they are on the list with 14

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1 other schools -- 15 other schools for not having their
2 audit and AFRs in on time.
3 So they're not uniquely violating the charter
4 provisions.
5 If you would trace back through history of the
6 charter schools, you will find this is a fairly
7 consistent situation that goes on.
8 Some schools, for whatever reasons, don't get their
9 audits in on time. Some schools, for whatever reasons
10 don't get their AFRs in on time.
11 Most of the time, it's not an intentional situation
12 where they're trying to flaunt the rules or they're
13 trying to reject or neglect their obligations. It's
14 some other factor.
15 In this case, we have two major factors; you're not
16 operational; you're not getting any more money.
17 And so there's not -- there's no policy to deal
18 with the school like this, a school that's out, a school
19 that is waiting to see if they're going to be officially
20 allowed to be out the period that they're already out.
21 Is there something that the State Board can do?
22 And there clearly is, because this is one of those,
23 as charter schools has gone on, laws and interpretations
24 and policies are created that are not set forth in the
25 law.

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1 The very transfer or, at least, the very aspect of
2 of suspending a charter for a year, as Ms. Rowe said, is
3 not statutory. It's something that the Board has done
4 and has created a policy for.
5 But they didn't think it was important enough to
6 make it part of the administrative code that applies to
7 charter schools, but they still had a policy on it. It
8 still deviates from the, quote, unquote, statue itself.
9 So this is a lot of deviation that the Board has
10 the power to do. Especially when they run into certain
11 circumstances that are unique, and this is one of those
12 particular circumstances.
13 If we look at the February 26 meeting, you see that
14 the State Board for Charter Schools did punish New
15 Destiny.
16 It punished New Destiny just like it punished the
17 other schools. They said: We are going to withhold 10
18 percent from what you get.
19 Straight up, that was the punishment.
20 The fly in the ointment, so to speak, is they
21 weren't getting any money at that particular time, so
22 that wouldn't be a real punishment to them, but that was
23 the order they made.
24 Then when they went over to the AFR, that's when
25 they said that since New Destiny is not getting any

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1 money, we would be getting 10 percent if they did get
2 money.
3 That's the order. They punished them. They ruled
4 right then on being late for the audit and being late
5 for the AFR.
6 On that same day, they treated the situation of
7 whether or not you can -- they would allow a transfer.
8 What did they focus on?
9 They didn't focus on: Are you doing a good
10 educational program?
11 They didn't focus on how hard you tried to put in.
12 They just said: Why don't you have a site yet?
13 Well, it's difficult to find a site.
14 Then they focused on: Why did you only have a
15 one-year lease? Why don't you have a specific marketing
16 plan?
17 How can you have a specific marketing plan when you
18 don't know the location?
19 You have to deal with generalities. You deal with
20 generalities in the application. Because when you put
21 the application in, most of the time, they don't have a
22 site. So you have to deal with generalities in that
23 situation.
24 But this Board wanted specifics, knowing that there
25 couldn't be specifics.

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1 So what do they do? They say: No, we're not going
2 to give you your extension because you're behind on the
3 audit and the AFR, which they just then formally found,
4 that same meeting, that they were in violation.
5 That's the first time the Board found a violation.
6 Even though they put discipline up here in the
7 earlier agenda, they put another discipline on them in
8 the secondary agenda when they were asking for the
9 extension.
10 That seems to be a double hit, a double jeopardy,
11 for the same offense.
12 And then they didn't say anything else.
13 They said: Okay, Madam Executive Director, you go
14 out and get them to surrender their charter. And if
15 they don't surrender, bring it back for revocation.
16 They didn't say to try to work something out. They
17 didn't say to try to put up a consent agreement, which
18 they're entitled to do.
19 They said New Destiny's choice at that time was
20 surrender or get revoked.
21 The surrender agreement, if you look at it, has
22 provisions in there that they waive any money that
23 they're entitled to get after the year they closed, and
24 that would include the money they're entitled to, almost
25 $16,000, for audit fees, and any other money they were

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1 entitled to get.
2 So not only are they taking the charter away, but
3 they're taking the receivables that are entitled to them
4 from the State for educating these kids.
5 They came back December 13th and said: You didn't
6 do what we asked you to do. What we asked you to do was
7 surrender.
8 So they're getting punished again because they
9 didn't surrender. Because of that, they issue a Letter
10 of Intent to Revoke.
11 That's what we are here for today.
12 So while there may be two technical violations, the
13 closure of the school was caused, No. 1, by the loss of
14 lease; and No. 2, by the Board themselves when they
15 refused to give them the extension.
16 It wasn't caused by New Destiny in any way. They
17 looked for different places. They went through the
18 formal process, and they still didn't have it.
19 So it was the Board that caused them not to have a
20 school going on at this particular time.
21 And it was the Board that didn't have any other
22 type of plan, policy, or whatever, to deal with a
23 situation like this.
24 And it was the Board that already hammered them
25 once by taking the 10 percent, which was the standard

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1 procedure, and instead went through and revoked them.
2 They revoked the first school that was ever revoked
3 on a second violation.
4 The other schools, you heard executive director
5 say, was three. And the one done on that particular day
6 was five years late on their audits.
7 That seems to be a little arbitrary as to why
8 you're picking on this school. The sister school on at
9 the same time was two years and it wasn't revoked.
10 So it boils down to, again, going back to the
11 contract, and the contract's purposes, educating the
12 students.
13 The reason that the executive director said it
14 wasn't doing an educational program is because they
15 really weren't thinking ahead from their operational
16 standpoint and should have gotten a longer lease. Can't
17 get a longer lease if it's not there.
18 The bottom line is the contract should not be
19 revoked as a whole because they were fulfilling their
20 educational purposes; and not only fulfilling them, but
21 fulfilling them adequately in a very difficult target
22 population.
23 The commitment I think you saw from Dr. Tinsley
24 when she was up on the stand, the heart was there.
25 She's been in education for a long time, most of it

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1 dealing with special education students, students that
2 are hard-pressed.
3 These are the students that if they're not helped
4 are going to be our future criminals, prostitutes, drug
5 dealers, et cetera.
6 Someone has to make a difference, or they're headed
7 to jail or who knows where. They were making a
8 difference.
9 They were making these kids realize that there is
10 another alternative besides the lifestyle they've been
11 around.
12 They were making that not only with their time and
13 effort, lack of salaries, but reaching into their own
14 personal pockets to the tune of over $80,000 to make
15 this school work, a nonprofit school.
16 They weren't getting pecuniary value for it. It's
17 a nonprofit school, limited by Uncle Sam and the
18 treasury department as to what they can and what they
19 can't do from a compensation basis by the tax laws.
20 That's what we're talking about today. It's a
21 difference. It's a contract different from typical
22 licenses that are out there. So we have to look at it
23 as a whole.
24 If one technicality or two violations or three
25 violations immediately cause a Board to revoke charter

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1 schools, it hasn't been doing it for almost 18, 19
2 years.
3 Schools have gone through without revocations over
4 and over again on similar violations.
5 On that same day, if you look at the agenda,
6 there's a school that didn't have fingerprint cards,
7 fingerprinted teachers. These are the potential child
8 molesters.
9 And what do they do? They get a fine, which they
10 allow to again go through the legislature and be able to
11 impose a fine instead of revoking them.
12 It's the severity of the offense, I think, that we
13 have to look at, the severity of the breach, and whether
14 or not that frustrates the whole purpose of the contract
15 to void and revoke the whole contract.
16 We think this charter school has merit and should
17 be allowed the stay open.
18 Thank you.
19 ADMINISTRATIVE LAW JUDGE: Okay.
20 I'm going to keep the record in this matter opened
21 for the limited and very limited purpose of receiving
22 the court reporter's transcript.
23 It's going to be the same transcript that the board
24 will be looking at.
25 When a copy of the court reporter's transcript is

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1 filed with the Office of Administrative Hearings, the
2 record will be deemed closed.
3 Again, it's kept open only for the transcript. No
4 other pleadings will be accepted.
5 When the record is closed, the parties will be
6 advised of that in writing.
7 I will then have 20 days upon which to issue an
8 Administrative Law Judge decision.
9 That decision will be transmitted to the Board
10 within 20 days from the date that the record is closed.
11 Upon receipt of my decision, the Board has a
12 statutory period of upon which to take action.
13 If the Board timely takes action, each of the
14 parties would receive a written order from the Board.
15 If the Board were to not timely take action,
16 statute provides that the director of the Office of
17 Administrative Hearings would certify my decision as the
18 effective decision and order in the case.
19 If that should occur, each of the parties shall
20 receive that director's written order.
21 Under either scenario, there will be a timely
22 affected order.
23 When there is, each of the parties have further
24 administrative and judicial appeal rights. When the
25 time frame for those have expired, the case is final.

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1 If you'd like to continue to track your case while
2 it's pending before the Office of Administrative
3 Hearings, you can do so by going to our website.
4 Our website address is www.azoah.com.
5 At the conclusion of our hearings, we invite
6 participants to complete an evaluation form for the
7 Office of Administrative Hearings.
8 There are blank evaluation form on each of your
9 desks. If you would like to complete one, you may do so
10 before you leave the Office of Administrative Hearings
11 this morning.
12 You may place any completed evaluation form in the
13 black box located on the floor outside the hearing
14 room. You cannot take them home, fill them out, and
15 mail them in.
16 The completion or noncompletion of an evaluation
17 form has no impact on the case that I have just heard.
18 If there is nothing further, we will be adjourned,
19 and the record, again, will be kept open for the limited
20 purpose of receiving the court reporter's transcript.
21 Thank you. Off the record.
22 (The hearing was concluded at 10:56 a.m.)
23
24
25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4 BE IT KNOWN that the foregoing hearing was taken
5 before me, DEBORAH J. BOYETTE, Registered Professional
6 Reporter, Certificate No. 50507, State of Arizona; that the
7 witness before testifying was duly sworn by me to testify to
8 the whole truth; that the questions propounded to the witness
9 and answers of the witness thereto were taken down by me in
10 shorthand and thereafter reduced to typewriting under my
11 direction; that the foregoing 64 pages constitute a true and
12 accurate transcript of all proceedings had upon the taking of
13 said hearing, all done to the best of my skill and ability.
14 I FURTHER CERTIFY that I am in no way related to
15 any of the parties hereto, nor am I in any way interested in
16 the outcome thereof.
17 DATED at Phoenix, Arizona, this 23rd day of July,
18 2013.
19
20
Deborah J. Boyette, RPR
21 Certified Reporter
Certificate No. 50507
22
23
24
25