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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA

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 **MOTION TO DISMISS** Before: Hon. Administrative Law Judge Brian Tully

COMES NOW NEW DESTINY LEADERSHIP CHARTER SCHOOL, an Arizona nonprofit corporation, (hereinafter "New Destiny") by their counsel and hereby respectfully requests the Court to Dismiss the Notice of Intent to Revoke filed by the Arizona State Board for Charter Schools, (hereinafter "ASBCS") pursuant to A.R.S. §15-183(I)(3) and in support of their Motion to Dismiss provide the following:

1. New Destiny is an Arizona nonprofit corporation which entered into a contract with the ASBCS on April 1, 2009 to operate a charter school serving grades K-6.

2. New Destiny submitted a Request For Good Cause Suspension to ASBCS on August 8, 2012 because it had been unable to secure a site for the school to operate during the 2012-2013 school year because its existing lease was not renewed when the landlord lost the property in a Deed of Trust Sale.

3. At the November 26, 2012 board meeting, ASBCS denied New Destiny's request for a Temporary Suspension of Operation. ASBCS further directed the ASBCS staff to "**work with** the charter holder on the terms of a surrender agreement." New Destiny did not want to surrender its charter contract, and New Destiny was not provided with any terms or dates for curing deficiencies.

4. On January 2, 2013, ASBCS provided a Consent Agreement for the Voluntary Surrender and Termination of the Charter Contract for New Destiny with the expectation that it be approved at a meeting of the charter holder and signed by the Board President. The expectation was that New Destiny would surrender its charter. The ASBCS did not "work with" New Destiny, it merely provided New Destiny with a contract saying New Destiny surrender its charter. New Destiny decided it did not want to surrender the charter.

5. A.R.S. §15-183(I)(3) provides in part that "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."

6. Prior to presenting New Destiny with the Notice of Intent to Revoke, the ASBCS 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 by providing proper notice of its intent to revoke.

7. Additionally, Arizona Administrative Code R7-5-304 (B)(3) provides that when entering into a consent agreement with the charter holder for resolution of non-compliance, the Board shall (a) describe each offense; (b) stipulate the facts agreed to by the Board and the charter holder; (c) specify the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action; (d) provide a timeline for the charter holder to complete the actions specified in the consent agreement; (e) stipulate that if the charter holder fails to comply with the terms and conditions of the consent

agreement, the Board may, after giving the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and (f) Is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative;

8. The ASBCS did not provide New Destiny with any specific actions or a timeline for any actions to be completed in order to cure the offenses alleged by the ASBCS.

9. ASBCS did not provide New Destiny with a ninety day cure period prior to issuing a Notice of Intent to Revoke nor did ASBCS provide New Destiny with terms and timelines necessary to determine the requirements of New Destiny to come into compliance.

WHEREFORE, New Destiny Leadership Charter School requests the Court to enter a dismissal of the Notice of Intent to Revoke against them, for reasonable attorney fees in representing them in the action and for all other relief just and proper in the premises.

Respectfully Submitted,

Leonidas G. Condos

Memorandum and Statement of Facts and Authority in Support of Motion to Dismiss

Relevant Facts

New Destiny Leadership Charter School ("New Destiny") is an Arizona nonprofit corporation that entered into a contract with the ASBCS on April 1, 2009 to operate a charter school serving grades

K-6. During the summer of 2012, the building that New Destiny had been leasing went into foreclosure, and they were forced to attempt to relocate because its lease was not renewed due to the landlord losing the property in a Deed of Trust Sale. After two months of failed attempts to find an adequate replacement facility, New Destiny reluctantly submitted a Request For Good Cause Suspension to ASBCS on August 8, 2012 in accordance with the rules and the direction of the Executive Director because it had been unable to secure a site for the school to operate during the 2012-2013 school year.

At the November 26, 2012 board meeting, ASBCS denied New Destiny's request for a Temporary Suspension of Operation. ASBCS further directed the ASBCS staff to "**work with** the charter holder on the terms of a surrender agreement." New Destiny did not want to surrender its charter contract, and New Destiny was not provided with any terms or dates for curing deficiencies. On January 2, 2013, ASBCS provided a Consent Agreement for the Voluntary Surrender and Termination of the Charter Contract for New Destiny with the expectation that it be approved at a meeting of the charter holder and signed by the board president. The expectation was that New Destiny would surrender its charter. The ASBCS did not "work with" New Destiny, it merely provided New Destiny with a contract which said New Destiny surrendered its charter and told New Destiny to approve and sign the contract. ASBCS listed reasons for the voluntary surrender in its minutes and as part of the surrender agreement; however, the items necessary for any future compliance and a corresponding timeline were never provided to New Destiny. The intent of the ASBCS was to shut down New Destiny without a hearing on the issues.

New Destiny had no intention of permanently shutting its doors to the students for whom it was providing educational services, consequently, New Destiny did not approve the surrender agreement.

Rather, New Destiny continued to work towards rectifying the areas of non-compliance identified by the ASBCS. On February 11, 2013 at the ASBCS board meeting, the board voted to issue a Notice of Intent to Revoke to New Destiny. Prior to presenting New Destiny with the Notice of Intent to Revoke, the ASBCS did not allow the statutory ninety days to correct the problems associated with the proposed revocation, and ASBCS did not provide New Destiny with any specific actions or a timeline for any actions to be completed in order to cure the non-compliance issues identified by ASBCS. As a result of the issuance of the Notice of Intent to Revoke, a hearing has been scheduled for July 2-3, 2013.

Since submitting the Request for Temporary Suspension of the charter, New Destiny has been diligently working to secure a school site for the upcoming 2013-2014 school year as well as address the non-compliance issues.

Applicable Law and Argument

A.R.S. §15-183(I)(3) provides in part that "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." Once it was determined by the ASBCS board that New Destiny had not signed the Voluntary Termination contract, New Destiny was not given the proscribed ninety days to correct the problems associated with the reasons for the proposed revocation of the charter. Rather, ASBCS immediately issued a Notice of Intent to Revoke.

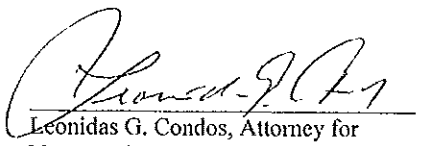
Additionally, Arizona Administrative Code R7-5-304 (B)(3) provides that when entering into a consent agreement with the charter holder for resolution of non-compliance, the Board shall (a) describe each offense; (b) stipulate the facts agreed to by the Board and the charter holder; (c) specify the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action; (d) provide a timeline for the charter holder to complete the actions specified in the consent agreement; (e)

stipulate that if the charter holder fails to comply with the terms and conditions of the consent agreement, the Board may, after giving the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and (f) is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative.

This section of the Administrative Code along with A.R.S. §15-183(I)(3) provide a very structured framework within which the parties can work to insure that the charter school is given every opportunity to succeed. At no time was New Destiny provided with the framework associated with parts (c) – (e). New Destiny was given neither a framework of terms that expressed how they could achieve compliance, nor the statutory ninety day cure period. Instead, the ASBCS has sent the matter to the Administrative Law Judge for a decision abdicating its statutory responsibilities.

For the foregoing reasons, Defendant has requested that the Notice of Intent to Revoke be dismissed.

Dated: June 17, 2013



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COPY of the foregoing document filed electronically this 17 day of June, 2013 with:

Office of Administrative Hearings
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COPY of the foregoing document mailed electronically and/or via regular mail this 13th day of June, 2013 to:

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By: /s/ Leonidas G. Condos
Leonidas G. Condos