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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 **NOTICE OF FILING OF TRANSCRIPT OF HEARING OF JULY 2 AND 3, 2013** (Honorable Brian Brendan Tully)

NOTICE is hereby given of the filing of the transcript of the testimony of the hearing held in this matter on July 2 and 3, 2013. *See* attached transcript (Volumes 1 and 2).

Signed this 24th day of July, 2013.

THOMAS C. HORNE
Attorney General

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

The foregoing Notice and attachment
filed electronically this 24th day of July, 2013 with:

Office of Administrative Hearings
http://www.azoah.com

COPY of the foregoing Notice and attachment
mailed electronically this 24th day of July, 2013 to:

Leonidas G. Condos
THE CONDOS LAW OFFICE, P.L.C.
Attorney for New Destiny Leadership Charter School
leocondoshome@yahoo.com

DeAnna Rowe
Executive Director
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By ksa
P0012013000586/3486959/ksa

VOLUME 1 OF 2

TRANSCRIPT OF JULY 2, 2013

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 I

HEARING

Phoenix, Arizona
July 2, 2013
8:00 o'clock a.m.

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

Dropkin and Associates
Certified Court Reporters
7600 North 16th Street
ORIGINAL Suite 216
Phoenix, Arizona 85020
Telephone: (602) 997-8066

INDEX

WITNESS: Andrea Leder

EXAMINATION BY: PAGE
Ms. Anderson 18, 109
Mr. Condos 62

WITNESS: DeAnna Rowe
Ms. Anderson 113, 190
Mr. Condos 130

WITNESS: Barbara Tinsley
Mr. Condos 193

EXHIBITS MARKED

FOR THE BOARD:

Exhibits	Description	Page
No. 1	Charter contract	10
No. 2	USFRCS Memo No. 93	10
No. 3	Email from BCS to charter rep, 10/19/12	10
No. 4	Letter from BCS to Tinsley, 11/15/12	10
No. 5	Letter from BCS to Tinsley, 11/16/12	10
No. 6	Memo from BCS, 6/11/12	10
No. 7	BCS meeting summary of 11/26/12 meeting	10
No. 8	Email from Rogers to Leder, 11/16/12	10
No. 9	E-mails between Leder to Lorenzo, 2/12/13	54
No. 10	Letter from BCS to New Destiny, 11/9/11	10
No. 11	Letter from BCS to New Destiny, 11/16/11	10

INDEX (cont'd.)

No. 12 Letter from BCS to New Destiny, 11/22/11 10

No. 13 Letter from BCS to New Destiny, 1/17/12 10

No. 14 Policy statement/temporary suspension 10

No. 15A Notice of 11/26/12 meeting, dated 11/16/12 10

No. 15B Agenda Item: AFS and Compliance Audits 10

No. 15C Agenda Item: AFR 10

No. 15D Agenda Item: Temporary Suspension, Appendix A and B 10

No. 16 E-mail from Bianca to New Destiny, 2/11/13 10

No. 17A Notice of 2/11/13 meeting, dated 2/1/13 10

No. 17B Agenda Item: New Destiny 10

FOR THE CHARTER SCHOOL:

Exhibits A through M, Q through Z, AA, BB, & CC 12
Exhibit DD 218

Page 5

1 A HEARING was taken upon oral examination by the
2 parties through their respective attorneys before DEBORAH J.
3 BOYETTE, RPR, a Certified Reporter in the State of Arizona,
4 at the OFFICE OF ADMINISTRATIVE HEARINGS, 1400 West
5 Washington Street, Suite 101, Phoenix, Arizona, on the 2nd
6 day of July, 2013, commencing at 8:00 a.m. of said day.
7 Further, this deposition was taken pursuant to the Arizona
8 Rules of Civil Procedure.
9
10 COUNSEL APPEARING:
11
12 Kim S. Anderson, Esq.
ASSISTANT ATTORNEY GENERAL
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Phoenix, Arizona 85007
14 Attorneys for Arizona State Board for
Charter Schools
15
16 Leonidas G. Condos, Esq.
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18 Attorneys for the Charter School
19
Brian Tully
20 OFFICE OF ADMINISTRATIVE HEARINGS
1400 West Washington, Suite 101
21 Phoenix, Arizona 85007
Administrative Law Judge
22
23
24
25

Page 6

1 PROCEEDINGS
2 July 2, 2013 8:00 a.m.
3 - - -
4
5 ADMINISTRATIVE LAW JUDGE: This is Docket No.
6 13F-RV-002-BCS, before the Office of Administrative
7 Hearings, State of Arizona, in the matter of New Destiny
8 Leadership Charter School, a non-profit corporation, and
9 the operation of New Destiny Leadership Charter School,
10 a charter schools.
11 Pursuant to the Arizona State Board of Charter
12 Schools' Notice of Intent to Revoke Charter, a notice of
13 hearing in this matter comes on for a hearing before the
14 Office of Administrative Hearings, an independent
15 agency, today, July 2nd, 2013.
16 I am Administrative Law Judge Brian Brendan Tully,
17 with the the Office of Administrative Hearings.
18 The Arizona State Board for Charter Schools is
19 represented by Assistant Attorney general, Kim Anderson.
20 New Destiny Leadership Charter School is
21 represented by its attorney, Leonidas G. Condos.
22 Pursuant to the Notice of Intent to Revoke and
23 Notice of Hearing, the hearing is to determine whether
24 grounds exist to revoke the charter held by New Destiny
25 Leadership Charter School to operate New Destiny

Page 7

1 There is a court reporter present. The court
2 report's transcribed notes will be deemed the official
3 record in this matter, once a copy of the transcript is
4 filed with the Office of Administrative Hearings at the
5 sole cost and expense of the Board.
6 We are also digitally recording the proceeding.
7 That's why I'm checking the panel over here to make sure
8 it's operating.
9 So if you're speaking, I ask that you speak
10 directly into a microphone. The microphone does not
11 amplify.
12 We'll also be keeping a copy of the audio record.
13 The parties have presubmitted exhibits.
14 New Destiny Leadership has one missing.
15 MR. CONDOS: There was Exhibit O that we -- it was
16 going to be a transcript, but the transcriber couldn't
17 decipher it.
18 ADMINISTRATIVE LAW JUDGE: That wasn't the one I
19 thought.
20 Exhibit O is Notice of Public Hearing.
21 It was Exhibit N. Exhibit N has nothing behind it.
22 According to your sheet, it's staff comments and
23 school submission to board regarding request for
24 temporary suspension.
25 At some point, you might want to check on that.

Page 8

1 MR. CONDOS: Judge, we can give you our notebook
2 that we put together for you. I think it has it in
3 there for you.
4 ADMINISTRATIVE LAW JUDGE: Counsel, do you have
5 Exhibit O?
6 MS. ANDERSON: I don't have exhibits -- identified
7 on their exhibit list, I do not have N or O.
8 I had a discussion with Mr. Condos. And it's my
9 understanding that there would be no Exhibit O.
10 We did discuss the inclusion of what he identifies
11 as Exhibit N in the Board's Exhibit 15D.
12 ADMINISTRATIVE LAW JUDGE: This is what I've got.
13 I'll pull it up.
14 I can't remember if that was File 2 or 3.
15 The first one is File 2.
16 That's Q, so let me go back.
17 This was sent over as N.
18 This is what was sent over as O: Nothing.
19 Somehow, whatever I've got behind here -- so there
20 is no O; is that correct at this point?
21 MR. CONDOS: Yeah, we took it out, but then we
22 moved things forward. We can go with whatever
23 identification you've got.
24 We can stay with what was submitted initially, and
25 just take out O and move it over to P, and then the rest

Page 9

1 of the letters down.
2 ADMINISTRATIVE LAW JUDGE: Let's see what happens
3 when it comes up, okay?
4 MR. CONDOS: Okay.
5 ADMINISTRATIVE LAW JUDGE: Just wanted to let you
6 know I didn't have it.
7 I'm not sure what this notice of public meeting
8 is. Looks like it's M. It's a different date. Take
9 care of that later.
10 All right. I'd like to explain the procedure we're
11 going to use at the hearing for the next few days.
12 We will begin with an opportunity for brief opening
13 statements. We will begin with counsel for the Board,
14 followed by counsel for the charter school.
15 After an opportunity for opening statements, we
16 then go into the presentations.
17 The parties may introduce witnesses, who will
18 testify under oath or affirmation, subject, at the
19 appropriate time, to cross-examination by the opposing
20 side.
21 You may also introduce your documentary evidence at
22 that time.
23 Your presentations will be that the Board will go
24 first, followed by the school.
25 After we have the presentations, we'll then have an

Page 10

1 opportunity for closing statements.
2 The order of closing statements will be that the
3 Board will go first, followed by the school.
4 Are there any preliminary matters?
5 MS. ANDERSON: Yes, Your Honor.
6 We do have some stipulations with regard to
7 exhibits.
8 ADMINISTRATIVE LAW JUDGE: Okay.
9 MS. ANDERSON: With regard to the Charter Board's
10 exhibits, with the exception of Exhibit 9, the parties
11 have stipulated to the admission of all of the exhibits
12 and subparts.
13 ADMINISTRATIVE LAW JUDGE: You're talking about the
14 Board?
15 MS. ANDERSON: Yes.
16 ADMINISTRATIVE LAW JUDGE: Exhibit 9?
17 MS. ANDERSON: Yes, Your Honor.
18 ADMINISTRATIVE LAW JUDGE: Mr. Condos, is that
19 correct?
20 MR. CONDOS: That is correct.
21 ADMINISTRATIVE LAW JUDGE: Okay.
22 Show Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12,
23 13, 14, 15, 16, and 17 admitted.
24 (Board's Exhibits were admitted.)
25 ADMINISTRATIVE LAW JUDGE: If there are no other

Page 11

1 preliminary matters --
2 MS. ANDERSON: We also have stipulations with
3 regard to New Destiny's exhibits as well.
4 ADMINISTRATIVE LAW JUDGE: Okay.
5 MS. ANDERSON: Exhibits A through F, the parties
6 have stipulated to.
7 ADMINISTRATIVE LAW JUDGE: A, B, C, D, E, F.
8 MS. ANDERSON: With regard to Exhibit G, I had a
9 discussion with Mr. Condos that proposed Exhibit G
10 contains two pages; however, the second page is not a
11 continuation of Page 1 of that exhibit, and also is
12 contained as Page 2 in Exhibit H.
13 So with regard to Exhibit G, there should be just
14 one page to that exhibit, with a 1 at the bottom of it.
15 It's an e-mail from Barbara Tinsley, dated Monday,
16 October 1, 2012, to Martha Morgan.
17 The parties stipulate to that page of the exhibit.
18 ADMINISTRATIVE LAW JUDGE: You're saying Page 2 is
19 going to be a Page 2 to something else?
20 MS. ANDERSON: Yes, Your Honor.
21 ADMINISTRATIVE LAW JUDGE: Mr. Condos?
22 MR. CONDOS: That's correct.
23 ADMINISTRATIVE LAW JUDGE: Okay. Hand you back
24 this page so I don't get it confused.
25 Show Exhibit G, consisting of one page,

Page 12

1 admitted.
2 MS. ANDERSON: Exhibits H through M, the
3 parties have stipulated to the admission of those
4 exhibits.
5 ADMINISTRATIVE LAW JUDGE: H, I, J, K, L, M are
6 admitted.
7 MS. ANDERSON: And we then skip to stipulation to
8 admit Exhibits Q, R, S, T, U, V.
9 ADMINISTRATIVE LAW JUDGE: Okay. Q, R, S, T, U and
10 V are admitted.
11 MS. ANDERSON: And also X, Y, Z, AA, BB, and CC.
12 ADMINISTRATIVE LAW JUDGE: X, Y, Z, AA, BB, CC are
13 admitted.
14 (Charter School's Exhibits were admitted.)
15 ADMINISTRATIVE LAW JUDGE: Anything else?
16 MS. ANDERSON: No, Your Honor.
17 ADMINISTRATIVE LAW JUDGE: Okay.
18 We'll begin with an opportunity for opening
19 statements.
20 Ms. Anderson.
21 MS. ANDERSON: Thank you, Your Honor.
22 Charter schools are public schools, and they're
23 established by a contract, also known as a charter,
24 between a sponsor and a public body or private person or
25 a private organization.

Page 13

1 The charter at issue today was entered into between
2 the Arizona State Board for Charter Schools, as a
3 sponsor, and nonprofit corporation New Destiny
4 Leadership Charter School, to operate a charter school
5 also by the name of New Destiny Leadership Charter
6 School.
7 While the 2013 legislative session brought some
8 changes to the charter school statutes at the time that
9 the Board made its motion to issue a Notice of Intent to
10 Revoke and this Notice of Intent to Revoke was filed,
11 the ARS 15-183(i)(3) provided that a sponsor of a
12 charter school may revoke a charter at any time if a
13 charter school breaches one or more provisions of its
14 charter.
15 So the question that needs to be answered in this
16 case is: Did New Destiny Leadership Charter School
17 breach one or more provisions of its charter?
18 It's the Board's position that the testimony and
19 the evidence in this case will show that the answer to
20 that question is, clearly, yes.
21 New Destiny, as are all charter schools, are
22 required by law and their charter to electronically
23 submit a copy of its Annual Financial Report, also
24 called an AFR, to the superintendent of public
25 instruction, by October 15 of each year, which covers

Page 14

1 the prior fiscal year.
2 New Destiny, as are all charter schools, is
3 required by law and their charter to undergo an annual
4 financial audit by an independent certified public
5 accountant.
6 The date by which charter schools sponsored by the
7 Arizona State Board for Charter Schools must submit
8 their annual financial audit package is no later than
9 November 15th of each year, and it covers the period of
10 the prior fiscal year, which ends June 30th.
11 New Destiny, as are all charter schools, is
12 required by law and its charter to provide a
13 comprehensive program of instruction for students for at
14 least 180 days during the school year, and a minimum
15 number of hours of instruction within those 180 days.
16 The testimony and the evidence will show today that
17 New Destiny breached its charter when it failed to
18 submit its fiscal year 2012 AFR to the superintendent of
19 public instruction by October 15, 2012.
20 New Destiny breached its charter when it failed to
21 submit its fiscal year 2012 annual audit package to the
22 Charter Board by November 15th, 2012.
23 And also, it breached its charter when it failed to
24 open and provide the requisite number of days and hours
25 of instruction to students during the 2012-2013 school

Page 15

1 year.
2 New Destiny, in fact, had no location in which to
3 operate during the 2012-2013 school year.
4 Although, they requested that the Charter Board
5 allow them to take the 2012-2013 school year off of
6 providing instruction to students, the Charter Board did
7 not grant their request.
8 The evidence will show that despite the Charter
9 Board's repeated communications with New Destiny about
10 its failures to submit its AFR and audit package, New
11 Destiny failed to make those submissions.
12 And in fact, to this day, have continued to fail to
13 make those submissions.
14 Nor did New Destiny operate a charter school for
15 the 2012-2013 school year.
16 New Destiny has not, in the 90 days since the
17 Notice of Intent to Revoke was filed, corrected any of
18 the problems associated with the reasons stated in the
19 Notice of Intent to Revoke Charter for the proposed
20 revocation of the charter.
21 At the conclusion of the hearing, the Charter
22 Board is confident that you will find that New Destiny
23 breached its charter and failed to make the corrections
24 identified within the Notice of Intent to Revoke Charter
25 and, as a result, its charter should be revoked.

Page 16

1 Thank you.
2 ADMINISTRATIVE LAW JUDGE: Thank you.
3 Mr. Condos, for the school.
4 MR. CONDOS: Thank you, Mr. Hearing Officer.
5 What you'll hear from the defense and the evidence
6 will show that this Board has been arbitrary and
7 capricious in these particular actions affecting New
8 Destiny Charter School.
9 You'll hear that this was a school that was open
10 for three years.
11 And during those three years, they were rated as a
12 performing school by the Department of Education.
13 You'll hear that the school had a lease for their
14 premises, and then discovered that the property that
15 they were leasing had been sold at a trust sale, which
16 in turn led them to having to not be able to open in the
17 next year at that location.
18 You'll hear that the rules provide and the policy
19 provides that there is a means for a school in a
20 situation like that to ask for a suspension.
21 You'll hear that the school followed all of the
22 requirements that were set out in the request and in the
23 policy for a request for extension.
24 This was done in August, shortly after the
25 beginning of the year.

Page 17

1 You'll hear that the school actually contacted
2 the State Board in July as to what the procedure
3 would be since they could not open and could not
4 find a new location in their area at that particular
5 time.
6 But you'll hear that a hearing didn't take place
7 until November.
8 At that particular time, the Board refused to give
9 them their suspension of one year to allow them to find
10 a new location and open a new school.
11 And then you'll hear that shortly after that, the
12 Board issues a Letter of Intent to Revoke because
13 they're not open, primarily because they didn't grant
14 the suspension.
15 So then you'll also hear other evidence with
16 respect to the attempts to complete full compliance by
17 the school.
18 And finally, the Board's decision in this matter,
19 in all the decisions in this matter, clearly will
20 illustrate an arbitrary and capricious manner of rulings
21 which brings us to the position we're in today.
22 ADMINISTRATIVE LAW JUDGE: Thank you.
23 Both sides having concluded their respective
24 opening statements, we'll now go to the presentations.
25 The Board may proceed.

Page 18

1 You can call your first witness.
2 MS. ANDERSON: The Charter Board calls, as its
3 first witness, Andrea Leder.
4 ADMINISTRATIVE LAW JUDGE: Okay.
5 Have a seat here.
6
7 ANDREA LEDER,
8 Having been first duly sworn upon her oath by the Notary
9 Public to speak the truth and nothing but the truth, was
10 examined and testified as follows:
11
12 EXAMINATION
13 BY MS. ANDERSON:
14 Q. Would you please state your name for the record.
15 A. Andrea Leder.
16 Last name is spelled L-e-d-e-r.
17 Q. Where are you currently employed?
18 A. At the Arizona State Board for Charter Schools.
19 Q. What is your position at the Charter Board?
20 A. I'm the government and financial services manager.
21 Q. How long have you been in that position?
22 A. It will be 10 years in -- well, been with the Board
23 for 10 years.
24 Q. What are your duties in your current position?
25 A. My duties include processing the engagement letters

Page 19

1 for the annual financial and compliance audits, reviewing the
2 completed audits that are submitted to the Board, and
3 following up with schools on issues identified in those
4 audits.
5 Q. As part of your duties, are you also charged with
6 monitoring charter schools sponsored by the Arizona State
7 Board for Charter Schools to ensure that the schools comply
8 with State laws pertaining to charter schools?
9 A. Yes, I am.
10 Q. Are you familiar with New Destiny Leadership
11 Charter School?
12 A. I am.
13 Q. How are you familiar with that school?
14 A. They have a contract with the Board to operate a
15 charter school.
16 Q. I think, for the purpose of clarification, because
17 the corporation has the same name as the school, I will --
18 when I'm referring to the operating entity, I will refer to
19 New Destiny; when I'm referring to the charter school entity,
20 I will call it the school.
21 A. Okay.
22 Q. Are you familiar with the charter contract between
23 New Destiny and the Arizona State Board for Charter Schools
24 that allowed the New Destiny to establish a charter school?
25 A. I am.

Page 20

1 Q. Is that charter contract what is contained in
2 Exhibit 1?
3 A. Yes, the first seven pages of this exhibit include
4 a copy of the charter contract itself.
5 The remainder of the exhibit includes the
6 attachments that are referenced in the contract.
7 And those attachments include the Articles of
8 Incorporation, as well as the original application submitted
9 by New Destiny.
10 Q. This is the charter contract that was executed
11 between the Charter Board and New Destiny, as reflected on
12 Page 7, by New Destiny, on March 31st, 2009, and by the
13 Charter Board on April 1st, 2009; is that correct?
14 A. That is correct.
15 Q. If you would refer to -- when I refer to page
16 numbers, I'll be referring to the page numbers in the lower
17 right corner of the page that begin with the letters BCS.
18 If you refer to Page 1, Paragraph C, and Page 7, it
19 reflects that the charter contract was executed by Barbara
20 Tinsley, on behalf of New Destiny; is that correct?
21 A. That is correct.
22 Q. And Barbara Tinsley is identified in these
23 paragraphs as the charter representative; is that correct?
24 A. Yes.
25 Q. What are the duties of a charter representative?

Page 21

1 A. As the charter representative, Barbara Tinsley is
2 the person appointed by New Destiny to act on its behalf with
3 the Board, and to serve as the primary contact for all
4 communication.
5 In that role, she is the person who is to ensure
6 that the corporation operates its charter school in
7 accordance with its charter contract and with all applicable
8 laws and regulations.
9 Q. When did New Destiny first operate a charter school
10 site under the contract that is Exhibit 1?
11 A. That would have been the 2009-2010 school year.
12 Q. When did New Destiny Leadership last operate the
13 charter school site under this charter contract?
14 A. That would have been the 2011-2012 school year.
15 Q. What grades is New Destiny authorized to serve?
16 A. Kindergarten through 6th grade.
17 Q. What was the number of students that were enrolled
18 in the school in the 2011-2012 school year?
19 A. They were funded for approximately 25 students.
20 Q. If you please refer to Exhibit 1, Page 6, Paragraph
21 16, it requires the charter school to comply with the same
22 financial and electronic data submission requirements as the
23 school district, correct?
24 A. That's correct.
25 Q. Are charter schools and school districts required

Page 22

1 by law to prepare and electronically submit the Annual
2 Financial Report to the superintendent of public instruction?
3 A. They are.
4 Q. Is that electronic submission done through the
5 Arizona Department of Education website?
6 A. Yes.
7 Q. Is the format of the Annual Financial Report
8 prescribed by the auditor general and the Arizona State
9 Department of Education?
10 A. Yes.
11 Q. What is the date by which charter schools are
12 required to electronically submit the Annual Financial Report
13 to the superintendent of public instruction?
14 A. October 15.
15 Q. What time period does that Annual Financial Report
16 cover?
17 A. It covers the period of July 1st through June 30th.
18 For the fiscal year 2012 AFR, that report covered
19 the period of July 1, 2011, through June 30th, 2012.
20 Q. That was the report that was due by October 15th,
21 2012; is that correct?
22 A. That's correct.
23 Q. What information is contained in the AFR?
24 A. The AFR includes detailed financial information on
25 the school's revenues and expenditures; and addresses such

Page 23

1 things as salaries and benefits, classroom supplies,
2 equipment, building maintenance, those types of things.
3 For expenditures, the AFR also includes a budget to
4 actual comparison.
5 Q. What is the significance of the Annual Financial
6 Report?
7 A. The superintendent of public instruction compiles
8 the AFR data for two reports that he is required to submit
9 annually to the governor and the legislature.
10 These reports provide an aggregate look at
11 education funding in Arizona, as well as include the
12 individual expenditures for each school district and
13 charter.
14 Q. And are the reports, the one compiled by the
15 superintendent of public instruction and the AFRs that are
16 prepared and submitted by each charter school and school
17 district, are they made available to the public on the
18 Arizona Department of Education website?
19 A. Yes.
20 Q. Is there information provided on the websites, the
21 Arizona Department of Education, and the auditor general, to
22 charter schools and school districts about the AFR and
23 instructions on its submission electronically to the Arizona
24 Department of Education?
25 A. Yes.

Page 24

1 Q. Is the AFR a fill-in-the-blanks form?
2 A. It is.
3 The auditor general's office and the Department of
4 Education have developed forms that the schools complete.
5 Q. Was information provided on the websites of the
6 Arizona Department of Education and the Arizona Auditor
7 General for the AFR that was due from the schools on October
8 15, 2012?
9 A. Yes.
10 Q. Would you please refer to Exhibit 2.
11 What is contained in Exhibit 2?
12 A. Exhibit 2 is a copy of the Memorandum 93 that was
13 issued by the Auditor General's Office and Department of
14 Education.
15 This memorandum includes the instructions for
16 completing the Annual Financial Report.
17 The forms that they complete are also released at
18 this time and included on the website with the memorandum.
19 Q. Refer to the last sentence in the first paragraph
20 of Exhibit 2.
21 It states that the completed AFR must be filed with
22 ADE by October 15, 2012, correct?
23 A. Yes.
24 Q. And "ADE," meaning the Arizona Department of
25 Education?

Page 25

1 A. That's correct.
2 Q. Did New Destiny Leadership Charter School submit
3 its Annual Financial Report to the superintendent of public
4 instruction for the fiscal year ending June 30, 2012, by the
5 date of October 15, 2012?
6 A. No, it did not.
7 Q. Did Charter Board staff correspond with New Destiny
8 regarding its having failed to submit its AFR for fiscal year
9 2012 and the possibility of action being taken by the Board
10 as a result?
11 A. Yes.
12 Q. Would you please refer to Exhibit 3.
13 What is contained in Exhibit 3?
14 A. Exhibit 3 is a copy of the e-mail I sent on October
15 19th, 2012, to the charter representatives for all charter
16 holders that had not submitted their AFRs for fiscal year
17 2012 to the Department of Education as of October 19th.
18 The first page is the e-mail, and the second page
19 includes the list of the charter holders that hadn't
20 submitted their AFR at that time.
21 Q. And at the top of Page 196, where it contains
22 e-mail addresses next to the "to," the t-o, which address in
23 there is for New Destiny Leadership Charter School?
24 A. If you look at the fourth line down, at the
25 end, there is an e-mail address that says:

Page 26

1 Newdestinypjt@hotmail.com, that is the e-mail address that
2 Barbara Tinsley had provided to our office for us to use to
3 communicate with her as the charter representative.
4 Q. When you refer to the last sentence in Page 196, it
5 reflects that you advised, among others, New Destiny that if
6 the fiscal year 2012 AFR was not submitted to ADE soon, that
7 its charter would be placed on the Board's November 26, 2012,
8 agenda for possible action; is that correct?
9 A. Yes.
10 Q. As of the Charter Board's November 26, 2012 meeting
11 that you reference in this exhibit, had New Destiny submitted
12 its Annual Financial Report to the Arizona Department of
13 Education?
14 A. No.
15 Q. What options are available to the Charter Board for
16 charter schools that have failed to timely submit their AFR?
17 A. The Board may withhold up to 10 percent of the
18 charter holder's monthly equalization, or their state
19 funding, or it may issue a Notice of Intent to Revoke the
20 charter.
21 Q. Did you, again, after the e-mail that is Exhibit 3,
22 correspond with New Destiny regarding its continued failure
23 to submit its AFR and the possibility of action being taken
24 by the Charter Board as a result?
25 A. Yes.

Page 27

1 Q. And is that correspondence what is contained in
2 Exhibit 4?
3 A. Yes, it is.
4 Q. How is Exhibit 4 provided to Barbara Tinsley at New
5 Destiny Leadership Charter School?
6 A. It was sent to the e-mail address we discussed
7 previously.
8 You can see that included on Page 198, but also
9 Pages 199 and 200.
10 That was e-mailed to her on the 15th.
11 Q. And the letter that is Exhibit 4 again advises New
12 Destiny that its Annual Financial Report for the fiscal year
13 ending June 30th, 2012, was due October 15, 2012, correct?
14 A. Yes.
15 Q. And this exhibit, also on Page 198, also advises
16 New Destiny that as of November 15, 2012, the date of the
17 letter, that the Arizona Department of Education had not yet
18 received New Destiny's AFR; is that correct?
19 A. Yes.
20 Q. And as reflected in the paragraph, in all capital
21 letters, on Page 198, you notified New Destiny that the Board
22 would address the unsubmitted AFR at its next meeting, and
23 would make a determination whether New Destiny was in
24 compliance or was not in compliance with State law, Federal
25 law, or its charter, correct?

Page 28

1 A. That is correct.
2 Q. And, as also reflected in this same paragraph, New
3 Destiny was advised that the Board may take action to
4 withhold up to 10 percent of its monthly State aid and/or
5 issue a Notice of Intent to Revoke Charter; is that correct?
6 A. Yes.
7 Q. As reflected in the last paragraph, advised New
8 Destiny of the date and time for the next Board meeting; is
9 that correct?
10 A. Yes.
11 Q. Which was November 26, 2012?
12 A. Yes, at 1:00 o'clock.
13 Q. Of all -- refer back to Page 1 -- Exhibit 4,
14 Page 197.
15 Of all of the charter operators listed on Page 197,
16 how many of them submitted their AFR prior to the Charter
17 Board's November 26, 2012 Board meeting?
18 A. All of them except for New Destiny Leadership
19 Charter School.
20 Q. Between your November 15, 2012 correspondence,
21 which is Exhibit 4, and the Board's meeting on November 26,
22 2012, were you contacted by New Destiny Leadership in
23 response to your correspondence that is Exhibit 4?
24 A. I was not contacted between November 15, 2012, and
25 November 26, 2012.

Page 29

1 Q. Before we go into what action was taken by the
2 Board with regard to New Destiny and its Annual Financial
3 Report at the November 26, 2012 meeting, I'd like for us to
4 move into the area of the annual financial audit.
5 Are charter schools sponsored by the Board required
6 to have an annual financial statement audit conducted by an
7 independent certified public accountant?
8 A. Yes.
9 Q. In addition to the annual financial statement
10 audit, are there other additional documents that the
11 independent -- the certified public accountant must complete
12 and also include with the annual financial audit?
13 A. Yes.
14 They must complete the appropriate compliance
15 questionnaire, which, for New Destiny, would be the legal
16 compliance questionnaire.
17 Q. What is contained in the legal compliance
18 questionnaire?
19 A. The legal compliance questionnaire includes a
20 series of questions which are answered by the independent
21 certified public accountant.
22 These questions address certain requirements that
23 are -- excuse me, certain contractual and statutory
24 requirements that are applicable to charter schools.
25 Q. What is the deadline date by which charter schools

Page 30

1 sponsored by the Charter Board must submit their completed
2 annual audit and compliance questionnaire to the Board?
3 A. November 15.
4 Q. And when the completed annual audit and compliance
5 questionnaire is submitted to the Charter Board by November
6 15, what period of time do those two items cover?
7 A. It covers the prior fiscal year; or, for the fiscal
8 2012 audit, the period of July 1, 2011, through June 30th,
9 2012.
10 Q. Does the Charter Board use as one of its monitoring
11 tools charter schools annual audits and compliance
12 questionnaires?
13 A. Yes.
14 Q. How?
15 A. The audit provides the Board with an independent
16 review of the school's financial records as well as the
17 school's fiscal and compliance practices.
18 It's the one tool that the Board has that annually
19 provides financial and compliance performance to the Board
20 for each of the Board's schools.
21 As such, it is a key component of the Board's
22 monitoring processes, and assists the Board in determining
23 what follow-up is needed for each of its charters.
24 Q. Does the Charter Board provide information to its
25 charter schools about the annual financial audit and

Page 31

1 compliance questionnaire and the dates that those documents
2 are due?
3 A. Yes, it does.
4 Q. How does it do that?
5 A. Annually, the Board issues audit guidelines.
6 Those guidelines are then posted on the Board's
7 website and also e-mailed to the charter representatives and
8 the audit firms.
9 Q. And the audit guidelines that you reference, is
10 that what is contained in Exhibit 6?
11 A. Yes, these are the guidelines that were issued to
12 the school for 2012.
13 Q. You are in fact the author of these documents; is
14 that correct?
15 A. I am.
16 Q. Is June 11, 2012, the date on which these audit
17 guidelines were also posted on the Charter Board's website?
18 A. No.
19 June 11, 2012, is the date the Board approved the
20 audit guidelines.
21 The documents were posted on the website and
22 e-mailed to the charter representatives on the next day, June
23 12.
24 Q. If you would, please refer to Page 206 of this
25 exhibit.

Page 32

1 In the lower part of the page, where there is a
2 heading: Engagement Letter Approval.
3 Can you explain the process of Engagement Letter
4 Approval?
5 A. The Board must approve the audit contract prior to
6 the start of the audit.
7 The Board uses the engagement letter, which
8 describes the terms of the contract.
9 In order for the engagement letter to be approved,
10 it must address certain items, and those are subdivided in
11 the guidelines.
12 Q. So if the Board uses -- does the Board then use the
13 Engagement Letter Approval as a process by which it would
14 approve or not approve the -- approve or not approve the firm
15 that was engaged to conduct the audit?
16 MR. CONDOS: Your Honor, we would object.
17 I think, in this case -- we normally have
18 considerable amounts of leeway to leading questions.
19 But in this particular case, I think Counsel is
20 testifying for Ms. Leder.
21 The simple question is: What's the purpose of it?
22 ADMINISTRATIVE LAW JUDGE: I'm going to sustain the
23 objection.
24 BY MS. ANDERSON:
25 Q. Once the annual financial statement audit itself is

Page 33

1 completed, does the audit itself also have to be approved by
2 the Charter Board?
3 A. Yes, it does.
4 Q. Do we have two processes of approval?
5 A. Yes, we do.
6 Q. And those are what?
7 A. There is the engagement letter process which we
8 just discussed, in which the Board reviews the engagement
9 letter to make sure that certain requirements are met.
10 One of those requirements is that the audit firm
11 being engaged meet the mandatory audit qualifications that
12 have been established by the Board and in government auditing
13 standards.
14 The reference to that is found on Page 206 of the
15 audit guidelines.
16 But the mandatory qualifications actually begin on
17 Page 2,004 -- 204, excuse me.
18 So there is the approval of the audit contract that
19 will start the process of work on the audit.
20 And then once the audit is submitted, it is
21 reviewed to determine whether all of the components have been
22 provided.
23 And that process is known as the completeness
24 determination, and that is discussed on Page 207 of this
25 exhibit.

Page 34

1 And then there is also the review of the substance
2 of the audit as well.
3 Q. If you would, please refer to Page 208 of
4 Exhibit 6, at the bottom of the page, where it has a
5 heading: Audit Deadline/Time Frame.
6 It states that the deadline to complete -- to
7 submit the complete auditing reporting package to the Board
8 is November 15; is that correct?
9 A. Yes.
10 Q. The term "complete audit reporting package," what
11 does that mean?
12 A. It refers to whether all of the components of the
13 audit package are there.
14 If you look above, on Page 208, it identifies,
15 depending on the type of audit that is being conducted, the
16 pieces that must be submitted to the Board in order for the
17 audit to be complete.
18 That includes the financial statements, the report
19 on internal controls that's required under government
20 auditing standards, as well as the legal compliance
21 questionnaires -- or, the questionnaires that we discussed
22 earlier.
23 Q. Also at the bottom of Page 208, under the heading
24 Audit Deadline/Time Frame, it also references an extension
25 being possible only for a charter holder that is subject to

Page 35

1 the single audit act amendments of 1996.
2 Can you explain what that means?
3 A. If a school -- a charter school expends more than
4 $500,000 in Federal funds during a fiscal year, in addition
5 to the requirements set up for the Board for the financial
6 statement audit, they are required to have additional audit
7 work done, and that is the single audit.
8 Under the single audit, which are Federal
9 requirements, they have until nine months after the end of
10 the fiscal year to complete their audit.
11 Q. So the charter operator that is subject to the
12 single audit act has a single audit date that is different
13 from November 15?
14 A. That is correct.
15 It is March 31st.
16 Q. Even for a charter holder that's subject to the
17 single audit act, that charter operator is still required to
18 submit the engagement letter to the Charter Board by November
19 15th; is that correct?
20 A. It is, so that the Board knows, can approve that,
21 to make sure that it does appear that they are subject to a
22 single audit.
23 But also so they know, once they hit the November
24 15th deadline, which charters the Board expects to review the
25 audits and which it will be expecting to receive audits by

Page 36

1 March 31st.
2 Q. For annual audits submitted by New Destiny in prior
3 years, has New Destiny ever been subject to the single audit
4 act?
5 A. No, it hasn't.
6 Q. Are the audit guidelines that are contained in
7 Exhibit 6, and that provided a November 15 due date, are
8 those guidelines updated and posted annually on the Charter
9 Board's website?
10 A. Yes, they are.
11 Q. Are they also e-mailed annually to charter
12 representatives?
13 A. Yes, they are.
14 Q. Did New Destiny submit its annual financial
15 statement audit and legal compliance questionnaire for the
16 fiscal year ending June 30, 2012, by the required date of
17 November 15, 2012?
18 A. No, they didn't.
19 Q. Did the Charter Board correspond with New Destiny
20 regarding its having failed to submit its annual financial
21 statement audit for the fiscal year 2012 and the possibility
22 of action being taken by the Board as a result?
23 A. Yes.
24 Q. Would you please refer to Exhibit 5.
25 What is contained in Exhibit 5?

Page 37

1 A. Exhibit 5 includes a copy of the letter I sent on
2 November 16th, 2012, to Barbara Tinsley, regarding the late
3 fiscal year 2012 audit.
4 This was e-mailed to Barbara Tinsley, as you can
5 see, on Page 201, as well as on pages 202 and 203.
6 Q. And Page 201 of Exhibit 5 advises New Destiny that
7 its annual financial audit and requisite accompanying
8 documents for the fiscal year ending June 30, 2012, were due
9 November 15, 2012, correct?
10 A. Yes.
11 Q. And it also reflects that as of the date of
12 November 16th, a complete audit package had not been
13 received?
14 A. Yes, that's correct.
15 Q. Does a similar letter go out to all or any charter
16 schools that, by the date of November 15, 2012, have not
17 submitted their annual financial audit?
18 A. Yes.
19 All of charter holders that had not submitted their
20 audit received a similar letter.
21 Only difference was it was addressed to them rather
22 than New Destiny.
23 Q. Given that we're just talking about a day later,
24 what is the significance of the Board sending out a letter to
25 New Destiny and these other charter holders on November 16?

Page 38

1 A. I guess there are a couple of things.
2 First, the Board's meeting is on November 26.
3 So under the law, the Board is required, if it's
4 going to withhold funds, that it give at least 72 hours'
5 notice to the charter holder of the pending action.
6 Another thing is to just alert the schools or these
7 charter holders that we had not received it.
8 So if they believe this is a mistake or a
9 miscommunication, they are notified that we don't have it and
10 there is time for them to remedy that situation, possibly,
11 prior to the Board meeting.
12 Q. As reflected in the paragraph on Page 201 that is
13 in all capital letters, you notified New Destiny that the
14 Board would address its failure to submit its annual
15 financial audit at its next Board meeting; is that correct?
16 A. Yes.
17 Q. And that the Board would make a determination
18 whether New Destiny was not in compliance with State law,
19 Federal law, or with its charter; is that correct?
20 A. Yes.
21 Q. Also, as reflected in this paragraph, New Destiny
22 was advised that the Board may take action to withhold up to
23 10 percent of its monthly State aid and/or issue a Notice of
24 Intent to Revoke the Charter of New Destiny, correct?
25 A. Yes.

Page 39

1 Q. As reflected in the last paragraph, the Board's
2 next meeting was Monday, November 26, 2012; is that correct?
3 A. Yes.
4 Q. Between your correspondence that is Exhibit 5, of
5 November 16, 2012, and the time of the Charter Board's
6 meeting on November 26, 2012, were you contacted by New
7 Destiny in response to Exhibit 5?
8 A. No, I was not.
9 Q. Were you contacted by anyone regarding New
10 Destiny's fiscal year 2012 audit?
11 A. I was contacted -- actually, I received an e-mail
12 from the audit firm who provided engagement letters for the
13 audit.
14 Q. Is that what is contained in Exhibit 8?
15 A. Yes, these are the engagement letters that I
16 received from David Rogers on November 16.
17 MR. CONDOS: Your Honor, could I have Ms. Leder
18 speak up just a little bit more.
19 You're soft-spoken regularly. I couldn't hear that
20 very well.
21 THE WITNESS: I'll try and be loud.
22 BY MS. ANDERSON:
23 Q. And the engagement letters that are referenced as
24 attached, in Exhibit 8, are addressed to New Destiny
25 Leadership Charter School rather than the Charter Board,

Page 40

1 correct?
2 A. Yes.
3 Q. Is it usual for audit engagement letters to be
4 addressed to the charter operator rather than the Charter
5 Board?
6 A. Yes, it is.
7 The audit, in this case, is of New Destiny's
8 financial audit statement and compliance practices.
9 So the engagement letter is describing the terms of
10 the contract between New Destiny and Anthony Lorenzo, the
11 audit firm.
12 While the Board's charter contract and State law
13 required the audit, it is New Destiny's responsibility to
14 identify and engage the auditor, and then to ensure that the
15 audit is conducted and a completed audit is submitted timely
16 to the Board.
17 Q. Is it the normal course of business that you would
18 receive engagement letters by e-mail?
19 A. Yes, it is.
20 Q. If you refer to Page 222 and 224, the engagement
21 letters are not signed by any officer or representative of
22 New Destiny; is that correct?
23 A. That is correct.
24 Q. If we refer to Page 221 of Exhibit 8, the third
25 paragraph, the second sentence reflects that Anthony Lorenzo

Page 41

1 is expected to begin the audit on approximately November 19,
2 2012, and to complete the financial statement audit and
3 appropriate compliance questionnaires no later than January
4 15, 2013, correct?
5 A. Yes.
6 Q. Did you approve these audit engagement letters?
7 A. I did.
8 Q. When did you approve those?
9 A. I approved them on November 16, the same day that
10 we received them.
11 Q. Did you convey your approval to the audit firm?
12 A. I did.
13 Q. When and how did you convey that approval?
14 A. An e-mail was sent, on November 16th, to the audit
15 firm.
16 Q. Was New Destiny also copied on that approval?
17 A. Yes.
18 Q. As of the date of the Charter Board's meeting on
19 November 26, 2012, had New Destiny remedied its failure to
20 submit its fiscal year 2012 Annual Financial Report which was
21 originally due to the superintendent of public instruction by
22 October 15, 2012?
23 A. No.
24 Q. As of the date of the Charter Board's meeting on
25 November 26, 2012, had New Destiny remedied its failure to

Page 42

1 submit its fiscal year 2012 annual financial statement audit
2 and compliance questionnaires which were due to the Board on
3 November 15, 2012?
4 A. It had not.
5 Q. And as you advised New Destiny in your November
6 2012 letters that are Exhibits 4 and 5, did the Board address
7 New Destiny's failures to submit its fiscal year 2012 AFR and
8 audit at its November 26, 2012 meeting?
9 A. Yes, it did.
10 Q. Would you please refer to Exhibit 15A.
11 This is the Charter Board's notice and agenda for
12 its November 26, 2012 Board meeting; is that correct?
13 A. Yes.
14 Q. Where in the Charter Board agenda that is Exhibit
15 15A is a discussion of New Destiny's failure to submit its
16 fiscal year 2012 Annual Financial Report and annual financial
17 audit?
18 A. If you look on Page 242, at the bottom, agenda
19 Item M, as in Mary, addresses compliance matters.
20 On the next page, on Page 243, you will see,
21 understood Item 2A, there is a section that addresses second
22 consecutive year late.
23 The second item listed under there is New Destiny
24 Leadership Charter School, and that section addresses the
25 submission of the 2012 audit.

Page 43

1 In Section 2B on the same page is the section under
2 second consecutive year late, where the 2012 AFR submission
3 for New Destiny Leadership Charter School is.
4 Q. As reflected on Page 243, in Number 2, it states
5 that the Board was going to receive information to determine
6 whether the charter holders listed below were in breach of
7 one or more provisions of charter contract, Federal, State,
8 or local laws; is that correct?
9 A. Yes.
10 Q. And it's with regard to their failure to meet the
11 time frames established for the annual financial audit and/or
12 the Annual Financial Report; is that correct?
13 A. Yes, it is.
14 Q. And it also notifies in the next paragraph that the
15 Board may take action, which may include 10 percent
16 withholding and/or issue a Notice of Intent to Revoke; is
17 that correct?
18 A. Yes.
19 Q. What is the significance of New Destiny being
20 listed under the heading Second Consecutive Year Late on
21 Page 243?
22 A. It means that the 2012 submission of the audit and
23 AFR were not the first time that the charter holder submitted
24 those documents late.
25 That 2012 actually marked the second consecutive

Page 44

1 year for those documents being late, so the 2011 documents
2 were late as well.
3 Q. This was their second consecutive year in being
4 late in its submission of its annual financial audit out of
5 how many years?
6 A. Three.
7 Q. This notice and agenda was published on the Charter
8 Board's website; is that correct?
9 A. Yes, it was.
10 Q. When was this notice and agenda published on the
11 Charter Board's website?
12 A. The notice and agenda were published on November
13 16, 2012.
14 Q. I'm sorry. What date?
15 A. November 16, 2012.
16 Q. Does the Charter Board publish all of its meeting
17 notices and agenda on its website?
18 A. Yes, it does.
19 Q. Was there also a report or summary that was
20 prepared for the Charter Board by its staff for the items
21 that are contained in agenda Item M2A?
22 A. Yes.
23 Q. Are the documents contained in Exhibit 15B and 15C
24 the reports or summaries that were prepared for that agenda
25 item?

Page 45

1 A. 15B is the staff report that was prepared for
2 agenda Item M2A.
3 And 15C is the agenda item that was prepared for
4 M2B.
5 Q. And are these summaries or reports also published
6 on the Charter Board's website?
7 A. Yes.
8 Q. Are the documents that are contained in Exhibit 15B
9 and C the type of summary or report that is normally prepared
10 by Board staff for items on the agenda in which the Board may
11 take action?
12 A. Yes.
13 Q. And the Board options provided on the summary on
14 Page 245 -- excuse me, yes, 245 and 247, is providing options
15 typical information provided in the report to the Board?
16 A. Yes, it is.
17 Q. Was a representative from New Destiny present at
18 the Charter Board's November 26, 2012 Board meeting?
19 A. Yes.
20 Q. Who was that?
21 A. Barbara Tinsley.
22 Q. Did she address the Board regarding the items on
23 the agenda for New Destiny?
24 A. Yes, she did.
25 Q. Did the Board make any motions with regard to New

Page 46

1 Destiny on the issues of its annual financial statement audit
2 and AFR?
3 A. Yes, it did.
4 Q. If you would, refer to Exhibit 7.
5 What is contained in Exhibit 7?
6 A. Exhibit 7 is the meeting summary prepared by Board
7 staff for the November 26, 2012 Board meeting.
8 Q. Does the Board typically prepare a summary of each
9 of its meetings?
10 A. Yes.
11 Q. Are those summaries published on the Charter
12 Board's website following the meeting?
13 A. They are.
14 Q. Does the summary contain a description that the
15 action Charter Board took at its November 26, 2012 meeting
16 with regard to New Destiny on the issues of its AFR and its
17 annual financial statement audit?
18 A. Yes, it does.
19 On Page 213, at the bottom, for the audit; and Page
20 214, for the AFR.
21 Q. The information contained on Page 213, at the
22 bottom, reflects that the Board passed a motion finding New
23 Destiny Leadership Charter School and another charter school
24 in noncompliance with State law and their charter contracts
25 for their failure to submit the annual financial statement

Page 47

1 and compliance audits, and approved withholding 10 percent of
2 each charter holder's monthly State aid apportionment until
3 the fiscal year 2012 annual financial statement and
4 compliance audit is submitted; is that correct?
5 A. Yes.
6 Q. Is that an accurate description of the action the
7 Board took on November 26, 2012, in this matter?
8 A. Yes, it is.
9 Q. In November of 2012, was New Destiny receiving
10 monthly State aid apportionments?
11 A. No, it was not.
12 Q. Why is that?
13 A. Because the school -- the charter was not opening a
14 school for that fiscal year 2013.
15 Q. If you would refer to Page 214 of Exhibit 7, where
16 it states, about two-thirds of the way down, the second
17 motion in the column on the right reflects that the Board
18 also made a motion finding New Destiny Leadership Charter
19 School in noncompliance with State law and their charter
20 contract for the failure to timely submit the Annual
21 Financial Report.
22 And for the record, it acknowledged if New Destiny
23 Leadership Charter School was currently receiving State
24 funds, the Board would withhold 10 percent of the charter
25 holder's monthly State aid apportionment until the fiscal

Page 48

1 year 2012 AFR was submitted to ADE; is that correct?
2 A. Yes.
3 Q. Is this an accurate description of the Board's
4 action on November 26, 2012, with regard to New Destiny?
5 A. Yes, it is.
6 Q. Also, as reflected on Page 213 and 214, both of
7 those motions were passed; is that correct?
8 A. Yes, that's correct.
9 Q. If you would, refer back to Page 213.
10 Under on the left, by 2A, there are some charter
11 operator names that are crossed out with the word "removed"
12 next to it.
13 What is the significance of that information?
14 A. That means that between the time the agenda was
15 posted on November 16th, 2012, and the Board's meeting on
16 November 26, 2012, those charter holders had submitted their
17 fiscal year 2012 audits.
18 Q. So no action was taken by the Board with regard to
19 those charter operators that had submitted their audit prior
20 to the November 26, 2012 Charter Board meeting?
21 A. That's correct.
22 Q. Did New Destiny submit its AFR and/or its annual
23 audit to the Board in December of 2012?
24 A. No, it did not.
25 Q. Did New Destiny submit its annual financial -- its

Page 49

1 annual audit and legal compliance questionnaire by January
2 15, 2013, the date that's stated in the engagement letter
3 that's Exhibit 8?
4 A. No, it did not.
5 Q. Did New Destiny submit its Annual Financial Report
6 and/or its annual audit at any time in January of 2012 --
7 excuse me, 2013?
8 A. No.
9 Q. Was New Destiny notified that it would be placed on
10 the Charter Board's February 11, 2013 meeting agenda for its
11 noncompliance issues?
12 A. Yes.
13 Q. Would you please refer to Exhibit 16.
14 What is contained in Exhibit 16?
15 A. Exhibit 16 includes the e-mail sent on February 6,
16 2013, by Bianca Ulibarri, who is a constituent services
17 specialist for the Board, to New Destiny's charter
18 representative, Barbara Tinsley, indicating that New Destiny
19 would be on the Board's February 11th, 2013 Board meeting,
20 under the agenda Item K, compliance matters.
21 It also references where the meeting materials for
22 that meeting can be accessed on the website.
23 Q. Would you please refer to 17A and, if you could,
24 identify 17A.
25 A. This is the notice and agenda for the Board's

Page 50

1 February 11th, 2013 Board meeting.
2 Q. And where in the Charter Board meeting agenda that
3 is Exhibit 17 is New Destiny Leadership Charter School
4 listed?
5 A. If you look on Page 272, there is a Section K, on
6 compliance matters, and New Destiny is addressed under the
7 first item, so K1, or Page 172.
8 Q. Did New Destiny submit its Annual Financial Report
9 and/or its annual audit to the Board prior to the February
10 11, 2013 Board meeting?
11 A. No.
12 Q. Was there a representative from New Destiny present
13 at the Board's February 11, 2013 meeting?
14 A. Yes.
15 Q. What did the representative say with regard to New
16 Destiny's annual audit and legal compliance questionnaire?
17 A. New Destiny's attorney stated that most of the
18 documents had been provided to the auditor, Anthony Lorenzo,
19 to finish the audit.
20 He indicated the problem was an issue of payment.
21 And that if the school could get the funds from the State,
22 then it could pay Mr. Lorenzo.
23 The school's attorney also stated that they had
24 been in communications with Mr. Lorenzo, and he had been very
25 cooperative in that process.

Page 51

1 The attorney also indicated that they were looking
2 at ways to try and raise the funds and to have an audit in 30
3 days or, at the most, 60 days.
4 Q. Following the Charter Board meeting of February 11,
5 2013, did you contact Anthony Lorenzo regarding the status of
6 New Destiny's fiscal year 2012 audit and statements made to
7 the Charter Board at the meeting?
8 A. I did.
9 Q. How did you contact Mr. Lorenzo?
10 A. I sent him an e-mail.
11 Q. If you would, please refer to Exhibit 9.
12 What is contained in Exhibit 9?
13 A. Exhibit 9 is a copy of the e-mail I sent to
14 Mr. Lorenzo on February 12th, and the response I received
15 from him also on February 12th.
16 Q. If you would refer to Exhibit 9, at about seven
17 lines down, Mr. Lorenzo states that as of February 12, 2013,
18 he did not have a signed engagement letter and was not
19 currently engaged to perform the audit; is that correct?
20 A. Yes, it is.
21 Q. At the end of the paragraph, it states that no one
22 at New Destiny had spoken with his firm since December 2012,
23 correct?
24 A. That is correct.
25 MS. ANDERSON: Your Honor, I move for the admission

Page 52

1 of Exhibit 9.
2 ADMINISTRATIVE LAW JUDGE: Any objection?
3 MR. CONDOS: I do, Your Honor.
4 Preliminary question for purpose of the objection?
5 ADMINISTRATIVE LAW JUDGE: You may.
6 MR. CONDOS: Ms. Leder, you sent this directly to
7 Mr. Lorenzo, is that correct, this e-mail?
8 THE WITNESS: That is correct.
9 MR. CONDOS: Did you have any telephone
10 conversations with him directly?
11 THE WITNESS: I may have spoken to him on the phone
12 before I sent the e-mail.
13 MR. CONDOS: Do you remember if you did or didn't?
14 THE WITNESS: I don't remember for sure, but it is
15 possible that I did.
16 MR. CONDOS: There is no reference to a telephone
17 conversation that you had with him in your e-mail to
18 Mr. Lorenzo?
19 THE WITNESS: That's correct.
20 MR. CONDOS: Do you usually memorialize anything if
21 you've had a conversation with him?
22 Per our conversation, I'm following up with this?
23 THE WITNESS: I usually do that.
24 MR. CONDOS: The fact that it's not in there may be
25 a good indication that perhaps you may be mistaken

Page 53

1 whether or not you had a conversation and just sent him
2 directly an e-mail?
3 THE WITNESS: That is possible.
4 MR. CONDOS: The response you received from
5 Mr. Lorenzo, did you follow-up in any way with him after
6 you received this response?
7 WITNESS: I may have sent an e-mail back to him at
8 that time.
9 And after that, there was no communication.
10 MR. CONDOS: Were you aware that there was a
11 bookkeeping company that worked with New Destiny to work
12 on their financials and also worked with Mr. Lorenzo?
13 THE WITNESS: Based on the information in this
14 e-mail, I was made aware of that, but I did not know
15 that prior to.
16 MR. CONDOS: I think you said a specific date in
17 December that was the last contact, at least in
18 reference to this e-mail, last contact they had with New
19 Destiny?
20 THE WITNESS: It was in December. I didn't give a
21 specific date in December.
22 That's based on the third sentence from the bottom,
23 where it says: Our office was informed by the
24 bookkeeper -- wait, let me see.
25 Our office was informed by the bookkeeper in

Page 54

1 December would not work, and sometime in January it
2 would.
3 MR. CONDOS: It doesn't say when conversations took
4 place, does it?
5 THE WITNESS: It does not give specific dates, no.
6 MR. CONDOS: You don't know when that conversation
7 took place?
8 THE WITNESS: I do not.
9 MR. CONDOS: Your Honor, we would object to this on
10 basis of hearsay.
11 It's being submitted as proof in fact as to
12 conversations between the CPA and the school or its
13 representatives. It clearly is hearsay at that
14 particular point.
15 ADMINISTRATIVE LAW JUDGE: Ms. Anderson?
16 MS. ANDERSON: Your Honor, first of all, hearsay is
17 admissible in these proceedings.
18 This is an e-mail that reflects that it was in
19 response to an e-mail from Ms. Leder to Mr. Lorenzo, and
20 it is reliable, and it is relevant to these proceedings,
21 and it should be admitted into evidence.
22 ADMINISTRATIVE LAW JUDGE: Objection is overruled.
23 Exhibit 9 shall be admitted.
24 (Board's Exhibit 9 was admitted.)
25 You may continue.

Page 55

1 MS. ANDERSON: Thank you, Your Honor.
2 BY MS. ANDERSON:
3 Q. Since February 12, 2013, the date of the e-mail
4 that is Exhibit 9, have you had additional contact with
5 Anthony Lorenzo regarding the annual audit of New Destiny?
6 A. Yes.
7 Q. When was that contact?
8 A. On June 6th, during a conversation that I had with
9 Mr. Lorenzo on another matter, I mentioned the upcoming
10 hearing for New Destiny.
11 In that conversation --
12 MR. CONDOS: Objection, Your Honor.
13 The simple question is: When did it happen?
14 ADMINISTRATIVE LAW JUDGE: Sustained.
15 THE WITNESS: It happened on June 6 and June 28.
16 BY MS. ANDERSON:
17 Q. What was the contact with Mr. Lorenzo on June 6?
18 A. As I mentioned previously, on June 6, during
19 another conversation with Mr. Lorenzo, I mentioned the
20 upcoming hearing for New Destiny.
21 MR. CONDOS: Your Honor, we would have to object to
22 this. This is clearly hearsay and outside --
23 ADMINISTRATIVE LAW JUDGE: Hearsay is admissible in
24 an administrative proceeding.
25 Your objection will go to the weight dealing with

Page 56

1 hearsay.
2 Nobody has subpoenaed Mr. Lorenzo.
3 You may continue.
4 BY MS. ANDERSON:
5 Q. If you could, proceed with telling us your
6 conversation with Mr. Lorenzo, on June 6, 2013.
7 A. I mentioned the upcoming hearing for New Destiny.
8 At that time, he stated that he had not spoken with
9 the attorney for the school or the school itself during
10 calendar year 2013.
11 Q. And you said there was a second contact with him.
12 I believe, you said June 28, 2013?
13 A. That's correct.
14 Q. What was that contact?
15 A. On June 28th, I contacted Mr. Lorenzo.
16 At that time, he said he had communicated with the
17 school's attorney earlier in the week, and they had discussed
18 the audit contract and the State's process for audit
19 expenses.
20 At that time, he indicated that nothing had changed
21 regarding the status of the audit contract or engagement
22 letter or the audit itself since the February e-mail.
23 Q. Did he provide any information to you in that phone
24 call of whether or not his firm currently has a signed
25 engagement letter with New Destiny?

Page 57

1 A. He said the status hadn't changed from February.
2 Q. Did Mr. Lorenzo indicate whether there was any
3 change, or whether his firm was or was not currently engaged
4 to perform the audit?
5 A. He indicated, again, that the status was the same
6 as in February.
7 Q. Would you please refer to Exhibit 4.
8 Was a letter similar to Exhibit 4 sent to New
9 Destiny Leadership Charter School regarding its fiscal year
10 2011 Annual Financial Report?
11 A. Yes, it was.
12 Q. And if you would, please refer to Exhibit 10.
13 What is contained in Exhibit 10?
14 A. Exhibit 10 is a copy of the letter I e-mailed to
15 Barbara Tinsley on November 9th, 2011, regarding the
16 nonsubmission of the fiscal year 2011 AFR.
17 Q. If you would, please refer to Exhibit 5.
18 Was a letter similar to Exhibit 5 sent to New
19 Destiny regarding its fiscal year 2011 financial audit and
20 compliance questionnaire?
21 A. Yes, it was.
22 Q. Is that letter what is contained in Exhibit 11?
23 A. Yes, it is.
24 Q. As reflected in the last paragraph on Page 230, it
25 reflects that the Board's next meeting was scheduled for

Page 58

1 Monday, November 21, 2011; is that correct?
2 A. Yes.
3 Q. And also that the Board may take action -- the
4 middle paragraph states the Board may take action, which may
5 include withholding up to 10 percent and/or issuing a Notice
6 of Intent to Revoke; is that correct?
7 A. Yes.
8 Q. Did New Destiny submit its annual financial audit
9 and requisite accompanying documents for the fiscal year
10 ending June 30, 2011, prior to the Board meeting on November
11 21, 2011?
12 A. No, it did not.
13 Q. Did the Board take disciplinary action against New
14 Destiny at its November 21, 2011 meeting?
15 A. Yes, it did.
16 Q. And what action was that?
17 A. The Board voted to withhold 10 percent of New
18 Destiny's State equalization funds.
19 Q. Until what period of time?
20 A. Until a complete audit was received by the Board.
21 Q. Would you please refer to Exhibit 12.
22 What is contained in Exhibit 12?
23 A. Exhibit 12 includes a copy of the letter I e-mailed
24 to Barbara Tinsley on November 22nd.
25 This letter discusses the action that was taken by

Page 59

1 the Board on November 21st to withhold the funds, and
2 indicated that the withholding would begin with the December
3 2011 payment, and would continue until the audit is
4 submitted.
5 Q. So was the withholding -- how many months was the
6 withholding in effect?
7 A. It was in effect for two months, December and
8 January.
9 Q. December 2011 and January 2012?
10 A. That's correct.
11 Q. In January of 2012, did you send another letter to
12 New Destiny regarding its failure to timely submit its fiscal
13 year 2011 annual financial audit?
14 A. I did.
15 Q. Would you please refer to Exhibit 13.
16 Is this the letter that you sent to New Destiny
17 regarding its failure to timely submit its fiscal year 2011
18 annual financial audit?
19 A. Yes, it is.
20 Q. How was this communication provided to New Destiny?
21 A. As with the others, this letter was sent by e-mail,
22 as you can see, on Page 236 and 237 and 238.
23 Q. And as reflected in the second paragraph, in all
24 capital letters, on Page 236, New Destiny was advised that
25 the Board may take action to issue a Notice of Intent to

Page 60

1 Revoke the charter of New Destiny, correct?
2 A. That is correct.
3 Q. As reflected in the last paragraph on Page 236, the
4 next Charter Board meeting was scheduled for January 23,
5 2012, correct?
6 A. Yes.
7 Q. Following the letter that is Exhibit 13, dated
8 January 17, 2012, and the Charter Board's meeting on January
9 23, 2012, did New Destiny submit its fiscal year 2011 annual
10 audit and financial compliance questionnaire?
11 A. Could you repeat the question.
12 Q. In between the letter that is Exhibit 13, dated
13 January 17, 2012, and the Board's meeting that you refer to
14 on the bottom of Page 236, which was January 23, 2012, did
15 New Destiny submit its annual financial audit and compliance
16 questionnaire?
17 A. Yes.
18 It submitted it on January 18, 2012.
19 Q. As of today, have you or anyone at the Charter
20 Board received New Destiny's annual audit and legal
21 compliance questionnaire for fiscal year 2012, which was due
22 by November 15, 2012?
23 A. No.
24 Q. Did you check with the Arizona Department of
25 Education on whether or not New Destiny had submitted its

1 Annual Financial Report for fiscal year 2012 which was due by
2 October 15, 2012?
3 A. Yes, I checked the website.
4 Q. The information of whether they submitted the AFR
5 is available on the Department's website?
6 A. Yes.
7 Q. What did you find?
8 A. I found, as of this morning, at about 7:15, the AFR
9 still had not been submitted.
10 Q. Is the AFR required, like the audit, to be
11 completed by an independent certified public accountant?
12 A. No.
13 Only the audit is required to be completed by a
14 CPA.
15 MS. ANDERSON: I have no further questions, Your
16 Honor.
17 ADMINISTRATIVE LAW JUDGE: We've been hearing for a
18 while. I would like to give the court reporter a
19 break.
20 We'll take a brief recess, and then we'll take
21 cross-examination.
22 MR. CONDOS: That's fine, Judge.
23 ADMINISTRATIVE LAW JUDGE: Off the record.
24 (Brief recess.)
25 ADMINISTRATIVE LAW JUDGE: Back on the record.

1 Mr. Condos, your cross.
2 MR. CONDOS: Thank you.
3 Judge, I wanted to let you know I had a sugar drop,
4 so I had to eat something. I was not being
5 disrespectful.
6 ADMINISTRATIVE LAW JUDGE: Anything you need to
7 do.
8 MR. CONDOS: Thank you.
9
10 EXAMINATION
11 BY MR. CONDOS:
12 Q. Ms. Leder, your position with the State, again, is
13 what?
14 A. Government and financial services manager.
15 Q. In that capacity, what are your responsibilities?
16 A. They include processing engagement letters for the
17 audits.
18 I review the completed audits that are submitted to
19 the Board, and I follow-up with schools on issues identified
20 in those audits.
21 Q. So primarily in the financial area?
22 A. In compliance with the audits.
23 Q. How long have you been in that position?
24 A. The titles have changed over the years. But I
25 would say since approximately May of 2007, those were my sole

1 responsibilities.
2 Prior to that, there was another person in the
3 office who did some of the same things and more.
4 Q. When you were given that position, were you given
5 any instructions as to how the charter schools were to be
6 dealt with as they tried to abide by whatever they were
7 required to provide?
8 Were they given any type of parameters as far as
9 what you were supposed to be looking for in that area?
10 A. The Board has developed rules related to the
11 audits, the engagement letters, the determination of audit
12 completeness, as well as the review of the audits, and
13 they've also developed a policy relating to the review of the
14 submitted audits.
15 Q. The rules related to the audit, where are those
16 found?
17 A. They are in, I believe, it's R7-5-500 through
18 either 504, 505. They're the 500 series.
19 Q. That's in their administrative code section, their
20 rules and regulations?
21 A. The Board's rules are in the Arizona Administrative
22 Code.
23 Q. Specifically, does that differ in any way from the
24 letter that you had sent to the Board -- to the charter
25 school members with respect to audit guidelines?

1 A. The audit guidelines are a requirement in the rule
2 that the Board issue those.
3 I'm not sure about the difference.
4 Q. So there is a rule that -- is it every year you're
5 supposed to send out guidelines to the charter schools?
6 A. I believe it says in the rule that we're supposed
7 to post them on the website.
8 Q. Do you also follow-up and send those to the
9 specific charter schools so they know where the changes are
10 and if there are any changes?
11 A. In the last, I want to say, three -- two or three
12 audit cycles, in the e-mail that we send out that says the
13 documents have been approved, we provide them to a link on
14 the website where they can see the versions that the Board
15 considered.
16 And the versions that the Board considered include
17 the tract changes, so you can see what changes were made to
18 the documents.
19 Q. How many rules has the Board adopted as part of
20 their code as found in the administrative code dealing with
21 audits?
22 A. It's the 500 series.
23 I think there are four or five sections in there.
24 Some of them include multiple components.
25 Q. What are those sections?

Page 65

1 Do you know what those sections deal with?
2 A. I believe the first one deals with the audit
3 guidelines.
4 There is one that deals with the engagement letter
5 approval process.
6 There is one that deals with the audit completeness
7 determination.
8 And there is one that deals with the review of the
9 audits that have been deemed to be complete.
10 If that's a correct summary, that would be four
11 sections.
12 Q. So the audit guidelines is what you're mandated by
13 the Board to prepare for the charter schools and for the
14 Board to review?
15 A. Yes, the Board reviews and approves all of those
16 documents.
17 Q. The audit guideline that you discussed, which I
18 believe is No. 6, Exhibit 6, that was prepared by you?
19 A. Yes.
20 Q. Was it at the direction of the Charter School Board
21 or at the direction of the executive director?
22 A. It was in order to comply with the Board's rules.
23 So I don't believe that anyone specifically told me
24 to update the guidelines, but the Board has approved rules
25 that require those to be updated annually.

Page 66

1 Q. When did you start updating?
2 MS. ANDERSON: Objection, relevance.
3 ADMINISTRATIVE LAW JUDGE: I'll allow it.
4 THE WITNESS: It may have been in April.
5 I know, as part of the audit documents, they
6 include the compliance questionnaires, and some of the
7 information for the compliance questionnaires comes from
8 other entities.
9 So those communications may include that.
10 BY MR. CONDOS:
11 Q. Was Exhibit No. 6 ever submitted to the Board for
12 approval?
13 A. Yes.
14 Q. Do you know when it was approved by the Board?
15 A. If you look on Page 204, the date on the audit
16 guideline is the date the Board approves them.
17 So it was June 11th of 2012.
18 Q. When was it that you sent these out to the
19 individual charter schools?
20 A. It was on June 12th, the next day.
21 Q. Was it sent to every charter representative that
22 you have for charter schools?
23 A. It was sent to all the charter representatives that
24 we have on file.
25 Q. How was it sent?

Page 67

1 A. It was sent by e-mail.
2 Q. Do you receive a notification after you send these
3 to individual charter representatives that they have received
4 them?
5 A. These are sent to the charter representatives by
6 Bianca Ulibarri, in our office.
7 And it's my understanding she will receive any
8 bounce-back e-mails.
9 Q. You don't receive any acknowledgement that you can
10 do like an e-mail that it was received?
11 A. I don't believe these are sent with e-receipts.
12 Q. But these are very important; is that correct?
13 A. Yes, they are.
14 Q. These are how they're supposed to follow the
15 guidelines, how to prepare the audit; is that right?
16 A. Yes.
17 Q. The second part on the audit guidelines is the
18 engagement letter that you have to approve.
19 Is it you that has to approve it, or who at the
20 Board, the staff, that approves it?
21 A. I'm the staff member.
22 Q. Were you given that authority by the State Board
23 for Charter Schools?
24 A. That is part of my job responsibilities.
25 The executive director hired me. So I guess, if

Page 68

1 anybody gave me that authority, it would be the executive
2 director.
3 Q. When you're hired and your qualifications and
4 responsibilities are put together, was that ever approved by
5 the Board?
6 MS. ANDERSON: Objection, relevance.
7 ADMINISTRATIVE LAW JUDGE: What's the relevance?
8 MR. CONDOS: The relevance is, has the Board
9 approved the actions that are taking place, her
10 supervision of the actions and qualifications?
11 ADMINISTRATIVE LAW JUDGE: I'm going to allow it.
12 THE WITNESS: Would you repeat the question.
13 BY MR. CONDOS:
14 Q. Did the Board ever approve your responsibilities
15 and your job description?
16 A. To my knowledge, no, they did not.
17 Q. So primarily, you were just appointed and given
18 these responsibilities by the executive director; is that
19 correct?
20 A. That would be correct.
21 Q. Who do you report to?
22 A. The executive director.
23 Q. When you receive the engagement letters, what's the
24 process for your approval?
25 Is there a guideline that you follow to make sure

Page 69

1 they're included, whatever is included is included?
2 A. Yes.
3 What I follow is what is in the Board's rules,
4 which addresses the qualifications of the audit firm, and
5 then refers to meeting the requirements that are outlined in
6 the audit guidelines, and then I follow the audit guidelines.
7 Q. In this case, New Destiny did obtain an engagement
8 letter from a CPA; is that correct?
9 A. Yes, they did.
10 Q. Was the CPA that was chosen qualified under your
11 guidelines?
12 A. Yes, he met the mandatory audit firm
13 qualifications.
14 Q. That individual does quite a few audits for charter
15 schools; is that correct?
16 A. That is correct.
17 Q. When the engagement letter came to you, you
18 reviewed it, and you said you approved it?
19 A. That's correct.
20 Q. Did you ever send any acknowledgment of approval to
21 anyone?
22 MS. ANDERSON: Objection, asked and answered.
23 ADMINISTRATIVE LAW JUDGE: I'll allow it.
24 THE WITNESS: Yes, an e-mail was sent through our
25 on-line system, and the e-mail was addressed to the

Page 70

1 audit firm and cc'd to Barbara Tinsley, as the charter
2 holder representative.
3 BY MR. CONDOS:
4 Q. Is there any reason we don't have that as part of
5 the record before the hearing officer today?
6 A. I can't explain why.
7 Q. You made a point that the engagement letter did not
8 have the school's signature; do you remember that?
9 A. That was mentioned.
10 Q. Is that significant in any way?
11 A. No.
12 The Board receives and accepts signed and unsigned
13 engagement letters.
14 Q. When you say "the Board," do these things ever go
15 in front of the Board?
16 A. No, they do not.
17 Q. The staff, you as the person responsible, is the
18 person who accepts it?
19 A. That's correct.
20 They are usually e-mailed to my e-mail address.
21 Q. So the Board has basically delegated those
22 responsibilities to the executive director, who in turn has
23 delegated them to you; would that be accurate?
24 A. To a point.
25 I think -- well, the responsibilities were

Page 71

1 delegated to the executive director, who delegated them to
2 me.
3 They have developed rules regarding that process,
4 and they approve annual audit guidelines that in part address
5 that process.
6 Q. So based on the guidelines they put together, you
7 have the leeway to interpret whatever you receive to approve
8 or disapprove the letter?
9 A. I am the one who approves or disapproves the
10 letters; that's correct.
11 Q. In fact, the letter itself that you received, the
12 engagement letter, doesn't even have Mr. Lorenzo's signature
13 on it; it's just a blank engagement letter?
14 A. It may not have had his signature. I'm not sure.
15 Let me check.
16 Q. Go ahead and take a look at it. I want to make
17 sure.
18 A. That is correct, it did not have his signature, but
19 it was sent by his firm.
20 Q. Wouldn't it be true that they can't sign this until
21 you approve it, the engagement letter?
22 A. I don't think there is any -- are we talking about
23 the audit firm or the school?
24 Q. Either one.
25 A. I don't think there would be anything preventing

Page 72

1 the audit firm from signing it when they send it to me or not
2 signing it when they send it to me.
3 The engagement letter needs to be approved by both
4 of us. So in some cases, I do receive engagement letters
5 that have been signed by the client; in other cases, I
6 receive engagement letters similar to the New Destiny one,
7 where they're not signed yet.
8 Q. You said "by both of us."
9 Who is "both of us" that has to approve it?
10 A. If I said "both of us," I don't know.
11 Q. Just you?
12 A. I'm the only one.
13 Q. In reality, the school is not allowed to enter into
14 the engagement letter until you've approved the engagement
15 letter; is that right?
16 A. They need to have our approval before they proceed
17 with the audit.
18 Q. So the school did have their engagement letter?
19 A. Yes.
20 It was submitted on November 16.
21 Q. At the time that you sent the notice out that they
22 did not have an engagement letter -- I believe that is
23 exhibit number -- I just had it here.
24 Exhibit 9, I believe it is.
25 On November 26 of 2012, you sent her an e-mail

Page 73

1 saying you had not received an engagement letter?
2 A. I don't believe I have that e-mail I can look at.
3 Q. It's my Exhibit F.
4 I'm trying to see which one was the matching one.
5 MR. CONDOS: Permission to approach?
6 ADMINISTRATIVE LAW JUDGE: You may.
7 BY MR. CONDOS:
8 Q. If you could turn to Exhibit H, please.
9 The bottom part of that is your e-mail to
10 Dr. Tinsley saying that you haven't received the letter yet?
11 A. Would that be the bottom of Page 1 or the bottom of
12 Page 2?
13 Q. Bottom of Page 1.
14 A. Okay.
15 Yes. It says, on November 6.
16 An e-mail was also sent on October 3rd saying the
17 same thing.
18 Q. On October 3rd, the e-mail you sent was sent to a
19 number of schools; is that correct?
20 A. That is correct.
21 Q. Is it not unusual to have a number of schools that
22 are late for their audits?
23 A. Late submitting their audits or late with their
24 engagement letters?
25 Q. Late with their engagement letter.

Page 74

1 A. Yes, it does happen.
2 Q. On that list right there, I believe the charters
3 that are represented there represent about 37 schools?
4 A. That might be correct.
5 I don't have the list, but I would say that's
6 probably ballpark.
7 Q. How many schools do we have in Arizona -- did we
8 have in October of 2012?
9 A. I can't say for sure how many we had in October
10 2012.
11 But I can say that for the school year 2012, we
12 were expecting 380 audits.
13 Q. Did you get all 380 audits except for New Destiny?
14 A. Yes, we have.
15 Q. Timely?
16 A. Timely, no, we did not.
17 Q. With respect to audits that are late, has the Board
18 formulated some sort of policy in how it deals with them?
19 A. It has developed a policy for dealing with them
20 after two months of withholding.
21 And the policy requires that they be brought back
22 to the Board for Notice of Intent to Revoke.
23 I don't know if they have -- I'm not aware of a
24 formal policy, written down policy, regarding bringing them
25 to the November meeting.

Page 75

1 But I do know that the Board has changed the date
2 of its November meeting so that it can address those charter
3 holders that don't timely submit their audits.
4 Q. So would it be true that there is no administrative
5 rule dealing with late audits?
6 A. I don't think that would be correct.
7 I believe there is a rule -- a requirement that if
8 the charter holder does not submit a complete audit, it is
9 brought to the Board for disciplinary action.
10 I believe that's the only specific item that is
11 addressed, the complete audit.
12 Q. You're saying that is an administrative rule?
13 A. I believe so.
14 Q. Is that one of the 500s?
15 A. Yes.
16 I believe it's in the completeness determination
17 section.
18 Q. Okay.
19 Did the Board ever formulate a matrix with respect
20 to audit compliance questionnaires?
21 A. It developed a matrix that deals with the entire
22 audit reporting package, which includes the questionnaire.
23 Q. Let me turn your attention to exhibit -- I think
24 it's marked as W.
25 I believe, in there, it says: Audit compliance

Page 76

1 question.
2 A. Yes, there is a matrix there.
3 MR. CONDOS: Your Honor, I think that may
4 match up with what we submitted initially, but I just
5 want to double check.
6 ADMINISTRATIVE LAW JUDGE: No.
7 MR. CONDOS: It would be X, under that one.
8 ADMINISTRATIVE LAW JUDGE: It would be Exhibit X.
9 MR. CONDOS: Okay.
10 BY MR. CONDOS:
11 Q. And is that a copy of the matrix follow-up for
12 audit questionnaires?
13 A. Yes, and for the entire audit package.
14 Q. And that, kind of, deals with the specifics under
15 the report, serious findings, minimum findings, and medium
16 findings.
17 That doesn't really have to do with the audit being
18 submitted, does it?
19 A. That's correct.
20 Q. It has to do with any findings that the auditor
21 finds in the audit submitted to you?
22 A. That is correct.
23 Q. Are you aware of any other policy that deals with
24 Board action with respect to late audits or late AFRs?
25 A. As I think I mentioned earlier, the Board did

Page 77

1 develop a policy that addresses if a charter has had funds
2 withheld for two months for failure to timely submit the
3 audit, it has -- the Board has directed staff to bring the
4 charter holder back to the Board.
5 Q. If I could turn your attention to -- it's AA in
6 your book.
7 But for the record, it's probably in BB.
8 ADMINISTRATIVE LAW JUDGE: Why don't you describe
9 it and we can see where we are.
10 MR. CONDOS: Policy statement notification six
11 months noncompliance.
12 ADMINISTRATIVE LAW JUDGE: It would be BB.
13 BY MR. CONDOS:
14 Q. Is that the policy statement you were talking
15 about, Ms. Leder?
16 A. Yes, it is.
17 Q. It really is like two policy directions, or two
18 types of disciplinary action; is that correct?
19 A. That is correct that it addresses audit issues --
20 excuse me, audit submission, and then all other issues.
21 Q. So if it's a nonaudit issue, they have six months
22 to come into compliance?
23 That's the first paragraph?
24 A. Yes, if it's not related to submission of the
25 audit.

Page 78

1 Q. If it is an audit issue, the staff is directed to
2 bring the school to the Board, after two months of
3 withholding, for consideration of Notice of Intent to Revoke?
4 A. That is correct.
5 Q. Does the Board have a policy with respect to a
6 school that has been forced to close because their site has
7 been pulled out from under them and how they deal with audits
8 in those situations?
9 A. No, they do not.
10 Q. Does the Board have a policy with respect to
11 schools that have asked for a suspension request because of
12 prior factors and can't open for this year and how they deal
13 with audits for those years when they're not open?
14 A. They have a policy that addresses requests for
15 suspension of a charter contract. I don't know -- I don't
16 believe it specifically addresses the audit.
17 They would not be subject to the audit for the year
18 they have been suspended, but they would be expected to
19 submit the other audits.
20 Q. So it would be a true statement that there would be
21 no policy for that one year that they're in a suspended state
22 or not operating with respect to audit requirements?
23 A. There is not a policy, but the -- if you weren't
24 operating during the audited fiscal year, you would not be
25 required to submit an audit.

Page 79

1 Q. You were aware that New Destiny had requested a
2 suspension for the one year because they, basically, were
3 forced to move out and could not find another location?
4 A. I was aware of the request, yes.
5 Q. You're aware that request went in in August of
6 2012?
7 A. That may be possible.
8 I wasn't involved in the processing of the
9 suspension request in our office, but I was aware that one
10 had been submitted.
11 Q. So when you were sending these e-mails and letters
12 to New Destiny, was there any consideration that was made by
13 the staff or by you with respect to: This school is not open
14 right now?
15 A. The request had been received, but no action had
16 been taken on that.
17 So the expectation is that the audit and the AFR
18 would be submitted because there is still a contract in
19 place, and it wasn't suspended or surrendered.
20 Q. There is a contract in place even when there is a
21 suspension; is that correct?
22 A. That is correct.
23 But during that period of time, their operations
24 are suspended.
25 So if for fiscal year 2013, they had been granted

Page 80

1 the suspension, when we came around -- I was going to say,
2 next November, but I guess it's just been a few months.
3 When we come to November of 2013, I wouldn't be
4 looking for an audit from New Destiny Charter School because
5 they weren't open during fiscal year 2013 and had been
6 granted an extension.
7 Q. During this limbo period that New Destiny found
8 itself in, or any charter schools would find itself in, the
9 Board doesn't have any type of policy to deal with what they
10 do in that situation for suspended schools with respect to
11 that?
12 MS. ANDERSON: Objection, asked and answered.
13 MR. CONDOS: She hasn't answered.
14 She answered for 2013.
15 ADMINISTRATIVE LAW JUDGE: I'll allow her to answer
16 it.
17 MR. CONDOS: Let me rephrase the question.
18 BY MR. CONDOS:
19 Q. The Board has no policy or administrative rule that
20 deals with a suspended school or a school that's not open but
21 not formally closed and not revoked with respect to the audit
22 for that particular period?
23 A. There is no policy.
24 But the expectation is that they will be
25 submitted.

Page 81

1 So the audit guidelines would still apply to them,
2 the rules would still apply to them.
3 Q. It may be the expectation.
4 But officially, under the rules, both under the
5 administrative rules, which are the rules of the State Board,
6 No. 1, there's no policy that deals with that, right?
7 A. That is correct.
8 Q. And there's no internal policy, which is this
9 policy statement is an internal policy; is that correct?
10 A. This policy statement is a Board policy.
11 This isn't an internal implementation policy. This
12 is the Board's policy.
13 Q. Is that codified anywhere?
14 A. No.
15 Q. So this is just the Board policy that they have
16 passed.
17 Even in this situation, there is nothing that deals
18 with the New Destiny situation; is that right?
19 A. I would disagree because at the time of the
20 consideration of the November 26 Board meeting, New Destiny
21 was still an open charter, an active charter on the books of
22 the Board.
23 It had its request for suspension, had it been
24 acted upon at that point in time.
25 So because it is an open charter, it would be

Page 82

1 expected that they would submit the audit and AFR, which is
2 why they were on the agenda.
3 Q. There is no policy that deals with that, is there?
4 A. I'm not aware of any policy that deals with that.
5 Q. They submitted the letter in August.
6 For some reason, the Board didn't deal with the
7 suspension of the charter until November 26.
8 Do you have any idea why that could have happened?
9 A. As I mentioned before, I was not involved in the
10 processing of the suspension.
11 Q. You were focused on the financials?
12 A. I was focused on the audit and AFR.
13 Q. You looked at the financials for New Destiny on the
14 prior audits they submitted?
15 A. I did review their '11 audit.
16 Q. You sent the letter out on January 17th. And on
17 January 18th, you received the audit?
18 A. Yes, the letter I sent on January 17th was the one
19 that said it was going back to the Board because we hadn't
20 received it.
21 You're correct, I did receive it.
22 Q. It didn't say: We're going back to the Board.
23 If said: If I don't receive it by that time, we're
24 going back to the Board; isn't that right?
25 A. Are we talking about the '11 audit?

Page 83

1 Q. Yes.
2 A. In the January 17th, 2012 letter, that's what we
3 are discussing, correct.
4 Q. No.
5 November 9th, 2011, the year before's.
6 It's Exhibit 10.
7 A. Could you repeat your question.
8 Q. Even though you sent the No. 10 and No. 11, the two
9 exhibits, there was no hearing on New Destiny in front of the
10 State Board for Charter Schools on November 21st, 2011; is
11 that right?
12 A. The New Destiny --
13 Q. It's a simple question.
14 Was there a hearing or was there not a hearing?
15 A. There was not a formal hearing.
16 Q. By November 21st, the audit was in?
17 A. No.
18 Q. Of 2011?
19 A. No.
20 Q. Okay. You're right.
21 But then, again, they finally did submit it.
22 At that particular time, they issued a 10 percent
23 withholding?
24 A. At which particular time?
25 Q. At the November 21st hearing, the State Board

Page 84

1 issued a 10 percent withholding?
2 A. At the November 21st meeting, the Board did vote to
3 withhold 10 percent.
4 Q. And they did withhold, and eventually the audit
5 came in?
6 A. Yes, it came in in January.
7 Q. That's not atypical of most charter schools that
8 are late?
9 They usually get it in after the 10 percent is
10 starting to be withheld?
11 A. Historically, we get 93 percent of the audits on
12 time.
13 So I don't believe that two months of withholding
14 is typical.
15 But there are other charters that do not get their
16 audit in on time, and they have a withholding for a month or
17 two.
18 Q. The Board, in their policy of supervising charter
19 schools, has really created a couple of hammers to make sure
20 they come into compliance without having to revoke anybody;
21 would that be fairly accurate?
22 A. I don't know.
23 Q. First of all, let me say, the first hammer would be
24 that if you don't have it in by the upcoming Board meeting
25 shortly after the November 15th deadline, you're going to be

Page 85

1 placed on the agenda, and the Board can withhold 10 percent;
2 would that be an accurate sort of means of persuasion, if
3 "hammer" is not the right word?
4 A. The letters that go out, as we discussed earlier,
5 indicate the Board can withhold 10 percent, or they can issue
6 a Notice of Intent to Revoke.
7 Q. That's what the Board has created as part of their
8 policy in dealing the delinquent schools who have delinquent
9 audits or AFRs; is that accurate?
10 A. It's the withholding.
11 Q. That has been their policy throughout the time
12 they've been dealing with charter schools and the audit
13 issues?
14 A. At least in recent years.
15 I can't speak for all of it.
16 Q. Then, if that doesn't work, if we haven't caught
17 the charter school's attention by that time, the Board has
18 directed the staff to bring it back to the Board two months
19 later?
20 A. After two months of withholding, yes.
21 Q. At that time, they then have the threat of either
22 revoking them or whatever else they could do, continue on the
23 10 percent.
24 The big gun of revocation comes in at that
25 particular time?

Page 86

1 A. I would argue that it can come in at both times.
2 But per their policy, yes.
3 Q. Isn't it true that they've never revoked a charter
4 school who didn't -- at the first time, who didn't submit an
5 audit on time?
6 A. When you say "the first time," what do you mean by
7 that?
8 Q. They're due November 15th?
9 A. Yes.
10 Q. The next time they go in front of the Board -- the
11 fact is, isn't it true they've never revoked a charter school
12 at that particular meeting?
13 A. That's not correct.
14 Q. For an audit?
15 A. Yes.
16 Q. When was that done?
17 A. Where is the information for the November 26
18 meeting, the agenda and the summary?
19 MS. ANDERSON: In Exhibit 15.
20 THE WITNESS: In Exhibit 15A, if you turn to
21 Page 243, there was -- this, again, is the November 26th
22 agenda.
23 There was a charter holder listed under 2A, under
24 third consecutive year late, Camelback Education, Inc.
25 If we go to the meeting summary for that meeting,

Page 87

1 which is Exhibit 7, and if you turn to Page 214, at the
2 top of that page, you will see that the Board voted to
3 issue a Notice of Intent to Revoke the charter contract,
4 and they also voted to withhold the 10 percent
5 withholding.
6 BY MR. CONDOS:
7 Q. But that was for a school that was in its third
8 consecutive?
9 A. Right.
10 But your question said this was the first time
11 after the deadline that they didn't.
12 So this is an example of this being the first time
13 after the deadline, that this school did.
14 Q. Out of all the meetings that the Charter School
15 Board has, this is the only school that has been -- letter of
16 intent -- and the school we're talking about is Camelback
17 Education.
18 It's the only school that has ever been issued a
19 letter of Intent to Revoke at the first time that it is
20 supposed to appear to the Board?
21 MS. ANDERSON: Objection, Your Honor, foundation as
22 to what period of time we're talking about.
23 MR. CONDOS: The existence of the charter school
24 and Charter School Board.
25 ADMINISTRATIVE LAW JUDGE: Go ahead and answer it.

Page 88

1 THE WITNESS: I can't speak for the whole
2 existence, but I am aware of another charter, Academy of
3 Arizona, where the Board also voted to issue a Notice of
4 Intent to Revoke at the first meeting held after the
5 audit deadline.
6 BY MR. CONDOS:
7 Q. How many audits did they miss at that time?
8 A. I think it was three, maybe four.
9 Q. With respect to a situation like New Destiny,
10 which, at the most, was two, even though they weren't open
11 during this particular year, there's never been a charter
12 school that has been revoked at the first meeting?
13 A. I guess I would argue that they were open during
14 fiscal year 2012.
15 They may not have been operating at the time of the
16 Board's meeting, but they were open during fiscal year 2012,
17 so the 2012 audit was required.
18 Q. At the time they appeared in front of the Board,
19 they were not open?
20 A. Yes.
21 Q. In fact, they were in limbo.
22 They had asked for a suspension, which still hadn't
23 been ruled on yet as of November 26, prior to the finding of
24 the State Board of the 10 percent withholding for them; is
25 that correct?

Page 89

1 A. That is correct.
2 Q. And they had never been rejected.
3 So they were up in the air as to what was going to
4 happen with that school?
5 A. They may have been up in the air as to what the
6 Board's decision would be on their suspension.
7 But I think there were lots of communications with
8 them regarding the expectations of the audit and AFR.
9 Q. This hearing took place four months after they
10 initially requested a suspension request?
11 A. It was the November meeting.
12 Q. And in fact, the Board, at that particular time,
13 treated New Destiny like it treated the other schools, at
14 least with respect to AFR, the audit, where it just withheld
15 10 percent, or do I have them backwards?
16 A. I think you have that correct.
17 Q. So they were ordered to give up 10 percent of
18 whatever they were going to get from the State?
19 A. Yes.
20 Q. The problem was, in this particular case, they were
21 getting nothing from the State because they were in a
22 suspended state or, at least, they were in limbo?
23 A. That's correct. They were not getting any funding.
24 Q. This school did receive money in the 2012-2013
25 year; is that right?

Page 90

1 A. They did receive an August payment.
2 Q. In fact, in June, anticipated that they would have
3 students, submitted appropriate numbers, as required by the
4 statute and by the Department of Education; is that correct?
5 A. Yes, in order to generate a payment.
6 Q. When they realized they would not be able to open,
7 they voluntarily informed the State Board of Education to
8 withdraw those numbers; are you aware of that?
9 A. I believe they did contact ADE, but I don't believe
10 it was the State Board of Education.
11 I don't know who instigated that contact, but they
12 did contact them.
13 Q. And they withdrew those students from being on the
14 list of compensable students for the school's equalization
15 payments?
16 A. I believe that's correct.
17 Q. And that was even before they asked for the
18 suspension?
19 A. I don't know about the dates.
20 Q. But they did do it voluntarily as far as you know?
21 A. I know it was done.
22 Q. Even though the process wasn't changed in time and
23 they received a check, they returned the money?
24 A. I believe that did happen.
25 Q. All of the money?

Page 91

1 A. I believe so.
2 Q. Are schools reimbursed for the audit expense?
3 A. They are.
4 Q. What are the ranges for audits for schools?
5 A. They range from -- for the typical charter school,
6 they range from, I believe, $5,000 or $6,000 to $15,000.
7 Depending on the size of the entity, they can go
8 much higher than that.
9 Q. When they have to pay for that audit, that comes
10 out of their normal equalization fund for that year; is that
11 correct?
12 A. Yes.
13 Q. So it takes the money from education or operations
14 to take care of the audit?
15 A. It's part of the cost of doing business as a
16 charter school.
17 Yes, part of their State equalization has to be
18 used for that purpose.
19 Q. Were you ever informed that that was supposed to be
20 reimbursed -- all the audits are supposed to be reimbursed to
21 the school; is that right?
22 A. They are, but it requires the school to submit
23 certain information to the Department of Education.
24 Q. If they submit that information, they don't get it
25 the next year, do they?

Page 92

1 A. That's correct.
2 Q. When do they get it?
3 A. There is a two-year lag.
4 So for the audit expenses incurred in 2012, if the
5 school submitted all of the appropriate documentation to the
6 Department of Education, they would receive those in fiscal
7 year 2014.
8 Q. The first school year for this is -- we're in our
9 fourth year, right?
10 A. Which --
11 Q. New Destiny.
12 A. 2010 was their first year.
13 So 2012 would have been their third year.
14 Q. I thought you said the first year was 2009-2010?
15 A. Correct.
16 That's fiscal year 2010.
17 Q. And then 2011, and then 2012.
18 We are talking about fiscal year 2013 that they
19 weren't open?
20 A. Yes, fiscal year 2013.
21 Q. If they held it for two years, they should have
22 been getting a reimbursement for the first year's audit in
23 2013?
24 A. Again, it goes to the process of the school
25 submitting what it needs to.

Page 93

1 Q. Assuming they submitted whatever documents they
2 needed, that was the year -- two years had run, and that's
3 the year they should get some money?
4 A. If they incurred audit expenses in fiscal year 2010
5 and they submitted what they needed to submit, they would
6 have been receiving a reimbursement in 2012.
7 Q. They obviously submitted an audit because they
8 weren't revoked after 2010?
9 A. Again, I didn't say if they submitted an audit.
10 I said if they incurred audit expenses in fiscal
11 year 2010 for the fiscal year 2010 audit.
12 In some instances, the auditor will begin the audit
13 of the audited year during the audited year.
14 In that sense, the school would have incurred
15 expenses for its fiscal year 2010 audit in fiscal year 2010.
16 In other cases, the audit firm doesn't begin the
17 fiscal year 2010 audit until after fiscal year 2010 ends. So
18 then those audit expenses would have been incurred in fiscal
19 year 2011.
20 Q. Do you know what the situation is here?
21 A. I do not.
22 Q. So if they submitted everything on time, they
23 should have been getting reimbursed for 2013 for the very
24 first audit; would that be accurate?
25 A. That would be correct.

Page 94

1 Q. They gave all the money back. They didn't withhold
2 any money.
3 And one of the issues that I believe the auditor
4 talked about was, he didn't have sufficient funds to complete
5 the audit -- start the audit?
6 A. I don't recall him talking about payment.
7 Q. He did say that he had conversation with me when
8 you talked with him after the revocation?
9 A. Yes.
10 On June 28th, he said you talked about the audit
11 contract and about the reimbursement process.
12 Q. He didn't mention at all that he talked to me and
13 said that funds was a factor here?
14 A. He didn't say anything, and I didn't ask him.
15 Q. In a situation here like New Destiny, if the
16 charter proceeds and it is revoked, what happens to the money
17 that's been withheld or been paid by the school for the
18 audits?
19 When do they get that reimbursed?
20 A. I'm not sure if they are allowed to file a 915
21 request to get that money or not.
22 If they are not, then that money would not be
23 reimbursed to them.
24 Q. So they lose their money?
25 A. They may if they're not allowed to filed a 915.

Page 95

1 I'm not sure they can do that.
2 Q. You're the person in charge of finance supervision
3 for the charter schools, and you have no knowledge as to
4 whether or not they would get their money back if they were
5 closed?
6 A. The statute has given me authority to oversee the
7 reimbursement of the audit cost, to develop that process to
8 the auditor general and to the department, and to distribute
9 the funding to the Department of Education.
10 The Board does not have a role in that process.
11 Q. The Board can ask the Department of Ed to withhold?
12 A. That's in statute that we can withhold.
13 Q. Is the audit expense in statute?
14 A. It is addressed in the statute that deals with the
15 audits, 15-914, that addresses that the auditor general and
16 Department of Education are to develop a mechanism for all
17 schools to receive an adjustment for their audit costs, which
18 is basically a reimbursement of their audit costs.
19 Q. You don't know whether they get any of the money
20 back?
21 MS. ANDERSON: Objection, asked and answered
22 ADMINISTRATIVE LAW JUDGE: Sustained.
23 BY MR. CONDOS:
24 Q. So New Destiny, as it proceeded, was in a totally
25 different situation than you had ever dealt with on an audit

Page 96

1 before?
2 There was no other school that was closed or, at
3 least, in limbo that still had to deal with the audit?
4 A. My recollection is that whenever the Board has
5 processed requests for suspension, that those schools have --
6 if they had been subject to an audit, meaning they had been
7 open in the prior year, they have submitted those audits to
8 the Board, so it wasn't an issue.
9 Q. But the Board dealt with this school initially like
10 it does with all the other schools and did the 10 percent
11 withholding?
12 A. That's correct, they withheld funds.
13 Q. On the same day, when they looked at the
14 suspension, they dealt with the suspension and found that one
15 of the reasons that they wouldn't allow them to go on was the
16 fact we had the audit delay?
17 A. That is correct.
18 Q. If the hearing would have gone on for the
19 suspension before November 15th, would there have been any
20 violations with the late audit or the late AFR?
21 MS. ANDERSON: Objection, Your Honor.
22 Misstates the facts.
23 Ms. Leder testified that the November meeting was
24 not a hearing.
25 ADMINISTRATIVE LAW JUDGE: Sustained.

Page 97

1 BY MR. CONDOS:
2 Q. If the decision for the suspension had been brought
3 up before November 15th, the Board -- there would have been
4 no violation of the audit late requirement; is that right?
5 A. The audit would not have been due prior to that
6 time.
7 It was due on November 15th.
8 Q. If there had a meeting before then, that wouldn't
9 have been an issue?
10 A. That's correct.
11 Q. We still would have had the AFR issue because that
12 was due October 15?
13 A. Correct.
14 Q. But if the meeting was held before October 15, then
15 neither one of them would have been an issue to the Board?
16 A. That's correct.
17 Q. Was there a meeting before October 15, 2012, of the
18 State Board?
19 A. Yes, there was a meeting.
20 I don't remember the exact date, but I believe it
21 was before October 15.
22 Q. Was this any discussion among the staff, that you
23 were involved in, with respect to the suspension request of
24 New Destiny prior to the October meeting?
25 A. As I indicated, I was not involved in the process

Page 98

1 of that request.
2 I only had certain communications with ADE
3 regarding the charter holder reimbursement.
4 Q. Returning the money, basically?
5 A. Yes. Returning, reimbursing.
6 Q. Were you asked by anybody that was working on the
7 suspension request as to whether we had any financial
8 questions or issues?
9 A. I would have been asked if the charter holder was
10 in compliance with the audit and the AFR.
11 So, prior to the November meeting.
12 Q. So August 5th, at the time they submitted their
13 request for suspension, they were in compliance with all
14 financial requirements?
15 A. That's correct.
16 Q. In September, they were still in compliance?
17 A. That is correct, because the documents weren't due.
18 Q. They only fell outside of compliance on October 15,
19 but that was only with AFR?
20 A. That's correct, because that's when those documents
21 are due.
22 Q. On November 15, they fell outside of compliance
23 because the AFR and audit hadn't been received?
24 A. As of November 15, but that was the audit deadline.
25 Q. In your Exhibit 13, the Board of 2012, they were --

Page 99

1 that was the that year they did submit the audit, but they
2 submitted it on January 18th; is that right?
3 A. Yes, the 2011 audit was submitted on January 18th.
4 Q. In the first paragraph, it says, not only the audit
5 reporting, but it also makes a mention of a compliance check
6 determined that they weren't providing a learning environment
7 that improved pupil achievement?
8 A. That's correct.
9 Q. That was never on the Board calendar either, was
10 it?
11 MS. ANDERSON: Objection, relevance.
12 ADMINISTRATIVE LAW JUDGE: What's the relevance?
13 MR. CONDOS: They're talking about we didn't have a
14 comprehensive program of instruction.
15 This implies that there may have been some problem
16 before, and we need to see what happened to it if
17 anything did happen to it.
18 ADMINISTRATIVE LAW JUDGE: It's in the exhibit.
19 Overruled.
20 THE WITNESS: Can you repeat the question.
21 BY MR. CONDOS:
22 Q. Did New Destiny ever have to answer for a learning
23 environment that didn't improve pupil achievement to the
24 Board?
25 A. Yes.

Page 100

1 Q. What did they do?
2 A. I believe they withheld the funds from the charter
3 and required them to submit a document.
4 Q. What document?
5 A. It was -- they didn't have to submit a PMP.
6 They have to address, I believe, certain components
7 of why they didn't meet.
8 I can't remember if it was growths or percentile.
9 Q. What was the basis for that -- basis for your
10 belief?
11 A. I just recall that happening.
12 Q. With respect to the audits themselves in 2012 that
13 they submitted, I believe we have copies of the audits that
14 were submitted by Mr. Lorenzo that are included in our
15 exhibits, Exhibit J.
16 That's the audit that was submitted by New Destiny
17 for the 2011 school year, ending June 30, 2011?
18 A. These are the financial statements, I believe, the
19 legal compliance questionnaire is in the next one. Those
20 constitute the full audit, yes.
21 Q. The compliance questionnaire is in Exhibit L; is
22 that right?
23 A. It's K in mine.
24 Q. Did you review these as part of your normal course
25 of employment?

Page 101

1 A. Yes.
2 Q. Did you find any problems with them?
3 A. I did.
4 Q. What was it?
5 A. Earlier, we had talked about the audit matrix and
6 compliance questionnaire follow-up.
7 This audit identified two issues that required the
8 charter holder to submit a corrective action plan.
9 The first may be found on Page 16 of the audit.
10 The auditor indicated that the school did not
11 provide support for a reimbursement of the school director of
12 $1,462; total reimbursements for the year total $3,317.
13 Because the school didn't have documentation to
14 support all of its expenditures, a corrective action plan was
15 required.
16 Additionally, if you go to Exhibit K, and you look
17 at Page 13, in the records management section, the first
18 question was answered: No.
19 And it refers to Page 14 and No. 4.
20 On Page 14, No. 4 indicates that the school did not
21 retain all of their attendance documents.
22 I'll read this: Teacher attendance rosters were
23 not maintained for one of three teachers for the month of
24 October, and were not retained for all teachers for the month
25 of September and for all months up to January 2011.

Page 102

1 Additionally, the school did not retain
2 sign-in-and-out sheets for the month of August, and for all
3 months from December to May.
4 And then it also refers to the reimbursement. And
5 it states at the end that management did report that
6 emergency move to a new facility was necessary midyear due to
7 the flooding of their old building and some records were
8 damaged.
9 Since the school didn't have all of its attendance
10 records, that is also another issue that requires submission
11 of a corrective action plan.
12 Q. Did they submit a corrective action plan?
13 A. They did.
14 Q. Was it satisfactory?
15 A. We were able to close out the corrective action
16 plan.
17 But as you saw in the audit matrix, we do look at
18 subsequent audits to make sure that the issues have been
19 resolved, and we did receive the subsequent audit.
20 Q. Who prepares the notice for the agendas?
21 A. You mean: Who drafts the agenda?
22 Q. Yes.
23 A. The executive director.
24 Q. In your e-mail that notified them for the January
25 meeting, you merely refer them to the agenda item; do you

Page 103

1 remember that?
2 A. Hold on just one second.
3 Are we talking about Exhibit 13?
4 Q. Yes, I think -- no. It's an e-mail.
5 Exhibit 16.
6 It's not yours. It's from Bianca.
7 A. This is for the February meeting.
8 And yes, it refers to the agenda Item K, and
9 provides a link to the materials.
10 Q. Agenda Item K talks about the possible notice of
11 revocation?
12 A. I believe it does.
13 Q. It's your Exhibit 17A?
14 A. Yes.
15 Q. Is there a reason that that big block that you have
16 of capital letters that's contained in your letters with
17 respect to the audit is not included anywhere in this e-mail?
18 A. The letter that is -- excuse me, the language that
19 is included in the other letters pertains to the Board's
20 decision -- or, possible action to withhold funds.
21 Under the law, the Board is required to provide at
22 at least 72 hours' notice of its decision if it's going to
23 consider withholding funds.
24 There isn't a similar requirement for when it
25 decides to consider issuing a Notice of Intent to Revoke.

Page 104

1 Q. You're saying there is no notice requirement to the
2 charter school before it issues a notice of revocation?
3 A. For the meeting where that is going to be
4 considered.
5 Q. And that's your understanding?
6 A. That is my understanding.
7 Once the Board makes that decision, there are all
8 sorts of time frames that come into play.
9 The law is very specific that when the Board
10 decides to withhold funds, that it must provide that 72
11 hours' notice to the charter holder.
12 There isn't a similar component in the law that
13 pertains to when the Board considers issue to revoke.
14 But the Board still does notify the charter
15 operator, that is evidenced in Exhibit 16, it looks like 72
16 hours.
17 Even though it wasn't required, it would have been
18 72 business hours prior to the February meeting.
19 Q. Is there anything you can see on No. 16 that says
20 there is a possibility of revocation?
21 A. Not on the e-mail.
22 But once you go to the website and look at the
23 agenda, it's clearly there.
24 Q. Is it standard practice not to notify people that
25 you need to be at that particular meeting and you may be

Page 105

1 revoked at that particular meeting?
2 MS. ANDERSON: Objection, misstates the testimony.
3 ADMINISTRATIVE LAW JUDGE: I'll allow it.
4 THE WITNESS: This e-mail notifies -- the second
5 sentence of the e-mail says: You are encouraged to
6 attend this meeting to answer any questions the Board
7 may have.
8 The second paragraph provides a link to the notice
9 and agenda posted on the Board's website which indicate
10 what actions the Board may be considering.
11 BY MR. CONDOS:
12 Q. But there's nothing on the face of this, like the
13 letters you had sent before, that revocation is a
14 possibility?
15 A. Not in this e-mail.
16 Q. Who directed Bianca to send this?
17 A. I'm not sure who directed her.
18 I know that --
19 Q. It wasn't you?
20 A. It was not me.
21 Q. In your 15B, you previously said that New Destiny
22 was late on its charter and they were withheld at least a
23 couple of months.
24 I would direct you to about two-thirds down, where
25 it talks about the charter holder's second consecutive year

Page 106

1 late.
2 In the previous, it says there that it was only
3 withheld for one month?
4 A. That is inaccurate. The staff report is
5 inaccurate.
6 The funds -- the withholding was in place for the
7 December payment, so the December 1st payment, and the
8 January 1st payment.
9 Q. Were you asked about this when the staff report was
10 prepared?
11 A. I don't believe anybody asked me.
12 Q. Who prepares this report?
13 A. I prepare this report.
14 Q. You prepare the compliance report here, Exhibit
15 15B?
16 A. Yes.
17 Q. How did you come up with one month, and today you
18 say it's two months or so?
19 A. I can't explain the reason for that because the
20 funds -- in order for the school to be brought back to the
21 Board in January, the funds would have to be withheld for two
22 months.
23 And the withholding for the fiscal year 2011 audit
24 began with the December 1st payment.
25 Since the audit was not in until January 18th, that

Page 107

1 means that a withholding was in place for the January 1st
2 payment.
3 Q. Did you verify that with the Department of
4 Finance?
5 A. I did look at their website and found that the
6 funds were withheld for the December payment.
7 But because the school had been overpaid, it didn't
8 generate a January payment.
9 And therefore, no withholding occurred because the
10 school did not receive any funds from the State for that
11 month.
12 Q. So your statement of one month is inaccurate?
13 A. Actually, it's not, because the withholding was in
14 place for the two-month period.
15 Q. So you completed 15B in total?
16 A. Yes.
17 Q. Down at the bottom, where it talks about Board
18 options, you have two options there?
19 A. I have two on that page, and a third on the next
20 page.
21 Q. There is a recommendation from the staff; is that
22 right?
23 A. Yes.
24 Q. The recommendation is that they withhold 10
25 percent?

Page 108

1 A. That's correct.
2 Q. Did you know at the time that you prepared
3 this that the school wasn't open, wasn't receiving any
4 funds?
5 A. At this time, I did, yes.
6 Q. Why would you make a recommendation that
7 they withhold 10 percent when there is no money coming
8 in?
9 A. In hindsight, it was probably a mistake.
10 But there were several schools on the agenda. And
11 rather than writing up a separate motion for New Destiny in
12 terms of the audit, it was put in so that the Board could act
13 on all of the schools that hadn't submitted their audit in
14 one motion if they choose to do so.
15 Q. Looking at 15B, besides Kin Dah Lichii Olta, what
16 other schools are on here?
17 Am I missing something?
18 A. If you look right above -- if you look under issue,
19 the charter holders listed on the agenda failed to submit
20 their audits by the date.
21 The background information specific to the charter
22 holders focuses on those who have a number of consecutive
23 years that they are late.
24 All of the charter holders that this was their
25 first consecutive year submitting the audit late are only

Page 109

1 addressed on the agenda.
2 This provides more detail for those charter holders
3 that were either in their second consecutive year late or
4 their third consecutive year late.
5 Q. Did you also prepare 15C?
6 A. Yes, I did.
7 Q. Did you prepare 15D?
8 A. I did not.
9 Q. Do you know who prepared that?
10 A. I believe that was Martha and DeAnna.
11 Q. "Martha" would be Martha Morgan?
12 A. That's correct.
13 Q. And "DeAnna" would be the executive director?
14 A. Yes.
15 MR. CONDOS: No further questions, Your Honor, at
16 this time.
17 ADMINISTRATIVE LAW JUDGE: Thank you.
18 Any redirect?
19 MS. ANDERSON: Yes, Your Honor.
20
21 FURTHER EXAMINATION
22 BY MS. ANDERSON:
23 Q. If the Charter Board passes a motion to withhold
24 10 percent or up to 10 percent of a charter operator's
25 State equalization monies, may the Board also at the

Page 110

1 same time elect to issue a Notice of Intent to Revoke the
2 charter?
3 A. Yes, it may.
4 Q. Have there been cases in which the Board has
5 requested the Department of Education to withhold 10 percent
6 of monies at the same time that they have pursued a Notice of
7 Intent to Revoke the Charter?
8 A. Yes.
9 Q. You testified a little bit about schools being
10 reimbursed for audit expenses.
11 Are there conditions that a charter school must
12 meet before it may receive reimbursement for prior audit
13 expenses?
14 A. Yes.
15 It is my understanding that minimally, the charter
16 holder must include the audit services expense in its Annual
17 Financial Report, or the AFR.
18 And it is also my understanding that the Department
19 of Education uses the engagement letters that are submitted
20 to our office as part of their process when determining the
21 reimbursement by adjustment amount.
22 Q. In terms of the reimbursement for the audit
23 expenses, how does that occur?
24 Is it a: You spent $5,000 for your audit, you're
25 eligible to receive a reimbursement, here is a check for

Page 111

1 $5,000; or, is it received in some other way?
2 A. The audit adjustment, or reimbursement, is spread
3 over 12 payments for the school year. So the school does not
4 receive a check or a bounce in their State equalization for
5 one month.
6 The audit expense is spread out over the full year,
7 and added onto the equalization assistance letter it receives
8 each month.
9 But the cost is spread out over 12 months.
10 Q. Does the equalization assistance that a charter
11 school receives, it typically receives those equalization
12 assistance payments on a monthly basis from the State; is
13 that correct?
14 A. It does, beginning -- while the fiscal year starts
15 on July 1, the schools do not receive their first payment
16 until August 1st.
17 Then they receive them monthly on or about the
18 first day of the month until we get to June.
19 And in June, they receive two payments, one on the
20 1st of June and one on the last day of June.
21 Q. Is the equalization assistant payment the amount
22 based on a formula that considers the number of students
23 attending the school?
24 A. Yes.
25 Q. So the audit reimbursement expenses would be an

Page 112

1 additional amount attached to the monthly equalization spread
2 over the entire year?
3 MR. CONDOS: Again, we object. The witness should
4 testify.
5 ADMINISTRATIVE LAW JUDGE: Continue, please.
6 THE WITNESS: Yes.
7 BY MS. ANDERSON:
8 Q. If you would, please refer to Exhibit K, Page 6.
9 The second row from the top, the answers of yes or
10 no or n/a in those columns, who puts that information in
11 there?
12 A. The audit firm does.
13 Q. The information contained in the column on the far
14 right, who puts that information in there?
15 A. The audit firm does.
16 Q. In terms of the top of the page, the second row
17 down, No. 3, in response to the question, was the Annual
18 Financial Report, AFR, sent to the superintendent of public
19 instruction by October 15, the independent auditor indicated
20 no?
21 A. That's correct, and stated that the AFR was no
22 sent -- probably meant not sent -- until November 18th,
23 2011.
24 MS. ANDERSON: I have no further questions, Your
25 Honor.

Page 113

1 ADMINISTRATIVE LAW JUDGE: You may step down.
2 Want to call your next witness?
3 MS. ANDERSON: The Board calls DeAnna Rowe.
4
5 DEANNA ROWE,
6 Having been first duly sworn upon her oath by the Notary
7 Public to speak the truth and nothing but the truth, was
8 examined and testified as follows:
9
10 EXAMINATION
11 BY MS. ANDERSON:
12 Q. Please state your name for the record.
13 A. DeAnna Rowe.
14 Q. Where are you currently employed?
15 A. I'm employed as the executive director for the
16 Arizona State Board for Charter Schools.
17 Q. How long have you been the executive director?
18 A. I've been the executive director since 2007.
19 Q. And what are your duties as executive director?
20 A. As the executive director, I'm responsible for the
21 assurance that policies and procedures are followed and
22 statutory requirements are implemented by our staff.
23 I serve as liaison to all of the different
24 governmental branches, and act as the primary communications
25 for the Board.

Page 114

1 Q. Would you please refer to Exhibit 1, Page 6,
2 Paragraph 18.
3 It requires the charter operator to provide
4 instruction for no less than the number of days required by
5 statute or as stated in the application, whichever is
6 greater, and meet the minimum hours of instruction with the
7 statutory reference; is that correct?
8 A. That's correct.
9 Q. Also requires the charter operator to provide that
10 instruction within the State of Arizona's fiscal year that
11 begins on July 1st and ends on June 30th; is that correct?
12 A. That's correct.
13 Q. Would you please refer to Page 148 of this
14 exhibit.
15 I'll call it the second paragraph, but it's
16 actually the first full paragraph on this page, at the bottom
17 of the page, that begins -- the paragraph that begins: At
18 New Destiny Leadership Charter School.
19 The third sentence of that paragraph states that
20 each year, students will be instructed for 180 days, correct?
21 A. That's correct.
22 Q. What is the source of this statement?
23 A. This is a document that was included in the
24 application for the submission of the charter.
25 Q. Would this statement have been made by New Destiny?

Page 115

1 A. That's correct, yes.
2 Q. Is 180 days also the minimum number of days
3 required by State law for schools to provide instruction
4 during the school year?
5 A. Yes, that's correct.
6 Q. In the 2011-2012, did New Destiny provide
7 instruction to the students for the requisite number of days?
8 A. No.
9 Q. Is there also a minimum number of hours of
10 instruction that must be provided within the school year by
11 charter schools for its students?
12 A. Yes, there is.
13 Q. And that depends on the grade; is that correct?
14 A. That is correct.
15 Q. In the 2012-2013 school year, did New Destiny
16 provide instruction for to students for the requisite number
17 of hours?
18 A. No, they did not.
19 Q. If a charter operator has been operating a charter
20 school pursuant to a charter contract with the Charter Board,
21 and that charter operator finds itself in a position that
22 it's not going to be able to open its doors for whatever
23 reason and provide instruction for students, does the Charter
24 Board have a process by which the entity can request
25 permission to suspend its operations?

Page 116

1 A. Yes, it does.
2 Q. What is that process?
3 A. There's a request for a suspension policy.
4 Q. Would you please turn to Exhibit 14.
5 Is this the Charter Board's policy regarding the
6 basis on which it will consider a request for a temporary
7 suspension of a charter school operation?
8 A. Yes.
9 Q. The grant of a request to suspend is discretionary,
10 is that correct?
11 MR. CONDOS: Objection, Your Honor.
12 Again, we're leading.
13 The witness should testify.
14 MS. ANDERSON: I'll rephrase, Your Honor.
15 ADMINISTRATIVE LAW JUDGE: Thank you.
16 BY MS. ANDERSON:
17 Q. Is the Board's decision whether to grant a
18 temporary suspension of charter school operations
19 discretionary?
20 A. Yes, it is.
21 In fact, in the very beginning, the first
22 paragraph, it says that the Board may consider on a
23 case-by-case basis the suspension of a charter school's
24 operations.
25 Q. Could you walk us through the process by which a

Page 117

1 charter operator submits a request to the Charter Board to
2 suspend its operation?
3 A. Sure.
4 The initial discussion can be a little bit
5 different, depending upon how the charter operator chooses to
6 approach it.
7 The policy is, obviously, available on our website
8 and available to anybody to use at any time.
9 Generally, however, a charter representative will
10 approach the staff first and indicate that they have come
11 across some challenges and want to know what their options
12 are.
13 When that occurs, they're directed to speak with
14 me, and I will either have a discussion with that charter
15 representative in person or on the phone, depending upon how
16 they choose, and sometimes we do both, to discuss the
17 situation and, specifically, the actions or the reasons for
18 the suspension.
19 Because as part of the submission requirements, the
20 charter representative needs to provide information to the
21 Board that will allow it to explain what the situation was
22 and what actions or what steps they've taken to ensure that
23 that won't happen again.
24 Generally, the detail of each of the suspension
25 agreements can be a little bit different, depending upon the

Page 118

1 reason for the request for the suspension.
2 After those conversations occur, the charter
3 representative is asked to submit the written documentation
4 as it's been requested.
5 Once the documentation is received, it's reviewed
6 to determine that all of the information is provided.
7 Additionally, as the policy prescribes, that the
8 staff must prepare information for the Board that determines
9 whether or not the charter holder is in compliance with the
10 current contract. And so a review will be done of that
11 compliance as well.
12 Generally, when it's determined that the
13 compliance -- the charter holder is in compliance and all of
14 the materials that are necessary have been received, the
15 matter will be scheduled for the next regularly scheduled
16 Board meeting.
17 If we determine that there is an area of
18 noncompliance, knowing that the Board is more apt to approve
19 a request when a school is in compliance as opposed to not in
20 compliance, we will ask that the charter representative
21 provide the additional information that demonstrates
22 compliance prior to scheduling it for a Board meeting.
23 Q. If we refer to Page 239, the bottom of the page,
24 where it contains three bullets, it indicates that the staff
25 will prepare information to be presented to the Board that

Page 119

1 includes the items listed above as well as the following.
2 The first bullet reflects that one of the items is
3 the status of compliance with all applicable Federal, State,
4 and local laws and all the terms of the charter, correct?
5 A. That's correct.
6 Q. At its meeting on November 26, 2012, did the
7 Charter Board consider New Destiny Leadership Charter
8 School's request for a temporary suspension of operation for
9 the 2012-2013 school year?
10 A. Yes, it did.
11 Q. Was there a report prepared for the Charter Board
12 meeting on November 26, 2012, concerning New Destiny's
13 request for a temporary suspension?
14 A. Yes, there was.
15 Q. Is that report what is contained in Exhibit 15D?
16 A. Yes, it is.
17 Q. And that report includes two appendices that
18 contain various attachments; is that correct?
19 A. That's correct.
20 Q. The initial report states the issue and provides
21 the background and describes the communication that was held
22 with the charter representative over the course of processing
23 the suspension request.
24 That communication is detailed in Appendix B.
25 Appendix A provides the responses or the

Page 120

1 information that staff was able to acquire from the charter
2 representative outlining the bulleted policy requirements,
3 showing that in fact the charter representative, the charter
4 holder, had provided the information requested.
5 Q. If you refer to Page 249 at the bottom of the page,
6 under the heading of compliance, reflects that at the time of
7 the report, New Destiny had not timely submitted the fiscal
8 year 2012 Annual Financial Report and the fiscal year 2012
9 annual audit; is that correct?
10 A. That's correct.
11 Q. At the Charter Board meeting on November 26, 2012,
12 did the Charter Board grant New Destiny Leadership's request
13 for a temporary suspension?
14 A. It did not.
15 Q. Would you please refer to Exhibit 7, on Page 215,
16 where it says agenda Item M, and the information in the right
17 column reflecting a motion from New Destiny Leadership
18 Charter School.
19 Does the information contained in that middle row,
20 the column on the right, accurately reflect the action taken
21 by the Charter Board at its November 26, 2012 meeting with
22 regard to New Destiny's request for a temporary suspension of
23 operation?
24 A. It does.
25 It summarizes the motion that was made, the reasons

Page 121

1 that were given for denying the motion.
2 And additionally, it directs the staff to work with
3 the charter holder on the terms of a surrender agreement to
4 be considered at the next regularly scheduled meeting.
5 Q. And it also reflects that if an agreement cannot be
6 reached, that staff will provide the Board with documentation
7 to consider a Notice of Intent to Revoke the charter at a
8 future Board meeting; is that correct?
9 A. That's correct.
10 MR. CONDOS: Is that Exhibit 7?
11 MS. ANDERSON: Yes, Page 215.
12 BY MS. ANDERSON:
13 Q. If you would, refer back to Exhibit 15D.
14 Page 248 and 249 seem to contain a series of dates
15 reflecting communication between the staff and various
16 charter holder and Department of Education, correct?
17 A. That's correct.
18 Q. If New Destiny sent a letter to the staff, as
19 indicated on the August 8, 2012 date, the letter that's
20 referenced on that August 8, 2012 date, is that the letter
21 that is contained on Page 257?
22 A. Yes, that's correct.
23 Q. It was received -- the received stamp in the upper
24 right-hand corner, is that received stamp reflecting the date
25 the Charter Board received that letter?

Page 122

1 A. Yes, that's correct.
2 Q. If the New Destiny submitted this letter on -- this
3 letter was received by the Charter Board on August 8, 2012.
4 Why did it take until November to bring the matter
5 before the Board?
6 A. The letter that was provided on August 8 --
7 received on August 8 didn't include all of the information
8 necessary to complete the report for the Board with regard to
9 the information that the Board requires as part of the
10 temporary suspension.
11 So staff contacted the charter representative and
12 provided them a link to the policy so that they could again
13 refer to that, and providing some additional clarification.
14 And again, in addressing -- specifically, in
15 addressing the reason for the request for the suspension and
16 the necessity for the suspension and the lack of a facility,
17 some additional specific information that could be shared
18 with the Board as to when a new facility would be acquired
19 and a timeline for doing that.
20 Additionally, at that point in time, we did take a
21 look at the charter holder's compliance and found that they
22 were out of compliance with their annual reporting
23 requirement with the Corporation Commission.
24 And that they also had received some Federal funds
25 that needed -- we needed confirmation that they had done what

Page 123

1 they needed to do with the use of those Federal funds and the
2 reporting requirements related to those funds.
3 And so additional information was requested.
4 Q. The additional information and what you were just
5 referencing, is that what is contained on Page 258?
6 A. 258?
7 Q. Yes, BCS 258.
8 A. Yes.
9 Q. That was sent by Martha Morgan to New Destiny on
10 August 10, 2012, correct?
11 A. That's correct.
12 Q. And Martha Morgan works in the Charter Board
13 office; is that correct?
14 A. Yes, she does.
15 Q. So that brings us up to August 10th.
16 What then happened after that to bring us
17 to the point it didn't get to the Board until November of
18 2012?
19 A. As indicated on Page 249 of the staff report,
20 following up, and as part of the requirement, and I think as
21 has previously been discussed today, the charter
22 representative did submit the names of students for funding
23 purposes for the 2012-2013 school year, and they did receive
24 a payment.
25 And part of the compliance process and the

Page 124

1 consideration of the suspension would be the repayment of
2 those funds.
3 And as indicated, under September 21st, the charter
4 holder provided documentation that the funds had been
5 provided back to the Department.
6 They provided compliance with the Corporation
7 Commission.
8 But we still didn't have the additional information
9 that we needed to complete the report. So we sent an
10 additional documentation, or e-mail, asking for that
11 information.
12 The charter holder did provide the plan to resume
13 the operations that was requested on October 1st.
14 We then notified the charter representative that,
15 in preparation for additional materials and ensuring
16 compliance, one of the things that would be required would be
17 the submission of an audit, and an indication of that would
18 have been an engagement letter.
19 And so in the general course of the
20 communication that was documented, the materials then -- when
21 the Board received the information that it required as of
22 October 1st, it was too late to prepare that information for
23 the October agenda, but had it scheduled for the November
24 agenda.
25 And at that point in time, given that the

Page 125

1 compliance matters were continuing to evolve as the charter
2 holder was not operating but was not maintaining compliance
3 with the requirements, rather than wait until December to
4 determine to put it on the Board's agenda because they
5 weren't in compliance, I made the decision that we would give
6 the Board the opportunity to discuss the suspension at the
7 time of the November Board meeting.
8 Q. If you would, refer to Page 258, where Martha has
9 e-mailed Dr. Tinsley.
10 If you look at the bullets in the middle of the
11 page, requesting information as to a plan to resume operation
12 of the charter school, which include a target date the
13 facility will be secured, as well as the target number of
14 student interest forms that will have been collected by that
15 date to support the cost of the facility, is the e-mail that
16 is Page 266 from Ms. Tinsley, dated October 1, 2012,
17 Dr. Tinsley's response for that information?
18 A. Yes, it is.
19 Q. And also on Page 258, the second bullet, which is
20 requiring New Destiny to demonstrate compliance with the
21 Arizona Corporation Commission, and at that time it was not
22 in good standing, was that information provided by New
23 Destiny in the facts that begins on Page 261 and was dated
24 September 21, 2010?
25 A. Yes, it is.

Page 126

1 Q. The Board's motion, at its November 26, 2012
2 Board meeting, that was reflected on Page 215, with regard
3 to the direction to staff to work with the charter holder
4 on the terms of the surrender agreement, did you take
5 action and follow-up to that direction from the Charter
6 Board?
7 A. I did, yes.
8 Q. And what action was that?
9 A. I used our standard -- our surrender agreement
10 language, modified it to reflect the situation with New
11 Destiny, and e-mailed a copy of that document to Barbara
12 Tinsley, for her Board's consideration.
13 And asked that if they agreed with the terms, that
14 they provide me a signed copy of the agreement and copy of
15 the minutes where her school Board adopted the terms of that
16 agreement.
17 Q. Did you e-mail the proposed agreement to New
18 Destiny?
19 A. I did, yes.
20 Q. When was that?
21 A. I believe that was in early January.
22 Q. Of 2013?
23 A. Yes.
24 Q. After that e-mail, did you have any subsequent
25 contact or communication with New Destiny about the surrender

Page 127

1 agreement?
2 A. After my initial e-mail, I did not receive any
3 additional information.
4 I sent the e-mail again -- I forwarded the e-mail
5 again and asked whether or not they had taken action or were
6 considering the agreement.
7 And then I believe there may have been
8 communication because, at some point, we did learn that they
9 were in discussion regarding the terms of the agreement with
10 legal counsel.
11 Q. So did you receive a signed surrender agreement
12 from New Destiny?
13 A. I did not, no.
14 Q. Would the surrender agreement be their voluntary
15 surrender of their charter and termination of their charter
16 contract?
17 A. Yes, it would.
18 Q. Did you receive any communication from New Destiny
19 regarding wanting to amend or change any of the terms of the
20 draft surrender agreement you sent to them?
21 A. I did not.
22 Q. So was the matter then scheduled for a Board
23 meeting?
24 A. Yes, it was.
25 Q. What meeting was that then scheduled for?

Page 128

1 A. That was the February 2013 meeting.
2 Q. If you would, please refer to Exhibit 17A.
3 Was this the notice and agenda prepared for the
4 Board's November 11, 2013 Board meeting?
5 A. Yes, it is, for the February 2013.
6 Q. I'm sorry.
7 Did I say "November"?
8 A. I heard "November," but it is the February.
9 Q. As stated in the middle of Page 271, was the notice
10 and agenda posted on the Board's website on February 1st,
11 2013?
12 A. Yes, they were.
13 Q. Was a report prepared for the Charter Board
14 regarding New Destiny for the February 11, 2013 Board
15 meeting?
16 A. Yes, there was.
17 Q. Is that report contained in Exhibit 17B?
18 A. Yes, it is.
19 Q. Was Exhibit 17B also published and available on the
20 Charter Board's website prior to the Board's February 11,
21 2013 Board meeting?
22 A. It was, yes.
23 Q. If you would, please refer to Page 274.
24 The heading -- second heading down that says:
25 Background.

1 There is a date of November 26, 2012, that is
2 underlined.
3 Is there any significance to your having underlined
4 that date?
5 A. That's because this is in black and white, it
6 appears to be an underline.
7 If you were to look at it on the Board's website,
8 for the materials, you would understand that it's a hyperlink
9 to the materials that were provided to the Board at its
10 November 26, 2012 meeting regarding the denial of the request
11 for suspension from New Destiny.
12 Q. And if you would, refer to the paragraph under the
13 heading of compliance, at the bottom of Page 274.
14 It reflects that as of the time of the report, New
15 Destiny Leadership Charter School had not timely submitted
16 its fiscal year 2012 annual audit and its fiscal year 2012
17 annual financial report, correct?
18 A. That's correct.
19 Q. Did representatives from New Destiny address the
20 Charter Board at its February 11, 2013 meeting?
21 A. It did, yes.
22 Q. What action did the Board take at its February 11,
23 2013, regarding New Destiny?
24 A. The Board issued the Notice of Intent to Revoke the
25 Charter.

1 MS. ANDERSON: I have no further questions, Your
2 Honor.
3 ADMINISTRATIVE LAW JUDGE: Cross.
4
5 EXAMINATION
6 BY MR. CONDOS:
7 Q. If I could refer you to paragraph -- Exhibit No. 1,
8 charter contract.
9 In that contract, this is the contract that
10 established the charter school; is that correct?
11 A. This is the contract that gave New Destiny
12 Leadership Charter school, the corporation, the authority,
13 the permission to operate a charter school, yes.
14 Q. In Section 2, it states what the purpose of the
15 charter school was; is that right?
16 A. It does, yes.
17 Q. And it says that they will provide an educational
18 service according to educational standards established by law
19 in the charter contract.
20 Prior to the request for suspension and prior to
21 the problem they had with their location, is it true that New
22 Destiny did satisfy that particular purpose?
23 A. Generally, yes. But not without having compliance
24 issues, yes.
25 Q. But they did satisfy -- they were in compliance

1 with the contract, they did fulfill that particular purpose;
2 is that correct?
3 A. They did, yes.
4 Q. Isn't it true also that for the first two years
5 that it was in operation, the school received performing
6 recognition by the Department Of Education?
7 A. Using the State's accountability system, yes, they
8 were designated as performing schools.
9 Q. You say that like that's not necessarily something
10 that is credible in your mind; would that be accurate?
11 A. The State Board for Charter Schools determined that
12 the State accountability system at that point in time wasn't
13 a sufficient means for them to evaluate the academic
14 performance of their charter schools.
15 And then through a process of changes in law and
16 the adoption of an academic framework have since made changes
17 to how it evaluates charter schools.
18 Q. So the performance -- the State created certain
19 ratings as a byproduct and as a result of the AIMS
20 implementation for the testing; is that correct?
21 A. That's correct.
22 Q. By the State, I mean the Department Of Education.
23 A. I believe it's the State Board of Education.
24 Q. The State Board of Education.
25 Those standards were created to analyze the AIMS

1 test results and put them into some sort of category on their
2 grading systems; is that right?
3 A. They were a labeling system that was developed
4 using a formula that establishes whether a school was
5 failing, underperforming, performing, highly performing, or
6 excelling.
7 Q. A performing, under that category, would mean that
8 they're satisfying all the requirements, their students are
9 meeting all the test requirements that the State Board of
10 Education required?
11 A. I don't believe that's an accurate assessment of
12 what that label indicates.
13 Q. "Performing" means that they're satisfying the
14 testing, falls under the satisfactory aspect of the State
15 Board of Education; would that be correct?
16 A. To the extent that a performing label didn't
17 require an improvement plan, yes.
18 Q. If it didn't require an improvement plan,
19 obviously, the State Board of Education and the
20 superintendent of instruction was satisfied with the level
21 that they were at at that particular point?
22 A. I don't believe there is any indication that the
23 State Board of Education or the Department Of Education or
24 the superintendent was satisfied or would be satisfied if all
25 public schools in this State received a performing label when

Page 133

1 other options were available; such as, highly performing and
2 excelling.
3 Q. But "performing" means they have satisfied the
4 level that they're achieving what they're supposed to be
5 achieving.
6 Then you have the higher levels, which they're
7 exceeding those. There is a difference there.
8 As far as requiring what they deemed performing,
9 that was the status of that performing level?
10 A. They were deemed performing.
11 I think the challenge I have is with your word
12 "satisfying."
13 Q. You may have a challenge.
14 But the State Board of Education didn't have a
15 challenge because they're the ones that created that word?
16 A. They didn't say that it satisfied anything.
17 It said, using a formula -- using the calculation,
18 this school was designated as a performing school.
19 Q. It's designated as a performing school, but you
20 disagree with the way the designation is; is that right?
21 A. No.
22 I agree that they followed their formula and the
23 school was in fact designated as performing.
24 Q. And they did that for the first two years?
25 A. I believe that's correct, yes.

Page 134

1 Q. The third year, they weren't given a rating because
2 there was a process of changing the rating system at that
3 time; is that correct?
4 Or, there was a classification they were a small
5 school and, consequently, there was no rating?
6 A. That's correct.
7 Q. In Section 3, which talks about the operation of
8 the school, which is the way -- the contract requirements,
9 there was no change of ownership set forth in Exhibit B; is
10 that right?
11 A. That's correct.
12 Q. And there was no delegation of any of their
13 contractual duties which would violate the contract; is that
14 right?
15 A. That's right.
16 Q. The governing board was established in accordance
17 with the statute?
18 A. I have nothing that would indicate otherwise, no.
19 Q. According to everything you had in front of you,
20 all meetings were being conducted in accordance with the open
21 meeting law; is that right?
22 A. With everything that we had available to us, yes.
23 Whether or not a school conforms to the
24 requirements is a part of the legal compliance questionnaire,
25 for which we didn't have a copy.

Page 135

1 Q. Isn't it true you had a copy for the prior years?
2 Let's put it this way.
3 You had nothing to show that they weren't complying
4 with the open meeting law; is that right?
5 A. I had nothing to show that they were or they
6 weren't for their most recent year of operation.
7 Q. But if they were violating an open meeting law,
8 wouldn't that cause a problem for you and raise an issue to
9 take to the Board?
10 A. If I had information that indicated that they were
11 violating open meeting law, it would be a matter that would
12 be followed up on.
13 Q. And there was nothing that you took to the Board on
14 open meeting law, right?
15 A. There was not.
16 Q. With respect to the school contractual obligation
17 to run a nonsectarian school, they were fulfilling that
18 provision of the contract, right?
19 A. That's correct.
20 There was nothing in the Notice of Intent to Revoke
21 that indicated there were violations of anything other than
22 the failure to submit the AFR, the failure to submit the
23 annual financial audit, and the failure to provide
24 instruction.
25 Q. Going back to my question, there was nothing you

Page 136

1 had that showed there was a contractual violation with
2 respect to any violations with respect to discrimination of
3 the children or nonsectarian aspect; is that right?
4 A. That's correct.
5 Q. And they -- prior to July 1 of 2012, they were
6 fulfilling the requirements of an educational instruction for
7 the prior three years?
8 A. Yes.
9 Q. And then Dr. Tinsley came to you and informed you
10 of the malady that happened to them with respect to their
11 landlord; is that right?
12 A. She did, yes.
13 Q. Was that in July, possibly?
14 A. Possibly, yes.
15 Q. That was at the beginning of the fiscal year,
16 before school was ready to start, and also before payments
17 were ready to start; is that right?
18 A. I don't have the date of our meeting, so I can't
19 confirm that statement.
20 Q. And she asked you what she needed to do -- did she
21 inform you that she had looked for other places in that
22 location to try to see if she could move the school to a
23 different location?
24 A. I believe she did indicate she had looked for other
25 things, yes.

Page 137

1 Q. And did you and she discuss what was needed for her
2 to do in order to obtain a suspension of one year?
3 A. Yes, we did.
4 Q. And if you could look at Exhibit A of New Destiny,
5 did you jot down some notes as to what was needed in
6 accordance with the policy and what was needed for her to
7 file in order to try to get a year suspension of the
8 operation?
9 A. If you're referring to Page 2 of Exhibit A, this
10 was a copy of my notes that I was taking while I was having
11 the discussion with Dr. Tinsley, and going through different
12 things. I jotted down different topics.
13 This is not necessarily a complete notes from our
14 meeting, but they were the notes that I wrote down.
15 And at the end of that meeting, as she was walking
16 away, I asked her if it would be helpful to have a copy of my
17 notes.
18 That's my recollection of how that occurred.
19 Q. These are the notes that you provided to her?
20 A. These were the notes that I took that I shared,
21 yes.
22 Q. In those notes, you laid out they had been open for
23 three years?
24 A. Yes.
25 Q. And that they needed a suspension for the one year?

Page 138

1 A. That's correct.
2 Q. And then you were aware that they had to or needed
3 to send notices to the parents who had signed up to attend
4 that school; is that right?
5 A. That's right.
6 Q. With respect to any payment that they would
7 receive, you informed them that they needed to return that;
8 is that correct?
9 A. I did, yes.
10 Q. And towards the bottom of the page, it says: Knows
11 how much space and number of kids to support, dollars,
12 question mark, and lease.
13 What was your thinking when you jotted down that
14 note?
15 A. Again, in looking at how to satisfy the requirement
16 for what was the cause -- the necessity for the suspension
17 and what information would be provided to the Board that to
18 indicate how much space she was going to need and for
19 whatever number of kids and the dollar amount that would be
20 required so that she could show that financially she could
21 support -- that that facility would support whatever number
22 of students she planned to serve.
23 Q. Right.
24 MR. CONDOS: Judge, you want to take a break now?
25 It's five till 12:00.

Page 139

1 ADMINISTRATIVE LAW JUDGE: How much longer do you
2 think your cross is going to take?
3 MR. CONDOS: It will be a while.
4 ADMINISTRATIVE LAW JUDGE: Would you like to break
5 for lunch now?
6 MS. ANDERSON: Yes.
7 ADMINISTRATIVE LAW JUDGE: We'll reconvene at
8 1:30.
9 We're going to have the door locked. So, I guess,
10 the last person out, if you would, make sure the door is
11 locked.
12 We'll reconvene at 1:30.
13 Off the record.
14 (Lunch recess was taken from 11:56 a.m. to
15 1:30 p.m.)
16 ADMINISTRATIVE LAW JUDGE: Good afternoon.
17 We are back on the record.
18 Mr. Condos, you may continue your
19 cross-examination.
20 MR. CONDOS: Thank you.
21 BY MR. CONDOS:
22 Q. Ms. Rowe, we were going through the contract
23 elements, the representations, and the obligations of the New
24 Destiny Charter School.
25 And with respect to the contract -- do you have

Page 140

1 Exhibit No. 1 in front of you? I'm sorry.
2 A. I do, yes.
3 Q. Section 18 deals with the length of the school
4 year, which is now 180 days. I just want to clarify
5 something.
6 In the first year that they were open, they did
7 fulfill the requirements for the days of operation,
8 2009-2010?
9 A. I have no reason to believe otherwise.
10 Q. 2010-2011, the same thing, they fulfilled all the
11 requirements with respect to the school and maintaining the
12 education of the kids; would that be accurate?
13 A. That's a different question.
14 Your question was about the 180 days the first
15 time.
16 Q. The 180 days for 2010-2011?
17 A. Yes.
18 Q. And then the part that I was confused with, you
19 weren't saying that in 2011-2012, they didn't fulfill that?
20 They did fulfill that in 2011-2012; is that right?
21 A. Their instructional base?
22 Q. Yes.
23 A. Yes.
24 Q. It was in 2012-2013 that they lost the lease and
25 the issues we're talking about today, basically?

Page 141

1 A. That's correct.
2 Q. Another obligation that they have under the
3 contract was to be nondiscriminatory.
4 And you're not aware of any issues with respect to
5 any discrimination on behalf of the school or any
6 discrimination of any of the children with any type of
7 disabilities, are you?
8 MS. ANDERSON: Objection, Your Honor.
9 The Charter Board has noted the basis on which it
10 is proceeding to revocation in the Notice of Intent to
11 Revoke, Notice of Hearing in this matter.
12 These other areas, the Board has not indicated in
13 its notice it is proceeding on any type of violation in
14 those areas.
15 So I object on the basis of relevance.
16 ADMINISTRATIVE LAW JUDGE: Mr. Condos.
17 MR. CONDOS: We're talking about a breach of a
18 contract.
19 And the question then becomes: Is it a material
20 breach to revoke the contract?
21 What we're trying to establish here is that there
22 are a number of obligations that the school has under
23 the contract that it has to fulfill, and it was
24 fulfilling those.
25 I'm just trying to get clarification that they were

Page 142

1 getting fulfilled.
2 ADMINISTRATIVE LAW JUDGE: I'm going to sustain the
3 objection.
4 MR. CONDOS: Okay.
5 BY MR. CONDOS:
6 Q. Also, in Title 1, which is 138 pages long because,
7 if I'm not wrong, the contract includes the application and
8 all the other exhibits that were attached at the time they
9 made the application; is that fairly accurate?
10 A. What does that have to do with Title 1?
11 Q. I'm sorry. Exhibit 1.
12 Exhibit 1 is 138 pages, I think?
13 A. We can count them.
14 Q. It has the application in it that they had made as
15 part of the exhibit as well as the corporation, et cetera.
16 A. I think Exhibit 1 is actually 187 pages.
17 Q. It's even longer than I thought.
18 In their application, they describe a mission
19 statement for this particular school.
20 Is it accurate that every charter school has to
21 provide a mission statement?
22 A. Yes.
23 Q. From that mission statement, the Board evaluates
24 the merits of their application and whether or not the Board
25 believes that if they grant an application that this school

Page 143

1 will be able to provide a proper learning environment?
2 MS. ANDERSON: Objection, Your Honor.
3 Again, relevance as to how this applies to the
4 issues identified by the Board in the notice as the
5 basis for revocation.
6 ADMINISTRATIVE LAW JUDGE: How does the mission
7 statement affect what the Board has charged?
8 MR. CONDOS: Judge, I think you have to look at the
9 charter school as a whole.
10 Even though there are certain alleged violations,
11 the question is: Did they really fulfill the contract,
12 and are they providing an adequate learning environment
13 to begin with?
14 Then you can look at the alleged violations.
15 ADMINISTRATIVE LAW JUDGE: To the extent that the
16 Board has charged violations, those are deemed
17 relevant.
18 So I'm going to sustain the objection.
19 BY MR. CONDOS:
20 Q. Going to that particular point, the Board has
21 established, as Ms. Leder has testified, a policy statement
22 with respect to the temporary suspension of a charter school
23 operation?
24 A. I'm sorry.
25 Going to what particular point?

Page 144

1 Q. The Board has established a policy statement
2 dealing with temporary suspension for charter schools.
3 Has that been used prior to this particular
4 incident?
5 A. Yes, it has.
6 Q. Isn't it true that most of the times it's used,
7 it's usually for -- the vast majority of the time that it's
8 used, it's used for new charters that haven't found a
9 location and need an extra year for preparation or something;
10 would that be fairly accurate?
11 A. No, it would not.
12 Q. How many times has it been used for a school that
13 needs to suspend its operation during -- after it started?
14 A. Almost always.
15 Q. Specifically, how many times has the Board dealt
16 with that?
17 A. I couldn't tell you that.
18 Q. Would it be more than one?
19 A. Ask me the question again, please.
20 Q. Aside from New Destiny here, has the Board ever had
21 to deal with a request for suspension of services after the
22 charter has started?
23 A. Yes.
24 Q. How many times would you say that has happened?
25 A. That is generally the reason for the use of this

Page 145

1 request.
2 So I would say almost always.
3 Q. All right. How many is "almost always"?
4 How many specific charter schools has the Board had
5 to deal with?
6 A. I can't tell you an exact number.
7 Q. More than five or less than five?
8 A. Probably, more than five.
9 Q. More than five where they've asked for a suspension
10 after they've already started?
11 After the school has already started operation, not
12 before they start, but after the school has already been in
13 operation, like this school, three years, one year, two years
14 or more, and some calamity happens and they ask the Board to
15 suspend for one year?
16 A. I can't tell you which ones they are.
17 I think, since this policy was adopted in 2004, I
18 think more than five is probably a safe number.
19 Q. Of those more than five, how many were denied the
20 opportunity to get a suspension of one year?
21 MS. ANDERSON: Objection, Your Honor. Again,
22 relevance.
23 In terms of -- the Board has multiple reasons upon
24 which a charter school can be denied a suspension.
25 In this particular case, the record reflects the

Page 146

1 suspension was denied because of the three areas
2 identified in the Notice of Intent to Revoke Charter.
3 MR. CONDOS: Judge, in this case, we're going by
4 the standard of arbitrary and capricious. And this goes
5 directly to that.
6 If there are other charter schools that have been
7 approved with no difficulties or whatever, then we have
8 a question as to: Was this a decision that was made
9 arbitrarily and capriciously?
10 ADMINISTRATIVE LAW JUDGE: If I understand the
11 Assistant Attorney General's argument, then we would
12 have to go through each and every one of those cases to
13 decide if the elements in those cases match the elements
14 in this case.
15 MR. CONDOS: Not necessarily, Judge.
16 I think, if we have -- depending on what the answer
17 is going to be.
18 But if we have a vast majority of those schools
19 that went through without difficulties and this school
20 didn't, then there's got to be some possible --
21 ADMINISTRATIVE LAW JUDGE: I'm going to allow the
22 executive director to answer the question to the best of
23 her ability.
24 THE WITNESS: I think I can recall at least one
25 other request for a suspension that was denied because

Page 147

1 the charter was not in compliance at the time of the
2 request.
3 BY MR. CONDOS:
4 Q. At the time of the request in this particular
5 situation with New Destiny -- even though I think they may
6 have contacted in July, but let's just start with the August
7 5th date, which is the date that Dr. Tinsley asked for the
8 suspension -- was there any violation with respect to the
9 audit at that particular time; August 5th, 2012?
10 MS. ANDERSON: Objection, Your Honor.
11 Asked and answered by witness Andrea Leder.
12 MR. CONDOS: This is a new witness.
13 MS. ANDERSON: Then it's repetitive.
14 ADMINISTRATIVE LAW JUDGE: I'll allow it.
15 THE WITNESS: As Andrea stated, the audit wasn't
16 due until August 15th. So at that time, they wouldn't
17 have been out of compliance.
18 BY MR. CONDOS:
19 Q. So they were in compliance at that time, August
20 5th?
21 A. With the requirements regarding solution of an
22 annual financial audit package, yes.
23 Q. And they were in compliance with respect to the AFR
24 on that date?
25 A. That's correct.

Page 148

1 Q. To your knowledge, there was no other violation out
2 there on August 5th except for the fact that they didn't
3 start school in July, which would have been before the normal
4 school start?
5 A. At the point of August 8, I believe, when we -- on
6 whatever date we had the conversation, I had not done a
7 compliance review at that point.
8 But I think we have evidence now that states, no,
9 at the time they submitted the request, they were not in
10 compliance with the Arizona Corporation Commission's
11 requirements to submit an annual report.
12 Q. That came into compliance in September; isn't that
13 right?
14 A. I'd have to look back at the exhibit.
15 Q. Please do.
16 A. Direct me to that exhibit, please.
17 Q. I think it's part of 15.
18 15B, I think it is, or D.
19 MS. ANDERSON: I think you may be looking for
20 Exhibit 15D.
21 BY MR. CONDOS:
22 Q. You can find it on Page 261, which is a fax from
23 Dr. Tinsley to Martha Morgan.
24 A. It appears they came back into compliance.
25 They were out of compliance beginning of May, and

Page 149

1 came back into compliance on August 22nd.
2 Q. As far as August 22nd, there was no violations that
3 New Destiny had; is that right?
4 A. We didn't check on August 22nd.
5 It was the school's responsibility to provide us
6 the information that they were in compliance.
7 I don't know that we knew on August 22nd that they
8 were in compliance.
9 Q. On September 21st, Martha Morgan received a fax
10 which, I assume, she relayed to you?
11 A. Correct.
12 Q. That fax had an attachment to it from the Arizona
13 Corporation Commission, right?
14 A. It did, yes.
15 Q. And that one has a date on it of 8-22.
16 So do you have anything that would doubt that the
17 start pass from Arizona Corporation Commission showing August
18 22nd on this document would be inaccurate?
19 A. No.
20 I believe that they may have come into compliance
21 at that point in time.
22 But were we aware that they were in compliance at
23 the time? No.
24 Q. But you were clearly aware on September 21st of
25 2012?

Page 150

1 A. That's correct, yes.
2 Q. So on September 21st, 2012, there was no violations
3 that New Destiny had of their contract, correct?
4 A. Technically, yes, I guess that could be an accurate
5 statement.
6 Q. Could be or is an accurate statement?
7 A. At that point in time, they received payment for
8 the purpose of educating students in the next fiscal year for
9 which they knew they weren't going to educate students, and
10 there wasn't any evidence that they had in fact returned the
11 money.
12 So a question could be raised as to whether or not
13 they were in compliance with their contract when they took
14 funds that they weren't intending to receive.
15 That's a technicality because I know very well that
16 Dr. Tinsley intended to return those funds.
17 But with regard to are they in compliance with
18 their contract, I think I would have to say no.
19 Q. Ms. Rowe, did you start off with not wanting to
20 renew this particular charter for any reason?
21 A. This isn't a renewal consideration.
22 Q. I mean, to allow them to have their suspension for
23 one year?
24 A. Absolutely not.
25 Q. In the correspondence, I believe, that is also part

Page 151

1 of this 15, there is some correspondence with respect to
2 notification that there was a return of the funds.
3 Do you remember ever seeing any correspondence or
4 e-mails to that effect?
5 A. Yes.
6 Q. If you could, look at our Exhibit D.
7 Do you see that Ms. Leder -- first of all, it
8 starts off back on August 23rd, when Barbara Axe -- is she
9 employed by the Department Of Education?
10 A. Yes, she is.
11 Q. -- received and sent an e-mail to Andrea with
12 respect to the school zeroing out their ADM; do you see that?
13 Page 2, the lower part.
14 A. School zeroed out their ADM, yes.
15 Q. That's where we discussed that they had anticipated
16 students in June, as is normal and required.
17 And then when they found out they weren't going to
18 open, they withdrew all those.
19 Is that what "zeroing out" means?
20 A. I think that would be what that meant, yes.
21 I don't know what she meant, but I would interpret
22 it that way.
23 Q. Then I would point you to Ms. Leder's response that
24 said, dated August 23, that we received notice that the
25 school is not going to operate this year, and that they

Page 152

1 request a suspension for the fiscal year.
2 So the Board expects the school to pay back the
3 funds.
4 Do you see where that is at the bottom of Page 1?
5 A. I do.
6 Q. And then -- so at that time, you knew, or at least,
7 the staff knew, that they were withdrawing any rights to
8 receive any equalization when they took those children off?
9 A. Any additional equalization, yes.
10 I knew that when Barbara and I met, yes.
11 Q. And then there is questioning with respect to
12 whether or not the school is going to be closed, and there
13 doesn't seem to be any real answer except for Ms. Ulibarri's
14 response on September the 7th that they were requesting a
15 suspension.
16 A. So the question posed to Bianca was: Are they
17 officially closed?
18 Q. Right.
19 A. And Bianca responded that they were processing a
20 request for suspension.
21 Q. So going back to the request for suspension and
22 looking at the Exhibit No. 14, which is the policy statement,
23 do you remember when that policy was approved?
24 A. I believe, the second page of the exhibit indicates
25 that the policy was approved November 15 of 2004.

Page 153

1 Q. So policy has been in force for about eight years
2 coming up to the New Destiny issue; would that be fairly
3 accurate?
4 A. Okay.
5 Q. During that time, I think you said that there may
6 have been a maximum of five or somewhere over five schools
7 that had applied for a suspension after they opened and
8 operated for a while?
9 A. I became the executive director in 2007.
10 Prior to that, I wouldn't have been involved,
11 necessarily, in the processing of these documents.
12 I think my recollection of the five would have been
13 since 2007.
14 Q. Out of those, all of them were approved except one,
15 which had violations?
16 A. Again, I said that I think I could recall at least
17 one that had made the request that was denied because it was
18 not in compliance.
19 Q. Is there any -- would it be an accurate statement
20 to say that there is no regulation that's ever been adopted
21 by the Board with respect to temporary suspensions of charter
22 school contracts?
23 A. The Board has adopted its policy.
24 Q. But there's no formal regulations in the
25 administrative code that deals with that; is that right?

Page 154

1 A. No, nor is there statutory authority to grant such
2 suspensions.
3 Q. But the Board can -- is there any statutory
4 authority -- there is no statutory authority to grant or
5 limit any type of extension to that effect; is that right?
6 To limit a charter contract, or to allow them to be
7 off for a year?
8 A. No.
9 It was at the request of -- initially, the Board
10 identified a need for a suspension when it received a request
11 for such a matter, and then determined that it should adopt a
12 policy to process such requests because it could within the
13 confines of the contract.
14 Q. Was there any reason that they didn't take the
15 extra step to codify it as a regulation of the Board, as
16 administrative code?
17 A. The Board has very limited resources and operates
18 under the premise that the immediate -- the items that are
19 most important need to be taken care of directly, and has not
20 created the code for this process.
21 Q. You say limited resources.
22 Isn't it true the Attorney General's Office works
23 for the -- represents the State Board for Charter Schools?
24 A. We are provided legal counsel by the Attorney
25 General's Office, yes.

Page 155

1 Q. The Arizona State Board for Charter Schools doesn't
2 pay for that representation, do they?
3 MS. ANDERSON: Objection, relevance.
4 ADMINISTRATIVE LAW JUDGE: Sustained.
5 BY MR. CONDOS:
6 Q. Going back to the policy here. It talks about
7 specifics with respect to the items that are needed.
8 If you look at Exhibit No. 14, in the middle, the
9 request is supposed to include the bullet points that are
10 right there; length of suspension, reason for suspension,
11 et cetera, et cetera.
12 That's what the policy requires; is that correct?
13 A. That's correct.
14 Q. If I could turn your attention to our Exhibit A,
15 which, aside from the first pages, is the handwritten notes
16 that I believe you previously said that you had prepared and
17 given to Dr. Tinsley?
18 A. They were my notes that I was documenting the
19 components of our conversation.
20 And I offered to share them with her at the end of
21 our meeting, yes.
22 Q. Had you offered to share them with her so she could
23 understand and proceed accordingly with the policy statement?
24 A. Yes.
25 Q. The specifics that are in the suspension of the

Page 156

1 charter are really not all laid out in your notes.
2 If they are, could you point out where all of these
3 are in there?
4 A. I'm not sure I understood your question.
5 Q. The main requirements for temporary suspension are
6 the bullet points that are found in Exhibit No. 14, right?
7 A. That's correct.
8 Q. And your suggestions here don't really match up
9 with all the suggestions or requirements that are in No. 14?
10 A. No.
11 And again, these weren't notes that I prepared for
12 Ms. Tinsley -- Dr. Tinsley. I'm sorry.
13 They weren't notes that I prepared for her. They
14 were my notes, as we were having a conversation, that I
15 offered to share with her at the end of our meeting if she
16 thought that they would be helpful.
17 Q. If you could, flip the page over to our Exhibit
18 No. B, which I believe is included in your package for
19 Section 15, as part of the notes that you submitted, I think
20 it's 15C -- 15D, same letters included in the package that
21 you gave to the Board; is that right?
22 A. Yes.
23 Q. In that request, it says the length of the -- the
24 policy statement says the length of suspension requested.
25 And in this, she is asking for the school year

Page 157

1 2012-2013.
2 Would that satisfy that length of suspension
3 requested?
4 A. Yes.
5 Q. And the reason for suspension, she talks about the
6 bank foreclosed on the property where they were.
7 And even though they paid their lease payments,
8 there was no more lease for occupancy.
9 Would that satisfy the reason for the suspension?
10 A. Yes.
11 Q. And the school site's grades for which a suspension
12 is requested is not in this specifically?
13 A. That's correct.
14 Q. And the number of students impacted by the
15 suspension aren't specifically set out in that particular
16 area as well, so that's two; is that correct?
17 A. That is correct.
18 Q. Description of the State revenues received to date,
19 the impact the suspension is going to have on the revenues is
20 not included?
21 A. That's correct.
22 Q. A plan to resume the operation of the school, she
23 specifically states, in the fourth paragraph of the August 7,
24 2012 letter: Our plan is to secure a facility early 2013,
25 but not later than May of 2013.

Page 158

1 Spent a year advertising, marketing school. We
2 would like to serve in a community similar to the one we're
3 in.
4 New Destiny students made progress in academics as
5 well as character development and behavior.
6 Would that be satisfactory with the plan to resume?
7 A. No, I don't believe that that clarifies with
8 specificity.
9 Q. Where is the deficiencies?
10 A. Early 2013, but no later than May 2013.
11 Q. Right.
12 A. And then including any --
13 Q. What's the problem with that?
14 A. That's a pretty broad range of time when we are
15 also talking about them spending a year advertising and
16 marking the school.
17 You can't spend a year advertising and marketing a
18 school if you might not have a facility until May.
19 Further, the other component of that bullet is the
20 effort that would be undertaken to remedy the reason for the
21 suspension request.
22 Which is why there was the specificity in my notes,
23 during our meeting, to address by what date will you have it,
24 and what number of students will you need to be successful.
25 You asked me earlier whether I was opposed to this

Page 159

1 suspension request, and I said: No.
2 I think that my meeting with Dr. Tinsley was an
3 effort to get the information that would have been necessary
4 for me to be able to support a favorable recommendation for
5 the suspension request.
6 Q. You say that, but your notes reflect what the notes
7 reflect.
8 And then you referred her to the temporary
9 suspension policy, right, or did you refer her to the
10 temporary suspension policy?
11 A. I believe the e-mail from Martha --
12 Q. Not from Ms. Morgan.
13 Did you refer her to the temporary suspension
14 policy?
15 A. I believe, the day of the meeting, we probably had
16 a copy of the suspension policy on the table.
17 Q. Did you give it to her, or do you remember?
18 A. I don't recall that I did or I didn't.
19 Q. Eventually, though, after you received the letter
20 from Dr. Tinsley, on August the 8th, which I believe is
21 stamped your receipt -- I'm sorry. It was an August 7th
22 letter, and you received it August 8th.
23 At some point in time, you asked Martha Morgan to
24 pick up and follow-up on this; is that accurate?
25 A. Yes.

Page 160

1 Q. Who is Martha Morgan, for the record?
2 A. She is a member of our staff.
3 Q. Does she have a title?
4 A. She is director of charter accountability, I
5 believe.
6 Q. In that position, is she responsible for -- how do
7 you define "accountability" for her title?
8 MS. ANDERSON: Objection, relevance.
9 MR. CONDOS: She's referred to follow-up.
10 Accountability implies accountability.
11 I would assume she is responsible to make sure that
12 all the T's are crossed and the I's are dotted.
13 ADMINISTRATIVE LAW JUDGE: I'll allow it.
14 THE WITNESS: We've divided the responsibilities
15 among the two directors to be new in expansion, and then
16 the continuation of schools.
17 At the time that we were addressing the matter with
18 regard to workload and responsibilities, I believed it
19 was appropriate to assign and request Martha to
20 follow-up on this matter.
21 BY MR. CONDOS:
22 Q. Was she supposed to report to you as to what her
23 findings were, or what was your mission that you gave her?
24 A. I asked her to communicate with Dr. Tinsley with
25 regard to the additional information that we needed to

Page 161

1 process the suspension request.
2 Q. In this e-mail, it's Exhibit C in my package, I
3 think it's also attached to your 15C or D, Martha writes:
4 DeAnna has asked me to work with you, and she's provided
5 notes whem you and she met in early August.
6 Those notes included the identification of items
7 that you need to provide to the office before a suspension
8 can be considered by the Board. She provides the link.
9 And then in reviewing the request letter, Martha
10 sets out certain items that are needed.
11 The notes that you gave to Ms. Morgan, is that the
12 same one page, or was this more notes that you had given to
13 Ms. Morgan?
14 A. That was the page.
15 Q. Just one page?
16 A. Yes.
17 Q. With respect to deficiencies or outstanding
18 requirements, what Ms. Morgan asserts here in her bullets is
19 that she needed to provide a plan to reserve the operation of
20 the charter school, including a target date a facility will
21 be secured, as well as the target number of student interest
22 forms to support the cost of facility.
23 That was one of the deficiencies that wasn't fully
24 explained in the August 7th letter; is that right?
25 A. That's correct.

Page 162

1 Q. And then she needed to demonstrate compliance with
2 the Arizona Corporation Commission, which we talked about a
3 little while ago; is that right?
4 A. That's correct.
5 Q. And then a description of State and Federal
6 revenues received to date and impact of suspension on those
7 revenues, including documentation.
8 That last point, can you show me where in the
9 policy statement that that is set out as a requirement under
10 the policy as to what needs to be submitted to the Board?
11 A. I think it's the fifth one.
12 Q. The description of State and Federal revenues
13 received to date, the impact on the revenues?
14 A. Yes, right.
15 I believe that's almost word for word what that
16 bullet is, yes.
17 Q. That was sent out on August the 10th.
18 The next correspondence from the staff, I believe,
19 from Ms. Morgan, is what we have marked as Exhibit E, and
20 that's dated September 21st, and that's shortly after the fax
21 we just discussed.
22 Do you remember seeing Exhibit E or a copy of it
23 from Ms. Martha Morgan?
24 A. Yes.
25 Q. Who is Lisa Wiesberg?

Page 163

1 A. Lisa Wiesberg is another member of our team.
2 Q. What was her responsibilities in this accumulation
3 of information?
4 A. I don't believe that she had any responsibility.
5 Q. Do you have any idea why she was copied on this?
6 A. She was in training.
7 Q. That one says that she received the information,
8 and they need the target date for securing the facility,
9 where it was a little broad, 2013, not later than 2013, the
10 target number of student forms that supported, and the
11 general plan that she has for recruiting students.
12 At that point, that was the only three items that
13 was required to make the request in full; is that right?
14 A. Those were the remaining three items that I would
15 have needed to be able to determine whether or not staff
16 could support the recommendation, yes.
17 Q. Exhibit F, we've already talked about, being the
18 documentation with respect to the charter compliance.
19 With respect to the corporation?
20 A. Yes.
21 Q. Then, if we turn your attention to Exhibit G, it is
22 an e-mail from Dr. Tinsley to Martha Morgan, which
23 specifically states a target date, last date for securing the
24 facility is May 1, 2013.
25 Target number of students, 30.

Page 164

1 General plan for recruiting statements with fliers
2 mailouts, make contact with parents at childcare facilities,
3 attend preschool, et cetera, using direct response to
4 Dr. Morgan's request, and it was dated on October 1st of
5 2012.
6 Is that an accurate representation of what that
7 document says?
8 A. Yes.
9 Q. And the other part that's on that letter is there
10 is no request from Dr. Morgan for -- at least, nothing here
11 or in the other letter that says we need anything else?
12 Let me rephrase that. That was a bad question.
13 After October 1st of 2012, did the staff send out
14 any letters of any contact with Dr. Tinsley saying we need
15 something else in order to be able to go forward in
16 compliance with our temporary suspension policy statement?
17 A. I don't believe so, no.
18 Q. At that time, the package and the requirements was
19 complete for the temporary suspension of the charter school
20 operation?
21 A. Yes.
22 Q. On October 1st of 2012, there was no violation with
23 respect to the audit compliance; is that right?
24 A. Correct.
25 Q. And there was no violation with respect to the AFR

Page 165

1 requirement?
2 A. Neither were yet due.
3 Q. So there was no violation?
4 A. There was no violation at that time; that's
5 correct.
6 Q. Is there a reason that that wasn't submitted to the
7 October meeting which, I believe, was going to be held in the
8 next week?
9 A. Yes.
10 Q. What was that reason?
11 A. Timing.
12 Q. What timing?
13 How much time did you need in order to put this on
14 the agenda?
15 A. The time required would have included the inclusion
16 of it on the agenda and with the preparation of the staff
17 materials.
18 Based on the workload at the time, there wasn't
19 sufficient time to get that done and include it on an agenda
20 that would provide the Board with adequate time for
21 consideration.
22 Q. At that time, was there anything that would cause
23 you to oppose the recommendation?
24 A. No.
25 Q. So when would have been the next meeting after the

Page 166

1 second week in October's meeting?
2 A. November Board meeting.
3 Q. November 26 meeting?
4 A. Yes, that's correct.
5 Q. At that time, the two items with respect to the
6 audit and the AFR were due?
7 A. I don't know what you mean by "due."
8 Q. The time limit had passed, October 15 and November
9 15.
10 A. The deadline for those submissions and inclusion on
11 the November agenda, yes.
12 Q. The school had not opened. Was there any
13 implication -- we're talking about November, four months
14 after the school started.
15 Was this any indication to the school that there
16 was a good probability that they would be able to go forward,
17 or a probability that they would not be able to get the
18 suspension at any time?
19 A. I don't believe this was an indication either way.
20 Q. Had the State Board ever dealt with a situation
21 like this where a timely submission was made and during the
22 period before, three months after or so, that it had not been
23 brought up to the Board at any time with respect to the
24 requests for the suspension?
25 A. I don't think I understand your question.

Page 167

1 Q. You said there was around five.
2 How quick were they able to get to a decision by
3 the Board?
4 A. I can't recall that.
5 Q. Was it, roughly, the same period as New Destiny, or
6 was it a different period?
7 A. I can't tell you that.
8 Q. They were placed on the November 26th agenda.
9 And on that agenda, which going back now to Exhibit
10 15, they were placed on the agenda with a number of other
11 schools that were in the 2012 annual financial audit
12 untimeliness, as shown in A and B of Item M, compliance
13 issues, correct?
14 A. Would you restate that?
15 Q. Sure.
16 If you would look at Exhibit 15A.
17 A. Yes.
18 Q. Those are -- they were placed on the agenda with
19 the other schools that were late in their audits?
20 A. That's correct.
21 Q. And then I believe Ms. Leder said she prepared 15B
22 and 15C.
23 Did you review those before they were added to the
24 package?
25 A. I reviewed them before they were linked to the

Page 168

1 Board's materials for consideration, yes.
2 Q. When it says the staff recommends the following
3 language in Option 2 at the bottom of the page, was there any
4 discussion with respect to the recommendation among the
5 staff?
6 A. I have meetings with my team on a regular basis
7 before determining what that final recommendation would be in
8 any process, yes.
9 Q. Not necessarily on a regular basis.
10 On this particular item that's 15B, did you meet
11 with the staff in order to formulate the recommendation of
12 which option you were going to submit to the Board?
13 A. The staff recommendation is consistently to
14 withhold 10 percent of funding for audits that are not
15 submitted timely.
16 Q. Does that mean you didn't meet with the staff, or
17 you did meet with the staff?
18 A. I can't recall whether I did or didn't, but it was
19 the appropriate recommendation at the time.
20 Whether the staff was involved in that
21 recommendation or wrote it because that was the
22 recommendation, ultimately, I reviewed the report and
23 determined it was the appropriate recommendation.
24 Q. If you reviewed the report, would that have been
25 Ms. Leder's preparation and her recommendation, and then you

Page 169

1 ratified that or at least approved it to go to the Board?
2 A. It was Andrea's development of the report and her
3 inclusion of the recommendation, the recommendation language
4 based on Board's past practices, yes.
5 Q. The background talks about the Board respects, but
6 the staff was actually waiting to receive 380 audits, and 297
7 were all that had come in by that time -- I take that back.
8 277 were all that had come in from the normal
9 audit, and 27 from the single audits is what is reflected
10 there?
11 A. That's correct.
12 Q. Do you remember in the hearing on the 26th --
13 A. I don't believe this was a hearing on the 26th.
14 Q. Not a hearing.
15 On February 13th, when New Destiny was placed on
16 the Board agenda for their renewal, do you remember the
17 president of the Board really lambasting the school, saying
18 all the other schools get theirs in and less than one
19 percent -- why haven't you got your -- something to the
20 effect of: I can't believe that you couldn't get it in on
21 time?
22 A. I wouldn't necessary -- I wouldn't recall the
23 statement that way.
24 But I do recall that our Board president does make
25 the statement that in fact this is an expectation, the

Page 170

1 deadline date isn't a surprise, and the majority of our
2 schools do comply with the deadline date.
3 Q. Do you remember him looking to Ms. Leder and
4 saying: What is it, only 1 percent or so, that don't get
5 their audits in on time?
6 A. I don't remember that directly from that meeting.
7 Q. Do you remember Ms. Leder sort of explaining to
8 them that it's really closer to 10 percent at that time?
9 A. I don't remember that either.
10 Q. Did anyone ever explain to the Charter Board any of
11 the reasons that this school might have had -- from the
12 staff, might have had in not being able to get the audits in
13 on time?
14 A. No.
15 It's the school's responsibility to get the audit
16 in on time.
17 Q. Who pays for the audits?
18 A. The charter holder pays for the audit.
19 Q. And eventually, they're supposed to be reimbursed?
20 A. There is a mechanism for the charter holder to be
21 reimbursed.
22 Q. That mechanism, it's not in the statute, is it?
23 A. I can't speak to that.
24 That's a school finance, Department of Education
25 responsibility.

Page 171

1 Q. Does the staff, in their orientation programs,
2 discuss reimbursement of audits?
3 Let me backtrack.
4 The staff conducts an orientation program for new
5 charters; is that right?
6 A. No, that's not correct.
7 Q. Do they conduct any type of orientation or any type
8 of seminar educational program for charters?
9 A. There are some technical assistance help webinars
10 on our website.
11 Q. The staff doesn't do anything live anymore?
12 A. That's correct.
13 Q. Is there ever any discussion by the staff or any
14 staff members about the reimbursement of the prior year's
15 fees?
16 A. I don't believe so.
17 Q. Do you have any idea how much the school had
18 advanced for its prior audits by this time?
19 A. I don't.
20 Q. Even though you reviewed the engagement letters,
21 there's nothing that -- I guess, the staff doesn't care with
22 respect to the amount of the audit?
23 A. I don't review the engagement letters.
24 Q. Ms. Leder does, right?
25 A. Yes.

Page 172

1 Q. There's no reporting or any concern with respect to
2 whatever the cost is?
3 A. I guess I don't understand your question.
4 There is an amount that is stated in the engagement
5 letter.
6 Q. Does the staff or anyone from Department of Ed
7 inform the schools that this is going to be the procedure as
8 to how you get reimbursed?
9 A. I can't speak to what the Department Of Education
10 does.
11 The staff of the Charter Board does not.
12 Q. Do you know if there is anything on the web pages
13 that says: This is how you're reimbursed?
14 A. I don't know that.
15 Q. Would it be a fair statement to say that New
16 Destiny was owed money for the prior audits?
17 A. I believe it would be a fair statement to say that
18 New Destiny had the ability to submit the appropriate
19 documentation to be reimbursed for their previous audits.
20 Q. Do you know if the proper paperwork was not sent in
21 to the State?
22 A. I can't speak to whether it was or it was not.
23 Q. At the -- in 15C, there is language that I also
24 believe Ms. Leder said that she prepared; is that right?
25 A. That's correct.

Page 173

1 Q. And the recommendations at the bottom has the
2 Option 2, which says that if New Destiny Leadership was
3 receiving funds, the Board would withhold 10 percent.
4 Was that placed in there just so that the Board
5 would be aware that the school was not receiving any money?
6 A. It was placed in there to make a record of the fact
7 that a 10 percent withholding would be the appropriate action
8 and their desired action, but that no withholding would occur
9 because they aren't currently receiving funding.
10 Q. At this time, was the Board aware that the school
11 was not open?
12 A. There isn't anything in these two reports that
13 relay that information that I recall.
14 Q. Wouldn't that have been a consideration that the
15 Board might have found interesting as it reviewed the fact
16 that an audit had not been received yet?
17 A. The charter representative had the opportunity to
18 share that information with the Board, and the Board could
19 have used that information at that time.
20 Q. Do you know if any of the people here on agenda
21 Item 2A and 2B spoke to the Board?
22 A. I know that everyone was provided an opportunity to
23 speak to the Board.
24 I can't recall if they actually did.
25 Q. How were they provided an opportunity?

Page 174

1 A. The Board president would allow each of them the
2 opportunity to address the Board and would call them by name.
3 Q. Do you remember if he specifically said that at
4 this meeting?
5 A. I don't recall that he did or he didn't, but we
6 would have reminded him that he needed to provide the
7 opportunity if he didn't.
8 So I would assume that, yes, he did.
9 Q. The minutes that are included with this -- I
10 believe that was 15C, D -- I'm sorry. Exhibit 7.
11 The minutes don't reflect any request for anyone to
12 speak on behalf or against any of these items?
13 A. These aren't minutes.
14 Q. What are they?
15 A. It's a summary of the activity.
16 Q. So where are the minutes for that meeting?
17 A. The Board no longer provides minutes of its
18 meetings.
19 It provides the recording on-line, which is in line
20 with open meeting law.
21 Q. But if the recording on-line is not readily
22 audible, does that -- do you believe that complies with the
23 open meeting law?
24 A. I haven't had a complaint that the tape isn't
25 audible.

Page 175

1 Q. So after the November 26 meeting, there is a
2 finding that the school is to have 10 percent withdrawn from
3 whatever funds they would be getting on a normal basis,
4 right?
5 A. At the meeting, yes.
6 Q. Would it be accurate if that has been the Board's
7 unwritten policy to try to persuade the schools to make sure
8 they get their audits in on time, some sort of penalty, so to
9 speak?
10 A. The penalty is the Board's statutory ability -- the
11 withholding of funding is afforded the Board through statute
12 as a means to encourage compliance, yes.
13 Q. And then the Board has created their own internal
14 policy that says: After two months, you're supposed to bring
15 these charter schools that still have not submitted an audit
16 back to the Board; is that right?
17 A. That's correct.
18 Q. Out of all the ones that were on the list for
19 November 26, how many were brought back at -- two months from
20 the 26th would have been December, January 26, but there was
21 no meeting on January 26, right?
22 A. There was a meeting in January.
23 Q. But they weren't on that agenda?
24 A. No.
25 It's two months of withholding. So there would be

Page 176

1 the withholding in December and withholding in January, so
2 they would be on the agenda in February.
3 Q. In New Destiny's case, there was no withholding,
4 right?
5 A. There was no money to be withheld; that's correct.
6 Q. But the Board or, at least, you as the staff
7 treated it as it should be two months from, at least, the
8 order, and brought them back to the January 15th meeting?
9 A. No, we didn't bring them.
10 Q. I'm sorry.
11 You brought them to the February 13th meeting?
12 A. We brought them to the February meeting.
13 I can't recall whether it was the 13th or not, but
14 the meeting in February.
15 Q. Is there a reason that the request for suspension
16 was not brought up in the November meeting?
17 A. A question for suspension, wasn't that an agenda
18 item on the November meeting?
19 Q. That's right, it was. I'm sorry.
20 It was after the determination.
21 In the package that you submitted to the State
22 Board members, I noticed there was no discussion or reference
23 to the fact that even though this is a small school and was
24 having its problems, it had been classified as performing for
25 its first two years?

Page 177

1 A. The Board was provided the most current academic
2 information.
3 Q. So that was in the application, in the submission
4 to them?
5 A. I believe it was included in the staff report.
6 You'd have to direct me to an exhibit.
7 Q. Let me refer you to, I believe it's, 15D.
8 The staff report that's in the 15.
9 A. Yes, 15D.
10 Q. In that section, can you point out where you
11 discuss that the school was conforming for the first two
12 years of operation?
13 A. Like I said, we discussed the current academic
14 performance, not the prior academic performance.
15 At the bottom of Page 249, it starts with academic
16 performance, and it says: The academic performance of the
17 school during the fiscal year 2012 school year, as based on
18 the Board's academic framework, is represented in the
19 dashboard below.
20 If you skip Page 250, because it's a duplicate of
21 Page 249, and move on to Page 251, you'll see the Board's
22 dashboard that reflects the academic performance of New
23 Destiny Leadership Charter School for fiscal year 2012.
24 Q. This is something that's created by your staff?
25 A. That's correct, yes.

Page 178

1 Q. Who on the staff is the one who is responsible for
2 accumulating all the information that goes into this?
3 A. The information is provided by the Department Of
4 Education to the staff, and there was a division of the
5 members who developed the dashboards.
6 I can't tell you who specifically developed this
7 one. But each dashboard is peer reviewed.
8 Q. The State Board of Education, Department of
9 Education, made a determination that it couldn't rate small
10 school under their system, in 2012?
11 A. It made a determination that it wasn't going to
12 rate small schools in 2012.
13 Q. Right.
14 A. Yes.
15 Q. And they were in the process of putting together
16 the ABC system after that, 2013, for the next year, or was it
17 that year?
18 A. There was an A through F process, and the legacy
19 label process for 2012. I believe that's correct.
20 Q. And with respect to this dashboard, what was the
21 determination?
22 There's no summary that talks about what these
23 mean.
24 A. There isn't a summary, but there is a link under
25 the dashboard that provides you access to the Board's

Page 179

1 academic framework guidance document that provides the detail
2 of each of the various indicators, and their respective
3 measures, and the overall rating criteria.
4 In this case, the charter received an overall
5 rating of NR, which is a no rating, because there wasn't
6 sufficient data to calculate a rating for the charter.
7 But for those areas where there was sufficient
8 data, the data was included for the Board's consideration.
9 Q. So the overall rating was a: No rating?
10 A. This was not sufficient data to determine whether
11 the school was performing at the Board's level or not,
12 correct.
13 Q. And you knew this before you -- I guess, where is
14 the value that this gives to the Board, in your opinion as
15 the executive director?
16 A. It gives them an indication of, using the Board's
17 statutorily required performance framework, where this
18 charter school fell within that performance requirement.
19 Q. NR?
20 A. No rating; that's correct.
21 Q. Is that bad?
22 A. A school with no rating is generally required, if
23 they want to expand their operations or amend their charter,
24 to provide additional information.
25 Q. This school wasn't opened.

Page 180

1 Did anyone ask for additional information to the
2 school?
3 A. No.
4 Q. If you're providing this information to the State
5 Board, was this ever provided specifically to Dr. Tinsley,
6 this snapshot?
7 A. All of the dashboards are placed in ASBCS on-line
8 in the charter holder's folder, and each charter
9 representative has access to that information.
10 And there was an announcement made that all of the
11 schools that could have dashboards created had dashboards
12 placed in their folders.
13 Q. But prior to including this into the recommendation
14 or nonrecommendation to the State Board with respect to
15 renewal, was this particular snapshot which shows a nonrating
16 ever provided to Dr. Tinsley or anybody else at New Destiny?
17 A. None of this was created with regard to renewal.
18 The dashboard was available to Dr. Tinsley through
19 ASBCS on-line when she chose to look at it.
20 Q. Is there an appeal for any school on the dashboard
21 here if they disagree with any of the numbers, any appeal
22 rights?
23 A. There is no disciplinary action based on the
24 dashboard. It is used to provide the Board additional
25 information.

Page 181

1 In the Board's academic framework guidance
2 document, it speaks to a demonstration of sufficient progress
3 opportunity that a school or a charter holder can use if it
4 has a no rating, or if it has a rating that doesn't meet the
5 Board's expectations and wants to provide additional
6 information.
7 That additional information is based on your
8 current year operations.
9 Q. But in this particular matter, when this went in
10 front of the Board and was submitted to the Board, a number
11 of -- at least two or, maybe, three of the Board members
12 raised questions about some of the scores here; do you
13 remember that?
14 A. I don't recall that.
15 Q. Do you remember some of them saying that the math
16 grades seemed to be low and the reading grades seemed to be
17 up or satisfactory?
18 MS. ANDERSON: Objection, Your Honor, to this line
19 of questioning with regard to relevance.
20 Their academic performance was not a basis for the
21 Board's issuance or identified in the Notice of Intent
22 to Revoke.
23 ADMINISTRATIVE LAW JUDGE: To the extent that it's
24 part of your exhibit, I'm going to allow it.
25 THE WITNESS: Would you repeat the question,

Page 182

1 please.
2 BY MR. CONDOS:
3 Q. Do you remember a number of the Board members, at
4 least two, maybe three, made issues of the fact that this
5 school was low on math and high on reading?
6 A. I don't recall that discussion.
7 In looking at the document, the school -- the
8 percent of students passing math overall was below the State
9 average percent passing in math, but was above in reading.
10 And comparatively, for the composite school
11 comparison, which is looking at like demographics with regard
12 to English language learners, free and reduced lunch, special
13 education students, and overall demographic for the grade
14 levels that are served, they were performing below the State
15 expected level of performance.
16 But for their free and reduced lunch population,
17 they were performing above the State average.
18 Q. So for all practical purposes, you submitted to the
19 Board the dashboard that didn't have a rating that could be
20 interpreted by them as being low in certain areas, high in
21 certain areas, and could be interpreted by the Board as they
22 wished?
23 A. It provided an opportunity for the Board to ask
24 questions, and the charter representative to respond.
25 Q. If there was no rating, I guess the question is:

Page 183

1 Why did you include it into this package about renewal?
2 A. Because the Board has adopted this academic
3 framework and has a dashboard for each of its schools and,
4 again, has been provided -- it's their guidance document,
5 it's their framework, they developed it, they understand it,
6 and they ask for the inclusion of current academic
7 performance in their staff reports, and I provide them.
8 Q. When did they ask for that?
9 A. They have made it clear that they want academic
10 data included in their staff reports.
11 Q. Was that ever at a meeting?
12 A. Probably.
13 Q. Do you have any idea when it might have been?
14 A. I don't know.
15 Q. Going through the history, I notice that you start
16 off with August the 8th.
17 There is nothing with respect to that premeeting
18 that Dr. Tinsley had with you.
19 Is there a reason why that wasn't included?
20 A. No.
21 Q. That was the meeting that you gave her some
22 direction in what she needed to do, though, right?
23 A. That was the meeting with her where I discussed
24 what her options would be and the information that would be
25 helpful to include in a submission so that the Board would

Page 184

1 have sufficient information to make a favorable decision.
2 Q. What other options did you discuss with her?
3 Did you discuss giving up the charter with her at
4 that particular time?
5 A. I suspect that I probably did.
6 I generally do.
7 Q. Were there any other options you discussed?
8 A. I don't believe.
9 Q. At the top, it just says: The school was unable to
10 open for 2012-2013 school year.
11 Is there a reason why you didn't provide a reason
12 why they couldn't open?
13 A. I'm sorry. Where are you?
14 Q. The top of 15D, issue.
15 A. Generally speaking, the issue is a very concise
16 statement about the matter to be considered, and the
17 additional information then comes in the background
18 information.
19 And again, in this case --
20 Q. In this case, there is nothing in the background
21 information that says that the request for not opening
22 2012-2013 year was not their fault?
23 A. The request includes Appendix A -- the report
24 includes Appendix A, which is their response -- summary
25 responses for the information that was provided that

Page 185

1 demonstrated they met the criteria for a suspension request.
2 And then Appendix B, which was also included in the
3 material, provided all of the correspondence that was -- it
4 provided correspondence related to the matter.
5 And specifically, the first piece of Appendix B was
6 the letter submitted by the charter representative which
7 described their first submission of their suspension request.
8 So it wasn't that the information -- the
9 information was included in the report that the Board members
10 received.
11 Q. If you look at your Exhibit A -- I'm sorry,
12 Appendix A, is there any item here dealing with an internal
13 policy that is deficient in 1 through 7?
14 A. The Board's suspension policy, no.
15 And in fact, the last sentence of the issue says:
16 The charter holder submission located in Appendix A did
17 address all of the required items indicated in the Board's
18 policy.
19 Q. Do you remember some of the questions that the
20 Board members raised to Dr. Tinsley at that 11-26 meeting as
21 to why she didn't have a longer lease and why she hadn't
22 planned better or anything like that?
23 A. I do remember that there was a discussion about the
24 fact that regardless of whether or not the landlord had lost
25 the building or not lost the building, there wasn't any

Page 186

1 evidence she had a lease to continue the operation of her
2 school beyond the 2012 school year.
3 Q. And you remember questions from the Board which
4 questioned as to new locations and requested specifics as to
5 how they were going to be doing marketing and recruitment of
6 new students?
7 A. I don't recall those questions, no.
8 Q. If the Board would have approved the extension,
9 would that have gave in to the argument that they were not
10 providing an educational program -- one of the conditions of
11 the Letter of Intent to Revoke?
12 A. Could you say that again, please.
13 Q. If the Board would have approved the extension --
14 the temporary suspension of operation, would that have
15 negated one of the three elements for the Notice of Intent to
16 Revoke?
17 A. Yes.
18 Q. And the decision of the Board in denying the
19 suspension gave certain direction to the staff; do you
20 remember that?
21 A. Yes.
22 Q. What was the direction again?
23 A. I think, as we've already stated, they directed me
24 to work with the charter representative on a surrender
25 agreement, and to bring the matter back to the Board for a

Page 187

1 Notice of Intent to Revoke if a surrender agreement couldn't
2 be reached.
3 Q. So basically, the Board presented New Destiny with
4 either sign a surrender agreement or we're going to revoke
5 you?
6 A. Those were my directions at that point in time, was
7 to work with them on a surrender agreement.
8 And if terms couldn't be reached, to bring it back
9 to the Board for consideration of a Notice of Intention to
10 Revoke.
11 Q. So at that time, you prepared a surrender agreement
12 which, basically, just gave up the charter?
13 A. That's what a surrender agreement does, yes.
14 Q. At the February hearing --
15 A. There was no hearing in February.
16 Q. Not a hearing.
17 The February 13th agenda, that's when you came back
18 to the Board and the issue of not signing the voluntary
19 surrender was up?
20 A. It was an agenda item in February, yes.
21 Q. And in there, you discussed the fact that they had
22 not complied with the Board's request of signing a voluntary
23 surrender?
24 A. If you want to point me to the exhibit, I'll look
25 at what I actually said to the Board.

Page 188

1 Q. If you look at Exhibit 17, in your notes.
2 A. The staff report is 17B.
3 Q. In that, when you go through, you say that it was
4 sent out in January, and did not receive a response until,
5 roughly, a week or so before the hearing, that it was being
6 reviewed.
7 But then what does your report say specifically
8 with respect to the Board as to the by-product of that
9 conversation?
10 A. I'm sorry. I'm not sure what conversation you're
11 talking about.
12 Q. Updating them with respect to the Board -- the
13 response of New Destiny in -- let me rephrase that.
14 New Destiny did not sign the voluntary surrender?
15 A. That's correct, they did not.
16 Q. And that was their prerogative; is that correct?
17 A. Sure.
18 Q. It was their right?
19 A. That's correct.
20 Q. That was the time that the Board -- the president
21 at the hearing -- not the hearing, but the meeting, the Board
22 said that he couldn't understand why the audit wasn't
23 complete?
24 A. I don't recall what comments the Board president
25 made.

Page 189

1 Q. If we can backtrack for a second to your Exhibit
2 No. 16, which is the e-mail that went to Dr. Tinsley
3 informing her of the February 11 Board meeting.
4 A. Yes.
5 Q. In that, it just refers to Item K, compliance
6 matter.
7 Did Bianca prepare this at anybody's direction?
8 A. Bianca is generally charged with notifying all
9 charter holders that are on an agenda through an e-mail that
10 they are in fact on an agenda for consideration.
11 Q. And is there any reason that this notice doesn't
12 provide the large language that is set forth in the letters
13 that go out with respect to audits to give notice that
14 there's a -- that there could be an issue of Notice of Intent
15 to Revoke the Charter?
16 A. The short version is: I agree with Andrea's
17 previous testimony.
18 If you would like me to go into detail as to the
19 statutory requirement to provide that notice for a 10 percent
20 withholding, but no statutory requirement to provide such
21 language for a Notice of Intent to Revoke, the answer is the
22 same.
23 Q. Is there any policy that deals with the situation
24 with regard to revocation that the Board has adopted?
25 Let me rephrase it.

Page 190

1 There isn't a policy that deals with revocation
2 that the Board has adopted, is there?
3 A. The Board handles consideration of Notices of
4 Intent to Revoke on a case-by-case basis.
5 Q. While the statute gives them the right, there is no
6 direction as to how the process should work from a media
7 standpoint of the Board, is there?
8 A. I'm sorry. I didn't understand.
9 Q. There is no regulations to deal with this either in
10 the administrative code?
11 A. With regard to revocation?
12 Q. Yes.
13 A. I don't recall.
14 MR. CONDOS: No further questions at this time.
15 ADMINISTRATIVE LAW JUDGE: Thank you.
16 Any redirect?
17 MS. ANDERSON: Yes, Your Honor.
18
19 FURTHER EXAMINATION
20 BY MS. ANDERSON:
21 Q. If you would, please refer to the Board's Exhibit
22 15D.
23 In terms of the school's performance profile for
24 the 2010-11 school year and school year 2011-12, if you would
25 refer to Page 257 of this exhibit, it reflects, in the letter

Page 191

1 from Dr. Tinsley to you, dated August 7, that in the
2 approximately -- well, the third paragraph after the bold
3 print states that New Destiny was a performing school in
4 2009-2010, 2010-2011 school years, no label was given this
5 year, correct?
6 A. That is correct.
7 Q. This is among the documents that was included with
8 the staff report to the Board for its consideration of New
9 Destiny's request for temporary suspension, correct?
10 A. That is correct.
11 Q. Continuing with Page 257, the following paragraph,
12 indicating New Destiny's plan to secure a facility early 2013
13 but no later than May 2013, did New Destiny secure a facility
14 to operate a charter school site in early 2013 but no later
15 than May 2013?
16 A. No, it did not.
17 Q. To date, has New Destiny secured a facility to
18 operate a charter school for the 2013-2014 school year?
19 A. No, it has not.
20 Q. If you refer to Exhibit 7, Page 215, the motion
21 that the Board made with regard to New Destiny Leadership
22 Charter School's request for suspension of operations
23 reflects that at its meeting on November 26, 2012, the Board
24 did indicate that the Board may consider a Notice of Intent
25 to Revoke the Charter at a future Board meeting; is that

Page 192

1 correct?
2 A. That's correct.
3 MS. ANDERSON: Your Honor, no further questions.
4 ADMINISTRATIVE LAW JUDGE: Thank you.
5 You may step down.
6 Why don't we go ahead and take our afternoon break,
7 and then we'll resume.
8 Going off the record.
9 (Brief recess.)
10 ADMINISTRATIVE LAW JUDGE: Back on the record.
11 The Board may continue.
12 MS. ANDERSON: Your Honor, the Board concludes its
13 presentation of witnesses.
14 ADMINISTRATIVE LAW JUDGE: Thank you.
15 We now will go to the charter school's
16 presentation.
17 MR. CONDOS: Judge, we would call Dr. Barbara
18 Tinsley to the stand.
19 ADMINISTRATIVE LAW JUDGE: Dr. Tinsley, would you
20 please come up.
21
22 BARBARA TINSLEY,
23 Having been first duly sworn upon her oath by the Notary
24 Public to speak the truth and nothing but the truth, was
25 examined and testified as follows:

Page 193

1 EXAMINATION
2 BY MR. CONDOS:
3 Q. Dr. Tinsley, please state your name and spell your
4 last name for the record, please.
5 A. Barbara J. Tinsley, T-i-n-s-l-e-y.
6 Q. Dr. Tinsley, do you have some sort of position with
7 New Destiny Leadership Charter School?
8 A. I am the charter holder.
9 Q. Is that a nonprofit corporation?
10 A. Yes, it is. It is a nonprofit corporation with a
11 501(C)(3).
12 Q. Are you the president of the corporation?
13 A. Yes, I am.
14 Q. How many people are on the board of directors of
15 this corporation?
16 A. At this time, this are only two.
17 Q. The other person is?
18 A. Charles Hancock Tinsley, Jr.
19 Q. Is he related to you in some way?
20 A. He is my husband.
21 Q. Dr. Tinsley, prior to you deciding to get into the
22 charter school education business, were you involved in any
23 other type of education?
24 A. I've been in education since 1980.
25 Q. Give me and the Judge a little background of your

Page 194

1 educational experiences.
2 A. I've taught everything from kindergarten to seniors
3 in high school, as well as I'm certified to teach at the
4 community college, the lifetime certificate. I've also
5 taught adults as well.
6 The thing I like to teach is junior high students,
7 and I taught sped ed for many years.
8 I've been in education since 1980.
9 Q. Are you certified as a special ed teacher here in
10 Arizona?
11 A. Yes, I am certified as a special ed teacher, K
12 through 12.
13 Q. Immediately prior to you deciding to seek out and
14 start a charter school, what did you do?
15 A. I was actually a teacher and had retired from one
16 of the local school districts and was subbing part-time.
17 Then I went full-time for two years in the high
18 school. I hadn't done that for a while.
19 It gave me a very good base of what the high school
20 students were going through. So I did that for two years as
21 a sped ed teacher.
22 Q. In what school were you teaching?
23 A. Phoenix Union High School District.
24 Q. Did there come a time where you decided you wanted
25 to get back into the educational business yourself more on a

Page 195

1 full-time basis?
2 A. Yes.
3 I'm very close to a district here in Phoenix, and
4 have been in that particular district for quite some time.
5 I really thought that we would be able to go in
6 that area and work with those young people and do some things
7 that I would like to have done with those particular young
8 people in that area.
9 Q. Which school district was this?
10 A. Roosevelt.
11 Q. Now, when you decided to put together the charter
12 application, did you prepare the application? Did you get
13 assistance from others?
14 It's fairly complicated.
15 A. Yes, I got assistance from other people in
16 education who were very familiar with the charter school
17 program, charter school operators, and budget people.
18 Whatever I needed, I got help on it. Curriculum
19 people.
20 All these people also helped me to put together the
21 charter. Not just the paperwork, but to put together the
22 charter as well.
23 Q. Eventually, in 2008, you were awarded a charter by
24 the State Board for Charter Schools?
25 A. Yes, I was.

Page 196

1 Q. That culminated into your execution of a charter
2 contract?
3 A. Yes.
4 Q. If the contract has a date of March 31st for your
5 signature and April 1st for DeAnna Rowe's signature, 2009
6 would that be pretty close?
7 A. I think so.
8 I don't remember the exact date.
9 Q. You were awarded the charter a year before then; is
10 that right?
11 A. Yes.
12 Q. And you had some difficulties in opening?
13 A. Location in the area that I wanted to work in.
14 Q. Where was that area?
15 A. In south Phoenix.
16 Q. What kind of difficulties did you run into in
17 trying to find a location?
18 A. It was just difficult to find a location to open a
19 charter school.
20 I also looked -- one particular I remember had
21 originally had a charter school.
22 But the charter school had torn up the facility,
23 and they refused to have another charter school in. They
24 said: No.
25 It was -- I had trouble trying to find a charter

Page 197

1 location in south Phoenix, but we did.
2 Q. And it was almost a year, right close to a year
3 after you received your charter, before you signed the
4 charter contract.
5 Had you requested an extension from the State Board
6 of a year to continue to look for a place until you found
7 one?
8 A. Yes, we did.
9 Q. What did you do in order to get that extension?
10 A. I filled out some type of paperwork. I don't
11 remember the exact paperwork.
12 I'm sorry, I don't remember the exact paperwork.
13 Whatever I had to do, I did it.
14 Q. From the time that you submitted it until the time
15 that they approved it, roughly, how much time had expired?
16 A. I'm sorry. I don't really remember.
17 Q. Was it as long as the stretch that we've had here?
18 A. No.
19 I imagine, back then, the way the Board operated,
20 if I submitted it in, it would have gone the very next
21 session.
22 No, no.
23 Q. Eventually, you did find a location in the South
24 Mountain area, and opened a charter school?
25 A. Yes, we did.

Page 198

1 Q. Do you remember what that first address was?
2 Could it have been on Broadway?
3 A. Yes, it was.
4 Q. You opened the school there, and then you ran into
5 a calamity as well?
6 A. Yes, we did.
7 We went out for a Christmas break, and we didn't
8 know they were going to turn off the electric, the heat, and
9 the pipes busted. They froze, and they burst.
10 So we had to move the school.
11 Q. How long did it take you to find another location?
12 A. That was really interesting. It didn't take me but
13 a couple weeks.
14 Q. Where was that location?
15 A. It was right down the street. It's was right down
16 the street. Two or three blocks.
17 A. From 19 to 24th Street -- from 1923, I believe,
18 Broadway, to 24th Street, 54, I believe, East Broadway.
19 Q. Did you have to move the school right around the
20 Christmas break time?
21 A. It was after Christmas break.
22 We didn't have the time. It was after Christmas
23 break, but everything fell right into place. We didn't even
24 have to shut down.
25 Q. Did parents and teachers cooperate in making that

Page 199

1 move and the students as well?
2 A. That's how we were able to do it. We had parent
3 cooperation, and we had -- the teachers were wonderful. They
4 made the sacrifices, and we got it done.
5 Q. You didn't have a real large school?
6 A. No, we did not.
7 30, maybe.
8 Our first year, we had 16. Then, I think, we
9 had -- we were paid for a full 16 our first year because they
10 were giving us full money for kindergarten.
11 Our second year, we had kindergarteners, but they
12 weren't paying us full money for kindergarteners. I think,
13 maybe, 30. I'm not sure.
14 Q. How would you describe the socioeconomics of the
15 neighborhood where the children were coming from?
16 A. Let's say we had 97 percent free and reduced lunch.
17 We were in a neighborhood that is high in poverty.
18 There are a lot in need in that neighborhood, but I didn't
19 look at it like that.
20 I looked at the neighborhood to see -- if you look
21 at the fact that it's just got the need and all that, you
22 won't be successful with your students.
23 So even though it was one of the worst
24 neighborhoods that you could grow up in, I looked at the
25 neighborhood with those children as having potential.

Page 200

1 So I looked at the potential in the neighborhood,
2 but it was one of the worst areas in south Phoenix. It's a
3 rough area.
4 I remember, when we moved, the lady said: You
5 know, there are people that don't even come over here at
6 night.
7 But you have to look at it from a potential
8 standpoint.
9 Q. Why would you want to open a school there?
10 A. I have been in the Roosevelt School District.
11 Roosevelt School District is a melting pot.
12 Everybody is in Roosevelt School District.
13 Let's just say I was raised in a Roosevelt School
14 District School area. My parents -- we weren't rich people.
15 We were poor people.
16 My family brought us up, and my parents did a good
17 job, and we got a good education because it was mandatory.
18 And no matter where you come from or how poor you
19 are, if you get a good education and have teachers that care
20 for you, you can make it.
21 That's why.
22 Q. The building that you ended up in after the flood,
23 was that -- at one time, did you share the building, or was
24 it used by another educational or children oriented type of
25 operation?

Page 201

1 A. At one time, when we first moved there, there was a
2 preschool in the building.
3 They moved their preschool to another location. So
4 we had the building after that, the full building.
5 Q. Did you have the full building, or was there an
6 extra section that wasn't used by you?
7 A. Yes, there was a large area -- because we only had
8 30 kids, there was a large area that we did not use.
9 Q. And how much was the rent at that location?
10 A. $1,800.
11 Q. Had you discussed with the -- first of all, did you
12 have a formal lease with the people that owned it?
13 A. Yes, I did.
14 Q. Who were the people that owned that building?
15 A. Child Help Corporation.
16 Q. Did they have a number of daycares around or
17 preschools around?
18 A. They had one additional facility. I'm not sure of
19 the exact location.
20 Child Help has things -- had things. They had -- I
21 know they shut things down after that.
22 Q. How long was your lease?
23 A. A year.
24 Q. If you knew that lease would be there, why didn't
25 you try to get a longer lease?

Page 202

1 A. The people who were in charge of Child Help are
2 known for helping children if they can. That's their goal.
3 These two women are fantastic as far as serving the
4 needs of the community. If there was any way that they could
5 let me stay in that building, they would.
6 Q. So they had you on a one-year lease.
7 Were they trying to figure out what they were going
8 to do with the building and others, or why was it just the
9 one year?
10 A. Yes.
11 It's interesting because, when we first started
12 out, even at our other facility, we were on a one-year lease.
13 I thought: Why a one-year lease?
14 Once I got into south Phoenix, and if you go by
15 what was going on in south Phoenix, and what was going on
16 with me at that particular time, I just took it and went with
17 it.
18 They were having some challenges, but I still had
19 great faith in the fact that they would do what they can.
20 Q. So you stayed there for a year and got another
21 one-year lease for the next year, and that would have been
22 2011-2012?
23 A. Yes.
24 Q. Did something happen in 2011-2012 that made that
25 location no longer a place for you?

Page 203

1 A. They were having financial difficulties and, from
2 what I understood, they lost the building. But when you're
3 losing your building, you don't tell everybody what's going
4 on.
5 They never came to me and said: We're losing this
6 building.
7 I did find out that they were losing their
8 building, and they had lost other properties, and I said:
9 Okay.
10 Q. That's when you found out you couldn't stay there?
11 A. They sent me a letter.
12 They came in, and we talked. And I got the letter,
13 and we had to move.
14 Q. Would that have been about the latter part of
15 April, first of May?
16 A. May.
17 Q. When did your school year end that year?
18 A. I believe, May 19th.
19 Q. When you found out that you couldn't stay at that
20 location, did you start looking for other places?
21 A. Yes.
22 I had a friend who was at another charter school
23 begin to talk to me about other possibilities of a charter
24 school.
25 I had a former person on the Board, and I talked

Page 204

1 with her. I began to talk to everybody. I began to beat the
2 bushes.
3 I began to talk to people with churches, the child
4 care centers, partnering with some people.
5 I could probably tell you every street in that area
6 because I have been up and down every street.
7 Q. Did there come a time when you realized you weren't
8 going to be able to find a location to open the school for
9 the next year?
10 A. Yes, I did.
11 Q. What did you do then?
12 A. When I found out that I wasn't going to open, one
13 of my friends who is in charters and I got together to work
14 on drafting the letter to the parents. We did that.
15 Then I sent -- along with the letter, I sent the
16 withdrawal form because the parents needed the withdrawal
17 form to get them in another school. So I got that out to
18 them as well.
19 And then after a moment, I went to talk to Ms. Rowe
20 about what was going on.
21 Q. That discussion took place at the State Board for
22 Charter School offices?
23 A. Yes, it did.
24 Q. Was there anybody else there, or just the two of
25 you?

Page 205

1 A. It was just Ms. Rowe at that time.
2 Q. What was discussed at that particular time?
3 A. I explained that the building -- that we had paid
4 our rent. First, I wanted people to know that I didn't lose
5 my place because I didn't pay my rent. I was paying the
6 rent. That wasn't the problem.
7 But that they were going to foreclose on the
8 building, the people, and I could not stay there, and that I
9 had looked for another location.
10 But I also explained to her that I had sent out the
11 letters and the withdrawal forms to the parents, and had
12 talked with the parents.
13 Q. Was there any solution reached?
14 Was there any suggestion as to what you could do
15 with respect to continuing forward in some way?
16 Let me rephrase that.
17 Did you both discuss the possibilities of maybe
18 having a year suspension so that you could go forward, find a
19 new place, and then start-up again?
20 MS. ANDERSON: Objection, leading.
21 THE WITNESS: I'm sorry?
22 ADMINISTRATIVE LAW JUDGE: Sustained.
23 BY MR. CONDOS:
24 Q. The discussion that you had with Ms. Rowe, did that
25 involve action that you could take with respect to the next

Page 206

1 step for the school?
2 A. Yes.
3 Q. What was discussed?
4 A. Suspension for a year, and to present it to the
5 Board, and what's on this paper.
6 Q. When you say the "paper," I'll refer you back to
7 our Exhibit A that is in one of those books there.
8 A. Yes.
9 Q. Tell me about how you happened to get that.
10 A. Get this paper?
11 Q. Yes.
12 A. This is what Mrs. Rowe said I needed to do. She
13 wrote it down for me, and she kept a copy of it and said to
14 put it in my file.
15 I took this piece of paper, and this is what I did.
16 Q. Were you referred to any site, or do you remember
17 getting anything with respect to the policy or what was
18 required to be submitted?
19 A. If I had, it would have been with this piece of
20 paper.
21 I still have the original notepad sheet that I was
22 given.
23 Q. What was the next step you took with respect to
24 getting a suspension?
25 A. I think the letter to Martha Morgan, I believe.

Page 207

1 Q. If you refer to Exhibit B, take that tab over one,
2 it has a letter dated --
3 A. Yes, I did, I did this letter. I'm sorry about
4 that.
5 Q. Did you submit this to the State Board?
6 A. I sent -- this letter is addressed to Mrs. DeAnna
7 Rowe, the executive director of the Arizona State Board for
8 Charter Schools.
9 Q. In that first paragraph, you talk about that it's
10 with great disappointment that you're having to inform them
11 that you won't be able to open for the 2012-2013 year?
12 A. Yes.
13 Q. And then you also informed them that you've sent
14 out the withdrawal forms?
15 A. Yes.
16 Q. That was done back in July 17th of 2012?
17 A. Yes.
18 Q. So the kids have plenty of time to find another
19 school?
20 A. Yes.
21 Q. You also talk about -- in that letter, you discuss
22 a little bit about the educational accomplishments or, at
23 least, the quality of education that the kids were getting at
24 your school, saying that you were a performing school in
25 2009-2010 and 2010-2011; was that accurate?

Page 208

1 A. Yes.
2 Q. In 2011-2012, you say that there were no labels
3 given out for that year.
4 Was that because you were a small school?
5 A. Yes, they did not give out labels for small
6 schools.
7 Q. You heard Ms. Rowe talk about a dashboard?
8 A. Yes.
9 Q. You saw what they had submitted to the Board.
10 Were you aware of that before it was submitted to
11 the Board, or when did you find out about a dashboard for
12 your particular school?
13 A. I'm not sure that I knew about the dashboard.
14 There was something else that she said was in my
15 folder. I don't know about a folder either that we did have.
16 Q. Was it your understanding, in 2012-2013, that the
17 school wasn't rated because it was too small?
18 MS. ANDERSON: Objection, leading.
19 ADMINISTRATIVE LAW JUDGE: I'll let her answer the
20 question, but you are leading.
21 BY MR. CONDOS:
22 Q. What was your understanding with respect to ratings
23 of the school by the Department of Education for Arizona?
24 A. They told us we would not get a rating because we
25 were too small.

Page 209

1 Q. Had you seen this snapshot before you saw it
2 attached to the request for suspension in November of 2012?
3 A. I think I had, but I'm not sure of an exact day.
4 I think I had seen that.
5 Q. Was it ever discussed with you, or did you get any
6 information as to what it meant, what it did?
7 A. I had a conversation with Dr. Morgan.
8 I remember her saying: Yes, your reading scores
9 were okay, your math slipped.
10 We were still higher than the people that were
11 around us. But you don't want your math scores to slip.
12 Q. Was there a discussion as to why the math scores
13 slipped in that period?
14 A. It's really interesting. We had the same
15 students -- we didn't have the same students for our
16 reading -- I'm sorry.
17 The kids did better on reading than they did on
18 math. I don't know what -- they just didn't do that well
19 that year on math.
20 Q. Did you take any steps or were you forced to take
21 any steps in order to fix that?
22 What was done?
23 A. I wasn't forced to take steps. I took steps.
24 I changed the math curriculum and talked with the
25 teacher, and he and I began to work on some things.

Page 210

1 But we had new students that had come in. When you
2 have a student that hasn't been with you, it takes a while to
3 work them up.
4 Q. You heard Ms. Rowe testify that with respect to a
5 lot of your scores in that dashboard, it showed that your
6 school was doing better than the normal free and reduced
7 lunch kids?
8 A. Yes.
9 Q. What's the surrounding schools in the Roosevelt
10 District that were around you, and how did you compare with
11 them?
12 A. Where I was located -- Roosevelt School District
13 had been targeted as a takeover district.
14 Where we moved the school, the school down the
15 street from us had actually been taken over by Roosevelt
16 School District when we moved.
17 They were all not performing as well as they
18 should. They are doing much better now.
19 Q. After you had the meeting with Ms. Rowe, did you
20 start putting together a little bit more of a formal letter
21 in response to what they had requested to you -- from you?
22 A. Other than this one, August 7th, this is the
23 only -- with exception of the one to Martha Morgan.
24 Q. A few days after you submitted that letter, did you
25 receive contact from Martha Morgan about items that you

Page 211

1 needed a little bit more specificity to?
2 A. No.
3 There is a letter in here.
4 Q. Let me refer you to Exhibit C.
5 Is that the e-mail or letter that you were
6 referring to that --
7 A. Yes, this is the one from Dr. Morgan.
8 Q. She has three bullet points that she would like you
9 to elaborate on?
10 A. Yes.
11 Q. During this time period as well, did you -- you had
12 uploaded names for the students in June, right?
13 A. Yes.
14 Q. That's required, usually, in June for compensation
15 for the next year?
16 A. Yes.
17 Q. After you realized that -- after you started giving
18 the exit paperwork to the students, did you also inform or
19 have somebody on your staff inform the State that you weren't
20 going to be opening?
21 A. Yes.
22 Q. Despite that, you still received a check?
23 A. Yes.
24 Q. That was like the normal August check?
25 A. Yes.

Page 212

1 Q. Did you return that money?
2 A. Yes, I did.
3 Q. All of it?
4 A. Yes.
5 Q. Did anybody tell you you had to, or did you realize
6 that wasn't --
7 A. Well, if you go back to that letter, it says right
8 here, the request for this suspension note from the meeting
9 with Mrs. Rowe, payment for August back to ADE, and attention
10 to Lyle Friedman.
11 Q. Yes.
12 A. Yes.
13 Q. After you received Dr. Morgan's letter, did you
14 then -- one of the extra items that they discovered was that
15 you hadn't sent in your annual report, so the corporation was
16 not in good standing.
17 It looks like you took steps to fix that?
18 A. Yes, we did.
19 Business manager took care of that.
20 Q. And then did you send a copy -- it appears you sent
21 a copy to the State that we've looked at and discussed
22 already?
23 A. Yes.
24 Q. Did you then submit additional information to
25 Dr. Morgan, at the State Board for Charter Schools?

Page 213

1 A. I'm sorry. I don't remember.
2 Q. If you look at Exhibit E, there is another little
3 note from Dr. Morgan to you, which says that they need a
4 little bit more information with respect to the target date
5 of securing a facility, and student forms, and the plan you
6 had?
7 A. Yes.
8 Q. Did you then submit to them information with
9 respect to those specific questions?
10 I'll refer you to Exhibit G.
11 Is that an e-mail that you prepared and sent to
12 Dr. Morgan?
13 A. Monday, October 1st, 2012?
14 Q. Yes.
15 A. Yes.
16 Q. After Dr. Morgan received that, did she ask you for
17 any more information with respect to the transfer?
18 A. I don't believe so.
19 Q. Not the transfer, but the suspension?
20 A. I can't remember.
21 I don't think so.
22 Q. Was it your understanding at that time that you had
23 given the State Board for Charter Schools everything that was
24 required for the suspension?
25 A. Yes.

Page 214

1 Q. What was the next thing you were told was going to
2 happen?
3 A. That we would have to go before the Board.
4 Q. Did they give you -- did anybody give you an
5 estimated date when that could be?
6 A. No.
7 Q. Did anybody ever tell you that there may be some
8 delays or anything during that period of time, you getting in
9 front of the Board?
10 A. I don't remember.
11 Q. Now, to the best of your knowledge, at that time,
12 were you in full compliance with your charter contract?
13 A. At that particular time, yes.
14 We had gotten the check back, we had taken care of
15 the Arizona Corporation Commission, and I believe I had done
16 everything I was supposed to do.
17 Q. Aside from extra items that you provided, was that
18 fairly similar to what you had done initially when you needed
19 that one year to find a location at the beginning of the
20 charter?
21 A. Yes.
22 Q. Who did your prior audits?
23 A. I'm sorry?
24 Q. Who was the CPA that did your prior audits for
25 2009-2010 and 2011-2012?

Page 215

1 A. Anthony Lorenzo.
2 Q. Did you also have -- utilize the services of a
3 bookkeeper or office manager or somebody for your accounting
4 and business purposes?
5 A. Business manager.
6 Q. Who is that?
7 A. Monica Fuller.
8 Q. Did Monica represent herself as having experience
9 in charter schools?
10 A. Yes.
11 Q. Had you verified that as well?
12 A. I did prior to my working with her.
13 As a matter of fact, I called the Arizona Charter
14 School Association to ask for business manager referrals.
15 Q. Was Monica the one that usually handled the audit
16 from the school's standpoint?
17 A. Yes.
18 Q. You had submitted your audits in the previous year.
19 And in 2011, you were late?
20 A. Yes.
21 Q. Do you remember what the circumstances were that
22 affected why you were late a couple months at that time?
23 A. I had to wait until I got the money together. We
24 had few students. It just took a little while to get all the
25 money that we needed together.

Page 216

1 It's not just the audit. We have to pay Monica for
2 her input into it as well.
3 It was financial.
4 Q. In the year that you were closed, waiting for the
5 suspension, did you have any discussions with anybody with
6 respect to an audit for that year?
7 A. Seems like I talked with Lorenzo, but the only sure
8 conversation I know I had with Lorenzo is I have an e-mail
9 that June 12th, 2012, I contacted him and contracted with him
10 to do our audit on June 12, 2012.
11 Other than that -- I don't pull it off of the
12 e-mails that I have. I can't say yes, yes, yes. I like to
13 be very precise.
14 Q. You saw the e-mail that Mr. Lorenzo sent in with
15 the engagement contract, which was dated, I believe, November
16 the 9th?
17 A. Yes.
18 Q. You're saying now that you had retained him or at
19 least told him to get started before then?
20 A. Yes. I have an e-mail on my desk.
21 Q. I'm going to hand you -- I guess that would be --
22 when we were looking for documents -- first of all, when did
23 you find this e-mail?
24 A. I was thinking about things that we needed, and I
25 found the e-mail this morning.

Page 217

1 I just knew there was one more thing that was
2 needed, and I took it off this morning to bring it in.
3 MR. CONDOS: If I mark this as DD, would that be
4 our next one?
5 Permission to approach?
6 ADMINISTRATIVE LAW JUDGE: You may.
7 On the way up, show Counsel what you are going to
8 show the witness.
9 Do you need a break to take a look at it?
10 MS. ANDERSON: Just a moment. It's pretty brief.
11 ADMINISTRATIVE LAW JUDGE: Take your time.
12 MS. ANDERSON: Do you have an extra copy for me?
13 MR. CONDOS: No.
14 THE WITNESS: Sorry.
15 MR. CONDOS: If the Hearing Judge wants, I can copy
16 one from the office, possibly.
17 ADMINISTRATIVE LAW JUDGE: We can take a break, and
18 you can go see if you can make copies.
19 MR. CONDOS: Okay.
20 ADMINISTRATIVE LAW JUDGE: Okay.
21 We're going to go off the record.
22 (Brief recess.)
23 ADMINISTRATIVE LAW JUDGE: We're back on the
24 record.
25 Did you get the copies you need?

Page 218

1 MR. CONDOS: We did.
2 Thank you. The staff are very nice.
3 ADMINISTRATIVE LAW JUDGE: Is this it here?
4 MR. CONDOS: Yes, sir.
5 ADMINISTRATIVE LAW JUDGE: This is DD?
6 MR. CONDOS: Yes.
7 (New Destiny's Exhibit DD was marked.)
8 ADMINISTRATIVE LAW JUDGE: You may continue.
9 BY MR. CONDOS:
10 Q. Ms. Tinsley, we were just talking about employment
11 of the CPA for the 2012 audit.
12 Mr. Lorenzo, in his e-mail to the staff -- well, in
13 his e-mail with the letter of engagement, the letter of
14 engagement had a date on it of November the 9th, and you have
15 now remembered and found an e-mail that illustrates that he
16 was obviously mistaken with respect to that?
17 MS. ANDERSON: Objection, misstates the contents of
18 the exhibit.
19 MR. CONDOS: I'll withdraw that whole line.
20 It was a terrible question, probably, anyway.
21 BY MR. CONDOS:
22 Q. I believe you testified that you retained -- or,
23 you told Mr. Lorenzo to start the audit in June?
24 A. We weren't going to exactly start during the
25 summer. I don't believe you start your audits in the summer.

Page 219

1 You have to wait until Mr. Lorenzo has time. He
2 says: I have this time to do these types of things.
3 But he needed to know -- as you see in the letter,
4 it says, from him: I'm contacting you regarding the audit,
5 and we need to know no later than June 15th.
6 I responded June 11th and said: Yes, I want you to
7 do our audit.
8 Q. What you've been reading from is actually what's
9 been marked for identification purposes as DD?
10 A. DD.
11 Q. Is that a true and accurate copy of the e-mail that
12 Mr. Lorenzo sent to you on June the 8th, and your response to
13 him on June the 11th?
14 A. Yes, it is.
15 MR. CONDOS: Your Honor, we would offer DD into
16 evidence.
17 ADMINISTRATIVE LAW JUDGE: Any objection?
18 MS. ANDERSON: No, Your Honor.
19 ADMINISTRATIVE LAW JUDGE: Thank you.
20 DD is admitted.
21 (New Destiny's Exhibit No. DD was admitted.)
22 BY MR. CONDOS:
23 Q. As the year progressed, July 1st, and your process
24 with respect to going forward on the suspension for your
25 charter school year, the audit -- first of all, the AFR,

Page 220

1 Annual Financial Report, was not submitted on October 15?
2 A. We weren't ready.
3 Q. Can you explain why that wasn't submitted at that
4 time?
5 A. If you take a look at the letter to Dr. Martha
6 Morgan, dated Monday, October 1st, 2012 -- and I'm not
7 sure -- Exhibit G.
8 Q. Yes.
9 A. At the bottom, it says: Dr. Barbara Tinsley,
10 executive director, New Destiny Leadership Charter School,
11 Inc., Post Office Box 523, Chandler, Arizona 85224.
12 The school was in storage units. We were still
13 trying to get things settled and put up and in place so that
14 I can really begin to do some things.
15 Q. Was that the same reason that the audit didn't get
16 completed by November 15th?
17 A. Yes.
18 The stuff is in storage boxes.
19 Q. On November 15th, did you even know whether or not
20 you were going to have a school for the next year?
21 A. No, we did not.
22 Q. Eventually, you received the notifications with
23 respect to the audits not being on time and the AFR not being
24 on time.
25 What did you do after that?

Page 221

1 A. I spoke with the business manager, and we talked
2 about the fact that we may not have a school next year.
3 And if we may not have a school next year, we need
4 to think about getting everything taken care of, set out,
5 moved out.
6 But the audit was a major issue, just trying to get
7 ready with the school.
8 Q. When you sent the check back that you received in
9 August, did you have sufficient funds left to pay for the
10 audit for 2012-2013?
11 A. The check, I believe, was $16,000, and I would
12 have -- had I known that the -- I didn't know that they
13 weren't going to send me the funds for the audit. I didn't
14 know that until the February meeting.
15 It was in the February Board meeting that I was
16 told that the funding for the reimbursement on that does not
17 come as a separate check, it comes in your ADM, and that's
18 when I found out that we would not be getting the money. But
19 that was in the February meeting.
20 Q. So up until then, you were waiting for a check to
21 come to you for the previous year's audits so you could pay
22 for this year's audit -- that year's audit?
23 A. Yes.
24 Q. Do you remember how much you paid Mr. Lorenzo for
25 the 2009-2010 audit?

Page 222

1 A. $5,000.
2 Q. Do you remember how much you paid Mr. Lorenzo for
3 the 2010-2011 audit?
4 A. $5,000.
5 Q. In 2011-2012, which was your third year, was that
6 also --
7 A. In the letter that you have, the DD, the audit was
8 going to be $5,750.
9 Q. At the meeting on November 26, when the State Board
10 dealt with the issue of schools who had not submitted their
11 audit at that time, do you remember the Board asking for any
12 of the people who were on that list to come up and provide
13 any information?
14 A. Yes.
15 Q. Did anybody go forward?
16 A. Yes.
17 Q. Did you go forward at that time?
18 A. Yes, I did.
19 Q. What did you tell the State Board?
20 A. That we had not been able to do our audit because
21 we had shut down the school.
22 We just, at that particular moment, had all of our
23 things together in one spot to do the audit.
24 But I thought that the main thing that I was
25 discussing with the Board at the time was the suspension.

Page 223

1 Q. That was later on the agenda?
2 A. Right.
3 Q. And when you presented your position with respect
4 to the suspension period there, what do you remember about
5 the feedback the Board gave you?
6 A. The person on the Board says: I don't understand
7 why you have not done your audit. A very few number of
8 people fail do get their audits in.
9 I really wanted to ask him: How many of them are
10 waiting for the check to come in? Of those people, how many
11 are waiting for the funds to come in?
12 When you get your funds in, you can do your audit.
13 Q. Were you asked as to what efforts you had made to
14 find a location?
15 A. I can't remember.
16 Q. Were you asked questions with respect to specific
17 marketing for students at that particular time?
18 A. I can't remember.
19 Q. So you remember the Board turning you down on that
20 day?
21 A. Yes.
22 Q. And you remember the Board directing the staff
23 to -- do you remember the Board giving direction to the staff
24 to do anything with respect to the contract itself?
25 A. What I remember being said was this: We think that

Page 224

1 you will not be able to find a school next year, and that you
2 will come back to us the following year to ask for another
3 suspension.
4 And that was what was said.
5 And then they said they wanted to issue a Notice to
6 Revoke. That is what was said.
7 Q. After that meeting, did you receive from the State
8 Board for Charter Schools, specifically, Ms. Rowe, anything
9 by e-mail with respect to what was directed by the State
10 Board?
11 A. I'm sorry. I can't remember.
12 Q. Do you remember ever receiving a voluntary consent
13 to give up your charter, basically?
14 A. I do remember getting some information from
15 Mrs. Rowe about what I needed to sign to give up the charter.
16 Q. Did you want to give up your charter at that time?
17 A. No, I did not.
18 Q. Why not?
19 A. Why give up a good charter?
20 We're doing a good job in an area that is known for
21 not doing a good job.
22 I didn't steal any money. I didn't hurt any kids.
23 MS. ANDERSON: Objection, asked and answered.
24 ADMINISTRATIVE LAW JUDGE: Sustained.
25 BY MR. CONDOS:

Page 225

1 Q. If I could turn your attention to Exhibit L,
2 there's an e-mail on the top that says: Surrender
3 agreement -- I take it back.
4 It's from DeAnna Rowe, the bulk of it, dealing with
5 the surrender agreement. And then there is a consent
6 agreement for voluntary surrender with it.
7 Did you ever review this?
8 A. I'm sorry. What page are you on?
9 Q. I'm on Page 1 of the actual consent agreement.
10 A. Are we in L?
11 Q. Yes.
12 Exhibit L, the first part is an e-mail?
13 A. Yes.
14 Q. And then --
15 A. This is what -- I believe this is what I was sent
16 from Mrs. Rowe.
17 Q. Did you have a chance to review it?
18 A. Yes, I did.
19 Q. Were you willing to agree to the terms to it?
20 A. No, I wasn't.
21 Q. Did you receive notification that you were to come
22 back to the Board in February of 2013?
23 A. Yes, I did.
24 Q. Between November 26 and February 13th, did you
25 still continue to look at alternatives so that you could hold

Page 226

1 your charter?
2 A. During that time, I talked with some individuals
3 who had charters, and I explained to them the situation that
4 I was in, and they offered suggestions.
5 One of the suggestions was made very specifically
6 is your charter does not limit you to south Phoenix, and to
7 look somewhere other than south Phoenix.
8 That was one of the suggestions I got.
9 Q. Did you start looking at other locations?
10 A. Yes, we did.
11 Q. Did you end up at some time entering into some
12 meaningful conversations or discussion about another
13 location?
14 A. Yes, I did.
15 Q. Would that have included a church that had -- tell
16 us about that.
17 A. There was a church that previously had had a
18 charter school, and the charter school had left, and they
19 were looking to have another charter on their facility.
20 Not only were they talking about having a charter
21 with the facility that they had, but they showed me the land
22 where they wanted to build and put additional buildings out
23 on this particular land.
24 And they had discussed with me that Mrs. Rowe had
25 come out. They were very open and said there were some

Page 227

1 things that were wrong, and they had fixed it, but it was a
2 previous charter school.
3 Q. Did it have a certificate of occupancy for a
4 charter school?
5 A. Yes, it did.
6 Q. How many classrooms did it have, if you can
7 remember?
8 A. Five.
9 Q. Was it something that you felt that you could
10 operate in if you could have -- if you could retain your
11 charter and be able to be at that location?
12 A. Yes.
13 The people were very nice, very willing to help,
14 whatever we needed. The facility would have been -- it would
15 have worked.
16 Their heart was right in wanting to also extend and
17 build out on that additional property.
18 Q. Had you explained your educational program to them
19 and what you operated there at your previous location?
20 A. Yes, I did.
21 Q. So did you -- when you were asked to come before
22 the State Board for Charter Schools, on February 13, was it
23 relayed to them that there was another location that you felt
24 that you could open in the next school year?
25 A. Yes, it was.

Page 228

1 Q. What was the response from the Board?
2 A. They said that we were negative, and it didn't
3 matter to them no matter what I said, no matter what
4 information I presented to them, they were not responding to
5 that information at that time.
6 Q. After you presented the information, did the Board
7 make a motion?
8 A. Yes, they did.
9 Q. That was their intent to issue this Notice of
10 Intent to Revoke?
11 A. Yes, they did.
12 Q. Since that time, have you -- is that location still
13 a possibility if the Board would reinstate or allow your
14 charter to go forward?
15 A. Yes, it is.
16 I talked with them after the meeting at the Board,
17 and I explained to them that the Board had not agreed. They
18 were very nice. They were sorry that it happened.
19 What was said: If you get it worked out, let's
20 work out something. If you can get something worked out,
21 let's work out something.
22 Q. Did they even offer -- did they offer you any
23 potential consideration that if the Board would allow you to
24 open there to assist you with respect to the audit?
25 MS. ANDERSON: Objection, leading.

Page 229

1 ADMINISTRATIVE LAW JUDGE: Sustained.
2 BY MR. CONDOS:
3 Q. Did they discuss any financial assistance to you if
4 you could open a school there?
5 A. Yes.
6 Q. Did that conversation or financial assistance, did
7 it involve the audit in any way?
8 A. We talked about quite a bit of financial assistance
9 which would have covered quite a bit.
10 They were -- as I said, they were very good people
11 and wanted to help and wanted the school. They want the
12 school.
13 So they were willing to -- he said he already put
14 in money, but he was willing to help with whatever I needed.
15 Q. Now, a question was asked of, I think, Ms. Rowe,
16 earlier as to whether or not you had found another location.
17 I'm not sure how it was she said it, but there is
18 another potential location you could open a school here; is
19 that right?
20 I'm sorry.
21 The location that we just discussed, that is still
22 available -- is that still available as we sit here today?
23 A. Yes, as well as there is another one as well.
24 They're not in south Phoenix, though.
25 Q. Where would that other one be located?

Page 230

1 A. Chandler.
2 I mentioned that to the Board.
3 Q. At the February 13th?
4 A. Yes.
5 Q. And in your initial application, you had set out a
6 marketing plan in fairly high detail. That would be found in
7 Exhibit 1.
8 Would that be consistent with some of the ideas
9 that you would have in order to try to get students at the
10 new location?
11 A. Where is Exhibit 1?
12 Q. If you look at Exhibit 1 --
13 ADMINISTRATIVE LAW JUDGE: I think it's in the
14 binder to your left.
15 THE WITNESS: What page, please?
16 BY MR. CONDOS:
17 Q. I would refer you to Page BCS156.
18 A. When I originally wrote this, I didn't have
19 experience as a charter operator. There are things I would
20 do that I added on what I sent to the Board.
21 Having become a charter operator, I learned to do
22 additional marketing, where I needed to go, types of people I
23 needed to contact with, child care centers, events that I
24 would go to. I think some of them are listed on that
25 letter.

Page 231

1 This is just the basic for what -- unless you
2 become a charter operator, you learn the other things you
3 need to do.
4 Q. So you feel fairly confident that if you could have
5 or could have the -- be allowed to keep your charter, you
6 could bring kids in to provide the education to them?
7 A. Yes.
8 Q. During the time that you have been operating the
9 school, you and Mr. Tinsley -- have you and Mr. Tinsley
10 reached into your own pockets to make the school work?
11 A. Yes.
12 Q. I'm going to have you take a look at Exhibit L, I
13 believe it is.
14 It's not. It's J.
15 Exhibit J is the audit that was completed for June
16 30th of 2011.
17 I'm going to ask you to take a look at Page 4,
18 which deals with liabilities and assets.
19 Under the liabilities, there is a loan payable to
20 related party of $79,698?
21 A. Yes.
22 Q. Who does the school owe that to?
23 A. Charles Hancock Tinsley, Jr., and Barbara J.
24 Tinsley, and Bethel International Outreach Ministry.
25 Q. Is that still outstanding?

Page 232

1 A. Yes.
2 Q. What was the money used for?
3 A. When we only had 16 students, our rent was $5,600.
4 I had two teachers, and a secretary.
5 Because I had kindergarten, so I had a kindergarten
6 teacher. And I had 3, 4, 5 teachers. Two teachers for 16
7 kids, and a clerk to help me out.
8 Q. So this was used to supplement and keep the
9 educational program going?
10 A. Yes.
11 Q. There is also another one that is two lines above
12 that, due to related party, $2,397.
13 Do you know who that is owed to?
14 A. No, I'm sorry, I don't.
15 Q. How about the deferred revenue underneath that one,
16 $13,622?
17 Is that for wages that you --
18 MS. ANDERSON: Objection, leading.
19 MR. CONDOS: I haven't finished.
20 ADMINISTRATIVE LAW JUDGE: Go ahead.
21 MR. CONDOS: I'll change it.
22 BY MR. CONDOS:
23 Q. Did you receive all your salary during the times
24 that you worked this?
25 A. My personal salary?

Page 233

1 Q. Yes.
2 A. No.
3 Q. Is that $13,622 some indication -- is that a salary
4 item?
5 A. I'm sorry. I would have to actually take a look at
6 how they got that.
7 Q. Was there a salary that you didn't take in order to
8 keep the school going?
9 A. Yes.
10 Q. Why did you not take your salary and did you have
11 Mr. Tinsley and yourself and the church put money in?
12 A. I wanted the school for the kids.
13 Excuse me. We wanted the school for the kids.
14 Mr. Tinsley gave the school $50,000. We wanted the school.
15 Q. Where did that come from?
16 A. His personal funds.
17 Q. Do you feel that that investment was actually doing
18 something for the children you were servicing?
19 A. Yes.
20 Q. How were the children -- what was your observations
21 with respect to the children and their families while they
22 were at your school?
23 A. I noticed that when you have parents that are happy
24 with what's going on and saying the kids are doing well -- I
25 remember one parent in particular that she came and asked me

Page 234

1 how her son was doing.
2 I said: He's one of my best students. He's an
3 excellent child.
4 She looked at me like I had lost my mind.
5 I said: What's wrong?
6 She said: He was always in trouble. I had to go
7 to the school every day, and you're telling me that this
8 child of mine -- she never had to come up to the school for
9 that child.
10 He just needed a different environment.
11 MR. CONDOS: No further questions.
12 ADMINISTRATIVE LAW JUDGE: Thank you.
13 Given the time of day, it's quarter to 5:00, why
14 don't we recess, and then, Counsel, you can
15 cross-examine the doctor in the morning.
16 MS. ANDERSON: That's fine, Your Honor.
17 There is a matter that I would like to discuss with
18 regard to the subpoenas that were requested.
19 ADMINISTRATIVE LAW JUDGE: Okay.
20 You can take your seat.
21 THE WITNESS: Thank you.
22 MS. ANDERSON: I would -- it's my understanding
23 from Mr. Condos that the subpoenas were delivered -- I
24 don't know if it's directly to the persons or delivered
25 in some manner by Ms. Yarger, who works with him.

Page 235

1 And pursuant to Rule 2-19-113, a party may object
2 to the subpoena, and it also requires service of the
3 subpoena be conducted by a person who is not a party and
4 at least 18 years of age.
5 It's the Board's position that the subpoenas did
6 not meet the requirements of Rule 2-19-113(C).
7 We move to quash them.
8 ADMINISTRATIVE LAW JUDGE: Mr. Condos?
9 MR. CONDOS: Judge, they were served yesterday. We
10 received a letter from the legal officers at the
11 Department of Ed saying that they received subpoenas
12 with no signatures on them.
13 They didn't come from our office.
14 So we responded that we would be providing
15 subpoenas, and they, basically, said: Bring them over.
16 That's, basically, what we've done.
17 If they don't want to come and appear, then
18 obviously we don't have any enforcement power,
19 possibly.
20 But they're just two people from the finance
21 department who were on our list from the initial stage
22 and Martha Morgan, who has written a number of these
23 documents, to clarify a couple of points.
24 ADMINISTRATIVE LAW JUDGE: What about the issue of
25 the improper service?

Page 236

1 MR. CONDOS: Ms. Yarger has passed the Bar, but she
2 is not an attorney yet, so she does work with our
3 office.
4 I don't know whether there is any partiality in our
5 situation by simply serving a subpoena and signing an
6 affidavit that they received them is going to be
7 prejudicial in any way to the State Board for Charter
8 Schools.
9 ADMINISTRATIVE LAW JUDGE: Tell you what, I'm going
10 to take it under advisement and give you a ruling in the
11 morning.
12 MS. ANDERSON: Okay.
13 MR. CONDOS: Okay.
14 ADMINISTRATIVE LAW JUDGE: Anything else?
15 MS. ANDERSON: No.
16 MR. CONDOS: No.
17 ADMINISTRATIVE LAW JUDGE: Okay. We are in recess
18 till morning.
19 (Hearing was adjourned at 5:47 p.m.)
20
21
22
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 witnesses before testifying was duly sworn by me to testify
8 to the whole truth; that the questions propounded to the
9 witnesses and answers of the witnesses thereto were taken
10 down by me in shorthand and thereafter reduced to typewriting
11 under my direction; that the foregoing 236 pages constitute a
12 true and accurate transcript of all proceedings had upon the
13 taking of said hearing, all done to the best of my skill and
14 ability.
15 I FURTHER CERTIFY that I am in no way related to
16 any of the parties hereto, nor am I in any way interested in
17 the outcome thereof.
18 DATED at Phoenix, Arizona, this 23rd day of July,
19 2013.
20
21
Deborah J. Boyette, RPR
22 Certified Reporter
Certificate No. 50507
23
24
25

VOLUME 2 OF 2

TRANSCRIPT OF JULY 3, 2013

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

Dropkin and Associates
Certified Court Reporters
7600 North 16th Street
ORIGINAL Suite 216
Phoenix, Arizona 85020
Telephone: (602) 997-8066

INDEX

WITNESS: Barbara Tinsley

EXAMINATION BY:	PAGE
Ms. Anderson	6
Mr. Condos	20

WITNESS: DeAnna Rowe

Mr. Condos	24

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.

COUNSEL APPEARING:

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Brian Tully
OFFICE OF ADMINISTRATIVE HEARINGS
1400 West Washington Street
Suite 101
Phoenix, Arizona 85007
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.

Page 5

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.

Page 6

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

Page 7

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.

Page 8

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.

Page 9

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?

Page 10

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

Page 11

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?

Page 12

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.

Page 13

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

Page 14

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.

Page 15

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

Page 16

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?

Page 17

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

Page 18

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.

Page 19

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.

Page 20

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.

Page 21

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.

Page 22

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

Page 23

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.

Page 24

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.

Page 25

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

Page 26

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?

Page 27

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.

Page 28

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,

Page 29

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

Page 30

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.

Page 31

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

Page 32

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

Page 33

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.

Page 34

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

Page 35

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

Page 36

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

Page 37

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

Page 38

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

Page 39

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

Page 40

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.

Page 41

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.

Page 42

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.

Page 43

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

Page 44

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.

Page 45

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.

Page 46

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

Page 47

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

Page 48

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

Page 49

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

Page 50

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

Page 51

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?

Page 52

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

Page 53

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

Page 54

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

Page 55

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.

Page 56

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

Page 57

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.

Page 58

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

Page 59

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

Page 60

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

Page 61

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

Page 62

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

Page 63

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.

Page 64

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