BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA

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In the matter of:

NEW DESTINY LEADERSHIP CHARTER SCHOOL, a non-profit corporation, in the operation of **NEW DESTINY LEADERSHIP CHARTER SCHOOL**, a charter school

No. 13F-RV-002-BCS

ARIZONA STATE BOARD FOR CHARTER SCHOOLS' NOTICE OF INTENT TO REVOKE CHARTER AND NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to A.R.S. § 15-183(I) and (Q) and Title 41, Chapter 6, Article 10, a charter revocation hearing will be held in the above-captioned matter on **July 2 and 3, 2013**, beginning at **8:00 a.m. This matter is set from 8:00 a.m. to 5:00 p.m.** The hearing will be held before Administrative Law Judge Brian Tully at the Office of Administrative Hearings, an independent state agency, located at 1400 West Washington, Suite 101, Phoenix, Arizona 85007, (602) 542-9826.

The hearing is to determine whether grounds exist to revoke the charter held by New Destiny Leadership Charter School to operate New Destiny Leadership Charter School.

I. STATEMENT OF LEGAL AUTHORITY AND JURISDICTION UNDER WHICH THE HEARING IS TO BE HELD AND REFERENCE TO THE STATUTES AND RULES INVOLVED.

Charter schools are established by contract ("charter" or "contract") between a sponsor and a public body, private person or private organization to provide a learning environment that will improve pupil achievement. A.R.S. §§ 15-101(4), -181(A), -183(B), -183(C). A charter establishing a charter school is effective for fifteen years. A.R.S. § 15-183(I). A sponsor may

revoke a charter at any time if the charter school breaches one or more provisions of its charter. A.R.S. § 15-183(I)(3). At least ninety days before the effective date of the proposed revocation the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. *Id.* Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. *Id.* The notice shall incorporate a statement of reasons for the proposed revocation of the charter. *Id.* The sponsor shall allow the charter school at least ninety days to correct the problems associated with the reasons for the proposed revocation of the charter. *Id.* The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose. *Id.*

II. STATEMENT OF REASONS FOR THE PROPOSED REVOCATION OF THE CHARTER

A. BACKGROUND

1. New Destiny Leadership Charter School ("the School") is a charter school authorized to operate pursuant to Arizona Revised Statutes ("A.R.S.") § 15-181 *et seq.* under the sponsorship of the Arizona State Board for Charter Schools ("the Board").

2. The School is authorized to operate pursuant to a charter between New Destiny Leadership Charter School, a non-profit corporation organized under the laws of the state of Arizona ("the Charter Operator"), and the Board.

3. Barbara J. Tinsley is the Charter Representative and person authorized to execute documents on behalf of the Charter Operator.

4. Pursuant to A.R.S. § 15-183 and the charter, the Board sponsors the Charter Operator to operate one school site in Phoenix, Arizona to serve students in grades K through 6.

5. The charter between the Charter Operator and the Board was executed on April 1, 2009 and the School began to provide instruction to students on August 3, 2009.

6. The charter between the Charter Operator and the Board provides that the Board may revoke the charter for any breach of the charter and/or violation of state, federal or local laws, ordinances or rules or regulations; or for conditions which threaten the health, safety, or welfare of the students or staff of the School or of the general public.

A. THE CHARTER OPERATOR FAILED TO TIMELY SUBMIT ITS ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 2012

7. A.R.S. § 15-183(E)(6) and the charter subject the Charter Operator to the same financial and electronic data submission requirements as a school district.

8. A.R.S. § 15-904 requires that the Charter Operator prepare and electronically submit its annual financial report for the prior fiscal year to the Superintendent of Public Instruction by October 15.

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

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

11. On November 15, 2012, the Charter Operator was again notified of its requirement to submit an annual AFR and that the Arizona Department of Education ("Department") had not yet received the FY2012 AFR. The Board further notified the Charter Operator that the Board would address this matter at their next Board meeting on November 26, 2012, where the Board may take action to "withhold up to ten percent of the monthly state aid

apportionment that would otherwise be due your charter school and/or issue a notice of intent to revoke your charter".

12. Pursuant to A.R.S. § 15-185(H), at its meeting on November 26, 2012, the Board determined that the Charter Operator was not in compliance with state law and its charter as a result of its failure to submit its FY2012 AFR[1]. The Board stated that if the Charter Operator was currently receiving state funds, that the Board would take action to withhold ten percent of the monthly apportionment of state aid that would otherwise be due the Charter Operator until the FY2012 AFR was submitted to the Department.

12. The Charter Operator breached its charter and A.R.S. §§ 15-183(E)(6) and -904 when it failed to timely submit its FY2012 AFR.

13. To date, the Charter Operator has failed to submit its FY2012 AFR, which was due to the Superintendent of Public Instruction at the Department by October 15, 2012.

B. THE CHARTER OPERATOR FAILED TO TIMELY SUBMIT ITS ANNUAL FINANCIAL STATEMENT AUDIT AND LEGAL COMPLIANCE QUESTIONNAIRE FOR THE FISCAL YEAR ENDING JUNE 30, 2012

14. A.R.S. §§ 15-183(E)(6) and -914 and the charter require that the Charter Operator undergo an annual financial statement audit, including the completion of a legal compliance questionnaire, by an independent certified public accountant.

15. Audit contracts and the completed audit reports for charter schools sponsored by the Board must be approved by the Board. A.R.S. § 15-914 (Laws 1999, 1st Spec. Sess., Ch. 4, Sec. 15, pars. C and D); Arizona Administrative Code R7-5-502 and R7-5-503.

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

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

by November 15, 2012.

17. On November 16, 2012, the Charter Operator was notified that the Board had not received a complete FY2012 audit from the Charter Operator. The Board further notified the Charter Operator that the Board would address this matter at their next Board meeting on November 26, 2012, where the Board may take action to "withhold up to ten percent of the monthly state aid apportionment that would otherwise be due your charter school and/or issue a notice of intent to revoke your charter".

18. Pursuant to A.R.S. § 15-185(H), at its meeting on November 26, 2012, the Board determined that the Charter Operator was not in compliance with state law and its charter as a result of its failure to submit its FY2012 audit[2] and voted to withhold ten percent of the monthly apportionment of state aid that would otherwise be due the Charter Operator until the FY2012 audit was submitted.

19. The Charter Operator breached its charter and A.R.S. §§ 15-183(E)(6) and -914 when it failed to timely submit its FY2012 audit.

20. To date, the Charter Operator has failed to submit its FY2012 audit which was due to the Board by November 15, 2012.

C. THE CHARTER OPERATOR FAILED TO PROVIDE A COMPREHENSIVE PROGRAM OF INSTRUCTION FOR THE REQUISITE NUMBER OF DAYS AND HOURS IN THE FISCAL YEAR ENDING JUNE 30, 2013 (SCHOOL YEAR 2012-2013)

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

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

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

23. A.R.S. §15-901(A)(1)(b)(i) requires that first, second and third grade students be enrolled in an instructional program that meets for a total of at least 712 hours for a 180 day school year. A.R.S. §15-901(A)(1)(b)(i) also requires that fourth, fifth and sixth grade students be enrolled in an instructional program that meets for a total of at least 890 hours for a 180 day school year.

24. On August 7, 2012, the Charter Operator submitted a request for a temporary suspension of the operation of the School, advising the Board that the owner of the building housing the School experienced some financial problems and the bank foreclosed on the property. The Charter Operator stated that it was not able to identify another location for the School and would not open its doors for the 2012-2013 school year.

25. The Charter Operator requested a 12-month suspension in the operation of the School.

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

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

D. ISSUANCE OF THE NOTICE OF INTENT TO REVOKE CHARTER

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

II. ORDER

YOU ARE HEREBY NOTIFIED that, based on the foregoing, and pursuant to A.R.S. § 15-183(I)(3), this Notice of Intent to Revoke Charter and Notice of Hearing serves as the Charter Operator's and the School's official written notice of the Board's intent to revoke the charter of New Destiny Leadership Charter School to operate the School. The hearing scheduled in this matter will occur at least ninety (90) days following the Charter Operator's receipt of this Notice.

YOU ARE FURTHER NOTIFIED that the Office of Administrative Hearings, on behalf of the Board, will conduct a hearing to determine whether the allegations in this Notice are true, to determine whether the Charter Operator has corrected the problems associated with the reasons for the proposed revocation of the charter, to determine whether grounds exist to revoke the charter of the Charter Operator, and to determine what, if any, other action may be necessary in this matter. The hearing will be conducted under the authority of, and in accordance with, A.R.S. §§ 15-183(I)(3), -183(Q), Title 41, Chapter 6, Article 10, and Arizona Administrative Code Rule 7-5-304. After the hearing is concluded, the Administrative Law Judge shall submit a written decision to the Board for review pursuant to A.R.S. § 41-1092.08. The Board shall then decide whether to accept, reject or modify the decision and will issue a final administrative decision accordingly.

YOU ARE FURTHER NOTIFIED that appearance in an administrative proceeding is considered the practice of law, which under most circumstances may only be undertaken by an active member of the Arizona State Bar. Ariz. R. S. Ct. 31(a)(2)(A)(3) and (b). Under Ariz. R. S. Ct. 31(d)(11):

> Unless otherwise specifically provided for in [Ariz. R. S. Ct. 31], in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee,

> provided that: the legal entity has specifically authorized such person to represent it in the particular matter, such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

IT IS FURTHER ORDERED that as part of the hearing process, pursuant to A.R.S. § 41-1092.06, you have the right to request an informal settlement conference. If you request an informal settlement conference, the Board must hold the conference within fifteen (15) days after receiving the request. This request must be in writing and must be filed no later than twenty (20) calendar days before the hearing. A request for informal settlement conference shall be in writing and mailed to:

> The Arizona State Board for Charter Schools
> Executive Director DeAnna Rowe
> P.O. Box 18328
> Phoenix, Arizona 85009

YOU ARE ADVISED that the original of all correspondence and pleadings to be filed in this matter should be directed to the Office of Administrative Hearings, 1400 W. Washington, Suite 101, Phoenix, AZ 85007, (602) 542-9826 with a copy to the Board at the address listed above and with copies to all other parties at the address listed below.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Office of Administrative Hearings, 1400 W. Washington,

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Suite 101, Phoenix, AZ 85007, (602) 542-9826. Requests should be made as early as possible to allow time to arrange the accommodation.

DATED this 18 day of March, 2013.

Jake Logan
President
Arizona State Board for Charter Schools

ORIGINAL filed this
18th day of March, 2013 with:

Office of Administrative Hearings
1400 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing Notice sent via certified mail,
return receipt requested, this
19th day of March, 2013 to:

New Destiny Leadership Charter School
Attention: Barbara Tinsley, Statutory Agent and Charter Representative
2708 N. Karen Drive
Chandler, Arizona 85334

New Destiny Leadership Charter School
1923 East Broadway Road
Phoenix, Arizona 85040

New Destiny Leadership Charter School
2454 East Broadway Road
Phoenix, Arizona 85040

COPIES of the foregoing Notice sent via regular
mail this 19th day of March, 2013 to:

Leonidas G. Condos
THE CONDOS LAW OFFICE, P.L.C.
1820 East Ray Road
Chandler, Arizona 85225
Attorney for New Destiny Leadership Charter School

Kim S. Anderson
Assistant Attorney General
Civil Division/Education and Health Section
1275 West Washington
Phoenix, AZ 85007
Attorney for the Arizona State Board for Charter Schools

By _____
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