IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: ARIZONA SCHOOL FOR INTEGRATED ACADEMICS AND TECHNOLOGIES, INC., a non-profit corporation, operating SCHOOL FOR INTEGRATED ACADEMICS AND TECHNOLOGIES, a charter school.	**No. 14F-RV-003-BCS** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: July 3, 2014

APPEARANCES: Arizona School for Integrated Academics and Technologies, Inc. did not appear. The Arizona State Board for Charter Schools was represented by Assistant Attorney General Kim S. Anderson.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. The Arizona State Board for Charter Schools ("Board") is authorized to execute charter contracts for the purpose of establishing charter schools in Arizona.

2. Arizona School for Integrated Academics and Technologies ("School") is a charter school authorized to operate under the sponsorship of the Board. On or about April 25, 2001, New Education in the Workplace, Inc., a non-profit corporation, ("Charter Operator") and the Board entered into a "Charter Contract Between Arizona State Board for Charter Schools And New Education in the Workplace, Inc." ("Charter Contract") to operate one school in Phoenix, Arizona to serve students in grades 11 and 12.

3. The term of the parties' Charter Contract is for 15 years from the date the Charter Contract was signed by both parties.

4. Paragraph 19 of the Charter Contract provides for the following:

Non-Renewal and Termination of the Charter Contract:

> The Arizona State Board for Charter Schools may revoke and/or not renew the Charter Contract pursuant to the provisions established by law and rules, for the Charter Operator's failure to begin providing educational instruction within the timeframe outlined in paragraph 3(E); or for any violation of the Charter Contract, State, Federal or local laws, ordinances or rules or regulations; or violations of GAAP or GAAS; or for conditions which threaten the health, safety, or welfare of the students or staff of the School or of the general public.

Exhibit 1.

5. On September 13, 2002, the Charter Operator requested a change in the Charter Contract from "New Education for the Workplace, Inc., dba School for Integrated Academics and Technologies" to "Arizona School for Integrated Academics and Technology, Inc." The change was effective October 16, 2002. Exhibit 2.

6. On December 17, 2002, the Charter Operator requested a change in the Charter Contract from "Arizona School for Integrated Academics and Technology, Inc." to "Arizona School for Integrated Academics and Technologies, Inc." The change was effective on or about January 21, 2003. Exhibit 3.

7. On May 3, 2011, the Charter Operator submitted an Instructional Days Amendment Request in which it sought to change the days of instruction offered at the School from 184 to 200. The change was effective on June 27, 2011, for the Fiscal Year 2011-2012. Exhibit 4.

8. In 2013, the Arizona Department of Education ("Department") conducted an audit of the School.

9. On June 7, 2013, the Department issued its audit findings, which included the following findings:

a. The School entered into an agreement with Job Corps[1] to be housed in the Job Corps Center and to provide high school curriculum for students enrolled in Job Corps who also wanted to earn a high school diploma in addition to their Job Corps training program.

[1] Job Corps is a federal program within the U.S. Department of Labor that provides vocational and career preparation training programs to low income urban youth between the ages of 16 and 24. Job Corps' operational costs are funded through the U.S. Department of Labor.

b. The School improperly counted for enrollment status the student time spent in Job Corps training program classes. Job Corps was not part of the Arizona public educational system and was not a recognized high school; its training program classes did not meet the statutory requirements to be included as a part-time or full-time instructional program and, as a result, should not have been claimed by the School for enrollment or average daily membership ("ADM"), or the total enrollment of fractional students[2] and full-time students,[3] minus withdrawals, for each school day. The School should have only claimed enrollment and ADM for courses it actually provided and should not have claimed for enrollment and ADM the time students spent in ineligible Job Corps training programs.

c. The School significantly overstated its ADM for 2010, 2011, and 2012 when it reported full-time enrollment status for its entire three year total of 2,051 students. ADE auditors found that 99.81 percent of the students attended the School either part-time or did not attend the School at all. Specifically, 824 students (40.18 percent) were not enrolled in any of the School's courses; 1223 students (59.63 percent) were determined to be part-time students; and only 4 students (0.19 percent) met statutory full-time status requirements.

d. Because the School improperly claimed Job Corps training prgrams to calculate its students' enrollment status, the School was overfunded by $4,888,509.48 in state aid, which it was required to repay to the Department.

e. The School failed to report the attendance of 55 students and was underfunded by $167,052.87 for those students.

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[2] A "fractional student" for high schools means a part-time student enrolled in less than four subjects that count toward graduation as defined by the state board of education.

[3] A "full-time student" for high school means a student who is enrolled in an instructional program of four or more subjects that count toward graduation as defined by the state board of education that meets for a total of at least 720 hours for a 180 day school year or the instructional hours prescribed by statute in a recognized high school.

f. The School failed to maintain immunization records in its permanent student records. *See* Exhibit 5.

10. On January 21, 2014, the Charter Operator notified the Board that effective February 3, 2014, the School would cease its operations and the provision of instruction to students for the 2013-2014 school year.

11. While the Charter Operator initially appealed the Department's audit findings, the appeal was withdrawn and on March 6, 2014, the Department entered a Final Administrative Order in which the Charter Operator was ordered to pay the Department $4,721,456.61. Exhibit 6.

12. On April 10, 2014, the Board issued the "Arizona State Board for Charter Schools' Notice of Intent to Revoke Charter and Notice of Hearing" ("Notice of Intent to Revoke") that set forth the reasons for the proposed revocation of the Charter Contract and gave notice of the evidentiary hearing scheduled before the Office of Administrative Hearings, an independent agency.

13. As of the date of the hearing, the School was not offering instruction.

14. The Notice of Intent to Revoke was mailed to the Charter Operator at its address of record.

CONCLUSIONS OF LAW

1. In this proceeding, the Board bears the burden to prove, by a preponderance of the evidence, that grounds exist to revoke the School's Charter and that revocation is an appropriate remedy. *See* A.R.S. § 41-1092.07(G)(2); A.R.S. § 15-183(I)(3); and A.A.C. R2-19-119.

2. A preponderance of the evidence is "such proof as convinces the trier of fact that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960). "It is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

3. The Notice of Intent to Revoke that the Board mailed to the Charter Operator at its address of record was reasonable. The Charter Operator is deemed to

have received notice of the hearing. *See* A.R.S. § 41-1092.04 and A.R.S. § 41-1092.05(D).

4. 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) provides that a sponsor shall give a charter operator at least 90 days written notice before the effective date of the proposed revocation of a charter. The notice is required to contain a statement of reasons for the proposed revocation. The charter operator is then given 90 days to correct the problems associated with the reasons for the proposed revocation.

5. The Charter Contract provides that the Board may revoke the Charter Contract "for any violation of the Charter Contract, State, Federal or local laws, ordinances or rules or regulations . . . ." Exhibit 1 at paragraph 19.

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

7. A.R.S. § 15-341.01 requires 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. The Charter Contract, pursuant to the amendments, required that instruction be conducted in the School for sessions totaling at least 200 days each school year.

8. The Charter Operator breached the Charter Contract and the provisions of A.R.S. § 15-183(E)(3) and A.R.S. § 15-341.01 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 for the 2013-2014 school year.

9. A.R.S. § 39-121.01 requires the School to maintain and preserve all records reasonably necessary or appropriate to maintain an accurate knowledge of its official activities which are supported by state monies.

10. A.R.S. § 15-183(E)(1) and the Charter Contract require the School to comply with federal, state, and local rules, regulations, and statutes relating to health. A.R.S. § 15-872 and A.A.C. R9-6-705 require the School to ensure that an

immunization record containing documentary proof of immunity for each student attending the School is maintained at the School.

11. The Charter Operator breached the Charter Contract and the provisions of A.R.S. § 15-183(E)(1), A.R.S. § 15-872, and A.A.C. R9-6-705 when it failed to properly maintain immunization records in its permanent student records.

12. A.R.S. § 15-185(B) and A.R.S. § 15-901 establish the financial provisions and reporting requirements of student attendance for a charter school sponsored by the Board. Charter schools are funded based on their ADM. A.R.S. § 15-901(A)(1).

13. The Charter Operator breached the Charter Contract and the provisions of A.R.S. § 15-185(B) and A.R.S. § 15-901 when it failed to accurately report student attendance to the Department.

14. The evidence of record established that the Board has the authority, pursuant to A.R.S. § 15-183(I)(3), to revoke the Charter Contract for the Charter Operator's breaches of the Charter Contract and the above-described statutory violations.

RECOMMENDED ORDER

In view of the foregoing, it is recommended that the Board revoke the Charter Contract with the Charter Operator to operate the Charter School on the effective date of the Order entered in this matter.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order shall be five days from the date of the certification.

Done this day, July 23, 2014.

/s/ Tammy L. Eigenheer
Administrative Law Judge

Transmitted electronically to:

DeAnna Rowe, Executive Director
State Board for Charter Schools