

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EDC 04777

<p>Dynamic Community Charter School, Petitioner,</p> <p>v.</p> <p>State Board of Education, Charter School Advisory Board, Office of Charter Schools and the N. C. Department of Public Instruction, Respondent.</p>	<p style="text-align: center;">FINAL DECISION</p>
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THIS MATTER came on to be heard before the Undersigned Administrative Law Judge (ALJ), Augustus B. Elkins II, on February 23 -26, May 9-12, and May 20, 2016 at the Office of Administrative Hearings (OAH) in Raleigh, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, memorandum of law and proposals after receipt of the official transcript. The transcript in this matter consisting of nine volumes was filed at the OAH on June 15, 2016. Petitioner and Respondents filed timely proposals on July 22, 2016. Due to the high volume of matters being handled by the Undersigned, the Chief Administrative Law Judge signed an Order extending the due date of this decision until October 27, 2016.

APPEARANCES

For the Petitioner: Laura Kay Berry, Officer and Non-Attorney Representative
Dynamic Community Charter School
Raleigh, NC

For the Respondents: Laura E. Crumpler, Special Deputy Attorney General
Tiffany Lucas, Assistant Attorney General
NC Department of Justice
Raleigh, NC

ISSUE

As cited in Petitioner's Pre-Hearing Statement: "At issue in this contested case is the State Board of Education's decision to revoke Dynamic Community Charter School ("DCCS")'s charter."

ADMITTED EXHIBITS

For the Petitioner: Petitioner's Exhibits 1 through 67 (Tr. pg. 964-65)
Petitioner's Exhibits 1 through 84 (Tr. pg. 1705)
Petitioner's Exhibits 86 through 92 (Tr. pg. 1706-07)

For the Respondents: Respondent's Exhibits 1 through 59 (Tr. pg. 1703-04)
Respondents' Exhibits 47 and 50 under seal

WITNESSES

The witnesses called and heard each day of the hearing are set forth in the Table of Contents at the beginning of each volume of the transcript. They include Sara Brady, Danielle Cockrum, Sondra Davis, Terri Zobel, Thomas Matthews, Maria D'Amelio, Melissa Champ, Cynthia Von der Lehr, Devon Gregory, Joel Medley, Helen Nance, Becky Taylor, Tracy Riddle, Laura Kay Berry, Diane Morris, Bill Hussey, Carol Ann Hudgens, Leigh Mobley, and Deanna Townsend-Smith. (Testimony regarding Respondents' Exhibit 47 sealed and bound separately, Tr. pg. 1384)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Charter schools in North Carolina are public schools operated by nonprofit corporations. If granted a charter by the State Board of Education (SBE), the nonprofit corporation is entitled to receive public monies to operate a charter school. Charter schools are governed by North Carolina General Statutes, by the charter issued by the SBE, and by policies and rules adopted by the SBE. In addition, charter schools must comply with any applicable federal laws and regulations.

2. On February 28, 2013, Petitioner Dynamic Community Charter School (DCCS) filed an application to open a charter school specifically serving middle and high school students with developmental and intellectual disabilities.

3. In order to receive a charter to operate a charter school, a nonprofit corporation must submit a detailed application outlining its plans for operation of a public school. The application is developed by the Office of Charter Schools (OCS) within the Department of Public Instruction (DPI). A charter application is reviewed first by the OCS and then is reviewed by the Charter School Advisory Board (CSAB) which was created in 2013 by legislation and replaced the Charter School Advisory Council (CSAC). At the time relevant to this particular school's initial charter, the charter application was initially reviewed by the CSAC, an advisory group whose members were appointed by the SBE and whose job it was to oversee charter applications, renewals, and operations, and to make recommendations as appropriate to the SBE. In June 2013, it was the CSAC that recommended approval of Petitioner's application and moved to forward the application to the SBE.

4. Since 2013, the CSAB reviews applications, both for initial charters and for renewals; and reviews any requests for changes to the charter. Its members are appointed by various agencies and officials, including the Governor and General Assembly. Its members are required to possess "strong experience and expertise" in various areas such as nonprofit governance, finance, education, and charter schools. N.C. Gen. Stat. § 115C-218(b). Among other duties, the CSAB is required to "make recommendations to the State Board on actions regarding a charter school, including renewals of charters, non-renewals of charters, and revocation of charters." N.C. Gen. Stat. § 115C-218(b)(10).

5. The CSAB is staffed by the OCS and works closely with other divisions within DPI, including, but not limited to, the Exceptional Children (EC) Division and the Office of Financial and Business Services, in order to remain aware of issues involving charter schools. If a school is experiencing difficulty, the CSAB often requests or requires that the board of directors for the school, or representatives from the school, appear at a CSAB meeting and respond to questions by the CSAB.

6. The OCS reports regularly to the Education Innovation and Charter Schools Committee (EICS), a standing committee of the SBE for which charter schools are a primary and ongoing focus. Becky Taylor is a member of the SBE who is chair of the EICS Committee. (The EICS Committee was previously called the Leadership for Innovation (LFI) Committee). In addition, Taylor serves as a nonvoting member of CSAB and liaison between the CSAB and the SBE.

7. Upon approval by the SBE, a charter school is issued a charter that entitles it to begin operation and to begin receiving public funds, including federal, state, and local funds. The charter document contains provisions regulating various aspects of charter school operation. The charter school is bound to comply with the representations in its application, the terms of the charter, and any relevant SBE policies. It is accountable to the SBE for ensuring compliance with all applicable federal and state laws, including The Individuals with Disabilities Education Improvements Act (IDEA) 20 U.S.C. § 1400, *et seq.*, (2004). Any request by a charter school to deviate from its application must be approved in advance.

8. Dynamic Community Charter School submitted a charter school application to the OCS in 2013, in anticipation of opening in the summer/fall of 2014. In its application, DCCS

described its targeted student population as students with developmental and/or intellectual disabilities (“Exceptional Children or EC students”) who were struggling in a “regular-education” classroom setting. DCCS’s application stated it anticipated that all students at DCCS would be EC students, and its entire education program would be built around ensuring that the needs of EC students were met. DCCS expressly wrote in its application that “DCCS will contract transportation services for students whose Individual Education Plan (Individual Education Program or IEP) stipulates so.” (Resp. Ex. 4). DCCS also expressly acknowledged in the charter application that “[t]he [initial] funding sources ...are inadequate to provide our students with the low student-teacher ratio they need as well as related services” and that the board recognized it would “not receive state exceptional children’s funds until after the April child count,” and, therefore, it might be necessary for the school to secure a loan in the beginning of the school year. *Id.*

9. DCCS’s application stated that its Board members would engage in several initial trainings before potential preliminary approval of its charter school application by the SBE. The trainings outlined by DCCS in its application included specific professional development on charter school operation, financial viability, and strategic planning. DCCS’s application also stated that once the application received preliminary approval, the charter school Board members would receive additional trainings throughout 2013 on charter school law, special education law, and financing.

10. The CSAC invited DCCS Board members to attend its regularly scheduled meeting on June 11, 2013, to discuss DCCS’s pending charter school application. At that meeting, Mr. Paul Norcross, a member of the CSAC, voiced concern regarding DCCS’s overall financial sustainability, stating that although the idea for the school proposed by DCCS was good, the school would face financial struggles. Mr. Norcross, however, made a motion to forward the application to the SBE and the motion passed unanimously. On August 8, 2013, the LFI Committee of the SBE recommended preliminary approval of 26 charter schools including DCCS.

11. At its regularly scheduled meeting on September 5, 2013, the SBE voted to grant preliminary charter approval to DCCS. Diane Morris, the person who launched the effort to begin DCCS, was sent a letter informing her of the preliminary approval on September 5, 2013. The letter informed Ms. Morris of dates, times, and locations of essential preliminary professional development opportunities that were provided by the OCS to charter schools that had been granted preliminary approval. The OCS has developed an extensive planning year training program that furthers its mission of collaborating with initial boards of approved charter schools and school leaders to ensure the smooth opening of successful charter schools envisioned during the application process.

12. The planning year culminates with preliminarily approved charter applicants submitting a final Ready to Open (RTO) progress report to the SBE, six to eight weeks prior to the start of the school’s first operational year, allowing the charter school board to demonstrate critical work has been completed in preparation for the opening of the school. Using a rubric developed by the OCS, the RTO evaluation team rates the charter school board’s readiness to open in various aspects of school operation, with scores ranging from insufficient, to emerging, to quality.

Successful charter applicants must receive, at a minimum, an overall score of emerging in all RTO criteria to demonstrate they are ready to open.

13. On November 25, 2013, DCCS's Board president, along with several other Board members of DCCS, attended a Public Charter School Preliminary Planning session, provided by the OCS, on special populations. The training session provided, among other things, professional development tailored specifically to the regulations and requirements concerning the creation of Exceptional Children (EC) accommodation plans. The training session also provided professional development concerning funding and financing regulations for Exceptional Children.

14. On January 9, 2014, the SBE voted at its regularly scheduled meeting to grant final approval to DCCS for a five-year charter, effective July 1, 2014 through June 30, 2019. The letter notifying DCCS that its application had been granted final approval stated that DCCS could begin the student enrollment process and referred DCCS to a frequently asked questions (FAQ) page on DPI's website if the school had questions about public charter school student eligibility. The notification letter also referenced the RTO process, which DCCS was in the midst of completing, and expressed the OCS's willingness to work with the school and answer questions as part of that process.

15. On or about May 13, 2014, a DCCS Board meeting was held at a Board member's residence. During the meeting, the DCCS Board reported that 22 students were coming from home school or private school environments and that DCCS would not get EC funding for those students until the school was in its second year of full operation.

16. On or about May 30, 2014, DCCS submitted a RTO progress report to the OCS. An evaluation team within the OCS reviewed the report and in a letter dated June 25, 2014, OCS notified Diane Morris that the sections of Funding Documentation and Key Staff in the Ready-To-Open Report (RTOR) were found to be insufficient according to rubric criteria.

17. On or about June 12, 2014, staff from the OCS had conducted a site visit at DCCS to discuss with DCCS Board members the insufficiencies found in the DCCS RTO report. In the letter to DCCS dated June 25, 2014, OCS Director, Dr. Joel Medley, stated that "[t]he evaluation team found that particular evidences lacked meaningful detail; demonstrated a lack of preparation; contained unanticipated obstacles, or otherwise raised substantial concerns about the applicant's understanding of the school governance, operational, or financial planning." (Resp. Ex. 8) In particular, the OCS evaluation team review found that DCCS was counting on a large sum of donated funds to operate the school in its first year, but only 20 percent had been raised as of June 12, 2014. The evaluation team was also concerned that the school had not yet hired any special education teachers or classroom teachers, and there was no contingency plan in place for ensuring the hire of qualified staff. The Board of DCCS was instructed in the letter to submit to OCS by August 1, 2014, tangible evidences that demonstrated at least the minimum standard of emerging in all categories that aligned with the information provided during the RTO meeting.

18. Laura Kay Berry, the current Board Chair for DCCS and former Fundraising Chair, testified that she first became aware of concerns with the school when Paula Kitzke, an EC

consultant, spoke with DCCS Board member Sara Turner in June 2014 stating that DCCS should not exist because it was setting special needs education back forty years by not mainstreaming.

19. On or about July 18, 2014, DCCS held a Board meeting at a Starbucks in Raleigh. The Board discussed lowering its enrollment cap in order to decrease its current proposed budget gap and, ultimately, voted to reduce first-year enrollment to 72 students. On July 23, 2014, DCCS's Board president sent Dr. Medley a letter requesting a reduction in enrollment for DCCS from 80 to 72 students. DCCS requested this reduction in hopes of improving its financial outlook, allowing DCCS to operate within a lower fundraising goal, while also permitting it to hire one less highly qualified teacher. The OCS approved the request but advised DCCS that it must be within 10% of its maximum authorized enrollment if it wished to continue within the SBE-approved projected enrollment plan.

20. On August 22, 2014, after having received a re-submitted RTO report from DCCS, Dr. Medley sent DCCS a letter informing the Board that the OCS deemed the Board to be progressing towards its goal of successfully opening a public charter school as scheduled and applauded the school's success. Dr. Medley also included contact information for Kebbler Williams and Shannon Sellers, both consultants for the OCS, in case DCCS had any additional comments or questions. Dynamic Community Charter School officially opened its doors for students on August 25, 2014. It had raised over \$100,000 in a fundraising campaign the summer before the school opened.

21. Laura Berry testified that on or about September 2, 2014, she was introduced to and spoke with Paula Kitzke, the EC consultant, and several others. She stated that sometime following that meeting it was her understanding and that of the DCCS administration that there were concerns regarding DCCS's ability to meet least restrictive environment (LRE) requirements and that the IEPs of all students would need to be rewritten to show that the students were in a separate school setting requiring 6.5 hours of EC instruction per day. Terri Zobel, who was employed and working on the first day of school to teach middle school Language Arts and Social Studies testified that all of the students at DCCS did not have IEPs coming into the school as some were coming from private schools and others from home school. She confirmed that every student at DCCS was assigned an IEP case manager and as a case manager it was her understanding that IEPs had to be written to reflect that students were with non-typical peers all day.

22. Ms. Zobel testified that as the IEPs were being rewritten to reflect separate school status, DCCS was informed by Carol Ann Hudgens, Section Chief for Policy Monitoring and Audit in the Exceptional Children's Division, that the school had to offer the full continuum of services and that DCCS was not a separate school.

23. Kebbler Williams from OCS conducted a site visit to DCCS on September 10, 2014. At the contested case hearing in this matter, Dr. Medley testified that "site visits [are] done pretty regularly for new schools. They ... often get more attention from [the OCS] than the more established school." (Tr. pg. 498). Dr. Deanna Townsend-Smith, the Lead Consultant for OCS, testified that site visits are conducted "primarily [to] look for compliance with charter school law, charter school statute, those things that are outlined in their charter application, [and] those things outlined in State Board policy." (Tr. pg. 1619). Dr. Williams toured the school and sat down with

Mike Watkins, the Lead Administrator/Principal at DCCS, to discuss his reflections on the first days of the 2014 school year. Mr. Watkins asked Dr. Williams to be informed about any training opportunities related to behavior and classroom management and Dr. Williams promptly shared relevant training opportunities available through DPI.

24. On or about October 6, 2014, DCCS held a Board meeting during which the Board discussed, among other things, revenue shortfalls and an urgent short-term need for DCCS to obtain State and federal grant monies. The DCCS Board also discussed holding several fundraisers which were ultimately scheduled for the spring of 2015. In addition, the DCCS Principal, Mike Watkins, reported that Department of Public Instruction (DPI) representatives would visit the school on October 27, and October 29-30, 2015, to review records, conduct interviews and audit school operations.

25. On or about October 29-30, 2014, the EC Division of DPI conducted a LEA-Program Assessment of DCCS. The LEA-Program Assessment is a comprehensive monitoring activity during which data is collected in multiple areas to determine the effectiveness of the EC Program. The goal of this assessment is to identify areas that require intervention and expedite corrective action in order to ensure compliance and meaningful student outcomes. The LEA-Program Assessment that was conducted at DCCS revealed issues with staff training, IEP development and implementation, teaching strategies, teacher licensure, safety and health, and behavior between teachers and students. DCCS was also found to be noncompliant in the provision of a free, appropriate, public education (FAPE) for students with disabilities.

26. On or about November 21, 2014, the OCS conducted a site visit to DCCS. During this visit, the OCS learned that DCCS had been under a spending freeze for the previous six weeks. Other areas of concern that were raised during this site visit included: (1) the Lead EC teacher's last day was November 21; (2) uncertainty about whether the school would be able to make payroll for January, April, May and June; and (3) a projected budget deficit in the range of \$535,000 for the end of the 2014-2015 school year.

27. In response to the LEA-Program Assessment, and in light of concerns raised surrounding the financial viability of the school, Shannon Sellers, an OCS consultant, sent Mike Watkins an email on November 21, 2014, inviting him and the Board chair of DCCS to attend the CSAB meeting scheduled for December 8, 2014. Dr. Townsend-Smith testified that, in furtherance of CSAB's statutory responsibilities, "anytime there are any red flags that [CSAB] wants to question the school about more directly... [CSAB] can say... this school needs to appear before us so that we can ask them some direct questions to get a sense about what is going on at the school, from the school's perspective." (Tr. pg. 1623-24).

28. Prior to the December 8, 2014, CSAB meeting, DCCS's Principal, Mike Watkins, resigned from DCCS. At a November 30, 2014 DCCS Board meeting, the Board approved Terri Zobel as Interim Lead Administrator. Mr. Watkins walked out of DCCS on December 1 and on December 2, 2014, Ms. Zobel replaced Mr. Watkins as the new Principal/Lead Administrator at DCCS. Ms. Zobel testified at the hearing that "[Mr. Watkins] was uncomfortable with the October [LEA-Program Assessment]. Mr. Watkins did not have a lot of knowledge of special education law and terminology and requirements." (Tr. pg. 399). Ms. Zobel also testified that Mr. Watkins,

as the Lead Administrator of a school targeting an EC student population, “was not equipped to understand all of the rules governing Exceptional Children’s education.” (Tr. pg. 115).

29. Representatives from DCCS, including Ms. Zobel, attended the CSAB meeting on December 8, 2014. At that meeting, Bill Hussey, EC Division Director at DPI, presented information to the CSAB about the LEA-Program Assessment and the concerns that were raised as a result of the assessment, including the school’s obligation to offer compensatory education services to the parents/guardians of every student with disabilities enrolled at DCCS based on the school’s failure up to that point to implement fully the IEP for each student enrolled. Mr. Joseph Maimone, a CSAB member, commented during the meeting that the application submitted by DCCS stated that the DCCS Board anticipated all children at the school would be Exceptional Children, however, it “sounded like the school was opened completely unprepared.” (Resp. Ex. 14). Ms. Zobel and DCCS’s new Board Chair, Laura Kay Berry, were unable to answer some questions asked by CSAB members and requested additional time to analyze the report. Carol Ann Hudgens had sent the report by email to the DCCS Lead Administrator on December 5, 2014 and DCCS Board and staff believed they did not have enough time to respond.

30. At the conclusion of the presentation by DCCS and after discussion, Eric Sanchez, a CSAB member, made a motion to invite the entire DCCS Board and the EC coordinator to the CSAB meeting in January 2015, to present a plan on how issues would be corrected by the end of the school year. If the school did not provide a satisfactory report, a revocation recommendation would be made. The motion passed unanimously.

31. On December 9, 2014, Dr. Medley sent DCCS’s new Board Chair, Laura Kay Berry, a letter informing her of CSAB’s request for DCCS to attend the CSAB’s January 12, 2015, meeting. The letter communicated to Ms. Berry that the following information had to be provided by DCCS at least one week in advance of the January meeting: (1) a full analysis of the school’s budgetary condition, (2) a response to the identified issues in the EC Division’s report, and (3) an explanation of all content and programs used to educate students. Dr. Medley stated that all Board members along with the Lead Administrator and Lead EC teacher needed to attend the January meeting.

32. On December 17, 2014, OCS Consultants, Shannon Sellers and Robin Kendal, visited DCCS and met with the Principal and Lead EC teacher. The Principal stated that many of the EC concerns were fixed or on their way to be fixed, and that teacher assignments had been restructured to meet licensure needs. The Consultants learned that monetarily the school was fine for January, February and March, but nothing was confirmed for April, May, and June.

33. Staff within the EC Division at DPI conducted a follow-up visit to DCCS on December 19, 2014 to discuss the LEA-Program Assessment with the new administration. DCCS shared corrective actions and an action plan to address concerns from the LEA-Program Assessment report. There continued to be concerns about compensatory education. DCCS was required to: (1) notify parents/students about the failure to implement IEPs and offer compensatory education; (2) consider an appropriate plan for individualized instruction by qualified special education teachers; and (3) provide transportation at no charge as required per IEPs.

34. Representatives from the DCCS Board as well as numerous parents and supporters attended the CSAB meeting on January 12, 2015 (minutes incorrectly site January 15, 2016), to discuss the CSAB's concerns regarding EC compliance and finances. The school's Lead EC teacher, Dustin Britt, presented EC compliance information that was collected through a self-assessment conducted by DCCS. Ms. Berry, DCCS's Board Chair, presented restructured financial reports with updated funding projections. After the DCCS presentation, the CSAB still had financial and EC compliance concerns. CSAB member, Eric Sanchez, applauded the parents' support for the school and for what they had done in just a month but commented, "I haven't seen anything today regarding the finances that enables me to understand how [DCCS] will be able to survive the year." (Resp. Ex. 16). CSAB member, Joseph Maimone, asked DCCS representatives if "there [was] enough commitment from [DCCS] staff to give a 10% across the board salary decrease for the remainder of the school year." (Resp. Ex. 16). Mr. Britt responded that given the short amount of time remaining in the school year, "personally for myself and my family would not hesitate to take that deal." Mr. Britt further stated that, speaking on behalf of the teachers still teaching at DCCS, "those of us who are left, if there's a child in the building, I'm in the building, pay me or not." No representatives from DCCS expressed any disagreement or concern with Mr. Britt's assertions. To the contrary, there was considerable applause from DCCS members in the audience. (Resp. Ex. 16).

35. CSAB member, Phyllis Gibbs, made a motion to give DCCS six months to come back to the CSAB and give a report on what they have been able to do. Later, Ms. Gibbs withdrew her motion and at the conclusion of the January 12, 2015 meeting, a motion was made by Mr. Maimone to allow DCCS to finish out the year with the understanding it provide monthly financial reports to CSAB; and, based upon the school's apparent consent to Mr. Maimone's inquiries, to reduce salaries and benefits by 10% to help DCCS meet its financial goals for the year. Ms. Berry expressed that she had communicated openly with school staff regarding DCCS's financial concerns. The motion carried by a vote of 8-3. (Resp. Ex. 16). Mr. Maimone clarified his motion by stating, "I don't think we can come back next month and vote to revoke the charter." He further stated, "We must give them through June 30th on my motion." (Resp. Ex. 16). Regarding monthly submission of reports and DCCS reporting to CSAB, Ms. Taylor did not believe a formal presentation would be necessary but that "it might be good to have one person here in case we have a question regarding a line item or either available by phone that we could ask." (Resp. Ex. 16)

36. Following the CSAB meeting on January 12, 2015, Dr. Medley sent a letter to Ms. Berry notifying DCCS that the CSAB had voted to "carefully monitor the financial and compliance situation" at the school, and that DCCS was required to provide written monthly financial updates and Board minutes as well as evidence of savings from cuts to salaries and benefits. In addition, the first month's report was to include commitment from the staff regarding the 10% minimum reduction in salaries for the remainder of the year. (Resp. Ex. 17).

37. After the January 12th meeting, Dr. Medley initiated a call with Ms. Berry and Diane Morris to discuss the requirement that DCCS secure a commitment from the staff for a 10% reduction in salaries and benefits. He expressed concern and advised that it would not be unreasonable to show CSAB other ways of cutting expenses or raising revenue equal to the 10% reduction.

38. On January 14, 2015, DCCS was placed on Financial Disciplinary Status by the Division of School Business (DSB), a division within DPI's Office of Financial and Business Services. A charter school may be placed in a financial noncompliance status if it shows signs of financial insolvency or weakness. Based on DSB's review of DCCS's submitted budget at the January 12, 2015 CSAB meeting, and information provided by the EC Division, the DSB had serious concerns about DCCS's financial viability. Specific concerns included the school's December 2014 budget, which showed a projected general fund deficit of \$280,074. Calculations provided by the EC Division for additional total costs for necessary compensatory education increased the potential for a year-end deficit ranging from a minimum of \$316,074 to \$492,574. DCCS was required to provide a written response regarding the financial status of the school by January 26, 2015.

39. DCCS submitted a financial update to the CSAB on January 30, 2015. In the update, DCCS stated that with the exception of Terri Zobel, the school's remaining faculty and staff were not willing to take a 10% pay cut. DCCS felt the directive was contrary to the obligations under its existing and binding contracts. Instead, DCCS proposed planning additional fundraising efforts to help cover the requested 10% savings. In addition, DCCS stated that it had identified over \$14,450 in budget cuts it would make in various areas, including in the areas of textbooks, EC services, and custodial services, to help the school's financial situation.

40. The EC Division conducted a follow-up LEA-Program Assessment at DCCS on February 4, 2015. Some improvements were found in the learning environment and climate, but concerns were raised that instructional practices and content had not improved. The assessment raised several issues, including, but not limited to: IEPs not being addressed, teacher assistants (as opposed to certified teachers) independently teaching classes, the school not having a guidance counselor, and teachers teaching outside of their licensure area. In addition, DCCS's budget reports continued to reflect that DCCS would have a significant deficit in June 2015.

41. On February 5, 2015 DCCS received the follow-up audit report authored by Carol Anne Hudgens based on classroom observation of DPI personnel. Also on February 5th, Dustin Britt from DCCS emailed Ms. Hudgens asking for clarification on a few items to ensure that DCCS corrected them appropriately. His email offered explanations and objections to some extent for the observations that he was questioning. Terri Zobel testified that she had concerns about statements and findings she believed were in error and that based on her observations, DPI personnel had spent no more than 5 to 10 minutes in any classroom.

42. On February 6, 2015, DCCS was notified by the OCS that the school had been placed on Governance Probationary Status based on DCCS's violation of the Charter Agreement and failure to comply with State and federal regulations, specifically, the failure to "provide free and appropriate education and related services to children with special needs" as agreed to in the Charter Agreement. The letter informed DCCS that failure to resolve the issue would result in the school being elevated to Governance Noncompliance Status. (Resp. Ex. 19).

43. DCCS representatives were not specifically invited to attend the CSAB meeting on February 9, 2015; however, the Board had been told it had to submit monthly financial reports

pursuant to the CSAB's directive given at the January 12, 2015, meeting, and had, in fact, sent a report to be presented at the February meeting. The fixed agenda posted on the official CSAB meeting website showed that Dynamic Community Charter School was to be discussed at the February 2015, meeting. (Tr. pg. 1642; Resp. Ex. 59). Ms. Berry testified that she and DCCS administration repeatedly checked the CSAB website and did not see DCCS listed on the tentative agenda. She stated that unbeknownst to Petitioners, DCCS was listed under the Updates and Presentations section and that the updated agenda was not provided to DCCS.

44. Dr. Townsend-Smith testified at the hearing in this matter that "part of [DCCS's] responsibility was to provide monthly updates to the CSAB. And when there are monthly updates provided, you know that you're going to be discussed." (Tr. p. 1645). Helen Nance, the previous chair of the CSAB and the Lead Administrator at a successful charter school testified that had her school been the subject of discussion by the CSAB, even if not on the agenda to present, a representative of the school would certainly have been present at the CSAB meeting to hear what was being discussed. No one from DCCS was present at the February CSAB meeting and no one from DCCS received a call during the meeting.

45. The CSAB held its regularly scheduled monthly meeting on February 9, 2015. Ms. Sellers, from the OCS, presented to the CSAB the financial update submitted by DCCS on January 30, 2015, along with the Follow-Up LEA-Program Assessment that was conducted on February 4, 2015. Several concerns were raised, including compensatory education costs that had not been accounted for in DCCS's budget, EC student services that had not been provided in accordance with those students IEPs, and the possibility that the school would be unable to make payroll for several months. Mr. Sanchez commented, "we have a school that... is calling themselves an EC school that's not serving the students appropriately." (Resp. Ex. 40). Mr. Sanchez later added, "there's nothing indicating this is getting better." (Resp. Ex. 40). CSAB member Alex Quigley, made a motion to recommend charter revocation at the next SBE meeting. When asked by Mr. Walker if his motion would rescind the vote from January, Mr. Quigley stated that he worried about waiting until June because the hole was getting bigger. The motioned carried by a vote of 10-1. (Resp. Ex. 20). On the afternoon of February 9th, Joel Medley emailed Ms. Berry to inform her that the CSAB voted to recommend that the SBE initiate revocation or assumption of the DCCS Charter.

46. Several witness testified as to the negative effect of DCCS fundraising created by the CSAB recommendation to initiate revocation. Moreover, the recommendation had a negative effect on staff causing several departures and making it difficult to hire replacement staff. Further, the recommendation was very stressful for the students. One seventeen-year-old student testified that public school had not worked for him as he had found himself bullied and singled out by others. He stated that DCCS had provided him with a place to belong, with smaller classrooms, IEP driven services, and subjects that academically challenged him. Moreover, DCCS provided him with positive social interactions and peers where he met and still maintains close personal friends. When he became aware of the possibility of closure, it became harder to do the academics. He stated that he and others became more and more stressed each time persons from the State would come into the school and classrooms.

47. On February 10, 2015, Dr. Medley sent written notification to DCCS that the CSAB voted to recommend that the SBE consider revocation of the Charter at the next SBE meeting. Dr. Medley informed DCCS that in the short amount of time DCCS had been open, the combination of significant compliance issues with the EC program, ongoing licensure and compensatory education concerns, and serious financial distress with a significant year end deficit, led the CSAB to make a recommendation to the SBE to consider revocation.

48. On February 10, 2016, Carol Ann Hudgens responded by email to DCCS's February 5th request for clarification to the EC Division's February 4th follow-up LEA-Program Assessment. She went through each point as set forth by DCCS's email and responded as to what the item(s) referred to, or what the observations were, or what documents were pulled, that lead to the various finding of issues and concerns. Terri Zobel stated that the next time Ms. Hudgens came to DCCS, she stated it not been her intent or the intent of her Division to seek DCCS's Charter revocation.

49. On February 16, 2015, Dr. Medley notified DCCS that the school did not meet the statutory and State Board of Education policy requirements for teacher licensure. DCCS was advised that it must become compliant within 30 days or the school would be elevated from Probationary status to Governance Noncompliant status.

50. On February 20, 2015, following the CSAB's decision to recommend revocation to the SBE, the EC Division sent DCCS a letter informing the school that the EC Division was committed to providing ongoing technical assistance to DCCS. The letter included the contact information for several EC Division consultants available to DCCS for assistance and collaboration. The original LEA Program Assessment and two follow-up reports, dated January 6, 2015 and February 4, 2015 were attached.

51. On March 2, 2015, DCCS emailed the Chair of the SBE with concerns about the SBE's upcoming consideration of the revocation of DCCS's Charter. DCCS argued the CSAB's decision was made in haste, without giving DCCS "a chance to correct or even properly respond" to concerns, and that the school had made improvements in the areas of licensure, EC and compensatory education services, and finances. The Board Chair asserted that the vast majority of parents had expressed intent to waive any compensatory services. She further stated that "Dynamic's parents have pledged over \$15,000 in additional funding and we have over \$10,000 in our online fundraising efforts not reported in our most recent budget report." DCCS asserted that it had not been given any meaningful notice of the CSAB's actions. DCCS's Board Chair requested that the Board "move Dynamic Community Charter from Action on First Reading on the March 4, 2015 Agenda to Discussion only in order to allow a full and thoughtful consideration of our school's condition, as both fairness and due process dictate." (Resp. Ex. 24).

52. On March 2, 2015, DCCS Board Chair Laura Kay Berry testified that she and Diane Morris met with Chief Financial Officer Phillip Price, as well as with Alexis Schauss, Bill Hussey and others regarding the pending revocation action. Mr. Price acknowledged that supplemental funding was available for prior homeschoolers. Ms. Berry stated the next day she sent an email request to Mr. Price and DCCS received approximately \$86,393.00 on March 16, 2015. Also the next day, Ms. Berry wrote to Dr. Medley stating that DCCS had a change in their financial position,

believing that DCCS would have the funding to finish the year. She also wrote that DCCS believed that additional facts and circumstances were not presented at the CSAB meeting which should be brought in front of the SBE. She requested that Dr. Medley “make sure these additional facts are communicated to the Board.” (Pet. Ex. 45)

53. The SBE held its regularly scheduled meeting on March 4-5, 2015. DCCS was not invited nor did they speak at the meeting. The Board found that DCCS had not only pending financial issues but also had significant compliance issues with services afforded EC students. The SBE minutes reference review of the January and February CSAB meetings and the findings and discussion in each. On March 5, 2015, the SBE voted to initiate revocation of the Charter for DCCS due to the “grave operational, financial, and governance concerns as discovered by [DPI].” (Resp. Ex. 25).

54. Dr. Medley sent DCCS a letter on March 5, 2015, notifying DCCS that the SBE voted to initiate revocation of its Charter due to legal compliance concerns and the school’s projected significant financial deficit. DCCS was further told that if they wished to appeal the decision, their signed Charter Agreement described the steps. DCCS was also provided the Charter School Closure Framework. Thereafter, DCCS requested a review of the revocation decision before a Review Panel in accordance with the provisions of the Charter Agreement related to termination of a charter for cause.

55. Prior to the convening of the Review Panel, however, DCCS requested, through its attorney, a meeting to discuss a possible resolution that might include options other than termination of their Charter. On March 16, 2015, Dr. Medley sent DCCS’s Board Chair a letter acknowledging their request to join in a meeting and informing them that DPI and the SBE would agree to DCCS’s request to discuss options other than charter termination.

56. Ms. Berry testified that on or about March 24, 2015, she and three other DCCS representatives along with their counsel met with representatives from OCS and DPI and their counsel to discuss resolution. On advice of counsel, the DCCS Board met on March 25, 2015 to agree to continue negotiations which would have the effect of removing DCCS from the April SBE meeting agenda.

57. On April 7, 2015, DCCS was placed on Governance Noncompliance status (the most severe governance warning that can be granted under SBE policy) and told to provide copies of all teachers’ NC Teaching License and information where teachers were working toward his or her license. DCCS was notified in a letter from the OCS dated May 1, 2015, that it was required to provide a written plan to the OCS by May 15, 2015, regarding its compliance with SBE policies for teacher certification.

58. Representatives from DCCS and DPI (including legal counsel for both) met on or about April 10, 2015. Following that meeting, representatives from DPI drafted a proposed agreement that contained various conditions that would commit the school to take necessary actions to ensure both an educationally sound and fiscally responsible operation.

59. During this time frame, beginning the week of April 27, 2015 and continuing to May, additional concerns were brought to the attention of the EC Division at DPI regarding the educational services being provided by DCCS and about the safety of students attending the school. Mr. Hussey testified at the hearing, “we started getting people coming to us, both parents, or grandparents initially, and then people from [DCCS] who came, and at that point were telling us that things that we thought were happening at [DCCS] were not happening and that they had very real concerns about the instruction, about the development of IEPs, about the safety of the kids, and that we were being misled by administration.” (Tr. pg. 1018). Ms. Berry testified that DCCS had been informed that DPI had received complaints from parents and staff that needed to be investigated before settlement could be finalized.

60. Among the concerns that were shared with DPI staff were: (1) IEPs were being created or developed based upon data collected by non-EC certified staff; (2) IEPs were not being developed based upon data or the unique needs of the students; (3) IEP meetings were held without properly constituted IEP teams; (4) the DCCS administration was giving pre-arranged instructions and “scripts” to staff to interact with DPI representatives to divert attention from the true practices that were actually occurring at the school; (5) teacher assistants were being used in inappropriate ways such as serving as “co-teachers” and/or case managers; (6) students at the school were not being properly supervised and were often left unattended for significant periods of time; (7) little to no instruction at the school that was specially-designed or appropriately focused on the various populations enrolled at the school; (8) numerous instances in which students were placed or left in unsafe situations and no staff at the school intervened or redirected the students; (9) lack of proper training of DCCS staff in management or instruction of the special student populations enrolled at the school; (10) lack of health care plans in place at the school for students; (11) inordinate number of staff absences; and (12) problems with the upcoming test administration, including unauthorized staff were to perform tasks inconsistent with State-required accountability procedures. The individuals who came forward to report these concerns to DPI did so on their own volition and not at the invitation or solicitation of the agency. (*See Resp. Ex. 28, 32, 37*).

61. The various complaints were not shared with DCCS by DPI staff when they were made. Moreover, those making the complaints had never brought their accusations to DCCS. Among others, those coming forward with information about DCCS included two teacher assistants, the DCCS former Lead Administrator, and the custodial grandfather of a former student. DPI personnel did not take action based on these complaints but set about to verify their accuracy. Mr. Hussey testified that he “made a decision that it was important for us to see whether or not what they were saying was true.” (Tr. pg. 1018).

62. In response to the multiple complaints the EC Division received, staff from the EC Division conducted unannounced on-site visits to DCCS on May 8, 2015, and May 12, 2015, in order to substantiate or refute the information received by the recent complaining sources. In addition, on May 11, 2015, representatives from the OCS’s Accountability Division visited the school in order to discuss testing practices and to observe the mandatory staff meeting outlining testing procedures.

63. The site visits by EC staff to DCCS on May 8 and May 12, 2015, confirmed the existence of problems that had been brought to the attention of DPI during the week of April 27,

2015. As Mr. Hussey testified at the hearing, “certainly there were things [at DCCS] that did not meet federal law.” He had further concerns that when the EC staff on one of the visits asked to see some of the records, they did not have access to them as they were locked in a room and no DCCS person present could unlock it. Mr. Hussey stated that a person who had come forward to report to DPI warned him that he would not have access to records. (Tr. pg. 1023).

64. On May 13, 2015, a letter documenting DPI’s findings and concerns regarding DCCS following the unannounced visits to the school was hand-delivered and e-mailed to the DCCS Board Chair and school Principal. The letter stated that in addition to educational and financial concerns, “the investigation revealed a number of instances in which leadership at the school has been untruthful in their dealings with the Department and that, in particular, raises significant doubt about mutual trust moving forward.” (Resp. Ex. 28). The letter informed DCCS that the SBE had determined that further discussion between the parties would not be productive and the SBE had instructed staff to proceed with the original decision to initiate revocation of the charter for DCCS.

65. On May 26, 2015, Dr. Medley sent a letter to Ms. Berry notifying DCCS that it remained on Governance Noncompliance Status for continuing to not meet the statutory and SBE policy requirements for teacher licensure, noting that OCS had received the ninth month licensure database, and DCCS had not met School Board policy requirements for maintaining certification of at least 50% of teachers.

66. On May 28, 2015, the EC Division sent DCCS the report documenting the results of the State’s review of the EC Program based upon the data gathered prior to and during the on-site visits in May, 2015. The report did not contain the identities of the staff and parents making allegations against DCCS.

67. DCCS had properly requested a Review Panel which had been stayed pending discussions of a resolution other than termination. With the SBE withdrawing from settlement negotiations, the Review Panel process was no longer held in abeyance. DCCS attended a Review Panel hearing on June 2, 2015, as part of the appeal process of the SBE’s decision to initiate revocation of DCCS’s charter. The SBE Review Panel hearing was chaired by Becky Taylor, a SBE member and a non-voting member of the CSAB. Two other SBE members, A.L. Collins and Olivia Holmes Oxendine, also served on the Review Panel. At the Review Panel hearing, Mr. Hussey presented the report prepared by the EC Division that was sent to DCCS on May 28, 2015. Mr. Hussey raised numerous concerns of the EC Division regarding the EC services being provided at DCCS, false or misleading statements made by leadership, and the declining trust felt by the EC Division towards the staff and leadership at the school.

68. Ms. Berry presented on behalf of DCCS at the Review Panel hearing, describing some of the hurdles faced by DCCS, specifically noting the lack of funds allotted to DCCS. She stated the school had been given misinformation on how it would be funded, both by the financial provider, Acadia and by the Department. She expressed challenges in having to provide transportation for some students. Ms. Berry stated she believed the school could operate in compliance as both a charter school and a unique charter school. Ms. Berry denied that DCCS was unsafe for students.

69. Ms. Berry stated that the late April/early May complaints had not been brought to the attention of DCCS and they were not given an opportunity to answer them. She testified at this hearing that there was not enough time to properly investigate and respond to the EC Divisions recent visits and report. She further testified at this hearing that because the Review Panel members interrupted the DCCS presentation with questions, DCCS was not allowed to finish its presentation.

70. Ms. Zobel, the Principal at DCCS, also addressed several of the questions posed by the Review Panel, including questions about absenteeism of DCCS staff. Ms. Zobel denied the existence of many of the concerns expressed in the May 13, 2015 letter from Dr. Medley. She relayed to the Panel that DCCS has very intelligent kids who were extremely worried that their school was being closed. In response to a question about whether DCCS was operating within the letter of the law and policies regarding education for EC students, Ms. Zobel, stated that errors had been made and that DCCS's prior administration had led them down a path that she would not have preferred to be in. She did believe that they were now getting there and could operate within required guidelines.

71. DCCS submitted letters of support from parents, students, and others to the Review Panel which Ms. Berry believed showed among other things that students were making progress academically, socially and developmentally.

72. Following the presentation by representatives from DPI and from DCCS and after questioning those representatives, the Review Panel deliberated on what action to recommend to the full SBE. On June 3, 2015, in a 6-page document with 40 findings of fact, the Review Panel issued its conclusion and recommendation to the State Board of Education "that the evidence supports the decision of the CSAB and the SBE to initiate revocation of DCCS's charter." The Review Panel recommended "that the SBE vote to revoke the charter of Dynamic Community Charter School." (Resp. Ex. 34).

73. The SBE held its regularly scheduled meeting on June 3-4, 2015. On June 4, 2015, the SBE voted to revoke DCCS's charter. That same day, the OCS sent a notification letter to Ms. Berry and Ms. Zobel informing DCCS of the SBE's decision to revoke the school's Charter. The letter attached the Closure Framework for charter schools and informed DCCS that representatives from DPI would be contacting them to further discuss the process of closing the school. Also included in the letter were the steps necessary for appeal of the SBE's decision.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.

2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that the Agency has deprived the petitioner of property or otherwise substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

4. In accordance with *Painter v. Wake County Bd. of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.” See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619 (1961). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence.

5. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm'r of Ins. v. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dep't of Human Res.*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982). In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

6. In North Carolina, the State Board of Education (SBE) is constitutionally mandated to “supervise and administer the free public school system and the educational funds provided for its support. . .” N.C. Const. art. IX, §5. The obligation of the SBE, under the Constitution and laws of the State, is to ensure that every child has the opportunity to receive a sound basic education. *Leandro v. State of North Carolina, et al*, 346 N.C. 336, 488 S.E. 2d 249 (1997). Consistent with its Constitutional mandate, the SBE must monitor charter schools and must hold charter schools to a standard that complies with the Constitutional guarantee.

7. The obligations that a charter school assumes by accepting an award of a charter include being prepared and capable at the outset to provide the opportunity for all its students to receive a sound basic education, including services required to be provided under State and federal laws to children with disabilities.

8. N.C. Gen. Stat. § 115C-218.95 sets forth the grounds for termination of a charter by the SBE and includes, *inter alia*, the following:

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- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violations of any of the conditions, standards, or procedures set forth in the charter;
-
- (6) Other good causes identified.

9. In this case, the SBE voted to terminate the Petitioner's Charter based on several deficiencies, including academics, compliance with federal laws, finances, long-term viability, student safety, and an erosion of trust in the Dynamic Community Charter School (DCCS) Board and leadership

10. The Charter School Advisory Board (CSAB) and a special committee of the SBE, the Review Panel, both heard from Department of Public Instruction (DPI) staff and from the school's representatives about the Exceptional Children's (EC) program and services at DCCS, as well as about academics and the financial situation at the school. Both the CSAB and the Review Panel considered all of the evidence before them and ultimately determined that the Petitioner's Charter should be revoked.

11. Petitioner asserted at this hearing that there was a denial of its right to Due Process of Law. It is well-established law that persons may not be deprived of life, liberty, or property without due process of law. The parties do not dispute the existence of a property right in the possession of a charter to operate a public charter school. The question then remains "what process is due." *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972).

12. In order to determine what "process" is "due," the United States Supreme Court, in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), sets forth a balancing test. The Court in *Mathews* described due process as a flexible process that "calls for such procedural protections as the particular situation demands," and sets out three factors to consider in determining what process is due in a given situation: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

13. As stated by the U.S. Supreme Court, a deprivation of property must be "preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The Court reiterated the requirement for prior notice and opportunity to be heard in *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532

(1985) when it held that “some kind of a hearing” be provided prior to a property deprivation. *Id.* at 542. The Supreme Court noted that, the “pre-termination ‘hearing’ through necessary, need not be elaborate... [and] ‘something less’ than a full evidentiary hearing is sufficient prior to adverse administrative action.” *Id.* at 545. As in *Loudermill*, the pre-termination due process requirement depends in large part on whether there exists in state law an opportunity for a full and fair post-termination hearing. *Id.* at 546. Moreover, interest in retaining a protected property right must be tempered by public interest (as well as the balancing of other interests). See *Arnett v. Kennedy*, 416 U.S. 134, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974).

14. In the instant case, the preponderance of the evidence shows the following:
 - a. On November 21, 2014, Petitioner’s school Principal and Board Chair were requested to attend an upcoming meeting of the CSAB scheduled for December 8, 2014, at which Dynamic would be discussed.
 - b. Petitioner’s Board Chair and new school Principal attended the December 8, 2014, CSAB meeting and DCCS was allowed to respond to the CSAB regarding concerns raised by DPI staff about academics, finances and EC services at DCCS.
 - c. On December 9, 2014, DCCS’s Board, Lead Administrator/Principal, and lead EC teacher were requested to attend the CSAB meeting scheduled for January 12, 2015, to discuss issues around legal compliance in various areas, including EC services and finances.
 - d. Representatives from DCCS attended the January 12, 2015, CSAB meeting and were allowed to present information and respond to the CSAB regarding concerns raised by DPI staff about academics, finances, and EC services at DCCS.
 - e. Petitioner did not attend the February, 2015, CSAB meeting, but “Dynamic” was on the posted agenda and it could have been reasonably anticipated both from the posting and from the prior January meeting that DCCS was likely to be discussed, particularly in light of the requirement imposed by the CSAB to produce monthly financial reports.
 - f. Following three separate, public CSAB meetings during which the CSAB discussed issues concerning Petitioner’s failure to comply with various legal mandates, the SBE voted to initiate revocation of Petitioner’s charter in March, 2015.
 - g. Following the SBE’s vote to initiate revocation proceedings, Petitioner requested a mediation session with the agency to discuss a resolution of the disputed issues other than termination of the school’s charter. DPI staff agreed to meet with representatives from DCCS to discuss options other than charter revocation.
 - h. While issues were brought forth and settlement negotiations were ongoing, concerns regarding EC services, student safety, deceptive practices by DCCS

staff, and academics, among others, were brought to the attention of DPI staff by individuals associated with the school. Consequently, DPI staff conducted unannounced site visits in order to verify the information received by these sources. Opportunities existed for DCCS to present documents, including records to address known issues regarding finance, academics and EC services.

- i. Once the unannounced site visits substantiated the concerns raised with DPI staff, DPI sent a detailed letter to DCCS specifically outlining twelve concerns that had been brought forward and then verified by DPI staff. DPI then discontinued settlement negotiations with DCCS and the SBE resumed revocation proceedings.
- j. Upon Petitioner's request, a Review Panel convened on June 2, 2015, to hear presentations from both DPI and Petitioner. The Review Panel voted unanimously to recommend revocation to the SBE.

15. All of the above occurred prior to the SBE final vote to terminate the charter. The multiple pre-revocation procedures are sufficient to satisfy the constitutional requirement for due process. As stated by our Court of Appeals:

Under federal due process [a property interest] is sufficiently protected by a pretermination opportunity to respond, coupled with post-termination administrative procedures. [The concern for fundamental fairness is satisfied by] oral or written notice of the charges . . . , an explanation of the . . . evidence, and an opportunity to present [its] side of the story.

Owen v. UNC-G, 121 N.C. App. 682, 686, 468 S.E. 2d 813, 816 (1996) (internal quotations omitted).

16. Petitioner's assertion that Becky Taylor's participation on the Review Panel was a violation of due process is without merit. Pre-termination due process is sufficient without all the requirements necessary for a full evidentiary hearing so long as there is an opportunity for such a hearing following termination. *Hilliard v. N.C. Dep't of Corrections*, 173 N.C. App. 594, 599 620 S.E.2d 14, 18 (2005) (due process was not denied when Petitioner given two days' notice prior to pre-disciplinary conference, and same persons were involved in investigation and conference).

17. Petitioner was permitted not only to present its side regarding the prevailing issues including compliance with the EC program requirements, ongoing licensure and compensatory education concerns, and serious financial distress at two CSAB meetings, but also had a lengthier opportunity to respond to all charges at the Review Panel hearing on June 2, 2015.

18. Petitioner received process due owed it under the federal and State constitutions, both before and after the SBE voted to initiate termination of its Charter. Petitioner was provided several opportunities to make presentations to DPI and to the Charter School Advisory Board. Furthermore, Petitioner was notified of and had the opportunity to appear before the Review Panel, a special committee of the State Board of Education. Finally, the due process provided to DCCS

has been followed by a full and fair post-revocation hearing in this tribunal, presided over by an impartial factfinder with the opportunity to present evidence and cross-examine witnesses.

19. The Respondent's termination of DCCS's Charter and the circumstances regarding procedural protections for Petitioner leading up to the revocation pass the prevailing case law requirements and the requirements of due process afforded the Petitioner by federal and State law. This includes not only the actions of the State Board of Education but also those of the Department of Public Instruction, the Office of Charter Schools and the Charter School Advisory Board. The preponderance of the evidence does not support Petitioner's assertion that its right to due process has been denied.

20. Petitioner has failed to meet its burden to show that the decision of the SBE and the actions of the Department of Public Instruction, the Office of Charter Schools and the Charter School Advisory Board in this case were erroneous in one or more of the ways enumerated in N.C. Gen. Stat. 150B-23. *See Surgical Care Affiliates, LLC v. N.C. Dep't of Health and Human Servs.*, 762 S.E. 2d 468, 474-475 (N.C. App. 2014), *review denied*, 768 S.E. 2d 564 (N.C. 2015).

21. As to the primary issue in this case, the Petitioner has failed to overcome the presumption set forth by law that the State Board of Education's revocation of Petitioner's Charter was lawful and correct. As such, the presumption granted by law remains, that the SBE did not fail to use proper procedure, act erroneously, or act arbitrarily or capriciously, as alleged in the Petition. The preponderance of the evidence in the record supports the State Board of Education's decision to revoke DCCS's Charter to operate a public school in North Carolina. Petitioner has failed to carry the burden of proof assigned to it by law.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the agencies involved with respect to facts and inferences within the specialized knowledge of those agencies as required under N.C. Gen. Stat. § 150B-34.

The Undersigned holds that Petitioner failed to carry its burden of proof by a greater weight of the evidence that the Respondents erred in the revocation of the Petitioner Dynamic Community Charter School's Charter. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbears, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondents to the ultimate issues.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed. The appealing party must file the petition within 30 days after being served with a copy of the Administrative Law Judge's Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 20th day of October, 2016.

A handwritten signature in blue ink that reads "Augustus B. Elkins II". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Augustus B Elkins II
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Attorney For Respondent

This the 20th day of October, 2016.



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