

BEFORE THE PUBLIC EDUCATION COMMISSION

STATE OF NEW MEXICO

IN RE: NOTICE OF INTENT TO REVOKE THE CHARTER OF
DZIL DITL'OOÍ SCHOOL OF EMPOWERMENT, ACTION AND
PERSEVERANCE

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING

Volume Two

October 24, 2017

11:00 a.m.

Jerry Apodaca Public Education Building - Mabry Hall
300 Don Gaspar
Santa Fe, New Mexico

REPORTED BY: Cynthia C. Chapman, RMR-CRR, NM CCR #219

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1 THE CHAIR: I'm going to call this hearing
 2 to order. It is 11:02 a.m. on Tuesday,
 3 October 24th, 2017.
 4 And I'm going to ask all to stand for the
 5 Pledge and the Salute to the New Mexico Flag.
 6 (Pledge of Allegiance and Salute to the
 7 New Mexico Flag conducted.)
 8 THE CHAIR: This is a hearing of the
 9 New Mexico Public Education Commission.
 10 COMMISSIONER TOULOUSE: Madam Chair, roll
 11 call.
 12 THE CHAIR: It's -- I'm getting to it.
 13 It's in the script.
 14 This hearing will come to order at
 15 11:03 a.m., October 24th, 2017.
 16 This hearing is being conducted at the
 17 Jerry Apodaca Education Building, Mabry Hall,
 18 300 Don Gaspar, Santa Fe, New Mexico.
 19 The purpose of this hearing is to take
 20 evidence concerning the revocation of the charter
 21 for Respondent DEAP.
 22 We presently have a quorum of the
 23 Commission in attendance. This meeting was properly
 24 noticed under the Open Meetings Act and constitutes
 25 a meeting of the Commission.

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<p>1 Will Commissioner Armbruster please call 2 roll? 3 COMMISSIONER ARMBRUSTER: Commissioner 4 Robbins. 5 COMMISSIONER ROBBINS: Here. 6 COMMISSIONER ARMBRUSTER: Commissioner 7 Toulouse. 8 COMMISSIONER TOULOUSE: Present. 9 COMMISSIONER ARMBRUSTER: Commissioner 10 Armbruster is here. 11 Commissioner Conyers. 12 COMMISSIONER CONYERS: Present. 13 COMMISSIONER ARMBRUSTER: Commissioner 14 Peralta. 15 COMMISSIONER PERALTA: Here. 16 COMMISSIONER ARMBRUSTER: Commissioner 17 Gipson. 18 THE CHAIR: Here. 19 COMMISSIONER ARMBRUSTER: Commissioner 20 Johnston. 21 COMMISSIONER JOHNSTON: Present. 22 COMMISSIONER ARMBRUSTER: Commissioner 23 Crone. 24 COMMISSIONER CRONE: Here. 25 COMMISSIONER ARMBRUSTER: Commissioner</p>	<p>1 Sections 22-8B-1 to 17.1, 1978, as amended, through 2 2015; hereafter, CSA. 3 This hearing is being recorded by our 4 court reporter, Cindy Chapman. 5 To provide an accurate record, I ask that 6 only one person speak at a time and that everyone 7 speak in a clear voice that can be heard, since the 8 recorder will not pick up nods, gestures, or 9 soft-spoken answers. 10 I also ask everyone present to please 11 silence all telephones and electronic equipment at 12 this time. 13 And I will also ask everyone to please 14 spell your name for the record when you do appear. 15 The hearing is scheduled for approximately 16 three hours. The Commission has already provided 17 time for opening statements and 105 minutes for PED 18 to present their case and 20 minutes for Public 19 Comment. 20 The Commission will provide today 21 105 minutes for the Respondent to present their 22 case, 20 minutes for closing arguments, 10 minutes 23 each. Time will stop during questioning by the 24 Commission or our attorney. 25 Ms. Beverly Friedman will serve as our</p>
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<p>1 Ruiz is not here today. 2 Commissioner Caballero. 3 COMMISSIONER CABALLERO: Here. 4 COMMISSIONER ARMBRUSTER: That is a quorum 5 of nine. 6 THE CHAIR: Thank you. 7 I am Commissioner Patricia Gipson, and I 8 will preside over this hearing. I will take 9 evidentiary and procedural rulings, and those 10 rulings are final. Any dispositive motions made 11 will be presented to the entire Commission for a 12 decision. 13 David Robbins, who's now out on a phone 14 call -- David Stevens; sorry about that -- David 15 Stevens from the Attorney General's Office will 16 advise me in this matter. 17 The members of the Commission intend to 18 make a decision on this hearing at the end of the 19 hearing. A full written decision will be sent out 20 with the grounds for our decisions based on the 21 record presented here today, and previously, on 22 October 13th. Commissioners will be allowed to ask 23 questions of any witnesses or counsel. 24 This hearing is being conducted in 25 accordance with the Charter School Act, NMSA 1978,</p>	<p>1 official timekeeper. 2 Will the parties please enter their 3 appearance for the record? 4 MR. McMILLAN: Seth McMillan and Kaitlyn 5 Luck, Montgomery & Andrews, on behalf of the Public 6 Education Department, presenting the case for 7 revocation. 8 MS. CUYLEAR: Good morning. Natasha 9 Cuylear and co-counsel, Justin Solimon. We're with 10 the law firm of Johnson Barnhouse & Keegan, and 11 we're here representing DEAP Charter School. 12 THE CHAIR: Thank you. Are there any 13 preliminary matters the parties wish the Hearing 14 Officer to consider? 15 MR. McMILLAN: Yes, just one, Madam 16 Hearing Officer. To the extent that we didn't do so 17 on the 13th, and to the extent it's necessary in 18 light of the stipulation between the parties, I'd 19 like to formally move the admission of the exhibits 20 in our hearing binder. 21 I know we had stopped partway through 22 questioning admitting those. So I'd like to move 23 for admission. 24 And that's all I have. 25 THE CHAIR: Thank you. And all those</p>

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1 exhibits that previously had not been admitted will
2 be admitted for the record.

3 MS. CUYLEAR: Madam Chair, also DEAP has
4 handed out this notebook labeled "DEAP Notebook"
5 with the exhibits that DEAP plans to enter today
6 with the witnesses. And we're -- we've conferred
7 with Seth McMillan, and they've agreed, stipulated
8 to the admission of the exhibits in this notebook.
9 So I'm moving formally for the admission of these
10 exhibits, as well.

11 THE CHAIR: They will be admitted. Thank
12 you.

13 (PED Exhibits 7 through 27 admitted
14 into evidence.)

15 (DEAP Exhibits A through F admitted
16 into evidence.)

17 COMMISSIONER JOHNSTON: Madam Chair, may I
18 ask a question --

19 THE CHAIR: Sure.

20 COMMISSIONER JOHNSTON: -- about
21 procedure?

22 And I'm confused from the last time. When
23 the Public Education Commission asks questions, will
24 it be that written process that we used the last
25 meeting? We'll submit written questions to you?

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1 The -- the Department has already
2 presented, and the Respondent may present evidence
3 in its defense of the allegations presented by the
4 Department.

5 Any witnesses offering testimony will be
6 questioned first by the party offering the testimony
7 and then by the opposing party.

8 I will permit direct examination,
9 cross-examination, redirect examination, and
10 recross-examination of all witnesses.

11 The Rule of Sequester applies, and if
12 invoked, all witnesses will be asked to wait outside
13 and not discuss the case until they are called.

14 Commissioners may question witnesses when
15 both parties have finished their examinations. I
16 will recognize any Commissioner who wants to
17 question the witness. No other questioning will be
18 permitted after Commissioners have finished
19 questioning the witnesses.

20 Unless the parties have anything further,
21 we are ready to begin.

22 I'm going to ask any person who will be
23 testifying in this matter to please rise and be
24 sworn in.

25 (All potential witnesses sworn.)

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1 THE CHAIR: No. We were doing that to be
2 able to finish with PED's case in a timely fashion.
3 We should be fine today.

4 COMMISSIONER JOHNSTON: Just to ask.

5 THE CHAIR: Correct. Yes.

6 COMMISSIONER JOHNSTON: Thank you.

7 THE CHAIR: Yes.

8 This hearing will be conducted in
9 accordance with the CSA. Hearings before this
10 Commission do not follow the Rules of Evidence, and,
11 as the Hearing Officer, I may admit any evidence I
12 so choose.

13 Hearsay may be introduced and considered
14 and will be given its due weight. I may limit
15 testimony that is incompetent, irrelevant,
16 immaterial, or unduly repetitious. The decision to
17 exclude or limit such evidence will be made by me,
18 as the Hearing Officer.

19 The Rules of Privilege apply in this
20 hearing. The Commission may take notice of
21 judicially cognizable facts and of general technical
22 or scientific facts within its specialized
23 knowledge.

24 The Department will present evidence
25 first. And then -- oh.

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1 THE CHAIR: Do either of the parties wish
2 to invoke the Rule of Sequester?

3 MR. McMILLAN: No, Madam Chair.

4 THE CHAIR: So whenever you're ready.

5 MS. CUYLEAR: DEAP calls Louella Poblano
6 as our first witness.

7 THE WITNESS: Good morning.

8 LOUELLA POBLANO,

9 after having been previously sworn under oath,
10 was questioned and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CUYLEAR:

13 **Q. Good morning. Would you please state your
14 name for the record, please?**

15 A. My name is Louella, L-O-U-E-L-L-A,
16 Poblano, P-O-B-L-A-N-O.

17 **Q. Thank you. Would you please briefly
18 describe your educational background?**

19 A. I have a Bachelor of Science in Elementary
20 Education from UNM. I have a Master's degree in
21 Gifted from the University of Oklahoma City. And I
22 also have another Master's in Educational Leadership
23 from Western New Mexico University.

24 **Q. Thank you. And can you state your
25 position at DEAP Charter School?**

1 A. I am the Head Administrator for DEAP
2 School.

3 **Q. Also, can you briefly describe your
4 professional career as an educator?**

5 A. Overall, I have about 31 years as an
6 educator. I have -- I'm going into my fifth year as
7 a school administrator. I have seven years as an
8 instructional coach. And I have 19 years as a
9 classroom teacher.

10 **Q. Thank you. Do you have experience in
11 serving as a school head administrator?**

12 A. Yes, I do.

13 **Q. And what is your background in serving as
14 a head administrator?**

15 A. I started with the Gallup-McKinley County
16 Schools as a school administrator for a K-5 --
17 pre-K-to-5 elementary school. And then I moved to
18 the Zuni Public School District, and I also served
19 two years there as a school administrator.

20 **Q. Thank you. And what licenses and
21 certifications do you hold?**

22 A. I hold a pre-K-through-12 administrator
23 license. And I also hold an Instructional
24 Leadership Certificate with an endorsement in
25 Gifted.

1 A. I started June 12th of this -- of this
2 school year.

3 **Q. Sorry, Ms. Poblano. I'll just redirect
4 you to your -- in your affidavit, you stated your
5 start date was July 11th, I believe.**

6 A. Okay.

7 **Q. Is that --**

8 A. Yeah. Yeah.

9 **Q. Is it July 11th, 2017?**

10 A. Yeah, 2017.

11 **Q. I just wanted to make sure. And how long
12 is the term of your contract with DEAP?**

13 A. My contract is a one-year term; July 12th
14 through, I believe, June 30th.

15 **Q. Of 2018?**

16 A. Of 2018, yes.

17 **Q. And do you live in Navajo, New Mexico?**

18 A. No, I don't live in Navajo, New Mexico.
19 But I commute from Fort Defiance, Arizona, which is
20 about 14 miles south of Navajo.

21 **Q. Were you familiar with DEAP as a school
22 before you signed on as -- to be the school's head
23 administrator?**

24 A. Yeah. I -- one of the colleagues that I
25 worked with when I was an administrator at -- with

1 **Q. Throughout your educational career, have
2 you primarily worked in schools located on or near a
3 Native American reservation?**

4 A. Yes. Most of my work and most of my
5 teaching career, I spent on -- I spent on different
6 Native American reservations, primarily with Navajo
7 and Zuni.

8 **Q. In your previous experience in working
9 with those schools, have you witnessed that school
10 experience issues with finding qualified and
11 certified people to serve at the school?
12 [Verbatim.]**

13 A. When I began my career, teachers and
14 administrators were not hard to find; but within, I
15 would say, the last seven years, there's been a
16 trend where it's really hard to get a certified
17 teacher or an administrator. For example, at DEAP,
18 our special ed teacher travels in from Española; so
19 we contract her out for services.

20 So it's really hard to get a certified
21 teacher or an administrator, especially in a rural
22 area like Navajo.

23 **Q. So you say that you're the current head
24 administrator at DEAP Charter School. When did you
25 start this position?**

1 the Zuni Public School District, she would come and
2 visit some of my TFA teachers. And she mentioned
3 that they needed a head administrator. And she also
4 mentioned really briefly that they were struggling
5 with a head -- keeping a head administrator and also
6 struggling with a little bit of their finances.

7 **Q. So when you signed on as DEAP's head
8 administrator, were you aware of the -- of the
9 Public Education Commission's intent to commence
10 charter revocation proceedings against the school?**

11 A. Yes, I was aware of that.

12 **Q. At the time, were you aware -- and this is
13 when you signed on as the head administrator -- were
14 you aware of the allegations against DEAP at that
15 time?**

16 A. I wasn't really clear on it. I did a lot
17 of, I guess, looking into different documents. The
18 former administrator had a file that was left in
19 the -- in her desk, and I looked through those
20 documents. And I also talked with the founders of
21 DEAP, just to get an idea of where the school is in
22 this -- and what their situation is with the State.

23 **Q. Is that the research you did after you
24 signed on as head administrator?**

25 A. Yes.

1 **Q. Are you on site at DEAP on a daily basis?**

2 A. Yes, I am.

3 **Q. And what are your duties as DEAP's head**
4 **administrator?**

5 A. Well, I -- I'm pretty much the supervisor
6 of all of DEAP's happenings and events. And I
7 supervise the teachers, as well as the other support
8 staff. I help with some of the parent committees.
9 I advocate for the school by attending chapter
10 meetings. I've only attended one so far.

11 And I also collaborate with our governing
12 board in keeping them informed of the school's
13 finances, what's happening with our assessments, our
14 curriculum, our staff, and, just -- you know, just
15 giving them an overall picture of what's happening
16 on a monthly basis with our governing board.

17 I also am responsible for looking at the
18 operating budget and just making plans. I know it's
19 the beginning of the school year; but just
20 considering where DEAP is, I'm looking at the
21 planning for the school year.

22 **Q. And as DEAP's school leader, can you speak**
23 **briefly about what your goals are as a school leader**
24 **for the school?**

25 A. Sure. My goals coming into DEAP and

1 because of all the allegations against DEAP -- I
2 think I counted over 33 audit findings. And with
3 that many audit findings, we've kind of -- I've --
4 I've taken on a few of the -- I call it "detective
5 work" in looking for things and just reaching out to
6 people to find certain answers to what those
7 allegations were.

8 And I know that our teachers have a full
9 load; but they also put time aside. You know, we
10 spend a lot of time on Fridays, and I'm sure all
11 weekends, and also during our break, like this past
12 week, just trying to -- just trying to clear a lot
13 of the audit findings.

14 **Q. And so when you say "audit findings," are**
15 **you referring to the June 9th audit review that was**
16 **produced by the Public Education Department? The**
17 **Audit Bureau?**

18 A. Yes.

19 **Q. Okay. So I'm sure you're aware that in**
20 **July, DEAP's governing council, they made several**
21 **revisions to their fiscal policies and procedures.**

22 A. Yes.

23 **Q. Are you aware of this?**

24 A. Yes, I am.

25 **Q. Were you involved in the process of**

1 hearing the different narratives of where DEAP is
2 and how it got there, one of my main goals was to --
3 just to rebuild trust, and not only within the staff
4 of DEAP, but also with our -- our sister schools and
5 a lot of the people that we network with. So for
6 me, that was really important was to just kind of
7 establish that trust and use the DEAP core values to
8 guide us in rebuilding our relationship with all our
9 networks and all our supports.

10 Academically, I do know that math is our
11 big struggle, as well as reading. So academically,
12 you know, our school improvement plan is to improve
13 our -- our reading comprehension skills and also our
14 math. And we are doing that by looking at our data
15 and focusing on our ELL student population.

16 **Q. Thank you. And so you are familiar with**
17 **the allegations against DEAP which are the subject**
18 **of these revocation proceedings?**

19 A. Yes.

20 **Q. And so based on what you know about those**
21 **allegations, has the school taken the necessary**
22 **steps to respond to or remedy the alleged**
23 **violations?**

24 A. Yeah. And I think with DEAP, it's a
25 really small school. We have a small staff. And

1 **revising DEAP's fiscal policies and procedures?**

2 A. Yeah. When it was presented to the board,
3 I believe it was my first week there. And I
4 reviewed the document before the board meeting. And
5 I just, you know, prepared myself to oversee how the
6 organizational flow of our finances would look like,
7 and just looked at some of the processes that I
8 would have to establish, you know, and share with
9 our DEAP staff.

10 **Q. So I want to switch gears.**

11 **So the Department has accused DEAP of**
12 **allowing an unlicensed staff person at DEAP to**
13 **perform school functions that only a licensed**
14 **administrator could perform.**

15 **I know you cannot speak to anything that**
16 **happened to DEAP before you became the school's head**
17 **administrator. But I'd like to ask you a few**
18 **questions with regards to your ongoing work with**
19 **DEAP staff.**

20 **Can you identify the professional staff at**
21 **DEAP with whom you work on a daily basis?**

22 A. Yes. DEAP has three certified teachers:
23 Kayla Begay is our ELA, and she's Certified
24 K-through-8.

25 We have Elijah Allan. He's our math and

1 science teacher.

2 And we have a new first-year teacher, a
3 TFA, her name is Kylie [ph] George. And she is our
4 secondary ELA and New Mexico History teacher.

5 And then our office staff, we have Karen
6 Mailman; she is our office secretary. And we have
7 Prestene Garnenez. She is the Director of
8 Operations and also one of the cofounders of DEAP,
9 along with Kayla Begay.

10 **Q. And do you involve any of the professional
11 staff whom you just identified in any
12 decision-making processes at the school?**

13 A. Yes. Usually, on a Friday -- that's when
14 we have our PD day -- all staff, we usually have a
15 general staff meeting. And that's where we discuss
16 and collaborate on school-wide events, assessments,
17 or things like budgets; because I know the last one
18 was how we spend our -- I believe it was called the
19 "Highly Qualified Charter Fund" or "Grant." So we
20 were able to divvy up and collaborate on how that
21 would be spent.

22 And that's how we operate at DEAP, as a
23 team.

24 **Q. And based on your prior experience in
25 serving as a head administrator at other schools, is**

1 **Q. In your role as head administrator, have
2 you witnessed a staff person incurring expenditures
3 without appropriate documentation, review, and/or
4 approval?**

5 A. No.

6 **Q. Have you witnessed a staff person making
7 budget decisions?**

8 A. Not individually.

9 **Q. Have you witnessed a staff person making
10 staffing decisions?**

11 A. No.

12 **Q. Would you say that you make the budget
13 decisions at DEAP Charter School?**

14 A. Yes, I do.

15 **Q. And do you make the staffing decisions, as
16 well, at DEAP Charter School?**

17 A. Yes.

18 **Q. Do you perform all staff performance
19 evaluations?**

20 A. Yes, I evaluate teachers and support
21 staff.

22 **Q. And do you manage all of DEAP's
23 expenditures?**

24 A. Yes.

25 **Q. Do you manage the recording of DEAP's**

1 **it common for a school administrator to organize a
2 staff leadership team to discuss operations?**

3 A. Yeah. In general, most school
4 administrators, they're responsible for everything
5 that happens at a school. And it's -- it's pretty
6 normal for a head administrator to be the overseer
7 of all the different teams that are created in the
8 school, yes.

9 **Q. In your time as serving as DEAP's head
10 administrator have you witnessed a staff person
11 making decisions regarding DEAP's operations?**

12 A. Can you repeat that question?

13 **Q. Sorry. In your time serving as DEAP's
14 head administrator, have you witnessed a staff
15 person making decisions regarding DEAP's operations?**

16 A. Individual decisions normally do not
17 happen; because we have a shared leadership model.
18 And items that are brought for attention for
19 staffing, for budget, for any school-wide event,
20 it's usually done in a team, within a team.

21 **Q. Do you make the ultimate decision with
22 regards to budget or staff matters that come up?**

23 A. Yes. And I'm the one that communicates to
24 the parents, to the governing board, or whoever is
25 impacted by our decision.

1 **expenditures?**

2 A. I manage some of it. I sign certain
3 documents, and they're shared with Prestene -- it
4 follows our chain of command. Like paying bills is
5 one example this week. You know, I signed -- I okay
6 payment, and then I give it back to Prestene. Then
7 it's shared with Sean Fry, and then the payment is
8 made.

9 **Q. Do you manage DEAP's curriculum, as well?**

10 A. Yes, I supervise it.

11 **Q. Is it fair to say you manage DEAP's daily
12 overall operation?**

13 A. Yes, I do.

14 **Q. And do you keep the board informed -- or
15 the governing council -- informed with regard to
16 DEAP's financial matters?**

17 A. Yeah. On a monthly basis, we have our
18 regular governing board meeting; so it is shared at
19 that time.

20 **Q. Ms. Poblano, you have two notebooks in
21 front of you. One is white, and one is black. The
22 white binder, I'd like to direct your attention to.
23 If you can turn to Exhibit 18.**

24 MS. CUYLEAR: And this is the binder of
25 exhibits that the Public Education Department

1 presented.

2 **Q. I believe Exhibit 18 is the letter --**
3 **well, can you tell me -- if you would take a look at**
4 **Exhibit 18, are you familiar with this document?**

5 A. Yes, I am.

6 **Q. Okay. And can you describe what that**
7 **exhibit is?**

8 A. On October 12th, I received an e-mail from
9 David Craig. And this was the first time I seen
10 this document. And I shared it with Prestene on --
11 on my laptop, I shared that, "This is the first time
12 I'm hearing about this. Are we on a -- monthly
13 Corrective budget plan?"

14 And she said, "No."

15 So I also shared it with Sean Fry and you.

16 **Q. Can you tell me -- you're looking at**
17 **Exhibit 18 right now. Is that a letter from David**
18 **Craig?**

19 A. Yes, it's a letter from --

20 **Q. Who is that addressed to?**

21 A. It is addressed to me and Mr. Fry.

22 **Q. Okay. And is the letter signed?**

23 A. No.

24 **Q. Have you -- has DEAP received a signed**
25 **copy of that letter?**

1 A. This was my response to Director Craig.
2 And in that response, I just responded to him and
3 told him that this was the first time I had seen
4 this letter.

5 **Q. And then when did you send that letter to**
6 **Director David Craig?**

7 A. October 11th.

8 **Q. And did you receive a response from**
9 **Director Craig with regards to that letter that you**
10 **sent?**

11 A. No.

12 **Q. Switching gears here. How often do you**
13 **communicate with the school's business manager, Sean**
14 **Fry?**

15 A. Pretty much on a weekly basis, either
16 through phone calls, e-mails.

17 **Q. And how often do you communicate with the**
18 **governing council with regards to the school's**
19 **financial matters?**

20 A. Usually, on a monthly basis.

21 **Q. Does that take place at governing council**
22 **meetings?**

23 A. Yes.

24 **Q. And can you provide an update on where**
25 **DEAP is with securing a chief procurement officer**

1 A. I asked about that. And we looked through
2 our mail log. And we did not have this letter
3 documented in our mail log.

4 **Q. Okay. But you haven't seen a signed copy**
5 **of that letter?**

6 A. No, I have not seen a copy of this letter.

7 **Q. So did DEAP -- so you're saying DEAP did**
8 **not receive a copy of that letter from David Craig**
9 **in the mail.**

10 A. I'm going to say no, even though I wasn't
11 there. But the -- our mail log indicates that there
12 was no evidence of this being submitted as a mail
13 recipient.

14 **Q. Okay. And then when was the first that**
15 **you learned of the existence of that letter and its**
16 **contents?**

17 A. The same day that I read it, October 12th.

18 **Q. So, Ms. Poblano, if I may now direct your**
19 **attention to Exhibit A. That's in the black**
20 **notebook labeled "DEAP Notebook."**

21 A. (Witness complies.)

22 **Q. Do you recognize this letter?**

23 A. Yes, I do.

24 **Q. Okay. Could you describe what that letter**
25 **is?**

1 **for the school?**

2 A. Yes. This past week, Kayla Begay, one of
3 our teachers, attended a CPO training. And she came
4 back with seven certificates, and she is now our new
5 CPO for our school.

6 **Q. So Kayla Begay is now certified as a Chief**
7 **Procurement Officer for the State?**

8 A. Yes.

9 **Q. And does she plan to register as DEAP's**
10 **CPO?**

11 A. Yes.

12 **Q. And can you also provide an update on**
13 **where DEAP is at with responding to the corrective**
14 **actions issued by the Department for DEAP's Fiscal**
15 **Year '16 audit findings?**

16 A. For Fiscal Year '16? I would say they're
17 about a little over 95 percent complete. There's
18 just a few items that we need to still look for.

19 **Q. But DEAP is in the process of responding**
20 **to the corrective actions for the Fiscal Year '16**
21 **audit findings; is that correct?**

22 A. Yes.

23 MS. CUYLEAR: I have no further questions,
24 Ms. Poblano. Thank you.

25 THE WITNESS: Okay.

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1 CROSS-EXAMINATION
 2 BY MR. MCMILLAN:
 3 **Q. Good morning, Ms. Poblano.**
 4 A. Good morning.
 5 **Q. My name is Seth McMillan. I'm an attorney**
 6 **for PED here at this hearing.**
 7 **You testified that you didn't begin as**
 8 **head administrator until July 11th, 2017; is that**
 9 **correct?**
 10 A. Yes. I believe it's July 12th.
 11 **Q. July 12th, 2017?**
 12 A. Uh-huh.
 13 **Q. In any event, you have a one-year**
 14 **contract?**
 15 A. Yes, I do.
 16 **Q. And you did not become the head**
 17 **administrator until after the Notice of Intent to --**
 18 **to Revoke the school's charter was issued; is that**
 19 **correct?**
 20 A. That's correct.
 21 **Q. Okay. Do you happen to know -- well,**
 22 **let's see. You testified that you're on site on a**
 23 **daily basis; is that correct?**
 24 A. That is correct.
 25 **Q. Do you happen to know, with respect to the**

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1 **school's budget, what FTE is assigned to your**
 2 **position as head administrator?**
 3 A. I believe it's a 1.0.
 4 **Q. Okay. You described your responsibilities**
 5 **as -- I heard the word "supervisor." You said that**
 6 **you supervise events; you supervise the teachers,**
 7 **the staff. It sounds like you also have a**
 8 **communication kind of role with the parents --**
 9 **parents' groups and with the council.**
 10 **What -- what is your understanding of --**
 11 **well, are -- of Prestene Garnenez' current role**
 12 **running the school?**
 13 A. Currently, Prestene is the director of
 14 operations.
 15 **Q. Okay.**
 16 A. And she -- she has several roles. She
 17 takes care of our -- our breakfast and our lunch
 18 preparations, as well as submitting the online
 19 menus. She also works in collaboration with me in
 20 processing a lot of our financial payments. That's
 21 basically the role that I see her.
 22 **Q. Okay. You testified that you generally**
 23 **run the daily operations of the school?**
 24 A. Yes.
 25 **Q. Can we take a look at -- let's see --**

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1 **Exhibit K in the white binder? And this is the**
 2 **binder containing DEAP's first set of exhibits,**
 3 **dated October 12, 2017. Do you have a copy of that**
 4 **in front of you?**
 5 A. The white binder only has numbers.
 6 **Q. Oh. You only have our exhibits in the**
 7 **small binder?**
 8 A. And the black one begins at Letter F.
 9 MR. MCMILLAN: Okay. And just for my
 10 information, does the Commission have our binder in
 11 front of it?
 12 COMMISSIONERS: We do. Yeah.
 13 MR. MCMILLAN: Okay. I'm going to
 14 present -- may I approach the witness with a copy of
 15 Exhibit K from DEAP's exhibits? This is the
 16 affidavit of Prestene Garnenez. I apologize for
 17 mispronouncing her name.
 18 **Q. (By Mr. McMillan) Do you see, in**
 19 **paragraph 3 of the affidavit, where Prestene has**
 20 **described her role in running the school?**
 21 A. Yes.
 22 **Q. Do you see where it says that she's**
 23 **responsible for the general day-to-day operations of**
 24 **DEAP?**
 25 A. Yes.

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1 **Q. That's -- that's essentially what you**
 2 **testified to now, that you're responsible for the**
 3 **day-to-day operations of DEAP?**
 4 A. Uh-huh.
 5 **Q. Who's responsible for the day-to-day**
 6 **operations of DEAP?**
 7 A. I am.
 8 **Q. Is Prestene Garnenez -- does she not**
 9 **understand her role, if, in paragraph 3 of her**
 10 **affidavit, she says that she's responsible for the**
 11 **general day-to-day operations of DEAP?**
 12 A. Yes, she does understand her role. And I
 13 will use an example from food services.
 14 I know that when I first arrived, we were
 15 ordering our really big refrigerator. And she did
 16 share a lot of the papers and documents related to
 17 that purchase. So, yeah, she -- you know, she does
 18 have a lot of roles on here.
 19 Another example is the school health and
 20 wellness. I worked in collaboration with her in
 21 editing and inputting some of the documents for the
 22 school wellness program.
 23 So she is the sender of those documents,
 24 and she does send documents for furniture, for food
 25 services, for furniture or equipment, and also the

<p style="text-align: right;">Page 194</p> <p>1 maintenance of facilities. 2 But I am aware of all those activities. 3 Q. Okay. Does Prestene have signature 4 authority on behalf of the school? 5 A. No. 6 Q. Who does have signature authority? 7 A. I do. 8 Q. Is it your understanding that prior to 9 your coming onboard, July 12th, 2017, that Prestene 10 was, in fact, signing financial documents? 11 A. Yes. And I believe that may have possibly 12 happened because there was no administrator. 13 Q. Okay. So there were times in the history 14 of the school where there was, in fact, no Licensed 15 Head Administrator? 16 A. I can't say for sure. But I know that 17 they've gone through several administrators. 18 Q. Okay. But there may have been occasions 19 when Prestene was, in fact, signing documents 20 because there was no head administrator? 21 A. I haven't asked her that question; so I 22 can't say yes or no. 23 Q. Okay. Do you know if Prestene holds a 24 license of any kind? 25 A. No. She has a degree from UCLA in</p>	<p style="text-align: right;">Page 196</p> <p>1 Manager, is it fair to say that there's been a lot 2 of turnover in that position with the school? 3 A. Yes. There has been -- 4 Q. Is it -- oh, I'm sorry. I didn't mean to 5 cut you off. 6 A. Yeah. There has been at least five 7 business managers. 8 Q. Okay. And is it your understanding, based 9 on your review of the history of the school, that 10 there have, in fact, been times during the school's 11 charter when there was no Licensed Business Manager 12 on staff? 13 A. I think for a short while, there -- there 14 may have been a lapse. 15 Q. Okay. Do you know when that short while 16 might have been? 17 A. I'm not sure of the year; but I do know 18 that one of the business managers from NACA 19 resigned, and DEAP did not know of that. 20 Q. And why is that? Does DEAP claim that it 21 hadn't been informed? 22 A. They weren't informed. 23 Q. Okay. Now, you testified that you're 24 aware of the audit findings, as well as the -- well, 25 you said there were over 30 findings. And I guess</p>
<p style="text-align: right;">Page 195</p> <p>1 Planning. 2 Q. Okay. You testified earlier that you 3 reviewed documents that were left behind by the 4 prior head administrator; is that correct? 5 A. That is correct. 6 Q. In reviewing those documents, did you see 7 that Prestene had been signing financial documents? 8 A. No, I didn't see any documents with her 9 signature on it. 10 Q. You didn't see any documents with her 11 signature when she was signing for procurement of 12 necessary items for the school's operations? 13 A. No, I don't remember seeing a procurement 14 with her signature on it. 15 Q. Is it consistent with your testimony that 16 DEAP's most recent -- or what you're calling a 17 current procurement officer -- has only recently 18 received some training in procurement law? 19 A. That is correct. 20 Q. And is it also your understanding that at 21 times during the school's charter, there was 22 actually no properly credentialed procurement 23 officer? 24 A. Yes, that is correct. 25 Q. Okay. With respect to a Licensed Business</p>	<p style="text-align: right;">Page 197</p> <p>1 we can just talk about, as -- well, there were both 2 audit findings from the 2016 audit -- correct? -- 3 A. That's correct. 4 Q. -- and additional findings resulting from 5 the, I believe, June 9th site visit report that the 6 Department did? 7 A. Yes. 8 Q. Okay. Is it your position that the audit 9 findings from 2016, that they have been addressed, 10 or they're in the process of being addressed? 11 A. The 2016 audit findings are in the process 12 of being addressed. 13 Q. Okay. Why -- my question, then, I guess 14 is why wait until essentially the evening before 15 this hearing, the first of these hearings on 16 October 13th, to provide any information to the 17 audit folks at PED regarding the school addressing 18 those findings? 19 A. This is the first time I -- as an 20 administrator, that I've been in a situation where a 21 school is undergoing an audit finding. I'm real 22 familiar with the instructional audit and how to 23 proceed. I wasn't really sure about instructional 24 audits [verbatim] and the process that's involved; 25 but I'm learning as I'm making my way through.</p>

1 **Q. Okay. Was it under your -- were you**
2 **involved in putting together the response that DEAP**
3 **filed with the Commission on October 12th?**

4 A. I would say the majority was already done
5 by DEAP.

6 **Q. Okay. And specifically, by whom?**

7 A. Probably the founders, Sean Fry. I know
8 he came on board a little before I did.

9 **Q. Okay. And did you -- at any point upon**
10 **seeing all of these findings and realizing that they**
11 **had to be addressed, did you make any suggestion**
12 **that they be addressed before, really, the night**
13 **before this hearing started?**

14 A. I think we've been addressing a lot of the
15 audit findings; but, again, like I mentioned
16 earlier, there are several people involved. And
17 contacting people and waiting for their responses,
18 it's --

19 **Q. Okay. And maybe I wasn't clear. But I**
20 **guess my question, better framed, would be why not**
21 **communicate the progress that had been made with PED**
22 **prior to a revocation hearing?**

23 A. If that is a process that I have to take,
24 I will do it in the future.

25 **Q. Okay. You testified that one of your**

1 **primary goals was to rebuild trust. And I**
2 **understood that to mean rebuild trust with your**
3 **network, with your sister schools.**

4 **Is it also fair to say that one of your**
5 **goals would be to rebuild trust with both the**
6 **chartering authority, the PEC, and with the PED, the**
7 **oversight body?**

8 A. Yes.

9 **Q. Wouldn't it be part of rebuilding trust,**
10 **couldn't it reasonably encompass communicating with**
11 **PED with respect to audit findings and other**
12 **negative findings?**

13 A. Yes, it would.

14 **Q. Okay. Yet nothing -- none of this was**
15 **communicated until October 12th; correct?**

16 A. When I first came onboard, I started
17 receiving e-mails from lots of PED people. And, you
18 know, in -- whoever e-mailed me, I introduced myself
19 as the new head administrator. So that was my way
20 of communicating.

21 And I do remember I e-mailed -- what was
22 her name? She testified.

23 THE CHAIR: Molly Saiz.

24 THE WITNESS: No, the other lady, the
25 blonde lady.

1 **Q. (By Mr. McMillan) Katie Poulos?**

2 A. Yes. I know her name, I heard before.
3 And so when she sent me an e-mail, I did respond to
4 her. And she sent me a reply of -- a reminder of
5 our revocation coming up.

6 **Q. I see. In that communication with Katie**
7 **Poulos, did you set forth any of the progress or the**
8 **ideas that DEAP had as far as righting the ship?**

9 A. I don't believe I did. I just made an
10 introductory statement.

11 **Q. Okay.**

12 A. And if she had any questions or concerns,
13 she had my contact numbers.

14 **Q. Okay. So to be clear, no information was**
15 **provided to PED with respect to the audit findings**
16 **or the site visit findings until the response,**
17 **DEAP's response, was filed October 12th; correct?**

18 A. Correct.

19 **Q. Okay. Finally, it was your testimony that**
20 **you received from David Craig an e-mail attaching**
21 **the June 24th letter that you received on**
22 **October 12th; does that sound right?**

23 A. Yeah. I know it was the day before our
24 hearing. It was during lunch, I received that
25 e-mail.

1 **Q. Okay. So it was the day before the**
2 **hearing, at lunch, you received the e-mail. Your**
3 **response, do you -- do you recall the date of your**
4 **response to that e-mail?**

5 A. On my letter, it has October 11th.

6 **Q. It has -- October 11th? And that's**
7 **Exhibit A in the black binder. October 11th is the**
8 **day before October 12th; correct?**

9 A. Yes, it is.

10 MR. McMILLAN: Okay. All right. That's
11 all I have. Thank you.

12 THE CHAIR: Commissioners, are there any
13 questions for this witness?

14 COMMISSIONER CABALLERO: Question.

15 Ms. Poblano, during the time that was
16 mentioned already as to your communication with PED,
17 were you in contact with individuals that were
18 representing the school?

19 THE WITNESS: Individuals from the PED
20 committee or the audit committee?

21 COMMISSIONER CABALLERO: Well, you have
22 representatives here representing the school in
23 defense of the school.

24 THE WITNESS: Okay. Our lawyers.

25 COMMISSIONER CABALLERO: Uh-huh.

<p style="text-align: right;">Page 202</p> <p>1 THE WITNESS: Okay.</p> <p>2 COMMISSIONER CABALLERO: Have you been in</p> <p>3 contact with them prior to the hearing?</p> <p>4 THE WITNESS: Yeah. I know that when I</p> <p>5 first started, about a month later, I do know I had</p> <p>6 a phone conference with Natasha, and we've been</p> <p>7 communicating on a fairly regular basis.</p> <p>8 COMMISSIONER CABALLERO: Did you</p> <p>9 understand what your relationship would be in</p> <p>10 communicating pending -- communicating with PED</p> <p>11 pending the hearing?</p> <p>12 THE WITNESS: No, I didn't. I didn't know</p> <p>13 that there's a process where you have to provide</p> <p>14 them updates.</p> <p>15 COMMISSIONER CABALLERO: Or whether you</p> <p>16 should communicate with PED, and what you should</p> <p>17 communicate with PED. Since you have</p> <p>18 representation, did you understand that?</p> <p>19 THE WITNESS: I know that communication is</p> <p>20 important. And -- you know, and like I mentioned,</p> <p>21 different people that would e-mail me from PED or</p> <p>22 PEC -- I don't think anybody contacted me from PEC.</p> <p>23 But I do know I get a lot of PED contacts through</p> <p>24 e-mail. And I try to keep a fairly ongoing</p> <p>25 communication with them.</p>	<p style="text-align: right;">Page 204</p> <p>1 COMMISSIONER ROBBINS: At that time, I</p> <p>2 think you also stated you had some idea of the</p> <p>3 problems that they had had from a fiscal standpoint.</p> <p>4 THE WITNESS: Yes.</p> <p>5 COMMISSIONER ROBBINS: I guess the</p> <p>6 question -- and I don't want to be, I guess, harsh.</p> <p>7 But knowing that there were problems, did you ask to</p> <p>8 see this? Or did -- was it volunteered to you?</p> <p>9 THE WITNESS: Yes, I did. I did ask to</p> <p>10 see the documents. And like I mentioned, I -- the</p> <p>11 former administrator that was there, she left some</p> <p>12 copies. And so I was just trying to create a</p> <p>13 timeline of the narrative of the different audits</p> <p>14 that took place and where DEAP was in that timeline.</p> <p>15 COMMISSIONER ROBBINS: Okay. Who gave you</p> <p>16 a copy of the review?</p> <p>17 THE WITNESS: I can't remember who gave me</p> <p>18 a copy. I believe Kayla -- not Kay -- yeah, Kayla</p> <p>19 may have given me an electronic copy of the</p> <p>20 testimony that took place in July.</p> <p>21 COMMISSIONER ROBBINS: Okay. Following up</p> <p>22 with what the counsel for PED, Sean [verbatim], had</p> <p>23 asked, if you were given a copy of this in early</p> <p>24 August, it appears that almost two months transpired</p> <p>25 from the receipt of this before there was any</p>
<p style="text-align: right;">Page 203</p> <p>1 COMMISSIONER CABALLERO: That's all,</p> <p>2 Madam Chair.</p> <p>3 THE CHAIR: Commissioner Robbins?</p> <p>4 COMMISSIONER ROBBINS: Yes. Ms. Poblano?</p> <p>5 THE WITNESS: Yes.</p> <p>6 COMMISSIONER ROBBINS: In the white</p> <p>7 binder, under Section 21 -- this was part of Molly</p> <p>8 Saiz' testimony a week and a half ago -- there's a</p> <p>9 letter dated June 9th transmitting the review that</p> <p>10 was performed on DEAP in the spring of 2017,</p> <p>11 basically covering Fiscal Year '16 and '17.</p> <p>12 When was the first time you were given a</p> <p>13 copy or that you saw this letter and the financial</p> <p>14 review?</p> <p>15 THE WITNESS: I -- excuse me,</p> <p>16 Commissioner. Can you hear me?</p> <p>17 THE CHAIR: The green light needs to be</p> <p>18 on.</p> <p>19 THE WITNESS: Okay. Oh.</p> <p>20 As to answer your question, when was the</p> <p>21 first time I saw this audit? I would say sometime</p> <p>22 in August, at the beginning of August.</p> <p>23 COMMISSIONER ROBBINS: You started -- you</p> <p>24 stated that you started on July 12th.</p> <p>25 THE WITNESS: Right.</p>	<p style="text-align: right;">Page 205</p> <p>1 communication back to the PED regarding these</p> <p>2 findings and any actions that would take place.</p> <p>3 Can you explain that gap, which does seem</p> <p>4 like it's a long period of time?</p> <p>5 THE WITNESS: Yeah. Two months? I know</p> <p>6 that I've -- I've been working with the staff at</p> <p>7 DEAP, mainly the two founders, in just getting all</p> <p>8 the different artifacts and evidence to -- to</p> <p>9 address the findings. And I did not address any of</p> <p>10 the PEC members about the -- our audit progress or</p> <p>11 our time frame.</p> <p>12 COMMISSIONER ROBBINS: Did you have any</p> <p>13 problems or any issues in getting information from</p> <p>14 staff at DEAP regarding addressing these findings?</p> <p>15 THE WITNESS: No, I didn't.</p> <p>16 COMMISSIONER ROBBINS: Okay. Thank you.</p> <p>17 That's all.</p> <p>18 THE CHAIR: I just have a follow-up with</p> <p>19 that.</p> <p>20 Do you recall if, during any of the</p> <p>21 governance council meetings that you may have</p> <p>22 attended starting when you -- when you first came</p> <p>23 onboard, if there was any discussion of the audit</p> <p>24 findings, once they were made available in July?</p> <p>25 THE WITNESS: I do remember I addressed</p>

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1 the PEC back in July. It was when I -- it was early
2 on when I first came onboard. And I know it was a
3 legislative meeting in Gallup.

4 THE CHAIR: Correct.

5 THE WITNESS: And in my presentation, I
6 did mention the audit. And I also mentioned that we
7 were -- we were moving forward with it, and we were
8 trying to address as many of the issues as we can.

9 THE CHAIR: Okay. So just so that we're
10 clear, that the presentation at the LESC was not
11 communication to the PEC; it was communication to
12 the LESC.

13 THE WITNESS: Right.

14 THE CHAIR: There were PEC members that
15 were there. But it was not -- that information was
16 not directly related -- relayed to the PEC. That
17 was information that was given to the LESC at that
18 time.

19 But I guess I didn't make myself clear.

20 Since you came on, through governance
21 council meetings, have there been discussions of the
22 audit findings?

23 THE WITNESS: Yes, there have been
24 discussions of audit findings with the governing
25 council.

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1 THE WITNESS: For the PEC hearing.

2 THE CHAIR: That wasn't an audit hearing;
3 that was a revocation hearing.

4 THE WITNESS: Yeah, it was the revocation.

5 THE CHAIR: No. I'm referring to
6 strategies to comply with the requirements of the
7 PED audit to fix the audit findings from 2016. Can
8 you give us more information on when discussions
9 started with the governance council to create those
10 strategies?

11 THE WITNESS: Okay. The strategies with
12 the governance council to cover the audit findings,
13 we talked about it, and we -- you know, we set some
14 timelines. And like I mentioned earlier, we, you
15 know, did our best to try to complete as many of the
16 audit findings as possible, using a very general
17 timeline.

18 And it was basically a month-by-month
19 with -- when we meet with our governing council.

20 THE CHAIR: And just one quick one. Just
21 correct me if I'm wrong. Did you say that you've
22 received a Highly-Qualified Charter grant? Did
23 you --

24 THE WITNESS: Yeah.

25 THE CHAIR: From PED or who's -- who

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1 THE CHAIR: So that there have been -- can
2 you give me an idea as to when strategies to -- to
3 implement the changes that are necessary, when
4 discussions of that began?

5 THE WITNESS: Well, I know that the time
6 frame, the ultimate goal -- because it's been
7 changed several times. We did have those dates as a
8 ultimate goal, to try to get as much of our audit
9 findings looked and corrected and with evidence to
10 support -- or -- and refute the audit findings.

11 And I think with the timeline that I
12 created, it was basically just to try to get as much
13 done a week before the audit hearing and present it
14 to the lawyers.

15 THE CHAIR: And that audit hearing date
16 was -- or is --

17 THE WITNESS: I believe the first one was
18 in August. And then it got moved to October 12th, I
19 believe, and then the 13th.

20 THE CHAIR: You had an audit hearing on
21 October 13th?

22 THE WITNESS: No -- yeah, we did -- well,
23 we didn't have an audit hearing. We came here on
24 October 13th.

25 THE CHAIR: For the PEC hearing.

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1 issued that grant?

2 THE WITNESS: I'm not really sure who
3 issued the grant. But I know that it was -- that I
4 use that as an example of how we, as a team, make
5 decisions on that. But I can't tell you for sure
6 where that grant came from. It was for
7 instructional support.

8 THE CHAIR: But you don't know where those
9 funds come from.

10 THE WITNESS: I believe it was from the
11 State. I can't tell you for sure.

12 THE CHAIR: Okay. Thank you.

13 Commissioner Armbruster?

14 COMMISSIONER ARMBRUSTER: Madam Chair.

15 As a head administrator, you mentioned a
16 couple of minutes ago that it's difficult to secure
17 certified staff, and that your special education
18 teacher comes from Española on a -- not on a daily
19 basis.

20 THE WITNESS: No.

21 COMMISSIONER ARMBRUSTER: So how are you
22 serving your special education children with a
23 licensed special education teacher?

24 THE WITNESS: A lot of our teachers are
25 using differentiated instruction. They use the

<p style="text-align: right;">Page 210</p> <p>1 Common Core standards for reading or math. And they 2 pretty much scaffold it down to their grade level, 3 so that the students that are below grade level or 4 that have Specific Learning Disabilities are being 5 addressed. 6 And I know that I met the special ed 7 teacher when -- I met her once. And she just 8 started. So when, in meeting with her, we talked 9 about how she can provide differentiation training 10 for our teachers to support what they've started at 11 the beginning of the school year. 12 COMMISSIONER ARMBRUSTER: So then there's 13 no direct special education intervention by a 14 specialist for special ed IEP children? 15 THE WITNESS: No. But we have 16 differentiated strategies that we're using with our 17 students. 18 THE CHAIR: Commissioner Johnston? 19 COMMISSIONER JOHNSTON: Thank you, 20 Madam Chair. 21 Ms. Poblano, I apologize if I repeat a 22 question. And if I do, when I say it, it will 23 clarify for both of us, and if you've already 24 answered, we don't have to go through it again. 25 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 212</p> <p>1 I'm looking at -- I'm looking for the FTE, 2 so that it would be on one page for you. Your 3 40-day membership for -- that's '15-'16 and '16-'17. 4 That was last year. If you'll turn over to the next 5 page, that's your end-of-the-year balance. 6 COMMISSIONER TOULOUSE: Page 4. 7 COMMISSIONER JOHNSTON: Yes. Thank you. 8 And on Page 4 -- I'm looking at the bottom of Page 4 9 in Section VIII [verbatim]. I'm looking at a 10 proposed FTE of 1.24. 11 And in looking at your budget, that's also 12 presented that was approved at the beginning of the 13 year. I'm looking at that same total full-time 14 equivalent. 15 So -- and you said you were a -- a 16 1-point? You're full-time? 17 THE WITNESS: Yes, I am full-time. 18 COMMISSIONER JOHNSTON: Can you tell me 19 how your salary is divided within the budget? 20 Because according to what I'm -- and I'm not an 21 expert at budgets. But what I'm looking at, I'm 22 only showing about 30 percent. So is your salary 23 taken from different areas in the budget? 24 THE WITNESS: I believe it is not. 25 COMMISSIONER JOHNSTON: Okay. Thank you.</p>
<p style="text-align: right;">Page 211</p> <p>1 COMMISSIONER JOHNSTON: Looking at today, 2 what is the current enrollment? Student enrollment? 3 THE WITNESS: Currently, we have 4 28 students enrolled. 5 COMMISSIONER JOHNSTON: So that's up from 6 the 40th day. 7 THE WITNESS: It's been -- that's been our 8 current enrollment since the beginning of the school 9 year. 10 COMMISSIONER JOHNSTON: Okay. 'Cause I -- 11 okay. How many of those are on IEPs or special ed 12 students? 13 THE WITNESS: Five. 14 COMMISSIONER JOHNSTON: What is the total 15 staffing full-time equivalent? What would be in the 16 budget? 17 THE WITNESS: The total staffing? I would 18 say that staffing takes about at least 80 percent of 19 our budget. 20 COMMISSIONER JOHNSTON: That's your 21 budget. But if you'll look in the white notebook, 22 if you'll look at Section 14 and the -- the first 23 page, Budget Analysis -- I'm looking at your '16-'17 24 average -- down in the very last -- "C," I'm looking 25 at 23 students that you closed out last year with.</p>	<p style="text-align: right;">Page 213</p> <p>1 You stated you have a licensed EL teacher, 2 instructor, Ms. Begay; is that correct? 3 THE WITNESS: Yes. 4 COMMISSIONER JOHNSTON: So she services -- 5 do you know how many students you have who are EL 6 students classified? 7 THE WITNESS: We have about between 12 and 8 14. 9 COMMISSIONER JOHNSTON: Thank you. And 10 Ms. Begay's salary, I think, is also shown 11 throughout the budget in different places. Because 12 is she not a full-time employee? 13 THE WITNESS: She is a full-time employee. 14 COMMISSIONER JOHNSTON: All right. So 15 there are different areas where I need to look. 16 How many members on the school board 17 today? 18 THE WITNESS: There are a total of five. 19 COMMISSIONER JOHNSTON: Five school board 20 members. Have you established an audit committee or 21 a budget committee? 22 THE WITNESS: We have established a budget 23 committee. 24 COMMISSIONER JOHNSTON: Okay. And how 25 large is that committee?</p>

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1 THE WITNESS: There's two members on
 2 there.
 3 COMMISSIONER JOHNSTON: There's two
 4 members. Who are those members?
 5 THE WITNESS: I believe it's Benita. And
 6 we have a parent, Regina -- I can't remember her
 7 last name.
 8 COMMISSIONER JOHNSTON: That's all right.
 9 I just need to -- answering these questions.
 10 You stated that you worked both with
 11 Gallup-McKinley and with the Zuni School Districts
 12 in New Mexico.
 13 THE WITNESS: That is correct.
 14 COMMISSIONER JOHNSTON: But you also
 15 stated you worked in Arizona.
 16 THE WITNESS: Yeah. I was a classroom
 17 teacher in Arizona with the Window Rock School
 18 District.
 19 COMMISSIONER JOHNSTON: All right. Your
 20 last administrative position was where?
 21 THE WITNESS: With the Zuni Public School
 22 District.
 23 COMMISSIONER JOHNSTON: And what was your
 24 position there?
 25 THE WITNESS: I was the elementary

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1 finances and school operations.
 2 COMMISSIONER JOHNSTON: As you submit your
 3 monthly budget reports to the State of New Mexico --
 4 THE WITNESS: No, we have not submitted.
 5 COMMISSIONER JOHNSTON: You have not
 6 submitted any yet this fiscal year, none of the
 7 monthly reports.
 8 THE WITNESS: No. No.
 9 COMMISSIONER JOHNSTON: And is there a
 10 reason for that?
 11 THE WITNESS: We just became aware of
 12 that, just recently.
 13 COMMISSIONER JOHNSTON: Okay. And so you
 14 were unaware that you needed to submit?
 15 THE WITNESS: Right. I did not know we
 16 had to submit.
 17 COMMISSIONER JOHNSTON: Has there been
 18 difficulty with creating these monthly reports?
 19 THE WITNESS: I don't know. I haven't had
 20 experience with it.
 21 COMMISSIONER JOHNSTON: Okay. Your
 22 relationship with Mr. Fry, your School Business
 23 Official, how often do you see him?
 24 THE WITNESS: Pretty much on a weekly
 25 basis. I don't see him; but I communicate with him

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1 principal for Shiwi Ts'ana Elementary.
 2 COMMISSIONER JOHNSTON: All right. And
 3 that was just this last year.
 4 THE WITNESS: Yeah.
 5 COMMISSIONER JOHNSTON: How long were you
 6 there?
 7 THE WITNESS: I was there two years.
 8 COMMISSIONER JOHNSTON: Two years. Were
 9 you an administrator at any time during your
 10 Gallup-McKinley service?
 11 THE WITNESS: Yes, I was.
 12 COMMISSIONER JOHNSTON: For how long?
 13 THE WITNESS: I was at Navajo El for two
 14 years.
 15 COMMISSIONER JOHNSTON: Two years. Since
 16 July and your arrival at DEAP, what activities have
 17 consumed the majority of your time as a principal?
 18 THE WITNESS: Because it's a really small
 19 school, in general, in my experience, a lot of my
 20 investment would be in instructional leadership and
 21 community and parental leadership areas. When I
 22 arrived at DEAP, it's kind of turned in a different
 23 direction, because I'm overseeing a lot of different
 24 programs and roles and responsibilities. I would
 25 say that the majority of my time has been spent on

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1 on a weekly basis.
 2 COMMISSIONER JOHNSTON: All right. And
 3 you have a copy of the school budget that was
 4 presented and was approved.
 5 THE WITNESS: Yes.
 6 COMMISSIONER JOHNSTON: And do you work
 7 with that budget with whomever is on site as you
 8 work through your daily expenditures?
 9 THE WITNESS: Yes.
 10 COMMISSIONER JOHNSTON: And do you have
 11 access to the software, to the finance software, so
 12 that you can monitor --
 13 THE WITNESS: Yeah, I have access to the
 14 OBMS.
 15 COMMISSIONER JOHNSTON: Yes.
 16 THE WITNESS: And that's where, if there
 17 needs to be budget adjustments with BARS, that's
 18 where I sign in. And I also approve a lot of the
 19 financial documents on the OBMS.
 20 COMMISSIONER JOHNSTON: All right. So you
 21 see where those expenditures are coming from the
 22 budget.
 23 Are you aware of the -- the dollars
 24 allocated to fund Mr. Fry's contracted position in
 25 this current budget? Do you know what that amount

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1 is?

2 THE WITNESS: It's -- right now, I would

3 say -- and this is a ballpark figure -- in the

4 \$40,000; \$30,000 to \$40,000.

5 COMMISSIONER JOHNSTON: Okay. And again

6 I'm not an expert, but I'm looking at the budget. I

7 see \$7,000.

8 THE WITNESS: Okay.

9 COMMISSIONER JOHNSTON: And I know -- and

10 correct me if I'm wrong. I'm asking you. In the

11 work that you have done with the Budget Department

12 here with Mr. Craig and the folks who work here at

13 PED, I don't know how much contact you have with

14 them, because as the principal, it's not your

15 primary responsibility. But in working with

16 Mr. Fry, I know that the budget was created to

17 utilize the dollars that were projected at the

18 beginning of the year. Those dollars were very

19 conservative dollars.

20 THE WITNESS: Yes.

21 COMMISSIONER JOHNSTON: And you had to put

22 in numbers that would fit. So you're -- I'm sure

23 you're making budget adjustments. How much is the

24 Teacher Quality Grant?

25 THE WITNESS: The Teacher -- I'm not

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1 COMMISSIONER JOHNSTON: Who wrote that?

2 THE WITNESS: I know it started with

3 Prestene and possibly other staff members. And

4 before it was submitted or uploaded to the Web EPSS,

5 we looked at it. Prestene and I looked at it, and

6 we tweaked a little wording here and there. There

7 was just one section that needed to be addressed,

8 and we worked on it, and we submitted it.

9 COMMISSIONER JOHNSTON: Okay. What was

10 that section?

11 THE WITNESS: I believe it was something

12 to do with evacuation or drills or something like

13 that.

14 COMMISSIONER JOHNSTON: Are you having

15 your fire drills?

16 THE WITNESS: Yeah.

17 COMMISSIONER JOHNSTON: And how do you

18 document those in your office?

19 THE WITNESS: When a fire drill happens,

20 we all go outside. And I'm a timer; another person

21 is a timer. And we make sure that all our students

22 are accounted for. Each teacher has their own

23 classroom list, and the numbers are reported to us.

24 And once we have everyone accounted, including

25 staff, we dismiss, and then we go back in. And then

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1 familiar with the Teacher Quality Grant.

2 COMMISSIONER JOHNSTON: Or the High -- the

3 one that we asked you about -- Highly-Qualified --

4 thank you -- Highly-Qualified Charter.

5 THE WITNESS: I know that each of us had

6 to spend about \$6,000 -- I would say about -- and

7 this is a ballpark figure --

8 COMMISSIONER JOHNSTON: That's all right.

9 THE WITNESS: -- because it's -- I would

10 say in the \$1,800s to \$20,000.

11 COMMISSIONER JOHNSTON: I saw \$39,000 as a

12 total grant figure when I was looking at it.

13 THE WITNESS: Okay.

14 COMMISSIONER JOHNSTON: I looked at -- if

15 I look at your Central Services, I saw many zeros in

16 your projected budget that were a concern to me. I

17 don't know, based on the projected and what you've

18 done monthly -- and these are more appropriate

19 questions for Mr. Fry -- just looking as the school

20 principal and time consumed with finances, this

21 budget, these pieces of paper, I know are very

22 important to you.

23 You talked about the health and wellness

24 policy.

25 THE WITNESS: Yeah.

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1 Prestene fills out the form for the total time it

2 took.

3 COMMISSIONER JOHNSTON: Okay. I think

4 there is some questions about the way I'm going. Am

5 I headed inappropriately?

6 THE CHAIR: I don't think that's within

7 the scope of the revocation hearing, their health

8 and wellness policy.

9 COMMISSIONER JOHNSTON: It was brought up.

10 That's why I wrote it down. It came up in the

11 testimony. So let's see if I -- I'm looking.

12 You are -- you are -- I think you've

13 answered that one.

14 Your relationship -- and this has -- I'm

15 asking this because of finance -- your relationship

16 financially with CES.

17 THE WITNESS: CES? Who is CES?

18 COMMISSIONER JOHNSTON: CES is the vendor

19 you use in your procurement process so that you can

20 piggyback on contracts. You go through them so you

21 don't have to get the bids and do all of that.

22 Have you met anyone from there yet?

23 Cooperative Education Services?

24 THE WITNESS: No, I haven't.

25 COMMISSIONER JOHNSTON: Okay. All right.

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1 Thank you very much. I appreciate it.
 2 THE WITNESS: Okay. Thank you.
 3 THE CHAIR: Commissioner Toulouse?
 4 COMMISSIONER TOULOUSE: Madam Chair.
 5 Ms. Poblano, I'm not going to
 6 cross-examine. I'm just going to ask you, what kind
 7 of contacts have you had with the Charter School
 8 Division and with the financial people? Have you
 9 had them frequently? How have they gone? Have you
 10 gotten the answers you need? Have you reached out
 11 to them? Have they reached out to you?
 12 THE WITNESS: No, I have not reached out
 13 to the Charter School --
 14 COMMISSIONER TOULOUSE: Division.
 15 THE WITNESS: -- Division.
 16 COMMISSIONER TOULOUSE: Why not?
 17 THE WITNESS: I don't know.
 18 COMMISSIONER TOULOUSE: Okay. Well, I'm
 19 just -- I'm trying to find out. Because part of
 20 their job is to help figure out a lot of this. And
 21 I'm finding many schools are no longer reaching out;
 22 so -- but did -- how frequently have you met with
 23 Mr. Craig or his staff? Or have you talked to them?
 24 THE WITNESS: No, I have not talked to
 25 Mr. Craig's staff.

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1 COMMISSIONER TOULOUSE: Okay. Because to
 2 me, that's another loophole. Not on your part. I
 3 had asked him when he was here in the summer to
 4 reach out to you folks.
 5 So, thank you.
 6 THE CHAIR: Commissioner Peralta?
 7 COMMISSIONER PERALTA: Ms. Poblano, are
 8 you currently teaching sixth and seventh grade
 9 science at the school?
 10 THE WITNESS: No, I am not.
 11 COMMISSIONER PERALTA: Have you ever? Did
 12 you ever begin in that capacity?
 13 THE WITNESS: Yes, I did begin the school
 14 year teaching -- it started with ELA Science, and
 15 then it got changed to -- excuse me. Go back. I
 16 started out with ELA Science and then ELA Sixth
 17 Grade, and then Study Skills. And it was just a
 18 matter of tweaking our schedule. And I just filled
 19 in as a teacher as we were working through our
 20 schedule.
 21 COMMISSIONER PERALTA: So on July 12th,
 22 when you came onboard with the school district, were
 23 you initially hired as a teacher or as an
 24 administrator?
 25 THE WITNESS: I was hired as an

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1 administrator.
 2 COMMISSIONER PERALTA: Okay. How long did
 3 you spend time in the science class?
 4 THE WITNESS: It was only for one block
 5 for about less than a week.
 6 COMMISSIONER PERALTA: Okay. Thank you.
 7 THE CHAIR: Okay. I just have one quick
 8 follow-up.
 9 You mentioned that the Director of
 10 Operations helps with payments. Could you just
 11 expand on that a little bit?
 12 THE WITNESS: Okay. When the mail is
 13 received -- and I'm going to use this past week as
 14 an example. A lot of our bills come in through the
 15 mail. And our secretary, our office secretary,
 16 Karen, collects the mail. She brings it in. She
 17 opens some; Prestene opens some.
 18 And any bills that come in, like our
 19 electricity bill, our Xerox bills, all our
 20 utilities, Prestene shares them with me.
 21 And we look at it -- I know there was a
 22 big spike in expenditure with our NTUA bill. That
 23 was because we increased our Internet.
 24 So we talked about that. And then I sign
 25 them. I put, "Okay to pay," date it, initial my

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1 signature. And payment is processed through Sean
 2 Fry.
 3 THE CHAIR: Okay. Thank you.
 4 Commissioner Conyers?
 5 COMMISSIONER CONYERS: Just one question.
 6 I know -- [feedback]. I know I don't like that.
 7 MS. KATIE POULOS: For any of you that
 8 have your microphones up, put them down and turn
 9 them off when you're not using them, and that will
 10 eliminate feedback.
 11 COMMISSIONER CONYERS: Okay. I'll try
 12 again here.
 13 I think most of us understand, when you're
 14 the head administrator, that you're -- you don't do
 15 all the work. But ultimately, you're responsible
 16 for -- for what happens in the school to a great
 17 extent.
 18 And my question -- I know you sign things.
 19 Do you feel comfortable that the -- when you do sign
 20 off on things that you're in agreement, and you do
 21 understand the implications?
 22 THE WITNESS: Yes.
 23 COMMISSIONER CONYERS: Okay. Thank you.
 24 THE CHAIR: Commissioners, any more
 25 questions?

1 COMMISSIONER TOULOUSE: Madam Chair, I'd
2 like to ask you a question of -- it seems to me our
3 closure was for the financial problems. And I see
4 people veering into way other areas that were not
5 part of the closure, including some of the academic
6 area, which was never one of our issues or problems
7 here.

8 Is that appropriate or not? I'm asking
9 you as the Hearing Officer.

10 THE CHAIR: Well, outside of the single
11 question that -- about the -- whether she's
12 currently teaching, I -- we haven't really delved
13 into education matters.

14 And the revocation letter did expand
15 beyond just the financial. There were the concerns
16 about the Director of Operations, the concerns about
17 unlicensed -- not having a Licensed Head
18 Administrator. So that I will refer you to that
19 letter, because it did expand on -- just beyond the
20 financial issues was part of the revocation letter.

21 COMMISSIONER JOHNSTON: And, Madam Chair,
22 if I may, I addressed the health-and-wellness
23 because it is a policy; and that's a part of
24 organization and policy. And that was where that
25 question was coming from.

1 A. My full name is Sean Dolan Fry. S-E-A-N,
2 F-R-Y.

3 **Q. And who is your current employer?**

4 A. I'm currently employed by the Vigil Group.

5 **Q. And how long have you been employed there?**

6 A. Let's see. This is our fifth year of
7 operation.

8 **Q. And what is your job title?**

9 A. I am a Lead Business Manager of the Vigil
10 Group.

11 **Q. Do you hold any licenses or certifications
12 that are relevant to the business management
13 services that you provide?**

14 A. I do. I hold a Level 2 Business
15 Official's License.

16 **Q. Do you provide business management
17 services exclusively to charter schools?**

18 A. No, not exclusively.

19 **Q. And how many charter schools have you
20 worked for?**

21 A. Ooh. Currently, I -- myself and an
22 assistant work with ten schools, including two
23 closures. And I oversee a team that handles another
24 nine, one of which is a closure. And then I also
25 assist with almost all of our clients on payroll.

1 THE CHAIR: Thank you. Thank you.

2 THE WITNESS: Okay. Thank you.

3 THE CHAIR: Commissioners, do we need to
4 take a wellness break --

5 COMMISSIONER CABALLERO: Yes.

6 THE CHAIR: -- before Mr. Fry starts?

7 Because this may be long.

8 MR. SEAN FRY: Fair enough.

9 THE CHAIR: So we'll take a -- we'll try
10 for ten; we'll definitely be back in 15.

11 (Recess taken, 12:16 p.m. to 12:31 p.m.)

12 MS. CUYLEAR: If I may, before I begin,
13 can I get where we are on the time for our case
14 presentation, how much time we have left?

15 MS. FRIEDMAN: Yes, ma'am. You have
16 44 minutes and 30 seconds.

17 MS. CUYLEAR: Forty-four minutes. Okay.
18 Thank you.

19 SEAN FRY,

20 after having been previously sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. CUYLEAR:

24 **Q. Would you please state your name for the
25 record?**

1 **Q. Are there certain challenges that you face
2 in providing business management services to charter
3 schools?**

4 A. That I face? A lot of the schools that we
5 work with, or a good number of them, are rural; so
6 it's trying to maintain and use all avenues of
7 communication with them. There is challenges that
8 they face.

9 **Q. So let's talk a little bit about your work
10 with DEAP Charter School.**

11 **When were you first contacted by DEAP
12 Charter School?**

13 A. I was brought into -- for DEAP Charter
14 School -- I believe it was the second week in June
15 of 2017.

16 **Q. And who -- who from the school contacted
17 you?**

18 A. I was actually reached out -- the Vigil
19 Group was reached out to by Ms. Charlotte Archuleta
20 about providing services that were in excess of what
21 she said she could do as a result of a hearing that
22 had occurred. This was a conversation that took
23 place on Friday. And then we had a call set up --
24 or on a Thursday. And then we set up a call for the
25 following Friday with Dr. Jimenez and Ms. Garnenez

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1 and Charlotte Archuleta.

2 **Q. Okay. So at the time that Charlotte**

3 **Archuleta contacted you, did she communicate to you**

4 **that she was unable to complete the work, the**

5 **business management work, for DEAP on her own?**

6 A. Yes. She basically said that what was

7 needed, or what David Craig said he wanted, was more

8 than she was able to do by herself, and especially

9 in the limited time frame.

10 **Q. And then when were you and the Vigil Group**

11 **retained to provide services to DEAP?**

12 A. It would have been I believe later that

13 following week after we had our conversation on

14 Monday, I maybe got a contract on that Wednesday or

15 Thursday.

16 **Q. Okay. So maybe third week in June? End**

17 **of June?**

18 A. Roughly, yes.

19 **Q. Okay. And for what purpose were you and**

20 **the Vigil Group retained?**

21 A. Specifically, the Vigil Group was retained

22 to provide a reconciliation of cash and account

23 balances, as well as general ledger activity through

24 that current time period, as well as finalizing

25 FY17.

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1 the NMPSIA information, the ERB and Retired Health

2 Care, and was able to pinpoint what those

3 transactions were so I could put what they were on

4 my spreadsheet.

5 I then requested documents, anything that

6 was available in any form I could, from DEAP, and I

7 was provided access to a secure Google share drive,

8 which had financial records going back for FY16 and

9 FY17, broken out by year. I opened up each file,

10 then broke them out by vendor.

11 So I went through and looked at each file

12 by vendor that was listed and looked for checks,

13 because there was copies of all the checks, as well

14 as looked for invoices that documented the items

15 that were being paid for.

16 Once this work was done, I contacted the

17 school and requested permission to speak to their

18 payroll company. They used a third-party payroll

19 company, ADP. I spoke with ADP and was given access

20 to run reports. I looked at all the payrolls that

21 has been ran, all of FY17, entered those into

22 another spreadsheet, and then spoke with the school,

23 spoke with -- at this time, I believe I spoke with

24 Veronica Chavez, who is the school's Executive

25 Budget Analyst to find out what funding sources they

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1 **Q. Okay. And what steps did you take in**

2 **order to begin this work? Generally.**

3 A. Generally. All right. So initially, I

4 started a comparison of their audited financials

5 from FY16 and looked at their trial balances for

6 their cash report, as well as what was in their

7 current software, the AptaFund 4.1 program, as well

8 as the information I had been given, as well as the

9 general ledger detail from the previous business

10 manager out of the Abila software.

11 From there, I reached out to the school,

12 and Charlotte, specifically, gave me copies of bank

13 statements, which were through the month of June at

14 this time.

15 I had a letter signified -- basically sent

16 a copy of our agreements with DEAP for both Retired

17 Health Care Authority and to ERB requesting backup

18 documentation, any proofs of payments for all of the

19 amounts remitted through May of 2017 all the way

20 back through June of 2016.

21 And then I started looking at every single

22 bank statement, and on an Excel spreadsheet, listed

23 every transaction; so just if there was a debit or

24 credit, it was listed.

25 Then I contacted and went through and got

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1 had.

2 I requested copies of all of the contracts

3 for employees, as well as agreements for these

4 grants. And I just began filling in the blanks on

5 my -- what I called my "Bank Reconciliation

6 Spreadsheet."

7 So I pinpointed who got paid, how much,

8 what date, and when did it clear.

9 And the same thing for deposits. I

10 requested access for all the school's deposits so I

11 could verify what account coding was used.

12 **Q. So it does sound like you had to request a**

13 **lot of financial information from the school. Did**

14 **you fail to receive any documents from the school**

15 **that you had requested?**

16 A. No, I did not. At the end, using

17 sequential analysis, there were only three

18 transactions that I couldn't pinpoint, one of which

19 actually came from a previous year.

20 So I was able to get that information.

21 And when I talked to the school, the first time I

22 visited, they pulled out a notebook and showed me

23 copies of two voided checks. And that filled

24 everything that I was missing.

25 **Q. And so you personally participated in this**

1 **work -- completing this work for DEAP?**

2 A. I did this work solely, correct.

3 **Q. Did you have regular communication with**
4 **the Public Education Department during this time,**
5 **since you've signed on as the school's business**
6 **manager?**

7 A. Some of the clients that I work with are
8 under PED takeover financially. So I have multiple
9 conversations a week, typically, with David Craig.
10 And so we did talk about the school's finances, the
11 work I was doing. We did have some conversations
12 off the record, in which case, you know, he did tell
13 me that he would never sign off on any work that I
14 did because he personally didn't do it himself.

15 But I told him what I was doing and the
16 methodology and some of my preliminary results. And
17 he, you know, basically said, "Well, that's good."
18 But I believe he took it with a grain of salt, of
19 course.

20 **Q. Would you say DEAP's financial records**
21 **were kept in good condition, based on everything you**
22 **reviewed?**

23 A. As far as their financial records being
24 separated by fiscal year and by vendor and, for the
25 most part by payments, listing backup documentation,

1 cash, respectively, I would say they're in an
2 exceptional place when we're looking at cash book
3 accounting or checkbook accounting, which is what we
4 are.

5 **Q. And based on what you have seen completing**
6 **this work for DEAP, have DEAP's financial records**
7 **been appropriately reconciled?**

8 A. Yes, they have.

9 **Q. Did you find any variances?**

10 A. I found variances between cash balances
11 that the school has had on their books versus what
12 was reported in their audit. The total variance
13 came to \$1,600.

14 I spoke with their auditor about it, and
15 they basically said that there was a lot of
16 questions about where some of their funding sources
17 came in. And a lot of that pertains to the Uniform
18 Chart of Accounts that the State uses doesn't
19 address every opportunity for a grant to come in or
20 money to come in. So they have things called
21 "Private Direct Categorical Grants." And that's
22 just one fund. So when we do accounting broken out
23 by fund, it just says, "29102, Revenue and
24 Expenditures."

25 It doesn't detail how much came out of

1 copies of invoices, and scanned copies of signed
2 checks, that is honestly more than some clients that
3 I see.

4 **Q. So you did --**

5 A. As far as the copies of the checks.

6 **Q. So they were kept in okay condition? Good**
7 **condition?**

8 A. I would say good condition, yes.

9 **Q. You also stated in your affidavit, which**
10 **is Appendix H to DEAP's written response, that the**
11 **finances of the school are in an exceptional place;**
12 **is that correct?**

13 A. I did, yes.

14 **Q. And what did you mean by that statement?**

15 A. So for me, when I was analyzing their cash
16 position, I found that based on the school's budget,
17 that they carry over 30 percent of operational cash.
18 And going into this year, which is going to be --
19 should be confirmed by their audit, which they're
20 currently in the course of doing, as well as overall
21 cash carryover in an amount that totaled about
22 \$170,000, which represented 36 percent of their
23 total budgeted revenues.

24 So if you'd tell me you have a district
25 that can carry over 30 percent cash, or 36 percent

1 this grant, this grant, this grant. And currently
2 this year, they have four different grants located
3 within that one fund code.

4 **Q. Did you find that DEAP's financial records**
5 **had the variances that were reported by the Public**
6 **Education Department?**

7 A. I did not. When I first came on, I didn't
8 honestly look to see at all what condition the
9 school's books were. I wanted to attack my work,
10 which was to completely reconcile, using a rebuild,
11 you know, completely going through all the activity
12 that occurred.

13 When I finally went into the system, I saw
14 that the transactions had not been recorded since
15 March 31st of 2017, other than the system generating
16 entries which would process nonpayroll checks; so AP
17 checks or vendor checks. And that's because they
18 used that third-party payroll company.

19 After each payroll, than the business
20 analyst, or the business manager, has to take that
21 information and input it into the system in the form
22 of a journal entry. So that had not occurred. But
23 I didn't receive a shoebox.

24 **Q. That's good. So they don't keep their**
25 **records in shoebox?**

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1 A. Not that I've ever seen since I've been
 2 there.
 3 **Q. Did you assist DEAP with revising their**
 4 **fiscal policies and procedures?**
 5 A. I did, yes.
 6 **Q. And then have you offered any training for**
 7 **DEAP's governing council and staff with regards to**
 8 **sound fiscal policies and procedures?**
 9 A. I did, yes, and I completed that, yes.
 10 **Q. When did that training take place?**
 11 A. I want to say that training took place in
 12 August. Now, the law had changed recently
 13 permitting -- or overseeing who was allowed and
 14 authorized to do those trainings. They had to get
 15 permission from the PED.
 16 So this training was just all informative.
 17 It's not hours that were being used for the normal
 18 required hours of any governing council member.
 19 **Q. In your opinion, do the revisions to**
 20 **DEAP's fiscal policies and procedures help to ensure**
 21 **that all purchasing and procurement requirements are**
 22 **met, according to federal and state requirements?**
 23 A. The financial policies and procedures that
 24 were adopted do, at the time, yes; and as far as I'm
 25 aware, still do.

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1 **Q. And to the best of your knowledge, are**
 2 **DEAP's staff currently following DEAP's revised**
 3 **fiscal policies and procedures?**
 4 A. To the best of my knowledge, yes.
 5 **Q. Are you familiar with the final budget**
 6 **documents for Fiscal Year 2017-2018 that DEAP**
 7 **submitted to the Department?**
 8 A. I am familiar with them. I briefly
 9 reviewed them; but I didn't have anything to do with
 10 their creation.
 11 **Q. Okay. And did you request a copy of those**
 12 **documents from the Department?**
 13 A. Yes, I did.
 14 **Q. Okay. If you can turn to Exhibit C in the**
 15 **black notebook.**
 16 A. (Witness complies.)
 17 **Q. Actually, first, can you turn your**
 18 **attention to Exhibit B? Is this the e-mail that you**
 19 **sent to the New Mexico Public Education Department**
 20 **to request a copy of the final budget documents?**
 21 A. Yes, it is. It's an e-mail that I sent to
 22 their Executive Budget Analyst, Veronica Chavez.
 23 **Q. Okay. And now, if you can turn to**
 24 **Exhibit C, are these the budgets documents for DEAP**
 25 **that you received from the State in response to your**

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1 **e-mail?**
 2 A. Yes, they do appear to be so.
 3 **Q. And is it your understanding that based on**
 4 **these documents, DEAP's operating budget for Fiscal**
 5 **Year '17-'18 was approved?**
 6 A. Yes. The first document that's listed at
 7 the very bottom corner on the right-hand side,
 8 901BCS-10 is the signed budget approval sheet. So
 9 it's signed by the board, and then two copies are
 10 sent to the PED, where it's reviewed and signed off
 11 by Director David Craig, and, then, also at the
 12 time, it's also signed off by the Deputy Secretary
 13 of Finance, which at the time was Paul Aguilar.
 14 **Q. So DEAP does have a current and approved**
 15 **operating budget for this fiscal year, '17-'18?**
 16 A. Yes, they do.
 17 **Q. Do you have an opinion as to the cause or**
 18 **causes of DEAP's financial issues?**
 19 A. Number one, I think it was their transfer
 20 and utilization of a software that, in my
 21 experience, I'd never ran across, which was
 22 Samsung's Abila software. I've heard of schools
 23 using Excel spreadsheets. I've seen schools using
 24 other proprietary software; primarily, it's Visions
 25 or Apta, for charter schools that I've seen in the

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1 State of New Mexico. I was not familiar with the
 2 Abila software.
 3 Then we also could never get access to
 4 that software to verify any of the original
 5 information coming -- or supposedly coming out of
 6 that system. We reached out to some tech support.
 7 And we even have the manual; but still, we were
 8 never really able to get logged in prior to that
 9 license expiring.
 10 **Q. And DEAP is currently not using that Abila**
 11 **software anymore?**
 12 A. No. DEAP is on the AptaFund 4.1 system.
 13 **Q. And in your opinion, would you say that**
 14 **DEAP had serious financial issues based on the work**
 15 **that you completed?**
 16 A. Not that I saw, nothing that puts them far
 17 worse than any of the clients that I've seen or
 18 schools that we've taken over and looked at their
 19 books.
 20 I found them to be in, like I said, above
 21 average condition as far as their record-keeping.
 22 And then once I did the reconciliation for their
 23 general ledger, presented the governing council with
 24 the journal entry to align those numbers, it was
 25 very little change. It was just mostly account code

1 corrections for using account codes that wouldn't
2 upload to the State.

3 **Q. Can you describe the ongoing work that you**
4 **perform for the school?**

5 A. So starting July 1, the Vigil Group was
6 contacted to be the business management contractor,
7 services provider, for DEAP School. I'm their
8 assigned business manager. I handle their financial
9 operations, as far as I run their payrolls.

10 I submit the reports to the -- to both
11 Louella and to -- I copy Christine that show who's
12 getting paid, how much everyone is getting paid.

13 We do the finance reports that I send to
14 the governing council monthly. I do, you know,
15 receive periodic phone calls and e-mails from both
16 Christine and Louella asking about the current
17 budget position.

18 We handle, like I said, everything from
19 the purchasing, procurement, to the reporting.

20 **Q. And, then, so how often do you communicate**
21 **with DEAP with regards to this work that you**
22 **perform? Is it on daily basis?**

23 A. I'd say it's close to a daily basis,
24 communicating with either Louella, or sometimes
25 directly with the governing council president, or

1 A. I have not.

2 **Q. Okay. Now, turning back to the document**
3 **marked as Exhibit 18, did you receive a copy of this**
4 **document in the mail?**

5 A. No, I did not.

6 **Q. Okay. Do you know if the school received**
7 **a copy of this document in the mail?**

8 A. I was told that they did not.

9 **Q. Okay. When did you first learn of the**
10 **existence of this document and its contents?**

11 A. I learned of the document when I received
12 it. I learned of its contents when I had a phone
13 conversation with David Craig on that Wednesday. So
14 that would have been the 11th. And before that, it
15 had been discussed the day before when the Executive
16 Budget Analyst asked me to type up a quick summary
17 of the financial situation for DEAP for what I
18 anticipated was for the purpose of this hearing.

19 And then she said, "You're on monthly
20 reporting, aren't you?"

21 And I said, "No."

22 She said, "Well, I think you are."

23 And I said, "We don't know, have never
24 heard anything about that."

25 She said, "Let me check my e-mails and

1 with Prestene, or with Kayla.

2 **Q. And how often do you visit the school?**

3 A. I've been out to the school twice since we
4 started. So we try and go to the clients that are
5 out of town at least quarterly. So right now, we
6 just don't get to go out there because of audit and
7 other meetings; but it's at least quarterly.

8 **Q. Okay. Mr. Fry, if you can turn to**
9 **Exhibit 18 in the white notebook.**

10 A. (Witness complies.)

11 THE CHAIR: I'm sorry. What was that
12 number?

13 MS. CUYLEAR: Exhibit 18.

14 **Q. (By Ms. Cuylear) Is that the letter from**
15 **David Craig?**

16 A. (Witness indicates.)

17 **Q. Are you familiar with this document,**
18 **Mr. Fry?**

19 A. Yes, I am.

20 **Q. Is that letter signed?**

21 A. No, it is not.

22 **Q. Have you received a signed copy of this**
23 **letter?**

24 A. I have not.

25 **Q. Have you seen a signed copy?**

1 I'll get back to you."

2 Then there was a phone call from David
3 Craig on Wednesday. I was out of town. I called
4 him back. And that's when we discussed this, among
5 some other issues that I've already discussed as far
6 as their financial situation, my work.

7 **Q. So is it -- are you saying that you**
8 **learned of the monthly reporting requirement for the**
9 **first time on October 11th, 2017, via e-mail from**
10 **David Craig; is that correct?**

11 A. Correct, with the attachment, yes.

12 **Q. Okay. Assuming DEAP, and you, as the**
13 **school's business manager, had received this letter**
14 **back in July, would DEAP have been able to comply**
15 **with the monthly reporting requirement at that time?**

16 A. Yes. The monthly reporting requirement is
17 simply to take the -- the information and the
18 activity that's gone through that time period and
19 export it, upload it to the State so that they can
20 run revenue and expenditure reports and then fill
21 out a cash report based on those figures. And
22 that's information that's given to the board monthly
23 anyway.

24 **Q. The Department has alleged that DEAP is**
25 **behind on required financial reporting. Would you**

1 **agree with this statement?**

2 A. They are currently not. So both July and
3 August's monthly cash reports were submitted to the
4 Department. And the report is typically -- schools
5 are typically on -- I believe this question came
6 up -- schools, unless notified by the Public
7 Education Department School Budget Analysis Bureau,
8 do quarterly reporting. And that report, as I
9 believe Director Craig stated at the first part of
10 this hearing, is not due until the last day of the
11 month following the end of that quarter.

12 So Quarter One ended September 30. So we
13 have all the way until October 31st to get that
14 report submitted and sent to the Budget Analyst in
15 order to be considered on time.

16 **Q. So DEAP is caught up with the required
17 financial reporting?**

18 A. Yes, they are.

19 **Q. And moving forward, DEAP is able to comply
20 with their monthly reporting?**

21 A. Yes, they are.

22 **Q. Mr. Fry, if you could turn to Exhibit 26
23 in the white notebook.**

24 A. (Witness complies.)

25 **Q. And I believe this was an e-mail that was**

1 information is presented fairly and accurately. So
2 there's four, basically, audit opinions, going from
3 the best to the worst. You have the Unqualified,
4 the Qualified, the Disclaimer, and then the Adverse.

5 **Q. And then which audit opinion did DEAP
6 receive?**

7 A. DEAP was not identified specifically as
8 having any audit opinion, and which only the
9 Disclaimed and the Adverse are typically going to be
10 identified. But to answer your question, they had
11 an Unqualified audit opinion.

12 **Q. And then are you familiar with the
13 corrective actions that the Audit Bureau has
14 requested that DEAP take?**

15 A. Yes, I am.

16 **Q. Are there any findings or corrective
17 actions that you don't understand on there?**

18 A. There was one, 2016-3, which -- let's see.
19 I was kind of -- when I read the actual finding --
20 because the school receives draft findings, and then
21 they get a chance to respond. It's the management's
22 responses. And that's what's listed in the actual
23 12 volumes of the Public Education Department's
24 component, including component units, financial
25 statements.

1 **sent to Dan Romero on July 18th by you; is that
2 correct?**

3 A. Yes.

4 **Q. And it references DEAP's Fiscal Year '16
5 audit findings. Have you reviewed DEAP's Fiscal
6 Year '16 audit findings?**

7 A. Yes, I have.

8 **Q. I'll direct your attention to Exhibit 27
9 now. I believe that's a letter to Jennie Jimenez
10 from Daniel Romero, dated October 11th.**

11 **Have you seen this document before?**

12 A. This is actually, I think, the first time
13 that I've seen this document.

14 **Q. Okay. But you're familiar with DEAP's
15 Fiscal Year '16 audit findings?**

16 A. Yes. So these letters were sent out to
17 charter schools who did not respond to the first
18 request, which was June 11th, requesting follow-up
19 on how findings would not be repeated for the
20 remaining 19 days of the fiscal year.

21 **Q. And in the course of an audit, what are
22 audit opinions?**

23 A. Audit opinions are -- the course -- the
24 audit opinion is basically the Independent Public
25 Accounting's assurances that the financial

1 And then from there, this becomes a public
2 document after the State Auditor releases it in
3 March.

4 But from that finding, it talks about not
5 recording liabilities. As I mentioned before, DEAP
6 has a third-party payroll company. And so as soon
7 as I initiate a payroll, two deposits come out of
8 DEAP's account, one to cover the direct deposit and
9 the manual check, the other to cover all of the tax
10 liabilities. And it's simultaneous.

11 So DEAP's last paycheck was on June -- I
12 want to say it was 29th of 2017. So that amount
13 transferred.

14 Now, the only thing that doesn't go to the
15 third-party company to be paid by them is Retiree
16 Health Care, New Mexico Public School Insurance
17 Authority, and ERB. And those numbers are easily
18 identified. So I don't know how they could have
19 failed to provide these.

20 But apparently, it happened.

21 **Q. If I may, I'll turn your attention to
22 Exhibit 5, which is Donna Overson's affidavit.
23 Donna Overson has alleged her instructions regarding
24 proper procurement processes were routinely ignored
25 by Prestene Garnenez and others at DEAP.**

1 **In the time that you've been working as**
2 **DEAP's business manager, have you worked with**
3 **Ms. Prestene Garnenez?**

4 A. Yes, I have.

5 **Q. Can you briefly describe what your working**
6 **relationship with her is like?**

7 A. It's a good working relationship.
8 Honestly, whenever Prestene asks me about how to do
9 something, I tell her either what the legal
10 requirement is, including the best practice, and
11 then she'll send it to me. I mean, there's
12 instances where, you know, even earlier, the school
13 thought that something would be processed just based
14 on an e-mail. And it was -- I told them, "No,
15 nothing is going to be processed until you get me
16 something written."

17 So it's a very well-structured and, I
18 would say, symbiotic relationship. I mean, we work
19 very well together.

20 **Q. It sounds like, in your experiences**
21 **working with Ms. Garnenez, that she follows your**
22 **instructions?**

23 A. Yes, for everything that I've instructed
24 the school, on which I try and stay in my lane. But
25 we work with so many clients that we've seen a lot

1 A. Yes, she does.

2 **Q. At the time that you have been working as**
3 **DEAP's business manager, have you witnessed any**
4 **purchases being made without a purchase requisition**
5 **or a purchase order?**

6 A. Offhand, no, none that I can think of.

7 **Q. So would you agree that DEAP routinely**
8 **follows your instructions?**

9 A. Yes.

10 **Q. I also want to ask you a question --**
11 **there's -- an issue with the AmeriCorps time sheet**
12 **came up in Donna Overson's affidavit. And I just**
13 **want to ask you, do you review -- as DEAP's current**
14 **business manager, do you review time sheets for**
15 **AmeriCorps training?**

16 A. No, I do not. There's not any employees
17 who are currently on a time sheet at DEAP, as well
18 as going back last year, I didn't ever identify any
19 sort of funding source, where they were receiving
20 money or paying money directly to AmeriCorps.

21 **Q. And David Craig has previously alleged**
22 **that the issue with the time sheet, the AmeriCorps**
23 **time sheet, could have jeopardized all federal**
24 **funding that the State receives. Do you agree with**
25 **that?**

1 of things. We're able to say, "This is what
2 happened, this is why it happened, this is what we
3 recommend," even for items that don't necessarily
4 pertain just to the finances. We really try and
5 strive to be, you know, trusted advisers, not just
6 business managers.

7 **Q. So would you agree that the staff members**
8 **at other -- other staff members, in addition to**
9 **Prestene, follow your instructions with regards to**
10 **proper procurement processes?**

11 A. From everything that I've seen, yes.

12 **Q. Okay. And Donna Overson's affidavit, she**
13 **also alleges that purchases were made without a**
14 **purchase requisition or purchase order, in violation**
15 **of the State's Procurement Code. So are you**
16 **involved in the purchasing process at the school?**
17 **It sounds like you are.**

18 A. Yes, I am.

19 **Q. And then what -- do you know who at DEAP**
20 **signs purchase orders?**

21 A. Currently, it's Louella Poblano.

22 **Q. Okay. Does she also send purchase**
23 **requisitions, as well?**

24 A. Yes, she does.

25 **Q. And does she sign contracts at DEAP?**

1 A. Again, I didn't find any financial control
2 that the school had, other than offering a place for
3 AmeriCorps recipients to work. There was no funding
4 that was involved. The school did not receive any
5 funding to pay these employees on a flow-through
6 basis that I saw.

7 MS. CUYLEAR: Thank you, Mr. Fry. Those
8 are all the questions I have. I'll pass the
9 witness.

10 CROSS-EXAMINATION

11 BY MR. MCMILLAN:

12 **Q. Good afternoon, Mr. Fry.**

13 A. Good afternoon.

14 **Q. Let's see. So it's my understanding that**
15 **you're not an on-site business manager at DEAP.**

16 A. That's correct. I'm not an employee of
17 DEAP.

18 **Q. You said that you visited DEAP a couple of**
19 **times.**

20 A. Yes, sir.

21 **Q. How many schools are you actually the**
22 **current business manager for?**

23 A. Including closure schools?

24 **Q. Sure.**

25 A. Ten.

1 **Q. Ten. You also oversee a team working with**
2 **nine schools?**

3 A. Correct.

4 **Q. And you have other job duties, as well?**

5 A. Yes. My background and assistance is in
6 payroll.

7 **Q. Okay. Give me, in broad strokes, what you**
8 **believe your role will be -- or is -- as business**
9 **manager of DEAP. What kinds of things are you**
10 **responsible for?**

11 A. So I am responsible for recording the
12 transactional activity, for maintaining that they
13 are following procurement after their CPO; so I'm
14 another dual control. I'm also responsible for --
15 I'm an authorized signer on their check account; so
16 they need dual signers for all their checks. I sign
17 one -- I'm one of those signatures.

18 I do reporting to the State. I maintain
19 compliance. I handle entering and making sure that
20 people's deductions are correct and that they're
21 paid properly and in accordance with regulations for
22 state and federal and locality. And try and sleep
23 occasionally sometimes, too.

24 **Q. It sounds like a lot of work, Mr. Fry. Is**
25 **it -- so you're -- and you're doing all of this,**

1 vacation, someone else is there to pick up the slack
2 or to cover; whereas, if -- in a traditional school,
3 charter school, one employee, if someone's out sick,
4 or, for instance, a tragic accident happened, then,
5 you know, they would be lost with institutional
6 knowledge, and someone would have to come in and
7 follow the bread crumbs.

8 **Q. Right. And it sounds like you did some**
9 **following of bread crumbs. It took about 47 hours**
10 **to pull DEAP's books together; is that right?**

11 A. That's correct.

12 **Q. In doing so, you testified that you didn't**
13 **initially review the condition of the books when you**
14 **kind of took over; is that right?**

15 A. That's correct. I didn't actually run a
16 general ledger of reports. The only thing I took
17 was their trial balance that was in the system
18 starting the first date, going back to 7/1 of '16.

19 **Q. Why not run their general ledger of**
20 **reports?**

21 A. Because for what I was doing, I wanted to
22 have a complete separate comparison -- I wanted to
23 have my work done so I could compare it to what was
24 actually present in the system.

25 **Q. Well, did you find that there was a**

1 **what you just described, currently for ten schools?**

2 A. The two closure schools do -- I just have
3 to get them through their audits and maintain final
4 payments. They don't have any payrolls, currently.
5 Their payments that they make now are pretty much
6 nonexistent.

7 And then I also have an assistant who
8 helps me with the other eight schools directly.

9 And then it's maintaining that the other
10 business managers stay on top of their assigned
11 tasks and to help them with any more advanced
12 issues, as far as accounting. Or, you know, if
13 someone is angry as far as an employee, I'll
14 typically step in for that, as well.

15 **Q. Okay. You're certain, with all of your**
16 **responsibilities doing this kind of thing for ten**
17 **schools and overseeing the team that's responsible**
18 **for nine schools, that you'll have the -- that you**
19 **would have the time and attention required to give**
20 **DEAP going forward?**

21 A. Yes. That's the beauty of the Vigil Group
22 is the fact that we have a team. So we have
23 14 employees. We have four people in payroll. We
24 have eight business managers.

25 So if I'm out sick or if I take a

1 **general ledger of reports in the system?**

2 A. Yes, there was definitely a general
3 ledger.

4 **Q. Okay. Was it up-to-date?**

5 A. It was not.

6 **Q. It was -- the school hadn't reconciled its**
7 **bank account since March of 2017; isn't that**
8 **correct?**

9 A. March 31 of 2017. That is correct.

10 **Q. Is it generally accepted accounting**
11 **practice not to reconcile your bank account for**
12 **several months at a time?**

13 A. As far as the generally accepted
14 accounting practice, I wouldn't say that. But as
15 far as a good rule of thumb, it's not general; but
16 it doesn't apply under GAAP.

17 **Q. But you would agree with me that that's**
18 **not a generally accepted accounting practice, which**
19 **is to say to not reconcile the bank account?**

20 A. No, you typically want to have your bank
21 account reconciled within a timely fashion and on a
22 recurrent fashion so that you can identify any
23 variances and assure your cash position.

24 **Q. You mentioned that DEAP had been working**
25 **on an old computer system. Were you ever able to**

1 **access that data?**

2 A. I wouldn't know if it was old or not. But
3 I was never able to access the Abila software.

4 **Q. By "old," I just the meant prior.**

5 A. Got you.

6 **Q. So the prior system, you were unable to**
7 **access. So how were you able to reconcile the old**
8 **system at a level consistent with the Uniform Chart**
9 **of Accounts?**

10 A. Again, that's why I didn't pay any
11 reliance to previous information. I completely
12 rebuilt their general ledger for activity that
13 occurred for all of FY17.

14 **Q. Okay. So you didn't attempt to use the**
15 **data the school had on hand at the time you embarked**
16 **upon your mission?**

17 A. No. My understanding of my mission was I
18 was going to find a lack of bread crumbs, and it was
19 an impossible task. So I went about it the best way
20 that I knew how.

21 **Q. Okay. Let's see. A couple of follow-ups**
22 **on your testimony.**

23 **Let's take a look at -- well, no. You**
24 **previously testified that the school is caught up on**
25 **its monthly reporting and that July and August have**

1 talking about what occurred utilizing information
2 with -- at the time, from Prestene.

3 **Q. Okay.**

4 A. So I had to assume that that information
5 was correct; so I guess yes.

6 **Q. If the school was in possession of**
7 **everything that you felt was necessary in terms of**
8 **information, why would you reach out to ERB, the**
9 **Retiree Health Care Authority, and the New Mexico**
10 **Public Schools Insurance Authority to request copies**
11 **of invoices and submissions from the school from**
12 **July 2016 to July 2017?**

13 A. So the statement that they -- repeat that
14 question one more time, please.

15 **Q. Sure. And I'm actually -- let's pay**
16 **reference to a document here. I'm looking at your**
17 **affidavit, which was Appendix H to the school's**
18 **response, paragraph 10.**

19 A. Uh-huh.

20 **Q. It says, "In addition..." -- and that**
21 **would be in addition to requesting bank statements**
22 **from Mrs. Archuleta -- you reached out to ERB, the**
23 **RHSA and the NMPSIA to request copies of all**
24 **invoices and submissions from the school from July**
25 **2016 to July 2017.**

1 **been submitted?**

2 A. That's correct.

3 **Q. When were those submitted?**

4 A. Those were submitted yesterday.

5 **Q. Ah-ha. Okay. So just in the interim here**
6 **between our two -- our two hearings?**

7 A. Right. Less than two weeks after finding
8 we were on monthly reporting.

9 **Q. Okay. With regard to procurement, you**
10 **testified that you're seeing purchase orders and**
11 **purchase requisitions properly used now, pursuant to**
12 **your instruction, is what I understand. Is it**
13 **your -- are you aware that there's an admission that**
14 **previous to your involvement, purchase orders were**
15 **not being used regularly, that purchase requisitions**
16 **were, but purchase orders were not?**

17 A. I am aware of that, yes. I read that in
18 the affidavit.

19 **Q. In recreating the -- the school's books,**
20 **were you required to make any assumptions along the**
21 **way?**

22 A. In this case, no. The information that I
23 took was based on activity that actually occurred.
24 And then any questions that I had were based on the
25 allowability within the grant awards and then

1 **Why was that necessary?**

2 A. Again, it goes back to the I didn't have
3 any -- or want any reliance on previous work. I'm
4 starting from scratch.

5 **Q. Okay. Was that information that**
6 **ultimately you were certain the school had in its**
7 **possession?**

8 A. I'm -- I found the majority of ERB forms
9 and Retiree Health Care forms on the website. When
10 I say "the website," I mean the Google Docs drive.
11 And then as far as the NMPSIA information, that, in
12 most cases, as far as what I've seen, is usually not
13 in the school's possession as far as printed out.
14 It's usually just saved or given access, because
15 NMPSIA keeps it online.

16 A long way, but I think I got there.
17 Sorry.

18 **Q. Can a school survive financially without**
19 **reconciling its bank account?**

20 A. Yes, they can. I would also bring
21 reference to the State of New Mexico's failure to
22 reconcile their bank accounts and survive.

23 MR. McMILLAN: Object to the form of the
24 answer. Strike that. Just kidding around.

25 **Q. You said that there were prior -- oh, I**

1 **see. You testified that the school's current**
2 **operating budget is in good shape; is that right?**
3 **That it's --**

4 A. That they have a budget, yes. Yes.

5 **Q. That they have a budget and that it meets**
6 **requirements.**

7 A. Yes. It's a very bare-bones budget. I've
8 had communication with both the Executive Budget
9 Analyst, Veronica Chavez, and Director David Craig
10 about the fact that there's currently not any money
11 that was budgeted for carryover.

12 I show they carried over \$84,000. That's
13 backed up in the cash reports. And that's backed up
14 in the general ledger, and that's going to be what's
15 backed up based on the audit work, I'm confident.

16 **Q. When you say "based on the audit work,**
17 **you're confident," what does that refer to?**

18 A. That refers to the information that I
19 turned over to their IPA for their audit, Loftus
20 Group, for -- based on FY17, for which the audit
21 they're currently in.

22 **Q. Okay. So that's an ongoing audit.**

23 A. That's correct.

24 **Q. Did you -- following up on my question**
25 **about this operating budget, did you, at any point,**

1 **newest regulation passed?**

2 A. The newest regulation went into effect, I
3 believe, in -- I want to say July. This is correct?
4 I actually had communication with Director Poulos
5 inquiring whether or not that I could get
6 certification for my training, as I had done
7 trainings before.

8 **Q. Uh-huh. Uh-huh.**

9 **Were you aware of -- even under the old**
10 **regulation, aware of any trainings prior to the one**
11 **that you delivered?**

12 A. That existed or that they took?

13 **Q. That the school had given.**

14 A. That -- the school is not required to
15 give. The governing council -- each governing
16 council member is supposed to have five hours of
17 training a year, under the old regulation.

18 **Q. Okay. You helped the school put together**
19 **some policies and procedures going forward; correct?**

20 A. Yes, sir.

21 **Q. What policies and procedures were in**
22 **place, to your understanding, prior to this set of**
23 **policies and procedures that you helped do?**

24 A. Honestly, I asked a lot of questions as
25 far as, "What was your policy when we started," and

1 **review prior operating budgets for the school?**

2 A. No, I did not. In essence, I did, just to
3 check what availability there was in the overall
4 fund; but I didn't review down to the level of
5 function and object detail.

6 **Q. Okay. So you don't have any opinion as to**
7 **whether those operating budgets looked good?**

8 A. Based on the FY16 audit, it did not. And
9 based on the way that the FY17 audit may or may not
10 come out, again it's an ongoing audit; so I can't
11 discuss.

12 **Q. Okay. You said that you did a training**
13 **with the school; is that right?**

14 A. Yes, that's correct.

15 **Q. Is it your understanding that's the first**
16 **training of that sort that the school has received?**

17 A. There were comments that they had not
18 received information of that kind, yes.

19 **Q. Are you aware of a regulation that**
20 **requires the governing council to provide this kind**
21 **of training from the onset?**

22 A. Until the new regulation passed, it wasn't
23 defined as to what kind of training; it was five
24 hours of training.

25 **Q. And what, to your understanding, was the**

1 that's why I established that we needed policies and
2 procedures. I don't know if there were heavy
3 reliance on those policies and procedures.

4 So I'm told that they had them; but I have
5 not seen them.

6 **Q. And did they tell you they had them in**
7 **writing?**

8 A. Didn't honestly get that far. Again, I
9 just took this as a clean slate.

10 **Q. Sure. Sure. But as you sit here now,**
11 **you're not aware of any written policies and**
12 **procedures in place prior to July of this year?**

13 A. I was told that they did have them, yes,
14 sir.

15 **Q. Okay. But you did not see them.**

16 A. Correct.

17 **Q. In your role as business manager, how**
18 **would you ensure, going forward, that generally**
19 **accepted accounting practices are being followed?**

20 A. The Generally Accepted Accounting
21 Principles that are constantly referenced are
22 internal control environment and a system of
23 security checks and balances. So as long as the
24 financial policies and procedures that were agreed
25 upon by the board are continually adhered to, I

1 don't see that as being an issue.

2 **Q. Okay. Prior to your involvement -- would**
3 **you agree with me that prior to your involvement,**
4 **the school did not actually have an appropriate**
5 **internal control environment?**

6 A. That, again, I cannot state. I can tell
7 you that in the course of my work, I did find the
8 requisitions that you mentioned prior in the backup
9 files for each of the vendors. I did find a lack of
10 purchase orders. In communications with the school,
11 you know, they were the one -- they told me that
12 they had these POs; but we were never able to pull
13 them out of Abila, so I could never verify that.

14 As far as who was signing, when I came on
15 in June, the bank signers had been adjusted based on
16 the reports I believe that David Craig and Molly
17 Saiz had done. So if the same person who was
18 signing at the school was also authorizing, then I
19 would say, "No, they were not having a system of
20 checks and balances at that time that would be
21 considered financially sound."

22 **Q. So, in fact, adjustment was acquired to**
23 **signature authority. Is that what you just**
24 **testified?**

25 A. That it had already been adjusted prior;

1 **for various positions at the school?**

2 A. So this number is based on the estimated
3 conclusion of the year, and then also what was
4 projected within the budget. So, yes, as far as I
5 can tell, it does.

6 **Q. Okay. Do you recognize Job Class, Class**
7 **No. 1111? Do you know who that is?**

8 A. Job Class 1111 is Superintendent.

9 **Q. Is that analogous to a head administrator**
10 **of a charter school?**

11 A. Currently, it is, yes.

12 **Q. Okay. Do you recall Ms. Poblano**
13 **testifying that her position is a 1.0 FTE?**

14 A. I do, yes.

15 **Q. Does that appear to be accurate, based on**
16 **the number we're looking at here under Job Class**
17 **1111, projected to 2017-2018?**

18 A. It does not align with that; but I can
19 also state, doing her payroll, that she is a .9
20 employee.

21 **Q. Okay. Was there ever a -- to your**
22 **knowledge, was a budget exception ever done to**
23 **identify her as a .9 employee rather than a .25?**

24 A. It is not. And it goes back to the reason
25 that I stated earlier, that the school is bare bones

1 because based on the information I saw compared to
2 when I changed the bank signers with the board
3 resolution to add myself and remove previous staff,
4 Ms. Garnenez was not on that list. So it had
5 previously been changed to that.

6 **Q. Okay. But it's your understanding that**
7 **she was on the list of approved signers prior to**
8 **that adjustment?**

9 A. Based on the information that I saw from
10 David Craig, yes.

11 **Q. And, finally, I think you're probably**
12 **better suited than any of us to interpret for us a**
13 **budget document. Let's take a look at that**
14 **Exhibit C in the black binder. I'm looking at**
15 **the -- they're not numbered, I don't think. But I'm**
16 **looking at the fifth page of this exhibit.**

17 A. Can you describe what's at the top? So I
18 can count this out.

19 **Q. No worries. It's "Estimated Average**
20 **Salary Increases," et cetera, et cetera?**

21 A. Okay. Yeah, it's a comparison, making
22 sure that staff are not going backwards. And
23 typically, it lines up with the information that's
24 presented on the 925F.

25 **Q. So does this document represent the FTE**

1 in their budget, and that their carryover for a
2 number of sources and anticipated revenue streams
3 were not necessarily accepted by the School Budget
4 Finance Analysis Bureau, because, as David Craig
5 would probably say, "It's hopes and dreams."

6 He wants to see actually concrete numbers
7 that the school can verify. So when I came in and
8 was told about the budget situation, even though I
9 didn't formulate the budget, that was a question
10 that come up.

11 **Q. Has there ever been a discussion of doing**
12 **a budget exception for that particular position?**

13 A. Oh, absolutely.

14 **Q. But it has not been done?**

15 A. It has not.

16 **Q. Is it budget maintenance to carry on with**
17 **variances like this in FTE for positions such as**
18 **head administrator?**

19 A. So there's also budget adjustments that
20 are going to take place as a result of their 40-day
21 adjustment, which won't take place until February,
22 which that's saying you have more kids, or you have
23 less kids, than what you actually projected.

24 So if I'm not going to be given a revenue
25 stream for those children, how am I going to be

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1 expected to budget an expenditure stream for those
 2 children?
 3 **Q. That got just a little beyond my ken. But**
 4 **I guess what I'm asking is, is that adjustment going**
 5 **to be requested with the 40th day?**
 6 A. Yes. Under normal -- under regular budget
 7 maintenance, it will be adjusted. And as of the
 8 final submission for fourth quarter, the school will
 9 maintain compliance within the function and the fund
 10 level, as required.
 11 **Q. Exhibit 26 in the white binder, just take**
 12 **a quick look there.**
 13 A. (Witness complies.)
 14 **Q. And, again, you testified to this on**
 15 **direct.**
 16 **This appears to be an e-mail sent by you**
 17 **to Daniel Romero July 18th, 2017. It closes with**
 18 **the statement, "I will have these to you tomorrow**
 19 **afternoon at the latest," that being responses to**
 20 **the Corrective Action Plan set forth following the**
 21 **2016 audit.**
 22 **Were those responses submitted within the**
 23 **time frame mentioned in this e-mail?**
 24 A. No, they were not.
 25 **Q. And why not?**

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1 A. They were not, because the information
 2 that was available from the school at the time, what
 3 had been retained by me. Basically, this is asking
 4 about something before I was there.
 5 And so the date that the school received
 6 these original response letters, as I mentioned, was
 7 19 days prior to the close of the year. So even if
 8 there were items in there where they wanted to know
 9 how it wasn't going to be a repeat finding, with
 10 19 days left, without disclosing ongoing audit
 11 information, I couldn't comment if it would or
 12 wouldn't be.
 13 **Q. Okay. And finally, to date, has there**
 14 **been, to your knowledge, a formal response to the**
 15 **Corrective Action Plan?**
 16 A. I am not aware that it has been formally
 17 submitted. I know that we have three out of the
 18 four responses prepared.
 19 **Q. Prepared for submission?**
 20 A. Correct.
 21 **Q. Okay. But it hasn't been done to date,**
 22 **hasn't been submitted to date; correct?**
 23 A. Correct.
 24 MR. McMILLAN: Okay. Mercifully enough,
 25 that's all I have for you, Mr. Fry. Thank you for

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1 your time.
 2 THE WITNESS: Thank you.
 3 THE CHAIR: Do you have any redirect?
 4 MS. CUYLEAR: No, redirect.
 5 THE CHAIR: Commissioners, any questions?
 6 Commissioner Armbruster?
 7 COMMISSIONER ARMBRUSTER: Mr. Fry -- is
 8 this on?
 9 THE CHAIR: The green light's on. You can
 10 use mine.
 11 COMMISSIONER ARMBRUSTER: I taught middle
 12 school. I have two.
 13 You described the process you went through
 14 to reconcile with the bank accounts. And my
 15 question is, is when a new business manager takes
 16 over, is it -- is it normal that you would have to
 17 go through the process you described?
 18 THE WITNESS: No, that is not.
 19 COMMISSIONER ARMBRUSTER: So what would
 20 you have expected, as a new person?
 21 THE WITNESS: So we've taken over schools
 22 at the end of fiscal years, in the middle of the
 23 year. And typically, what's going to be done is
 24 we're going to be provided the trial balance. And
 25 we'll verify the trial balance as best as we can,

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1 based on the information that's in the system, or
 2 verify that the general ledger ties without
 3 variances for cash.
 4 But, again, you know, I didn't come on as
 5 the business manager until July; so I was contracted
 6 by the school to perform that work specifically in
 7 June.
 8 COMMISSIONER ARMBRUSTER: So basically,
 9 you had to do more than would be expected, in a
 10 sense.
 11 THE WITNESS: If someone -- if I had to do
 12 that work in July, then, definitely, yes.
 13 COMMISSIONER ARMBRUSTER: And the other
 14 question is, does the work that you had to do
 15 reflect that the school leader, business manager,
 16 and the governing council, were engaged in regular
 17 and, I guess, consistent financial management?
 18 Because I know that's part of the law.
 19 And that was -- and prior to you beginning, I know
 20 that --
 21 THE WITNESS: It would not have been
 22 possible to provide relevant financial information
 23 for any time periods on past when the bank account
 24 had been reconciled and the account payroll entries
 25 entered in the system.

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1 So typically, we try and give schools and
2 the governing councils monthly reports that show
3 revenue to expenditures, revenues to budget,
4 expenditures to budget. Items of that nature would
5 not have been available without those entries.

6 COMMISSIONER ARMBRUSTER: So they were not
7 able to do that part of the law until you got there,
8 basically. Is what you're saying? Am I saying that
9 correctly?

10 THE WITNESS: Based on the way I found the
11 system, yes.

12 COMMISSIONER ARMBRUSTER: Okay. Thank
13 you.

14 THE CHAIR: Commissioner Johnston?

15 COMMISSIONER JOHNSTON: Thank you,
16 Madam Chair. I think it's on.

17 Mr. Fry, you've used the term "rebuild."

18 THE WITNESS: Correct.

19 COMMISSIONER JOHNSTON: Is it "rebuild" or
20 "build"?

21 THE WITNESS: The building blocks were
22 there. They just had to be compiled. So I would
23 say "build" would be an appropriate term, as well.

24 COMMISSIONER JOHNSTON: Thank you.
25 Let's see. There has been discussion

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1 using restricted funding in that scenario to
2 maintain operations, which are nonrecurring; so your
3 operations, therefore, would be nonrecurring, in
4 theory.

5 COMMISSIONER JOHNSTON: And so what would
6 be the positives of monthly reporting for a school
7 that's really working earnestly to rebuild its --

8 THE WITNESS: It would be a rigid
9 structure of communication with the School Budget
10 Finance Analysis Bureau.

11 COMMISSIONER JOHNSTON: And so rather than
12 looking at it punitively, we could look at it
13 positively, as something that reinforces what the
14 school -- and reports what the school is working to
15 do.

16 THE WITNESS: Yes. I believe Director
17 Craig spoke about this as far as the steps that he
18 would take before he came in. So he doesn't have to
19 take these steps before anything occurs as far as a
20 takeover; but it would be typical to request
21 increased communication, and that would be one way
22 to do it.

23 COMMISSIONER JOHNSTON: Thank you.
24 When -- you said you speak with the staff at DEAP
25 often.

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1 about the monthly reporting requirement. What is
2 the purpose of monthly reporting?

3 THE WITNESS: The purpose of monthly
4 reporting is so -- as I understand it, is so the
5 School Budget Finance Analysis Bureau can look --
6 make sure that the school has positive trends as far
7 as they're not projected to end in a negative
8 position. That's for the actual reporting.

9 And then as far as the cash reporting, the
10 requirement is that your operational can cover the
11 negative balances within your other funds so that
12 you have positive cash.

13 COMMISSIONER JOHNSTON: And why is this
14 important to the school and to the governing
15 council?

16 THE WITNESS: For the school, it's
17 important, because it represents a snapshot of what
18 will -- the financial position that the school will
19 end in if changes are not made, whether positive or
20 negative.

21 So if they end up showing that they're in
22 a negative cash position as far as they don't have
23 enough operational money to cover the other funds,
24 that basically means that they are going to end up
25 with negative cash, which isn't possible. They're

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1 THE WITNESS: Uh-huh.

2 COMMISSIONER JOHNSTON: When you call,
3 with whom do you speak?

4 THE WITNESS: I speak typically with
5 Louella and with Prestene on a conference phone. Or
6 I speak with one of them, depending on what it is I
7 need. So if I'm missing some sort of document, as
8 far as that was sent to me, and it was unsigned for
9 payment, then I'll send it back and say, "You know,
10 this needs to be approved before we can pay it."

11 And it will go back to the channel that it
12 originated; in this case, it's Prestene.

13 But when it's talking about a staffing
14 situation, about budget adjustments or what you want
15 to do with the money, it usually comes from Louella.
16 But when I call, it's usually going to be routed
17 through and to Louella, and Prestene is in the room.

18 COMMISSIONER JOHNSTON: How many Budget
19 Adjustment Requests, or BARs, have you done this
20 year?

21 THE WITNESS: I want to say seven or
22 eight.

23 COMMISSIONER JOHNSTON: And the budget
24 that we were provided -- and it's in the white
25 notebook -- by Mr. Craig is the very first budget,

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1 the one that is compliant with funding. And the one
2 you're calling "bare bones."

3 THE WITNESS: Correct. Yes.

4 COMMISSIONER JOHNSTON: If I understand
5 correctly, at this point the \$84,000 that you
6 submit -- you see as there with all of the work
7 you've done. But you have not been able to change
8 this bare-bones budget in any way up to this point.

9 THE WITNESS: Correct. It's not
10 reflected, because it would basically be, "This is
11 what I say." And there's no assurance.

12 So typically with our clients, what we'll
13 do is we'll take the draft financials as the basis
14 for a request for an increase BAR; or we'll do the
15 decrease BAR based on that same information.

16 COMMISSIONER JOHNSTON: And I looked. I
17 have to ask you. What membership -- what student
18 membership was this bare-bones budget drafted on?

19 THE WITNESS: I believe that it was
20 drafted on a number of "23" on the growth, and I
21 want to say it was "28."

22 COMMISSIONER JOHNSTON: Yeah. I saw 23 on
23 the growth, and actual enrollment on the 40th day is
24 28. Is that what we're working on?

25 THE WITNESS: Yes, I believe that's

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1 ahead.

2 THE WITNESS: So I was going to say, yes.
3 So it's based on the information that's available at
4 hand. So your budget is your plan; but we all know
5 that plans can change.

6 COMMISSIONER JOHNSTON: And the goal with
7 this is that it will; because currently, as -- in my
8 reading of this, I see that -- that the Vigil firm
9 is -- has \$7,000.

10 THE WITNESS: So the Vigil firm, our line
11 is going to be found under 11000-2500-53414, where I
12 believe there is an excess of \$40,000.

13 COMMISSIONER JOHNSTON: Let me look and
14 see. I'm looking for it in the original budget.

15 THE WITNESS: Where it says "Auditing."
16 That's under the 2300. So you want to look for the
17 numbers that are under the 2300. It tells you where
18 it is, only with the subtotal.

19 COMMISSIONER JOHNSTON: Okay. I've got
20 you. I just -- my concern is the bare-bones budget
21 and moving the school forward and maintaining
22 salaries and services. And I'm sure you're aware,
23 because you have read this so many times, you live
24 by it, that the -- the amounts that are in here are
25 really bare bones.

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1 correct. It's going to be on the 910B5.

2 COMMISSIONER JOHNSTON: So there is some
3 additional SEG dollars that will come in as a result
4 of that, once it's confirmed; is that correct?

5 THE WITNESS: And there is an increase in
6 the unit value, which won't be set until
7 January 31st.

8 COMMISSIONER JOHNSTON: Of this year, yes.

9 THE WITNESS: Correct.

10 COMMISSIONER JOHNSTON: But you have to
11 operate under those dollars.

12 THE WITNESS: So the State has also -- and
13 speaking with David Craig, with other clients --
14 allowed that if they don't project growth -- for
15 instance, I have one school that has 58 students
16 more than we were allowed to estimate, and
17 Director Craig let us do growth, we still have to
18 have the teachers to cover all of these kids so the
19 budget is out of whack.

20 But we know what we're actually going to
21 have as a result of doing the analysis and doing a
22 separate 910B5 document.

23 COMMISSIONER JOHNSTON: Okay.

24 THE WITNESS: So --

25 COMMISSIONER JOHNSTON: I'm sorry. Go

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1 THE WITNESS: They are, yes.

2 COMMISSIONER JOHNSTON: All right. I
3 won't go any further. I think that's my last
4 question, if I may just look and see.

5 Who prepare -- prepared the FY18 budget?

6 THE WITNESS: The FY18 budget was prepared
7 by, from my understanding, Ms. Archuleta and
8 Dr. Jimenez.

9 COMMISSIONER JOHNSTON: Okay. With
10 assistance from anyone at PED?

11 THE WITNESS: For this version, they went
12 back and forth, definitely. So from the school
13 side, it was those two. And then I believe David
14 Craig and Vince Vigil were involved, outside of
15 their Executive Budget Analyst, Veronica Garcia --
16 Veronica Chavez. Pardon me. Former Secretary.

17 COMMISSIONER JOHNSTON: Thank you.

18 THE CHAIR: Commissioner Toulouse?

19 COMMISSIONER TOULOUSE: Madam Chair, I
20 don't know whether you should be "Madam Chair" or
21 Madam Hearing Officer; but -- Mr. Fry, was the lack
22 of reconciliation on the bank books because it was
23 no longer a financial business manager doing the
24 books at that point?

25 THE WITNESS: So at that time, it was Ms.

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<p>1 Charlotte Archuleta as the business manager. I 2 couldn't say why that had not occurred. 3 COMMISSIONER TOULOUSE: Because I 4 wondered, because I know there was a period where 5 there was a switchover and -- 6 THE WITNESS: Yes. 7 COMMISSIONER TOULOUSE: -- whatever. And 8 I wondered about that. 9 THE WITNESS: Yes. 10 COMMISSIONER TOULOUSE: The other thing I 11 wondered about is on your estimation; because I 12 think there was some indication that you weren't 13 there enough. How large a school do you need to 14 have to actually have an on-site business manager 15 when you have a bare-bones budget? 16 THE WITNESS: Honestly, I have schools 17 that have, like I said, over 550, and choose to 18 staff their classrooms, versus having the on-site 19 business manager. The average business manager is 20 probably going to make between \$50,000 and \$70,000, 21 plus 40 percent more than that with benefits. 22 So it's also an economical trade-off, as 23 opposed to only having one point of information, 24 which also leads to a failure for proper checks and 25 balances.</p>	<p>1 THE WITNESS: Yes, sir. 2 COMMISSIONER CRONE: You said you 3 believe -- I'm having trouble reading my own 4 writing. You can see why. (Indicates.) 5 You said you believe the staff is 6 following policies and procedures to the best of 7 your knowledge. Why did you say to the best of your 8 knowledge? 9 THE WITNESS: Well, because I'm not there 10 24/7; and even then, I'm not involved with their 11 classrooms. I don't know what takes place outside 12 of the school. I can only go with the information 13 that's presented to me. And from everything that 14 I've seen, I mean, the school has already issued 15 almost 50 purchase orders for this year. And I 16 didn't find numbers of that magnitude, even in the 17 system, from the -- I think it just times out 18 telling me to stop -- from the previous year. 19 So I say "from the best of my knowledge" 20 because I can't say for absolute surety. 21 COMMISSIONER CRONE: Okay. Thank you. 22 Do you feel your knowledge is limited in 23 this regard? 24 THE WITNESS: In which aspect, if I may 25 ask for clarity?</p>
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<p>1 COMMISSIONER TOULOUSE: So a school with 2 28 students and a handful of staff is certainly not 3 in a position that they could even keep a full-time 4 business manager busy; correct? 5 THE WITNESS: Understatement. Absolutely. 6 COMMISSIONER TOULOUSE: Thank you very 7 much. 8 THE CHAIR: Commissioner Crone? 9 COMMISSIONER CRONE: Madam Chair? 10 Mr. Fry, why did you feel that you needed 11 to revise DEAP's policies and procedures in July? 12 THE WITNESS: Because I wanted something 13 that was concrete. And specifically, I wanted it to 14 say who was doing what at the school, based on their 15 staffing. 16 So a generic policies and procedures that 17 I use for School A has different staffing than the 18 school for School B or C. 19 And so we always try and customize those 20 policies and procedures to reflect who actually is 21 doing these duties, so when an auditor comes in and 22 tests these controls, as required for GAAP, the 23 school is found to be in compliance with their 24 internal controls. 25 COMMISSIONER CRONE: Thank you.</p>	<p>1 COMMISSIONER CRONE: Well, to the best of 2 your knowledge, do you feel that your knowledge is 3 limited? 4 THE WITNESS: So my reliance has to come 5 from the information that's given to me by the 6 stakeholders and by the school, from everything I've 7 seen, all purchasing I've seen at the school, 8 anything I've even heard here said they're adhering 9 to the policies and procedures. 10 COMMISSIONER CRONE: Thank you. That's 11 all. 12 THE CHAIR: Commissioner Robbins. 13 COMMISSIONER ROBBINS: Mr. Fry, you had 14 stated that you had to recreate -- I'll just speak 15 up. 16 Regarding the procurement violations and 17 those errors, that there were a lack of POs that you 18 couldn't find them in the system, have you done 19 anything, or do you have any information that any of 20 the items procured and actually received have been 21 misappropriated or not used in the fashion that they 22 were -- should have been intended? 23 THE WITNESS: No, I do not. And looking 24 at the individual detail, I can tell you that the 25 school didn't even have anything that's purchased of</p>

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1 an item price over \$5,000.

2 So everything that was purchased was, you
3 know, again -- not to use "bare bones" -- but it was
4 extremely small. And this is actually a
5 conversation that I've had with the auditor.

6 But I gave detail into my reconciliation.
7 And based on the -- the unique culture that the
8 school exhibits, based on their location, there was
9 a number of purchases I had to ask what this was
10 for; but I was given appropriate information as far
11 as from what I understand.

12 And to go back to your question, I believe
13 that I was not -- I did not find any information to
14 say that it was being misappropriately used or
15 fraudulently used.

16 COMMISSIONER ROBBINS: So basically, they
17 didn't follow the State's procedures that are
18 required; so there was a technical violation. But
19 there was no malice aforethought or anything like
20 that in what you found; correct?

21 THE WITNESS: Correct. What they did not
22 follow was the NMAC, which was that you have a
23 purchase order prior to your purchase.

24 COMMISSIONER ROBBINS: Right. NMAC.
25 Doesn't it also allow, if there is a financial

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1 triggered our bell was the -- the event regarding
2 the time sheet. So I just want to make this clear
3 that it's your testimony that there were no funds at
4 that time coming in for that grant, if that's --

5 THE WITNESS: That's correct, yeah. There
6 was not -- there was not any money coming in that I
7 saw and that -- either through the bank account or
8 through any of the backup documentation, that was a
9 funding source for the Teach for America.
10 [Verbatim.]

11 THE CHAIR: All right. Thank you.
12 Commissioner Conyers.

13 COMMISSIONER CABALLERO: I'll pass it to
14 him, and then I'll do it.

15 COMMISSIONER CONYERS: So just kind of for
16 clarification and to satisfy my curiosity, one of
17 the items that was reported to us said the Licensed
18 Head Administrator reported that the school had
19 implemented a policy of shredding all receipts.

20 And I realize that may precede your being
21 there. But in your work, did you find any evidence
22 of either a policy or a practice of shredding all
23 receipts?

24 THE WITNESS: No, I did not. So as I
25 stated, I had digital records for the majority -- by

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1 individual, to request after-the-fact approvals for
2 those types of things, if they -- if they are able
3 to recognize those?

4 THE WITNESS: I'm not familiar with that.
5 I know that, as Mr. Craig specified earlier, that
6 the procurement is one of the most common findings.
7 So if that were the case, I think that schools would
8 have less of them.

9 When we have the course of an audit, they
10 look at the date on the invoice or the date on any
11 backup, and if it is prior to the date on the PO,
12 then it's a procurement finding in that nature.

13 COMMISSIONER ROBBINS: One last question.
14 And I think this is -- had been addressed in the
15 testimony last -- last week or two weeks ago.

16 In your review of everything from last
17 year and everything up to this date, do you have any
18 evidence of fraud or misappropriations of funds by
19 DEAP?

20 THE WITNESS: No, I found none.

21 COMMISSIONER ROBBINS: Thank you.

22 THE CHAIR: I have a question. Then I'll
23 get to you.

24 I just need a clarification; because one
25 of the -- for us, the -- I think the event that

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1 far, the majority of all of the transactions. Like
2 I said, there was a handful of that. I was not able
3 to get some of it across fiscal years.

4 I did question -- because that did come up
5 in a conversation that I had with Director Craig, I
6 did ask the school, and they said that they did also
7 have physical records.

8 COMMISSIONER CONYERS: Okay. Thank you.

9 THE CHAIR: Commissioner Caballero?

10 COMMISSIONER CABALLERO: I'm going to ask
11 this question, only because a significant time was
12 spent on it. And I understand that this hearing is
13 mostly -- or primarily -- finances; right?

14 THE WITNESS: (Indicates.)

15 COMMISSIONER CABALLERO: Between you and
16 Ms. Poblano, who would be better in a position to be
17 communicating with PED on a daily, weekly, or
18 whatever basis on the proceedings or what they're
19 doing prior to the hearing? You or her?

20 THE WITNESS: I would.

21 COMMISSIONER CABALLERO: Okay. Did you
22 get a request by PED to -- to be communicating with
23 them on your process or your progress?

24 THE WITNESS: No. I volunteered that
25 information.

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1 COMMISSIONER CABALLERO: Okay. Did you
2 get any of that request by Craig?

3 THE WITNESS: I'm sorry.

4 COMMISSIONER CABALLERO: Did you get the
5 same request from Mr. Craig to be communicating with
6 him on a daily basis?

7 THE WITNESS: No. So the information --
8 like I stated, I believe I've sent information to
9 the Executive Budget Analyst, Veronica Chavez,
10 twice, just wanting to know what the financial
11 situation was currently for the school.

12 COMMISSIONER CABALLERO: Okay. So the --
13 what would be what the -- either PED or Craig would
14 want from the school? The corrective measures and
15 results, or daily communication of how they're
16 doing?

17 THE WITNESS: I believe probably the daily
18 communication. I was speaking with David Craig
19 about the change in their policies and procedures
20 and about the work I was doing. And then as I
21 stated, I had spoke or e-mailed to Veronica and had
22 a communication about where they're currently
23 looking now. So I think it's two different time
24 frames, past -- FY17 and FY18.

25 COMMISSIONER CABALLERO: So those

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1 we allocate the funds, you know, if it were up to
2 me, if they asked me how to design the school, I'd
3 say you get two total people, based on only having
4 28 students. So that's -- I don't know if that
5 answers your question or not.

6 COMMISSIONER TOULOUSE: No. I just
7 wondered if the finances were in a shape that you
8 thought deemed closure at the time you put it all
9 together.

10 THE WITNESS: No, I do not. No, I did not
11 and do not.

12 COMMISSIONER TOULOUSE: Thank you.

13 THE CHAIR: Commissioner Armbruster?

14 COMMISSIONER ARMBRUSTER: So when you --
15 it's hard -- it's a hard job. We hear from one
16 source that there was shredding going on. We hear
17 from you that is not true, or, if it was true, they
18 had digital. All right. So don't laugh. But you
19 mean they took pictures? What do you mean
20 "digital"?

21 THE WITNESS: So they would scan them.
22 They would scan them in and save them into a file
23 format that would then be put into a taxonomy. So
24 they could locate it by, this was a payment to
25 Johnson Barnhouse Keegan from June, and it came from

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1 communications were kept by you, then, and -- what
2 you were doing.

3 THE WITNESS: Yes. So like I stated, I
4 speak with the Budget Analyst probably 20 times a
5 week at various levels. I speak with David Craig
6 usually weekly. And we touch base on a number of
7 topics. And so we have had conversations
8 surrounding DEAP.

9 COMMISSIONER CABALLERO: Okay. That's
10 all, Madam --

11 THE CHAIR: Thank you.
12 Commissioner Toulouse?

13 COMMISSIONER TOULOUSE: Madam Chair, I
14 just want one kind of wrap-up question.

15 Mr. Fry, since you handle several of the
16 schools that are being closed down, when you went
17 in, and once you looked at all of these books, how
18 did this school compare to those schools that you
19 were handling that were -- that you've handled the
20 closures?

21 THE WITNESS: It's much smaller, much,
22 much smaller. So their operations are scaled back.
23 They're -- they have a large reliance on community
24 and outside support.

25 So the State of New Mexico, the way that

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1 FY17. So I would find it by clicking on FY17,
2 Johnson Barnhouse, and then the backup.

3 COMMISSIONER ARMBRUSTER: Thank you.

4 THE WITNESS: Pleasure.

5 THE CHAIR: Thank you.

6 THE WITNESS: Thank you.

7 MS. FRIEDMAN: Eighteen minutes.

8 MS. CUYLEAR: We have 18 minutes left?

9 ALAN BRAUER,
10 after having been previously sworn under oath,
11 was questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CUYLEAR:

14 **Q. Good afternoon. Would you please state
15 your name for the record?**

16 A. Sure. Alan Brauer. A-L-A-N, B-R-A-U-E-R.

17 **Q. And who is your current employer?**

18 A. NACA Inspired Schools Network, or NISN.

19 **Q. And what is your job title with that
20 organization?**

21 A. I am the Fellowship Director and Education
22 Team Lead.

23 **Q. And how long have you been employed there?**

24 A. You know, I accepted a position in January
25 of 2015 and started full-time May 2015.

1 **Q. So you've been full-time with NISN since**
 2 **May 2015?**
 3 A. That's right.
 4 **Q. Okay. And I understand the Public**
 5 **Education Department made a visit to the NACA**
 6 **Inspired Schools Network in May of this year, 2017;**
 7 **is that correct?**
 8 A. That is correct. And I will specify that
 9 this person -- there were multiple visits, I
 10 believe. During that time, the visit I am going to
 11 be speaking about is one from Auditor Daniel Romero,
 12 who came to our office the week of May the 8th.
 13 And then we weren't able to actually meet
 14 with him for any long period of time. And then my
 15 manager, Kara Bobroff, met with him actually here in
 16 Santa Fe, Friday, May the 12th.
 17 **Q. Were you present at -- is it the May 8th**
 18 **visit? -- with Daniel Romero?**
 19 A. I was there. And then we had a couple of
 20 other things that came up. And then we had to
 21 reschedule, and he wasn't able to stay with us
 22 during that time.
 23 **Q. Sounds like two visits took place, or**
 24 **meetings, with the Public Education Department? The**
 25 **May 8th and the May 12th; is that correct?**

1 A. Yes, that's right.
 2 **Q. Did the Department request any documents**
 3 **following those visits?**
 4 A. Yes, they did.
 5 **Q. Okay. Do you recall what documents the**
 6 **Department requested?**
 7 A. They asked for documentation for MOUs that
 8 dealt with any federal funding that was part of my
 9 organization that went, to any degree, to any of the
 10 schools that we support.
 11 **Q. Okay. And did NISN provide those**
 12 **documents?**
 13 A. We did. We sent them out from Clarence
 14 Hogue's e-mail address to Daniel Romero on May the
 15 18th.
 16 **Q. So the Department has copies of those MOUs**
 17 **that we're talking about?**
 18 A. Yes.
 19 **Q. If I may direct your attention, Mr. -- to**
 20 **Exhibit E in the black notebook. And also -- well,**
 21 **we can stay with Exhibit E for now.**
 22 **So was -- so was this document provided to**
 23 **the Department following the Department's visit in**
 24 **May?**
 25 A. Yes.

1 **Q. Okay. And do you know what this document**
 2 **is?**
 3 A. I do.
 4 **Q. Okay. Can you explain -- is this a**
 5 **partnership agreement?**
 6 A. This is a partnership agreement, yes.
 7 **Q. Okay. And who is it between?**
 8 A. It's between NISN and DEAP Charter School.
 9 **Q. Okay. So does this partnership agreement**
 10 **pertain to a U.S. Department of Education grant?**
 11 A. It does.
 12 **Q. Okay. Can we turn to Exhibit F?**
 13 A. (Witness complies.)
 14 **Q. Was this document also provided to the**
 15 **Department?**
 16 A. Yes, it was.
 17 **Q. And is this another partnership agreement?**
 18 A. It is. It is another USDE grant agreement
 19 with DEAP.
 20 **Q. It is between NISN and DEAP?**
 21 A. That's correct.
 22 **Q. For both of these, who is the recipient of**
 23 **both of these two grants?**
 24 A. NISN is the sole recipient.
 25 **Q. Do any funds directly flow through to DEAP**

1 **under the grant -- under each of these partnership**
 2 **agreements?**
 3 A. No, they do not.
 4 **Q. And as you have stated, NISN is the sole**
 5 **recipient?**
 6 A. That's correct.
 7 **Q. Okay. So does the grant award to NISN**
 8 **require that NISN and DEAP create an MOU for the**
 9 **sub-grant award?**
 10 A. Yes.
 11 **Q. Okay. So that's the purpose of the MOU?**
 12 A. That's correct.
 13 **Q. Let's refer -- there's been some talk**
 14 **about this AmeriCorps time sheet on Donna Overson's**
 15 **affidavit. She made an allegation that Prestene**
 16 **Garnenez changed the description of work on a time**
 17 **sheet for federal time-and-labor reporting on a**
 18 **federal grant.**
 19 **So do you know which federal grant Donna**
 20 **Overson was referring to?**
 21 A. I do. She was referring to the AmeriCorps
 22 grant that NISN is the sole recipient of.
 23 **Q. Okay. And, sorry. Is Donna Overson --**
 24 **was she an employee of NISN?**
 25 A. She was an employee of NISN, yes.

1 **Q. Okay. So back to the AmeriCorps grant.**
2 **So you're saying that NISN is the sole recipient of**
3 **that grant?**

4 A. That's correct.

5 **Q. Okay. Does any actual money from the**
6 **grant flow through directly to DEAP?**

7 A. No, it does not. The money, you know,
8 Kara Bobroff and I are the sole people who write
9 the -- or sign off on any checks that go to our
10 AmeriCorps members at each of our schools. And so
11 the only money that is exchanged from NISN to
12 anybody at the school is paying the salary of the
13 AmeriCorps member at those schools.

14 **Q. So that's a program that's administered**
15 **and managed by NISN?**

16 A. That's right.

17 **Q. Okay. So when Ms. Overson refers to**
18 **federal time-and-labor reporting, is it DEAP -- so**
19 **you're saying it is NISN that is required to do the**
20 **reporting.**

21 A. That's correct, yes.

22 **Q. And just so I'm clear, how does DEAP**
23 **receive the money under the AmeriCorps grant**
24 **program?**

25 A. You know, they do not receive any money

1 straight to DEAP or to their operating budget. The
2 only money that is exchanged is from NISN to the
3 Corps members themselves directly, for their either
4 part-time role at schools or their full-time
5 positions at schools.

6 **Q. So is NISN required to furnish reports**
7 **regarding time and labor for this grant?**

8 A. Yes.

9 **Q. Does NISN have a process for furnishing**
10 **those reports?**

11 A. Yes.

12 **Q. Who does NISN furnish those reports to?**

13 A. To the state AmeriCorps officers.

14 **Q. Does NISN have internal controls for**
15 **ensuring that time and labor is accurately reported?**

16 A. Yes.

17 **Q. If I may direct your attention to the time**
18 **sheet in question, which is Exhibit 7 in the white**
19 **notebook --**

20 A. (Witness complies.)

21 **Q. -- have you seen this document before?**

22 A. I have. I have not honestly seen it -- I
23 have not gone through each of the pages; but I have
24 reviewed it, for sure.

25 **Q. Okay. But do you know what this document**

1 **is for?**

2 A. I do.

3 **Q. What is it used for?**

4 A. This first one, Exhibit 7, Page 24, at the
5 bottom, this is an AmeriCorps time sheet.

6 **Q. Okay. And was this time sheet submitted**
7 **to -- I'm sorry. You said it was submitted to --**
8 **who did you say it was submitted to?**

9 A. To NISN.

10 **Q. Did DEAP provide this time sheet to NISN?**

11 A. Yes.

12 **Q. What did NISN do with it?**

13 A. In this situation, we would send this
14 to -- we would compile all our Corps members. We
15 have around 20 right now working in our schools at
16 this time. And so we would compile them and then
17 send them to the AmeriCorps program officers here at
18 the state.

19 **Q. And were NISN's internal controls and**
20 **procedures followed in regards to the submission of**
21 **this document?**

22 A. Yes.

23 **Q. So did NISN report the correct time and**
24 **labor?**

25 A. To the best of my knowledge, yes.

1 **Q. Donna Overson also claimed that she**
2 **recorrected the time sheet, which was for Lane**
3 **Franklin, for AmeriCorps training. Do you happen to**
4 **know if it was part of Ms. Overson's job to review**
5 **time sheets for AmeriCorps training?**

6 A. To review time sheets for AmeriCorps
7 training, no, that's not her space.

8 **Q. It's not. Okay. Do you know how it came**
9 **to be that she was reviewing -- she had access to**
10 **the time sheet?**

11 A. I do. The person in question on the top
12 of this time sheet, his name is Lane Franklin. And
13 within here, you'll see both AmeriCorps time sheets,
14 and the handwritten ones are DEAP Charter School's
15 time sheets; so there are two different types of
16 time sheets in here.

17 The school -- Lane is a part-time
18 AmeriCorps corps member. The school wanted to hire
19 him to be a .5 FTE staff member at the school. When
20 we were aware of that, there is a requirement, being
21 an AmeriCorps corps member, that you cannot work at
22 the school that you're volunteering in.

23 And so when we found that out in March,
24 during this time, during this -- these time sheets,
25 our program officer, J'Shon Lee, who works for NISN,

1 as well, and coordinates AmeriCorps, worked with the
2 school to rectify that situation.

3 **Q. Okay. So the -- whatever was reported on**
4 **the DEAP time sheet, that never was submitted, or**
5 **that was corrected before it was submitted to the**
6 **AmeriCorps program?**

7 A. That is correct.

8 **Q. So then the correct time and labor was**
9 **accurately and correctly reported.**

10 A. To the best of my knowledge, yes, that
11 was.

12 **Q. Are you aware that the Department has**
13 **alleged that during DEAP's first two years of**
14 **operation, DEAP had five different business**
15 **managers?**

16 A. I am.

17 **Q. Okay. Would you agree with that**
18 **statement?**

19 A. To an extent, yes. Technically, we did --
20 I think they did have five different business
21 managers. NACA Inspired Schools Network provided
22 business management services similar to that that
23 the Vigil Group does with their different -- their
24 different partners. And so we had three different
25 business managers that worked with us during their

1 the State or to the PED as the official business
2 manager; but she did do work for the school as of
3 April the 20th.

4 **Q. Okay. So would you say that April the --**
5 **April 20th, 2017, was Ms. Girdner's last day serving**
6 **as DEAP's business manager?**

7 A. I would say -- based on the e-mails that
8 I've been privy to, I would say that was probably
9 around the same time. Veronica -- "Chavez," I
10 believe is her last name, the Budget Analyst, sent
11 over a request for technical review that included a
12 letter from David Craig, as well, during that time.

13 And so she forwarded that to Kara Bobroff
14 and myself at that time. And so I took that as
15 knowledge that she really wanted to have somebody
16 else take on that.

17 **Q. Okay. And I understand that NISN has made**
18 **a decision to no longer provide business management**
19 **services to NISN-affiliated schools such as DEAP; is**
20 **that correct?**

21 A. That's correct.

22 **Q. Can you explain the reason behind NISN's**
23 **decision to discontinue providing these types of**
24 **services to NISN-affiliated schools such as DEAP?**

25 A. Sure. I -- in my opinion -- although Kara

1 first and second year that we would -- that we
2 offered up as their business management
3 professionals.

4 And so when I think about five, yes, there
5 were technically five different people; but there
6 were three that worked with the same organization.

7 **Q. Okay. So could we think of it as -- would**
8 **you characterize it -- or could you characterize it**
9 **as NISN provided business management services, and**
10 **through those services, provided three different**
11 **business managers?**

12 A. Yes, that's how I would --

13 **Q. I want to talk about, specifically, the**
14 **business management services that NISN did provide.**
15 **I believe Kay Girdner was the last business manager**
16 **from NISN to provide business management services to**
17 **DEAP; is that correct?**

18 A. I believe that is correct. She was the
19 manager of the two other business managers from our
20 organization. And so they directly reported to her.
21 When Donna Overson resigned from DEAP's business
22 management services, I believe that Kay did -- for a
23 short period of time provided ongoing supports to
24 the school.

25 I'm not sure if she sent in information to

1 was the direct manager of the business managers
2 for -- for -- that NISN provided to schools. But in
3 my opinion, in my conversations with Kara, we really
4 feel that a business manager should be chosen from
5 the school. There's so much intimate relationships
6 that have to be in place in order to run a school
7 and function very highly, we wanted to make sure
8 that that business manager fit the culture and
9 the -- the values of the local school community.

10 And we felt at that time, when we got out
11 of the business management business, that it was
12 better for us to have the schools decide who was
13 going to offer that -- services to them.

14 **Q. Within NISN's own organization, did NISN**
15 **experience turnover issues with business managers?**

16 A. Yes, we did.

17 MS. CUYLEAR: And I think that was my last
18 question. Thank you. I'll pass the witness.

19 THE WITNESS: Thank you.

20 MR. McMILLAN: How much time do I have?
21 Anybody know?

22 MS. FRIEDMAN: No. We have -- we're not
23 timing you.

24 MR. McMILLAN: Oh, I see. I see. Right.
25 Right.

1 THE CHAIR: The last time there was no
2 timing; so we've held with that, which I kind of
3 regret telling you that at this moment in time;
4 but...

5 MR. McMILLAN: Well, then, I've only got
6 about an hour's worth of questions.

7 Kidding, of course.

8 CROSS-EXAMINATION

9 BY MR. McMILLAN:

10 **Q. Let's just take a look at that Exhibit E**
11 **behind -- or in the black binder. Exhibit E and**
12 **Exhibit F are both those MOUs that you testified to.**

13 **What's the date of the signature of this**
14 **MOU?**

15 A. One is 12/21/2016, and the other three are
16 12/20/2016.

17 **Q. Okay. At that time, do you know who the**
18 **head administrator -- the Licensed Head**
19 **Administrator was at DEAP?**

20 A. Yeah. Jennie Jimenez, at the time, if I
21 recall correctly.

22 **Q. And has she signed -- is she a signatory**
23 **to either of these MOUs?**

24 A. She is not. But that wasn't necessarily a
25 need for us to have the head administrator be the

1 **right? -- in this case, from DEAP.**

2 A. Yes. So we have Corps members in each
3 school. And each school that we have a Corps member
4 is a designated supervisor for AmeriCorps that is
5 their direct connection at that school. And we have
6 a program officer with NISN, as well.

7 **Q. Okay. Should NISN report inaccurate or**
8 **doctored time information, does that -- could that**
9 **potentially have repercussions with respect to NISN**
10 **and its schools, financial repercussions?**

11 A. Yes.

12 **Q. So NISN must necessarily rely upon the**
13 **reporting at the school level; correct?**

14 A. We do. And then we also verify.

15 **Q. You do verify. And -- but the bottom line**
16 **is that should a school inaccurately or somehow**
17 **change time sheets to get around requirements, and**
18 **that information isn't -- or it does make its way**
19 **back to the grant administrator, couldn't that be**
20 **detrimental to the funding?**

21 A. I think you speculated a little bit with
22 saying that they were trying to get around
23 something.

24 **Q. It was an "if." I'm sorry. It was a**
25 **hypothetical.**

1 person who signed this.

2 **Q. Okay. But it was your understanding that**
3 **the individuals who did sign on behalf of DEAP -- it**
4 **looks like they were Prestene Garnenez and Kayla**
5 **Dawn Begay -- was it your understanding that they**
6 **had signature authority on behalf of the school?**

7 A. I'm not sure about signature -- signatory
8 authority on behalf of the school with regard to the
9 Public Education Department or other external
10 things; but for us, they had authority to sign these
11 documents.

12 **Q. Okay. And do you know whether either held**
13 **the appropriate licenses to have signatory authority**
14 **on behalf of the school at the time?**

15 A. I'm not -- I'm not sure.

16 **Q. Okay. When -- when you were discussing**
17 **the issue with the -- with the time sheets, did I**
18 **understand this correctly? NISN is, in fact,**
19 **required to report time accurately and honestly to**
20 **the -- the grant administrator, essentially.**

21 A. Yes; for AmeriCorps, yes.

22 **Q. For AmeriCorps, specifically; that's what**
23 **we're talking about. Okay. Therefore -- and it**
24 **necessarily must follow that NISN is getting the**
25 **time reporting from -- from the schools directly --**

1 **If a school were to doctor time**
2 **information, for whatever information, and that**
3 **information is fed up to you folks, to NISN, and you**
4 **pass it on; even following verification, you pass it**
5 **on to the grant administrator, and the grant**
6 **administrator somehow figures out that there has**
7 **been something amiss here, something has gone awry,**
8 **couldn't that be hurtful to the grant?**

9 A. So I would say that the -- you know, the
10 AmeriCorps corps members either get paid \$6,000 or
11 \$12,000 a year, depending on if they're halftime or
12 full-time with AmeriCorps. The intention of these
13 time sheets is not to nickel-and-dime people in
14 terms of how many hours on the job they are.
15 They're volunteering.

16 It's more to focus on ensuring that they
17 are providing you the direct service or indirect
18 service to that school with regard to the
19 fulfillment of the AmeriCorps program, and then
20 making sure that they either have -- they either
21 meet the threshold of the half-time, which is around
22 900 hours of service, or the full-time, which is a
23 little bit short of 1,800 hours for the entire year.

24 And so the purpose of the time sheets for
25 AmeriCorps is to ensure that Corps members are

1 moving towards their needed hours to -- to meet the
2 requirements of the program.

3 **Q. Okay. I'll give you that. But in any**
4 **event, is honest and accurate reporting important at**
5 **the school level?**

6 A. Yes.

7 MR. McMILLAN: Okay. No further
8 questions. Thank you.

9 MS. CUYLEAR: We're done.

10 THE CHAIR: Commissioners?

11 Thank you.

12 (Witness is excused.)

13 MS. CUYLEAR: Madam Chair, are we out of
14 time for our case?

15 MS. FRIEDMAN: No. You have five minutes.

16 MS. CUYLEAR: We do have one more witness.
17 I guess we can use the five minutes, and I can try
18 to get through it as quickly as I can.

19 PRESTENE GARNENEZ,

20 after having been previously sworn under oath,
21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. CUYLEAR:

24 **Q. Good afternoon. Can you please state your**
25 **name for the record?**

1 sure that we do the things that we say we were going
2 to do with the grants. So that involves keeping
3 track of the funds.

4 So I -- I do a wide variety of things.

5 **Q. But you report to the head administrator,**
6 **Louella Poblano?**

7 A. Yes.

8 **Q. And final approval, is that made by the**
9 **head administrator on all the things you're working**
10 **on?**

11 A. Yes. As Louella shared earlier, that we
12 do have leadership meetings; and so we discuss
13 things. But she ultimately has the final say-so of
14 what we want to do.

15 **Q. Have you ever claimed that DEAP does not**
16 **need a head of school?**

17 A. No. In fact, I've always felt like I've
18 been an advocate for the opposite, in that I want a
19 strong head administrator who can really help guide
20 the DEAP School and the -- you know, really help us
21 get to know our roles and responsibilities.

22 **Q. Have you ever claimed that DEAP does not**
23 **need a business manager?**

24 A. No, that's not true, either. Again, if
25 anything, I've been an advocate for wanting to bring

1 A. Sure. Prestene, spelled P-R-E-S-T-E-N-E.
2 Last name, Garnenez, for everybody who doesn't know
3 how to pronounce it. G-A-R-N-E-N-E-Z.

4 **Q. And what is your position with DEAP?**

5 A. I'm the Director of Operations.

6 **Q. How long have you held that position?**

7 A. Since the school opened about August 2015.

8 **Q. Okay. And who is your supervisor?**

9 A. Louella Poblano.

10 **Q. Can she fire you?**

11 A. Yes.

12 **Q. Are you aware that the Department has**
13 **alleged that DEAP allowed you, as an unlicensed**
14 **staff member, to perform school functions that only**
15 **a licensed administrator can perform?**

16 A. Yes.

17 **Q. What is your response to that allegation?**

18 A. I think that my authority has been widely
19 exaggerated with the school. I am the Director of
20 Operations, and so I do spend a great deal of time
21 with the day-to-day operations of the school. You
22 know, a lot of the things that I do are related to
23 the food program, to the facilities itself.

24 I do things like grant-writing. I also
25 manage the grants when we do receive them; so making

1 a business manager to our school. I've -- I think
2 it would be very helpful to have someone there with
3 day-to-day access who can give us information about
4 where we are in the budget.

5 You know, just -- I mean, Sean has
6 testified that we talk almost daily, you know, just
7 because we have a lot of questions. And so we rely
8 on the business manager to help guide us with a lot
9 of information. And it would be helpful to have
10 somebody on site.

11 **Q. Are you aware that there's an allegation**
12 **that you changed the description of work on a time**
13 **sheet for federal time for an individual named Lane**
14 **Franklin?**

15 A. Yes.

16 **Q. Did you personally erase or white-out any**
17 **information in that time sheet?**

18 A. I did not.

19 **Q. Did you personally replace any description**
20 **in the time sheet?**

21 A. I did not.

22 **Q. Did you instruct Mr. Franklin to make the**
23 **change that he made?**

24 A. I received an e-mail from Donna Overson
25 and stating that his time sheet that he submitted,

1 that we could not utilize AmeriCorps activities on
2 that time sheet. And so I took it, like, thank you,
3 you know, for making sure those checks and balances
4 exist.

5 And so I forwarded that to Lane and made
6 him aware of that. And so he made those changes.
7 And all I did was just -- the scanned copy that he
8 sent to me, I just sent it back to Donna.

9 **Q. So you just forwarded Ms. Overson's**
10 **instructions to Mr. Franklin?**

11 A. Uh-huh.

12 **Q. Is that a "Yes"? Sorry.**

13 A. Yes. I'm sorry. Yes.

14 **Q. And then did you forward Mr. Franklin's**
15 **revised time sheets to Ms. Overson?**

16 A. Yes.

17 **Q. And after forwarding the time sheet that**
18 **Mr. Franklin resubmitted to Ms. Overson, did she**
19 **provide any further response to you?**

20 A. No, she did not.

21 **Q. When did you first learn that Ms. Overson**
22 **took issue with the time sheet that Mr. Franklin**
23 **revised?**

24 A. When these proceedings started, I think we
25 were summoned to come to the May PEC meeting. And

1 CROSS-EXAMINATION

2 BY MS. LUCK:

3 **Q. Good afternoon. So just turning to the**
4 **MOUs that were discussed just a moment ago. So you**
5 **signed them as -- in your role as the cofounder; is**
6 **that correct?**

7 A. And the Director of Operations, yes.

8 **Q. Okay. And so there was no one who signed**
9 **it on behalf of the school that had a license?**

10 A. At the time, yes.

11 **Q. Okay. And no one who signed it --**

12 A. An administrative license?

13 **Q. I apologize. Yeah, an administrative**
14 **license. So there was also no one who signed it who**
15 **had signatory authority?**

16 A. Well, as Alan stated, that this was an MOU
17 that did not require a formal head-of-school
18 signatory authority.

19 **Q. Okay. And did you also sign financial**
20 **documents on behalf of the school in your role?**

21 A. For example?

22 **Q. So, for example, there were receipts that**
23 **were given out to people who made donations to the**
24 **school that were signed by you; is that correct?**

25 A. Receipts for donations, such as?

1 shortly before -- I think about four or five days
2 before that -- we got copies of these affidavits
3 from Ms. Girdner and Ms. Overson. And that was the
4 first time that I had read that she had some issue
5 with regards to this time sheet.

6 MS. FRIEDMAN: You have one minute.

7 THE CHAIR: One minute.

8 **Q. (By Ms. Cuylear) Do you recall signing**
9 **MOUs on behalf of DEAP?**

10 A. Yes.

11 **Q. And did you sign as the head of school on**
12 **those documents?**

13 A. No, I did not. Both -- or all three of
14 those MOUs that are in question were signed in
15 December, and they had my title of Cofounder and
16 Director of Operations. Just also to clarify with
17 what Alan said at the time, we did not have a head
18 administrator.

19 **Q. And then other than the one occasion where**
20 **you signed the NISN MOUs as Director of Operations**
21 **and Cofounder, who signed other documents on behalf**
22 **of DEAP?**

23 A. The head administrator.

24 MS. CUYLEAR: Thank you. That's all the
25 questions I have.

1 **Q. Those were provided in the documents that**
2 **were attached to the responses. I can show you a**
3 **couple of those.**

4 A. Yeah. Please.

5 **Q. Okay. So, sorry. These are attached in**
6 **Exhibit D to the response.**

7 MS. LUCK: And if I may approach?

8 **Q. Do you recognize these documents?**

9 A. Yes. These are bank transactions for
10 deposits with Wells Fargo.

11 **Q. Okay. And about what time were those**
12 **done?**

13 A. These are done when the school receives
14 checks, whether it be grant checks; so like the
15 grants from NISN.

16 **Q. Okay. And those are signed by you;**
17 **correct?**

18 A. The receipt of these, yes; the document
19 that we received them, yes.

20 **Q. Okay. And they're not signed by any kind**
21 **of licensed official with any signatory authority?**

22 A. No.

23 **Q. Okay. And is it true that you also signed**
24 **some procurement documents?**

25 A. Procurement for?

1 **Q. I can show you again in the response to**
2 **the --**

3 A. Can I also add to you that I've never been
4 made aware that these receipts for documents coming
5 in needed to be signed by a licensed administrator?
6 The previous business managers from NISN, they gave
7 us instructions when we first started the school,
8 whenever there are checks coming in, that we enter
9 the information in the receipt book. We make sure
10 that we get a copy of the checks, and we deposit it.

11 That was the guidance I was given by the
12 previous business manager; so I did not think it was
13 anything outside of the ordinary.

14 **Q. Okay. And so returning back to the**
15 **response on Appendix F, there are some procurement**
16 **requests that are also signed by you. Are you**
17 **familiar with these? They're from September 6th of**
18 **2016.**

19 A. They're not procurement requests that I'm
20 looking at.

21 **Q. Okay. I'll show you these.**

22 MS. LUCK: If I may approach?

23 **Q. So, again, this is appendix F.**

24 A. Okay. So this is a preapproval purchase
25 and check request form that was completed by me for

1 **your signature authority was adjusted; is that**
2 **correct? You were no longer a signatory authority?**

3 A. For checks.

4 **Q. Okay. So you are still a signatory**
5 **authority on behalf of the school?**

6 A. I was only a signatory authority for
7 checks.

8 **Q. Okay. And are you a signatory authority**
9 **anymore on checks?**

10 A. No.

11 **Q. Okay.**

12 A. But, again, that was the advisement that
13 was given to us by the previous business manager
14 when we first opened the school. So signatory
15 authority stemmed all the way back from August 2015.
16 It was myself, and it was the founding governing
17 council members who were also signatory authorities.

18 **Q. Okay.**

19 MS. LUCK: Okay. Thank you for your time.

20 THE CHAIR: Commissioners, any questions?

21 Commissioner Toulouse?

22 COMMISSIONER TOULOUSE: Madam Chair.

23 Ms. Garnenez?

24 THE WITNESS: Thank you.

25 COMMISSIONER TOULOUSE: I just want to ask

1 the purchase of food items. And it was preapproved
2 by Kayla Begay.

3 **Q. Okay. So, again, on these documents, they**
4 **weren't completed by a business manager; is that**
5 **correct?**

6 A. No. They were completed -- that's --
7 it's -- I took this as our normal purchase
8 requisition. So a requisitioner fills out the form
9 and then gives it to the head administrator for
10 approval. And then that's what we submit to the
11 business manager. So this followed that same
12 process. But it's just a preapproval check request.

13 **Q. And was that done by anybody who had --**
14 **who was the Chief Procurement Officer?**

15 A. No.

16 **Q. Okay. So the person who completed those**
17 **documents did not have a license.**

18 A. The purchase requisitioner wouldn't need
19 to have a license. I mean, we have the office
20 manager completing purchase requisitions to purchase
21 office supplies.

22 **Q. And is that person trained in procurement?**

23 A. No. But the requisition can be completed
24 by anyone within the school.

25 **Q. Okay. And so there was testimony that**

1 you, how impassioned are you for this school? I
2 know how much you care. I want you to put it on the
3 record how much you care.

4 It's okay. I just -- I want you on the
5 record saying how important this school is to you.

6 THE WITNESS: So there are 24 hours in a
7 day. And I probably spend 15 to 16 hours working on
8 the school.

9 COMMISSIONER TOULOUSE: Thank you. And
10 how many -- how much time went into before you even
11 came in with your proposal to us?

12 THE WITNESS: Kayla and I worked on it so
13 hard. I think the year prior to we even opening,
14 you know, it was all that we worked on, talking to
15 people and getting to know the process. And for me,
16 because, you know, I am -- I've stated it before
17 many times over, that I am new to the world of
18 education, you know. And I do rely on a lot of
19 people who have that familiarity with all of these
20 processes.

21 And perhaps that naive -- you know, I went
22 into it naive, trusting these business managers who
23 worked with us from NISN, and that they were guiding
24 us properly. I also trusted that, you know, having
25 a head administrator on staff would -- would be

<p style="text-align: right;">Page 322</p> <p>1 something that is really easy. 2 But I don't know if you guys have ever 3 been out to our community. And, again, I want to 4 invite you. But we're real remote. And we're a 5 tiny, tiny little town. And to get somebody who is 6 licensed to come and work and live in Navajo, 7 New Mexico, was way harder than I think Kayla and I 8 anticipated. 9 But I also knew that I'm -- I'm a fairly 10 decent educated person. You know, I went to school. 11 I did what my parents, my family, my ancestors had 12 asked of me to do, which is go to school, get an 13 education, and come home, help your people, you 14 know. On top of that, I've got a good head on my 15 shoulders. I'm high-functioning. I'm efficient at 16 what I do. And I learn really fast. I have a fast 17 learning curve. 18 And these past few months have been really 19 reassessing all of this and the system in which we 20 have to function in, and that it's not fair. You 21 know, it's not fair that our school is even at this 22 point. 23 I know you guys didn't get to hear all of 24 the testimonies from the public comment. But those 25 parents who came, like, they're single parents. We</p>	<p style="text-align: right;">Page 324</p> <p>1 THE WITNESS: I prepare it. I prepare the 2 food. I prepare breakfast, and I prepare lunch. 3 And I'm actually really proud of our food program, 4 you know, because we -- we incorporate a lot of 5 fresh fruits and vegetables. You know, we don't 6 purchase foods where they're pre-packaged and 7 preserved. They're not pre-fried. 8 I mean, we're trying to get these kids to 9 see that eating healthy and appreciating good, 10 healthy, fresh foods needs to start somewhere. 11 I mean, we're coming from communities in 12 which the population is obese or is diagnosed with 13 diabetes and trying to show them that, you know, 14 healthy foods doesn't always have to be yucky. You 15 can make them into foods that you can really 16 appreciate, like savor the sweetness of the fruits 17 and vegetables that you're eating. 18 So I do. I'm proud of the food program 19 that we do. And I think it really lends itself to 20 the overall vision that Kayla and I share, which is 21 this holistic school that not only addresses our 22 young people academically, but socially, 23 emotionally, and even physically. 24 What are we putting in our bodies? How 25 does that affect us when we're out there running?</p>
<p style="text-align: right;">Page 323</p> <p>1 have kids who have come to our school who don't even 2 have parents and have to live with their relatives. 3 Sometimes they don't even know where their next meal 4 is coming from. 5 And we're impacting their lives. I'd like 6 to believe that. And I hope that you see that with 7 role models like Kayla and I to show them that you 8 can go. You can go off in the world. You can get a 9 good education. You can come back, and you can help 10 your community. 11 COMMISSIONER TOULOUSE: Madam Chair, I 12 appreciate this. I wanted you to be able to speak 13 from your heart. And I have one more question. 14 Who fixes breakfast? 15 THE CHAIR: Commissioner Toulouse, you're 16 going beyond the scope of this hearing. And I was 17 advised to let it go once; but I really -- 18 COMMISSIONER TOULOUSE: Ms. Garnenez -- 19 her name has figured from the very first day in 20 this. And I thought she -- because her name was 21 there, she needed to defend that name. 22 But I also want to know who cooks 23 breakfast for those kids every day. 24 COMMISSIONER JOHNSTON: Madam Chair, I 25 have a question.</p>	<p style="text-align: right;">Page 325</p> <p>1 How does that affect us when we're taking a test? 2 We're really trying to build a school that 3 gives these students this sort of 360-degree view 4 all around of the world that they exist in. 5 COMMISSIONER TOULOUSE: Thank you. 6 THE CHAIR: Commissioner Peralta? 7 COMMISSIONER PERALTA: Thank you, 8 Madam Chair. I just have one question. Back to the 9 signatory authority. Since 2015, when the school 10 was first started, who was it that gave you the 11 authority to sign? 12 THE WITNESS: For the check signing? 13 COMMISSIONER PERALTA: Any authorization 14 to sign any procurement document or any purchase. 15 THE WITNESS: The head administrator would 16 sign, when we had a head administrator. There were 17 portions of time in which we did not have a head 18 administrator. And so Kayla played that role, or I 19 played that role. 20 COMMISSIONER PERALTA: Okay. So it was -- 21 at no time was it ever the governing council 22 president. 23 THE WITNESS: The governing council 24 president also signed checks, yes. 25 COMMISSIONER PERALTA: Gave you the</p>

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1 authority to sign.
 2 THE WITNESS: Not formally, not in a
 3 meeting.
 4 COMMISSIONER PERALTA: So you never had
 5 any conversation with the president and say -- he
 6 basically gave you that authority to sign?
 7 THE WITNESS: She did not.
 8 COMMISSIONER PERALTA: "She." I'm sorry.
 9 I apologize.
 10 So the initial head administrator, when
 11 you first started the school, gave you that
 12 authority. Then it sounds like that administrator
 13 left, and then you were without an administrator.
 14 THE WITNESS: Yes.
 15 COMMISSIONER PERALTA: And then you had
 16 another licensed administrator come in.
 17 THE WITNESS: Yes.
 18 COMMISSIONER PERALTA: And that licensed
 19 administrator again gave you that authority? Or
 20 there was no conversation --
 21 THE WITNESS: No. He would sign. When he
 22 was our administrator, he would sign.
 23 COMMISSIONER PERALTA: All right. Thank
 24 you.
 25 THE CHAIR: Commissioner Johnston?

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1 And how -- how closely are you -- I guess
 2 I'm looking for distance. Where is Navajo Pine
 3 located?
 4 THE WITNESS: It's about half-a-mile.
 5 COMMISSIONER JOHNSTON: And during -- what
 6 is the relationship with Navajo Pine?
 7 THE WITNESS: There isn't a relationship.
 8 COMMISSIONER JOHNSTON: Is there a reason
 9 for that?
 10 THE WITNESS: No. In the first year, when
 11 we were going through the application process and
 12 then we got approved, we had approached
 13 Gallup-McKinley County Schools about accessing a
 14 portion of one of their schools; because we knew
 15 that the north wing of the middle school had never
 16 been occupied from the time that it was built. And
 17 so we had approached the School Board requesting if
 18 we could enter into an agreement with them for that.
 19 But they tabled the discussion and didn't
 20 really respond to us. And so that's basically been
 21 the extent of the relationship with Gallup-McKinley
 22 County Schools.
 23 We are also -- through the local hospital,
 24 we are in receipt of some services called "Project
 25 Venture" with our students, in which they target the

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1 COMMISSIONER JOHNSTON: Thank you,
 2 Madam Chair.
 3 Ms. Garnenez, can you go through the
 4 steps -- if I'm a teacher, and I want to purchase
 5 something, and I complete a requisition, to whom do
 6 I give that requisition?
 7 THE WITNESS: The purchase requisitions
 8 are given to the head administrator.
 9 COMMISSIONER JOHNSTON: What happens when
 10 the head administrator gets it?
 11 THE WITNESS: The head administrator
 12 reviews it, and then we submit it to the business
 13 manager.
 14 COMMISSIONER JOHNSTON: All right. And
 15 then?
 16 THE WITNESS: The business manager issues
 17 a purchase order. Usually, he'll send it to me, and
 18 I send it out to the entities in which the purchase
 19 requisition -- or the quote was made from.
 20 COMMISSIONER JOHNSTON: During the times
 21 when there was no head administrator, who signed?
 22 THE WITNESS: Like I said, it was either
 23 Kayla or I.
 24 COMMISSIONER JOHNSTON: All right. I just
 25 needed that to clarify.

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1 sixth and seventh graders at both the Navajo middle
 2 school and our middle school.
 3 COMMISSIONER JOHNSTON: Okay. And I
 4 was -- in my mind, as you were going through all of
 5 these transitions, and you were the constant, you
 6 and Ms. Begay, the ability to reach out to a school
 7 district that understands these same procedures and
 8 processes with which you're grappling, that's where
 9 I was trying to -- because within a half-a-mile was
 10 a school, a part of the school district; so -- but
 11 thank you very much.
 12 THE CHAIR: Commissioners?
 13 Thank you.
 14 (Witness is excused.)
 15 THE CHAIR: Counselors you have
 16 ten minutes each for your closing arguments.
 17 MR. McMILLAN: Madam Chair, members of the
 18 Commission, many thanks for your -- for your time.
 19 I know that many of the issues raised in
 20 this hearing over the two days were already familiar
 21 to the Commission from prior meetings and
 22 discussions. But now, you've heard the sworn
 23 testimony of PED witnesses, witnesses from the
 24 school. You've received exhibits from both sides.
 25 I'm now going to take a moment to explain

<p style="text-align: right;">Page 330</p> <p>1 why we believe revocation is appropriate under the 2 law. I'll try not to bore you to death; but this is 3 really where the rubber meets the road. 4 I promised -- I don't know if I promised. 5 But I said at the beginning that we weren't here to 6 malign the students of this school, the parents, the 7 teachers, to -- we -- this -- these hearings -- this 8 case is about the financial management of the school 9 since its inception. And that's what I'm going to 10 talk about right now. I'm going to try to fit the 11 facts as we've heard them, the evidence that we've 12 heard, to the law to demonstrate why revocation is 13 appropriate. 14 We'll all recall that the operative 15 statute here is Section 22-8B-12K, and that it 16 includes four subsections warranting revocation. 17 I would submit that three of those four 18 subsections have been implicated in this hearing: 19 No. 1, violations of the charter contract. 20 The contract itself has been admitted as evidence, 21 and we've gone over -- we went over with a PED 22 witness a number of the provisions that we believe 23 have been violated. 24 No. 2, a failure to meet generally 25 accepted standards of fiscal management.</p>	<p style="text-align: right;">Page 332</p> <p>1 findings from 2016, the site visit report findings, 2 some of the other evidence we've heard are very 3 serious. There's a large number of findings that 4 suggest generally a lack of oversight, a lack of 5 governance and of management ability, at least in 6 the early years of the school. 7 And although it's our -- well, let me just 8 move into my discussion under that first general 9 reason set forth in the Notice of Intent, that being 10 issues of financial and procurement concerns. 11 Starting with violations of the charter 12 school contract, you'll recall that we went through 13 Section 8.08 and Section 8.09 in testimony with PED 14 witnesses. Section 8.08 asks a question, "Is the 15 school meeting financial reporting and compliance 16 requirements?" 17 I believe that the Commission has heard 18 evidence over two days that the school has, in 19 instances, failed to meet financial reporting, and, 20 certainly, compliance requirements. And while up 21 until the date of this hearing, there was no 22 evidence that there was -- that the school was 23 complying with the post-audit Corrective Action Plan 24 that it entered into, and that it was not compliant 25 with monthly reporting, we, of course, have heard</p>
<p style="text-align: right;">Page 331</p> <p>1 No. 3, a violation of any provision of law 2 from which the school is not exempted. 3 I'll be going through each of these in 4 just a moment. 5 I would note that the school has put on 6 evidence that it believes it has righted, and is 7 righting, the ship. However, I would remind the 8 Commission that the statute does not speak to 9 progress. The term "substantial progress" was used 10 on Friday, the 13th. That language, while 11 apparently applicable to academic performance and 12 measures thereof, with respect to financial 13 problems, the statute really addresses past 14 violations, individual violations, and does not -- 15 there's no allowance in the language of the statute 16 for substantial progress. 17 The PEC's Notice of Intent had set forth 18 two general reasons for revocation; number one, 19 issues of financial and procurement concerns; and, 20 two, issues of concern regarding the actions of an 21 unlicensed person. 22 It's our position that the reasons set 23 forth in the Notice are sufficient individually, on 24 their own, to revoke the charter. However, 25 collectively, the audit, site visit -- the audit</p>	<p style="text-align: right;">Page 333</p> <p>1 new evidence, apparently brought out just for 2 purposes of this hearing. 3 Nonetheless, if you go back to the 4 testimony of David Craig and Molly Saiz, I think we 5 have substantial evidence, at least, of failure to 6 meet reporting and compliance requirements. 7 Section 8.09 of the charter school 8 contract asks the question, "Is the school following 9 Generally Accepted Accounting Principles?" 10 Well, it seems to me, if we look back at 11 the testimony, we have frankly straight-up 12 admissions that Generally Accepted Accounting 13 Principles were not being followed for some time. 14 We heard that both from the current business manager 15 and in other testimony. Therefore, it's clear that 16 there were violations of the charter school contract 17 with respect to a failure to follow Generally 18 Accepted Accounting Principles. 19 And while, since June, the Vigil Group has 20 been involved, there's actually been no evidence 21 provided directly to PED, anyway, in response to the 22 site visit report or its 2016 audit findings, that 23 the school has indeed managed to develop an 24 acceptable internal control environment, because 25 prior to this hearing, we had no report and no</p>

1 response to the findings.

2 Nonetheless, again, our case is based on
3 past transgressions, not future promises and not
4 necessarily the current state of affairs, as
5 described by the current business manager.

6 There's also -- let's see. Moving on
7 under our issues of financial and procurement
8 concerns, the second subsection of the statute I'd
9 like to talk about -- I just talked about the
10 violations of the charter contract.

11 I'd like to talk about the failure to meet
12 generally accepted standards of fiscal management.
13 We heard evidence of failure by the school to
14 develop, for some time, an appropriate internal
15 control environment and to work within appropriate
16 frameworks. You'll recall David Craig testifying
17 with really a wealth of experience in this area that
18 the internal control environment at this school was
19 the worst he'd ever seen in his -- in his work with
20 a school, and he rated fiscal management 8 or 9 out
21 of 10, 10 being the worst he had ever seen.

22 We've also heard evidence of difficulties
23 reconciling, verifying bank accounts, general ledger
24 accounts, difficulties in putting together a working
25 operating budget, and seeming lack of understanding

1 resolving them. And to date, there's been no --
2 that has not been done.

3 These -- the failures that I'm describing
4 aren't just failures to meet generally accepted
5 practices, but many are also violations of State
6 law.

7 If you look at the procurement code,
8 Section 13-1-95-2E requires a Licensed Chief
9 Procurement Officer, as does Section 13.1.97. I
10 believe the evidence supports findings of violations
11 of the small purchases provision of the Procurement
12 Code, that being 13-1-125.

13 THE CHAIR: You have one minute.

14 MR. McMILLAN: Oh, my gosh. Okay.

15 There are also a number of violations of
16 regulation -- these are generally listed in the
17 Notice of Intent to Revoke. I don't have time to go
18 through them now.

19 We also have concerns about problems with
20 federal law, problems that will -- with grant
21 reporting, doctoring of time sheets, this kind of
22 thing that have larger repercussions.

23 Finally, with respect to issues of concern
24 with regard to actions of an unlicensed person,
25 let's look at Section 8.12 of the charter school

1 of what it takes to do so.

2 We've heard evidence of purchase and
3 procurement violations. You'll recall David Craig
4 testifying that the school had on hand no documents
5 that would have matched the requirements of the
6 procurement code.

7 Furthermore, we've heard that they have --
8 the school has had no Chief Procurement Officer for
9 a period of time, and that signatures required for
10 procurement were furnished by unlicensed individuals
11 with no training in procurement when there was no
12 head administrator at the school.

13 In addition -- and there's -- this is
14 closely related -- we've heard a good deal of
15 evidence about the school operating for periods of
16 time without a business manager, operating for
17 periods of time without a licensed school
18 administrator, and, in any event, substantial
19 turnover in these positions. That kind of thing
20 goes to a failure to meet generally accepted
21 standards of fiscal management, as well.

22 Finally, we have the unresolved audit
23 findings, which we're told today are being remedied;
24 it's an ongoing process. But, again, part of fiscal
25 management is dealing with audit findings and

1 contract, which asks, "Is the school meeting its
2 staff credentialing requirements?"

3 We have plenty of evidence that has not
4 been done along the way. There are also violations
5 of State law attendant to these failings.

6 So in conclusion, returning to my opening
7 statement that charter schools -- can I just finish
8 the sentence, the thought? -- are about past
9 performance, not future promises. The evidence
10 shows that DEAP's past performance warrants
11 revocation, notwithstanding the promises and
12 proposals presented by the school today.

13 Thank you very much.

14 THE CHAIR: I have one question.

15 MR. McMILLAN: For me?

16 THE CHAIR: Yes. And that is that
17 22-8B-12K says "may," not "shall" revoke.

18 MR. McMILLAN: Sure. If that's the
19 language of the statute, that's correct. I didn't
20 mean to imply that you're required to revoke. I
21 said that revocation is warranted under the language
22 of the statute, that you may. You have the
23 authority.

24 THE CHAIR: Okay. Thank you.

25 MR. McMILLAN: Yeah.

<p style="text-align: right;">Page 338</p> <p>1 MS. CUYLEAR: Madam Chair, members of the 2 Commission, thank you for -- for sitting in on these 3 proceedings. It's really unfortunate that we find 4 ourselves here today. And I'd like to reiterate 5 that until this moment, until these proceedings were 6 initiated, that DEAP was never given an opportunity 7 to respond to the allegations against the school, 8 which really arose after some affidavits that came 9 about in March. DEAP was never given a Corrective 10 Action Plan.</p> <p>11 And I believe that the PEC owes DEAP the 12 same opportunity and consideration it has repeatedly 13 given to non-Native charter schools to correct 14 deficiencies and build capacity.</p> <p>15 You've heard quite a bit today from 16 members of DEAP. You have heard from DEAP's head 17 administrator, Louella Poblano, with regard to the 18 work that she has done and that she continues to do 19 since signing on at DEAP in July.</p> <p>20 And considering Ms. Poblano has -- became 21 DEAP's administrator a little over three months ago, 22 Ms. Poblano, I think, has done an exceptional job at 23 responding to the school's issues and taking charge. 24 She has proven herself committed and capable of 25 continuing to work to move DEAP forward, and she</p>	<p style="text-align: right;">Page 340</p> <p>1 allegations, especially since she has proven her 2 commitment to DEAP. Ms. Garnenez has told you today 3 that she did not do those things that she was 4 accused of doing. She never signed documents for 5 DEAP under the title of DEAP's head administrator. 6 She did not change a federal time sheet. And she 7 never improperly instructed a DEAP business manager 8 to pay personnel out of federal grant proceeds.</p> <p>9 Unfortunately, due to the rescheduling of 10 today's hearing, no one from DEAP's governing 11 council could be present today. But the governing 12 council did submit a statement which was included in 13 DEAP's written response as Appendix M. The 14 governing council, in that statement, acknowledged 15 that the opening years of the school have been 16 challenging; yet they remain committed to learning 17 from the past in order to secure a better future for 18 the school. They have taken actions that prove they 19 have been responsive to the allegations against the 20 school.</p> <p>21 First, they hired the Vigil Group, the 22 very same month that the Commission voted to have 23 this hearing. And then they hired a more than 24 capable head administrator, Louella Poblano. And 25 then they've also revised their fiscal policies and</p>
<p style="text-align: right;">Page 339</p> <p>1 should really be commended for taking on this role 2 and for taking on the work she has done.</p> <p>3 You also heard testimony from Sean Fry 4 with regard to DEAP's financial status. The school 5 is in auditable condition, and DEAP is in good 6 financial shape.</p> <p>7 I would also like to remind the Commission 8 when these proceedings were initiated, Sean Fry and 9 the Vigil Group had just signed on as DEAP's 10 business manager, and they have really undertaken 11 this work. And as Sean alluded today, DEAP's 12 finances are in good condition, and they do not have 13 the issues that were reported by the Department.</p> <p>14 The school is meeting financial reporting 15 requirements, and they are meeting generally stepped 16 standards of fiscal management.</p> <p>17 I find it interesting that the Department 18 keeps hanging on stuff that's happened in the past. 19 DEAP has learned from the past, and they've been 20 responsive, and I think that's evidenced by the 21 testimony you've heard today about everything that 22 DEAP has produced.</p> <p>23 You also heard testimony from Prestene 24 Garnenez. You know, it is so unfortunate that 25 Ms. Garnenez has been the target of so many wrongful</p>	<p style="text-align: right;">Page 341</p> <p>1 procedures. The school had already had fiscal 2 policies and procedures in place; but they took the 3 additional step in showing how responsive they are 4 to relook at those fiscal policies and procedures 5 and see what's not working and what can we do 6 better. If that's not evidence of being responsive, 7 I don't know what is.</p> <p>8 The governing council has demonstrated 9 their continued commitment to maintaining oversight 10 over the head administrator and the school's fiscal 11 well-being.</p> <p>12 On the other side of this hearing you've 13 heard lots of evidence and testimony from the 14 Department. They've made a lot of statements at the 15 October 13th hearing and today, and they've done 16 their best to portray DEAP as having a long history 17 of compliance issues and a pattern of bad practices.</p> <p>18 In actuality, when a school is only in 19 year three of its operations, I think it is 20 difficult to say that school has established a long 21 history or a pattern of anything. If the school has 22 shown anything in what they've produced and by their 23 testimony today, it is that they are certainly 24 responsive to compliance issues, and they take those 25 issues very seriously.</p>

<p style="text-align: right;">Page 342</p> <p>1 And this fact has been completely ignored 2 by the Department. They haven't communicated with 3 the school since these proceedings have been 4 initiated, and it's really been up to DEAP to reach 5 out to the Department and to say, "What do you need? 6 What do we need to give you?" 7 But that really means that DEAP has really 8 taken this seriously. 9 We also understand the Commission's 10 concerns with the time limits of DEAP's response. 11 However, responding to these proceedings and 12 responding to the audit findings are two separate 13 endeavors, and the school has had to treat both 14 separately. 15 So this school was preparing its response 16 for these proceedings, and also it had to focus on 17 responding to the audit. So this school has these 18 two separate processes sort of going at the same 19 time, and they've been working on responding to 20 both. 21 None of the Department's evidence is new 22 or compelling enough to warrant revocation. The 23 Department has not produced any evidence that DEAP 24 has committed fraud or abuse. David Craig also 25 testified that there is no evidence of fraud or</p>	<p style="text-align: right;">Page 344</p> <p>1 the numerous letters of support that DEAP has 2 received from local tribal and national entities. 3 Let's not forget that DEAP also received a 4 "B" from the Public Education Department; so not 5 only are they improving, but they are also 6 out-performing local schools in their area. 7 I think one of the resonating themes of 8 this -- and what I've heard from public comment -- 9 is too often, Native American students whether they 10 live on or off the reservation, they are forced into 11 a system that does not answer to their needs as 12 indigenous peoples and does not offer a culturally 13 relevant curriculum. The Commission heard this 14 testimony directly from concerned parents and 15 students at DEAP. 16 The State of New Mexico also has a legal 17 obligation to educate Native American students in 18 Native American communities. And DEAP Charter 19 School is a solution to this greater societal 20 problem, and it deserves the full support of the 21 State. 22 I think, as you heard from parents who -- 23 who have their children at DEAP, there are no better 24 alternatives in the area. DEAP is where they choose 25 to enroll their child.</p>
<p style="text-align: right;">Page 343</p> <p>1 abuse, and you heard the same thing from Sean Fry 2 today. 3 The Department is still relying on 4 affidavit testimony from two people that DEAP has 5 never been given the opportunity to cross-examine, 6 which is a horrible violation of due process. 7 I would also like to remind the Commission 8 that while statements may have led us to this 9 hearing, they are not sufficient to support 10 revocation. 11 And with regards to that June 9th audit 12 report that the Department has relied upon, DEAP has 13 responded to every alleged violation in that report, 14 and they have either remedied the issue or refuted 15 it entirely. But I think the important takeaway is 16 that DEAP has responded. 17 Based on everything you've heard today, I 18 think it is very clear that DEAP is composed of a 19 strong, capable, and exceptional group of people. 20 And DEAP just started year three of its operations. 21 And while some would agree that the school 22 has struggled with its financial and administrative 23 operations, most would also agree that the school 24 has demonstrated tremendous success, not only in its 25 community, but in the state. This is evidenced by</p>	<p style="text-align: right;">Page 345</p> <p>1 We still uphold that the Commission should 2 have implemented a Corrective Action Plan, and it's 3 unfortunate that these proceedings were initiated. 4 But even without that being given that opportunity, 5 DEAP, on its own initiative, has created this 6 process as a corrective action process, and they 7 have taken action to correct those areas where the 8 school may have fallen short in the past. 9 DEAP wants to stay open. With this goal 10 in mind, they have done everything they can to make 11 sure that they are compliant. And DEAP has made 12 substantial progress toward achievement of the 13 Department's standards and towards accepted 14 standards of fiscal management. 15 DEAP has continued -- is continuing to 16 work with the Commission and the Department. And 17 based on all the corrective actions that DEAP has 18 taken on its own initiative, we ask that the 19 Commission not take any further action toward 20 revocation of this great school. 21 Thank you Madam Chair, Commissioners. 22 THE CHAIR: Thank you. And before you go, 23 I'm going to turn this over to Mr. Stevens to ask 24 this question. 25 MS. CUYLEAR: Okay.</p>

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1 MR. DAVID STEVENS: We've reviewed the
 2 statute under which this is operating. I think the
 3 Commission would be helped to be clear whether DEAP
 4 is arguing that the Department has failed to
 5 demonstrate any one of those four elements required
 6 for revocation, or whether DEAP is arguing that the
 7 Department has demonstrated one or more; but, since
 8 the statute says "may revoke," it should exercise
 9 its discretion and not revoke.
 10 MS. CUYLEAR: Can I have a minute to --
 11 MR. DAVID STEVENS: Please.
 12 (Ms. Cuylear confers with co-counsel.)
 13 MS. CUYLEAR: So I'm going to turn it over
 14 to my co-counsel to answer that question, if that's
 15 okay.
 16 THE CHAIR: We need the record to reflect
 17 that Commissioner Caballero has left the room.
 18 MR. SOLIMON: In the documents that have
 19 been submitted in DEAP's response -- I think it was
 20 October 12th -- we've identified those portions of
 21 the statute that we believe we've refuted through
 22 statements or testimony or exhibits.
 23 But to the extent any of those statutory
 24 standards have been met, we'd ask that the
 25 Commission, nevertheless, find that there is

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1 insufficient grounds to revoke the charter of DEAP.
 2 MR. DAVID STEVENS: So that the Commission
 3 understands, DEAP is arguing, in the alternative,
 4 that those elements have not been met. But if the
 5 Commission determines that they have, it should
 6 nonetheless decide not to revoke?
 7 MR. SOLIMON: Under its discretion to do
 8 so, yes.
 9 MR. DAVID STEVENS: Okay. Thank you.
 10 THE CHAIR: Thank you.
 11 Commissioners, we are now going to go into
 12 Executive Session, as provided in the OMA. We're
 13 going to take a short break before we go into
 14 Executive Session. That'll give the room time to
 15 clear out. It will give us a break.
 16 During that time period, we will consider
 17 only the subject matter of this hearing. No votes
 18 will be taken, and we will reconvene to make a final
 19 decision.
 20 So I will, at this point in time, ask
 21 everyone in the audience to please step outside, and
 22 Commissioners will take a short break, and then
 23 we'll come back.
 24 (Recess and Executive Session held.)
 25 THE CHAIR: I bring this hearing back into

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1 session. And just as people have noted, the PED
 2 attorneys have been released for the day; so that
 3 we're trying to save the State money. So that's why
 4 they are not here.
 5 So we are -- this hearing is back in
 6 public session. The only thing -- the only item
 7 that was discussed during Executive Session was the
 8 item of the revocation of DEAP, and there were no
 9 votes taken during that time.
 10 That being said, Commissioners, we are
 11 ready for a motion.
 12 COMMISSIONER ROBBINS: I'll move.
 13 THE CHAIR: Commissioner Robbins, would
 14 you like to make the --
 15 COMMISSIONER ROBBINS: I'll so move. I
 16 move that the Public Education Commission not revoke
 17 the charter of DEAP, that there be imposed a
 18 Corrective Action Plan at the earliest opportunity.
 19 COMMISSIONER TOULOUSE: Second.
 20 THE CHAIR: There is a motion by
 21 Commissioner Robbins, a second by Commissioner
 22 Toulouse.
 23 Commissioner Armbruster, a roll-call vote,
 24 please.
 25 COMMISSIONER ARMBRUSTER: Commissioner

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1 Peralta.
 2 COMMISSIONER PERALTA: Yes.
 3 COMMISSIONER ARMBRUSTER: Commissioner
 4 Toulouse.
 5 COMMISSIONER TOULOUSE: Yes.
 6 COMMISSIONER ARMBRUSTER: Commissioner
 7 Caballero.
 8 COMMISSIONER CABALLERO: Yes.
 9 COMMISSIONER ARMBRUSTER: Commissioner
 10 Crone.
 11 COMMISSIONER CRONE: No.
 12 COMMISSIONER ARMBRUSTER: Commissioner
 13 Johnston.
 14 COMMISSIONER JOHNSTON: No.
 15 COMMISSIONER ARMBRUSTER: Commissioner
 16 Gipson.
 17 THE CHAIR: Yes.
 18 COMMISSIONER ARMBRUSTER: Commissioner
 19 Armbruster votes "No."
 20 Commissioner Conyers.
 21 COMMISSIONER CONYERS: Yes.
 22 COMMISSIONER ARMBRUSTER: Commissioner
 23 Robbins.
 24 COMMISSIONER ROBBINS: Yes.
 25 COMMISSIONER ARMBRUSTER: That's a

1 six-to-three vote. It passes.

2 THE CHAIR: The motion passes with a
3 six-to-three vote. The Commission has come to a
4 decision based on the record made today; and it is
5 to not revoke the charter of DEAP.

6 We will provide a written decision within
7 ten working days of today's hearing. I -- it says,
8 "Either party may appeal the decision, pursuant to
9 NMSA 22-8B-7."

10 Before we conclude the hearing, are there
11 any questions about the Commission's decision and
12 how and when the order will be issued?

13 MR. SOLIMON: No, Madam Chair, other than
14 to thank you on behalf of my client for the
15 thoughtful deliberation and the decision that you
16 reached today. Thank you very much.

17 THE CHAIR: Okay. Thank you very much.
18 This hearing is now adjourned.
19 (Proceedings adjourned at 4:20 p.m.)
20
21
22
23
24
25

1 RECEIPT

2 JOB NUMBER: 7857L CC Date: 10/24/17

3 PROCEEDINGS: PUBLIC HEARING, VOL. 2

4 CASE CAPTION: IN RE: REVOCATION OF THE CHARTER OF
5 DEAP CHARTER SCHOOL

6 *****

7 ATTORNEY: MS. BEVERLY FRIEDMAN

8 DOCUMENT: Transcript / Exhibits / Disks / Other _____

9 DATE DELIVERED: _____ DEL'D BY: _____

10 REC'D BY: _____ TIME: _____

11 *****

12 ATTORNEY:

13 DOCUMENT: Transcript / Exhibits / Disks / Other _____

14 DATE DELIVERED: _____ DEL'D BY: _____

15 REC'D BY: _____ TIME: _____

16 *****

17 ATTORNEY:

18 DOCUMENT: Transcript / Exhibits / Disks / Other _____

19 DATE DELIVERED: _____ DEL'D BY: _____

20 REC'D BY: _____ TIME: _____

21 *****

22 ATTORNEY:

23 DOCUMENT: Transcript / Exhibits / Disks / Other _____

24 DATE DELIVERED: _____ DEL'D BY: _____

25 REC'D BY: _____ TIME: _____

1 BEFORE THE PUBLIC EDUCATION COMMISSION
2 STATE OF NEW MEXICO
3
4

5 IN RE: NOTICE OF INTENT TO REVOKE THE CHARTER OF
6 DZIL DITL'OOÍ SCHOOL OF EMPOWERMENT, ACTION AND
7 PERSEVERANCE
8
9

10 REPORTER'S CERTIFICATE

11 I, Cynthia C. Chapman, RMR, CCR #219, Certified
12 Court Reporter in the State of New Mexico, do hereby
13 certify that the foregoing pages constitute a true
14 transcript of proceedings had before the said New
15 Mexico Public Education Commission, held in the State
16 of New Mexico, County of Santa Fe, in the matter
17 therein stated.

18 In testimony whereof, I have hereunto set my
19 hand on October 31, 2017.
20
21

22 _____
23 Cynthia C. Chapman, RMR-CRR, NM CCR #219
24 BEAN & ASSOCIATES, INC.
25 201 Third Street, NW, Suite 1630
Albuquerque, New Mexico 87102

Job No.: 8994L (CC)
Proofed By: KW

A

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