

BEFORE THE PUBLIC EDUCATION COMMISSION

STATE OF NEW MEXICO

TRANSCRIPT OF PROCEEDINGS
CHARTER SCHOOL REVOCATION HEARING

In Re: CREATIVE EDUCATION PREPARATORY INSTITUTE
March 22, 2016

1:00 p.m.

300 Don Gaspar

Jerry Apodaca Education Building, Mabry Hall
Santa Fe, New Mexico

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MR. JEFF CARR, Member
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1 THE CHAIR: I'm going to call this Public
2 Education Commission revocation hearing for CEPi
3 into session.

4 As our first order of business, I will
5 ask -- let Mr. Secretary call the roll, please.

6 COMMISSIONER PERALTA: Commissioner Pogna?
7 (No response.)

8 THE CHAIR: Commissioner Toulouse?

9 COMMISSIONER TOULOUSE: Present.

10 COMMISSIONER PERALTA: Commissioner
11 Ambruster?

12 COMMISSIONER ARMBRUSTER: Present.

13 COMMISSIONER PERALTA: Commissioner
14 Conyers?

15 (No response.)

16 COMMISSIONER PERALTA: Commissioner
17 Shearman?

18 COMMISSIONER SHEARMAN: Here.

19 THE CHAIR: Commissioner Chavez?

20 COMMISSIONER CHAVEZ: Here.

21 COMMISSIONER PERALTA: Commissioner Carr?

22 COMMISSIONER CARR: Here.

23 COMMISSIONER PERALTA: Commissioner
24 Peralta is here.

25 Commissioner Gipson?

1 COMMISSIONER GIPSON: Here.

2 COMMISSIONER PERALTA: Commissioner
3 Bergman?

4 THE CHAIR: Here.

5 COMMISSIONER PERALTA: Mr. Chair, we have
6 eight members of the Commission present for today.

7 THE CHAIR: Thank you, Mr. Secretary. I
8 will note for the record that we do have eight
9 members present. We do have a quorum; so we may
10 conduct our business today.

11 I'm going to start this session with the
12 Pledge of Allegiance, which I will lead. I will ask
13 Secretary Peralta if you will lead the Salute to the
14 New Mexico Flag.

15 (Pledge of Allegiance and Salute to the
16 New Mexico Flag conducted.)

17 THE CHAIR: Thank you so much. I do have
18 a document that I need to read into the record. So
19 I will begin with that.

20 This is a Charter School Revocation
21 Hearing of the New Mexico Public Education
22 Commission. This Commission will come to order at
23 1:00 p.m. on Tuesday, March 22nd, 2016.

24 This hearing is being held at the Mabry
25 Hall in the Jerry Apodaca Education Building in

1 Santa Fe, New Mexico. The purpose of this hearing
2 is to take evidence concerning the Notice of Intent
3 to Revoke the Charter issued against Respondent
4 Creative Education Preparatory Institute, also known
5 as "CEPi."

6 I am Chairman Vince Bergman, and I will
7 preside over this hearing. I will make evidentiary
8 and procedural rulings, and those rulings are final.
9 Any dispositive motions made will be presented to
10 the PEC for decision. Assistant Attorney General
11 Dylan K. Lange will advise me in this matter.

12 This hearing is being conducted in
13 accordance with the Uniform Licensing Act, NMSA,
14 1978, Section 61-1 through 31 and the Charter School
15 Act, NMSA 1978, Sections 22-8B-1 through 17.1.

16 This hearing is being recorded by our
17 court reporter to provide an accurate record. I ask
18 that only one person speak at a time and that
19 everyone speak in a loud and clear voice, since the
20 recorder will not pick up nods, gestures, or
21 soft-spoken answers.

22 I also ask everyone present to silence all
23 telephones and electronic equipment at this time.

24 This hearing will be conducted in
25 accordance with the Uniform Licensing Act. Hearings

1 before this Commission do not follow the Rules of
2 Evidence. And as the presiding officer, I may admit
3 any evidence I so choose. Hearsay may be introduced
4 and considered and will be given its due weight.
5 The Commission may limit testimony that is
6 incompetent, irrelevant, immaterial, or unduly
7 repetitious. The decision to exclude or limit such
8 evidence will be made by the presiding officer.

9 The hearing is scheduled for approximately
10 three hours. The Commission will provide 20 minutes
11 for opening statements, ten minutes for each side;
12 60 minutes for each side to present its case,
13 including the examination of witnesses and questions
14 by Commissioners; 20 minutes for public comment;
15 followed by 20 minutes for closing arguments, ten
16 minutes each. Time will stop during questioning by
17 the Commission or our attorney.

18 Ms. Beverly Friedman, who is not here at
19 this time -- she is being substituted for by
20 Kimberly Ulibarri, who will serve as our official
21 timekeeper.

22 We will limit all testimony and public
23 comment to the issues identified as being within the
24 scope of the hearing. The scope of the hearing has
25 been set out in a Notice of Intent to Revoke the

1 Charter of CEPi and includes the issues outlined in
2 the February 29th, 2016, letter, sent by Ms. Poulos
3 to CEPi.

4 The rules of privilege apply at this
5 hearing. This Commission may take notice of
6 judicially cognizable facts and of general technical
7 or scientific facts within our specialized
8 knowledge.

9 The representative from PED will present
10 evidence first; and then the Respondent may present
11 evidence in defense of the allegations alleged in
12 the Notice of Intent to Revoke, and subsequent
13 allegations.

14 Any witness offering testimony will be
15 questioned first by the party offering the
16 testimony, and then by the opposing party. I will
17 permit direct examination, cross-examination,
18 redirect examination, and recross-examination of all
19 witnesses. The Rule of Sequester applies, and if
20 requested, all witnesses will be asked to wait
21 outside and not discuss this case until they are
22 called to testify.

23 As the presiding hearing officer, I may,
24 in my discretion, question witnesses when both
25 parties have finished their examinations.

1 After that, other Commissioners may
2 question the witnesses, with my approval. No other
3 questioning will be permitted after the
4 Commissioners have finished questioning the witness.

5 Because the Commission will consider
6 public comment presented that is within the scope of
7 the hearing, each Commissioner may question a person
8 providing public comment; however, only the
9 Commissioners may question the public.

10 The Commission's decision may occur as
11 early as today during this open hearing. The
12 Commission may decide to revoke the charter of this
13 school. The Commission may also decide to allow the
14 school to retain its charter and may take testimony
15 and hear argument regarding conditions that may be
16 placed on the school if the school's charter is not
17 revoked.

18 Unless the parties have anything further,
19 we are ready to begin; just in time, I might add.

20 MS. FOX: Mr. Chair, members of the
21 Commission, my name is Susan Fox, and I'm
22 representing CEPi, the Creative Education
23 Preparatory Institute. I'm going to refer to them
24 as "CEPi" throughout.

25 I have a quick preliminary motion

1 regarding housekeeping matters, if I might?

2 THE CHAIR: Just one second. Actually, I
3 have both parties entering their appearances.

4 That's what's in front of us. Should I --

5 MR. HILL: That's fine.

6 THE CHAIR: I would ask the PED
7 representative to enter his appearance, please.

8 MR. HILL: Mr. Commissioner -- Mr. Chair,
9 rather -- Commissioners, Dan Hill for Public
10 Education Department.

11 THE CHAIR: Thank you, Mr. Hill. Thank
12 you, Counsel. I just wanted his appearance to be
13 here.

14 You may proceed, then.

15 MS. FOX: Commissioners, as you know
16 Section 11.1 of CEPi's charter contract with you
17 says until the PED promulgates regulations that set
18 forth specific procedures for revocation, the
19 parties are going to follow the process, as set
20 forth in the Uniform Licensing Act, to the extent
21 that those are consistent with the Charter Schools
22 Act provisions.

23 I have -- or I'm having passed out to you
24 a copy of a relevant portion of the Uniform
25 Licensing Act, as well as some e-mail

1 correspondence.

2 Once we received the Notice of Intent to
3 Revoke on February 22nd, I looked at the Uniform
4 Licensing Act to determine next steps. So I've
5 handed you a copy of Section 61-1-8 of the
6 New Mexico statutes, which says, in Section B, that,
7 "Upon written request to another party, any party is
8 entitled to, 1, obtain the names and addresses of
9 witnesses who will or may be called by the other
10 party to testify; and, 2, to inspect and copy any
11 documents or items which the other party will or may
12 introduce in evidence at the hearing."

13 It further goes on to say, "The party to
14 whom such a request is made shall comply with it
15 within 10 days after the mailing or the delivery of
16 the request. No such request shall be made less
17 than 15 days before the hearing."

18 Accordingly, on February 23rd, I sent
19 Ms. Poulos, Mr. Friedman, and Mr. Lange -- excuse
20 me -- Ms. Friedman and Mr. Lange -- a written
21 request via electronic mail specifically asking for
22 a copy of the documents and communications upon
23 which the NMPED intended to rely or introduce at
24 this hearing in support of CEPi's charter revocation
25 and the names and address of witnesses who will or

1 may be called by NMPED or the PEC to testify at this
2 hearing.

3 This was sent 28 days in advance of
4 today's hearing.

5 I also asked to examine PED documents
6 relating to CEPi, generally, with regard to CEPi
7 waivers, and also with regard to its most recent
8 charter renewal in 2013-'14. I also made this
9 request in addition to, under the ULA, pursuant to
10 the New Mexico Inspection of Public Records Act,
11 which provides for a maximum 15 days' response
12 period.

13 The e-mail thread that I have in front of
14 you is the second document in your packet. And if
15 you read from the bottom up, you can see what my
16 request was and what the responses were.

17 I did receive an e-mail from Ms. Friedman
18 on February 23rd acknowledging receipt of my
19 request, pursuant to IPRA, and indicating that a
20 response would be forthcoming within 15 days of my
21 request to examine documents.

22 Under the ULA 10-day provision, the list
23 of PED's witnesses and a copy of the exhibits it
24 intends to use at this hearing was due to me by
25 March 8th, if you don't count weekend days.

1 Under IPRA requirements, the response to
2 my request to inspect PED's files pertaining to CEPi
3 was due March 9th.

4 As I indicated to you at the last PEC
5 meeting as an item of housekeeping, as of March
6 11th, we hadn't received any documents pursuant to
7 our IPRA request, or anything pursuant to our ULA
8 request.

9 PED did provide three CDs of unsorted
10 documents totaling more than 8,000 pages last
11 Tuesday, Wednesday, and Thursday, a week past the
12 deadline for the IPRA request and 10 days beyond the
13 ULA deadline. So we have had very little time to
14 review and digest the materials produced in advance
15 of this very critical hearing.

16 We also have reason to believe that the
17 production was incomplete as at least one letter
18 that CEPi sent to CSD Staff relating to the 2013-'14
19 renewal, and an e-mail thread between CSD Staff and
20 CEPi was not part of the 8,000 documents produced.
21 We do have our own copies of the e-mail thread that
22 will be introduced as part of CEPi's presentation;
23 but, unfortunately, we were relying on the PED to
24 have retained a copy of the signed original letter
25 from CEPi and to provide it to us. So we don't have

1 a copy of that original for you today as part of our
2 case. We'll have to rely on the draft copy from our
3 files.

4 We don't believe that CEPi's case should
5 be prejudiced by the late production by PED, which
6 was within their control, nor by PED's failure to
7 produce documents that we know should be part of
8 PED's records.

9 Normally, a motion to continue this
10 hearing to a later date might be in order. But in
11 this case, CSD already has waited until February to
12 provide its notice of intended revocation, and
13 moving this hearing to a later date would impact the
14 school's right to appeal in a time frame that would
15 have a meaningful chance of being decided prior to
16 the end of the school year.

17 As it is, this hearing's late in the game,
18 given that over the next month, as a practical
19 matter, students and staff will be needing to
20 explore other school and employment options, and the
21 school budgeting process for the next year will be
22 in swing. We need to have this decided sooner
23 rather than later for the sake of staff and
24 students, and continuing it beyond today would just
25 prejudice the school's rights further.

1 Therefore, because PED has failed to
2 comply with the time frames required by 61-18B for
3 production of its witness list, and compiled late,
4 with respect to its production, a copy of documents
5 that PED will or may use as evidence at this hearing
6 after we sent a valid and timely request, I move to
7 strike any witness PED intends to offer to testify
8 at this hearing and any documents it intends to use
9 as evidence at this hearing.

10 If this were a case in court, these
11 sanctions would be proper and appropriate under
12 Rule 37B(2) (b) of the Rules of Civil Procedure,
13 which I've also included in your packet, because
14 pretrial discovery matters are taken seriously and
15 failure to adhere to statutory and rule requirements
16 can be a violation of basic fairness and a party's
17 right to due process.

18 I ask that you grant this motion today.

19 THE CHAIR: Counsel Hill, would you like
20 to respond, sir?

21 MR. HILL: I would.

22 Mr. Chair, just so I get this right, do I
23 need to hold this down while I'm speaking?

24 THE CHAIR: Unfortunately. We might try
25 that microphone there. See if that works.

1 MR. HILL: Is this working?

2 THE CHAIR: Yes.

3 MR. HILL: So before I address CEPi's
4 motion, I agreed with -- with Ms. Fox to make a
5 statement on the record before the hearing begins.
6 And that statement was that I had recused myself
7 from representing the Secretary in any further
8 matters in this case.

9 The reason why that was necessary is
10 because I was made aware of the facts that underlie
11 this revocation hearing; and so it would be
12 inappropriate for me to later represent the
13 Secretary in the matter if I had actual knowledge of
14 the facts.

15 The reason why I'm making this statement
16 is Ms. Fox threatened to file a motion to bar me
17 from representing the Department in this case.
18 Seems like this statement has resolved that motion;
19 but, you know, now there's another attempt, at the
20 last minute, to prevent a hearing from happening; so
21 I want to address the arguments that Ms. Fox made in
22 her motion.

23 First, it is correct, she did file an IPRA
24 request. She sent it to Ms. Friedman and cc'd Katie
25 Poulos and Dylan Lange. I will confess I believe

1 the Department treated it as an IPRA request and
2 responded completely.

3 There are some questions that Ms. Fox
4 raised about certain documents, and we went back to
5 our files and determined whether we had those
6 documents and produced everything we had.

7 What I do want to note in this case is the
8 IPRA request was filed; a response was given.
9 Nowhere in Ms. Fox's responses to the PED did she
10 ever alert us of this argument that she was being
11 denied -- her client was being denied due process or
12 there was some sort of discovery violation. Had she
13 done so, which is the normal course in civil
14 litigation; it's called a "good faith letter" is the
15 first step in a discovery dispute -- you send the
16 letter saying, "Excuse me. I think you missed
17 something," or, "We're entitled to some piece of
18 evidence." And then the other party responds; and
19 if you can't come to an agreement, a motion is
20 filed.

21 I raise that because we come here before
22 you. Everyone is prepared to have a hearing on the
23 merits of this matter. And now at this last minute,
24 we're hearing this motion to strike all of the
25 Department's witnesses and exhibits. It feels to me

1 like this was a tactical move, and not, as the
2 school represents, something where they're being
3 blindsided by it.

4 They've had plenty of time to follow up
5 with the Department and make their dispute known.
6 They waited until the very start of this hearing to
7 raise a motion that is the first time I'm hearing
8 it.

9 So I think, one, it's appropriate for the
10 hearing to go on. It's clear that CEPi was able to
11 prepare for the hearing. They have put together a
12 case, and they have -- they have adequate counsel to
13 proceed. The Department is also prepared, and we
14 spent a lot of time preparing.

15 I think, if -- if, Mr. Chair, the members
16 of the Commission -- if you're concerned about the
17 evidentiary issue, it seems like the more
18 appropriate course here would be to enter a
19 scheduling order that requires an exchange of
20 witnesses and exhibits, and then reset the hearing.

21 I understand Ms. Fox's concerns about the
22 timing; however, everybody's ready to go. It
23 doesn't have to be reset for a long time, just as
24 much time as Ms. Fox needs to review the witness
25 list and exhibits.

1 And in closing, I'll add, there's nothing
2 surprising about the Department's witnesses or
3 exhibits. One, all of the documents we're -- we're
4 going to present to you today, or plan to as
5 exhibits, were provided to Ms. Fox in response to
6 the discovery request and are documents that the
7 school should be aware of. They come from the
8 school. It's -- there are no documents that we've
9 created that the school wouldn't have already had
10 notice of.

11 The Notice of Intent to Revoke made clear
12 the basis for this action and for the Commission's
13 potential action against the charter. And I simply
14 do not believe there is an issue of unfairness or
15 gamesmanship going on here. This matter should
16 proceed as scheduled.

17 And if the Commission is concerned about
18 the discovery matter that Ms. Fox has raised, I
19 don't think the proper course is to dismiss this
20 petition; I think the proper course would be to
21 reset the hearing.

22 THE CHAIR: Thank you, Counsel Hill.

23 One moment, please.

24 (Chair consults with PEC counsel.)

25 THE CHAIR: Thank you for the comments

1 from both attorneys who are involved in this hearing
2 today.

3 At this time, I will deny that motion for
4 the reasons that Counsel Fox actually stated
5 herself. Because of the time, we act when we have
6 facts to act on. The fact that it's later in the
7 year is unfortunate; but we do need, I believe, to
8 go forward with this hearing today if everyone is
9 prepared. The Commissioners are prepared.

10 So I will deny that motion.

11 MS. FOX: Thank you.

12 THE CHAIR: Then I will ask, are there any
13 other preliminary matters that the parties wish the
14 PEC to consider today?

15 Seeing no response, I will ask, are there
16 any exhibits to be received into evidence by
17 agreement or stipulation?

18 Seeing no response, I -- it says my next
19 action is to administer oaths.

20 I ask any person who will be testifying in
21 this matter to please rise and raise your right hand
22 to be sworn.

23 Do we have witnesses here today?

24 (Potential witnesses rise.)

25 THE CHAIR: Please raise your right hand.

1 Do I need to have them identify
2 themselves?

3 All right. I'll ask you to take this
4 following oath:

5 "Do you solemnly swear or affirm that the
6 testimony you are about to give will be the truth,
7 the whole truth, and nothing but the truth?"

8 (All potential witnesses answer
9 in the affirmative.)

10 THE CHAIR: Thank you. You may be seated.

11 Do either of the parties want to invoke
12 the Rule of Sequester to exclude these witnesses
13 during this hearing?

14 MS. FOX: No.

15 MR. HILL: No, Mr. Chair.

16 THE CHAIR: I see a "No" from both sides.
17 Thank you so much.

18 Are there any parties that are going to
19 testify today by phone?

20 MS. FOX: Not on our part.

21 MR. HILL: No.

22 THE CHAIR: Both sides have answered "No."
23 And now it says we are ready to begin this
24 hearing.

25 We will have -- the PED will start with

1 their opening statement. They will be given ten
2 minutes; so -- and, Kimberly, I will ask you -- I
3 will tell you when to start.

4 Please step forward, Counsel Hill. Again,
5 I think, identify yourself, and then I will instruct
6 the timekeeper to begin your time.

7 MR. HILL: Thank you, Mr. Chair, members
8 of the Commission.

9 THE CHAIR: Are you ready to proceed?

10 MR. HILL: Yes, Mr. Chair.

11 THE CHAIR: You may start the timer.

12 MR. HILL: Mr. Chair, members of the
13 Commission, I have to confess, I'd rather not be
14 here this afternoon. It's never a pleasant matter
15 to think about, let alone actually close a school.

16 The folks that have started the school and
17 that run the school, I'm very confident, believe in
18 what they're doing. I'm not here to tell you that
19 they're bad people; I'm not here to attack their
20 character or to say they haven't worked hard.

21 But what makes this difficult to do, and
22 why it's so difficult, the matter set before you, is
23 that there are times when a school, despite the best
24 efforts of the folks involved, shouldn't remain
25 open.

1 And in this case, I believe we have a
2 school where the facts and evidence suggest that it
3 should be closed. There are very serious matters at
4 issue here.

5 The PEC, as the authorizer of the school,
6 has the discretion to revoke a charter for four
7 reasons:

8 The first reason is that the school has
9 committed a material violation of any of the
10 conditions, standards, or procedures set forth in
11 the charter contract.

12 The second basis, the school has failed to
13 make or meet substantial progress toward the
14 achievement of the Department's standards of
15 excellence or student performance standards
16 identified in the charter contract.

17 Third, the charter failed to meet
18 generally accepted standards of fiscal management.

19 Or, four, the charter violated any
20 provision of law for which the charter was not
21 specifically exempted.

22 Now, as I mentioned earlier, the Notice of
23 Intent to Revoke sets forth the bases for this
24 hearing, sets forth the issues. And those were more
25 fully explained in a letter that was provided to the

1 PEC by Ms. Poulos on February 8th. Rather than
2 recite all of those bases and do the work that the
3 witnesses the PED will have testify will do, I want
4 to just go over a few of the, we can say,
5 highlights -- but they're really "lowlights" -- from
6 that notice.

7 One of the most serious issues that is
8 presented to the Commission today with regard to
9 CEPi really goes to this third prong of your
10 discretion to revoke a charter: Failing to meet
11 generally accepted standards of fiscal management.

12 This school came to the PEC and told you
13 that they have past due tax liabilities, quite
14 substantial past due tax liabilities, federal tax
15 liabilities for payroll taxes that were not paid,
16 and for some time, for many months. Those -- those
17 funds were withheld from employees' paychecks, as
18 they should have been. But rather than sending them
19 to the IRS, as the school is required to do by law,
20 there was no payment made.

21 And the school has incurred substantial
22 penalties for that, not only owing the taxes that
23 they've withheld from their employees' paychecks,
24 but then interest and penalties incur on top of
25 that. It's a serious matter. It's serious to begin

1 with that they haven't paid their taxes. More
2 alarming to me is that it took almost two to three
3 years for it to be discovered by the school.

4 That suggests lack of governance, a lack
5 of oversight by the board -- really, the board and
6 board of finance of the school being asleep at the
7 wheel.

8 Aside from this very serious issue of a
9 very large tax liability that the school owes --
10 there's no question as to their owing that liability
11 and the penalties and interest that come along with
12 it -- this school's finances cannot be audited.
13 Their past two fiscal audits have resulted in a
14 Disclaimer of Opinion.

15 That's a fancy way for an audit firm to
16 say, "We're not going to touch this. We can't give
17 you an opinion as to the finances of the school.
18 It's too bad; it's not clear. The accounting
19 practices aren't right. And we can't tell you
20 whether their books are real, whether they match
21 what their actual financial position is."

22 That's the central purpose of a financial
23 audit. The audit firm goes in; they look at your
24 books; and they say, "You said you ended the year
25 with \$100,000 in the black, and, we agree, you ended

1 the year with \$100,000 in the black." They affirm
2 your financial statements. They give an opinion
3 affirming those statements.

4 For this school, the audit firm can't give
5 an opinion; they won't. They're disclaiming that
6 opinion, saying, "We can't -- we can't go there.
7 Too many issues with controls, accounting,
8 bookkeeping, for us to be able to say with any
9 reliability we can give an opinion as to the state
10 of the finances of the school."

11 We'll go through the audit findings from
12 the past two fiscal years, where audits have been
13 completed. And they're very serious findings. Not
14 only are there a large number of findings; but
15 they're serious findings, suggesting, again, lack of
16 governance, oversight, the board not exercising its
17 role to make sure that the finances at the school
18 are correct, the board not overseeing the staff and
19 the director of the school to make sure that these
20 things aren't happening. These are serious matters.

21 I think the reasons that were set forth in
22 the notice, each of them could be a basis to revoke
23 the school's charter. I think the totality of those
24 reasons, to me, makes it such the case that the hard
25 job the PEC is faced with is one that they should

1 exercise today, which is to make that hard decision
2 to close a school.

3 And, again, I'm not here to attack the
4 director of the school, attack the staff or their
5 students. I truly believe there are folks at the
6 school who are committed to what they're doing.
7 They think it's right. They think that the mission
8 of the school is important. And I empathize with
9 that.

10 But the bottom line is that the PEC is
11 here, as the authorizer, to make those hard
12 decisions. And this is a school that's gone very
13 far off the path.

14 The -- the thing that really solidifies it
15 to me is looking at statements that came from an
16 investigator that was hired at the school's request.
17 And the findings of that investigator, I think, were
18 alarming.

19 The students are not receiving the
20 attention they should be getting because of turmoil
21 at the school. Their futures are at stake.

22 Couldn't agree with that more. The future
23 of these students is at stake.

24 I understand this is a hard decision. I
25 understand that there are folks who are committed to

1 this school. But at the end of the day, the -- the
2 evidence is serious. There have been serious
3 transgressions that were listed in the notice.

4 And I think, for those reasons, the PEC
5 should revoke the school's charter.

6 THE CHAIR: Thank you, Counsel Hill.

7 Counsel Fox, do you wish to make an
8 opening statement at this time, or would you prefer
9 to reserve until you begin your case?

10 MS. FOX: I'll go ahead and do it at this
11 time, Mr. Chair, if you don't mind.

12 THE CHAIR: Proceed, then. Are you --
13 identify yourself again, please.

14 MS. FOX: Susan Fox, Matthews Fox Law
15 Firm.

16 Is this on? Can you hear me?

17 MR. HILL: Flip it up.

18 MS. FOX: Flip it up? Now? I can hear
19 myself.

20 THE CHAIR: Are you ready?

21 MS. FOX: Yes.

22 THE CHAIR: You may start the time, then.
23 Ten minutes.

24 MS. FOX: Mr. Chair and members of the
25 Commission, revocation, as you know, is a drastic

1 step, which closes a school before the end of its
2 contract. And it severely impacts students, staff,
3 and families. So to ensure that this step isn't
4 taken lightly, the Legislature requires, as Mr. Hill
5 has stated, that the authorizer not revoke the
6 charter unless one of the four reasons are present.

7 The CSD has here the burden of proving
8 that CEPi did any of these, by a preponderance of
9 the evidence.

10 There's a lot that CSD has put into its
11 recommendation for revocation, so much that a
12 half-day hearing hardly seems enough time. And it's
13 probably a good idea, under the circumstances, to
14 outline what this hearing is not about briefly.

15 It's not about the school failing to make
16 progress toward achievement or student performance
17 standards. There's nothing in the Notice of Intent
18 to Revoke that alleges this. And this hearing is
19 limited to those allegations that are in the --
20 contained in the Notice of Intent to Revoke.

21 And it's not about school personnel
22 matters, which are also not alleged as a basis for
23 revocation in this notice, and which are not a
24 statutory basis for revocation.

25 This school changed principals this year,

1 which was not a welcome development in the eyes of
2 some. However, these matters are not properly part
3 of this hearing, and we cannot discuss these matters
4 in open session.

5 CEPI's school personnel matters have been,
6 and will continue to be, addressed by the school in
7 accordance with the School Personnel Act and due
8 process. And, background about the school, which
9 you'll hear more of during the school's
10 presentation.

11 This is a high school designed for up to
12 200 at-risk youth in Albuquerque, who, for various
13 reasons, are looking for an alternative educational
14 scenario that better fits their individual life
15 situations and needs.

16 CEPI was initially chartered in the early
17 2000s by APS, and in 2009, the school moved over to
18 PEC. It was recently renewed by you in 2013 with no
19 conditions.

20 The school at that time received a "No
21 Financial Issues" report from PED.

22 This renewal also continued the four-hour
23 instructional block time that had been in place for
24 the prior charter terms, pursuant to a statutory
25 waiver in the Charter Schools Act from a

1 Length-of-School-Day Statute and pursuant to an
2 explicit waiver from PED to that effect.

3 The school will present that this school
4 has never, and was never designed to, provide --
5 provide the 1,080 hours in school time stated in the
6 statute, which doesn't apply to them. And the
7 former CSD and the 2013 PEC understood this and
8 renewed the school that way.

9 Each of the other operational allegations
10 addressed in the CSD's February 8th letter and
11 appendices will be discussed by school
12 representatives when it's our turn.

13 In several respects, the school will
14 demonstrate that CSD's operational allegations are
15 simply wrong. In a few instances, the CSD's
16 conclusions are correct; and in some cases, the
17 school has already corrected those deficiencies that
18 were pointed out.

19 The appropriate way to have handled these
20 operational criticisms, as you'll hear from the
21 school, was through a Corrective Action or
22 Improvement Plan under the contract, or even by CSD
23 discussing the matter with the school and giving the
24 school the opportunity to fix it, as was the
25 practice of prior CSD Staff.

1 Under the circumstances that will be
2 presented to you today, proceeding immediately to
3 revocation with regard to these operational issues
4 is an unwarranted and too drastic step, and the
5 school will urge you to consider a Corrective Action
6 Plan instead.

7 With respect to the financial matters
8 alleged by CSD, you will not hear the school deny
9 that it had a disclaimed audit for both fiscal years
10 2014 and 2015; but you'll hear about what this
11 really means. When the school learned about these
12 audits in the summer of 2015, the school took
13 immediate steps to address the situation, including
14 entering into a Corrective Action Plan with the PED
15 and hiring an independent firm to reconcile the
16 books.

17 When that firm discovered that State and
18 federal employee payroll taxes had not been
19 consistently paid, going back several years, the
20 school informed PED immediately and has since worked
21 to address the situation.

22 The school will assure you that it is
23 currently operating in the black, and that if
24 spending continues as budgeted, the school will end
25 the year with a good cash balance, which the school

1 would propose to use to pay off a significant
2 portion of the IRS liability.

3 The school asks you to remain open so that
4 it can address its tax liability, fix these
5 financial issues over the next few years, and
6 demonstrate to you at it's 2019 renewal that it is
7 back on financial course.

8 You'll hear the PED's contracted business
9 manager opine that he thinks the school can do so,
10 if it is allowed to remain open.

11 As the PED has done in other charter and
12 district situations, the PED has taken over the
13 school's Board of Finance to, in the words of Hanna
14 Skandera in PED's letter, "resolve all areas of
15 concern so that the charter can move forward to
16 strengthen student success in an environment of
17 fiscal accountability."

18 The school agrees with Ms. Skandera and
19 feels confident that, with PED assistance, it can
20 put its financial house back in order within the
21 remainder of its charter term.

22 This corrective action, coupled with
23 perhaps a Corrective Action Plan with the PEC on the
24 operational issues, should be the direction we head
25 together from here.

1 Thank you.

2 THE CHAIR: Thank you, Counsel Fox.

3 If there is no other business, then, at
4 this point, I would say it is time to hear PED's
5 case. They will have 60 minutes for that. And
6 whenever you're ready, Mr. Hill, I will have her
7 start the clock.

8 MR. HILL: We're ready to proceed,
9 Mr. Chair.

10 THE CHAIR: Start the clock. Please,
11 proceed, sir.

12 MR. HILL: PED calls its first witness,
13 Katie Poulos. Where would you like the witness to
14 sit?

15 MR. LANGE: Have her sit up there. It
16 might be hard to navigate. What do you think?

17 COMMISSIONER GIPSON: The corner is over
18 there because there's a -- yeah.

19 THE CHAIR: If everyone agrees to that,
20 that'll be fine. That way, we can see and hear
21 perhaps in the audience but also see and hear --

22 MR. HILL: While Ms. Poulos is getting
23 situated, the Department has hearing notebooks with
24 exhibits it intends to use in this hearing.
25 Obviously, the parties haven't stipulated to any

1 exhibits, and each exhibit will have to be entered
2 into evidence accordingly.

3 Mr. Chair, can I pass out the notebooks?

4 THE CHAIR: Yes, you may. Go ahead and
5 stop the clock, Kimberly, while we're doing this
6 housekeeping.

7 MR. HILL: I could have gone fast.

8 THE CHAIR: I'm just going to note that
9 some are white; some are black. There's no
10 significance there, is there?

11 MR. HILL: Not that I'm aware of,
12 Mr. Chair.

13 THE CHAIR: Thank you.

14 MR. HILL: I guess it would be a good idea
15 to give the witness one.

16 THE CHAIR: Go ahead and start the clock
17 again.

18 KATIE POULOS,
19 after having been duly sworn under oath,
20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HILL:

23 Q. Ms. Poulos, can you identify yourself to
24 the Commission?

25 A. I am the Director of the Charter Schools

1 Division at the Public Education Department.

2 Q. Ms. Poulos, in this matter involving CEPi
3 did you conduct a site visit regarding the school?

4 A. I did, along with two members of my team.

5 Q. And did that site visit amount to, or end
6 with the recommendation that you made to the PEC?

7 A. It did.

8 Q. And what was that recommendation?

9 A. The recommendation was for the revocation
10 of the charter of CEPi Charter School.

11 Q. And, Ms. Poulos, did you craft a letter?

12 A. Yes, I did.

13 Q. And did that letter set forth the findings
14 of your site visit?

15 A. Yes, it did.

16 Q. Can you summarize those findings to the
17 Commission?

18 A. It might be a little challenging. But
19 there were findings, particularly and most notably,
20 that the charter school was not providing the
21 minimum required instructional hours, which is
22 1,080 hours.

23 Additionally, there was a concern that the
24 school was not compliant with the Americans with
25 Disabilities Act.

1 There were concerns about the school not
2 having the ability to demonstrate compliance with
3 background check requirements, not being able to
4 demonstrate that English Language Learners were
5 being provided the services to which they are
6 entitled.

7 Additionally, there was a concern about
8 the reporting of and service of special education
9 students.

10 There may have been others; but that's
11 what comes to mind.

12 Q. So, Ms. Poulos, can you turn to Exhibit 9
13 in the notebook in front of you? Would you tell the
14 Commission what this document is?

15 A. This document is the 2015-'16 school
16 calendar that was submitted. It's three pages. And
17 it was submitted to our Budget and Finance
18 Department by CEPi Charter School for the 2015-'16
19 school year and the approval of the 2015-'16
20 school-year budget.

21 Q. Is this a requirement?

22 A. This is a requirement for all schools.

23 Q. What happens if the school doesn't submit
24 this document?

25 A. Without this, they wouldn't get an

1 approved budget.

2 Q. Okay. Let's go to the third page of the
3 document, please. And this has --

4 MR. HILL: Are we missing a document?

5 COMMISSIONER GIPSON: Yeah. If it's just
6 the calendar, I can look on. I'm okay.

7 MR. HILL: We'll correct that in a second.
8 Apologize, Commissioner Gipson.

9 COMMISSIONER GIPSON: That's okay.

10 Q. (By Mr. Hill) On the third page of this
11 calendar, can you explain what this page is?

12 A. This page is used by the School Budget and
13 Finance Department to check to ensure that all
14 schools are providing, at a minimum,
15 1,080 instructional hours, if they serve high school
16 students.

17 There's different requirements based on
18 grade levels; but this is a requirement before a
19 budget can be approved, that they do verify the
20 1,080 hours.

21 Q. Ms. Poulos, the top of this page has a box
22 that includes the statute; correct?

23 A. That's correct.

24 Q. And that statute sets forth the required
25 number of hours, instructional hours, for a school

1 year for a school; correct?

2 A. That is correct.

3 Q. What is it for this particular school?

4 A. For this school, Section 22-2-18.A(3) is
5 relevant, because this school serves Grades 7
6 through 12. In fact, it serves Grades 9 through 12.
7 And that requirement is 1,080 hours per year.

8 Q. Ms. Poulos, did CEPi submit a budget with
9 the school calendar indicating that they would meet
10 that requirement?

11 A. They did.

12 Q. And where is that found on this document?

13 A. If you look at the last column in the
14 table that says "Total Hours," under Grade 9, 10,
15 11, and 12, it says that there will be 1,086 hours.

16 Q. So you're looking at the table in the
17 middle and to the right-hand side of the page?

18 A. That's correct.

19 Q. What would happen if the school submitted
20 a budget that didn't meet that 1,080-hour
21 requirement?

22 A. The budget would not have been approved.

23 Q. Ms. Poulos, when you visited the school
24 and when you reviewed the documents that the school
25 provided, in your opinion, does the school actually

1 hold that number of instructional hours per school
2 year?

3 A. It did not.

4 Q. What makes you say this?

5 A. So -- if you don't mind, if I could point
6 to one of the other pages?

7 Q. Go ahead.

8 A. Specifically, if you look at Page 2, it
9 says the total number of instructional days will be
10 181 instructional days. And then if you look down
11 into the box that says, "Indicate instructional
12 hours for five-day weeks," for Grades 7 and 12, it
13 indicates that there will be four hours per day.

14 That was the first issue we noticed,
15 because according to the school calendar, the
16 students do not attend four days a week for 181 --
17 sorry -- four hours a day for 181 days.

18 I don't have the exact number in front of
19 me; but, in fact, they attend approximately four
20 hours a day four days a week, Monday through
21 Thursday, and then do not attend four hours on
22 Fridays. In fact, Friday sessions are only three
23 hours, approximately. And then students don't
24 attend every Friday; it is an alternate Friday. And
25 so that was the first issue with the calendar.

1 The next issue that we explored was, if
2 you go back to Page 3, where we were on that table,
3 in the column identified as "Additional Hours," the
4 school was supposed to have 362 additional hours.
5 Now, we had to look in a variety of places to
6 understand what that was supposed to mean. But in
7 their contract and waiver, it identified a couple of
8 things:

9 One, that there would be a requirement
10 that students log on to their studies for at least
11 one hour a day, in addition to the four hours that
12 they are required to attend every day.

13 And then the other items that the contract
14 and waiver stated was that they would monitor to
15 ensure every student met the 1,080 hours through
16 additional programs, including work study or service
17 learning.

18 We asked to see evidence or documentation
19 of that or of a formalized program, and we were not
20 provided anything to demonstrate that those
21 additional hours are being logged, monitored, or are
22 a part of an official program to ensure that the
23 school is offering a 1,080 instructional program
24 [verbatim].

25 Q. So, Ms. Poulos, let me make sure I

1 understood what you said, because there was a lot in
2 there.

3 On the first -- second page of this
4 document, the school indicated that it would have a
5 five-day week with four hours of school each day.
6 But in reality, the school operates a four-day week,
7 alternating Fridays with additional classes; is that
8 correct?

9 A. That's correct. And on those Fridays,
10 it's approximately three hours, not four hours.

11 Q. And on the next page, the table indicates
12 additional hours that the school is counting towards
13 its 100- -- 1,080 requirement; but the school hasn't
14 documented that students are actually attending for
15 those hours. Is that correct?

16 A. That's correct; they did not demonstrate
17 any documentation for us.

18 Q. Ms. Poulos, are schools required to take
19 attendance?

20 A. Yes, they are. In fact, schools are
21 required to take attendance, not just for the day,
22 but for each class period.

23 Q. Why is that?

24 A. To know -- I think the easy answer is
25 there's a compulsory attendance law in New Mexico

1 that requires students to attend, and, in fact,
2 requires them to attend for the minimum
3 instructional hours. And the only way to determine
4 whether they're doing that is by taking attendance.

5 Q. When you visited the school and reviewed
6 their documents, are they complying with that
7 requirement to take attendance?

8 A. We -- we had some concerns that they were
9 not. We certainly had information from interviews
10 with staff members that for the first two weeks of
11 school, the beginning fall semester, they did not;
12 additionally, on the day that we were there, which
13 was the beginning of this semester, we again saw
14 inconsistencies, that some classrooms were taking
15 attendance and some classrooms did not appear to be
16 taking attendance.

17 And we also received from them an
18 attendance roster, which we tried to understand and
19 had great difficulty in understanding. And it left
20 great gaps. And so it appeared that they had not
21 been taking attendance for periods of time.

22 MR. HILL: Thank you. At this point, I
23 want to move the admission of Exhibit 12. Excuse
24 me. I said the wrong number. 9.

25 MS. FOX: No objection.

1 THE CHAIR: Then I so move.

2 MR. HILL: Thank you.

3 Q. (By Mr. Hill) Ms. Poulos, can you turn to
4 Exhibit 5 in this binder, which, hopefully, all the
5 Commissioners and everyone else has?

6 Charter School Contract. Do you recognize
7 this document?

8 A. Yes, I do.

9 MR. HILL: I just ask that we move
10 Exhibit 5 into evidence, as well.

11 (Chair consults with PEC counsel.)

12 THE CHAIR: Excuse me. I'm sorry.

13 MR. HILL: Has Exhibit 5 been accepted
14 into evidence?

15 THE CHAIR: Yes, it has.

16 Q. (By Mr. Hill) Ms. Poulos, is this the
17 charter contract between the Public Education
18 Commission and CEPi?

19 A. It is.

20 Q. And this contract sets forth the terms and
21 conditions that apply to the school; correct?

22 A. That's correct.

23 Q. All right. I want to go to Page 17 of
24 this contract.

25 And, Ms. Poulos, at the top of this page,

1 this contract talks about improvement plans; is that
2 correct?

3 A. That's correct.

4 Q. Does anything in this contract require
5 that an improvement plan be entered before the PEC
6 can revoke the charter?

7 A. No.

8 Q. What was your answer?

9 A. No.

10 Q. Okay.

11 COMMISSIONER SHEARMAN: I'm sorry. I did
12 not hear the question.

13 MR. HILL: I can repeat it.

14 COMMISSIONER SHEARMAN: Please do.

15 Q. (By Mr. Hill) Ms. Poulos, is there
16 anything in the charter contract that requires the
17 PEC to implement an Improvement Plan or a Corrective
18 Action Plan prior to revoking the school's charter?

19 A. No.

20 Q. And, Ms. Poulos, the section I've
21 referenced references another section of the
22 contract; is that correct?

23 A. Oh, yes, that's correct.

24 Q. What section are we talking about?

25 A. I believe you're referencing Article

1 X-I -- which, pardon my brain -- I believe that's
2 "9."

3 COMMISSIONER GIPSON: No, it's 11.

4 THE WITNESS: 11. Not working very well
5 today.

6 MR. HILL: Okay. So you're not Roman.
7 We'll let that slide.

8 COMMISSIONER GIPSON: I'm showing my age.

9 Q. (By Mr. Hill) If we go to Article XI --
10 and I'm just going to find the page number quickly.

11 COMMISSIONER TOULOUSE: 56.

12 Q. 56.

13 THE CHAIR: Page 56.

14 Q. Ms. Poulos, are you there?

15 A. I am. I am.

16 Q. And what is this section? What is it
17 about?

18 A. This section references suspension,
19 nonrenewal, and revocation.

20 Q. And the second sentence of this section.
21 What does it say?

22 A. It says, "Corrective action required by
23 authorizer for actions not warranting immediate
24 revocation."

25 Q. The second sentence. I'm sorry.

1 A. I'm sorry?

2 Q. Of the first paragraph.

3 A. It says, "The authorizer is not required
4 to allow corrective action, as set forth below, if
5 the unsatisfactory review warrants revocation."

6 Q. Okay. And then if we go on to the -- to
7 the next section, what does that section define?

8 A. It defines the corrective actions required
9 by the authorizer for actions that do not warrant
10 immediate revocation.

11 Q. Okay. And then if we keep going -- and,
12 so, Ms. Poulos, as you understand this charter
13 contract, do the conditions that you present to the
14 PEC require or warrant a Corrective Action Plan?

15 A. No. There's nothing in the contract that
16 references that.

17 Q. And so your testimony is that the PEC can
18 proceed with revocation without entering into a
19 Corrective Action Plan?

20 A. That's correct.

21 Q. Okay.

22 MS. POULOS: Thank you.

23 Q. Ms. Poulos, I want to go to Exhibit 6,
24 please.

25 A. (Witness complies.)

1 Q. And can you tell me what this document is?

2 A. This document is a letter from CEPi
3 Charter School to Paul Aguilar, the Deputy
4 Secretary, titled, "Unpaid Federal and New Mexico
5 State Payroll Taxes."

6 Q. And, Ms. Poulos, have you seen this letter
7 before?

8 A. I have.

9 MR. HILL: And at this point, I'm going to
10 ask that Exhibit 6 is admitted into evidence.

11 THE CHAIR: So ruled.

12 Q. (By Mr. Hill) Ms. Poulos, on the second
13 page of this letter, there is a table. Can you
14 describe that table to the Commission?

15 A. The table identifies school years, or
16 fiscal years, from 2011 through 2015, and the unpaid
17 taxes both to the IRS and to the State of New
18 Mexico, as well as the total that is due.

19 Q. What is the total due?

20 A. For both the State and the IRS, it's
21 \$5,200 -- \$520,620.

22 Q. So it appears you're going to have trouble
23 with Arabic numbers, too; but you got it.

24 Can you look at the first sentence
25 underneath that table and read it to the Commission?

1 A. "The school has identified approximately
2 \$300,000 in its account that was earmarked for such
3 payments, but which, apparently, was not processed."

4 Q. Okay. And, Ms. Poulos, I know you're not
5 here to testify to your knowledge of math. But
6 would you agree with me that \$300,000 is less than
7 \$520,000?

8 A. I would agree with that.

9 Q. Thank you. To your knowledge, has -- has
10 this tax liability been paid by the school?

11 A. No.

12 Q. Ms. Poulos, do you know if this table
13 includes potential penalties or interest on that
14 total amount due?

15 A. I do not believe that it covers interest
16 or penalties.

17 Q. Okay. I'd like to move to Exhibit 8.
18 Will you please identify this exhibit to
19 the Commission?

20 A. This is a letter, or an e-mail, from
21 Alfred Martinez to Mr. Christopher Hotchkiss.

22 Mr. Martinez, my understanding was, had
23 been hired to assist the school with budget and
24 finance.

25 Q. How did you come to have a copy of this?

1 A. It was provided to me.

2 Q. From someone at the school?

3 A. From someone at the school, yes.

4 Q. And if we look at the second sentence of
5 the letter, can you tell the Commission what it
6 says?

7 A. It says, "My concern is that CEPi, number
8 one, has overspent their fiscal year 2015-'16 budget
9 and have five months remaining in the current fiscal
10 year."

11 Q. Ms. Poulos, does Mr. Martinez make a
12 recommendation in this letter?

13 A. He does.

14 Q. What is that?

15 A. He recommends that the school freeze
16 spending immediately, other than emergency
17 purchases. And then states, "Once prior year cash
18 balances are determined, midyear adjustments could
19 be made to make informed decisions."

20 MR. HILL: At this point, I'm going to ask
21 that Exhibit 8 is admitted into evidence.

22 THE CHAIR: So rule.

23 Q. (By Mr. Hill) Ms. Poulos, having reviewed
24 this e-mail, is it concerning to you?

25 A. It's very concerning.

1 Q. After reading this e-mail, would you say
2 that the school is adhering to Generally Accepted
3 fiscal or Accounting Practices?

4 A. No, I would not.

5 Q. Ms. Poulos, Mr. Martinez makes eight --
6 outlines eight concerns; is that correct?

7 A. That's correct.

8 Q. Having reviewed those concerns, do you
9 find them serious?

10 A. I do.

11 Q. Do they suggest that the school is
12 adhering to generally accepted accounting practices?

13 A. No, they do not.

14 Q. Would you expect a school that has
15 adequate board and board of finance oversight would
16 have these sorts of concerns?

17 A. Absolutely not.

18 Q. In your opinion, do these concerns raise
19 to a level that would support revoking the school's
20 charter?

21 A. Absolutely.

22 Q. All right. Ms. Poulos, I have another
23 document that is not in the binder that I'm going to
24 show you and pass out.

25 MS. FOX: Mr. Chair, I object to the

1 admission of this report. This report was
2 specifically prepared for school personnel
3 investigative purposes and is not properly presented
4 as a public document in public session at a public
5 hearing on this matter.

6 In addition, it's outside the course and
7 scope of the Notice of Intent to Revoke that was
8 provided by the Charter Schools Division.

9 THE CHAIR: Counsel Hill, do you have a
10 response to that objection?

11 MR. HILL: I do, Mr. Chair. First, I
12 haven't offered the exhibit into evidence yet. And
13 so I think the proper juncture to make an
14 evidentiary ruling would be when it's offered into
15 evidence, understanding that if the exhibit is not
16 offered into evidence, it's not made part of the
17 record, it can't be relied upon by the Commission in
18 its final action.

19 I think it would be appropriate for
20 Ms. Poulos to lay some foundation to the document,
21 and that would inform the Commission as to -- and
22 Mr. Chair -- as to whether the document is
23 appropriate to be entered into evidence or not.

24 (Chair consults with PEC counsel.)

25 THE CHAIR: I will deny the motion at this

1 time and allow it to proceed. But you may refile
2 your motion later.

3 MS. FOX: Jump up, you mean?

4 THE CHAIR: Yes.

5 MS. FOX: Okay.

6 THE CHAIR: Proceed.

7 Q. (By Mr. Hill) Ms. Poulos, what is this
8 document?

9 A. This document is an investigative report
10 that was created by Mr. Dennis Good. It was created
11 by the CEPi Preparatory Institute, Charter School,
12 in response to complaints, both the ones that
13 initially came to the attention of the PEC in the
14 late fall and, I believe, as well as other
15 complaints.

16 MS. FOX: I object to that testimony.
17 That's just completely wrong. And, again, if you
18 look at the introduction to this, it says this was
19 prepared on behalf of Matthews Fox Law Firm. This
20 is work-product material, which, frankly, I'm not
21 sure how it got to the PED in this context.

22 I offered, in prior sessions, to meet with
23 you all in closed session to discuss the results of
24 these investigations. And that hadn't been
25 forthcoming yet. So we're -- that request hadn't

1 been followed up on. And so I would move that we
2 not go any further with this document for those
3 reasons.

4 MR. HILL: Mr. Chair, I think it would be
5 appropriate to figure out how Ms. Poulos came to
6 possess the document. Seems like if Ms. Fox is
7 going to assert privilege, the privilege has been
8 waived somehow, and it wouldn't apply.

9 I also don't think it's appropriate for
10 Ms. Fox to object to the testimony of Ms. Poulos.
11 Certainly, she can cross-examine Ms. Poulos on the
12 matter, if she disagrees with her testimony.

13 MR. LANGE: So, Ms. Fox, are you objecting
14 to the -- discussing this document, generally, or --

15 MS. FOX: I am. We're in open session.
16 This is -- this is confidential personnel matters,
17 attorney work product. And is if -- if this -- if
18 this -- and it's outside the scope -- course and
19 scope of this hearing.

20 If this Commission wants to learn about
21 the personnel matters that are discussed at length
22 in this report, which is part of attorney
23 work-product material, again, I would be happy to do
24 so in a properly noticed closed session for that
25 purpose.

1 THE CHAIR: So it is your claim that it is
2 attorney-client work product, and is privileged.

3 MS. FOX: It absolutely is, Your Honor.

4 THE CHAIR: That's a new one; but that's
5 fine.

6 MS. FOX: It absolutely is. I do not
7 believe that either my office nor any member of the
8 governing council waived the privilege or was
9 authorized to waive the privilege on behalf of the
10 school.

11 THE CHAIR: On that basis, then, I believe
12 in this case, I will sustain your -- do you wish --
13 can he respond?

14 Go ahead and respond, Counsel Hill.

15 MR. HILL: Mr. Chair, again, privilege can
16 be waived. Ms. Fox has made a representation that
17 it hasn't been waived. I disagree with her
18 representation, in that the school doesn't hold the
19 privilege. The only legal client that Ms. Fox can
20 have is the governing council. And I believe if we
21 were to inquire as to how this document was obtained
22 by the PED, the -- the Commission would be able to
23 rule on whether the document is privileged.

24 With regard to sensitive matters in the
25 document, the PED has no objection to the documents

1 being redacted to exclude names from the record or
2 to be entered under seal, so that the matters that
3 are sensitive are not disclosed publicly.

4 It's not the intent of the PED to go
5 through and read the names of folks; but there are
6 findings in this -- these reports that are relevant
7 to the matter at hand.

8 THE CHAIR: Thank you. I take note of
9 that, also. However, it does concern me that this
10 involves personnel issues. I believe I will restate
11 again, I believe I will sustain the motion by
12 Counsel Fox, and I believe that's to exclude this
13 document.

14 COMMISSIONER SHEARMAN: Good.

15 THE CHAIR: Is that -- I'm not -- am I on
16 solid ground there? I have made my ruling then.

17 MR. HILL: Mr. Chair, may I ask you on
18 what basis you are excluding the document?

19 THE CHAIR: Well, if I was an attorney, I
20 would provide you with one.

21 MR. LANGE: Ms. Poulos, how did you
22 receive this document?

23 THE WITNESS: This document came to me
24 from -- through one of the governing board members,
25 who did also send it out to, I believe, other

1 members of the PEC, saying her position is as a
2 whistleblower.

3 COMMISSIONER GIPSON: No, we have not
4 received this before.

5 THE WITNESS: I believe Mr. Lange did
6 receive that e-mail, also.

7 COMMISSIONER SHEARMAN: He's not a member
8 of the PEC.

9 COMMISSIONER GIPSON: It didn't come out
10 to the PEC.

11 MR. LANGE: I guess, Mr. Hill, the basis
12 that we're denying this is basically it's attorney
13 work product, and hasn't been waived. There's an
14 assertion [verbatim] that it maybe has; but at
15 this point, we're not going to entertain any
16 questions regarding this report.

17 MR. HILL: Mr. Chair, I'm assuming
18 Mr. Lange is speaking for the Commission?

19 THE CHAIR: Would you like me to restate
20 that? I will --

21 (Commissioner Carr consults with
22 PEC counsel.)

23 THE CHAIR: Commissioner Carr has asked to
24 speak. I believe I will allow him to do that.

25 COMMISSIONER CARR: I -- I think that all

1 the members of the Commission are not in agreement;
2 but -- and I think that we need to be part of that
3 decision. So I -- carte blanche is that, you know,
4 we're all equal members here. And so we all need to
5 be part of this decision. There's not one person
6 that's in charge.

7 COMMISSIONER GIPSON: I thought it was a
8 legal decision we were abiding by, not our
9 individual decisions. I thought we were following
10 the recommendation of the attorney.

11 COMMISSIONER CARR: That wasn't clear to
12 me that it was the recommendation of the attorney.
13 It sounded like it was the recommendation of the
14 Chair.

15 So if that's the case, yeah, I would
16 like -- yeah, I'm going to go with our attorney; but
17 it didn't sound like our attorney was completely on
18 board.

19 THE CHAIR: Well, I will also make note
20 that in my initial reading, I note I was the
21 presiding officer, and I would rule on all motions
22 and procedural initiatives. I don't want us to get
23 offtrack here.

24 COMMISSIONER TOULOUSE: Mr. Chair, first
25 of all, I think the clock should be stopped while

1 we're having this discussion.

2 THE CHAIR: Yeah. Stop the clock, please.

3 COMMISSIONER TOULOUSE: I want to point
4 out the fact that this is personnel information
5 which should not be made public. As long as there
6 are names in this -- I will not sit here -- if we do
7 proceed to do it, I will get up and leave, because
8 with my many years in management in government, I
9 know you do not put personnel things, and with names
10 on them, out for the general public. And I don't
11 want to be a part of it, if we do that.

12 So I agree with your decision. I wouldn't
13 mind discussing it in private; but publicly, I don't
14 think it's fair to the people whose names are in
15 this document to have them potentially made public,
16 where they did not intend for them to be made
17 public.

18 And so whatever your choice is, if you
19 choose to hear it, I will leave the room while you
20 do. If you don't choose to hear it, I would
21 appreciate it.

22 But either way, thank you.

23 THE CHAIR: But the problem with hearing
24 it in private is that we perhaps need to make a
25 decision today. I don't know when we would hear it

1 in private.

2 COMMISSIONER CARR: Well, Mr. Chair, I'd
3 be -- I would like to hear it clearly from our
4 attorney what his recommendation is. And then --
5 and then I -- I will most likely abide by that.

6 I do agree that normally personnel
7 decisions are kept private; but if they've already
8 been made public, you know, that's -- that's a
9 different matter.

10 But I'd just like to hear from our
11 attorney, and then I'll -- I'll just go with
12 whatever he says.

13 THE CHAIR: Counsel Fox?

14 MS. FOX: Yeah, Mr. Chair, members of the
15 Commission. Just like Commissioner Carr pointed
16 out, no one member of any governing board or
17 Commission can act alone in this matter. And here,
18 I think we heard that one member of the school's
19 governing council, without authorization from the
20 remainder of the governing council, has apparently
21 acted alone to provide this document -- which is not
22 even the final document created by the Matthews Fox
23 Firm on this issue -- has made that apparently
24 publicly available, and now -- you know -- or
25 available to the PED.

1 And I disagree that it was made publicly
2 available. So it's as if one of you had taken one
3 of your internal documents and made it publicly
4 available. I'm sure all of you would be up in arms
5 about that, as well.

6 MR. HILL: Mr. Chair, members of the
7 Commission, I can -- I can have the witness put on
8 this evidence, or I can testify to it myself, that
9 this document was provided in response to a public
10 records request to Ms. Fox. It's a public record;
11 it was produced to her.

12 MS. FOX: That -- I don't think that's
13 correct. I never got a public records request for
14 this document. And I believe if we had gotten one,
15 and if we would have gotten one, this would have
16 been denied, as attorney -- under what I just
17 mentioned to you before.

18 MR. HILL: If the Commission wants to take
19 a recess, we can get the record from -- well, I say
20 that Ms. Friedman isn't here today. But Ms. Poulos
21 can testify to the document being produced in
22 response to CEPi's public records request.

23 THE CHAIR: Our counsel, legal counsel, is
24 recommending we take a recess. So this is probably
25 an appropriate time, anyway, to take a short recess.

1 How long?

2 MR. LANGE: Five minutes.

3 THE CHAIR: Five minutes, please. Be back
4 in five minutes.

5 (Recess taken, 2:15 p.m. to 2:28 p.m.)

6 THE CHAIR: We are all here. I am going
7 to call recess over. We are back in session.

8 And our legal counsel advises me again
9 that the issues that have been raised here could be
10 argued for day or two in a regular court and still
11 not necessarily be resolved.

12 So as the presiding officer for this
13 particular hearing, I am going to sustain the motion
14 from Counsel Fox. I believe that that is the
15 decision that is the way we need to go at this time.
16 So I will sustain that motion, and these documents
17 are not to be considered.

18 And I'm also going to announce in the
19 future, if you have new evidence to present, before
20 it goes to the full Commission, bring it to me,
21 please, under the advice of my counsel -- our
22 counsel.

23 Thank you.

24 MR. HILL: Mr. Chair, for the record,
25 what's the basis for excluding evidence?

1 MR. LANGE: Mr. Chair, members of the
2 Commission, Mr. Hill, the basis is there's a claim
3 of attorney work-client privilege. The rules of
4 privilege apply to this hearing. And unfortunately,
5 that's -- that's the claim. We're going to sustain
6 any -- any conversation, questioning, or admitting
7 of this document.

8 MR. HILL: Is that the only basis for
9 excluding the document?

10 MR. LANGE: At this point, that is the
11 basis that we have for you here now.

12 MR. HILL: Okay. I just want to make sure
13 the record is clear what the basis is for excluding
14 the evidence. It's the Department's burden to put
15 on the case, and it's our burden to present the
16 evidence. And so I want to make sure there's a
17 clear record as to why evidence is being excluded
18 that's being offered by the Department.

19 THE CHAIR: I believe the answer from our
20 legal counsel should suffice in that. And, Kim, if
21 you haven't already, start the clock again.

22 Q. (By Mr. Hill) Ms. Poulos?

23 A. Yes, sir.

24 Q. Did you receive an e-mail including
25 investigative reports from CEPi?

1 A. Yes, I did.

2 Q. Okay. In that e-mail, did you make any
3 representation that you would keep those documents
4 confidential?

5 A. No.

6 Q. Were those documents then later produced
7 in response to an Inspection of Public Records Act
8 request?

9 A. Yes.

10 Q. Who were they produced to?

11 A. To Ms. Sue Fox.

12 Q. And the documents were referencing --
13 those are the documents that have been excluded from
14 use in this hearing; correct?

15 A. That's correct.

16 Q. Okay. Do you recall what the findings
17 from those documents were?

18 A. Relevant --

19 MS. FOX: I'm going to object again.
20 Please, we've been through this. It's outside the
21 scope. It's attorney-client privilege; it contains
22 confidential matters. And, again, this document was
23 not produced by the school pursuant to any sort of
24 waiver of any sort of privilege or any other -- or
25 personnel matter issues.

1 So I -- you know, don't know where this
2 came from. No one has produced a document showing
3 that the school has waived the attorney-client
4 privilege; and so I'm going to continue to object
5 and ask that this line of questioning be stopped.

6 THE CHAIR: Counsel, it does sound to me
7 like you're trying to go around my sustaining of the
8 original motion. Although I'm not a judge, I'm
9 going to sustain the motion.

10 MR. HILL: Mr. Bergman, I'm not seeking at
11 this point to enter the exhibit into evidence. I'm
12 questioning the witness about her knowledge of the
13 facts that relate to this hearing and the school. I
14 think it's relevant evidence. The findings that
15 she's aware of would be relevant.

16 It seems like members of the Commission
17 were interested in those findings and were not
18 interested in the personnel matters; and we're
19 making every effort to not draw personnel matters
20 into this case.

21 I think -- I understand Ms. Fox's
22 objection. I don't understand her argument, because
23 the document was produced to her in response to a
24 public records request. It's -- privilege has been
25 waived at this point.

1 But in the interest of time, unless the
2 Commission wants to discuss this further, I will
3 continue.

4 COMMISSIONER CARR: I have a question.

5 MR. LANGE: Go ahead.

6 THE CHAIR: Commissioner Carr?

7 COMMISSIONER CARR: Can you produce the
8 document that was the request to Ms. Fox?

9 THE WITNESS: It wasn't a request to
10 Ms. Fox. It was a request by Ms. Fox for all files
11 in PED's files with regards to CEPi. This document
12 was contained in that.

13 COMMISSIONER CARR: So you are --

14 COMMISSIONER CHAVEZ: You told him to stop
15 the clock; right?

16 MR. HILL: Mr. Chair, can we stop the
17 clock if we're not putting on evidence on the
18 State's behalf?

19 THE CHAIR: My legal counsel -- our legal
20 counsel continues to tell me we should not hear any
21 more on this issue. And that's going to be my
22 ruling at this time.

23 COMMISSIONER CARR: Okay.

24 COMMISSIONER SHEARMAN: And, Mr. Chair, in
25 line with that ruling, may I ask that these

1 documents be collected and no longer in our hands?

2 I don't want anybody to think that I've read or, in
3 any way, shape, form, or fashion, am I aware of any
4 of the personnel information that's in that report.

5 THE CHAIR: Do we have a consensus on that
6 request? Let's dispense with those documents.

7 MR. HILL: Mr. Chair, I want to confirm
8 that the time has been paused for the State.

9 MS. ULIBARRI: I've not been given
10 direction.

11 THE CHAIR: Is it still running? Is the
12 clock still running?

13 MS. ULIBARRI: Yes.

14 THE CHAIR: Please stop it again, and
15 leave it stopped for a few minutes, since we're --
16 because of all this back-and-forth, we will add ten
17 minutes, with the agreement of Counsel Fox, to your
18 time.

19 So make a note on that, Kimberly, that
20 we're going to add ten minutes.

21 Is that satisfactory to both counsel?

22 MS. FOX: Yes, it is.

23 MR. HILL: Yes, Mr. Chair.

24 THE CHAIR: All right. Let's proceed
25 forward, please.

1 Q. (By Mr. Hill) Ms. Poulos, I want to have
2 you turn to Exhibit 12. Can you identify this to
3 the Commission?

4 A. Exhibit 12 is a letter that was addressed
5 to Mr. Hotchkiss. And it was sent by the Governor's
6 Commission on Disability. We, at the PED, received
7 a copy when this original letter was sent to
8 Mr. Hotchkiss.

9 Q. Ms. Poulos, how did you receive this
10 letter?

11 A. Again, we were copied in on the original
12 letter to Mr. Hotchkiss from the Governor's
13 Commission on Disability.

14 MR. HILL: I move the admission of
15 Exhibit 12.

16 THE CHAIR: Any objection to this?

17 MS. FOX: No.

18 THE CHAIR: So approved; so moved.

19 Q. (By Mr. Hill) Ms. Poulos, what does this
20 letter say? What is it about?

21 A. This letter concerns accesses to
22 handicapped stalls in both the men's and women's
23 restroom. And it directs the school to ensure
24 compliance with the Americans With Disabilities Act
25 by making the bathroom stalls -- that are built for

1 appropriate access -- making those open and not
2 keeping those locked.

3 Q. Was the school in compliance with the law
4 on this matter?

5 A. It was not. And each time that I visited
6 the school, I found that specifically, the
7 restroom -- the handicapped stall in the women's
8 restroom was locked. I asked several times for it
9 to be unlocked. It would be unlocked and then
10 relocked the next time I tried to enter it.

11 Q. To your knowledge, has this noncompliance
12 been rectified by the school?

13 A. No, it has not.

14 Q. Is this a serious matter?

15 A. I believe it is.

16 Q. Why?

17 A. It's a federal law to enable those with
18 disabilities to access public facilities. And their
19 actions show that they have disregard for the
20 requirements of that law.

21 Q. What possible consequences could the
22 school face because of this?

23 A. I believe that there are -- there is the
24 possibility for penalties; or if an individual felt
25 that they were being denied access, they could

1 potentially have a civil suit against the school.

2 Q. Ms. Poulos, can you go to Page 37 of
3 Exhibit 5?

4 A. (Witness complies.)

5 MR. HILL: Of Exhibit 5, the charter
6 contract.

7 COMMISSIONER GIPSON: Oh.

8 Q. (By Mr. Hill) Ms. Poulos, on Page 37,
9 there's a section entitled, "Facilities Occupancy
10 Requirement."

11 Can you look to the second paragraph of
12 that section and read it to the Commission?

13 A. That portion of the contract states, "The
14 school shall comply with all state and federal
15 health and safety requirements applicable to public
16 schools, including those health and safety codes
17 relating to educational building occupancy."

18 Q. Ms. Poulos, looking back to Exhibit 12 --
19 without turning to it -- does -- is the school in
20 violation of the charter contract as a result of
21 that finding from the Governor's Commission?

22 A. It appears to be.

23 Q. Ms. Poulos, I want to stay on Exhibit 5.
24 This is the charter contract; correct?

25 A. That's correct.

1 Q. If we go back to Page 33, in subsection
2 (a), of section 8.1, it's entitled, "Material Terms
3 of the Charter"; is that correct?

4 A. That's correct.

5 Q. And the first subsection, (i), of the
6 material terms is what?

7 A. It's the "Operational Structure," and it
8 includes the length of school day, school year, and
9 the grades, and the number of students they can
10 serve.

11 Q. Ms. Poulos, if you look at the table in
12 that subsection (i), the second row is labeled
13 "Length of School year"; is that correct?

14 A. That's correct.

15 Q. And what does it state?

16 A. "Students [will] receive 181 days of
17 instruction."

18 Q. Ms. Poulos, did students at CEPi receive
19 181 days of instruction?

20 A. It depends on -- well, no, they did not.

21 Q. And, Ms. Poulos, if -- if we recall, we
22 went over the school's budget; that was Exhibit 9.
23 The school's budget also indicated 181 days of
24 instruction; right?

25 A. That's correct.

1 Q. When we were going over Exhibit 9, you
2 indicated there were issues with how the school
3 accounted for those days; is that correct?

4 A. That's correct.

5 Q. They listed a five-day school week, when
6 they had a four-day week; is that correct?

7 A. Correct.

8 Q. Based on your review of -- of the -- this
9 term and your knowledge from the site visit and
10 review of documents, is the school in compliance
11 with the charter contract with regard to subsection
12 (i), "Operational Structure"?

13 A. It is not.

14 Q. Ms. Poulos, in the course of your work at
15 the Charter Schools Division, did you come to have
16 any knowledge of the governing morning structure of
17 this charter school?

18 A. I did.

19 Q. Ms. Poulos, are you aware of the laws
20 that -- that apply to the governing councils of
21 charter schools?

22 A. I am.

23 Q. Is there a requirement for a certain
24 number of members on a governing council?

25 A. There is a requirement that each governing

1 council have at least five members.

2 Q. If we turn to Page 35 of Exhibit 5, I'm
3 looking at subsection (vii). Does that section say
4 anything about the number of governing council
5 members required for the school?

6 A. It states that the school, according to
7 its bylaws will have between five and nine members.

8 Q. Ms. Poulos, at any point during your
9 tenure at CSD, did CEPi fall under the minimum
10 requirement for charter school governing council
11 members?

12 A. Yes.

13 Q. Can you explain that, please?

14 A. So throughout the fall, I did attend
15 governing council meetings. And it appeared, at the
16 first meeting I attended in November, that they may
17 have been short of membership. They, at that time,
18 removed a board member and then voted on two new
19 members.

20 I think at that point, they then had five
21 members. And then they added new members again in
22 December. And then the members that had been added
23 in November left in January; additional members left
24 in January. At some point during January, I believe
25 they had three board members.

1 Q. Ms. Poulos, this may be a silly question.
2 But would that violate that provision of the
3 charter?

4 A. It would.

5 Q. Ms. Poulos, if we go ahead in the contract
6 to Page 46, towards the bottom of the page,
7 subsection (a) of section 8.10, is there anything
8 else about governing council membership contained in
9 the contract in this section?

10 A. The contract does state that they shall
11 have at least five members. It also requires them
12 to notify of a resignation or a designation within
13 30 days. And if they fail to fill a vacancy within
14 40 days, they must seek an extension from the
15 authorizer.

16 Q. And, Ms. Poulos, you were reading onto the
17 next page, Page 47; correct?

18 A. Yes, that's correct.

19 Q. To your knowledge, is this school -- or
20 was the school -- in compliance with this
21 requirement of the contract?

22 A. I believe specifically in relation to
23 having five board members they were not in
24 compliance; as well as notifying the authorizer
25 within 30 days of resignation, they were not.

1 Q. If we go back to Page 46, Section 8.9, can
2 you describe to -- rather, read to the Commission
3 what that section is?

4 A. It states, "The school shall demonstrate
5 compliance with applicable laws, rules, and
6 regulations relating to financial management and
7 oversight expectations that shows the school is
8 following generally accepted accounting principles."

9 Q. In your opinion, has the school complied
10 with this requirement of the contract?

11 A. No.

12 MR. HILL: I'm going to pass the witness
13 at this point. Before I pass the witness, I want to
14 confirm with Mr. Chair whether the time is running
15 for cross-examination or not.

16 THE CHAIR: Counsel Hill -- stop the clock
17 for a second for that procedural question.

18 The clock will be stopped for the
19 cross-examination.

20 MR. HILL: Thank you.

21 THE CHAIR: So leave the clock off,
22 please.

23 Counsel Fox, are you prepared to
24 cross-examine this witness?

25 MS. FOX: I am.

1 THE CHAIR: Proceed.

2 MS. FOX: I just have a few
3 cross-examination questions; so we won't be taking
4 too long, I don't believe.

5 CROSS-EXAMINATION

6 BY MS. FOX:

7 Q. Ms. Poulos, are you an expert, or even
8 trained in, generally accepted accounting
9 principles?

10 A. I am not trained in the principles. I am
11 able to read the information that's provided and do
12 liaise with our Finance and Budget Department.

13 Q. Okay. What generally accepted accounting
14 principles exactly has the school violated?

15 A. I did provide that, with the assistance of
16 our Audit and Budget and Finance Departments in the
17 letter that was provided to you, as well as to the
18 school.

19 I think I could provide a big-picture
20 description of the issues with regards to the
21 disclaimed audit: Not maintaining records
22 appropriately; not maintaining appropriate
23 separation of duties, segregation of duties. I
24 think specifically in relation to the Charter School
25 Act and the requirement of a Board of Finance, the

1 audit subcommittee and the budget finance
2 subcommittee also did not demonstrate that they
3 complied with their requirements.

4 Q. Okay. You are aware that there is a set
5 of what's called "generally accepted accounting
6 principles," and -- you know -- and they are
7 numbered or lettered or somehow set out?

8 A. Yes.

9 Q. And you are not able to identify for us
10 here today which ones the school has violated. I
11 understand you've given us a general idea; but
12 you're not able to point to any specific GAAPs
13 today?

14 MR. HILL: Mr. Chairman, object to the
15 line of questioning to the extent it
16 mischaracterizes what the earlier testimony was.
17 The statute sets forth a basis for the PEC to revoke
18 a school's charter for failure to meet generally
19 accepted standards of fiscal management. I believe
20 that is what the earlier testimony was to.

21 MS. FOX: I believe they used the term
22 "generally accepted accounting principles"; and I
23 was following up on that.

24 THE CHAIR: Just one moment.

25 (Chair consults with PEC counsel.)

1 THE CHAIR: I think I'll not accept the
2 objection. I'll deny it. But please clarify a
3 little bit exactly what you're going for.

4 MS. FOX: I was just -- the term was used
5 by Ms. Poulos, a "violation of generally accepted
6 accounting principles," or GAAP, I guess. And I was
7 following up on exactly which ones she believed that
8 the school had violated so that the record is clear.

9 THE CHAIR: Go ahead and proceed.

10 Q. (By Ms. Fox) Ms. Poulos, if you would look
11 at Exhibit 12, please, and, specifically, on
12 Page 2 --

13 A. (Witness complies.)

14 Q. -- the third paragraph, first sentence.
15 Would you agree that Ms. -- Ms. Hope -- used the
16 word "recommend" in that letter?

17 A. She does use the word "recommend."

18 Q. Okay. Thank you.

19 With respect to membership of the
20 governing council, what evidence do you have that
21 the governing council didn't notify you of
22 resignations within 30 days?

23 A. I have received no notice of the
24 resignations within 30 days. I did receive notice
25 of designations; but that did not include the notice

1 of resignations.

2 Q. Okay. So you're drawing a distinction.
3 Were you generally aware that the governing council
4 had been -- changes had been made in the governing
5 council?

6 A. We had not been provided any notice.

7 Q. But you had been attending CEPi's
8 governing council meetings for several months;
9 correct?

10 A. I had. And I had not received any notice
11 of the changes.

12 Q. But you were generally aware of that fact;
13 correct?

14 A. I have not received notice.

15 Q. With respect to the school calendar,
16 Exhibit 9, that school calendar check, the inputting
17 for that is computerized; correct?

18 A. It is computerized and verified by our
19 Budget and Finance Department.

20 Q. Are you in charge of that verification, or
21 ensuring that that calendar gets inputted correctly?

22 A. I am not. Our Budget and Finance is. A
23 programmatic review is done by the Charter Schools
24 Division. And that was where we went and verified
25 the implementation of the calendar, as submitted.

1 Q. Okay. So who is -- who is the school's
2 liaison, then, when it comes to how to input that
3 information into that program?

4 A. I don't have the list of all the school
5 budget analysts; but they do have an assigned budget
6 analyst.

7 Q. Okay. And you don't know, then, what
8 instructions were given to the school regarding how
9 to complete that inputting?

10 A. I do not have any information about the
11 communications between the analyst and the school.

12 Q. Okay. Is it possible that the budget
13 analyst told CEPi personnel to put the 100- --
14 1,080-hour figure in there in order to get the
15 program to work correctly?

16 A. It's not possible. The Budget and Finance
17 Department know that they may not, under law,
18 approve a budget if the school does not provide the
19 minimum instructional hours; so they would not
20 provide contrary advice.

21 Q. If you look at the actual calendar, is it
22 not clear that the school is providing four hours,
23 plus an additional 300-and-some hours as part of
24 its -- as its program?

25 A. I'm not sure I understand your question.

1 Q. Well, if you look at that same chart,
2 where the 1,086 hours is provided, right before
3 that, it says four hours, and then an additional
4 amount of 362 hours; right?

5 A. Uh-huh.

6 Q. And if you times that by -- if you times
7 four hours by 181 days, and at 362, you don't come
8 up with 1086, do you?

9 A. I believe you do. I don't have a
10 calculator with me.

11 Q. I'm as bad at math as you are with Roman
12 numerals.

13 A. I can pull my calculator out and do the
14 calculation.

15 Q. 118 times 4 --

16 MR. HOTCHKISS: 1,086 plus the 362.

17 MS. FOX: I stand corrected.

18 Q. (By Ms. Fox) Okay. So it was clear that
19 the 1,086 is made up of four hours a day for
20 181 days, plus 362 additional hours, in that chart.

21 A. That is correct.

22 MS. FOX: Okay. Now you all know why I
23 went to law school and not accounting school.

24 All right. I have nothing further for
25 this witness.

1 THE CHAIR: Thank you, Counsel.

2 Counsel Hill, do you have any redirect at
3 this time?

4 MR. HILL: I do.

5 THE CHAIR: Start the clock again, please.

6 REDIRECT EXAMINATION

7 BY MR. HILL:

8 Q. Ms. Poulos, will you go back to Exhibit 12
9 again, please?

10 A. (Witness complies.)

11 Q. And on the first page of the exhibit, the
12 first paragraph, can you read the sentence starting,
13 "This is a violation of..."?

14 A. "This is a violation of Federal and State
15 accessibility requirements."

16 Q. And the sentence before that, please.

17 A. "Only the receptionist has the key to..."
18 have -- "...to unlock the large wheelchair stall."

19 Q. And Ms. Fox had you look at some
20 recommendations on the second page. Is it your
21 understanding that those recommendations somehow
22 eliminate this violation of federal and state law?

23 A. No.

24 Q. And can you explain maybe more clearly
25 what that violation of law was?

1 A. Yes. I believe the violation is not
2 having the wheelchair-accessible stalls open to the
3 public. And, further, I had a conversation with the
4 author of this letter, who made multiple other
5 recommendations, indicating that there were a
6 multitude of ways the school could comply, including
7 installing different types of doors.

8 Q. If we go to the next page of this exhibit,
9 can you read that second-to-last paragraph into the
10 record, please?

11 A. Starting with, "CEPi's school
12 programs..."?

13 Q. On the second page, starting with, "A
14 staff and student... ."

15 A. "A staff and a student population of
16 persons without disabilities does not eliminate the
17 requirement for a 'wheelchair stall.' Every
18 facility must comply with the ADA and not
19 discriminate against any guest or visitors to your
20 school on a daily basis and during special events:
21 'no qualified individual with a disability shall, on
22 the basis of disability, be excluded from
23 participation in or be denied the benefits of
24 services, programs, or activities of a public or
25 private entity.' See ADA Regulations, Section

1 35.130 and 36.201."

2 Q. Thank you. If you go back to Exhibit 9,
3 now, this is the school calendar.

4 A. (Witness complies.)

5 Q. The first page of this exhibit, it has a
6 calendar on it; correct?

7 A. That's correct.

8 Q. And that calendar has some marks on it.
9 Some dates are in boxes; some are shaded; some are
10 crossed out. What does that mean?

11 A. Certainly. You are -- there's instruction
12 provided at the top, where the school is instructed
13 to block non-instructional days -- that would be
14 professional development days -- to shade observed
15 holidays, and then to strike all days prior to the
16 first day of instruction and after the last day of
17 instruction.

18 Q. So, Ms. Poulos, if we look at each month,
19 underneath the month, there is a -- there is a
20 listing of the instructional days provided in that
21 month; is that correct?

22 A. That's correct.

23 Q. And then if we go to the bottom of this
24 page, it totals up to 181 instructional days;
25 correct?

1 A. Correct.

2 Q. But we talked about earlier, this school
3 says, in this document, it's on a five-day week;
4 correct?

5 A. Correct.

6 Q. But it's not on a five-day week; correct?

7 A. Correct.

8 Q. So if we look at any month, on the column
9 for Fridays on the calendar, should those days be
10 crossed out, or should they be counted as
11 instructional days?

12 A. The school should not have them identified
13 as full instructional days.

14 Q. So the calendar says they have 181 days.
15 The boxes for each date indicate 181 calendar days.
16 But the school doesn't actually have 181 calendar
17 days; correct?

18 A. Correct.

19 Q. If we go to the second -- I'm sorry -- the
20 third page, again, it seems like there might have
21 been some confusion about this.

22 Can you explain what's going on in that
23 first -- that first table, "Statutory Requirements"?

24 A. Yes. That identifies the statutory
25 requirements for minimum instructional hours by

1 grade level.

2 Q. And in that table, the school is only
3 totaling 720 hours; is that correct?

4 A. I'm sorry. Which one are you pointing me
5 to?

6 Q. We're on Page 3, the table to the left.

7 A. Yes. That's correct.

8 Q. So there's 180 days and four hours, and we
9 get 720 instructional hours; is that correct?

10 A. I believe it's 724, when you multiply 181.

11 Q. Okay. So they're listing 180 rather than
12 181.

13 And, Ms. Poulos, on the next -- the next
14 table to the right, this is where we see additional
15 hours per day, or additional hours?

16 A. Correct.

17 Q. And so when you add those together, you
18 get to the statutory minimum; is that correct?

19 A. Correct.

20 Q. So in other words, what the school
21 submitted to the Department indicated they had met
22 that statutory minimum of hours?

23 A. Correct.

24 Q. And your earlier testimony was, in
25 reality, they had not.

1 A. Correct.

2 MR. HILL: I have no further questions.

3 THE CHAIR: Thank you. Stop the clock,
4 please.

5 Counsel Fox, do you have any recross at
6 this time?

7 MS. FOX: I do not.

8 THE CHAIR: Keep the clock stopped, I
9 believe, for Commissioners' questions. The clock is
10 stopped for Commissioners' questions. If any of you
11 have questions for this witness, now would be the
12 time to ask them.

13 Are there any Commissioners that wish to
14 ask a question?

15 Any Commissioners to my left? I see no --
16 I see no questions. I believe we're -- all right.
17 Then I believe it's time to dismiss this witness.

18 Counsel Hill, do you have any other
19 witnesses?

20 MR. HILL: Mr. Chair, yes, at this point
21 I'd call Eileen Marrujo-Gallegos to the stand.

22 THE CHAIR: Start the clock, please.

23

24

25

1 EILEEN MARRUJO-GALLEGOS,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HILL:

6 Q. Please identify yourself and spell your
7 name for the court reporter.

8 A. Eileen Marrujo-Gallegos. E-I-L-E-E-N,
9 M-A-R-R-U-J-O, dash, G-A-L-L-E-G-O-S, Director of
10 Operations with the Public Education Department, and
11 also Acting School Budget Director at the time of
12 the current situation.

13 Q. Was the Board of Finance for CEPi taken
14 over by the Public Ed Department?

15 A. Yes.

16 Q. Why?

17 A. As a result of the federal outstanding
18 taxes -- tax liability that had not been paid and
19 the federal tax reports that had not been submitted.

20 Q. Can you turn to Exhibit 3?

21 A. (Witness complies.)

22 Q. It should be IRS documents. Have you seen
23 these documents before?

24 A. Yes.

25 Q. And can you explain briefly what they are?

1 A. These documents identify the outstanding
2 notices that the school has not filed their 941
3 reports for the periods identified, 3/30- -- for the
4 quarter ending 3/31/14, 6/30/14, 9/30/14,
5 12/31/2014, and March 31st, 2015; also amount owed
6 by the school in regards to penalties.

7 MR. HILL: Thank you. I'm going to move
8 the admission of Exhibit 3.

9 MS. FOX: I don't have any objection, Your
10 Honor, except for the fact that I will note that
11 although my memory of each of the 8,000 documents
12 that was provided to me is not crystal-clear, I
13 don't believe these were presented as part of our --
14 the response to the IPRA request.

15 However, that's already been denied; so I
16 just wanted to note that for the record.

17 THE CHAIR: I will approve the submission,
18 with the note of Counsel Fox.

19 Q. (By Mr. Hill) Will you turn to Exhibit 6,
20 please.

21 A. (Witness complies.)

22 Q. Have you seen this document before?

23 A. Yes, I have.

24 Q. And what is this document?

25 A. This document is identifying the total

1 amounts due by the school district -- I'm sorry --
2 by the charter school to the IRS and to the State of
3 New Mexico.

4 Q. At the time this letter was sent, you were
5 the Acting School Budget Director for PED; correct?

6 A. Correct.

7 Q. What's disclosed in this letter from CEPi
8 to the Public Education Department, among others, is
9 this something you've ever seen before, as School
10 Budget Director?

11 A. No.

12 Q. Is this a serious matter?

13 A. Very serious.

14 Q. Having reviewed this document, can you say
15 whether this school has in place generally accepted
16 fiscal management practices?

17 A. No, they do not -- or did not.

18 Q. Ms. Marrujo-Gallegos, can you explain to
19 the Commission what payroll taxes are?

20 A. Payroll taxes are taxes that are held from
21 the employee and, the portion that the employer must
22 pay, also, which must be paid to the federal
23 government and to the State of New Mexico in a
24 timely manner.

25 Q. So -- and when a school pays its

1 personnel, do they withhold, from the payment,
2 payroll taxes?

3 A. Yes, they do.

4 Q. What does the school -- or what should a
5 school do with that withholding?

6 A. Submit payment to the federal government
7 and the State of New Mexico.

8 Q. Is it a complicated process to submit the
9 payment to the IRS or to the State Tax & Rev
10 Department?

11 A. Currently, I do not serve as a business
12 manager in a school district. But to my
13 understanding, it is not. I have done it in a
14 previous employment; and no, it is not.

15 Q. Is this the sort of thing that there's any
16 reasonable explanation for not paying withheld
17 payroll taxes?

18 A. No.

19 Q. In your experience as a school budget
20 director, have you had occasion to operate the
21 finances of a charter school?

22 A. Yes.

23 Q. And that experience was part of your
24 responsibilities approving payroll?

25 A. Correct.

1 Q. And when you approved payroll, what steps
2 did you take to make sure the tax withholding was
3 paid to the IRS?

4 A. Worked in conjunction with our contracted
5 business manager to ensure that payroll taxes were
6 paid on a monthly basis or a quarterly basis.

7 Q. If we go back to Exhibit 6 -- and we've
8 talked about this before -- but there's a table that
9 the school submitted showing a total amount due; is
10 that correct?

11 A. Correct.

12 Q. And that total amount due is \$520,620; is
13 that correct?

14 A. Correct.

15 Q. Ms. Marrujo-Gallegos, can you explain how
16 a school submits its budget to the Department?

17 A. So a school is given a budget date when
18 their budget is due. Typically, it is set in the
19 month of April. The School Budget and Finance
20 Analysis Bureau will work with the school -- in this
21 case, the charter school -- to develop their budget.

22 The school is given a 910B5, which
23 identifies what their State Equalization Guarantee
24 is for that school. School Budget then has a
25 checklist of required documents that must be

1 submitted, based on their due date that was
2 previously set up, which includes -- and I don't
3 have that in front of me right now -- a number of
4 documents, which basically is all of the revenue,
5 all of their expenditures, their school calendar, a
6 list of documents that need to be submitted.

7 Once those documents are submitted, the
8 School Budget Bureau reviews those documents and
9 works with the school to ensure that they have
10 budgeted the amount of their SEG that they were
11 awarded, ensure that their budget is balanced,
12 ensure that what is submitted is meeting all
13 statutory requirements based on what was submitted.

14 If there are any issues or concerns, the
15 Budget Bureau does work with the school to rectify
16 any issues and ensure that a budget that is
17 submitted is completely aligned with all statutory
18 requirements.

19 Q. When the school's budget is approved,
20 would it reflect what is withheld for payroll tax
21 purposes and what then should be sent to the -- to
22 the federal or state government?

23 A. Yes and no. Yes, because in the
24 personnel, it includes the portion of the taxes that
25 will be set aside. It is, again, a budget -- an

1 estimated amount. It is not the exact amount; so,
2 yes.

3 Q. So in other words, the budget
4 contemplates, "You're paying staff this much; you're
5 withholding this much; and that's going to be sent
6 to the federal government." Correct?

7 A. Correct.

8 Q. If a school withheld the taxes, but didn't
9 pay them to the government, would that be in
10 violation of their approved budget?

11 A. Yes.

12 Q. Is that something they could do without a
13 budget adjustment request being approved?

14 A. Yes.

15 Q. I'm sorry. They could?

16 A. Can you restate the question?

17 Q. Could the school take the withheld taxes
18 and use it for some other purpose without having the
19 budget adjustment request approved?

20 A. Yes, they could. They could use that
21 budget authority within that same function.

22 Q. And what function would that be within?

23 A. Operational; if the funds are budgeted and
24 operational.

25 Q. Okay. This Exhibit 6, in the first

1 paragraph on the second page, says, "The School has
2 identified approximately \$300,000 in its account
3 that was earmarked for such payment... ."

4 If the school were to earmark cash on hand
5 for a payment for past-due taxes, how would they go
6 about doing that with your office, with the School
7 Budget Office?

8 A. So the -- if this amount was identified,
9 the \$300,000, it should have been set up as a
10 payable to the IRS; and it should have been
11 identified -- it would have been on their audit
12 listed as payable to the IRS. However, the cash
13 would have still been budgeted in the subsequent
14 school year.

15 Q. So is that something that they would --
16 the school would have to give the notice to PED that
17 they've earmarked these funds for payment of
18 past-due taxes?

19 A. It would be included in their audit, in
20 the financial audit, as a payable.

21 Q. If we go to Exhibit 8, have you seen this
22 document?

23 A. No.

24 Q. Now, if we look at -- on Exhibit 8, there
25 are eight numbered paragraphs. I want to give you a

1 second to review those, and then I'm going to ask
2 you some questions about them.

3 If we look at the first paragraph,
4 "Unrestricted cash that was budgeted has not yet
5 been verified, or audited, so it may not
6 materialize."

7 Can you explain, in maybe nontechnical
8 terms, what that means?

9 A. That would mean that the cash on hand has
10 not -- we cannot be 100 percent sure -- certain that
11 it is available to be utilized for any purpose.

12 Q. Okay. And is -- generally speaking, is
13 that a good thing for a school, or school district,
14 to have no idea as to whether the cash is really on
15 hand or not?

16 A. No, that is not a good thing.

17 Q. Does that meet generally accepted
18 standards of fiscal management?

19 A. No.

20 Q. Second paragraph, "Invoices - we continue
21 to receive invoices for payments that have not been
22 encumbered. Trying to determine available budget is
23 a struggle."

24 What does that mean?

25 A. Services were rendered by individuals, or

1 goods were received, and no PO was issued,
2 potentially, to encumber these funds. So there
3 isn't a mechanism to pay for these outstanding
4 invoices.

5 And the ability to identify available
6 budget is difficult because the school had
7 encumbered all of their funds at the time that they
8 were receiving these invoices.

9 Q. So if a school is running this way, what
10 could happen?

11 A. Expenditures exceed the revenue;
12 basically, not having cash to pay their bills.

13 Q. And if we look up to the first paragraph
14 of this e-mail, it says, "As of February 2, 2016,
15 CEPi has expended and encumbered \$1,844,994.67 for
16 an over budget of \$3,736.67."

17 What does that mean?

18 A. In layman's terms, basically, their checks
19 are going to bounce.

20 Q. It's not a good thing?

21 A. No.

22 Q. Is that a -- does that comply with
23 generally accepted standards of fiscal management?

24 A. No.

25 Q. This school was required by the PED to

1 employ an outside business manager; is that correct?

2 A. Correct.

3 Q. This school was also required to engage an
4 accounting firm to try to make sense of its
5 finances; correct?

6 A. Correct.

7 Q. As of today's date, have either been able
8 to balance the school's accounts?

9 A. No.

10 Q. As of today's date at the hearing, has the
11 school had an audit of its financial statements,
12 rendering an opinion on those statements?

13 A. No.

14 Q. Ms. Marrujo-Gallegos, you've been involved
15 with a number of charter school boards of finance
16 and also school district, school budget issues.
17 Where would you rank this sort of issue that you've
18 seen with CEPi among the other schools you've dealt
19 with?

20 A. On a scale from, 1 to 10, I would say
21 approximately 9.

22 Q. And so I'm assuming "10" is the worst?

23 A. Correct.

24 Q. In your opinion, is this a school that is
25 solvent?

1 A. No.

2 Q. Is this a school that will be able to pay
3 for its encumbered expenses?

4 A. At this point, I would say I don't know;
5 because we don't know what the financial situation
6 is of the school.

7 Q. In your opinion, having seen the financial
8 issues at the school, is the PEC justified in
9 revoking this school's charter?

10 A. Yes.

11 MR. HILL: I'll pass the witness.

12 THE CHAIR: Thank you. And, actually, she
13 held up the "Time is up" sign. So I believe your
14 60 minutes -- did that include the added ten
15 minutes?

16 MS. ULIBARRI: Uh-huh. Yes.

17 THE CHAIR: That included the added ten
18 minutes. So your time is expired.

19 Counsel Fox, do you have
20 cross-examination?

21 MS. FOX: I do.

22 CROSS-EXAMINATION

23 BY MS. FOX:

24 Q. Ms. Marrujo-Gallegos, my name is Susan
25 Fox. We haven't met; but we've probably

1 corresponded in some way or another.

2 COMMISSIONER SHEARMAN: Please use the
3 mic.

4 MS. FOX: Sorry about that. I forgot my
5 microphone.

6 Q. Ms. Marrujo-Gallegos -- so we -- I think
7 we all understand that the school received
8 disclaimed audits for fiscal year '14 and '15. What
9 about prior year audits? '12? '13?

10 A. I don't have that information in front of
11 me.

12 Q. Okay. But is it not part of your
13 presentation that they did receive any sort of poor
14 audit or disclaimed audit in those years?

15 A. (Indicates.)

16 Q. Okay. And part of audits is to test
17 compliance with IRS requirements; correct?

18 A. Yes.

19 Q. Okay. Do you know, or have any reason to
20 know, why, in prior audits, the 2012, 2013, and 2014
21 tax issues were not identified in those audits?

22 A. No, I do not.

23 Q. Okay. PED didn't have any notice of that
24 issue as a result of those audits; correct?

25 A. Correct.

1 Q. And neither did the school; correct?

2 A. Not that I'm aware of.

3 MS. FOX: Is it something I'm doing? Too
4 close?

5 COMMISSIONER PERALTA: Pull that other
6 microphone away.

7 Q. (By Ms. Fox) Ms. Marr- -- excuse me -- I'm
8 sorry -- Marrujo-Gallegos -- I get tongue-tied when
9 I'm up here -- the PED audit -- you're familiar with
10 the PED audit letter from 2014 and 2015 from Axiom?

11 A. Somewhat; but my colleague is, I think, a
12 little bit more familiar than I am.

13 Q. Okay. Let me ask you this question. And
14 if I need to have you look at it, I'll hand it to
15 you.

16 Are you aware of that audit letter from
17 Axiom that specifically disclaims that the fiscal
18 year '14 and '15 audits don't provide an opinion of
19 the effectiveness on the school's internal controls
20 or compliance? Are you aware of that?

21 A. No.

22 Q. Let me hand you a copy of the volume two
23 of the PED financial statement from Axiom Certified
24 Public Accountants, Volume II, Pages -- it looks
25 like 20 through 24. And I'll direct your attention

1 to the bottom of Page 24.

2 Have you finished reading that?

3 A. (Witness indicates.)

4 Q. Is it fair to say that Axiom has -- has
5 stated, in the report, that these disclaimed audits
6 cannot be used to prove noncompliance and are not
7 intended to be used for that purpose?

8 A. Yes.

9 Q. Okay. Thank you.

10 Now, the PED has taken over the school's
11 finances; correct?

12 A. Correct.

13 Q. And you've been in that position for a
14 couple of months now? I believe the Secretary took
15 over January '14?

16 A. Correct.

17 Q. Do you have any evidence that any unpaid
18 payroll tax money was misappropriated, or fraud was
19 involved?

20 A. Can you clarify the question, in the sense
21 of "misappropriated"?

22 Q. Well, that anyone absconded with some
23 money.

24 A. No.

25 Q. Okay. And as far as you know, no fraud is

1 involved.

2 A. Not that I'm aware of at this time.

3 MS. FOX: Okay. Pass the witness.

4 THE CHAIR: Thank you. I guess, since PED
5 is out of time, there cannot be any redirect.

6 MR. LANGE: Let him redirect.

7 THE CHAIR: Our legal counsel has said,
8 Counsel Hill, if you'd like to do some redirect, you
9 may; I assume, untimed. Untimed.

10 MR. HILL: Thank you, Mr. Chair.

11 REDIRECT EXAMINATION

12 BY MR. HILL:

13 Q. Can you turn to Exhibit 10 in the
14 notebook?

15 COMMISSIONER SHEARMAN: 10.

16 MR. HILL: 10.

17 Q. I'm going to represent to you these are
18 excerpts from PED's fiscal year '14 and '15 audits;
19 is that correct?

20 A. Yes.

21 Q. And on the first page, there are two
22 paragraphs stating the basis for disclaimer of
23 opinion on the Creative Education Preparatory
24 Institute No. 1. Do you see those?

25 A. Yes.

1 Q. And can you read the first paragraph into
2 the record, please?

3 A. "Management of the Creative Education
4 Preparatory Institute No. 1, CEPi, was unable to
5 provide sufficient evidentiary material in support
6 of certain transactions and account balances, as
7 presented in the CEPi financial statements and the
8 related fund financial statements as of and for the
9 year ended June 30th, 2015. We were unable to
10 satisfy ourselves by other auditing procedures
11 concerning these reported balances for CEPi as a
12 whole and its individual funds. Most notably, we
13 noted that cash is not being properly reconciled on
14 a monthly basis and that entries are being posted to
15 fund balance without adequate supporting
16 documentation. As a result of these, we were unable
17 to determine whether any adjustments "... might have
18 been -- "...may have..." -- "...may have been found
19 necessary in respect of the balances reported on the
20 CEPi's financial statements."

21 So, in other words, they're saying here,
22 they can't -- they can't say whether the documents
23 submitted by CEPi are accurate or not?

24 A. Correct.

25 Q. And the second paragraph, "Disclaimer of

1 Opinion on Creative Education Preparatory Institute
2 No. 1 and its funds," that ends with, "We have not
3 been able to obtain sufficient appropriate audit
4 evidence to provide a basis for an audit opinion.
5 Accordingly, we do not express an opinion on the
6 financial statements of CEPi for its related funds."

7 Is that correct?

8 A. Correct.

9 Q. If we turn the page, however, and we go a
10 couple of pages forward -- it looks like Volume II,
11 Page 77 -- it looks like there are findings listed
12 against CEPi; is that correct?

13 A. Correct.

14 Q. Without going through each one of these
15 findings -- that would take a long time, because
16 there is a few of them -- can you explain to me what
17 this "2009-24" means, just in general terms?

18 So let me ask that a different way. Would
19 "2009" refer to the year that finding was first
20 issued against the school?

21 A. Yes.

22 Q. And so if we're looking at an audit from
23 the year ending June 30th, 2015, this 2009 audit
24 finding would have been repeated all the way up to
25 the 2015 time frame; correct?

1 A. Correct. It would have been repeated for
2 six years.

3 Q. That finding, it says it's a material
4 weakness and compliance finding. Can you just
5 explain, in sort of general terms, what that means.

6 A. Could I defer that to my colleague, Molly
7 Saiz?

8 Q. Actually, let's go back to Page -- the
9 second -- second page of this exhibit. And if we go
10 sort of halfway down the page, it says, "A
11 significant deficiency..."; do you see that?

12 A. Yes.

13 Q. So this is -- this is telling you, "A
14 sufficient..." -- "A significant deficiency is not
15 as bad as material weakness"; right?

16 A. Correct.

17 Q. Okay. So "material weakness" is not a
18 good thing to get on your audit?

19 A. No.

20 Q. Okay. If we keep going forward, it looks
21 like there's a number of material weaknesses that --
22 that the audit firm found against this school; is
23 that correct?

24 A. Correct.

25 Q. And we won't go through and add them all

1 up. There's quite a number. It also looks like
2 there's a number of findings that go back to 2009
3 and 2011; is that correct?

4 A. Correct.

5 Q. Let's go to Volume II, Page 80. Here, we
6 have a finding, "2011-1, Internal Control
7 Structure." And, actually, let's -- it starts on
8 Page 79. It's kind of a long finding -- on 78,
9 rather.

10 Now, this finding says, "Internal Control
11 Structure."

12 What does that mean?

13 A. That the school did not have any controls
14 set up within the organization.

15 Q. So this is a finding that has to do with
16 more than just the financial statements; it's
17 looking at the actual business office of the
18 organization?

19 A. Correct. The whole structure of the
20 business office.

21 Q. And again, that's a material weakness?

22 A. Correct.

23 Q. And it dates back to 2011. So it's been
24 going on for some time when this audit was done; is
25 that correct?

1 A. Correct.

2 MR. HILL: You know, I don't think it's
3 helpful for the Commission to go through this at
4 length. I think what would make more sense is if we
5 enter this exhibit into evidence.

6 And then it -- the Commission can take on
7 notice all these findings into their decision on the
8 matter.

9 MS. FOX: No objection.

10 THE CHAIR: So approved.

11 (Exhibit 10 marked.)

12 MR. HILL: I have no further questions.

13 THE CHAIR: Counsel Fox, do you have some
14 redirect, then?

15 MS. FOX: I have some brief redirect.

16 THE CHAIR: Recross, actually?

17 MS. FOX: Recross. Yes, I'm sorry.

18 RECROSS-EXAMINATION

19 BY MS. FOX:

20 Q. Ms. Marrujo-Gallegos, you've testified
21 that the school had repeat audit findings; correct?

22 A. Correct.

23 Q. And those were concerning, over the years,
24 to the PED's Finance Office?

25 A. Correct.

1 Q. Okay. And you consider them to be
2 significant problems and deficiencies in the
3 school's financial practices?

4 A. Correct.

5 Q. Okay. I'm wondering, then, why, in
6 December of 2013, when the school was up for
7 renewal, and the PED School Finance Office was asked
8 to provide any issues that the school had with
9 respect to financial matters, the CSD's December
10 2013 recommendation -- or preliminary analysis for
11 CEPi's renewal states, on Page 22, quote, "The PED
12 School Finance Office reports no concerns with the
13 school."

14 And I'll be -- I'll read it in more
15 detail.

16 "The school is on a quarterly reporting
17 schedule and is both timely and current in its
18 financial reporting. The PED School Finance Office
19 reports no concerns with the school."

20 If these -- if these weaknesses or
21 deficiencies that are apparently repeated were so
22 bad, why wasn't that reported to the PEC as part of
23 the renewal process?

24 A. So what was reported here is indicating
25 that the school was submitting their quarterly

1 reports, which was in a timely manner, which was
2 reported by the business manager, who was certifying
3 that they are -- that they had reconciled their bank
4 accounts on a monthly basis and that they have --
5 are submitting their reports accurately and that
6 they reconcile to their general ledger.

7 Q. Well, perhaps. But you see on Page 21 of
8 that report that audit findings are reported by PED.
9 And then it appears to me that if you look at the
10 summary, "The PED School Finance Office reports no
11 concerns."

12 So it seems to me that this is an
13 overall -- you understand that the PEC relies on
14 this report to determine the school's overall
15 financial status in determining whether or not the
16 school should be renewed; correct?

17 A. Correct.

18 Q. Okay. And that was understood by whoever
19 was making this report on behalf of the School
20 Finance Office at that time?

21 A. I would assume so; but I don't know. Yes.

22 MS. FOX: Okay. Thank you.

23 THE CHAIR: Is that all, Counsel Fox?

24 Is that all?

25 MS. FOX: That's all.

1 THE CHAIR: Yes. Here, again, we're back
2 to the Commissioners now. If Commissioners have
3 questions for this witness, this is the time to ask
4 them.

5 I see nothing to my left.

6 Commissioner Carr?

7 COMMISSIONER CARR: I have a few questions
8 that came up.

9 One is, are employees liable for the tax
10 owed at the end of the year? So when an employee
11 who files their tax return, and they haven't paid
12 any taxes -- are they stuck with a multiple
13 thousand-dollar bill at tax-return time?

14 THE WITNESS: No. The liability is on the
15 school.

16 COMMISSIONER CARR: So the amount deducted
17 from my check, if I was an employee there, you know,
18 for withholding -- not the employer's part, but my
19 part -- I wouldn't owe that; the school would owe
20 it. Is that what you're saying?

21 THE WITNESS: Correct.

22 COMMISSIONER CARR: So there's an
23 additional liability, possibly, that's not even
24 mentioned here.

25 THE WITNESS: Potentially.

1 COMMISSIONER CARR: Have we seen the
2 actual bank records to see where this money -- if
3 this money is actually there, or if it's gone
4 somewhere else? Can -- have we -- can we see -- I
5 mean, is it possible for us to look at those? Or is
6 that something that you would request, if there --
7 if you saw a red flag?

8 THE WITNESS: Yes. So currently, we do
9 have copies of the bank statements. And it is a
10 requirement with the monthly or quarterly cash
11 report that is submitted to the Budget and Finance
12 Analysis Bureau to submit a copy of their bank
13 statement, which the business manager is then
14 certifying that they reconciled.

15 COMMISSIONER CARR: So you would know if
16 that \$300,000 was actually there or not.

17 THE WITNESS: Correct. If I remember
18 correctly, I think the cash balance, the last time I
19 was updated for CEPi, was approximately \$400,000.
20 But, again, without reconciling their cash, we don't
21 know what that cash belongs to. We don't know if
22 that cash is from current year SEG or if it's from
23 the payroll tax liabilities that's owed. It is
24 unknown at this time.

25 COMMISSIONER CARR: Okay. Another, you

1 know, question I would have as an employee is if my
2 federal taxes were not withheld, was my insurance
3 withheld and paid? Was my -- you know, do I
4 actually have any health insurance or not? And in
5 which case, I'd be calling a lawyer probably seeking
6 a lawsuit or something.

7 I just -- there's a lot -- to me, there's
8 a lot of potentialities here that have not even been
9 brought up and, I'm sure, will maybe could come to
10 light later on.

11 So, I mean, is -- if -- is it part of the
12 budget and something that you would look at if
13 payroll deductions are actually being handled
14 properly and people are being paid, such as
15 insurance, which would be probably the biggest
16 concern?

17 THE WITNESS: So that is not necessarily a
18 process of the operating budget. It is a process
19 that we look at when we have taken over the Board of
20 Finance of a particular school.

21 COMMISSIONER CARR: Uh-huh.

22 THE WITNESS: During the process of the
23 budget, it is a plan that is submitted, along with
24 the anticipated expenditures; but the actual
25 ensuring that that is being paid is on the business

1 manager. When the Board of Finance has taken over,
2 then it's the responsibility of the Public Education
3 Department.

4 So now, since the Public Education
5 Department has taken over the Board of Finance, we
6 have worked with the business manager that was
7 hired, as well as the accounting firm, to ensure
8 that all the insurances and the payroll liabilities
9 for NMPSIA have been paid. So those have been paid.

10 COMMISSIONER CARR: They've been paid
11 since you've taken it over; but you're not --

12 THE WITNESS: And in the past, as well.

13 COMMISSIONER CARR: And in the past, as
14 well.

15 Okay. I think that answers my question.

16 COMMISSIONER GIPSON: Can I just interrupt
17 for a second to tail into a part of that question?

18 COMMISSIONER CARR: Of course.

19 COMMISSIONER GIPSON: Can I ask about
20 Social Security? Some of that tax liability also
21 includes their Social Security payments. And would
22 they get credit for the quarters if they've been
23 behind? That's -- you know --

24 THE WITNESS: That is part of liability.

25 COMMISSIONER GIPSON: So are the employees

1 getting -- would you know, are the employees getting
2 credit for the quarters that they worked, if
3 those --

4 THE WITNESS: Since the 941s have not been
5 filed, they are not receiving their credits.

6 COMMISSIONER CARR: So, again -- so
7 involved with that, that's an additional possible
8 liability on top of the money that we see here.

9 THE WITNESS: Potentially.

10 COMMISSIONER CARR: Okay. That would be
11 of great concern to me if I was an employee at that
12 school.

13 So I think my final question is, have you
14 found the information that you've received
15 sufficient to turn over to the -- well, I do see
16 there was a courtesy copy to our State Auditor
17 already in one of these documents.

18 Is there -- has there been -- has any of
19 this information been turned over to the New Mexico
20 Attorney General's Office?

21 THE WITNESS: I am not aware of that.

22 COMMISSIONER CARR: Okay. No further
23 questions.

24 COMMISSIONER SHEARMAN: Mr. Chairman, I
25 do.

1 MR. HILL: Mr. Chair, Commissioner Carr,
2 if I could just address that question?

3 THE CHAIR: Go ahead.

4 MR. HILL: The Department has not made any
5 referral to the Attorney General's Office. We're
6 really waiting to determine the outcome of the
7 accounting work that's being done by an outside
8 accounting firm to have evidence if there was a
9 crime.

10 But we really just can't say where the
11 money went. It's possible it went to illegal
12 purposes, and it's possible that it was spent on
13 other things and was just really bad accounting. We
14 don't know enough at this point to make a referral.
15 And that's why we haven't done so.

16 As you do note, the matter has been
17 referred to the State Auditor, and they are aware of
18 the issue.

19 COMMISSIONER CARR: Okay.

20 THE CHAIR: Thank you. Okay. I will --
21 Commissioner Shearman. But no more testimony.

22 COMMISSIONER SHEARMAN: No. A question.

23 I'm looking at Exhibit 6, the letter to
24 Deputy Secretary Aguilar. The second paragraph,
25 "The school also contracted with Mr. Martinez, a

1 State Licensed Business Manager, on November 23 --
2 23rd, 2015, to train CEPi's business manager on
3 internal controls and procedure and to help
4 reconcile fiscal records....," so forth and so on.

5 Did CEPi have a certified business manager
6 at that time?

7 THE WITNESS: Yes. Their licensed
8 business manager was Suzy Martinez.

9 MR. HOTCHKISS: Sanchez.

10 THE WITNESS: I'm sorry. Suzy Sanchez.
11 However, the school did hire Mr. Alfred Martinez to
12 assist her in training her to complete and submit
13 her monthly reports, and to assist in implementing
14 internal controls and procedures.

15 COMMISSIONER SHEARMAN: Okay. And then
16 I'm looking at Exhibit 8, the memo from Mr. Martinez
17 to Chris. And it says, on line No. 5, "Business
18 services has yet to be approved by PED. This could
19 cost \$30,000 to \$60,000."

20 What business services is that referring
21 to? Is that the business manager?

22 THE WITNESS: Yes, ma'am. When the Public
23 Education Department took over at that time --
24 Ms. Suzy was the previous business manager -- was --
25 resigned. So the PED had to enter into a contract

1 with the Vigil Group. It hadn't been determined yet
2 at that point who was -- the PED was going to enter
3 into a contract with.

4 But the specific business services that
5 are mentioned here is the business manager from the
6 point that the Public Education Department took over
7 the Board of Finance.

8 COMMISSIONER SHEARMAN: Thank you very
9 much. Thank you.

10 THE CHAIR: Thank you. Any other
11 questions from Commissioners?

12 I have yet to hear the PED actually say
13 they've rested; but they are out of time.

14 Does the PED rest at this time?

15 MR. HILL: Yes.

16 THE CHAIR: Is that an appropriate
17 question?

18 Okay. So the PED has rested.

19 I believe before -- if both counsels
20 agree, perhaps it would be a time for us to take
21 another short break. This time, folks, please be
22 back in your seats at the appropriate time, which
23 will be, by that clock, ten till. And we'll start,
24 then, with the defense.

25 Thank you. We'll take a recess.

1 (Recess taken, 3:38 p.m. to 3:48 p.m.)

2 THE CHAIR: We're about a minute early;
3 but it looks like everyone that needs to be here is
4 here. And so I'm going to start -- we'll start now.
5 It is time for the defense's turn. They also will
6 have 60 minutes.

7 Are you handing out materials/or what are
8 these --

9 MS. FOX: This is probably a good time to
10 address that. The school has brought with it these
11 pretty green notebooks that have been tempting you
12 here during this whole proceeding.

13 And I would like to go ahead and
14 distribute those at this time -- our.

15 THE CHAIR: Stop the clock if it's
16 running. Okay. Yeah.

17 MS. FOX: Mr. Hotchkiss and Ms. Loftis
18 will be talking about documents in there.

19 Mr. Vigil, I'm going to have come up
20 first, since we were talking about the financial
21 matters.

22 THE CHAIR: If you need for us to have
23 these, we accepted their book. We will accept
24 yours.

25 MS. FOX: Are you telling me to go for it

1 and distribute them at this time? Okay.

2 THE CHAIR: Are we keeping these, I
3 presume? Okay.

4 (Exhibit notebooks handed out.)

5 MR. LANGE: What are these documents?

6 MS. FOX: That's a supplemental set of
7 documents that didn't make it into the green books.

8 THE CHAIR: All right. I believe that
9 we've handed out all the documents now. Please
10 identify yourself once again, and then when she's
11 done with that, then you may start the clock. You
12 have 60 minutes to present your case.

13 MS. FOX: I'm still --

14 THE CHAIR: And, I guess, time to call a
15 witness.

16 MS. FOX: Still Sue Fox with the Matthews
17 Fox Law Firm.

18 At this time, I'm going to call Michael
19 Vigil to the podium. And I'm going to proceed a
20 little bit differently than Dan has chosen to -- or
21 Mr. Hill has chosen to proceed.

22 I am going to -- the school is going to be
23 presenting most of its evidence through narrative.
24 I will ask a few preliminary questions. But due to
25 the time constraints that we have, we figured the

1 most effective way of addressing the issues was
2 going to be through narrative testimony. So I'm
3 going to proceed that way.

4 THE CHAIR: Proceed.

5 MICHAEL VIGIL,
6 after having been first duly sworn under oath,
7 was questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. FOX:

10 Q. Okay, Mr. Vigil. Would you state your
11 name, please?

12 A. Michael Vigil.

13 Q. And you're -- are you the PED's contracted
14 business manager for the school for this fiscal
15 year?

16 A. Yes, I am.

17 Q. Okay. And when did you start in that
18 position?

19 A. We began February 1st of this year.

20 MS. FOX: Okay. Take it away with your
21 narrative, please.

22 THE WITNESS: And for the PEC's
23 information, just to go on the record, I am a
24 licensed Certified Public Accountant. I was
25 licensed in New Mexico in 1990. I originally became

1 a CPA in Arizona in 1982. So it's been quite a
2 while I've been doing this.

3 I've been working with school finance
4 since 1990, when I began working with the
5 Albuquerque Public Schools. I left APS in 2006,
6 where I last served as a superintendent for
7 business. And I have been working with charter
8 schools since.

9 As indicated, the Vigil Group has been
10 contracted by the Public Education Department and
11 this school to provide business management services
12 for the remainder of this fiscal year FY16.

13 As I stated, we began on February 1st.
14 PED has taken over the school, the school's Board of
15 Finance. And they do that, on occasion, with both
16 schools -- charter schools and districts, when
17 material irregularities have occurred. This has
18 occurred in both charters and district.

19 The FY15 independent audit report, I just
20 want to point out, did have a disclaimer opinion for
21 this school, CEPi. It also had a disclaimer of
22 opinion for six other entities in the same audit
23 report. So this is not unusual -- well, it's not
24 good; but it does happen to other entities, as well.

25 I want to first go over the independent

1 audit report. The auditor's main objective is to
2 provide an opinion and ensure that financial
3 statements of the entity being audited are fairly
4 stated in accordance with generally accepted
5 accounting principles.

6 Now, these are national standards that we
7 put together as accountants so that financial
8 statements can be comparable between similar
9 entities. That's what the -- the reason we have --
10 what we call GAAP, "generally accepted accounting
11 principles."

12 They give this opinion after reviewing the
13 books and records of the entity and the policies and
14 procedures of the entity, in accordance with
15 generally accepted auditing standards.

16 They're required, the auditors, to file
17 specific processes and procedures in the audit in
18 determining the fairness -- whether or not GAAP was
19 followed.

20 The auditors are not engaged to determine
21 financial mismanagement. They don't look for fraud
22 as a first basis. They look to determine that the
23 financial statements are fairly stated.

24 In a disclaimer of opinion report the
25 auditor is not expressing an opinion on the

1 financial statements or the fairness of the
2 reporting. It is saying they could not do that. In
3 the school's disclaimer opinion for the fiscal
4 school year '14 and '15 audited financial
5 statements -- and it was read earlier -- but it
6 states, "The management of the school was unable to
7 provide sufficient evidential matter in support of
8 certain transactions, account balances, as presented
9 in the financial statements... ."

10 The auditors were unable to satisfy
11 themselves by other auditing procedures concerning
12 the reported balances as a whole or -- and/or the
13 individual funds. The auditors noted that cash was
14 not properly recorded -- reconciled on a monthly
15 basis, and journal entries are posted to fund
16 balances without adequate supporting documentation.

17 In addition, the school, as noted, did
18 receive a number of audit findings.

19 Now, audit findings, as we saw in the
20 paper recently -- schools receive audit findings.
21 And normally, you resolve your audit findings.
22 That's the goal of every school is to resolve any
23 audit findings received. Some -- you look at the
24 audit report. With every finding, there is a
25 management response. And in reading the responses,

1 you will see that management has indicated that some
2 of these issues are being addressed or have been
3 addressed.

4 CEPI has also entered into a Corrective
5 Action Plan with the Public Education Department.
6 And this is also very helpful in resolving these
7 audit findings.

8 Now, as we began working with the school
9 and with the Public Education Department, we are
10 implementing procedures -- we're trying to address
11 all the audit findings. And our goal is to avoid a
12 future disclaimers of opinion for this fiscal year.
13 We would like to improve it to what's called a
14 "modified opinion," which is still not that good of
15 an opinion. But it's better than a disclaimer of
16 opinion.

17 The -- the audit did not report on the
18 payroll taxes. If you read the audit, there is no
19 findings on payroll taxes. That was very
20 interesting to me, because that's the major issue
21 that we came across.

22 The school had not submitted payroll taxes
23 correctly or completely for a number of years. The
24 PED hired another CPA firm -- it is not mine; it is
25 another firm that we are working with -- to

1 reconcile the school's cash. When they were
2 reconciling the school's cash is when they
3 discovered that taxes had not been paid, okay?

4 At that point, they were asked -- the
5 other firm was asked to reconcile the federal tax
6 liabilities. And we recently received those
7 reconciliations. The reconciliations that we have
8 show that the school did submit payments to the
9 federal government of approximately \$4,000 over the
10 past four years.

11 However, based on the records in the
12 school, payments should have been approximately
13 \$800,000. So they didn't submit -- that's -- that's
14 a \$400,000 number you're hearing.

15 In addition, payments of approximately
16 \$120,000 are owed to the State Tax & Revenue
17 Department.

18 The school hired a tax attorney to resolve
19 these tax issues. The attorney's preliminary
20 calculations confirmed -- and we received those --
21 that information this morning -- confirmed the same
22 numbers, showing liability of approximately \$403,000
23 of unpaid federal tax and approximately \$117,000 of
24 unpaid State withholding tax.

25 And that's before penalties, interest, and

1 any other fees that may be tacked on for them being
2 late.

3 This was reported to the office of the
4 State Auditor and the Public Education Department.

5 So we are working with a State tax
6 attorney to get these resolved as quickly as
7 possible, because it is important to the individual
8 teachers, the employees, that we get those tax
9 records fixed and done correctly and quickly; so
10 that -- we're talking about quarters; we're talking
11 about a lot of other issues. We want to make sure
12 that everyone's records are correct.

13 I want to point out, though, that for the
14 fiscal year '16, we have ensured that the current
15 tax records are current. So for this fiscal year,
16 all taxes are current; NMPSIA is current; IEB is
17 current; all payroll deductions are current as of
18 today.

19 And we may find that there may be
20 something back there from prior years; but we are
21 paying, as we are deducting correctly.

22 I want to go after, lastly, the school's
23 current financial position.

24 We have reconciled cash. I know it was
25 reported earlier that cash was not reconciled. It

1 is reconciled. The outside CPA firm and my firm
2 have both reconciled the cash. We've come up with
3 the same number. We have a proposed journal entry
4 to enter into the books of the school to correct the
5 school's -- the books.

6 And we're working with the Public
7 Education Department, the School Budget Finance
8 Analysis Bureau, with Ms. Marrujo-Gallegos and
9 Ms. Molly Saiz to get this corrected. We're waiting
10 for approval of our recommendation, so that the
11 books will be properly stated.

12 Currently, the cash balance is about
13 \$400,000 in the school. Now, that's cash before
14 making any payments for any of these tax
15 liabilities, which you understand.

16 In addition, we reviewed the budget. So
17 there's a little bit of problem on the way the
18 budget was presented. So the letter originally
19 issued by Mr. Martinez was back when he was --
20 worked in the school back in November. All
21 schools -- all school districts receive an SEG
22 adjustment, final adjustment. It comes -- it just
23 came at the end of March. With that adjustment, it
24 put the school's budget into the positive by over
25 \$100,000.

1 So they do not have a negative budget.
2 They are not in deficit for the fiscal year. They
3 are actually on a positive basis. So they do have
4 \$100,000 of additional budget left. And that money,
5 because we're working with both the school and with
6 the Public Education Department -- and we're going
7 to be very selective with any expenditures that are
8 going to be allowed to be paid or entered into.

9 No purchase orders will be issued without
10 the Public Education Department approving them; so
11 we're going to be very strict.

12 It is my estimate, our opinion, that the
13 school will end the fiscal year with a positive cash
14 balance in excess of \$400,000. Now, that is before
15 paying any of the taxes that are owed. We need to
16 know what that final workout is going to be, and
17 that is the biggest liability that is over this
18 school at this point.

19 All other vendors, teachers' contracts,
20 insurances, everything else is covered and still
21 maintain that cash.

22 As I said before, we are making changes.
23 We're implementing new procedures. We're putting
24 internal controls in place. No one person is going
25 to have control over everything, as was done before.

1 And so with those changes, we believe we can put the
2 school back on a correct financial track.

3 However, I will tell you it is my opinion
4 it will not be finished by this year. It will take
5 more than a year to totally catch up, totally pay
6 off and get everything back to where it needs to be.

7 Thank you.

8 THE CHAIR: Are you finished with that
9 witness?

10 MS. FOX: I am finished with my direct.

11 THE CHAIR: Counsel Hill, do you wish to
12 cross?

13 Please stop the clock.

14 CROSS-EXAMINATION

15 BY MR. HILL:

16 Q. Mr. Vigil, if you can go to what's in the
17 book in front of you? It's Exhibit 10. And these
18 are excerpts from the fiscal year '14 and '15
19 financial audit, financial statement audits.

20 If you look at the second is page of this
21 document -- it's Volume II, Page 25 -- it has a list
22 of entities and is -- it identifies when there's
23 been a material weakness finding; is that correct?

24 A. Yes.

25 Q. Can -- so as a CPA, I'm sure you know what

1 a material weakness is; correct?

2 A. Yes.

3 Q. Can you explain that, please?

4 A. The audit findings are broken into three
5 categories. So if it's a relatively minor issue
6 that you need some correction on, we call it "Other
7 Matters" and you will see items that sometimes
8 findings that will be "Other Matters." And other
9 CPAs use different terms for that.

10 As you get more material findings, the
11 next level up is a "Significant Deficiency." It's
12 items that should not occur. They're material
13 weaknesses within a school, problems that have
14 occurred. And they need to be corrected as quickly
15 as possible.

16 When you get to a "Material Weakness,"
17 there is a number of these "Significant
18 Deficiencies," or problems, that have occurred in
19 such a rate that they have raised to the level of a
20 "Material Weakness."

21 So it's the worst type of finding you
22 could receive.

23 Q. Okay. And so if we look at the -- that
24 worst category of finding, Material Weakness, am I
25 correct when, looking at this table, a number of

1 entities received a finding for that; but CEPi
2 received -- actually, it looks like six separate
3 findings that were deemed material weaknesses. Is
4 that correct?

5 A. That is correct.

6 Q. And so no other entity received more than
7 one material weakness finding; is that correct?

8 A. That is correct.

9 Q. When we go down the page, we have
10 "Significant Deficiencies," which you've explained
11 are kind of the middle tier. CEPi has one of those
12 findings; correct?

13 A. Correct.

14 Q. And then on the next page, we have
15 compliance and other matters. And if I am looking
16 at this correctly, CEPi had four of those findings;
17 is that correct?

18 A. That is correct.

19 Q. So that puts their grand total of findings
20 at 11, if I'm doing the math right; is that correct?

21 A. Their grand total of findings, I believe
22 for this fiscal year, was 13. You don't have the
23 fiscal year '15 findings there with them. So
24 this -- these are the recurring, repeat findings;
25 not all findings.

1 Q. Okay. So I messed that up. So these are
2 just the ones that repeated and weren't corrected.
3 And then there were two additional new findings on
4 top of that.

5 A. That is correct.

6 Q. Okay. Just sort of glancing at this -- at
7 this sheet, is there any other school with anywhere
8 near the number of findings that CEPi has?

9 A. It doesn't appear so.

10 Q. Okay. Now, as a CPA, I'm sure you're
11 familiar with the audit process.

12 A. (Indicates.)

13 Q. And part of the audit process is the
14 entity that's being audited submits documents to the
15 audit firm; correct?

16 A. Well, I wouldn't use that terminology.
17 It's the -- the entity being audited provides its
18 financial statements to the audit firm. And then
19 the audit firm takes select samples and certain line
20 items on which they wish to get backup
21 documentation, supporting documentation, that will
22 show compliance with laws; also, support for the
23 numbers reported in the financial statements.

24 Q. Okay. So the audit firm is looking at the
25 documents that the school has provided?

1 A. Yes.

2 Q. Now, let's say the school hasn't paid its
3 taxes, and it's being audited, but it doesn't
4 provide any documents to the audit firm saying, "We
5 haven't paid our taxes."

6 How would the audit firm handle that sort
7 of situation?

8 A. I -- from my experience, my belief would
9 be the auditor should look at the federal tax
10 reports that have been filed, verify those amounts
11 against a bank statement that would show the
12 reconciliation that the funds actually left the bank
13 statement, per the report filed with the IRS.

14 If they could not find a match, then
15 they're going to question. "You have a" -- for
16 example, "You have the quarterly 941 reports. You
17 have no payments. How was this -- how was this
18 matching up?"

19 I don't understand why they did not see
20 this.

21 Q. Okay. Could one of the explanations have
22 been that the school didn't submit documentation
23 that would have allowed the audit firm to see that
24 the money didn't leave the account?

25 A. I can't speak to why -- what happened. I

1 just know that personnel costs make up the largest
2 percentage of the budget, and the related
3 liabilities. And in all the schools that we manage,
4 we are audited all the time on every deduction for
5 employees. So I do not know what happened in this
6 situation.

7 Q. And so you mentioned that you're a CPA,
8 and you're also a licensed business manager; is that
9 correct?

10 A. That is correct.

11 Q. Now, as part of your job, then, is you
12 manage the business offices for charter schools;
13 correct?

14 A. That's correct.

15 Q. And my understanding is that's the only
16 entity that you work for are charter schools;
17 correct?

18 A. No, that is not correct.

19 Q. Okay. Do you work for school districts,
20 as well?

21 A. We have helped school districts. We have
22 helped regional educational cooperatives. And we
23 have helped nonprofits.

24 Q. So when you're working for one of these
25 entities, and you're operating as their business

1 manager, what would happen to you, personally, if it
2 was later determined that the school hadn't paid its
3 payroll taxes to the federal government or the state
4 government and hadn't filed various tax forms?

5 A. First, let me clarify. There is a
6 difference of the treatment between a contractor and
7 an employee. So as a contractor, we do have -- I
8 have liability insurance and such. If me or any of
9 my business managers had incorrectly paid, or gotten
10 into a situation like this, my liability insurance
11 would kick in and pay -- pay whatever needs to be
12 paid on our part.

13 As far as an employee, I do not know how
14 the IRS is going to handle that, this specific
15 situation.

16 Q. Let me ask a different way. You're
17 licensed by PED; correct?

18 A. Yes.

19 Q. Would you expect there to be any
20 consequence to your license if you failed to pay
21 taxes?

22 A. No. I've seen too many people do things,
23 and school business managers throughout the state,
24 and they -- none of them have ever had their license
25 revoked.

1 Q. Okay. Do you think they should?

2 A. I've recommended it on a few occasions,
3 and those business managers have not had their
4 licenses revoked by PED.

5 Q. Okay. Fair enough. But you think you
6 should have your license revoked if you had done
7 this?

8 A. Yes, I do.

9 Q. What about as a CPA? You have another
10 sort of license; correct?

11 A. That is correct.

12 Q. What would happen as a CPA if you didn't
13 pay payroll taxes for an entity where you're
14 operating as their business manager?

15 A. I would assume that my CPA license would
16 be at risk.

17 Q. Okay. "At risk." You might lose your
18 license?

19 A. Yes.

20 Q. Mr. Vigil, you've already looked back and
21 you've seen significant number of repeated findings
22 for the school; correct?

23 A. Yes.

24 Q. You've only come to the school -- excuse
25 me -- in this current school year; correct?

1 A. That is correct.

2 Q. And so you don't really have any knowledge
3 of what happened in the past?

4 A. No, I don't.

5 Q. And you can't really speculate as to what
6 happened to that money that was meant for payroll
7 taxes?

8 A. I don't want to speculate as to what
9 happened. I will tell you, though, that the books
10 on the school's financial system, what it appears
11 happened is that the previous business manager
12 booked the expenditure and never processed it.

13 On the outstanding checklist, there is an
14 excess of \$340,000 of outstanding items going back
15 to 2011. So they reached a point of booking the
16 expense, putting it on the system; but they never
17 submitted it to the bank for payment.

18 Q. So explain to me how that would work.
19 When you're going to balance your cash statement,
20 and you've booked the money as going out, but it
21 hasn't actually gone out, how is your cash statement
22 going to balance?

23 A. I have not seen their cash reports or --
24 that they've submitted before. I'm not sure how
25 they balanced it.

1 Q. Okay. And, again, your experience as a
2 CPA, if you submit to an audit firm a cash balance
3 saying, "We're a few hundred thousand dollars off,"
4 is that something they're going to look at?

5 A. They did look at it. And one of the
6 findings was the cash report was completed
7 incorrectly and did not match the general ledger.
8 So that is one of the findings that continues
9 throughout, since the beginning. So that was a
10 finding at the school.

11 Q. As a CPA, and as your role as a school
12 business manager, have you seen notices from the IRS
13 before?

14 A. Yes, I have.

15 Q. And typically, those are addressed to
16 whom?

17 A. It normally comes to the school, direct.
18 And if you have listed a contact person, it will
19 list -- usually, it's the business manager is listed
20 on that notice; if not, the business manager or the
21 principal.

22 Q. Notices from the IRS. I'm assuming those
23 are something that might get your attention?

24 A. Yes, they should.

25 Q. So in my understanding is that the IRS

1 typically doesn't, particularly with payroll
2 liabilities, go quietly into the good night if
3 you're not paying; correct?

4 A. Yes.

5 Q. And so those notices then get sent to the
6 school; correct?

7 A. Yes.

8 Q. I mean, as you sit here today, can you
9 give any explanation for why those notices weren't
10 seen by anyone at the school and acted upon?

11 A. I wasn't there. I don't know why it
12 doesn't -- I have no idea why.

13 Q. Would you agree with me that it's
14 generally better to try to take care of those issues
15 sooner than later?

16 A. Yes.

17 Q. And had the school appropriately opened
18 the mail and received the notices, they could have
19 taken care of these issues years ago, as opposed to
20 it all coming to a head now.

21 A. Assuming notices were received, yes.

22 Q. That also would cut off potential
23 penalties and interest; correct?

24 A. Not necessarily. The IRS sends you the
25 notice. You have so much time to take action. And

1 all along, you're penalized with penalties and
2 interest, the longer you wait to respond.

3 Q. It goes without saying, the longer you
4 wait, the more interest and penalties you're likely
5 to pay?

6 A. Yes.

7 MR. HILL: I have no further questions.

8 THE CHAIR: Thank you, Counsel. Do you
9 have any redirect?

10 MS. FOX: Just one, Your Honor.

11 THE CHAIR: Start the clock again, please.

12 REDIRECT EXAMINATION

13 BY MS. FOX:

14 Q. Mr. Vigil, would you confirm that the
15 payroll tax liability issues preceded this current
16 school year? Correct?

17 A. Yes, that is correct.

18 MS. FOX: Okay. Thank you. No further.

19 THE CHAIR: And do you have any redirect?

20 MR. HILL: No, Mr. Chair.

21 THE CHAIR: Or recross? My eyes are
22 starting to --

23 MR. HILL: I have neither redirect nor
24 recross.

25 THE CHAIR: Thank you. So are you

1 dismissing this witness, then?

2 Oh, yes. Yes. Okay.

3 Do Commissioners have any questions for
4 this witness?

5 Commissioner Carr?

6 COMMISSIONER CARR: Sorry. I'm the only
7 one asking the questions. I have a couple.

8 If CEPi is over budget this year, and all
9 the money has been accounted for, why don't they
10 have enough money to pay their back taxes?

11 THE WITNESS: Mr. Chair,
12 Commissioner Carr, my belief is prior years, they
13 went -- they went in deficit. Current year, they're
14 not in deficit because of those taxes. So they
15 over-expended in prior years; so the amount of
16 liability has been -- has been accumulated over
17 these past four years. And so one year of positive
18 cannot take care of four years of negative.

19 COMMISSIONER CARR: So the -- has the
20 number of students in the school changed
21 dramatically?

22 THE WITNESS: Mr. Bergman, Mr. Carr, I am
23 not sure what their enrollments were prior to this
24 year. I do know that when we received the final SEG
25 adjustment that came to us the end of March, that

1 there was a large amount, given -- in excess of
2 \$200,000, because of the growth factor.

3 So they did grow this year. And that
4 generated those revenues to help them pull this year
5 into the positive.

6 COMMISSIONER CARR: Okay. So it seems it
7 appears to me that money was paid out somewhere, you
8 know, salaries, expenditures for supplies, some --
9 something; but we don't really know for sure where
10 those over-expenditures were.

11 THE WITNESS: Mr. Bergman and Mr. Carr, I
12 don't -- I can't speak to last year, to be honest,
13 or prior years. I have not looked at those. We're
14 reconciling cash. We're not asked to go back and
15 recreate prior years' reports and such.

16 So I do not know what they used the money
17 for in the past.

18 COMMISSIONER CARR: Okay. So based on
19 that, based on our lack of knowledge, and based on
20 the fact that you're a CPA, don't you think a
21 forensic audit might be called for?

22 THE WITNESS: Mr. Bergman, Mr. Carr, the
23 Public Education Department and I were just talking
24 about that recently, that going -- we need to maybe
25 go back and have someone come in and go back prior

1 years to determine what exactly happened. That has
2 not been done, as of now.

3 COMMISSIONER CARR: So you're -- you're --
4 you would recommend a forensic audit, as a CPA, at
5 this point? Is that what you're saying?

6 THE WITNESS: Mr. Bergman, Mr. Carr, I
7 personally would not. I'll tell you why. Being --
8 with my APS experience -- and I had charter schools
9 with APS back when they started in 1999 -- I think
10 the financial statements have all been done. You
11 have the fiscal year '15. And I know that people
12 are saying, "Well, we don't even have cash balances
13 already."

14 Well, the audit was held up in fiscal year
15 '14 and fiscal year '15, because the Public
16 Education Department threw out their original
17 auditor. If you remember, we did two year audits in
18 one year. So no one had cash balances; not one
19 State charter school, because we're all doing our
20 cash balance BARs now, because we barely got the
21 audit. To go backward would have to restate every
22 financial statement of the PED if we're going to
23 change the financial records.

24 So if -- if we feel there is fraud or
25 something of that nature, yes, let's do it. But if

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1 we don't know -- if we're just guessing, I think
2 we're going to spend a lot of money and not get much
3 results from it.

4 COMMISSIONER CARR: So as a -- as a CPA,
5 I -- I'm not a CPA; but that's why I'm asking you --
6 if another CPA firm recommends a forensic audit,
7 and, indeed, another CPA firm is engaged for that
8 purpose, and they do find some major issues, would
9 you be concerned about your reputation at that
10 point?

11 THE WITNESS: Not my reputation, Mr. Carr.
12 I was not involved -- I was not involved in any of
13 that issue. It was way prior to me. So what we've
14 been contracted to do is to take the school from now
15 to the end of the year and clean it up as much as
16 possible so that we can do an audit for this fiscal
17 year. We have not been directed to go backwards.

18 And so you're asking me my opinion as to
19 whether or not we do an audit. That's -- my opinion
20 is an audit is going to be very difficult to prove
21 anything.

22 COMMISSIONER CARR: Okay.

23 COMMISSIONER SHEARMAN: Mr. Chairman?

24 THE CHAIR: Is that all?

25 COMMISSIONER CARR: Yes, sir.

1 THE CHAIR: Anyone else?

2 Commissioner Shearman?

3 COMMISSIONER SHEARMAN: This is sort of a
4 hypothetical question. But the business manager is
5 working with whatever software the school had. They
6 expensed all of the money that was withheld for
7 taxes and so forth. In the system, they wrote the
8 checks. How were those checks never processed?

9 THE WITNESS: Mr. Bergman, Ms. Shearman,
10 so in the -- for the IRS and for State taxes and for
11 most of the liabilities, you actually don't write
12 checks. They're wires. You have to process a wire.
13 It's an ACH wire that goes to the IRS. And you use
14 the system for the federal IRS, called "Electronic
15 Funds -- "Electronic Payment Funds Transfer System."

16 And so you get these wires. So what you
17 do is you prepare on your system like you're going
18 to write a check; and you process them
19 electronically. That's what you tell the computer.

20 Then you go to your bank, and you
21 actually -- or to the IRS website, the State of New
22 Mexico website -- and you actually process, using
23 the specific ID numbers and such they have given
24 you, the actual payment. Then the State or the IRS
25 basically gets the money from the bank direct on an

1 ACH wire.

2 So what they did is they processed
3 everything on the computer; they never processed on
4 the bank.

5 COMMISSIONER SHEARMAN: Would it be
6 possible for perhaps an inexperienced business
7 manager to honestly think they had completed the
8 work, and they had not? It had not been sent --
9 completed those last steps?

10 THE WITNESS: Ms. Shearman, I would think,
11 yes, on occasion, you might forget to actually
12 finish out. Because I'm training a very young staff
13 to become business managers, I find that sometimes
14 they do not follow all the way through. And that's
15 why we have checks and balances to make sure it's
16 done.

17 But the problem that I have is that it
18 wasn't followed through sometimes. But a lot of --
19 sometimes it was. So not -- it wasn't like if there
20 were -- it was a consistent practice; it was
21 inconsistent.

22 COMMISSIONER SHEARMAN: Would you have a
23 theory on how that could have happened, other
24 than -- I'm not saying it's intentional. I'm not
25 saying it isn't intentional. I'm just curious as to

1 how that might have happened.

2 THE WITNESS: I do believe there might
3 have been a business manager that didn't understand
4 the whole -- the way it was supposed to work, maybe
5 got a little bit caught up in doing other things or
6 was tight on cash in other areas and so forgot to --
7 used Peter to pay Paul and forgot to repay Peter.

8 COMMISSIONER SHEARMAN: Thank you, I
9 appreciate that.

10 THE CHAIR: Any other Commissioners?

11 I -- let me say this, Mr. Vigil. It's not
12 going to sound like a question. But if you wish to
13 treat it as a question, please do, because I'd like
14 to hear your response to it.

15 I know, speaking personally, my response
16 when I heard that there was a fairly large tax
17 liability that had not been uncovered in these
18 audits, my first question was how would someone
19 who's auditing any entity's finances not notice that
20 payroll taxes and maybe other taxes were not being
21 paid?

22 And that concerns me. I'm sitting here as
23 a Commissioner; but I'm also a part of the public.
24 And I have -- as a part of the public, I would love
25 to have faith that when I hear of an audit, that its

1 uncovering. So I think this shakes my faith a
2 little bit when I hear about an audit. How could
3 something that important be missed?

4 I know you've said how there's samples
5 and -- but have you got an answer for that?

6 THE WITNESS: Mr. Bergman, I honestly
7 don't know how they missed these taxes not being
8 paid. When we audit -- when the schools that I am
9 contracting with are audited, we are required, by
10 the auditors that are auditing us, to provide all
11 the 941s, to provide all the tax payments. And we
12 do a schedule that reconciles the federal tax, the
13 Social Security tax, Medicare tax, retiree health
14 care, ERB, NMPSIA; every payroll deduction is
15 reconciled.

16 And we usually have a variance of, you
17 know, three or four dollars, because some of these
18 deductions are percentages; so there's a rounding
19 error issue. But we reconcile every single one for
20 our auditors. So that this happened, I -- I'm at a
21 loss myself.

22 THE CHAIR: Thank you. I thank you for
23 that explanation. Is there anything more for this
24 witness?

25 Did I get all the -- thank you. The

1 witness will be dismissed.

2 Counsel Fox, do you have another witness?

3 MS. FOX: I do, Mr. Chair.

4 THE CHAIR: Proceed. Start the time
5 again, please.

6 MS. ULIBARRI: You asked me to start it
7 earlier.

8 THE CHAIR: Was it running when we were
9 asking our questions? Then let's add some time at
10 the end.

11 MS. FOX: You may or may not need it.

12 I call Christopher Hotchkiss.

13 CHRISTOPHER HOTCHKISS,
14 after having been first duly sworn under oath,
15 was questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FOX:

18 Q. Will you state your name, please, Chris?

19 A. My name is Christopher Hotchkiss,
20 H-O-T-C-H-K-I-S-S.

21 Q. And what's your position at CEPi?

22 A. I'm the Chief Executive Officer of CEPi
23 Charter High School.

24 Q. How long have you been at the school?

25 A. I began July 1st, 2015.

1 Q. Okay. And how did the Charter Schools
2 Division notify you that they were coming for a site
3 visit in January?

4 A. The CSD arrived January 5th, approximately
5 9:00 a.m., unannounced.

6 Q. Okay. How was the site visit conducted?
7 You were there; correct?

8 A. I was there.

9 Q. Okay. And how was that --

10 A. I was called out, and I greeted them and
11 brought them to my office. They read a prepared --
12 actually, Ms. Poulos read a prepared statement to
13 me -- and that's the first page in the green
14 binder -- and then presented me with our -- yeah,
15 me -- with a list of documents that they wanted
16 gathered, pretty extensive list. And that's the
17 next few pages.

18 Q. Okay. Did you gather and provide those
19 documents?

20 A. We did. It took us multiple days. And
21 CSD was actually there January 5th, and they had to
22 leave. They had training, I do believe. Then they
23 came back that Monday, January 11th.

24 Q. Okay. Did CSD ask you any questions
25 during either of the site visits?

1 A. I provided them with a room. They stated
2 that they would conduct interviews. They also
3 stated that they would meet with me.

4 They never met with me. They never asked
5 me for any documentation, any questions, beyond
6 reading me the opening statement. They did not have
7 an exit interview, either.

8 Q. Okay. Did they follow up with you in any
9 way about that site visit?

10 A. They did not follow up with me in any way
11 about that site visit until we received the letter
12 of revocation.

13 Q. Okay. And you have a copy of that
14 February 8th letter, recommending revocation?

15 A. I do.

16 MS. FOX: Okay. Commissioners, in the
17 interest of time, I'm also going to ask
18 Mr. Hotchkiss to present narrative testimony on the
19 allegations raised in Ms. Poulos' February 8th
20 letter and the appendices, which are the operational
21 allegations.

22 THE CHAIR: However you wish to proceed.

23 MS. FOX: Okay. Go ahead, Chris.

24 THE WITNESS: Okay. Number one, to
25 address instructional hours, we meet daily

1 instructional hours through the waiver accepted
2 during our charter renewal, as well as the automatic
3 waiver provided in the State Statute NMSA 12-8B-5C.

4 This current waiver shows that we offer
5 two instructional blocks of four hours each Monday
6 through Thursday. Students choose the a.m. or the
7 p.m. block that best suits their individual needs.

8 Also, students attend alternate Fridays.
9 This totals approximately 630 hours of instruction.

10 And this is noted in Tab A, under our
11 waiver. We provide extra time through driver's
12 education, PE, work study, dual enrollment, and
13 distance learning. Distance learning is monitored
14 by a certified teacher. That's, please note, in
15 Tab A; also, a letter that she wrote.

16 We also encourage students to attend extra
17 sessions, as well as every Friday. Every student
18 also has an advisor who keeps check on progress and
19 additional hours.

20 MS. FOX: Let me stop you, Chris, for a
21 second. Is it Tab A that the explanation for
22 distance learning monitoring is? Or is it Tab D?

23 COMMISSIONER GIPSON: Tab A on distance
24 learning.

25 THE WITNESS: Distance learning is in Tab

1 A. It's .1 FTE explanation.

2 MS. FOX: Okay. Thank you. Go ahead.

3 THE WITNESS: So it was never intended as
4 part of our charter to have the 1,086. It was
5 always intended as a waiver. The charter has always
6 had a waiver and conducted school and instructional
7 hours in this manner.

8 Also, please note that in there is the
9 instructional hours and response during the charter
10 renewal process from Jeff Arthur.

11 That's Tab B. Also I do believe that
12 there is the waiver from the past charter, which is
13 2009, which pretty much goes along with exactly what
14 is said in our current waiver.

15 Also, I want you to note that on Page 2 of
16 the waiver, it states that our students do attend
17 school on alternate Fridays for three-hour blocks,
18 and that they attend four days a week.

19 Q. (By Ms. Fox) How does CEPi track and
20 monitor these additional hours?

21 A. We track and monitor additional hours by
22 the distance learning teacher tracks the distance
23 learners; the advisers who are the teachers and some
24 of the staff track, every two weeks, the progress of
25 our students. We track them through Next Step

1 Plans.

2 MS. FOX: Okay. Is that all you have with
3 respect to the instructional hours item?

4 THE WITNESS: Yes.

5 MS. FOX: Okay. Go ahead and proceed,
6 then.

7 THE WITNESS: All-righty. Student count,
8 failure to comply with Compulsory School Attendance
9 Act, NMAC 6.10.08.

10 In Tab G, there's an affidavit from
11 Cynthia Sanchez, who keeps track of our attendance,
12 in regards to tak- -- making daily phone calls in
13 regards to students being absent.

14 We also send out a letter during the
15 school year on students who were absent. Advisers
16 also keep track of their students.

17 I do want to note that we did keep track
18 of attendance the first two weeks of school, per
19 period, and the teachers had to do that by hand. At
20 that point in time, the master schedule is not in
21 our student information system, which is the vehicle
22 by which the teachers actually keep attendance in
23 that system.

24 So it was a new process getting that
25 master schedule into that system for our current

1 counselor at that time. And it wasn't in for the
2 first two weeks; but there are examples of the
3 teachers taking attendance per period during the
4 first two weeks of school.

5 Please note that CSD did not request proof
6 that we follow our attendance policy; nor did they
7 request proof of early intervention. Ms. Sanchez'
8 affidavit describes that she makes a phone call to
9 students' parents for each absence; and then we
10 follow up with a referral to our case manager,
11 Ms. Bustos.

12 Also noted in Tab G are e-mails to the
13 staff stating to take attendance during that first
14 two weeks of school. And so before this school
15 year, they took attendance one time during the pods;
16 but we changed it to where they take attendance
17 every period for each class period, which actually
18 amounts to ten periods a day under the two
19 instructional blocks.

20 MS. FOX: And the reason that, in past
21 years, your understanding that they only took
22 attendance once during each four-hour block was
23 what?

24 THE WITNESS: That's correct. My
25 understanding was they took attendance only one time

1 per hour block [verbatim], because the teachers
2 rotated, and the students stayed in one place. And
3 so they kind of took it as each pod being its
4 individual classroom, and the student never left
5 that classroom.

6 In this instance, two students do move
7 throughout the classrooms or the pods. But
8 regardless, the attendance needs to be taken every
9 class period, per teacher. And we have it set up
10 now that that's not only the way that they take
11 attendance, but they also keep grades in that
12 student information system.

13 On to No. 3?

14 MS. FOX: Yes.

15 THE WITNESS: The wheelchair stall issue
16 in the women's restroom.

17 We received a letter from Hope Reed, the
18 accessibility specialist with the Governor's Council
19 on Disabilities. And in that letter, it was clear
20 that it was a recommendation that we keep the
21 wheelchair stall accessible at all times.

22 The code -- the zoning lady that we had
23 come in and look at the stall and measure everything
24 stated that we should make sure that that stall is
25 available to anybody who comes in with a wheelchair.

1 So we do have a key that is upfront to make sure
2 that that stall is available. It is very clear in
3 that letter that it is a recommendation.

4 I also have an e-mail that was sent from
5 Hope Reed to Ms. Poulos that states that, "GCB has
6 written to Christopher Hotchkiss requesting that the
7 wheelchair toilet stall be unlocked." And they
8 state that the PED and her office has more
9 authority, and that they should make it open.

10 Honestly, I actually tried to take the
11 door down myself. I bent a couple of little Allen
12 wrenches. We can open it all the way up. The
13 reason that we have it closed down is it's a blind
14 spot. It's hard to monitor. The students do like
15 to hang out around that corner. I believe it's a
16 safety issue.

17 But it's certainly not an issue that --
18 that we want to protest over. We can easily take
19 the doors down. Well, I thought we could easily
20 take the doors down by just popping out the bolts;
21 but I guess we're going to actually have somebody
22 come in and do it, where I have to open it up and
23 take it off the hinges, if the PEC so desires.

24 And you have a letter from the -- from
25 Hope, good. But I only have one letter from Hope

1 Reed to Ms. Poulos. And I'm happy to pass that
2 along amongst the Commissioners, if they would like
3 to see it.

4 MR. LANGE: Do you want to offer this into
5 evidence?

6 MS. FOX: Sure. We'll go ahead and offer
7 it into evidence. Let me show it to Dan.

8 THE CHAIR: Has the other counsel seen it?

9 MS. FOX: I'm just going to show it to him
10 now.

11 MR. HILL: No objection.

12 THE CHAIR: No objection? I guess we will
13 accept it.

14 MS. FOX: Let's call it Exhibit BB. Our
15 exhibits are numbered -- are labeled A through Z.
16 And I guess there's an extra one. So A through
17 double A, and now A through double B.

18 Go ahead, Chris. Go ahead and -- let's
19 talk about the issues that Ms. Poulos alleges with
20 the staff files.

21 THE WITNESS: Okay. On the staff files,
22 which are referred to as "personnel files," I want
23 to note that it's noted in that section -- and these
24 are all under Tab N -- "M" as in "Mike," and "N,"
25 as in "Nancy."

1 Each Level 1 teacher was assigned a
2 veteran teacher as a mentor at the beginning of the
3 school year. And there are a couple of letters in
4 there that state that they're receiving mentoring,
5 as well as a document that's in our student
6 information system that we forward out to S.T.A.R.S.

7 We've been working on getting our
8 personnel files into compliance. I really honestly
9 thought that it would be rather simple and that we
10 would just send our staff that had either outdated
11 background checks here to PED, or send them
12 someplace to have that done.

13 It actually ends up being a little bit
14 more complicated than that. We actually have to
15 contact and get permission from the Department of
16 Public Safety to get an ORI number. We are in the
17 process of doing that. We have sent out that
18 information.

19 In the past, I believe, before this
20 semester -- this is how soon I think changes have
21 occurred -- they used to go through the Licensure
22 Department to get the background checks for PED.
23 And they have discontinued that, requiring the
24 school to have their own ORI number.

25 Each one of our teachers and staff that do

1 not have one that is current on our file have signed
2 authorization release forms for us to send to the
3 New Mexico Department of Public -- Public Safety,
4 requesting any New Mexico background checks that
5 they have.

6 We still need to have them do a current
7 one; because if they didn't have it on file, they
8 need one on file. And one of them had one on file
9 that wasn't within the two years that they're
10 required to have one within; it was off by about a
11 week. All licensure information in the personnel
12 files are now correct. And that was as simple as
13 printing out licensure information off of the PED
14 website.

15 All of our Level 1 teachers -- no, I'm
16 sorry. Oh. It states in there that our PE teacher
17 had no inclination of actually being certified. She
18 was a certified teacher in English, and we had her
19 teaching PE under a waiver that we received from
20 PED. She has since passed her certification test
21 and is currently licensed to teach PE. And that is
22 also in the tabs.

23 On to governing council. Okay. We're on
24 to the governing council. And these are going to be
25 under Tab O.

1 CSD is correct that we had not been
2 reporting when governing council members have
3 resigned. We actually just recently received some
4 more guidance that was sent out, in fact, to the
5 entire -- all of the charter schools, with some new
6 procedures. We do believe that we are current with
7 the new procedures that are out.

8 We have signed affidavits, and we have
9 sent the report to the Public Education Commission
10 of our current governing council members, which, at
11 this point in time, equals six.

12 Am I doing Response to Intervention?

13 MS. FOX: Yes.

14 THE WITNESS: Okay. No. 8, which is the
15 Response to Intervention, Student Assistance Team,
16 are under Tabs R, S, T, U, V, and W.

17 CEPi follows the Tier 1 and Tier 2
18 process, as well as the SAT process, to
19 intervention. Our SAT team has been in place since
20 the beginning of the school year. SAT could be used
21 for a couple of reasons. Sometimes it's used for
22 initiating special ed services. And often, in the
23 high school, it's used to help struggling students,
24 as well as to help implement 504s.

25 It's rather rare that students actually

1 come in needing special ed services that haven't had
2 them prior in high school. It does happen, though.
3 But this process has been in place since the very
4 beginning.

5 The staff was provided with strategies on
6 improving school-wide reading and math performance
7 to the principal on a variety of dates.

8 [Verbatim] -- actually, they provided them to me --
9 a variety of dates prior to CSD's visits. Contrary
10 to what Ms. Poulos stated, as far as the e-mail that
11 we gave to her, which was a forward of my e-mail,
12 all of these interventions that the teachers had
13 sent, and then a lot of professional development on
14 Friday afternoons -- extra time on their part -- we
15 did a lot of work in our public -- in our
16 professional learning communities to address,
17 increasing reading and math scores.

18 And so the staff was divided up into two
19 PLCs, math being science and math, and reading being
20 English and social studies. And they really took a
21 long, hard look on how to help our students, and
22 mostly, our students who are struggling in math and
23 English.

24 I do believe that the results of the
25 college-and-career ACCU tests that have been coming

1 out and we've taken an initial look at have shown
2 some progress in this area. Also, the counselor at
3 that time, who was heading the SAT, sent out
4 information on Tier 1 and Tier 2, as well as the SAT
5 process; so there are multiple documents in there
6 showing those processes.

7 The special education process. I want to
8 start off by noting that was correct, though note
9 that there was an incorrect reporting on the 80th
10 day of two C-level students, instead of them being
11 as B-level students. And we actually asked NMPED to
12 open the 80th day window so we could correct this
13 issue, because it is a funding issue.

14 We were told by NMPED that as far as the
15 80-day count goes, we need to wait for them to send
16 out the information to do the corrections at the
17 same time as all the other districts. But that will
18 be corrected before it becomes a funding issue.

19 The discrepancy has been corrected, and
20 the 120-day is correct at this point.

21 CSD was mistaken to note that all students
22 were B-level. We did have one B-level student, and
23 we had two level A students. These are noted under
24 Tab Z.

25 Also noted in there is a service log by

1 the social worker, and noted in there are
2 accommodations and modifications that are given out
3 and signed off by the faculty, which the CSD made
4 reference that they did not appear to be giving
5 special ed services of the students receiving those
6 services. And that's some evidence showing that we
7 do.

8 We did go for a period of time without a
9 special ed teacher. I don't know if -- how many of
10 you know how difficult it is to hire a special ed
11 teacher; but it's pretty difficult. We actually put
12 out an advertisement for it before we went on
13 Christmas break. And over two months -- month and a
14 half -- we got two applicants. The first applicant
15 that we offered the job to turned it down. The next
16 applicant that we offered the job to accepted, and
17 since PED has control of our finances at this point,
18 they have to approve all contracts.

19 And it is a learning process for both of
20 us and NMPED as far as how we get those approved.
21 And so that actually goes all the way up to Deputy
22 Secretary Aguilar's office, where he has to sign the
23 contract. So it did take a little bit of time to
24 get our special ed teacher on board; but he's on
25 board, doing great. The students are -- are really

1 enjoying him. And we're making sure that we catch
2 up on any services that were not provided at that
3 time, because they are compensatory.

4 MS. FOX: Pass the witness.

5 THE CHAIR: Go ahead and stop the clock,
6 then.

7 Have you already made an adjustment -- I
8 think, in the interest of fairness, we allowed PED
9 an extra ten minutes. I believe we should allow
10 Counsel Fox also an additional ten minutes, if
11 everyone agrees to that.

12 So can we add ten minutes into whatever
13 calculation you've got going. Go ahead,
14 Counsel Hill.

15 CROSS-EXAMINATION

16 BY MR. HILL:

17 Q. Mr. Hotchkiss, I want to go back to the
18 green notebook and Tab A.

19 A. Green notebook, Tab A.

20 Q. These are "Waivers for Creative Education
21 Preparatory Institute"?

22 A. That's correct.

23 Q. And it looks like the third waiver you
24 were talking about looked like "Length of School Day
25 and year" [verbatim]; is that right?

1 A. There's three pages. On the first page is
2 notes that each student is assigned a morning or an
3 afternoon instructional block.

4 Q. Okay. My question was just, is that third
5 row? "Length of School Day and year" [verbatim]?
6 And that's referencing a waiver regarding that
7 topic?

8 A. Can you show me what line you're looking
9 at? Are you on the very first page?

10 Q. Yes, I'm on the first page.

11 A. And line what?

12 Q. It would be the third row.

13 A. Okay.

14 Q. The third line. "Length of School Day and
15 School year."

16 A. I don't know if I'm seeing the same thing
17 you're seeing.

18 Q. Okay. So this Tab A, it says, "Exhibit 2:
19 Waivers for Creative Education Preparatory
20 Institute."

21 And there's a third row.

22 MS. FOX: Can I approach, Dan?

23 MR. HILL: That's fine.

24 A. Okay. It talks about that -- I was just
25 looking for the wording. Okay.

1 Q. (By Mr. Hill) Okay. If we go to the
2 second page, it's like we're still in this waiver
3 for length of school day and year; correct?

4 A. Correct.

5 Q. Go to the third paragraph. Can you read
6 that into the record, please?

7 A. "The school will meet and monitor its
8 state-required instructional hour requirements. It
9 will meet this requirement through a combination of
10 instructional approaches, each with its own
11 scheduling demands."

12 Q. Thank you. I want to go to Exhibit 1 in
13 the other notebook now, the first page. Can you
14 read paragraph A?

15 A. "Except as otherwise provided in this
16 section, regular students shall be in
17 school-directed programs, exclusive of lunch, for a
18 minimum of the following:"

19 Q. Now, skip to paragraph 3, please.

20 A. "Grades seven through twelve, six hours
21 per day or one thousand eighty hours per year."

22 Q. Okay. And going back to the green book,
23 this waiver said the school will meet and monitor
24 its state-required instructional hours
25 requirement -- will meet this requirement -- with a

1 combination of instructional approaches with its own
2 scheduling demands.

3 I'm a little bit confused here, because it
4 seems like you testified earlier that your school
5 was waived from the 1,080-hour requirement. But in
6 the green notebook, it seems like you're saying you
7 are going to meet and monitor that requirement.

8 So I guess I don't understand what the
9 requirement is you're talking about. Can you help
10 me figure that out, please?

11 A. We've had a lot of discussion on the
12 waiver. And we believe it wasn't written as clearly
13 as we would have liked. But we do believe that it
14 is a waiver of the 1,080 instructional hours. And
15 if you note, just below the paragraph where it says
16 we'll monitor our instructional approaches, it
17 states four days a week with a three-hour block on
18 alternate Fridays. And it does state that the block
19 is four academic periods of 60 minutes long, which
20 is four hours long.

21 And so I do believe that offering our
22 other -- our other programs, driver's ed, PE,
23 distance learning, dual enrollment, is another way
24 of adding additional hours and offering more hours
25 for our students.

1 Q. Well, that's right; because the next page
2 has a table that shows the number of hours that your
3 school offered. And if I'm reading that correct, it
4 says you offered 1,602 hours; is that correct?

5 A. Right. It states that we offer 1,602. It
6 doesn't say that we require the students to be in
7 class for 1,602. The requirement is the four core
8 classes of 576 and the alternate core class of
9 54 hours.

10 Q. So let me make sure I understand that.
11 You're saying that your school -- at your school,
12 students -- and you think that the waiver says
13 this -- are only required to attend 576 hours of
14 core instruction and 54 alternate core hours of
15 instruction, and that, combined, is their entire --
16 meets their entire school year requirement.

17 A. According to the waiver, that's correct.
18 But we also have them --

19 Q. So can you show me in the waiver where it
20 says that the students at your school only need to
21 take 630 hours for a year? Does it say it somewhere
22 in there?

23 A. It actually also includes an additional
24 hour. I'm sorry. I missed that part on the waiver.
25 So on Page 2, under "Guided Computer-based"

1 instruction, you have "In-school," and you have
2 "Off-campus."

3 And so in-school, four days a week, four
4 hours a day, and three-hour block on alternate
5 Fridays.

6 Also, off-campus, they have an hour -- one
7 hour per day. And they get that one hour per day
8 through PE, distance learning, dual enrollment, and
9 driver's education.

10 Q. You would agree with me, there's nowhere
11 in this waiver where it says a number of
12 instructional hours per year that your students have
13 to meet.

14 A. I would agree with you.

15 Q. Okay. I want to go back to the other
16 binder to Exhibit 9. Now, I know you've testified
17 about what you say the waiver says. But this
18 document, that there's already been testimony about
19 today, is that you're operating on a five-day week;
20 is that correct?

21 A. That is correct.

22 Q. And in the calendar, it lists every
23 Friday, except for a holiday or in-service days as
24 being a day where students attend; is that correct?

25 A. That is correct.

1 Q. And -- but, in fact, not all students
2 attend on all of those days; correct?

3 A. That is correct. But we have half the
4 student population on Friday; then the next Friday,
5 we have the other half of the student population.
6 So we do have 181 days of instruction.

7 Q. So the school has 181 days of instruction;
8 but each student doesn't; correct?

9 A. That is correct.

10 Q. So -- my math might not be right. But it
11 seems like each student only has 164 or 165 days of
12 instruction. And some of those days are three-hour
13 days on Fridays; correct?

14 A. That sounds correct.

15 Q. Okay. And so I guess I'm just trying to
16 find out why this school calendar says something
17 that really doesn't meet with what the school's
18 doing. It says 181 instructional days. And then
19 when we turn the page to Page 3, it sure looks like
20 those 180 days are being counted for every student
21 and not just across the school as a whole. So it
22 seems like I'm missing something here.

23 A. Having looked at the 2015-2016 school
24 calendar check, which I did not prepare -- and this
25 is actually the first time that I've seen it -- I

1 would have to say that it is not reporting
2 correctly.

3 Q. And so when it says "Total Hours" there of
4 1,086, that's not accurate, either.

5 A. I need to pull out my calculator and do
6 the math. But I would say that it doesn't look
7 correct; because it doesn't take into account the
8 Fridays. And so I'm looking at this, and I'm
9 looking at -- it's stating 181 days at four hours a
10 day, which would mean that they're coming four hours
11 a day on Friday. And then with the additional
12 hours, it would add up to 1,086.

13 Without pulling out a calculator and
14 actually adding it up, I don't know if that's
15 exactly what it comes out to.

16 Q. Staying in that same notebook, if we could
17 go back to Exhibit 6, please.

18 A. (Witness complies.)

19 Q. Have you seen this letter before,
20 Exhibit 6?

21 A. Okay. Are you talking about the tax
22 letter?

23 Q. Yes.

24 A. Yeah, I helped prepare it.

25 Q. And you don't dispute that the school has

1 calculated that it owes a \$520,000, plus some
2 change, tax liability; is that correct?

3 A. I do not dispute that. I think that
4 that's pretty close to accurate. Weiner and Company
5 actually came out with the federal part to be
6 absolutely accurate. I do not believe that the
7 state payroll taxes have received the exact amount
8 of detail.

9 Q. So we still don't know exactly what the
10 numbers are; but you think they're basically right.

11 A. Yeah, they're basically right.

12 Q. Is this your first time running a school?

13 A. It is not.

14 Q. How long have you been a school
15 administrator?

16 A. Twelve years.

17 Q. So in your 12 years of being a school
18 administrator at -- how would you react if someone
19 came to you and said, "Well, I know we prepared the
20 budget. But we owe \$500,000 this year; so figure it
21 out"?

22 A. Well, this is how I reacted. The second
23 Weiner and Company contacted me about the payroll
24 taxes, I disclosed it to the State immediately. I
25 disclosed it to our governing council immediately,

1 and to our attorney immediately.

2 And then we started coming up with a plan
3 on how we wanted to address that. I hired a
4 business manager to come in and work with the
5 current business manager to see if we could get our
6 books reconciled. I also brought in the Vigil Group
7 in November and asked them what their availability
8 was to help out. Yeah, it's --

9 Q. You brought the Vigil Group in in November
10 of what year?

11 A. 2015.

12 Q. Okay. This letter is dated January 7th,
13 2016; correct?

14 A. Correct.

15 Q. So you brought in the Vigil Group two
16 months before you sent this letter?

17 A. I brought them in to consult with them
18 what we can actually do about helping out with the
19 business management aspect of the school.

20 Q. So did you wait two months before
21 disclosing this to the PEC and the State Auditor and
22 PED? Or -- explain that to me.

23 A. No. If you look, on December 10th, 2015,
24 Christopher Hotchkiss and Sean Weiner had a phone
25 conference with Eileen Marrujo-Gallegos, Acting

1 Director of NMPED's School Budget and Financial
2 Analysis Bureau, to disclose and alert NMPED to the
3 tax issues.

4 Q. So you disclosed it to
5 Ms. Marrujo-Gallegos on the 10th of December; but
6 this letter, then, wasn't sent until January 7th;
7 correct?

8 A. That's correct.

9 Q. And you had brought in the Vigil Group
10 some time before that. November; correct?

11 A. I brought in the Vigil Group late
12 November, because we knew that the business office
13 was having some serious issues, and I wanted to see
14 if we could bring in another contractor to see if we
15 can clean that up.

16 Q. What's the overall revenue from SEG for
17 CEPi, year to year, if you know?

18 A. Approximately \$1,800,000, a little bit
19 over.

20 Q. So 1.8 million. \$500,000 is a significant
21 portion of that revenue; correct?

22 A. That's correct.

23 Q. It's more than a third? A little bit less
24 than a third?

25 A. Right around a third.

1 Q. In your 12 years being a school
2 administrator, have you ever had just a little bit
3 under a third of your budget sitting around that you
4 could use for a rainy day, or maybe a giant tax
5 storm, that comes your way?

6 A. No, I have not.

7 Q. So if the school is going to pay these tax
8 liabilities, that money is going to have to come out
9 of the revenue that would otherwise be going into
10 the classroom; correct?

11 A. That is correct.

12 Q. So ultimately, you know, paying back this
13 liability is going to have an effect on the
14 operation of your school and on the students in the
15 school.

16 A. It would.

17 Q. So there are things you might like to do,
18 as a school, that you won't be able to do now
19 because of this liability.

20 A. I think that it would affect our
21 carryover. I think that we could run our program as
22 we're running it now and run it very well with the
23 amount budgeted. But, yes, we would have to put our
24 carryover toward paying the back taxes.

25 Q. Are were you carrying -- did you have a

1 carryover of almost a third of your entire revenue?

2 A. Well, what it looks like now, and after
3 listening to Michael Vigil and being involved in
4 this process for quite some time, once they
5 reconcile the books, it's looking like there's
6 approximately \$350,000 to \$400,000 in cash that was
7 meant to go toward the taxes that we could put
8 toward the tax liabilities.

9 And it's looking like if we, you know,
10 save for a rainy day, and we spend our money very
11 frugally from now till the end of the school year
12 we're going to have approximately \$100,000
13 carryover, of which case you would take that
14 carryover and earmark that toward paying the back
15 taxes the following school year; so it does not
16 impact student learning.

17 Q. Okay. But as we sit here, you don't
18 really know what that cash balance is, do you?

19 A. We will not know that cash balance until
20 the Vigil Group, Weiner and Company, and NMPED
21 decide on the process they want to go about
22 reconciling the books. And I've been asking for
23 that process to take place for the last month to
24 three weeks; but --

25 MR. HILL: I have no further questions.

1 THE CHAIR: Thank you for that.

2 Counsel Fox, do you have redirect?

3 MS. FOX: I have no redirect.

4 THE CHAIR: No redirect. So there's no
5 recross, then, I guess.

6 I guess, then, this witness is -- oh, no.
7 Here again, Commissioners, questions from
8 Commissioners for this witness?

9 I see none to my left. I see --
10 Commissioner Ambruster?

11 COMMISSIONER ARMBRUSTER: I'm -- have two
12 questions about -- I think her name is Suzy Sanchez.
13 And one is she was the business manager. And I
14 wanted to know what her qualifications were and how
15 long she had been at CEPi. I don't -- just a
16 minute. Was that a personnel --

17 THE WITNESS: She was a licensed business
18 manager.

19 COMMISSIONER CARR: Hey, point of order.
20 I think we're getting into a personnel matter here
21 by mentioning a name and -- of an individual
22 employee.

23 COMMISSIONER SHEARMAN: If I might point
24 out, it's already been mentioned earlier, by name.
25 By name.

1 COMMISSIONER CARR: Well, true.

2 MS. FOX: I don't have any problem with
3 it -- with the fact of her name. She was the
4 licensed business manager -- that's public record --
5 or her qualifications. But once we get into sort of
6 more matters of opinion and -- and actions taken
7 with respect to her personnel actions, I'll jump up
8 if we get there.

9 THE CHAIR: So do you have a specific
10 question that needs to be answered then?

11 COMMISSIONER ARMBRUSTER: He said she was
12 a licensed business manager. I wondered how many
13 years she had been at CEPi.

14 THE WITNESS: I believe she began as the
15 business manager in 2009. And she was in another
16 capacity for a few years before that. But I can't
17 give you an exact date of when she started without
18 looking at her file.

19 THE CHAIR: Thank you. Anything else from
20 Commissioners?

21 Then I believe this witness is dismissed.

22 Counsel Fox, do you have any more
23 witnesses?

24 MS. FOX: I do. I have -- I'd like to
25 call Lisa Loftis, please.

1 Can you tell me how much time we do have
2 left? I know we're getting close to the end. And I
3 appreciate everyone's attention. It's getting late.

4 MS. ULIBARRI: You have about 25 minutes
5 left.

6 MS. FOX: Okay. Did you hear that, Lisa?
7 25 minutes?

8 MS. LOFTIS: Oh, excellent.

9 LISA LOFTIS,
10 after having been first duly sworn under oath,
11 was questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. FOX:

14 Q. Ms. Loftis, would you state your name,
15 please, for the Commissioners?

16 A. Lisa Loftis.

17 MR. HILL: And do you need that spelled?

18 THE REPORTER: Please.

19 THE WITNESS: L-O-F-T-I-S.

20 Q. (By Ms. Fox) What's your position at CEPi,
21 Lisa?

22 A. I am a teacher.

23 Q. Okay. And how long have you been at CEPi?

24 A. Eleven years.

25 Q. Okay. You've received a copy of Katie

1 Poulos' February 8th letter?

2 A. I have.

3 MS. FOX: Okay. And, again, in the
4 interest of time, I'm going to ask Mrs. Loftis to
5 provide narrative testimony with respect to two of
6 the allegations contained in that February 8th
7 letter.

8 THE WITNESS: As a teacher, or as one of
9 their teachers, we were quite concerned with some of
10 the allegations under No. 4, as far as our
11 instructional program of instruction.

12 I was asked by my fellow teachers to
13 gather information from each of them and to explain
14 exactly what we do and to try to answer the things
15 that she said she didn't receive but didn't ask for.

16 First of all, I'd like to explain to you
17 what we do at CEPi. We're not like anything you've
18 ever seen as far as the way we do our instructional
19 stuff. They've taken a lot of time to go back and
20 forth about instructional hours and whether we meet
21 the 1,080 -- we are non-traditional. We do what we
22 need to do in a smaller amount of time.

23 We don't have pep rallies; we don't have
24 general assemblies; we don't waste time. In fact,
25 until this year, we didn't even waste passing

1 periods, because we rotated. The students stayed
2 there working; we came into their area; they
3 switched to our subject.

4 So it may be something that's a little
5 confusing, because we're not like any other school.

6 As far as the instructional hours, I won't
7 go into that a lot, because that's already been
8 talked about. But since I've been at the school for
9 eleven years -- a little over eleven years -- and
10 since both of my daughters graduated from the
11 school, I do understand how there could be concern:
12 "oh, they've just got four hours a day."

13 They go, required time, four hours a day,
14 plus at least three hours every other Friday. They
15 also have opened them, which they did not have at
16 their traditional schools that they attended. They
17 have that extra time.

18 We, as teachers, licensed teachers, are
19 there, eight hours a day, to deal with any and all
20 of the students. They must be there four hours.
21 They can be there eight hours on Fridays. They must
22 be there three hours. They can come every Friday.
23 But if they work or something, and need a Friday
24 off, they must come at least every other Friday.

25 Also, on Fridays, teachers stay until

1 12:00. Sometimes we stay until 2:00. Last year, we
2 took turns staying late so that students that needed
3 to catch up could come in and have that more
4 one-on-one time, as needed.

5 So I wanted to make that clear. And if
6 you have questions later, feel free to ask. I can
7 tell you all about the program.

8 And as you'll notice in the waivers, it's
9 always been this way. We're not hiding anything.
10 This is how we do it. But people misunderstand it
11 sometimes. Both of my daughters did graduate from
12 CEPi. One has already graduated from UNM. The
13 other one is finishing nursing school. Our program
14 does work.

15 Now, as far as our instructional program.
16 Most of our instruction is done on GradPoint; that's
17 a Pearson product. You may have heard of PARCC;
18 that's a Pearson product.

19 This is a Common Core, State
20 standard-aligned program. It takes care of talking
21 about the standards, the objectives for that lesson.

22 Sure, we've got stuff on the walls that
23 show standards and objectives. But we might have a
24 ninth-grader working on a Module 5, while a
25 twelfth-grader is standing next to them working on

1 Module 2, something completely different.

2 We don't go in and interrupt them and say,
3 "Today, we're going to do Standard so-and-so."

4 We let them work with the instructional
5 program, the GradPoint program, guiding them and
6 telling them what they're learning.

7 We, as licensed teachers, rotate around
8 the pods while they sit at their computers; and if
9 they get confused on anything -- they can just
10 almost have their hand up -- we're going to see it;
11 we're going to be right there. We pull up a chair;
12 we sit beside them. They get their own lesson,
13 one-on-one, explaining it. When we're finished,
14 we've written in their notebook; we've shown them
15 how to do it. They've got it to refer to later.

16 And they say, "Why didn't GradPoint put it
17 that way?"

18 I say, "I don't know."

19 Some people get it; some people don't. We
20 sit down and customize it to their learning needs.
21 We ask them questions to see what they already
22 understand. We figure out where they're missing it;
23 we help them get it.

24 In the meantime, the ones who do get it
25 continue on. We don't stop the class to re-teach

1 everyone. The ones who get it keep on learning.

2 We have many students who finish in three
3 years instead of four. Is it because they don't
4 have enough seat time? They have the seat time they
5 need.

6 They also get credit for work experience.
7 They get to take CNM dual enrollment. They have
8 opportunities they could never have if they were
9 sitting in a seat listening to a boring lecture and
10 not able to go out and do these internships and
11 other things that we have provided.

12 Sure, this year, some of the things fell
13 through the cracks because we do have a new
14 administrator. He didn't realize many of the things
15 we offer. A few of those were discontinued this
16 year.

17 Does that mean we don't know what we're
18 doing?

19 No. It means that we have things in place
20 from the past that we could reimplement.

21 You don't shut us down because a few
22 things went wrong one year out of 12. We have
23 students who would not be in school if we didn't
24 have our program.

25 And I'm sorry. I might be off of what I'm

1 supposed to be saying; but I want to give you this
2 background first, so you understand.

3 We take the ones the traditional public
4 schools either don't want to deal with or don't have
5 the resources to deal with. And we welcome them.
6 And then it pulls our test scores down, because
7 these are students that come to us sometimes at
8 fourth-, fifth-grade level in their reading and
9 math.

10 We are held accountable to get their PARCC
11 scores up to what everybody else is doing. They
12 have average, maybe, three-fourths of the year of
13 growth all of their school career. They come to us.
14 We're supposed to make them increase 1.4 years if
15 they're behind. How? But we do when we can.

16 Sometimes we fail. And we risk being shut
17 down if our scores aren't good. We stick with it,
18 anyway, because we believe in our kids. And I'd
19 rather work with our type of kid than any of the
20 other kids out there; because someone has to teach
21 these kids.

22 Now, back to what I should be saying. I'm
23 so sorry. But I do believe in our school or I
24 wouldn't have been there as long as I have been.

25 As far as how we track their time that

1 they do as far as their additional hours at home, we
2 track that through two-week plans. And I'm sorry.
3 Somehow it didn't get in our evidence book. I think
4 we ran out of room to stick stuff.

5 But we do two-week plans that show the
6 students exactly where they have to go for the
7 semester, how much they have to do every two weeks
8 in order to get there, what the plan is, if they've
9 fallen behind, to get them caught back up.

10 Then we e-mail or call our parents every
11 two weeks, and we tell them -- in fact, in
12 Exhibit -- in Tab E -- this is actually supposed to
13 prove something else -- but it will show you an
14 example of many of the letters that the teachers
15 have sent out. My name's on a lot of those -- but
16 they're not all mine -- where we tell them, "You
17 must work from home. Parents, please encourage your
18 students to come in, spend extra time. We're open
19 for alternate sessions. If you have an a.m. kid,
20 send them for p.m., as well."

21 In fact, I did that with my own daughter.
22 She had to stay for two sessions a lot of times;
23 because I wouldn't let her go home, because she
24 wasn't driving. So she did finish a little early.

25 But we're open; we're available. We

1 encourage it; the parents know it; the students know
2 it. And we track that on Exhibit -- or Tab --
3 sorry, I lost my notes on that. But there is a tab
4 that shows all of the work they did over
5 Thanksgiving break, all the work they did over
6 Christmas break.

7 We can pull that up on our program just
8 like that. We do. Once someone in our data PHC
9 printed that for us, gave it to all the teachers, so
10 that we would know which of our advisees had been
11 working and which we needed to encourage to do more
12 work.

13 We have an upcoming spring break. All of
14 my advisees -- and I'm sure the others, as well --
15 have been advised to use this time to either catch
16 up or get ahead. If they get blocked out because
17 they can't take their tests at home, because they
18 might cheat -- we don't want that -- they cannot
19 take their tests at home.

20 They have access to the staff e-mails.
21 All they have to do is e-mail me, say, "Could you
22 excuse my post-test. I'll take it when I come back
23 to school." And then they can keep working, taking
24 notes. When they come back to school, they take the
25 test. If they need help, we help explain it before

1 they go on to the test.

2 Okay. The observations by the CSD. They
3 said they walked in, and they weren't provided
4 copies of our lesson plans.

5 Well, first of all, they didn't ask.
6 Secondly, what kind of lesson plan would I have that
7 would meet 9A, 9B, 10A, 10B, 11A, 11B, 12A and 12B,
8 all my students that were there in the pod at one
9 time? It wasn't asked for. That would be a strange
10 thing to ask for. So to say it wasn't provided,
11 that's kind of unfair.

12 Also, this was the first instructional day
13 of the second semester. This was an unannounced
14 visit. We would have been happy to have gathered
15 any and all of this, which we have done. It is in
16 here. And it wasn't hard to find. We had all of
17 this stuff.

18 I have, locked in my drawer -- anytime any
19 of you want to come, I can unlock my drawer, pull
20 out all of these modifications and accommodations,
21 all of the ELL learners. We have this. We know
22 what we're doing. We do it well.

23 We were not asked for it. In fact, we
24 were specifically told, "Don't mind us."

25 We were also told -- I'm going to skip

1 some of this for interest of time -- and I'm an
2 English language arts teacher. And it says that
3 when they went into the pod, there was one teacher
4 and one educational assistant. There were three
5 licensed English teachers, no educational
6 assistants, in the pod. I'm not sure where some of
7 this came from.

8 Also, when they went into some of the
9 pullout electives, such as art history, they go in
10 when it's not even the beginning of the class. Then
11 they say, "No, no standards or objectives were
12 mentioned during the ten minutes we happened to walk
13 in at the end."

14 You know, how are you going to know that
15 those things didn't happen?

16 I could not believe the wording of this.
17 How can they make these accusations that we don't
18 teach well, that we didn't do these things, when
19 they did a quick, ten-minute visit to these things
20 saying, "Don't mind us"?

21 In fact, while they were in the English
22 pod, the discussion was about my service dog. No
23 one asked me about my accommodations for my special
24 ed students in the class.

25 This was unbelievable. And this is from

1 someone who had been attending our governance
2 council meetings, someone that we thought was truly
3 there to see what was going on with our school. And
4 then how did this get in here? I'm baffled. I
5 really am.

6 All of our teachers have licenses, have
7 certifications, multiple endorsements. I, myself,
8 have multiple endorsements. I've been at the school
9 a long time. I've served as a reading specialist,
10 as an English teacher. I've taught some business
11 classes. We have TESL certifications for at least
12 two staff members.

13 That brings me to the ELL stuff.
14 Supposedly, we didn't take care of ELL matters.
15 Okay. The school did not -- the school did not
16 demonstrate that it ensures that ELL students can
17 participate meaningfully and equally in educational
18 programs, as required by -- all of the requirements.

19 Our response to that:

20 The teachers were not asked to demonstrate
21 that they ensure that EL Learners can participate
22 meaningfully and equally in the educational
23 programs, as required. Each subject area teacher
24 maintains a list of EL students, just as they also
25 maintain a file of IEPs, 504 plans, and other

1 information needed to provide the extra help for
2 identified students.

3 If asked, all teachers could, and would,
4 have produced this up-to-date list, along with
5 documentations of services they provide EL students.

6 Okay. The accusation was made that they
7 reviewed both paper and student files and electronic
8 student files located in PowerSource.

9 I have been at the school since -- part of
10 the first year. We have never used PowerSource; so
11 I assume they mean Schoolmaster or some other
12 program that we use.

13 "More than half of the student files, both
14 paper files and electronic files, did not contain
15 home language surveys for those students who did not
16 have a home language survey," and so on. Here's our
17 response to that:

18 Most, if not all, CEPi students have, on
19 file, home language surveys. I know I went and
20 looked at the file. I got the key from the front
21 and went and looked at the cumulative records.

22 "Or other proof of their home language."

23 So there was a little misunderstanding on
24 a few, where we had something that proved their home
25 language; but perhaps it was not the actual letter,

1 the actual form. We fixed that for any that we did
2 find, because that was a misunderstanding.

3 Admittedly, about half of this
4 documentation was in paper form, and half was in
5 digital form, thereby causing the confusion for
6 the -- the visiting CSD staff.

7 To alleviate this misperception in the
8 future, I personally went through, pulled out hard
9 copies, gave those to Mr. Hotchkiss' administrative
10 assistant, who scanned those in. Now, we have them
11 both places.

12 About half had been in one place; half had
13 been in another. Now, they're in both places. We
14 do what we can to fix anything brought to our
15 attention. None of this was asked of us during the
16 visit.

17 Is there something besides instructional
18 and ELL that I --

19 MR. HOTCHKISS: Training, all our
20 professional development at the beginning of the
21 year.

22 THE WITNESS: Oh, for ELL. We also had
23 professional development at the beginning of the
24 year. We did sign in to each of those sessions.
25 All of the staff members attended.

1 Also, it said that -- that we didn't have
2 anybody in that position. She -- her last day had
3 been right before the winter break. They came the
4 first instructional day of second semester. We had
5 not hired a special education teacher. That's who
6 had done the English language stuff.

7 If you'll look at Tab -- so sorry -- P,
8 you will see that I am one of the people that has
9 now stepped up to take care of the ELL testing. I
10 am now certified as an online test administrator and
11 an online test coordinator.

12 One of my coworkers, Ms. Starla Vernon,
13 who is also an English teacher -- you'll find her
14 credentials in there, as well. She is also
15 certified for both of those.

16 We took care of doing the testing that
17 needed to take place. We took care of that within
18 the window.

19 When they visited and said that the test
20 scores were not in there, the window had not even
21 opened yet. We had the list. We had them inputted.
22 We could not give the test until the window opened.

23 We have now given all of the testing, as
24 we had planned to the ones that were already input
25 into the program. We will not have those scores

1 until later on in the school year; so, of course,
2 those weren't in the files.

3 So the accusation that the scores weren't
4 in the files -- they couldn't be. They hadn't taken
5 the test yet. The scores from previous years were
6 in the files. I verified that.

7 MS. FOX: Is that the end of your
8 presentation, Lisa?

9 THE WITNESS: Tab L -- no. Actually, your
10 Item AA. I wish I had more time to spend on that,
11 because that's kind of nice. And during public
12 comment, if there's time for that, one of my
13 co-teachers will go over that.

14 But I want you to notice, if you have time
15 to flip through that -- that's some PARCC scores
16 from last year, showing how we compare in some of
17 our reading and math scores to other charter
18 schools, as well as to our feeder schools, such as
19 Volcano Vista and Cibola, the more traditional
20 schools that didn't do well with our students.

21 They come to us. We got them up where
22 their scores are in line with the other schools.
23 We're pretty proud of that.

24 MS. FOX: Okay. Thanks, Ms. Loftis. And
25 I know Dan probably has some cross. But I'd like

1 to, at this time, submit the green book of evidence,
2 as well as the two supplementary, AA and BB,
3 documents into evidence on behalf of the CEPi
4 school.

5 THE CHAIR: Any objection? Then so -- so
6 approved.

7 Or are you objecting?

8 MR. HILL: I want to -- we didn't go
9 through each exhibit. My recollection is that not
10 every witness testified to the exhibits.

11 THE CHAIR: Stop the clock, please.

12 MR. HILL: So I suppose I don't have an
13 objection. The only exhibit, having reviewed it, is
14 the -- the additional PARCC exhibit -- seems like
15 it's beyond the scope of the -- of the Notice of
16 Intent. I certainly understand why they'd want to
17 present it to you. But no one from PED has made an
18 argument that the school's performance on student
19 achievement was poor.

20 Aside from that, I just want to note my
21 objection that not all the exhibits were actually
22 covered by witnesses, and foundation wasn't laid to
23 all the exhibits. But aside from that, I don't
24 object.

25 THE CHAIR: I would ask Counsel Fox, is it

1 your opinion that AA is outside the scope? Do you
2 share that opinion?

3 MS. FOX: I believe that those -- those
4 matters having to do with school performance are not
5 within the scope of -- of the notice for revocation.
6 It was designed to be supplementary information that
7 perhaps someone will speak to on public comment;
8 but -- or perhaps not. But it's -- it's not that
9 big of a deal.

10 (Chair consults with PEC counsel).

11 THE CHAIR: All right. I will rule this
12 way. I believe that AA probably is outside the
13 scope and will not be a part -- considered part of
14 the exhibits. And I will note Mr. Hill's objection
15 generally; but he did not specifically identify
16 which parts of the book that you apparently did not
17 cover.

18 And -- but -- so I will accept, then,
19 the -- approve the submission of the rest of these
20 documents.

21 Is that correct?

22 All right. So you will -- where are we on
23 cross? Do you now have cross?

24 MR. HILL: I have no questions for the
25 witness.

1 THE CHAIR: Do you have --

2 MS. FOX: I don't.

3 THE CHAIR: So is it -- you're through
4 with this witness, then?

5 MS. FOX: Yes, unless the PEC has
6 questions.

7 THE CHAIR: I keep leaving us out of the
8 loop. Are there any questions for this witness from
9 the Commissioners?

10 I see none to my right; I see none to my
11 left.

12 I guess you are dismissed. Thank you.

13 THE WITNESS: Thank you for your time
14 here.

15 THE CHAIR: Do you have more witnesses to
16 present?

17 MS. FOX: We do not.

18 THE CHAIR: We do? Is that --

19 MS. FOX: We do not.

20 THE CHAIR: "We do not."

21 All right. Well, then, based on that,
22 then, we are to the next section, which is Public
23 Comment. Could I impose on Director Poulos to bring
24 us the Public Comment sign-up sheet that's out in
25 the lobby, bring it up?

1 While we're doing that, I'll -- we've
2 thought about a break; but due to the lateness of
3 the hour, unless a Commissioner really needs a
4 break, is it okay if we go forth here?

5 Does anybody need a break? I see none.
6 Then let's proceed.

7 While she's bringing me the list, let me
8 start reading the instructions.

9 I will now allow 20 minutes of public
10 comment. There will be no further public comment
11 allowed.

12 Once the 20 minutes has run, following the
13 public comments, we will take closing arguments from
14 counsel.

15 I would like to remind those wishing to
16 make public comment that your comments should be
17 relevant to the scope of this revocation hearing.
18 This hearing is limited to whether or not to revoke
19 CEPi's charter. The PEC is not making a decision on
20 anything outside of this scope.

21 And as soon as I have the number here,
22 I'll tell you how much time you're going to have.

23 MR. LANGE: There's eight; so they'll get
24 two minutes.

25 THE CHAIR: I have eight speakers. I will

1 limit the time for each of those speakers to
2 two-and-one-half minutes.

3 I expect, Kimberly, that might complicate
4 your life a little. When they're
5 two-and-a-half-minutes are up, be very loud. When
6 your two-and-a-half minutes are up, stop. That's
7 it.

8 MS. ULIBARRI: I'll give you a sign.

9 THE CHAIR: Hold the sign up. You will
10 have two-and-a-half minutes to speak. The speakers
11 shall present in the same order as they have signed
12 on the list. I'll have that in a second.

13 Each speaker is allowed to offer their
14 comments. However, speakers are not permitted to
15 question any witnesses or introduce evidence.

16 Counsel for both parties are entitled to
17 question a public speaker, if they so choose, and/or
18 request that public speakers be sworn in.

19 The time taken during the questioning will
20 not count toward the time allotted to each speaker.
21 The Commission will give public comment its due
22 weight.

23 So I guess, if Counsel want to have these
24 people sworn, you'll need to tell me in advance
25 before they begin to speak.

1 MR. HILL: Mr. Chair, I think it would be
2 appropriate to swear them all in right now, as was
3 done with the witnesses.

4 THE CHAIR: Counsel Fox, do you --

5 MS. FOX: I agree.

6 COMMISSIONER TOULOUSE: Mr. Chair?

7 THE CHAIR: Let me read the list. Okay.
8 All right. Mr. -- a J. Lloyd. I ask you to stand
9 as I call your name.

10 Cathy Bullock.

11 Mary Aragon. Kelly Wogenrich. Did I get
12 your name wrong? Please bear with me.

13 Lisa Loftis, who just spoke. Is that
14 going to be allowed to speak again?

15 MS. LOFTIS: I spoke for CEPi. I can
16 speak as a community member and parent of former
17 students.

18 THE CHAIR: My fellow Commissioners are
19 shaking their heads "No."

20 We allowed to you to be very passionate.

21 Kim Torres.

22 Flip Rowen.

23 And Linda -- "Klock" or "Klack"?

24 FROM THE FLOOR: "Klock."

25 THE CHAIR: So I'll ask you to raise your

1 right hands, please, and I will read the oath to
2 you.

3 Do you solemnly swear or affirm that the
4 testimony you are about to give -- or in this case
5 public comment -- will be the truth, the whole
6 truth, and nothing but the truth? Do you all -- let
7 me hear you say that.

8 (All Public commenters sworn.)

9 MS. FOX: Commissioner, I'm afraid they
10 have someone who says they signed in and whose name
11 wasn't called.

12 MS. SANCHEZ: I was the last one to sign
13 in.

14 THE CHAIR: There was a name here; but
15 someone had scratched it out. Sanchez?

16 MS. SANCHEZ: That's me, Traci Sanchez.

17 THE CHAIR: Did you scratch your name out?
18 Then you may speak. Did you have your hand up?

19 MS. SANCHEZ: Yes, sir, I did.

20 THE CHAIR: Okay. All right. Then you
21 will be last; last, but not least, perhaps. You
22 understand. I've told you, two-and-a-half minutes
23 each. I ask you to come to the podium. Use the
24 mic, if it's still laying there. Identify yourself
25 for the recorder. And then the time will start, as

1 soon as they've identified themselves.

2 When the sign goes up, please stop.

3 All right. The first speaker is "J.

4 Lloyd."

5 MR. LLOYD: My name is Jimmy Lloyd. It's
6 with a little bit of trepidation and under fear that
7 I'm going to be speaking. So I do not envy the
8 council.

9 A lot of information has been presented to
10 you all today. And for myself, I've been actually
11 watching the school and trying to understand the
12 school for -- ever since probably about January
13 2015 -- so a lot earlier than a lot of the dates
14 we've had presented today -- for my own reasons.

15 And you've had a lot of sides kind of
16 shown. So the information being presented is being
17 presented to you, I'll say, with a perspective. So
18 I'm really going to encourage and ask for a little
19 bit of thought in what has been presented today from
20 both sides to try to seek the truth of what really
21 is happening.

22 So that is what I really want to ask the
23 council to do is seek the truth before making the
24 decision and really look at what's been presented
25 and how it's been presented and what may not be

1 getting presented; and particularly the last, what
2 may not be getting presented from either side.

3 THE CHAIR: Thank you.

4 Cathy Bullock.

5 MS. BULLOCK: Okay. Hi. My comments are
6 written, so I can go fast.

7 THE CHAIR: State your name, please.

8 THE WITNESS: My name is Cathy Bullock. I
9 am the grandmother, raising a grandchild who is a
10 senior at CEPi. I spoke to you at the November 12th
11 meeting. I shared with you my love for CEPi and my
12 concerns for CEPi.

13 I felt great relief when you ordered an
14 investigation of CEPi. We had no idea where that
15 would take us. The financial issues were not known
16 back then.

17 My hope after the investigation was that
18 the PED would take over the entire school, the
19 administration, the governance council, and the
20 finance office. That didn't happen.

21 The only thing -- because I felt that was
22 the only way change could happen this year. PED did
23 take over the finance office, and I was very pleased
24 with that.

25 That said, I need to tell you that CEPi is

1 an absolutely amazing school, in spite of its
2 financial and leadership crisis. It has literally
3 saved children, including my granddaughter. And at
4 the last -- at the PEC meeting in November, I told
5 you some of her circumstances, and I've written to
6 you of her circumstances.

7 She would have been lost to us, literally.
8 She would have been dead, had it not been for CEPi.

9 I feel that CEPi teachers are both victims
10 and survivors of a horrendous year; yet they are
11 still doing an amazing and phenomenal job with our
12 students.

13 I'm a retired teacher and administrator,
14 and I know amazing teaching when I see it. And you
15 saw the passion of CEPi teachers. They are what has
16 kept this school going.

17 My granddaughter was a semester behind
18 when she started school at CEPi two years ago. She
19 is a semester ahead and has 16 hours of dual credit.
20 CEPi kids do well -- I'm sorry you didn't accept the
21 PARCC scores, because how can a school be bad when
22 the kids do so well?

23 I think you need to consider that and
24 consider the fact that it saves the lives of kids.

25 Please do not revoke the CEPi charter.

1 Thank you.

2 THE CHAIR: Thank you. And I'll remind
3 Counsel, I'm waiting for you. If you want to ask
4 questions, I'll expect you to indicate to me -- no,
5 you're -- next name on the list is Mary Aragon.

6 MS. ARAGON: Hello, Chairperson -- is this
7 on? -- Chairperson Bergman, Commissioners, my name
8 is Mary Aragon. I'm a grandparent, also raising a
9 granddaughter. I hope you have received the letters
10 that I have sent you in reference to my
11 granddaughter.

12 I also want to say what a wonderful school
13 CEPi is. It has saved her life. Very quickly,
14 after the sudden death of my husband and being the
15 only father she knew, as we were raising our
16 granddaughter, she fell very behind in her studies.
17 She had always attended private school.

18 After the loss of my husband, the funding
19 was not there. Financially, I could not keep her in
20 private school. I sent her to a traditional public
21 school, where -- still traumatized. She got
22 severely behind. Her self-esteem was just
23 declining.

24 Then a friend told us about CEPi. I put
25 her at CEPi. The first day of school, she came out

1 and said, "Grandma, I'm going to make it. I'm going
2 to graduate on time."

3 These teachers immediately took her under
4 their wing, and they nurtured her broken spirit.
5 Alexandra -- oh, I'm sorry. I am so proud of her
6 and these teachers. She is graduating on time.

7 She started in February of '15. She
8 needed 14 credits to graduate. That child is
9 nonstop on that computer. She gets the assistance
10 she needs from the teachers. If there is something
11 she doesn't understand, they take the time.

12 There are so many other students who need
13 the school. Please don't close it.

14 I understand that when we started all
15 this, we had no idea what was going to come out.
16 Our goal was to save the school and keep it as it --
17 as it was.

18 So, please, you know, these teachers are
19 amazing; this school is amazing. Please save it for
20 all those at-risk students that have no place to go.

21 You know, they nurture the children. They
22 bring their self-esteem back, and they can seek
23 graduation. And we have enough children that are
24 not graduating in traditional schools. This is
25 school that helps them get there. And these kids

1 need that.

2 Thank you for your time.

3 THE CHAIR: Thank you.

4 Kelly Wogenrich.

5 MS. WOGENRICH: My name is Kelly
6 Wogenrich, and I'm a teacher at CEPi. I have some
7 letters here from current students and past students
8 and parents. We have asked our students to stay at
9 school today. I'm sorry. This is hard for me. But
10 I would like to turn these letters over to you in
11 support of our school.

12 Mr. Bergman and Mr. Lange, we already had
13 the letters sent to you in the past; so I don't know
14 if you've shared them with the Commissioners. But I
15 think they have a right to see them.

16 THE CHAIR: I don't want to be rude. But
17 I did say we're not accepting testimony or letters,
18 documents.

19 MS. WOGENRICH: But they were sent to you
20 previously. So, Commissioners, I do ask that you
21 ask to read these from our students, because they
22 have been sent, over the past month, to Mr. Bergman
23 and Mr. Lange, and we ask that you do read them.

24 The only other thing I have to say is the
25 reason we put in our PARCC scores is there were

1 accusations made that we were not teaching to Common
2 Core standards, which was false. And we wanted you
3 to look at our PARCC scores to show that we've taken
4 kids who have flunked out of other schools and made
5 them reach the levels of other schools. And we
6 think it's important that you see that.

7 THE CHAIR: Thank you.

8 Kim Torres.

9 MS. TORRES: Hello. My name is Kim
10 Torres, Chairperson, Board Members.

11 I'm a parent to two former students of
12 CEPi. I feel it's important that you guys really
13 understand how important this school is to these
14 kids, like they've said, that nobody else wanted.

15 One of my children came from a Catholic
16 private school, went to a public high school and was
17 eaten alive. This child was not going to go back to
18 school. But because of CEPi, that child went back,
19 graduated, and is now in college.

20 My second child was a freshman, reading at
21 a fifth-grade level.

22 Okay. I know what an IEP is, because of
23 the CEPi teachers. It was always made very clear to
24 me that, "This is what the State expects. This is
25 what we expect."

1 I was there for meetings. I was there to
2 sign off on everything. I knew my child's project.
3 This child graduated because of CEPi and because of
4 these teachers.

5 They weren't just given a pass. These
6 children had to work hard. They knew what was
7 expected of them. They knew they had to do their
8 work on the computers. They knew they had to pass.
9 And they knew they had outside hours they needed to
10 complete.

11 Let me tell you, as far as attendance,
12 Cindy knows me well. If one my students was not in
13 school, I was called immediately. So they kept
14 track of my children. And because of this four-hour
15 block, my one child with the ADHD would not have
16 made it through a six-, seven-hour school day. But
17 my child was there for the four hours, did the work
18 that was expected of them, again, and did the extra
19 work, because of this school, because of these
20 teachers.

21 So, please, again, like they said,
22 enrollment has been up for CEPi. So please, give
23 future generations -- give the future kids that
24 have -- that nobody else wants that don't have a
25 chance wants, please, give them this opportunity.

1 Don't punish everybody for the acts that may have
2 happened.

3 I mean, these people care. The school
4 cares; the children care. Please keep the school
5 open.

6 Thank you.

7 THE CHAIR: Thank you. Flip Rowen.

8 MR. ROWEN: Good afternoon,
9 Commissioner -- Mr. Chairman. My name is Flip
10 Rowen. I'm a retired Air Force hospital
11 administrator.

12 You've heard a great deal today about the
13 wonderful things CEPi has done over the years. The
14 passion that the teachers exhibit in here is not
15 lost on the students in the classroom or the pods.

16 But I want to make sure you draw a
17 distinction between all of the financial issues that
18 are going on, the current year operational budget
19 issues that are going on, even the contractual and
20 statutory issues that you've been made aware of
21 through various avenues.

22 I know I, myself, have sent numerous
23 pieces of correspondence to Ms. Poulos and
24 Mr. Lange. I can only hope those were forwarded to
25 the rest of you.

1 But the point I make here is all of those
2 issues are outside the realm of the staff, the
3 teachers, who are helping these kids succeed.

4 So I would like to implore you to consider
5 that and specifically to consider keeping CEPi open.

6 I do understand there are issues that have
7 to be addressed, and possibly those could be
8 qualifications to keeping it open. I know myself,
9 through all the professional organizations I've been
10 in -- and I've been CEOs of tertiary care teaching
11 hospitals, if I expended my annual budget in six
12 months, I'd have been fired a long time ago.

13 I think that the principal should be
14 removed. I think that the governance council
15 president should be removed. I think they've failed
16 the school, the teachers, the students, the parents.
17 But that doesn't mean the school is a bad place, and
18 I implore you to keep it open.

19 Thank you.

20 THE CHAIR: Thank you.

21 Linda Klock.

22 MS. KLOCK: I don't like microphones. My
23 name is Linda Klock. It's K-L-O-C-K. And my son
24 goes to CEPi. If you close that school down, he
25 will lose everything he's worked so hard to get.

1 He was at Volcano Vista, and they just
2 trashed him. I have not seen him so energized to go
3 to school to take care of what he needs to do to
4 graduate.

5 He's my last one. I've raised four boys.
6 And I'm telling you, we need this school. We need
7 this school for the kids. And the teachers that are
8 there, they are awesome. And I'm -- I'm begging
9 you, don't take this away from him. He needs it.

10 There's a lot of kids at that school that
11 need it. And it's not because they just want to be
12 there. They enjoy going and learning. And my son
13 is one of those kids that if he doesn't have
14 something like this, he'll be lost. And he's here
15 with me today, as a testament to that.

16 So please do not close that school down.
17 You know, we can do anything. But if you close the
18 school down, you're going to have more delinquents
19 on your hands. And that's not fair. These kids can
20 be productive citizens in this world if we give them
21 a chance.

22 Thank you.

23 THE CHAIR: Thank you. That is the last
24 name on the list.

25 Oh, I'm sorry. It's still scratched out.

1 I should have made a mark or something. I can't
2 read the first name.

3 MR. SANCHEZ: It's Traci Sanchez. My
4 daughter is also a student at CEPi. My daughter has
5 always gone to parochial or non-traditional schools,
6 like charter schools. She's an avid softball
7 player. So public school was the only route to get
8 her in there, hoping for a scholarship.

9 In her eighth-grade year she was being
10 approached by scouts to play college. We put her
11 into traditional high school, Sandia High School.
12 And she completely got -- fell through the cracks.
13 She completely got lost. After three attempts of
14 suicide and 54 unexcused absences, which I had never
15 been notified about, in a two-month period, we
16 decided that it -- this just wasn't working for her.

17 And she had gone down a path of drugs, and
18 she's gone down a path of severe depression and
19 destroying herself, from a very straight-A student,
20 bright and diligent child, that we thought was going
21 to be our success child, to a complete nightmare
22 that I had never expected to go through with my
23 child.

24 We put her -- we did a lot of research on
25 charter schools, a lot of them, because I really had

1 my doubts about -- kids that are, you know, in
2 charter schools are kids that won't succeed, or kids
3 that can't make it, or kids that need this or that.
4 So we did our research, and we went to CEPi. We
5 agreed to put her there. And we told her it was a
6 test.

7 When we went to enroll her, Ms. Bustos
8 told her, "There's nobody holding your hand here.
9 There's not a counselor that's going to baby-sit.
10 If you want to do this, you have to do it yourself.
11 You have to step up and decide you want to graduate
12 from high school. The 54 absences aren't going to
13 cut it. You have 'X' amount of absences that you
14 can do."

15 She went in there lacking one credit;
16 luckily; she was behind in one credit. All D's; but
17 she was lacking. She now -- she went into that
18 school as a junior. She now will graduate early.
19 She has one credit at the end of this year.

20 When we first got there, it was a rough
21 start, and I didn't -- wasn't aware of all of the
22 issues that were going on. The school called me,
23 because she was having a panic attack, and she was
24 going to go and hurt herself, and she had her keys
25 to her car.

1 Mr. Hotchkiss took those keys from her and
2 made her stay until we could get there. He also
3 offered to go with us to Behavioral Health, where we
4 had to check her in.

5 This school does make a difference for
6 these children that can't survive in public school
7 or traditional school. These children need this.
8 You've heard many stories here today, that these
9 children need this type of environment and this type
10 of school.

11 I honestly believe my daughter will go on
12 to be a success and the leader I always knew that
13 she could be. She's talking about going back and
14 playing softball.

15 THE CHAIR: Time.

16 MR. SANCHEZ: Thank you.

17 THE CHAIR: Thank you.

18 Now, I believe that satisfies the Public
19 Comment portion.

20 We have another portion now is time for
21 closing arguments, which may be received from either
22 party.

23 We'll start with PED. And the time limit
24 on that will be ten minutes, if you need it.

25 MR. HILL: Mr. Chair, I hate to impose.

1 But can I take a quick recess?

2 THE CHAIR: Yes. Is that amenable?

3 COMMISSIONER GIPSON: It's fine by me.

4 Thank you.

5 THE CHAIR: Please be back in five
6 minutes. Is that suitable? Five minutes?

7 MR. HILL: That's perfect. Thank you.

8 THE CHAIR: Be back at 6:00.

9 (Recess taken, 5:55 p.m. to 6:03 p.m.)

10 THE CHAIR: Now recess is over. We are,
11 once again, to the part of the proceeding where we
12 have closing arguments. Each counsel will have ten
13 minutes.

14 We'll start with Counsel Hill.

15 MR. HILL: Mr. Chair, members of the
16 Commission, when we started about five hours ago, I
17 told you that, to be honest, I didn't want to be
18 here.

19 And that hasn't changed. It's hard to
20 close a school. It's -- it's one of the hardest
21 things that the Commission does, part of your role.

22 I also told you at the outset I wasn't
23 going to defame the school or challenge the
24 credibility or the character of the folks at the
25 school. I believe there are a lot of committed

1 individuals at this school, a lot of parents and
2 teachers who support the mission of the school.
3 That's clear.

4 I've been an educator, been a teacher. In
5 the course of this job, I've been able to go to a
6 lot of schools in New Mexico. And I've never come
7 across a school where the educators aren't
8 passionate, they don't care about their students
9 where people aren't working hard and advocating for
10 those students.

11 But at the end of the day, that's not what
12 this hearing is about. We're not here because PED
13 is saying CEPi has failed as a school, that their
14 student achievement is poor, that what they're doing
15 for kids is poor. Rather, there are serious issues
16 that were testified to today, and evidence was
17 submitted about the management of the school.

18 And all too often, this body sees schools
19 where it's the management -- where it's the adults
20 in charge of the adults in charge who aren't doing
21 right by kids, who aren't doing right by the staff.

22 At a certain point, it's the Commission's
23 discretion to determine when enough is enough and
24 when a school has reached a point where the
25 misconduct -- where the violations of law or the

1 failures of accounting warrant revoking the charter.

2 I understand that this is a hard decision
3 and that there are a lot of parents and students and
4 staff members who feel very passionately about this
5 school. I think it makes your job all that much
6 harder; because your role, as the Commission, is
7 really to do what's right systemically and to follow
8 the law. And if schools are continued to be allowed
9 to persist and continue in operations with very
10 serious financial transgressions, very serious
11 violations of law, very serious management issues,
12 that sends a message to the rest of the charter
13 community that, "You know what. If we just go in
14 front of the PEC, and we talk about how everyone is
15 passionate about the school, how our students are
16 doing well, that any of those other issues are
17 secondary."

18 I wish that I didn't have to make the
19 argument to you to revoke this school. I wish that
20 the management of the school had been better and
21 that the governing council of the school had
22 exercised more authority and more oversight over the
23 school.

24 It pains me to hear parents who are so
25 committed to a school; yet the staff -- or, rather,

1 the management -- of the school, isn't able to
2 deliver on their responsibility and, really, promise
3 to that school community.

4 When we have the issues like were
5 presented today at a school, it is very hard to see
6 that school being able to turn around and come back
7 from the financial precipice that it faces.

8 It's undisputed that the school did not
9 pay taxes. It's not disputed.

10 It's not disputed that they owe over
11 \$500,000 in tax liabilities, not including penalties
12 and interest. That's a substantial sum of money.
13 For a school with an operating budget that's under
14 \$2 million, it's very hard to imagine that sort of
15 liability being saddled on a school.

16 I think the issues that were presented
17 here showed clear violations of the law, clear
18 instances where generally accepted standards of
19 fiscal management were not met, instances where the
20 charter's contract was violated.

21 I think, individually, these
22 transgressions alone justify revocation; but taking
23 the totality of them together, I think that the
24 Commission should revoke this school's charter.

25 Thank you.

1 THE CHAIR: Thank you.

2 Counsel Fox?

3 MS. FOX: So let's just start with
4 operational allegations and recap what you've heard
5 today.

6 With respect to instructional hours, the
7 school believed, and continues to believe, that it
8 has a statutory waiver from the length of the school
9 day requirements pursuant to State statute in the
10 Charter Schools Act. And it believes that that was
11 confirmed in 2009 and then again in renewal on -- in
12 2014.

13 The school's block schedule is what it has
14 been, with additional student time, depending on
15 individual student needs, as contemplated by the
16 charter and the waivers.

17 With respect to attendance, the testimony
18 has been that attendance is regularly and properly
19 taken and communicated with parents. And the issue
20 in the first two weeks has been explained.

21 The wheelchair stall issue in the women's
22 restroom has been addressed.

23 With respect to program of instruction,
24 the levels of criticism leveled by Ms. Poulos are
25 unfair, unwarranted, represent a fundamental

1 misunderstanding of the CEPi model, and are outside
2 of CSD's jurisdiction.

3 Moreover, the school has demonstrated that
4 PEC need not be concerned that CEPi's teachers are
5 not teaching its students properly. They are. And
6 as student letters and testimony demonstrate, CEPi's
7 teachers go above and beyond.

8 With respect to staff files and background
9 checks, this is a classic area where CSD site visits
10 and technical assistance can and should point out
11 areas where improvement is necessary. In fact, this
12 has been CSD's approach in the past. Corrections
13 easily can be made in this area, and, in CEPi's
14 case, have been made, or will be made, once CEPi is
15 given access to the new computerized system for
16 background checks. All staff are indeed properly
17 licensed or are in process for licensure.

18 Yes, governing council turnover occurred,
19 and board members have resigned and been replaced.
20 The board now has six members, committed to seeing
21 this process through.

22 Ms. Loftis' testimony effectively rebuts
23 the conclusions reached by the CSD during the brief
24 site visit regarding ELL implementation.

25 With regard to RtI and SAT allegations,

1 the school's testimony again demonstrates that many
2 of the criticisms that were leveled against the
3 school were the result of the material not being
4 requested from the correct people, or the correct
5 information not being requested, or a
6 misinterpretation of what the school actually has
7 been doing, which has been complying with RtI and
8 SAT.

9 With regard to special ed, the school's
10 evidence shows that the school has 17 special ed and
11 two gifted students, with a full-time, licensed,
12 special ed teacher serving the students. Faculty do
13 comply with accommodations and modifications, and
14 services are being provided. There was a
15 discrepancy in two student service levels in
16 S.T.A.R.S., which is being addressed with PED.

17 Notably, as you've heard, the school was
18 afforded zero opportunities to address these
19 operational criticisms with CSD in an exit
20 conference or even just a conversation. CSD
21 proceeded straight to revocation with a rather
22 bizarre zeal.

23 Certainly, as with any organization,
24 issues may exist that need correction. And as in
25 any professional workplace, the school welcomes

1 criticism and suggestions for improvement as part of
2 a continuous improvement effort. To the extent that
3 the PEC feels that issues exist with this school's
4 operations, the proper avenue is a Corrective Action
5 Plan, pursuant to the provisions of the charter
6 contract. And the school remains willing to pursue
7 that avenue with the PEC.

8 On the financial side, you heard that
9 CEPi's financial problems occurred in years past,
10 not this year. CEPi's taxes are paid up for 2016,
11 and the school is projected to end the year with a
12 cash balance.

13 The school's financial issues in past
14 years are serious. No one's disputing that. But
15 they're fixable.

16 The opportunity -- the school is working
17 with PED and its contractors to get the school's
18 books reconciled and the school's financial
19 processes put back in order.

20 The school has to own the tax situation
21 from past years, and CEPi does.

22 What CEPi can say about this situation,
23 however, is that despite numerous audits, a full
24 renewal process, and frequent monitoring by and
25 reporting to PED by the school, the failure to pay

1 payroll taxes for fiscal years 2012 through '15
2 wasn't discovered by anyone until the fall of 2015,
3 and only then by a contractor hired by the school.

4 CEPi needs to stay open in order to pay
5 the tax liabilities, plus any penalties and
6 interest.

7 Current year taxes are up-to-date. CEPi
8 is committed to working with PED outside contractors
9 and PEC to put its financial house in order.

10 On behalf of the school, I ask that you
11 find that revocation is not warranted here under the
12 circumstances or under the law, and that you
13 consider a Corrective Action Plan as the better
14 alternative, and that you allow this school to
15 continue serving its students.

16 Thank you.

17 THE CHAIR: Thank you, Counsel. I'm going
18 to very quickly summarize where I think we're at
19 right now.

20 Counsel did tell us early on in this
21 session -- remind us that we are late in the school
22 year. There's a great deal of uncertainty at this
23 school because of the -- uncertainty. And I believe
24 my recommendation would be we, as a Commission, need
25 to resolve this this evening, even though given the

1 late hour. So we need to either make that decision
2 either to revoke or not to revoke.

3 Given that, if that's acceptable to the
4 Commissioners -- I'm looking to see if it's
5 unacceptable -- then our counsel has given us a
6 couple of ways we can get to that point.

7 If the Commission wishes, we can go into
8 Executive Session to deliberate and discuss this.
9 He said we are not required to do that. If this
10 Commission wishes, we can stay right here in open
11 session and have our deliberations and discussions
12 here in front of the audience.

13 Now, this is not audience participation.
14 It will be only Commissioner input, if we choose to
15 stay here.

16 So what is the will of the Commission?
17 Executive Session, or stay right here?

18 THE CHAIR: Executive Session?

19 All right. Then what do I -- I need to
20 read this, then. Our legal counsel says I need to
21 read this.

22 This hearing is now closed. The
23 Commission will now enter into its deliberations
24 regarding this matter, and no one other than the
25 Commission members and the Commission's attorney

1 will be permitted to participate in the
2 deliberation.

3 This hearing is being closed, pursuant to
4 NMSA 1978, 10-15-1(H)(3), of the Open Meetings Act.
5 The PEC will only deliberate on the revocation of
6 CEPi's charter.

7 After the deliberation, the Commission
8 will announce its decision, if one is reached.

9 I will now call for a motion to enter into
10 an Executive Session.

11 COMMISSIONER PERALTA: So move.

12 COMMISSIONER CARR: Second.

13 THE CHAIR: Commissioner Peralta has
14 moved; Commissioner Carr has seconded. We do need a
15 roll-call vote, Mr. Secretary.

16 COMMISSIONER PERALTA: Commissioner Carr?

17 COMMISSIONER CARR: Yes.

18 COMMISSIONER PERALTA: Commissioner
19 Chavez?

20 COMMISSIONER CHAVEZ: Yes.

21 COMMISSIONER PERALTA: Commissioner
22 Shearman?

23 COMMISSIONER SHEARMAN: Yes.

24 COMMISSIONER PERALTA: Commissioner
25 Armbruster?

1 COMMISSIONER ARMBRUSTER: Yes.

2 COMMISSIONER PERALTA: Commissioner

3 Toulouse?

4 COMMISSIONER TOULOUSE: Yes.

5 COMMISSIONER PERALTA: Commissioner

6 Peralta votes "Yes."

7 Commissioner Gipson?

8 COMMISSIONER GIPSON: Yes.

9 COMMISSIONER PERALTA: Commissioner

10 Bergman?

11 THE CHAIR: Yes.

12 COMMISSIONER PERALTA: Mr. Chairman, all
13 eight members have voted in favor of the Executive
14 Session.

15
16 THE CHAIR: Thank you. The motion and the
17 second have been approved by an eight-to-zero vote.

18 I will ask everyone in the room, except
19 Commissioners, to leave. Don't go too far, folks.
20 Don't go too far, 'cause we'll call you as soon as
21 we're through.

22 (Executive Session conducted
23 off the record.)

24 THE CHAIR: All right. I will note that
25 we are coming back from our Executive Session. I'm

1 told we don't have to take a vote on that; so we are
2 out of our Executive Session.

3 I will read this statement.

4 Pursuant to NMSA 1978, 15-10-1J, all
5 matters discussed in the Executive Session were
6 limited only to those relating to the possible
7 revocation of CEPi's charter, period.

8 I have a motion, if we are ready to offer
9 a motion.

10 I can see heads shaking.

11 All right. I will make the following
12 motion, then.

13 Based on the substantial evidence,
14 testimony, argument, and public comment presented
15 today, I, Vince Bergman, Chair of the Public
16 Education Commission, move to revoke the charter of
17 Creative Education Preparatory Institute, effective
18 June 30th, 2016.

19 Do I have a second?

20 COMMISSIONER GIPSON: Second.

21 THE CHAIR: I have a motion made by
22 myself; I have a second made by Commissioner Gipson.

23 Is there any further discussion?

24 I see no further discussion.

25 Mr. Secretary, can we have a roll-call

1 vote?

2 COMMISSIONER PERALTA: Commissioner
3 Shearman?

4 COMMISSIONER SHEARMAN: With a heavy
5 heart, yes.

6 COMMISSIONER PERALTA: Commissioner
7 Toulouse?

8 COMMISSIONER TOULOUSE: Yes, based only on
9 the fiscal mismanagement and the -- my feeling that
10 the board needs to have been responsible for that.
11 I can't condone that sort of fiscal mismanagement;
12 so I must vote "No."

13 COMMISSIONER SHEARMAN: No?

14 COMMISSIONER TOULOUSE: Sorry. I mean
15 "Yes."

16 COMMISSIONER PERALTA: That is "Yes" in
17 favor of the motion?

18 COMMISSIONER TOULOUSE: Yes, in favor of
19 the motion, based on my low blood sugar.

20 COMMISSIONER PERALTA: Commissioner
21 Ambruster?

22 COMMISSIONER ARMBRUSTER: Yes.

23 COMMISSIONER PERALTA: Commissioner Carr?

24 COMMISSIONER CARR: Yes.

25 COMMISSIONER PERALTA: Commissioner

1 Chavez?

2 COMMISSIONER CHAVEZ: Yes.

3 COMMISSIONER PERALTA: Commissioner

4 Peralta votes "Yes."

5 Commissioner Gipson?

6 COMMISSIONER GIPSON: Yes.

7 COMMISSIONER PERALTA: Commissioner

8 Bergman?

9 THE CHAIR: I vote "Yes," and with the
10 same caveat I've given in the past, that this is by
11 far, the most difficult decision I'm asked as a
12 Commissioner to make in this. And I do it with a
13 heavy heart, also.

14 COMMISSIONER PERALTA: Mr. Chair, that is
15 eight to zero in favor of the motion to revoke.

16 THE CHAIR: Thank you, Mr. Secretary. I
17 will note that that motion has been approved by an
18 eight-to-zero vote.

19 I have one final statement to read here.

20 Within 30 days from today, I will prepare
21 a written decision. The Commission will make and
22 issue its decision in accordance with the Uniform
23 Licensing Act.

24 A decision to revoke a charter may be
25 appealed by the governing body, pursuant to NMSA

1 1978, Section 22-8B-7.

2 This hearing is now adjourned. Thank you.

3 (Proceedings adjourned at 6:52 p.m.)

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certify that the foregoing pages constitute a true
transcript of proceedings had before the said
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State of New Mexico, County of Santa Fe, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on March 29, 2016.

Cynthia Chapman

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