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BEFORE THE PUBLIC EDUCATION COMMISSION

STATE OF NEW MEXICO

TRANSCRIPT OF PROCEEDINGS  
SPECIAL MEETING - PUBLIC HEARING

June 18, 2015

1:00 p.m.

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

REPORTED BY: Cynthia C. Chapman, RMR-CRR, NM CCR #219  
Bean & Associates, Inc.  
Professional Court Reporting Service  
201 Third Street, NW, Suite 1630  
Albuquerque, New Mexico 87102

JOB NO.: 3083L(CC)

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492



MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com

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A P P E A R A N C E S

COMMISSIONERS:

MS. CAROLYN SHEARMAN, Chair  
MR. VINCE BERGMAN, Vice Chair  
MR. GILBERT PERALTA, Secretary  
MS. KARYL ANN ARMBRUSTER  
MR. JEFF CARR  
MR. JAMES CONYERS  
MS. PATRICIA GIPSON  
MS. MILLIE POGNA  
MS. CARMIE TOULOUSE

STAFF:

MS. JULIA BARNES, Attorney for the PEC  
MR. MATT PAHL, Policy Director, PED  
MS. JULIE LUCERO, General Manager, Options for  
Parents  
MR. JOSHUA GRANATA, Assistant Attorney General,  
Counsel to the PEC  
MS. BEVERLY FRIEDMAN, Custodian of Records and  
PED Liaison to the PEC

For the Health Sciences Academy:

MR. MARK T. BAKER  
PEIFER, HANSON & MULLINS, P.A.  
20 First Plaza Center, Northwest, Suite 725  
Albuquerque, New Mexico 87102

For the New Mexico Public Education Department:

MR. DANIEL M. HILL  
Office of General Counsel  
New Mexico Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, New Mexico 87501-2744

## I N D E X

	PAGE
1	
2	
3	5
4	
5	6
6	7
7	
8	
9	31
10	36
11	
12	43
13	62
14	
15	66
16	
17	82
18	89
19	122
20	
21	128
22	130
23	
24	133
25	160
	161
	163

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBITS ADMITTED INTO EVIDENCE

A "Stipulations" 28

ATTACHMENTS

- 1 "Finding of Fact and Conclusions of Law"
- 2 "Proposed Conditions for Health Science [sic] Academy"
- 3 Sign-In Sheets (2 pages)

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492



MAIN OFFICE  
201 Third NW, Suite 1630  
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(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com

1 THE CHAIR: Ladies and gentlemen, I call  
2 to order this Special Meeting of the New Mexico  
3 Public Education Commission.

4 Mr. Secretary, may we have roll call?

5 COMMISSIONER PERALTA: Commissioner Pogna?

6 COMMISSIONER POGNA: Here.

7 COMMISSIONER PERALTA: Commissioner

8 Toulouse?

9 COMMISSIONER TOULOUSE: Present.

10 COMMISSIONER PERALTA: Commissioner

11 Armbruster?

12 COMMISSIONER ARMBRUSTER: Present.

13 COMMISSIONER PERALTA: Commissioner

14 Conyers? (No response.)

15 Commissioner Peralta is here.

16 Commissioner Gipson?

17 COMMISSIONER GIPSON: Here.

18 COMMISSIONER PERALTA: Commissioner

19 Chavez? (No response.)

20 Commissioner Carr?

21 COMMISSIONER CARR: Here.

22 COMMISSIONER PERALTA: Commissioner

23 Bergman?

24 COMMISSIONER BERGMAN: Here.

25 COMMISSIONER PERALTA: Commissioner

1 Shearman?

2 THE CHAIR: Here.

3 COMMISSIONER PERALTA: Madam Chair, you  
4 have eight members of the Commission present.

5 THE CHAIR: Thank you very much. I  
6 declare we have a quorum for this hearing.

7 Next item is Pledge of Allegiance and  
8 Salute to the New Mexico Flag. Commissioner  
9 Toulouse and Gipson, please?

10 (Pledge of Allegiance and Salute to the  
11 New Mexico Flag conducted.)

12 THE CHAIR: Thank you, all.

13 In case anyone has come in since I said it  
14 before, if you want to speak during the Public  
15 Comment section of this hearing, the sign-up sheet  
16 is out in the lobby, okay? Thank you very much.

17 Commissioners, we're to Item No. 2, which  
18 is Approval of the Agenda. As you know, we may  
19 reorder things, but we may not add anything to the  
20 agenda.

21 Any comments on the agenda?

22 Hearing none, may I hear a motion to  
23 approve?

24 COMMISSIONER POGNA: I do.

25 COMMISSIONER CARR: Second.

1 THE CHAIR: Commissioner Pogna moves to  
2 approve. Commissioner Carr seconds.

3 Any discussion?

4 All those in favor, please say "Aye."

5 (Commissioners so indicate.)

6 THE CHAIR: Any opposed, please say "No."

7 (No response.)

8 THE CHAIR: The agenda is unanimously  
9 approved.

10 Item No. 3 is the Hearing on Revocation of  
11 the Charter of Health Sciences Academy Charter  
12 School.

13 Is everyone ready? All right.

14 This is a hearing of the New Mexico Public  
15 Education Commission, hereinafter, "the Commission."  
16 This hearing will come to order at exactly 1:05 p.m.  
17 on Thursday, June 18, 2015.

18 This hearing is being conducted at the  
19 Jerry Apodaca Education Building, Mabry Hall,  
20 300 Don Gaspar, Santa Fe, New Mexico. The purpose  
21 of this hearing is to take evidence concerning the  
22 revocation of the charter of Health Sciences  
23 Academy.

24 I am Commissioner Carolyn Shearman, and I  
25 will preside over this hearing. I will make

1 evidentiary and procedural rulings, and those  
2 rulings are final.

3 Julia Barnes, our contract attorney, will  
4 advise me in this matter.

5 This hearing is being conducted in  
6 accordance with the Charter School Act, NMSA 1978,  
7 Sections 22-8B-1 to 17.1, 1978, as amended through  
8 2015.

9 This hearing is being recorded by our  
10 court reporter, Cindy Chapman.

11 To provide an accurate record, I will ask  
12 that only one person speak at a time and that  
13 everyone speak in a clear voice that can be heard,  
14 since the recorder will not pick up nods, gestures,  
15 or soft-spoken answers.

16 I also will ask everyone present to please  
17 silence all telephones and electronic equipment at  
18 this time.

19 The hearing is scheduled for approximately  
20 three hours. The Commission will provide 20 minutes  
21 for opening statements, ten minutes each; 60 minutes  
22 for each side to present the case, including the  
23 examination of witnesses and questions by  
24 Commissioners; 20 minutes for public comment,  
25 followed by 20 minutes for closing arguments, ten



1 minutes each.

2 Time will stop during questioning by  
3 Commissioners or our attorney.

4 Ms. Beverly Friedman will serve as our  
5 official timekeeper. And, Beverly, I know you have  
6 flashcards that you will hold up to help people to  
7 understand how much time they have left. So,  
8 please --

9 MS. FRIEDMAN: And when you're finished,  
10 (bell rings).

11 THE CHAIR: Thank you very much.

12 We will limit all testimony and public  
13 comment to issues identified as being within the  
14 scope of the hearing. The scope of the hearing has  
15 been set out in the Notice of Intent to Revoke the  
16 Charter of Health Sciences Academy, and includes the  
17 issues outlined in the memo from Matt Pahl,  
18 presented at the April 17, 2015, PEC meeting.

19 In addition, the Charter School Division  
20 has added three possible issues to the scope of the  
21 hearing.

22 First, failure to meet the terms of the  
23 contract, which include -- which indicate -- pardon  
24 me -- the school will implement project-based  
25 instruction.

1           Second, the school does not have Next Step  
2 Plans in place. 22-13-1.1, NMSA 1978, requires  
3 these plans for each student, grades eight through  
4 grade 12.

5           The school is -- and third, the school is  
6 not in compliance with special education  
7 programming.

8           Some of these issues may have been  
9 resolved already.

10           The Commission's decision will be made  
11 during a meeting convened pursuant to the Open  
12 Meetings Act and will occur as early as today during  
13 this open meeting.

14           The Commission may decide to revoke the  
15 charter of this school. The Commission may also  
16 decide to allow the school to retain its charter and  
17 may take testimony and hear arguments regarding  
18 conditions that may be placed on the school if the  
19 school's charter is not revoked.

20           Commissioners, I propose that we take  
21 testimony, argument, and public comment regarding  
22 revocation and then deliberate on the issue of  
23 revocation. If Commissioners then so further  
24 desire, we may then reconvene immediately thereafter  
25 to take further evidence on additional issues after

1 the issue of revocation.

2 If this process is used, I will provide  
3 each side with additional time to provide argument  
4 and testimony, if necessary, on any additional  
5 issues. However, the public will only be provided  
6 with one opportunity to provide comment. That will  
7 be during this first phase of the process.

8 In accordance with the Charter School Act  
9 and the Open Meetings Act, the Commissioner --  
10 pardon me -- the Commissioners present today may  
11 make and issue its decision immediately following  
12 this hearing. If the Commission decides that it  
13 needs more time to come to a complete decision, we  
14 will let you know the next steps that we will take  
15 to issue a decision in this matter.

16 If no decision is reached today, the next  
17 possible time when the Commission may discuss this  
18 matter is tomorrow. There is an agenda regarding  
19 this matter on the PEC meeting agenda for tomorrow,  
20 Friday, June 19, 2015, at the Jerry Apodaca  
21 Education Building, Mabry Hall, 300 Don Gaspar, in  
22 Santa Fe, New Mexico.

23 The Commission may take action at a  
24 time -- at a later time if a complete decision is  
25 not reached today; however, if the Commission does

1 consider this issue after today, only those  
2 Commissioners present today or who have read a full  
3 transcript of this hearing will take part in that  
4 decision.

5 Representatives from the school are  
6 welcome to attend the Commission meeting, if they so  
7 desire.

8 The Commission will issue a written  
9 decision pursuant to the Charter School Act when a  
10 decision has been reached.

11 Item No. 4: At this time, I will ask the  
12 parties to enter their appearance for the record.  
13 First, the Department. Who is here from PED?

14 MR. HILL: Madam Chair, members of the  
15 Commission, Dan Hill for the PED. And I'm joined  
16 by -- with Matt Pahl, who is the Policy Director of  
17 the Public Education Department.

18 THE CHAIR: Thank you very much. And on  
19 behalf of the Respondent, Health Sciences Academy?

20 MR. BAKER: Madam Chair, members of the  
21 Commission, Mark Baker. And with me here are  
22 members of the school, if they could, at the Board's  
23 discretion, briefly introduce themselves so you  
24 would know who's present. Jacob Montañó, the Head  
25 Administrator.

1 THE CHAIR: Thank you.

2 MR. BAKER: Introduce yourselves, as well.

3 MS. BEEGLE: (Inaudible.)

4 THE CHAIR: Please speak up very clearly,  
5 please.

6 MS. BEEGLE: Good afternoon, Madam  
7 Chairman, Fellow Board Commission -- I'm sorry; I'm  
8 nervous -- members of the Commission, Melanie  
9 Beegle, admin assistant, Health Sciences Academy.

10 DR. ORMAND: Madam Chair, members of the  
11 Commission, Brian Ormand, new Board member with  
12 Health Sciences Academy.

13 MR. ACEVEDO: Madam Chair, members of the  
14 Commission, Juan Acevedo, Board member and also HSA  
15 parent.

16 MR. TAPIA: Good afternoon, everyone. I'm  
17 Joseph Tapia. I'm a member of the HSA Governing  
18 Council, and I'm from Albuquerque, New Mexico.

19 THE CHAIR: Thank you.

20 MR. TAPIA: And that's it. T-A-P-I-A.

21 THE CHAIR: Please let the record reflect  
22 that Commissioner James Conyers is in attendance  
23 now.

24 Thank you very much.

25 Let's move on to preliminary matters.

1 Mr. Dan Hill, do you have preliminary  
2 matters to bring to us?

3 MR. HILL: Yes, Madam Chair. The parties  
4 have come to stipulations as to a number of the  
5 facts and think at this time it would be appropriate  
6 to share those with the Commission.

7 We have copies here for you. And then  
8 there is one signed original that we will -- that we  
9 will make copies of, as well. So at this point  
10 would it be appropriate to share those stipulations?

11 THE CHAIR: Please do.

12 MR. HILL: Thank you.

13 THE CHAIR: And, Mr. Hill, do you plan to  
14 read those into the record?

15 MR. HILL: During our case in chief or our  
16 case, we will.

17 THE CHAIR: Okay, thank you.

18 COMMISSIONER CARR: Madam Chair?

19 THE CHAIR: Commissioner Carr?

20 COMMISSIONER CARR: My understanding, he's  
21 going to read this whole thing into the record? Is  
22 that necessary?

23 THE CHAIR: I believe it is.

24 COMMISSIONER CARR: All right, if it's  
25 necessary.

1 MR. HILL: Madam Chair, it's up to the  
2 Commission. I think Mr. Baker and I would be  
3 comfortable with having it as an exhibit attached to  
4 the hearing. But if the Chair prefers, we can read  
5 the stipulations into the record.

6 MS. BARNES: This is Julia Barnes. I just  
7 had a question in terms of what the stipulations  
8 are, 'cause I know that they also include several  
9 conditions. Is -- is CSD stipulating to the  
10 conditions or just the facts?

11 MR. HILL: Madam Chair, members of the  
12 Commission, Ms. Barnes, the Charter Schools Division  
13 and the Department is stipulating to the facts and  
14 stipulating to the fact that the school has -- has  
15 submitted those conditions as conditions that they  
16 have offered to the Commission, should the school be  
17 not revoked. The stipulations should not be read as  
18 an indication that the Department is suggesting  
19 those conditions are sufficient or appropriate, or  
20 any indication of the converse, as well.

21 THE CHAIR: Mr. Baker?

22 MR. BAKER: Madam Chair, members of the  
23 Commission, we didn't ask the Charter Schools  
24 Division to weigh in on that because we recognize  
25 that we have a big preliminary hurdle to clear

1 before conditions should be considered. But we  
2 think it's appropriate for you all to see the steps  
3 and the plans that the school has outlined in  
4 determining whether revocation is appropriate.

5 So we wanted those before you with the  
6 Charter Schools Division's acquiescence that they  
7 have been proposed. If we get to that stage, we  
8 would simply ask that the Charter School Division be  
9 prepared to weigh in on the appropriateness of that,  
10 as the Commission deems appropriate at that time.  
11 We didn't want to get ahead of the Commission or  
12 presume anything.

13 THE CHAIR: Thank you, Mr. Baker.

14 Ms. Barnes?

15 MS. BARNES: Julia Barnes, again. If I  
16 can just -- so we have a clean record, Mr. Hill, can  
17 I just confirm that you all are stipulating to Facts  
18 1 through 8 on the first page, 9 through 15 on the  
19 second page; on Page 4, you're stipulating to  
20 numbers 18 and 19 on Page 4; paragraph -- you're  
21 stipulating as well to paragraph 21 on Page 4; Facts  
22 Nos. 22 through 31 on Page 5; the Facts numbered 32  
23 and 33 on Page 6.

24 On Page 7, you're stipulating to the  
25 entire page, numbers 35 through 45. On Page 8,



1 you're stipulating to Facts 46 through 51. And on  
2 Page 9, you are stipulating to Fact No. 53.

3 I've tried to skip all the conditions. Is  
4 that correct?

5 MR. HILL: Madam Chair, members of the  
6 Commission, Ms. Barnes, that is correct. And I'll  
7 just note for the record, the numbers you omitted,  
8 we stipulate to the -- to them, as drafted. And  
9 they state that -- so these -- for the  
10 Commissioners, these are all of the paragraphs under  
11 "School-proposed oversight and additional remedial  
12 measures if allowed to remain open."

13 We're simply stipulating that the school  
14 has proposed those oversight and additional  
15 remedies. We're not making a substantive statement  
16 as to whether we believe those are good or bad  
17 remedies at this point.

18 MS. BARNES: And, Mr. Baker, if I can just  
19 follow up? So the numbers that I read, which are  
20 not conditions, the school is admitting to those  
21 facts.

22 MR. BAKER: That's correct, members of the  
23 Commission. Those facts are stipulated, as well as  
24 the school's proposal for additional conditions, if  
25 permitted to go forward. The facts are all

1 stipulated.

2           And I believe that -- I can't remember the  
3 paragraph number offhand -- paragraph 4 stipulates  
4 that, to the extent there were additional matters  
5 that had been raised in the CSD site visit memo, or  
6 otherwise, that are not contained in the  
7 stipulations, the Public Education Department is  
8 stipulating that those are -- those have been  
9 resolved following further inquiry into the school.

10           THE CHAIR: Thank you. Thank you both for  
11 that information.

12           Mr. Hill, did you have something else?

13           MR. HILL: I'm just going to clarify.

14 Paragraph 5 was the paragraph Mr. Baker was  
15 referencing that states, "To the extent a matter the  
16 PED had previously raised is not addressed below,  
17 that omission reflects the PED's withdrawal of the  
18 issue after clarifying the facts with the school."

19           And to explain, Madam Chair, members of  
20 the Commission, that simply means all of the facts  
21 are stipulated to here. If something is not in this  
22 document that was raised previously in Mr. Pahl's  
23 memo, that issue has been withdrawn on the basis  
24 that facts were provided by the school showing it  
25 was no longer an issue, or was not an issue in the

1 first instance.

2 THE CHAIR: Okay, thank you.

3 Ms. Barnes?

4 MS. BARNES: Let me just further clarify,  
5 Mr. Hill. I think that there were a few issues  
6 raised afterwards by the Charter Schools Division,  
7 and I'm assuming that statement refers to those  
8 other issues, as well.

9 MR. HILL: Ms. Barnes, I believe we're  
10 restricting the stipulations solely to the matters  
11 that were before the Commission for this hearing.  
12 And so if there were other findings or  
13 determinations made by the Charter Schools Division  
14 that are outside of the scope of this hearing, they  
15 wouldn't be addressed in this -- in this  
16 stipulation -- these stipulations, regardless.

17 And to the extent any issues were properly  
18 raised before the Commission, all of the  
19 stipulations within these -- this document reflects  
20 all of the facts that have been agreed to by the  
21 parties. And to the extent an issue that was raised  
22 before has been withdrawn, the Commission should  
23 note that that means the PED is withdrawing that as  
24 a basis for revocation for the school.

25 MS. BARNES: So the Charter Schools

1 Division was authorized to present additional issues  
2 within the scope of the hearing, and they did that.  
3 Commissioner Shearman just raised -- just read  
4 those:

5 Failure to meet the terms of the contract,  
6 which indicate the school will implement  
7 project-based instruction; the school does not have  
8 a Next Step Plan; and the school is not in  
9 compliance with special education.

10 So those were properly brought into the  
11 scope of this hearing. And I'm just assuming that  
12 the paragraph you just referred to also relates to  
13 those three items.

14 I think all that's remaining is one issue  
15 on special education, if I'm correct.

16 MR. HILL: That's correct.

17 THE CHAIR: Okay, thank you.

18 Commissioners, this is a lengthy document.  
19 It's also an important document. I suggest we take  
20 whatever time is necessary so that all Commissioners  
21 can read through this document and be comfortable  
22 with it before we move on. Is that satisfactory?

23 MS. BARNES: Now, let me just clarify,  
24 from Mr. Baker. You sent me a document last night.  
25 I believe it's exactly the same; is that correct?

1 MR. BAKER: Madam Chair, members of the  
2 Commission, correct.

3 THE CHAIR: Thank you. Commissioners?  
4 I'm sorry. Commissioner Toulouse?

5 COMMISSIONER TOULOUSE: Madam Chair, for  
6 the record, I would just like to say I read this  
7 last night. I've checked through it again today.  
8 And I think some other Commissioners may agree with  
9 me. This is not a clean document, in my mind. This  
10 should have been two separate sections or two  
11 separate documents, because I don't want to ever,  
12 later on, whether this is put in as an exhibit or  
13 what, have the confusion that we're agreeing that --  
14 before we've done any voting or any hearing, that  
15 these other conditions, if they're met, we're going  
16 to approve it.

17 I just think it would be a much clearer  
18 document if those were a completely separate  
19 document, or at least a completely separate section  
20 of the document. And so I think it's too late to do  
21 anything now; but I want to be on the record saying  
22 I don't think this is a clean document. Thank you.

23 THE CHAIR: Thank you.

24 COMMISSIONER GIPSON: Madam Chair, I'm  
25 just going to reiterate and support. I'm

1 uncomfortable with accepting the conditions in that  
2 same document as what -- the stipulations. I'm not  
3 happy with it; but I know at this point in time,  
4 there's probably not much we can do with it. But  
5 I -- I'm not happy with that.

6 MR. HILL: Madam Chair, if I would, could  
7 I respond to those comments?

8 It was certainly not PED's intention -- I  
9 believe I'm safe speaking for Mr. Baker -- to put  
10 forward a document that would somehow hamstring the  
11 Commission or state that you're accepting some sort  
12 of condition.

13 The purpose of the stipulations, in the  
14 litigation context, is that the parties agree to  
15 certain facts. And so rather than having an  
16 evidentiary hearing, where we're putting on evidence  
17 which both parties agree to, we're setting all the  
18 facts that were agreed upon.

19 I think it speaks highly of the school  
20 that they don't dispute many of the facts, or  
21 virtually all of the facts, in this case. And  
22 rather than waste everyone's time in putting on  
23 evidence where there is no dispute, they would  
24 stipulate to those facts.

25 The -- with regard to the conditions --

1 and I did a poor job of explaining this, and the  
2 document may not explain it very well -- all that  
3 the Department is doing is acknowledging that these  
4 are conditions proposed by the school. Rather than  
5 having some sort of evidentiary hearing, where we're  
6 disputing whether the school has proposed  
7 conditions, we thought it was prudent to say, "This  
8 is what the school has proposed, and we'll give it  
9 to the Commission for you to review and decide, in  
10 your discretion, whether to revoke the school,  
11 whether to accept those conditions, whether to  
12 propose other conditions, et cetera."

13 It should be -- it should be clear; but we  
14 don't endorse any of those conditions. That's not  
15 what the purpose of the stipulations was to do. And  
16 it also should be clear that the stipulations are an  
17 agreement between the parties, and they don't have  
18 any binding on the Commission. You don't have to  
19 accept the stipulations as facts; although, it would  
20 be odd if you -- if you denied a fact that both of  
21 the parties agreed to.

22 But we're not trying to, in any way,  
23 invade our authority or discretion with the  
24 document. And I apologize for any confusion there.

25 THE CHAIR: Ms. Barnes?

1 MS. BARNES: I just wanted to say, for the  
2 Commissioners, that what I have prepared for you to  
3 consider separates the findings of fact from a  
4 potential later conversation about the conditions.

5 So that ties in exactly with what Mr. Hill  
6 was just saying, that you can bring this document  
7 into evidence, but you may look at them separately.  
8 And I have them provided separately for you.

9 THE CHAIR: Mr. Baker?

10 MR. BAKER: Madam Chair, members of the  
11 Commission, just to round this out, it's not the  
12 school's intention to try to foist the conditions on  
13 you; rather, it's to give you the context -- if  
14 you're deciding the ultimate sanction on the  
15 school -- to understand what the school has done and  
16 is willing to do, we believe, is relevant for your  
17 consideration; but in no way do we expect this binds  
18 you or in any way narrows the field of what you can  
19 or should consider today.

20 This is to show you what the school has  
21 endured, what the school has done, and what the  
22 school, if allowed to survive, will do, going into  
23 the future. That's the sole purpose of the last  
24 section that's caused concern. And so we don't  
25 intend or expect that that has to be, or will be,



1 adopted by the Commission. It's in your hands.

2 THE CHAIR: Thank you. Any other  
3 discussion?

4 COMMISSIONER CARR: Just --

5 THE CHAIR: Commissioner Carr?

6 COMMISSIONER CARR: Just to stipulate,  
7 I've already read the document, as well. I would  
8 just as soon have it put in the record.

9 THE CHAIR: Perhaps it would be simpler to  
10 ask. Is there anyone yet who has not had time to  
11 read this document?

12 Commissioner Armbruster, have you read the  
13 document?

14 COMMISSIONER ARMBRUSTER: Yes, I have.

15 THE CHAIR: Commissioner Pogna, have you  
16 read the document?

17 COMMISSIONER POGNA: Yes.

18 THE CHAIR: Commissioner Peralta?

19 COMMISSIONER PERALTA: (Indicates.)

20 THE CHAIR: Commissioner Shearman has read  
21 it.

22 COMMISSIONER BERGMAN: Yes, I have.

23 COMMISSIONER CONYERS: Yes.

24 COMMISSIONER TOULOUSE: I have.

25 COMMISSIONER GIPSON: Absolutely.

1 THE CHAIR: Please let the record reflect  
2 all Commissioners say they have read this document.  
3 At this time, I would accept any stipulations of the  
4 party into evidence stipulated by both parties.

5 Okay? Moving on, then.

6 Given the stipulation, we may not need all  
7 of the following hearing procedures; but I still  
8 want to set it out on the record.

9 No. 2. Hearings before this Commission do  
10 not follow the Rules of Evidence. And as Hearing  
11 Officer, I may admit any evidence I so choose.  
12 Hearsay may be introduced and considered and will be  
13 given its due weight by the Commissioners. I may  
14 limit testimony that is irrelevant, immaterial, or  
15 unduly repetitious. The decision to exclude or  
16 limit such evidence will be made by me, as the  
17 Hearing Officer.

18 No. 3. The Rules of Privilege apply in  
19 this hearing.

20 No. 4. The Commission may take note of  
21 judicially cognizable facts of general, technical,  
22 or scientific facts within its specialized  
23 knowledge.

24 No. 5. The Department will present  
25 evidence first, and then Health Sciences Academy may

1 present evidence in defense of the allegations  
2 presented by the Department.

3 No. 6. Any witnesses offering testimony  
4 will be questioned first by the party offering the  
5 testimony and then by the opposing parties. I will  
6 permit direct examination, cross-examination,  
7 redirect examination, and recross-examination of all  
8 witnesses.

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

13 Before the Commission will consider public  
14 comment presented that is within the scope of the  
15 hearing, Commissioners may question a person  
16 providing public comment.

17 May I say that again and make sure I said  
18 it correctly?

19 Because the Commission will consider  
20 public comment presented that is within the scope of  
21 the hearing, Commissioners may question a person  
22 providing public comment.

23 No. 7. Commissioners or our counsel may  
24 question witnesses when both parties have finished  
25 their examination. I will recognize any

1 Commissioner, or our counsel, who wants to question  
2 a witness. No other questioning will be permitted  
3 after Commissioners and our attorney have finished  
4 questioning the witness.

5 No. 8. Are there any exhibits to be  
6 received into evidence by agreement or stipulation,  
7 other than the one document we already have?

8 MR. HILL: No.

9 MR. BAKER: No, Madam Chair.

10 THE CHAIR: Thank you very much.

11 Commissioners, let's take about a  
12 ten-minute break right now, please.

13 (Recess taken, 1:33 p.m. to 1:40 p.m.)

14 THE CHAIR: If everyone is ready, I'll  
15 call this hearing back into session. I would first  
16 like to remind everyone, please use the microphone.  
17 It's very hard to hear. And we want to be sure that  
18 all Commissioners hear everything that's said.

19 The other thing that I would like to  
20 announce is that the stipulations document will be  
21 available at the end of this hearing, if anyone  
22 wants a copy of it.

23 Okay? Let us move on.

24 Item 9. Mr. Hill, do you have any -- do  
25 you want to present any evidence on behalf of the

1 Department at this time?

2 MR. HILL: Madam Chair, brief housekeeping  
3 matter. I move the admission of the document that's  
4 been marked as Exhibit A, the stipulations, into  
5 evidence at this time.

6 THE CHAIR: Thank you. That document is  
7 accepted as Exhibit A, I believe Mr. Hill said.

8 All right. Is that everything, Mr. Hill?

9 MR. HILL: Thank you, Madam Chair, if  
10 you'll permit, I'll just offer a brief opening  
11 statement, and we will stand for questions.

12 THE CHAIR: Okay. Let me first ask you if  
13 anyone is going to testify on behalf of the  
14 Department.

15 MR. HILL: No, Your Honor; but we --  
16 myself and Mr. Pahl will stand for questions at the  
17 close of our opening statements. I believe this is  
18 amenable to Mr. Baker, and then he will present  
19 after the Department closes.

20 THE CHAIR: I have opening statements. So  
21 just a minute. So let me get to it, if you don't  
22 mind.

23 Mr. Baker, do you have witnesses that are  
24 going to testify on behalf of the school today?

25 MR. BAKER: Madam Chair, members of the

1 Commission, yes. Jacob Montañó and Dr. Ormand from  
2 the Governing Board are my two witnesses who will  
3 provide testimony.

4 THE CHAIR: At this time, I will  
5 administer the oath to all witnesses, if you will  
6 stand and raise your right hand.

7 (All potential witnesses sworn.)

8 THE CHAIR: Thank you, all.

9 MR. MONTAÑO: Yes, ma'am.

10 COMMISSIONER CARR: Madam Chair, just kind  
11 of a point of order. I just wanted to make sure at  
12 the -- since we're going to kind of -- since we're  
13 conducting this as a court semi-trial type of  
14 situation, I wanted to make sure that the PED had  
15 had the opportunity to give a closing statement, if  
16 they so desire, based on the testimony that they  
17 heard today. It's in --

18 THE CHAIR: Yes, yes.

19 COMMISSIONER CARR: Okay, good.

20 THE CHAIR: Anything else? Let me get to  
21 that point, and we'll be ready for your opening  
22 statements in just a moment.

23 Do either of the parties wish to invoke  
24 the Rule of Sequester to exclude witnesses during  
25 this hearing?

1 MR. HILL: Madam Chair, the Department  
2 does not wish to invoke the Rule of Sequester.

3 THE CHAIR: Okay. Mr. Baker?

4 MR. BAKER: Madam Chair, no, we do not  
5 wish to invoke the Rule.

6 THE CHAIR: Thank you very much. Now we  
7 are to opening statements. I will first ask the  
8 Department to go to present their opening statement.  
9 I would remind you, you have ten minutes.

10 MR. HILL: Thank you, Madam Chair,  
11 Commissioners.

12 The Department presents before you a case  
13 which is very unique in terms of the proceedings for  
14 the Public Education Commission. It is unique  
15 because the parties have agreed to the facts that  
16 underlie the claim.

17 As I said initially, I think this is a  
18 show of good faith from the school that they have  
19 submitted to, or agreed to, the facts that were  
20 presented. And they will present, I believe, their  
21 argument for why the Commission should exercise its  
22 discretion and not revoke their charter.

23 The facts that are set forth in the  
24 stipulations, which is Exhibit A to the record,  
25 fully encompass all of the facts before the

1 Commission today.

2 To the extent issues were excluded, the  
3 Commission should infer from that that those issues  
4 have been resolved in terms of the PED has received  
5 documentation from the school that resolve those  
6 issues and show that they are no longer an issue  
7 that support revoking the school's charter.

8 The PED is not putting on any direct  
9 testimony or evidence before the Commission because  
10 all of the facts included in the stipulation  
11 encompass really all of the evidence that was set  
12 forth in the prior hearing.

13 With that, we are here to stand for your  
14 questions. Mr. Pahl is standing, again, in place of  
15 the Charter Schools Director, who is, I believe, out  
16 of the country at this point. But we'd be happy to  
17 answer questions, to the extent you have questions.

18 And I'll just close with, the matter  
19 before the Commissioners is really within your  
20 discretion. It is -- the facts are before you. I  
21 do not anticipate any quibbling about what the facts  
22 are. Everyone agrees to what the facts are.

23 It is really up to the Commission as to  
24 what you do with those facts and how you choose to  
25 act in this instance.



1           And so at this point, I will stand for  
2 questions. Or, I guess, if you'd rather follow the  
3 process, we can have Mr. Baker give an opening  
4 statement. I'd be happy to deviate from the -- from  
5 the script, if you will, and have the PED stand for  
6 questions now, and then Mr. Baker can give an  
7 opening before he presents his witnesses. I think  
8 it's up to Mr. Baker and the Commission.

9           MR. BAKER: I have no objection to  
10 whatever procedure the Commission prefers.

11          THE CHAIR: Thank you. Commissioners,  
12 does anyone have questions for PED at this point, or  
13 would you rather hold your questions until after  
14 opening statements?

15           Commissioner Bergman?

16          COMMISSIONER BERGMAN: Madam Chair, does  
17 your script envision when we're going to discuss the  
18 later findings -- or those three items that you  
19 specifically mentioned that came up later? When is  
20 that envisioned to be handled in our process? Does  
21 that come later in your script?

22          THE CHAIR: Ms. Barnes, please respond.

23          MS. BARNES: Mr. Hill, I suggest you -- I  
24 suggest that the Commission go ahead and ask  
25 questions of PED, particularly if you have

1 questions -- not particularly -- but if you have  
2 questions about those three items that then were  
3 waived, I think that Matt Pahl would be able to  
4 answer those questions now about what they received  
5 and how those issues got removed.

6 THE CHAIR: Commissioner Bergman?

7 COMMISSIONER BERGMAN: With your  
8 permission, let me jump into that. That would have  
9 been my question for Mr. Pahl. I know you have been  
10 away for a month or two now. But since you're here  
11 and no one else from CSD is, can you brief us at  
12 least where CSD stands at this time, because they're  
13 the ones that brought forth those three additional  
14 items. And how will they be addressed, and when  
15 will they be addressed?

16 MR. PAHL: Madam Chair, members of the  
17 Commission, all the academic issues that were  
18 brought up after the memo, in the interim between  
19 the memo and now, there was evidence supplied by the  
20 school that -- that -- that convinced PED to  
21 withdraw them as -- as issues of concern.

22 However, I'll just underline that the  
23 Public Education Department and the Charter Schools  
24 Division brought forth a memo prior to those issues,  
25 and that memo and the issues articulated in that

1 memo, we found to be grounds for the recommendation  
2 that we made towards the Commission.

3 So it's not to -- to -- it's not to gloss  
4 over those issues that have been provided in the  
5 interim. But I do have limited information. And  
6 the reason is, is because, you know, for the hearing  
7 and the decision that was made earlier, it was based  
8 off the items in the memo. So I will try to answer  
9 them as best as possible.

10 Again, the academic issues that were  
11 brought forth in the interim, there was evidence  
12 provided by the school that caused PED to withdraw  
13 them.

14 COMMISSIONER BERGMAN: All right. Thank  
15 you for that answer because I think that was our  
16 problem, then.

17 Mr. Hill, you wanted to say something?

18 MR. HILL: If I may, Madam Chair?

19 THE CHAIR: Mr. Hill?

20 MR. HILL: Members of the Commission, the  
21 one academic issue that remains is that the school  
22 agrees that it does not have a special education  
23 teacher. And then they've -- we've stipulated the  
24 remedy that they've -- they've implemented in the  
25 interim, which is they're working to recruit a

1 special education teacher, as well as exploring  
2 other options, such as contracting with a qualified  
3 special education teacher from Gadsden School  
4 District.

5 That's the only one of those issues that  
6 remains before the Commission at this time.

7 COMMISSIONER BERGMAN: Thank you for that  
8 clarification, too. Yeah, I think that was all of  
9 my concerns.

10 Thank you, Madam Chair.

11 THE CHAIR: Thank you. Mr. Hill and  
12 Mr. Pahl, if you all would like to vacate the table  
13 and let Mr. Baker come up for his opening statement,  
14 please? Or I understand, Mr. Baker, should you  
15 choose, you may hold your opening statement till  
16 later, until the beginning of your case, if you so  
17 choose.

18 MR. BAKER: Madam Chair, members of the  
19 Commission, I will go -- if I can get this on -- I  
20 don't know if -- there we go. I'll go ahead and  
21 provide my opening statement.

22 THE CHAIR: Thank you.

23 MR. BAKER: And again, with me at the  
24 table is the Head Administrator of the school, Jacob  
25 Montañó.

1           To underline what Mr. Hill has presented  
2 to the Commission, my role here today is not to  
3 quibble with what was set forth in Mr. Pahl's  
4 memorandum on behalf of the Charter Schools Division  
5 in April.

6           At that time, you all were presented with  
7 a very difficult set of facts. You had a school  
8 that had had a long series of problems through the  
9 course of the year. You had what I believe was  
10 clear, from the record from that hearing, a Head  
11 Administrator that the Public Education Department  
12 and the Commission recognized was doing an admirable  
13 job trying to reverse course and get the school on  
14 the right track. But you had a lingering concern as  
15 to whether the school had effectively disentangled  
16 itself from the source of the problems that were  
17 driving the issues that arose through the Charter  
18 Schools Division site visit, complaints you all had  
19 heard.

20           As you'll see from the stipulations, the  
21 school has acknowledged those problems. It  
22 recognizes that those problems existed. We have  
23 also tried to lay before you additional facts that  
24 were not available to you in April when you made the  
25 initial step towards revocation that you took, so

1 that you all can see that there is additional  
2 information that warrants a close look at the  
3 school.

4 The easy decision today would be for you  
5 all to revoke the charter of the Health Sciences  
6 Academy. That choice will have serious consequences  
7 for the community of Santa Teresa, the surrounding  
8 communities, the students who remain committed to  
9 the school, the families who want their kids to go  
10 there next year, students in the night program to  
11 receive adult education. So my task today is to  
12 provide you enough information that you all can feel  
13 secure that you're not taking an unreasonable risk,  
14 subject to tight oversight, in allowing the school  
15 to remain open for at least another year to  
16 establish that, in fact, there is a route ahead.

17 And I think there are two facts in  
18 particular that were not available to you in April  
19 that are important for you to know today. And that  
20 is there has been a clean, permanent, and  
21 irrevocable severance between the school and the  
22 former chair of the Governing Council, Raphael  
23 Nevins. He is no longer entangled in the school's  
24 operations. Entities and people associated with him  
25 and those who were identified in Mr. Pahl's

1 memorandum as having triggered problems from the  
2 school, ranging from Texas students enrolling to  
3 conflict issues and the like, those people are no  
4 longer associated with the school and will not be  
5 associated with the school going forward.

6 On the heels of that separation, you now  
7 have a window where the school has operated free  
8 from those entanglements. And what you see is a  
9 matter of rapid progress in the right direction.

10 You had seen before that Mr. Montañó has  
11 been committed to this school, and he has a history  
12 of success as a school administrator, and he's fully  
13 committed to this, because he recognizes the Health  
14 Sciences Academy fulfills an important function for  
15 the community it serves that isn't available  
16 otherwise.

17 And I will have him speak to this more  
18 directly. But the way I have internalized it is  
19 this is a school that facilitates kids who otherwise  
20 might sell themselves short, who otherwise might  
21 look to careers that don't require reaching, to look  
22 at the real possibility that they can succeed in the  
23 health care industry. They can be doctors; they can  
24 be nurses; they can be EMTs. They can engage  
25 themselves in a way that isn't necessarily something

1 that they would otherwise think of.

2 And Mr. Montaña recognizes that that's a  
3 need in the community that otherwise will be  
4 unfilled.

5 He left a very secure, comfortable  
6 position at an established middle school, Santa  
7 Teresa Middle School, to take a risk on this school.  
8 And our request is that the Commission take a risk  
9 on this school, as well, a measured risk, which is  
10 you will see and have comfort that, in fact, there's  
11 been a clean brake, that, in fact, the Governing  
12 Board is overseeing the school and moving it in the  
13 right direction so that all responsibility doesn't  
14 rest with Mr. Montaña for the forward progress, that  
15 you have teachers, staff, and kids who want to see  
16 the school succeed.

17 And if I provide that to you and get you  
18 to that comfort level, my hope is that you will see  
19 that there's something worth salvaging here, that  
20 there's something important that can be brought out  
21 from this, and that a year from now, having taken  
22 the risk and not having washed your hands of the  
23 school, you will be glad to see there is a service  
24 being provided to kids in this part of the state  
25 that otherwise won't be available.



1           So my purpose today is to have Mr. Montaña  
2 talk to you a little bit about some of the  
3 particular issues Mr. Pahl raised, provide some  
4 additional clarification on those facts and steps  
5 that have been taken to move things forward; in  
6 addition, Dr. Ormand to talk to you about the  
7 Governing Board's role, the oversight it's providing  
8 and its commitment to moving the school forward  
9 through the entanglements that troubled it through  
10 the last year.

11           So that's a roadmap of my intentions for  
12 the day.

13           I would add that although the  
14 Commissioners didn't have additional questions for  
15 PED at the stage that it was opened up for them, I  
16 have no objection to you interjecting questions to  
17 the PED at any time, if you feel like you need input  
18 from them. The format here -- I don't feel like  
19 they've now given up their turn at the mic, for lack  
20 of a better term. I want you to have answers to the  
21 questions that you have, because we're asking you to  
22 give this school a chance. And the only way that I  
23 feel that you're going to be comfortable doing that  
24 is if you have the information you need to feel like  
25 this is the reasonable way forward, different from

1 what you saw in April.

2 Thank you.

3 THE CHAIR: Thank you, Mr. Baker.

4 The next item on our agenda is for the --  
5 each attorney to present their case. I'll ask you  
6 again, Mr. Hill, if you have anything else you would  
7 like to present at this time.

8 MR. HILL: No, Madam Chair. The  
9 stipulation contains all the factual evidence before  
10 the Commission, and we have no direct testimony to  
11 offer.

12 THE CHAIR: Thank you very much. You  
13 know, Commissioners, the next item we have,  
14 60 minutes allocated for the Respondent to present  
15 their case. I would really like to take a real  
16 break and make sure everyone, when they get back, is  
17 very comfortable in an hour's worth of case and  
18 questioning and really paying attention.

19 So could we take about ten minutes? And  
20 when we come back, we will be ready for Mr. Baker to  
21 present his case on behalf of Health Sciences  
22 Academy. Okay?

23 Let's do that. Ten minutes. We'll be  
24 back at about eight minutes after. Thank you.

25 (Recess taken, 1:58 p.m. to 2:09 p.m.)

1 THE CHAIR: I call back into session this  
2 hearing.

3 The next item is Respondents presenting  
4 their case. But before you begin, Mr. Baker, I  
5 would just like to remind Commissioners and our  
6 attorney that any questions you may have of  
7 Mr. Baker or any of his witnesses as he's putting on  
8 his case, you may ask questions of them. And those  
9 questions and the response do not count in his  
10 60 minutes.

11 So is everyone comfortable with that?

12 Okay. Mr. Baker, whenever you're ready,  
13 please.

14 MR. BAKER: Thank you, Madam Chair,  
15 members of the Commission. I would first call Jacob  
16 Montaña, the Head Administrator for Health Sciences  
17 Academy.

18 JACOB MONTAÑO,  
19 after having been first sworn under oath,  
20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BAKER:

23 Q. Mr. Montaña, would you first introduce  
24 yourself and tell the Public Education Commission  
25 when you joined the Health Sciences Academy?

1           A.     Madam Chair, honorary Commissioners, my  
2 name is Jacob Montaña, and I am the Director for the  
3 Health and Sciences Academy. I joined the Health  
4 and Sciences Academy in early December.

5           Q.     Mr. Montaña, would you briefly describe  
6 your background before joining the school?

7           A.     Yes, sir. I come from Las Cruces,  
8 New Mexico. And I'm also a very proud veteran of  
9 the United States Army and the New Mexico National  
10 Guard. I'm also very proud to say that I am a  
11 New Mexico State graduate and have received my  
12 degrees in elementary education, special education,  
13 and educational management and development.

14                   I have nine years' teaching experience in  
15 special education, elementary education, and  
16 bilingual education, and I have 21 years of  
17 experience as an administrator of both elementary  
18 and middle schools. And I'm happy to say that I've  
19 had very good success in working with some difficult  
20 schools and being able to turn them around.

21           Q.     Would you provide the Commission an  
22 example of a school that you were successfully able  
23 to turn around?

24           A.     Most recently, it would have been when I  
25 was at Mesquite Elementary School in Gadsden

1 Independent School District, where I was a  
2 principal. The State had threatened to come in and  
3 take over the school. At that time -- because the  
4 school was low performing, at that time, my staff  
5 and I had to develop a governance plan in unison  
6 with the State Department.

7 We were able to do so and turn the school  
8 around, I'm happy to say, in two-and-a-half years'  
9 time and make, at that time, before the school  
10 report card period reporting, make AYP, Adequate  
11 Yearly Progress, in every one of our subgroups:  
12 Special education, bilingual education, and regular  
13 education, in regards to mathematics and language  
14 arts specifically.

15 Q. Now, I'm going to shift gears with you,  
16 Mr. Montañó. And I'm going to ask you what's been  
17 discussed already this afternoon, the stipulations  
18 document that's before the Commission as Exhibit A.

19 Are you familiar with that document?

20 A. Yes, sir, I am.

21 Q. Have you reviewed it carefully?

22 A. Yes, sir, I have.

23 Q. You acknowledge in that document a number  
24 of problems at the school. Are you fully  
25 comfortable with those acknowledgments and

1 admissions?

2 A. As much as it pains me to say so, yes,  
3 sir, I am.

4 Q. And there are additional stipulations  
5 regarding steps you've taken to move the school  
6 forward. Are those accurate reflections of actions  
7 you've taken?

8 A. Yes, sir, they are.

9 Q. Have those been supported -- well, let me  
10 back up. Have those been supported by the Governing  
11 Board since recent transitions in that board's  
12 composition?

13 A. I'm happy to say yes, they have, most  
14 certainly.

15 Q. There is also a section in the  
16 stipulations that discusses additional oversight  
17 propositions and remedial steps that the school, if  
18 it was allowed to remain open, is proposing as  
19 potential actions that can be imposed, conditions  
20 that could be imposed.

21 Are you comfortable with the school's  
22 ability to comply with those if the Commission were  
23 to choose to allow the school to stay open?

24 A. Yes, sir, of course.

25 Q. And is the Governing Board comfortable

1 with those steps, as well, based on your knowledge,  
2 Mr. Montañó? I'll ask Dr. Ormand, as well. But  
3 based on your knowledge.

4 A. Yes, the Governing Board is, as well, and  
5 they're very supportive.

6 Q. Okay. I want to step back and talk a  
7 little bit more about transition within the school.  
8 At the time of the Charter Schools Division's site  
9 visit, who was the chair of the Governing Board?

10 A. That would be Mr. Raphael Nevins, sir.

11 Q. And had he been the chair of the Board  
12 since you joined the school in December?

13 A. Yes, sir.

14 Q. Is he still in that role?

15 A. No, sir, he is not.

16 Q. When did that change?

17 A. April 23rd of this year.

18 Q. And was that by action of the Governing  
19 Board?

20 A. Yes, sir, it was.

21 Q. Are you aware of the vote among the  
22 Governing Board regarding removal of Mr. Nevins as  
23 the chair?

24 A. Yes, sir, I am. And it was a unanimous  
25 vote.

1 Q. Does Mr. Nevins have any relationship with  
2 the school at this time?

3 A. None whatsoever.

4 Q. Has that been true since the 23rd of  
5 April?

6 A. Yes, sir.

7 Q. Is the school going to have any  
8 relationship with Mr. Nevins going forward into the  
9 future?

10 A. None, none whatsoever.

11 Q. Now, in the -- in Mr. Pahl's memorandum --  
12 you've reviewed that document; correct?

13 A. Yes, sir, I have.

14 Q. And that's the document from the site  
15 visit in March?

16 A. Yes, sir.

17 Q. There are other individuals mentioned in  
18 that document as the source of problems within the  
19 school. Do you recall those individuals? I'm not  
20 asking you to list them. But do you recall those  
21 individuals?

22 A. Yes, sir, I do.

23 Q. And the individuals identified in that  
24 memorandum in association with problems at the  
25 school, are any of those individuals still



1 associated with Health Sciences Academy?

2 A. No, sir, they are not.

3 Q. Are they going to be associated with  
4 Health Sciences Academy going into the future?

5 A. Absolutely not.

6 Q. Since it unanimously removed the former  
7 Board chair, what has the Governing Board's role  
8 been in pursuing the changes that are identified in  
9 the stipulation, the steps that you have taken, and  
10 the school has taken, to move forward?

11 A. I must say it's a very welcoming thing to  
12 be supported by the Governing Board; whereas,  
13 before, I was not allowed to have communication with  
14 the Governing Board. But now, I am.

15 They're supportive. They offer direction,  
16 insight, and they're very, very positive. And as an  
17 educator of 30 years, it's a terrific feeling.

18 Q. When you say that you were not allowed to  
19 have communication with the Governing Board  
20 previously, can you explain that to the Commission,  
21 please?

22 A. It was not allowed by Mr. Nevins, the  
23 president of the Governing Board at that time. We  
24 were not allowed to have communication with any of  
25 the Board members.

1 Q. And since his removal, have you been in  
2 regular communication with your board?

3 A. Oh, yes, sir, very much so.

4 Q. And have you had any resistance or  
5 pushback on any of the proposed changes that you've  
6 made or that have been suggested?

7 A. No, sir. I've only received strong  
8 support and direction and guidance from our present  
9 governing board.

10 Q. In Mr. Pahl's memorandum, there was  
11 reference to an entity called "Healthy Futures,  
12 Incorporated."

13 Can you give the Commission a general  
14 sense of what that entity is?

15 A. I really wasn't as aware of Healthy  
16 Futures as I am currently. Going into the position  
17 that I hold currently, I did do a little bit of  
18 research in regards to some things that were shared  
19 with me in regards to Healthy Futures and the  
20 association of a Mr. Raphael Nevins with Healthy  
21 Futures.

22 Q. What functions was Healthy Futures,  
23 Incorporated, providing for the school when you  
24 first arrived?

25 A. When I first arrived, as it was brought to

1 my knowledge, the food service program. The lease  
2 payment thing was not brought to my attention until  
3 later on.

4 Q. So leasing and food service?

5 A. Yes, sir.

6 Q. And does Healthy Futures, Incorporated,  
7 have any relationship to Health Sciences Academy  
8 today?

9 A. No way, none whatsoever.

10 Q. Was that relationship severed with support  
11 of the Governing Board?

12 A. Definitely.

13 Q. Any pushback at all?

14 A. No, sir.

15 Q. In Mr. Pahl's memorandum, there was also  
16 the discussion of students from Texas registering  
17 under New Mexico addresses and attending your  
18 school. Can you describe for the Commission how  
19 that came to your attention and what you did when  
20 you learned of it?

21 A. As the Commission very well knows, the  
22 schools are supported by the 40th, 80th, and 120th  
23 day count. I came aboard in early December and into  
24 January. Around January the 29th, which would be  
25 about a week prior to reporting into the S.T.A.R.S.

1 system, it was brought to my attention by our  
2 administrative assistant, Melanie Beegle, that there  
3 were some inconsistencies in regards to some of the  
4 students -- and I'll be specific -- to the nighttime  
5 students that were attending our school.

6 When I asked and inquired about what those  
7 problems were or issues or concerns were, she stated  
8 that several of those individuals shared the same  
9 address.

10 When I asked, "Well, what individuals,"  
11 she was able to go ahead and draw up two lists of  
12 students. I'm not sure as to the number of  
13 students. I want to say eight on one list living at  
14 the same address, and about 13, maybe 15,  
15 approximately, living at another address.

16 When I received that information,  
17 immediately that night -- because that program for  
18 our adult students is Monday through Thursday from  
19 6:00 to 10:00 at night -- I called all of the  
20 student body of the nighttime students into the  
21 cafeteria, where I carefully explained and outlined  
22 the procedures for our school in reporting accurate  
23 information to the S.T.A.R.S. system.

24 And I explained that's kind of how we  
25 funded our schools, and that if you were a Texas

1 resident, you shouldn't be coming to our school.

2 I didn't want to embarrass anyone. They  
3 took the information graciously. I made myself  
4 available after addressing the student body. I  
5 stayed until 10:00 that night and met with adult  
6 students attending the program.

7 One by one, they filed into my office.  
8 And it's -- other than this, it was probably the  
9 hardest thing I had to listen to. We had adult  
10 students that very much wanted to come to school  
11 there and very much wanted to better themselves by  
12 getting a high school diploma. And I had to tell  
13 them that they weren't allowed to.

14 But they understood, because what was most  
15 important to them was that the school remain open  
16 and that there be no hardship as a result of them  
17 reporting that they were New Mexico residents when,  
18 indeed, they were not.

19 Q. Did you obtain information about how it  
20 came to be that these students decided to submit  
21 New Mexico addresses despite their residence in  
22 Texas?

23 A. Yes, I did.

24 Q. And I'm not going to ask you to identify  
25 anyone by name. But can you, in general terms --

1 the Commission can ask for names, if they want. But  
2 for present purposes, I think it's spelled out in  
3 Mr. Pahl's memorandum.

4 Did you learn of an employee's involvement  
5 in that issue?

6 A. Yes, sir, I did.

7 Q. And what did you learn?

8 A. I learned that she had encouraged them to  
9 use those addresses.

10 Q. What did you do upon learning of that  
11 employee's involvement in this issue?

12 A. I'm sorry. Could you repeat that?

13 Q. Yes. I'll ask the question differently.

14 Is that employee still employed by Health  
15 Sciences Academy?

16 A. No, sir, she's not.

17 Q. When this issue was raised -- well, first  
18 of all, let's be clear on the time line. This is  
19 coming to your attention in January, end of January?

20 A. Yes, sir.

21 Q. And before the Charter Schools Division  
22 contacted you about the issue, had you successfully  
23 disenrolled the Texas residents that had been  
24 identified?

25 A. Yes, sir, I had.

1 Q. And so when the stipulations refer to you  
2 validating that the issue had arisen at the time  
3 that the Charter Schools Division contacted you  
4 about that, were you able to both tell them that the  
5 issue had arisen, and tell them that the students  
6 had already been disenrolled?

7 A. Yes, sir.

8 Q. With the exception of the former Board  
9 chair, did you get pushback from any Governing Board  
10 members regarding your action to disenroll the Texas  
11 students?

12 A. I did not.

13 Q. So I asked you this kind of on a whim,  
14 just trying to get a feel for you when we first  
15 started working together. And I'd like you to talk  
16 to the Board about it, because I thought it was  
17 interesting.

18 My question to Mr. Montañó was, you have  
19 an administrative job in an established school. Why  
20 would you agree to go over to Health Sciences  
21 Academy in December, on the heels of another  
22 administrator having left?

23 And so I would appreciate it if you would  
24 talk to the Commission a little bit about what led  
25 you to make this decision.

1           A.    Yes, sir.  I was in the same proximity,  
2    within about a mile to a two-mile range of the  
3    Health Sciences Academy at a very successful public  
4    school.  I was also the administrator there for the  
5    seventh-graders, and also the athletic coordinator.  
6    I was there for approximately four-and-a-half years.

7                        So I know the students, and I know their  
8    parents outside the realm of education, in sporting  
9    events, in other functions that I attended where  
10   they were present.

11                       I really much -- excuse me -- I really --  
12   when some of the students would be turned back to  
13   our school from the Health Sciences Academy, I was  
14   the first person that they met to come back and be  
15   re-enrolled in the school; so, of course, I would  
16   ask them, "Well, what's going on?  What's wrong?  
17   How come you don't -- how come you didn't stay over  
18   there?"

19                       Some of them honestly responded, "Well,  
20   they didn't have any sports."

21                       Others of them responded, "Well, it's kind  
22   of chaotic, and we don't have any homework.  We  
23   don't even have any school books."

24                       And I was, like, "Really?"

25                       And they said, "Yes."



1           And then I dove in a little deeper, and I  
2           said, "Well, what is it that's different about a  
3           charter school as opposed to a public school?"

4           And they said, "Well, we went with the  
5           intent of becoming involved, or maybe later on,  
6           becoming possibly a nursing assistant, an EMT, an  
7           OT, a veterinarian" -- the list went on and on and  
8           on.

9           And that intrigued me. It intrigued me so  
10          much so that as I started to question them further  
11          in regards to the opportunities that the Health and  
12          Sciences Academy provided, I thought it was a unique  
13          opportunity for the students in that community and  
14          also the parents. What a wonderful thing to be  
15          offered.

16          And I looked back at my own education,  
17          where I went to a middle school, and then I went to  
18          a high school. And we pretty much all followed the  
19          same curriculum. So when I graduated from high  
20          school, I had no idea what I wanted to do; thus, I  
21          joined the Army.

22          But this offered them some direction, a  
23          choice, if you will, in regards to where they may  
24          wish to go. And, really, what made it very  
25          intriguing for me is if you've ever been in our

1 district, or in our communities of Chaparral,  
2 Anthony, or Santa Teresa, this offers kids that  
3 don't have that kind of opportunity; they don't have  
4 that kind of encouragement. They don't go home to  
5 the Internet, color TV, books, and parents that are  
6 encouraging them to, you know, say, "Hey, go to  
7 college. Hey, you can become a doctor. Hey, you  
8 can become a nurse."

9 That's not what it's like down there. It  
10 isn't, you know. It really isn't.

11 So I wanted to be part of something that  
12 changed that, that encouraged students of that  
13 cultural background and in that, if you will,  
14 demographic area, socioeconomic class, what have  
15 you, I wanted them to know that, "Hey, you, too, can  
16 become a doctor or a nurse, and -- or an EMT. You  
17 can do it. You really can."

18 I wanted to be a part of that. I wanted  
19 to develop it. I wanted to push it forward. And as  
20 you very well know, my first time here in front of  
21 all of you was on the 17th. And I can't tell you  
22 enough, you know, in regards to that tough meeting,  
23 how tough it was.

24 But I'm still here. I'm not going to  
25 quit. I'm not going to stop coming before you if it

1 means offering something truly unique to the  
2 students in that area, or any students. I'd like to  
3 think that that's why we're all here.

4 I'm sorry. Sorry. I'm sorry.

5 Q. Mr. Montaña, since the 17th, have you  
6 communicated with parents and others in the  
7 community regarding the proposed revocation of the  
8 school's charter?

9 A. Well, you notice that it -- the transcript  
10 from the 17th of April appeared -- or was made  
11 available to the public, as well as newspaper  
12 articles released in the Las Cruces Sun News. I  
13 thought, at that point, we had 132 day students  
14 enrolled; and we had approximately 60 students,  
15 night students.

16 I thought that once that -- because it was  
17 in the paper, I thought that we would lose our  
18 students. And I'm here to tell you that out of  
19 132 students we had, that when that came out, and  
20 until the end of school, we didn't lose one student,  
21 not one.

22 So, you know, we worked very hard at  
23 reassuring our students and their parents, the  
24 community, that we would most assuredly fight for  
25 the school, for lack of a better term. I had

1 several meetings, not only with the students but  
2 with their parents and with the nighttime students,  
3 as well. And I've continued to have those meetings.

4 And as a matter of fact, they're waiting  
5 to hear from me as soon as I get back; so...

6 Q. Do you have an understanding of despite  
7 the moves toward revocation, the number of students  
8 you have who would enroll in the fall if the school  
9 is allowed to remain open?

10 A. Presently, we have about 158 to 60  
11 students presently enrolled for the daytime program  
12 and between 60 and 65 students for the nighttime  
13 program. We'll easily build that, just as -- or add  
14 to that number, dependent upon the decision that's  
15 made either today or tomorrow.

16 Through our recruiting efforts, that  
17 number is going to really climb.

18 Q. Now, what school district do most of your  
19 students come to the school from?

20 A. The Gadsden Independent School District,  
21 sir.

22 Q. And I think you mentioned the towns -- the  
23 primary towns in that district are Chaparral,  
24 Santa Teresa, Anthony?

25 A. Yes, sir.

1 Q. What other charter schools are there  
2 within the Gadsden District that would serve  
3 secondary students?

4 A. To my knowledge, there is maybe one; and I  
5 think that's Anthony Charter School, sir.

6 Q. How far would your students have to travel  
7 each way to attend a charter school in Las Cruces?

8 A. Approximately 35 to 50 miles; and that's  
9 just one way.

10 Q. Is there a closer option?

11 A. No, sir.

12 Q. Would you talk a little bit about the  
13 night students? What is the night program?

14 A. The nighttime program is specific to those  
15 students that want to get a high school diploma and  
16 not a GED. They range in the ages from 21 years of  
17 age all the way to about 60.

18 Q. Other than the Health and Sciences Academy  
19 program is there an adult diploma option for the  
20 students you're serving?

21 A. Not a diploma option. There is a GED  
22 option that is available, but not a diploma.

23 MR. BAKER: Madam Commissioner, members of  
24 the Commission, I would invite questions of  
25 Mr. Montaña at this time, if you all have any. Or I

1 can continue with the Board Chair's testimony and  
2 then open it up to questions for both.

3 THE CHAIR: Thank you, Mr. Baker.  
4 Commissioners, do you have questions of  
5 Mr. Montañó?

6 COMMISSIONER ARMBRUSTER: I do.

7 THE CHAIR: Commissioner Armbruster?

8 COMMISSIONER ARMBRUSTER: Yes. I  
9 wondered, on the academic performance of the  
10 students, you have measures of that? And what would  
11 that be?

12 THE WITNESS: Yes, ma'am. And that is  
13 reflected in the Discovery testing, which is  
14 administered to the middle school students four  
15 times during the process of the year, and to the  
16 high school students three times. And I'm happy to  
17 report that our English Language Learners have made  
18 significant growth in the areas of mathematics and  
19 language arts.

20 Specific to our English students, of  
21 course, they're doing well, not as well as we had  
22 hoped in regards to math and language arts. We have  
23 seen some growth, but it's been sporadic. Sometimes  
24 they go up, and then by the next testing measure,  
25 they go down.

1           But please recognize that the Discovery  
2 test, every time you take it, it gets a little bit  
3 harder. You're not taking the same test that you  
4 take at the beginning of the year that you're taking  
5 at the end. It gets progressively harder and more  
6 challenging for the students.

7           THE CHAIR: May I just make a point of  
8 order here, please? Under normal circumstances,  
9 that would be the first question any of us would  
10 ask. But that is not, I don't believe, part of the  
11 reasons for this hearing.

12           COMMISSIONER ARMBRUSTER: Okay. I'll  
13 stop.

14           THE WITNESS: Oh, sorry.

15           THE CHAIR: But let's do try to keep it  
16 within the scope. Thank you.

17           Commissioner Carr?

18           COMMISSIONER CARR: Mr. Montaña?

19           THE WITNESS: Yes, sir.

20           COMMISSIONER CARR: I have the greatest  
21 respect for you personally and your professionalism.

22 I -- and please know that with my question, I'm  
23 not -- I'm in no way doubting your veracity.

24           But my -- having said that, my question is  
25 how can you possibly guarantee that some of these

1 people who caused the issue -- and one of them is  
2 present today -- that they won't somehow edge their  
3 way in or have some sway that we don't know about?

4 And that's of grave concern to me. And I  
5 don't know how you can answer this question, because  
6 I just don't -- I don't think you can guarantee it.  
7 I don't think anybody could.

8 So if you have a response to that, I  
9 welcome it.

10 THE WITNESS: Well, first of all,  
11 Commissioner Carr, thank you very much for the  
12 positive comments, sir. I hold you, as well, in the  
13 highest respect and regard.

14 Sir, what keeps bringing me back here in  
15 front of all of you is the students that I  
16 represent. And I don't know that there are any  
17 guarantees. But I can guarantee you one thing. I  
18 will not -- will not, under no conditions, let  
19 anything bad, any harm or whatever you want to call  
20 it, whatever impropriety or what have you, come  
21 close to those students. There's no way. And on  
22 that, you have my word for what you may take it for.

23 But there's no way. If there was a  
24 guarantee, sir, boy, I would give it to you. But  
25 boy, I'm not going to let anybody or anything happen



1 to those wonderful kids that I represent, sir.

2 There's no way.

3 COMMISSIONER CARR: Thank you, sir.

4 THE CHAIR: Commissioner Gipson?

5 COMMISSIONER GIPSON: I just need a point  
6 of clarification, because I'm not sure -- how many  
7 students did you end up disenrolling? Because  
8 there's -- you know, there's been a couple of  
9 numbers around. So just for clarity.

10 THE WITNESS: The Texas students, ma'am?

11 COMMISSIONER GIPSON: Yes, the Texas  
12 students. Sorry.

13 THE WITNESS: Approximately 20.

14 COMMISSIONER GIPSON: Okay.

15 THE CHAIR: Anything else?

16 COMMISSIONER GIPSON: Well, only  
17 because -- you know, I'm looking at the  
18 stipulations, and it says 13. So 20 were  
19 disenrolled, but only 13 had been reported on the  
20 S.T.A.R.S.? That's where I'm getting confused.

21 THE WITNESS: If I may, Commissioner  
22 Gipson, refer to my administrative assistant who has  
23 that information right here to the right of me, she  
24 can speak more directly to that than I can. She's  
25 outstanding. Her name is Ms. Melanie Beegle.

1           And Honorary Commissioner -- or Madam  
2 Commissioner --

3           THE CHAIR: Could we -- hold on just a  
4 second, please.

5           THE WITNESS: Yes, ma'am.

6           MS. BARNES: Swear her.

7           THE CHAIR: Did you stand and take the  
8 oath?

9           MS. BEEGLE: No, ma'am.

10          THE CHAIR: Would you please do that now?  
11 Would you take the microphone, please, and state  
12 your name?

13          THE WITNESS: My name is Melanie Beegle,  
14 B-E-E-G-L-E.

15                                   MELANIE BEEGLE,  
16 after having been first duly sworn under oath,  
17 was questioned and testified as follows:

18          THE CHAIR: Please come up to the table.

19          MS. BEEGLE: Thank you.

20                                   EXAMINATION BY COMMISSIONER GIPSON

21          THE CHAIR: And we're going to ask you to  
22 hold that microphone pretty close to your mouth so  
23 we can all hear you.

24          MS. BEEGLE: Okay. Thank you.

25          THE CHAIR: Thank you.

1 MS. BEEGLE: So the question being?  
2 Repeat it again, please?

3 COMMISSIONER GIPSON: How many students  
4 that were out-of-state students were ultimately  
5 disenrolled?

6 MS. BEEGLE: So there were 20 that were  
7 ultimately disenrolled. There were only --

8 COMMISSIONER GIPSON: But only 13 had been  
9 reported for funding purposes?

10 MS. BEEGLE: Between the 40th and 80th  
11 day, because we caught them before the 120th.

12 COMMISSIONER GIPSON: That's all I needed.

13 THE CHAIR: Before -- may I ask you,  
14 before you walk away, please, is 20 the total number  
15 of -- I can't use any other word -- but fraudulently  
16 enrolled students? Was that the total number of  
17 fraudulently enrolled students?

18 THE WITNESS: Yes. Initially, the CSD --  
19 initially, the CSD had reported 19. We did find  
20 another initial one that, on my record sheet, was  
21 termed as a 10-day drop. We did establish that she  
22 was a Texas resident, and we submitted that as a  
23 Texas resident. So the total is 20.

24 THE CHAIR: Thank for you that  
25 clarification. For her?

1 COMMISSIONER BERGMAN: For you, actually.

2 THE CHAIR: Oh. Commissioner Bergman?

3 COMMISSIONER BERGMAN: I would just like  
4 to note, I think the correct terminology is  
5 "allegedly fraudulent" at this stage. Okay.

6 THE CHAIR: It's been stipulated. Would  
7 you agree, Mr. Baker?

8 MR. BAKER: Yes, Madam Chair.

9 THE CHAIR: Thank you very much. I don't  
10 want to be wrong. I was once before.

11 Any other questions --

12 COMMISSIONER GIPSON: Only once?

13 THE CHAIR: -- for this young lady?

14 COMMISSIONER CONYERS: Well, it could be  
15 for her. It's for someone from the school.

16 THE CHAIR: Commissioner Conyers, go  
17 ahead.

18 COMMISSIONER CONYERS: Okay. One of my  
19 concerns always with closure is looking at the  
20 amount of investment that the people of New Mexico  
21 already have in the school in terms of not only  
22 time, but money and the facilities and textbooks and  
23 so on. And you had said that when you're at the  
24 other school, the students came in and said, "Oh,  
25 they had no textbooks."

1 Well, do you have textbooks or E-books?  
2 Or what do you have there?

3 MR. MONTAÑO: I'm better with the old  
4 microphone.

5 Sir, most definitely so. We have  
6 textbooks ranging anywhere from Algebra 1,  
7 Algebra 2, geometry, biology, literature; all of the  
8 classes have been provided with textbooks. Plus  
9 we've received additional laptops to complete our --  
10 one of our labs in regards to an intro to chemistry,  
11 biology, earth and life science. And we are  
12 receiving, on a daily basis, all kinds of furniture  
13 and other things that were ordered through capital  
14 outlay monies that we are continuously receiving  
15 during the summer months to finish furnishing our  
16 school, sir.

17 COMMISSIONER CONYERS: Okay. Thank you.

18 THE CHAIR: Commissioner Armbruster?

19 COMMISSIONER ARMBRUSTER: And this is  
20 another clarification question. So the young man --  
21 I think he's what you said -- came back and said,  
22 "Well, they don't have textbooks"?

23 So is it true, if you know -- and you may  
24 not -- did they have textbooks? Apparently didn't  
25 have furniture or laptops or all these other things

1 that you have since gotten. So where did the  
2 capital outlay money -- A, did they have those  
3 things? And B, where did the money go if they  
4 didn't have it?

5 MR. MONTAÑO: When I first went into the  
6 school in December, and -- I visited the school, and  
7 I sat on my hands, if you will, to notice teachings  
8 and other things. I went into every one of the  
9 classrooms. And absent in 90 percent of the  
10 classrooms, except for one, which would be  
11 New Mexico History, there were no books. There was  
12 a curriculum, sort of speak [verbatim]; but it was  
13 here and there and over there and there.

14 And that had to be redirected, which is  
15 one of the first things I did when I became the  
16 administrator. I met with the teachers personally  
17 and professional learning communities and outlined  
18 all of the best teaching practices through the AVID  
19 strategies and also through Dr. Marzano's "nine  
20 essential components" for best teaching practices.  
21 And that's what we follow.

22 In regards to capital outlay monies, those  
23 things were taken care of in regards to ordering  
24 since the beginning of the year, I believe. I  
25 wasn't there at the beginning. I really didn't come

1 aboard until midyear. And so a list of -- let's  
2 call it a wish list -- of things that the teachers  
3 felt that they needed to be successful in regards to  
4 teaching students was developed.

5 Then it was narrowed down and -- to fit  
6 into the amount of capital outlay monies that were  
7 available. And once that was narrowed down, of  
8 course, it had to receive approval and so on and so  
9 forth.

10 And I learned that, well, when you're  
11 ordering things, capital outlay monies, you have to  
12 wait a long time to get stuff. So the teachers were  
13 without things that we take for granted, like  
14 student desks, chairs, bookshelves to put books in,  
15 locking cabinets and things of that nature, ma'am.

16 COMMISSIONER ARMBRUSTER: Thank you.

17 MR. MONTAÑO: Yes, we did get books. We  
18 really got books, yes.

19 THE CHAIR: Ms. Barnes?

20 MS. BARNES: I just had a quick follow-up  
21 question to Commissioner Gipson.

22 In terms of the seven students that  
23 weren't reported in S.T.A.R.S., did -- were they  
24 late arrivals to the school?

25 MR. MONTAÑO: Melanie?

1 MS. BEEGLE: Yes, ma'am. Their enrollment  
2 date was between 80th day and 120th day funding  
3 period; so they were not counted or funded for.

4 THE CHAIR: Okay. To follow up on  
5 Commissioner Gipson's questions, of the 19, 20 -- we  
6 were told 19 students were disenrolled. So it's now  
7 20 students were disenrolled. And that happened in  
8 January, you're saying?

9 MR. MONTAÑO: Yes, ma'am, towards the end  
10 of January.

11 THE CHAIR: Okay. Were they all night  
12 students?

13 MR. MONTAÑO: Madam Chair, yes, ma'am.

14 THE CHAIR: Okay. And of those  
15 20 students that were disenrolled, were they able to  
16 transfer to another school to finish their -- finish  
17 the academic year?

18 MR. MONTAÑO: They were adult students,  
19 Madam Chair. And I don't know about them  
20 transferring to another program such as ours.  
21 There's not another one in the area like the one  
22 that we offer, ma'am.

23 THE CHAIR: See, my concern here is that  
24 representatives of your school recruited those  
25 students, very likely told them to use New Mexico



1 addresses -- fraudulently so. They were there  
2 because the school told them they could be there.

3 Perhaps -- I don't know what adults have  
4 to do to come back to school. But it's my  
5 experience, the ones I have ever worked with,  
6 they're making a huge sacrifice to come back to  
7 school. They now understand how important that  
8 diploma is. GED won't get it. And this Commission  
9 has been told that many times.

10 So they're making a huge sacrifice to come  
11 back to school to earn that diploma. And through no  
12 fault of their own, they're kicked out of school,  
13 disenrolled, expelled, kicked out; it's all the  
14 same. They're gone, and they probably didn't get to  
15 finish. So all the work they put in that year, all  
16 the sacrifice they made that year, was for nothing.

17 And I -- that is what bothers me. In this  
18 whole -- of everything that's gone on in this  
19 school, that bothers me the most, that we have  
20 students who were truly trying to better themselves  
21 and their families, probably; and through no fault  
22 of their own, they didn't get to finish.

23 And I hold the school responsible for  
24 that. And I don't think there's any way that can be  
25 fixed, particularly if the school did not make an

1 effort to try to find those students another program  
2 to enroll in. I don't know that you can have any  
3 response to that; but I just want you to know that  
4 is my true overriding concern of all of this.

5 MR. MONTAÑO: Madam Chair, I share that  
6 sympathy, ma'am. And I apologize on behalf of the  
7 school. But I can assure you that I have taken  
8 steps to rectify that situation in regards to  
9 replacing a counselor with a dean of students, where  
10 credit -- accreditation can be made and direction  
11 can be offered, since the onset of registration.

12 So when you come in, and you are, let's  
13 say, recruited by someone to come in, you visit with  
14 the dean now. And we pull your records; we see  
15 exactly where you're at. We see exactly what you  
16 need, and clear direction is offered for you.

17 And, of course, at that time -- and I'm  
18 sorry, Madam Chair, but, you know, we have to ask  
19 for residency and things of that nature. And it  
20 breaks my heart, too, because these are people that  
21 want to better themselves. And if you -- and I  
22 would invite you and any of the other Commissioners  
23 to come to our school and see where we're at.

24 We're in the heel of New Mexico. Texas  
25 is -- El Paso, Texas, is right there. You could hit

1 it with a rock. And the border is about three miles  
2 away from us. And that's the Mexican border. And  
3 we have people all the time wanting to come in, even  
4 from Mexico, wanting to register to get a high  
5 school diploma from our school.

6 And it pains me, ma'am, to have to turn  
7 them away and say, "Well, I'm sorry. You're not a  
8 New Mexico resident."

9 Now, we can certainly make better efforts  
10 towards finding another program for them. We  
11 certainly can. And I apologize that I didn't have  
12 that information for them when they were  
13 disenrolled. I truly am. And I accept the  
14 responsibility of not having that for them. And I'm  
15 sorry.

16 THE CHAIR: Thank you for that.

17 Let me just ask one other question. One  
18 of the later issues that CSD brought forward was the  
19 lack of special education programming in your  
20 school. And in your introduction, I hear that you  
21 are a special education teacher.

22 So during your time at Health Sciences,  
23 were you able to implement any kind of special  
24 education program for the students that you  
25 obviously knew needed those services? What -- what

1 went on after you arrived at the school for those  
2 special education students?

3 MR. MONTAÑO: Madam Chair, you are  
4 correct. I am a special education major. I was a  
5 special education teacher, first and foremost, in my  
6 teaching career. I have been a part of IEPs,  
7 Individual Education programs -- or Plans -- for  
8 students, throughout my tenure as an educator.

9 As I came into the school, we did have a  
10 gentleman by the name of Jim Moseley [ph], who was  
11 providing services for our special education  
12 students, of which we have ten. Of the ten, four of  
13 them are gifted and talented. Gifted and talented  
14 students fall under the umbrella of special  
15 education in New Mexico; the other six were not.

16 I was a part of those IEPs. I have since  
17 interviewed prospective teachers wanting to -- with  
18 special education licensure. However -- and I mean  
19 this no disrespect -- but it's hard for me to offer  
20 a job when the school is kind of in the state that  
21 it's in. And I lost a very good candidate as a  
22 result.

23 I can't say -- I'm honest, and I'm  
24 truthful, and I'm upfront, Madam Chair. So when I'm  
25 interviewing these individuals and I'm saying,

1 "Well, we're in kind of a situation, and this is  
2 what it is," it's very hard to -- to offer something  
3 I can't deliver at this point, ma'am.

4 THE CHAIR: But I'm asking, since you  
5 arrived in December, I believe you said, did you  
6 take it upon yourself, perhaps, to offer services to  
7 these students who needed it, or bring in someone --  
8 I realize since April, perhaps, it would have been  
9 more difficult to offer someone a full-time job.

10 MR. MONTAÑO: Yes, ma'am.

11 THE CHAIR: But in December, January,  
12 February, you were there with no special education  
13 teacher with students who needed it. Am I  
14 understanding this correctly?

15 MR. MONTAÑO: Madam Chair, we had an  
16 individual. His name was Jim Moseley [ph]. And he  
17 was also a teacher for the Gadsden Independent  
18 School District.

19 THE CHAIR: Was he a special education  
20 teacher for you?

21 MR. MONTAÑO: Yes, ma'am. Yes, ma'am. He  
22 came in and he did all of the identification things.  
23 He held the IEPs. And he would visit with teachers  
24 in regards to the accommodations and the needs that  
25 the students needed.

1 THE CHAIR: But as far as offering  
2 specific special education services, you were not  
3 able to do that.

4 MR. MONTAÑO: Not specific, ma'am.

5 COMMISSIONER PERALTA: Madam Chair?

6 THE CHAIR: Commissioner Peralta?

7 COMMISSIONER PERALTA: So on that note,  
8 was he considered just on a consultant basis was  
9 what his job was? He was just consulting, making  
10 sure that the plans were in place; but then also  
11 touching base with the teachers to make sure these  
12 plans were followed through? Correct?

13 MR. MONTAÑO: Correct, sir.

14 THE CHAIR: Commissioner Armbruster?

15 COMMISSIONER ARMBRUSTER: Sorry. Two  
16 quick questions:

17 So if you were to find one of those rare  
18 special education teachers, you really couldn't  
19 offer a full-time job, because you only have six  
20 students. And the second part of that, so you can  
21 do it all at one time, is that you also don't have a  
22 GATE-certified teacher; is that correct?

23 MR. MONTAÑO: Let me address, if I may,  
24 ma'am, the first part of that. My background is in  
25 special education, and special education is actually

1 an endorsement attached to a degree, per se, in  
2 elementary education, or early childhood, or  
3 secondary.

4 So, for example, I may be a special  
5 education teacher, yes, for this part of the day;  
6 but then I am also certified to teach mathematics,  
7 language arts, or what have you, in the second half  
8 or the other realm of my teaching.

9 So that -- that's kind of -- we're looking  
10 for that magical person that can also do the --  
11 let's call it a .5, or a half-time, FTE for special  
12 education. We don't want to contract out.

13 It's very hard to get special ed people.  
14 We have contracted out for ancillary services such  
15 as psych services, speech, social work; all of those  
16 things have been taken care of. But we're having to  
17 go outside the school.

18 I really, really want someone inside the  
19 school to be a part of our family there that we have  
20 and take ownership.

21 COMMISSIONER ARMBRUSTER: And for the  
22 GATE-certified, endorsed, whatever?

23 MR. MONTAÑO: If you -- "GATE" is a term  
24 I'm not really familiar with, ma'am. I'm sorry.

25 COMMISSIONER ARMBRUSTER: Gifted -- what

1 do you call --

2 MR. MONTAÑO: Gifted and talented?

3 COMMISSIONER ARMBRUSTER: Gifted and

4 talented, okay.

5 MR. MONTAÑO: Yes, ma'am. Generally, most  
6 gifted and talented students, Commissioner  
7 Armbruster, are basically monitored. What they fall  
8 into, to use old terms, is an A-level status, where  
9 they receive just -- if I was a special education  
10 teacher for gifted students, I would visit with them  
11 maybe once a week, 15 to 25 minutes a week, just to  
12 see how things were going, and then to visit with  
13 the regular education teacher to make sure that  
14 their needs were being met.

15 That's all dependent upon, of course,  
16 their IEP. Some students require as little as  
17 25 minutes; some may require as many as 30 minutes  
18 during the process of a week.

19 COMMISSIONER ARMBRUSTER: So basically,  
20 the IEPs for the GATE, gifted and talented students,  
21 didn't specify a particular -- they're just an  
22 inclusion kind of program?

23 MR. MONTAÑO: No, ma'am. They were  
24 monitored, and teachers were visited by Mr. Moseley  
25 in regards to meeting their needs.



1 COMMISSIONER ARMBRUSTER: But he,  
2 Mr. Moseley, has a special ed endorsement, not a  
3 GATE special ed endorsement; is that correct?

4 MR. MONTAÑO: That would be correct. I  
5 know that the gifted and talented, or gifted  
6 education, is on top of, or in addition to, having a  
7 special education endorsement, ma'am. I, for  
8 example, have a special education degree; but I  
9 haven't gone to school for gifted and enriched in  
10 regards to receiving that licensure, ma'am.

11 COMMISSIONER ARMBRUSTER: Thank you.

12 THE CHAIR: I see no further questions.  
13 Thank you.

14 MR. MONTAÑO: Madam Chair, Honorary  
15 Commissioners, thank you very much for your time.

16 THE CHAIR: Just a note, please, to note  
17 that the copies of the stipulation are out in the  
18 front lobby if anyone cares to pick up a copy.

19 Go ahead, Mr. Baker.

20 MR. BAKER: Thank you, Madam Chair. I  
21 would now call Dr. Brian Ormand, a member of the  
22 Governing Board for Health and Sciences Academy.

23  
24  
25

1                                   BRIAN ORMAND,  
2                   after having been first duly sworn under oath,  
3                   was questioned and testified as follows:

4                                   DIRECT EXAMINATION

5 BY MR. BAKER:

6           Q.    Dr. Ormand, first introduce yourself to  
7           the Commission. Give them a brief overview of your  
8           background.

9           A.    Certainly. Madam Chair, members of the  
10          Commission, thank you for the time today. I just,  
11          very quickly, wanted to thank the Commissioner -- I  
12          mean the Board members that were able to attend  
13          today. And the other Board members couldn't get  
14          away from their jobs to be here; but they wanted to  
15          be here.

16                               And so my name, again, is Brian Ormand. I  
17          grew up in Silver City. We're not going to start  
18          way back when I was a kid on the ranch. But I grew  
19          up in ranching and mining and farming and got a  
20          degree from New Mexico State, went away and worked  
21          out of the state in the information technology  
22          field, came back to New Mexico. And, to make a long  
23          story short, I spent 25 years at New Mexico State  
24          University working in -- in instructional technology  
25          and those areas, and also being an adjunct

1 instructor for two different colleges and Doña Ana  
2 Community College, as well.

3 My wife's a kindergarten teacher. I've  
4 gotten involved in K-12 education quite a bit with  
5 virtual learning and with -- more recently, with the  
6 Chamber of Commerce and work-readiness programs,  
7 where students work on work internship programs.  
8 And so I've always had a passion for education. And  
9 when I became semi-retired, my wife said, "Please  
10 don't get on any more boards that don't pay."

11 But I think I just -- I'm a sucker for  
12 education, as most of you probably are, too.

13 And so I had known Mr. Montañó 25 years  
14 ago when my daughters and my son went through Zia  
15 Middle School in Las Cruces Public Schools, when he  
16 was starting his career as an administrator there,  
17 had the opportunity to work with him on some  
18 technology committees to implement technology  
19 programs at that school. And I just have a lot of  
20 respect for him at that point -- from that time.

21 He's -- just kept in touch briefly with  
22 him over the years. So when I found out that he was  
23 going to retire -- or not retire -- but transition  
24 from an administrator in the public schools to the  
25 charter school, I was very excited, because one of

1 my backgrounds is I served on the -- the State  
2 Coalition of Charter Schools Board as one of the  
3 boards I had served on. I've served on a number of  
4 boards.

5 And I just wished him well, and I said,  
6 you know, "I hope that your wife is going to put up  
7 with you taking on all this new stuff," because I  
8 knew charter schools are a lot of work. They --  
9 they're -- I'm very much in favor of them as giving  
10 parents and students options.

11 But, I mean, one of the things that we --  
12 I worked on when I was on the Commission was just  
13 the -- making sure that charter schools are high  
14 quality, that they're run well, and that they have  
15 sustainability. And so this is something that I  
16 wish Mr. Montaña well.

17 And I then reengaged when I found out that  
18 the school was having these difficulties. And I was  
19 able to join the Board in -- on April 23rd, at the  
20 same Board meeting where we changed the  
21 configuration of the Board. And so I was asked  
22 to -- to join the Board at that point, and I did,  
23 and have learned a lot about the school and the  
24 opportunity it presents.

25 So that's a little bit of my background,

1 Mr. Baker.

2 Q. Would you talk a little bit about the  
3 question that was raised, and that Commissioner Carr  
4 mentioned, related to whether there is concern about  
5 the people that Mr. Montañó spoke to in his  
6 testimony re-engaging with the school?

7 And I'll start with the -- with the former  
8 Board chair. Do you have any concern among the  
9 current -- currently constituted Board that there is  
10 a desire, or a risk, that he will be invited back,  
11 in any capacity, by that Board -- by your Board?

12 A. The answer is absolutely not. There --  
13 the Board, I am proud to say -- and I'm proud to  
14 serve with these Board members -- were resolute.  
15 Once they became awakened by the revocation of the  
16 charter, they became very passionate about saving  
17 their charter and doing what was right for their  
18 community and for their children.

19 And so my fellow Board members and I are  
20 resolute in the fact that we are going to have no  
21 further dealings with anyone with a perceived -- any  
22 type of real or perceived conflict of interest with  
23 this school, either as a Board member or as any  
24 operational or contractual relationships with the  
25 school.

1 Q. How many times has the Board met since you  
2 came on?

3 A. Counting that Board meeting where we  
4 reconfigured the Board, we've met two more times.  
5 So we've met in April, May, and June, to -- to, I  
6 would say, address many -- many issues in terms of  
7 training that the Board had not received at that  
8 point.

9 We had a -- the second Board meeting after  
10 the reconfiguring Board meeting, we had a Board  
11 meeting, slash, training that went most -- Friday  
12 afternoon, after everybody got off work, and then  
13 Saturday to do Board training; and that was  
14 conducted by Abby Lewis.

15 And we realigned many of our handbooks  
16 that we hadn't had in place to align with State  
17 statute and charter school rules to make sure that  
18 we were moving into a more compliant thing.

19 And then we just recently had another  
20 Board meeting, where we've had -- the Board become  
21 aware -- or, really, a stronger report on the budget  
22 and the finances and the plans for the upcoming  
23 school year. And so that was at the most recent  
24 Board meeting.

25 Q. Dr. Ormand, have you reviewed the

1 stipulation signed by the Board Chair?

2 A. Yes, I have.

3 Q. And in addition to communicating with  
4 Mr. Montañó about steps that the Board and he are  
5 advancing for the school, you're aware of specific  
6 issues raised in the school regarding steps that  
7 have been, and are, proposed to be taken to -- to  
8 provide oversight and course correction for the  
9 school, if it's allowed to remain open?

10 A. Yes, I'm aware of all the stipulations and  
11 the remedies that are proposed.

12 Q. Can you speak for the Board with regard to  
13 the support for those steps and additional steps the  
14 Commission might find necessary or appropriate to  
15 provide oversight going forward?

16 A. Yes. The Board is in support of these  
17 recommendations and will be working closely with the  
18 administration to make sure that they're carried  
19 out. We will work as a Board to become a better  
20 board and to have an appropriate relationship with  
21 the administration to provide the oversight and  
22 support that the administration, Mr. Montañó, and  
23 the administration needs, but not be micromanaging  
24 what goes on in the school.

25 And I think that as long as we have

1 competent administration, which I'm confident we do  
2 at this point, I don't think there's any excuse for  
3 the Board to get involved in micromanagement.

4 Q. With regard to the oversight function of  
5 the Board, is the Board engaged in managing policies  
6 and procedures and avoiding any -- any future  
7 issues, similar to those raised in Mr. Pahl's  
8 memorandum from his site visit?

9 A. Yes, we're engaged in implementing  
10 policies, handbooks. We just conducted a review of  
11 the Executive Director, Mr. Montaña, in private  
12 session, and then delivered that to him in terms of  
13 our expectation moving forward on his annual review.  
14 And so we're taking the steps that we need to take  
15 to get on a good footing and a regular rhythm of  
16 governance.

17 Q. You mentioned that your wife had asked you  
18 not to join any other boards that would be free.  
19 Curious. There's a list of provided training that's  
20 pretty substantial in the proposed stipulations.  
21 Are you and your fellow Governing Board members  
22 comfortable and committed to engaging in that  
23 training if the school were to be permitted to  
24 remain open?

25 A. Well, first of all, regarding my wife,



1 she -- she -- she is supportive of education. She's  
2 been an educator all her life. So she understands  
3 the passion. And, yes, we're committed -- I'm  
4 committed, and I know my fellow Board members are  
5 committed, to engage in this training and to do  
6 whatever is necessary to support this school, the  
7 community, and Southern Doña Ana County, which often  
8 lacks some of the opportunities that we see more  
9 readily in the main City of Las Cruces.

10 So we're supportive of the training that  
11 we need to do and whatever we need to do without  
12 getting -- overstepping our bounds as a governance  
13 board and getting involved in micromanaging issues.

14 MR. BAKER: With that, Madam Chair,  
15 members of the Commission, I would submit that  
16 Dr. Ormand would be open for questions.

17 THE CHAIR: Thank you very much.  
18 Commissioners, do you have any questions?

19 Commissioner Toulouse?

20 COMMISSIONER TOULOUSE: Madam Chair,  
21 Dr. Ormand, I put this question off until we got to  
22 the Board, because I noticed in the stipulations --  
23 and because you said you had been discussing budget  
24 at your last one -- that the money that was overpaid  
25 has not been repaid.

1 Do you have a plan to repay that money  
2 that was paid out for those students from Texas to  
3 get you on an even footing, if we should allow you  
4 to remain open?

5 THE WITNESS: At this point in time, we've  
6 asked for a plan from our financial group, and we  
7 expect to review that and have a way to get that  
8 done. We're committed to getting that done.

9 But a specific plan, we haven't covered  
10 that yet in our Board meeting. We've been covering  
11 a lot of ground; but we haven't covered that quite  
12 yet, except for the fact that we're going to do  
13 that.

14 COMMISSIONER TOULOUSE: Madam Chair,  
15 follow-up?

16 Did you have a time frame for that  
17 repayment?

18 THE WITNESS: Yeah, I think it's  
19 stipulated two years.

20 COMMISSIONER TOULOUSE: I just wanted to  
21 make sure that that was the Governance Council's  
22 plan with budget; because I know how, when you're  
23 doing budgets, things can slip. And I just want to  
24 make sure that whatever is stipulated here is also a  
25 part of your planning process.

1 THE WITNESS: Yes, ma'am.

2 COMMISSIONER TOULOUSE: Thank you.

3 THE CHAIR: Thank you.

4 Commissioner Bergman?

5 COMMISSIONER BERGMAN: I just want to  
6 raise this, because you used the term "micromanage"  
7 several times in your discussion there. I would  
8 like you to state for the record that you and your  
9 fellow Board members fully understand that you hire  
10 Mr. Montañó. Mr. Montañó is responsible for the  
11 day-to-day operations of the school, not the Board.

12 And part of the problems that we're  
13 talking about today came from some interference,  
14 apparently -- I say "apparently" -- and that you are  
15 not to have any interactions with other employees  
16 except Mr. Montañó. Just want to be sure you guys  
17 understand that.

18 THE WITNESS: Yes, Commissioner Bergman.  
19 I think that we've had discussions on this. And we  
20 do understand the roles and the difference in the  
21 roles. But we do understand that we oversee and  
22 hire Mr. Montañó, and we will be working with him,  
23 if this Commission deems fit to continue the school  
24 on a long-term sustainability plan for leadership,  
25 not only at the board level, but at the

1 administration level.

2 But I think we're -- we wouldn't be  
3 involved in getting involved in the day-to-day,  
4 except to come and represent or something at an  
5 event, without getting involved with the day-to-day.

6 COMMISSIONER BERGMAN: Thank you for that.  
7 I think I'd like to expand on Commissioner  
8 Toulouse's questions. I've given some thought to  
9 that, too.

10 I know you're in the planning stage, and  
11 you can't answer it now. I am just curious. We  
12 have the PED General Counsel here and everything.

13 Can money that was fraudulently --  
14 allegedly fraudulently obtained, can it be repaid  
15 out of future SEG money? Or does it have to be  
16 raised privately?

17 I realize that's not my concern,  
18 necessarily. But I think that's going to have to be  
19 addressed at some point.

20 Can you use current money to repay past  
21 money?

22 Just thought I'd throw that in the mix.  
23 Thank you.

24 THE CHAIR: Mr. Hill, would you care to  
25 respond to that, or shall we tap someone else?

1 THE WITNESS: Whether the money can be  
2 repaid out of --

3 MR. HILL: Madam Chair, can I respond? I  
4 think it's really a question of the timing.  
5 Obviously, if money was misappropriated and spent,  
6 you have to pay it back with some other source of  
7 funds.

8 And so, Commissioner Bergman, I think to  
9 your question, in instances where a school district  
10 has been over-allocated SEG, either for fraudulent  
11 or just a quirk of accounting, so their accounts  
12 were high initially, and they had an adjustment,  
13 those are typically paid out of current-year funds  
14 and then sometimes rolled over into the next fiscal  
15 year.

16 So I don't think there's anything  
17 inappropriate, per se, with the plan. But saying  
18 that, I think it's something that the Department  
19 administration might say it needs to be paid back  
20 sooner than two years.

21 I don't have an answer for you as to  
22 whether or the Department would approve the two-year  
23 pay-back plan.

24 COMMISSIONER BERGMAN: Thank you for that.  
25 I'm not concerned, really, whether it's appropriate

1 or not. I am concerned that if it comes out of  
2 future SEG money, that that could have some negative  
3 effect on the school's finances going forward in the  
4 future. There would be less money available to put  
5 into the students. That's where my concern really  
6 comes from.

7 Thank you, Madam Chair.

8 THE CHAIR: Thank you. I'd like to follow  
9 up on that. As a board, my -- my thought would be  
10 that after the Board's experience with a head  
11 administrator -- no, pardon me -- a board chair that  
12 was so knowledgeable, apparently, and the board  
13 simply seemed to follow what that board chair said,  
14 I would think that the board would want to be very  
15 cautious in the future to be more knowledgeable of  
16 all aspects of running a school; not get into  
17 running a school, but be knowledgeable, so that  
18 they, too, would have a better idea of how things  
19 should go working with their administrator, of  
20 course, but not being reliant on any one person to  
21 give you direction, to give the board direction.

22 And so my question is, you've directed  
23 your financial group to come up with a plan to repay  
24 this money. But how much knowledge does the Board  
25 have about what that plan's going to have to say?

1           And how much money are we looking at,  
2 anyway? Does the Board already know that amount?  
3 How much money is going to have to be repaid?

4           MR. BAKER: Madam Chair, if I might speak  
5 to that, we've been working -- we've discussed this,  
6 and we believe we need a figure from PED that's  
7 going to have to be traced back to different  
8 students, because different students are funded at  
9 different levels. And the idea would be to have a  
10 dialogue with PED, where they would tell us the  
11 figure amount.

12           We've asked for two years in the  
13 stipulation. If a different time period needs to be  
14 sorted out, the school is open to that and realizes  
15 that that may require some belt-tightening in the  
16 short run to make it square.

17           But they can't just go off of the number  
18 and run a total that's owed, because it fluctuates.  
19 And so I think that the proposal would be that PED  
20 would help sort out the details of what SEG was  
21 there. The school would then pinpoint, with help  
22 from the number crunchers in the Vigil group, what  
23 the payment schedule would look like. And then the  
24 Board would act, after looking to make sure that fit  
25 within the budget, to approve it or request

1 modifications, as the Board determined were  
2 necessary, for the school either to pay it back  
3 quicker, or to request a longer period of time to  
4 pay it back, not be on the two years, if that was  
5 what the Commission posed.

6 But the Board would then weigh in at that  
7 point is my understanding of the proposal.

8 THE WITNESS: And, Madam Chair, I would  
9 also say that the Board is committed to not rely on  
10 just one person on the Board anymore. They are very  
11 much working -- knowing what they don't know and  
12 learning what they don't know; and so they're  
13 actively engaged in learning all aspects of the  
14 school, as you pointed out, not from a  
15 micromanagement point of view, but from an  
16 understanding point of view.

17 And so there are more questions being  
18 asked, I think, than were asked before; although, I  
19 wasn't in prior Board meetings. But I know the  
20 Madam Chair, the Vice Chair that became the Chair,  
21 she is -- she is coming up to speed and leading that  
22 charge a lot.

23 THE CHAIR: Then let me just throw out a  
24 hypothetical; because I know you can't know the  
25 amount of money specifically right now. But I think



1 you -- you do know how much each student was worth  
2 as far as lease assistance funds; that's a stated  
3 amount. You do know that you probably have about  
4 20 students that you're going to have to pay back  
5 their SEG. And you have the basic SEG unit value.

6 Has anybody put a pencil to it and said,  
7 "Well, we're looking at about this much money, and  
8 this here's what we might have to do to make that  
9 work"? "Are we going to have to lay off somebody?  
10 Are we going to have to -- what are we going to have  
11 to do?"

12 Are you just thinking -- is the Board  
13 thinking what you're going to have to do to pay back  
14 those funds and still provide all the educational  
15 programs for the students that you have sitting in  
16 classrooms?

17 THE WITNESS: Yes, ma'am. First of all, I  
18 think it's 13 students, not 20, because of the --  
19 what was reported and actually collected  
20 inappropriately.

21 THE CHAIR: Okay.

22 THE WITNESS: And then in terms of those  
23 13 students, I think that we have it on the agenda  
24 to put that -- and, again, some of this is subject  
25 to what PED will allow -- what's been proposed as

1 the two-year payback, the details of which we're  
2 hoping that -- well, we're already planning for the  
3 Vigil group to present us with a plan. And then  
4 once we understand the impact, we're going to find  
5 out how that would be implemented in a manner that  
6 doesn't disrupt services to the existing students.

7 We're going to work on that, ma'am.

8 THE CHAIR: Okay. And my final question  
9 has to do with if the school is allowed to remain  
10 open, do you have the cash balances -- do you have  
11 the cash money to start school and pay the bills  
12 until you start getting money, and sufficient money  
13 to pay the bills? Because I know so much federal  
14 and state is on a reimbursement basis: You pay it;  
15 they pay you back.

16 Do you have that kind of money going  
17 forward? Because I know this process has been  
18 pretty expensive. And I'm wondering if you have the  
19 money to start school and keep things going.

20 THE WITNESS: Yes, ma'am. In the specific  
21 budget report that we just got from the Vigil group,  
22 that was a specific question that several of the  
23 Board members asked, that exact question. And the  
24 answer was "Yes, unless there is a substantial delay  
25 from PED."

1           But if the normal processes take effect,  
2           there should be no problem. The school was not in  
3           financial problems before. And, again, some of it  
4           depends on this repayment plan, and some of it  
5           depends -- but per the budget reports we reviewed at  
6           the last Board meeting, that question was asked and  
7           answered that, "Yes, we're ready to move into the  
8           fall semester."

9           THE CHAIR: And do you -- I said I had one  
10          question. I have more than that.

11          Do you have letters of commitment from  
12          most of your staff to return for next year?

13          MR. MONTAÑO: Madam Chair, yes, ma'am.

14          THE CHAIR: Thank you.

15          Commissioner -- Ms. Barnes?

16          MS. BARNES: I -- Mr. Montañó, I had a  
17          question for you. I just wasn't clear. I know that  
18          you did the special education plans that you needed  
19          to do; you did the IEPs. But this is follow-up,  
20          actually, to a question by Commissioner Peralta.

21          Were the services, the special education  
22          services provided that were identified in the IEP,  
23          were they provided to students?

24          MR. MONTAÑO: Yes, ma'am.

25          MS. BARNES: And they were provided by the

1 teachers themselves? Is that what I understood?

2 MR. MONTAÑO: Yes, ma'am. When the IEPs  
3 were held with Mr. Moseley, ways of intervention and  
4 accommodations for those students, specifically, as  
5 well as the parents, they were outlined in regards  
6 to what needed to be followed in regards to meeting  
7 the service needs for those particular students.

8 MS. BARNES: So do you believe that you're  
9 in compliance with the special ed regulations for  
10 the last year?

11 MR. MONTAÑO: Given my background -- and I  
12 haven't been there until midyear. But since I've  
13 been there, we need to do a much better job. And  
14 we're going to get a special education teacher. By  
15 just telling -- and I'm not discounting the regular  
16 education teacher -- but, you know, we need to  
17 service our students better, ma'am. We truly do.

18 Now, oftentimes, a special education  
19 teacher will go into an inclusion-type environment  
20 and is seen as just being another teacher so that  
21 the special education students don't feel like  
22 they're being identified as being special education.

23 And that special education teacher will  
24 pull them and other students -- and they may -- to  
25 the back at a small table and offer instruction

1 twice, or break it down or offer another form of  
2 differentiated instruction to meet the needs of  
3 those students specifically, ma'am.

4 MS. BARNES: And that's what you want to  
5 implement next year?

6 MR. MONTAÑO: It would be dependent upon  
7 the service levels of the students. But the school  
8 lends itself to differentiated instruction, yes,  
9 ma'am, but -- yes. Now, it would depend -- let's  
10 say if we have, of course, an extensive leveled  
11 special education student, well then that  
12 environment -- that won't work, per se. They may  
13 need to have an occasional pullout, a planned  
14 pullout for so many hours and receive instruction  
15 from that special education teacher, et cetera,  
16 et cetera.

17 COMMISSIONER PERALTA: May I? So,  
18 Mr. Montaña -- so what you're saying -- I need to  
19 find out. You do have a pullout, or you don't have  
20 a pullout? Sounds to me, when you're talking about  
21 pullout, you're talking about those special ed  
22 students being taken by that regular teacher to the  
23 back of the room and doing some individualized  
24 instruction? Or are they taken out of the classroom  
25 and doing the 30 minutes or 45 minutes, whatever the

1 plan says, with the special ed certified teacher?

2 Can you a tell me, what is -- how is that?

3 THE CHAIR: Are you talking about what was  
4 happening last year, in the last school year?

5 COMMISSIONER PERALTA: Right.

6 MR. MONTAÑO: If I'm speaking to the last  
7 school year, then we did not have a pullout, sir.

8 COMMISSIONER PERALTA: So the gentleman  
9 from the Gadsden Independent School District was the  
10 one that was providing some sort of service to your  
11 school district. And that's the reason why I said,  
12 in essence, when you don't have special ed services,  
13 and you have someone just checking in on a  
14 regular -- you know, interim basis, that's a  
15 consultant type of service. So when you do that and  
16 you don't provide full special ed services, do you  
17 provide transportation for those students whose  
18 parents want them to have special ed services for  
19 that community?

20 MR. MONTAÑO: Yes, sir, that would be a  
21 requirement. The transportation would be -- let's  
22 say a special education student wants to come to the  
23 Health Sciences Academy. We would need to provide  
24 transportation services. Let's say if that  
25 particular student was bound to a wheelchair or

1 needed special transportation services, yes, sir, we  
2 would have to provide that.

3 THE CHAIR: But did they?

4 COMMISSIONER PERALTA: My question is, if  
5 you had a student in your school, at Health Sciences  
6 Academy, who was a special ed student that is not  
7 receiving services, and the parents wanted their  
8 child to have full special ed services outside your  
9 school, you would have to compensate both the  
10 transportation for that kid to go to another school  
11 to get services?

12 MR. MONTAÑO: Well, sir, for services  
13 outside of the school, that would be only if we  
14 could not provide those services, per se. There is  
15 a SAT -- Student Assistant Team -- process, where a  
16 student is identified first by -- in regards to  
17 needing the services. Once that referral would be  
18 made, then the SAT committee would sit down and  
19 determine whether or not that that individual was a  
20 candidate for special education testing.

21 Now, there are some things that supersede  
22 those things, sir, such as students that have  
23 fluency problems, such as stuttering, things that  
24 you can readily identify. They have to be provided  
25 those services; but they still must follow a

1 process. However, that process is speeded up  
2 somewhat, and that particular person would receive a  
3 full diagnosis in regards to receiving special  
4 education services.

5 Now, let's say that the school could not  
6 meet those special education services, and they  
7 said, "Well, you can't provide my student, or my  
8 child, with these services specific to his or her  
9 needs," then, of course, they could seek outside  
10 services, sir.

11 MR. BAKER: Madam Chair, could I try to  
12 synthesize? Because I see that the Chair is  
13 perplexed and wanting to get to what happened last  
14 year, versus the conversation about -- because  
15 Mr. Montañó is very knowledgeable about how this  
16 should go, going forward.

17 And I haven't been with the school all  
18 along; so I'm going to synthesize what I'm hearing  
19 about what happened last year, and I'm going to ask  
20 you to comment on it, Mr. Montañó.

21 I think the school was complying with the  
22 requirement to have the IEPs in place, had teachers  
23 who were assisting in following the IEP. But the  
24 shortfall would be that they didn't have a certified  
25 special education teacher available to provide all



1 of those services.

2 Is that an accurate synthesis?

3 MR. MONTAÑO: Yes, sir.

4 THE CHAIR: I --

5 MR. BAKER: I hope I'm not overstepping;  
6 but I'm just trying to provide clarity.

7 THE CHAIR: You cleared up a lot of my  
8 confusion.

9 COMMISSIONER PERALTA: I just have one  
10 last question. The gentleman from the Gadsden  
11 Independent School District was paid for the time he  
12 came into your school to do his consulting or  
13 whatever it was?

14 MR. MONTAÑO: Yes, sir.

15 THE CHAIR: Then let me ask one follow-up  
16 question. Did your school receive special education  
17 funding last year?

18 MR. MONTAÑO: Yes, ma'am. Madam Chair --  
19 excuse me -- yes, ma'am.

20 THE CHAIR: Well, if services are not  
21 provided, how can you receive special education  
22 funding if you did not have a special education  
23 teacher?

24 Now, I know your gifted students probably  
25 can be handled in a regular classroom with

1 assistance or that sort of thing; but did you have  
2 any students that had true learning disabilities,  
3 speech problems, any D-level special education  
4 students -- and I'm not talking -- again, I'm not  
5 speaking of gifted, I'm speaking of truly, students  
6 who needed specialized help to be successful in  
7 their education.

8 MR. MONTAÑO: Madam Chair, we did not have  
9 any D-level students. Our students that needed the  
10 services in regards to speech and ancillary services  
11 for special education, social work, things of that  
12 nature, we provided. That was through an outside  
13 source, ma'am.

14 THE CHAIR: You had a speech pathologist  
15 come in?

16 MR. MONTAÑO: Yes.

17 THE CHAIR: What other types of special  
18 education students' problems did you have in the  
19 students that you had as special education students  
20 last year?

21 MR. MONTAÑO: We had some of our students  
22 that needed some psych services, some that needed  
23 speech, quite a few that needed the social work  
24 services, four of them that needed the gifted and --  
25 the talented monitoring.

1 Other than that, I can't be as specific to  
2 levels of special education, per se, like C or D, in  
3 that regard. In regards to learning disabled, those  
4 students that need additional services, I would say  
5 possibly three, maybe four.

6 THE CHAIR: And how did they get those  
7 services?

8 MR. MONTAÑO: Through the accommodations  
9 that were provided by the teacher, through the  
10 special education representative, Mr. Moseley.

11 THE CHAIR: Now, does that meet the letter  
12 of the law? I mean, if a regular classroom teacher  
13 can do it, why do you need a special ed teacher? Am  
14 I missing something here?

15 COMMISSIONER GIPSON: No.

16 COMMISSIONER PERALTA: In my experiences,  
17 in most cases, LDs usually require some time outside  
18 the regular ed setting for specialized intervention  
19 by a certified special ed teacher. And that was  
20 what I was trying to get at.

21 THE CHAIR: Commissioner Armbruster?

22 COMMISSIONER ARMBRUSTER: Thank you,  
23 Madam Chair.

24 I was a special education teacher for  
25 39 years, recently retired. And my question, maybe,

1 to PED -- Dan, wake up. So I'm assuming that the  
2 school received money because it's in the SEG for  
3 special education students. And isn't that  
4 dependent on having a special ed teacher? Could be  
5 an inclusion class; but that meant that there was a  
6 regular ed teacher, as well as a special ed teacher.  
7 Doesn't have to have a pullout.

8 I mean, that's -- that's not a requirement  
9 of the special ed. But the services that were in  
10 that class were -- were duly delivered. Is that --  
11 so is that -- could they get that money for this?

12 MR. HILL: Madam Chair, Commissioner  
13 Armbruster, for SEG purposes, the way that the  
14 funding is generated by a special education student  
15 comes out of the membership numbers. So if the  
16 school has to report, in their S.T.A.R.S. reporting,  
17 the number of students who have IEPs and the level  
18 of student that they are, and that generates  
19 additional funding through the process, within the  
20 SEG allocation, there's not a direct -- it's a --  
21 it's a non-categorical grant.

22 So the school district can -- or the  
23 school can use it for whatever purpose. It  
24 determines whether or not it was generated, per se,  
25 by special ed or by at-risk or some other factor.

1           The only fund source that would be  
2 conditional for special ed would be the federal  
3 special ed dollars. I don't have the information  
4 about the school in front of me. But I don't think  
5 there's anything inappropriate, per se, about a  
6 school reporting students with IEPs in their  
7 S.T.A.R.S. counts from an accounting purpose, and  
8 then generating funding for those students.

9           I think the issue that was identified and  
10 put before the PEC is that, per the letter of the  
11 law, they needed to have a -- a licensed special  
12 education teacher for those students; and they did  
13 not.

14           My understanding is that they still  
15 attempted to provide services to those students; but  
16 those services wouldn't technically comply with the  
17 lawsuit, because the educator was not licensed in  
18 special education.

19           COMMISSIONER ARMBRUSTER: So if their  
20 person were not licensed in that area, they still  
21 get to keep their funding, the extra funding that  
22 they do get for special ed?

23           MR. HILL: The special ed funding  
24 generated through the funding formula is not  
25 conditional on having special education certified

1 teachers. And so that funding would go to the  
2 school. And it's not earmarked for any particular  
3 purpose, and it wouldn't be reverted back, or we  
4 wouldn't try to claw back that money if the school  
5 didn't have a licensed special educator.

6 There are other mechanisms for enforcement  
7 in special ed where the Special Education Bureau  
8 will go out and put a corrective action plan in  
9 place and require that school to do -- take certain  
10 measures to become compliant.

11 THE CHAIR: Mr. Hill and Mr. Baker, I'm  
12 going to ask that Julie Lucero with CSD, the General  
13 Manager of CSD, perhaps if she could come down and  
14 join us? I know special education is one of her  
15 specialties, and perhaps she could help us.

16 MR. HILL: Madam Chair, that's who I've  
17 been text-messaging; so I'm going to have her come  
18 down.

19 MS. BARNES: I just text-messaged her,  
20 too.

21 COMMISSIONER GIPSON: Please come help.

22 MS. BARNES: Ed Woodd is also on call to  
23 come down. I know he's available.

24 MR. HILL: I think Julie is more  
25 experienced in special ed, and she would be better

1 suited to answer those questions. If I can propose  
2 maybe we could take a, you know, five-minute break  
3 while she comes down?

4 THE CHAIR: Is she available?

5 MR. HILL: She is.

6 THE CHAIR: Why don't we do that? Let's  
7 take about five minutes until Ms. Lucero can join  
8 us.

9 (Recess taken, 3:33 p.m. to 3:50 p.m.)

10 THE CHAIR: We are back in session.

11 Please note that Julie Lucero is here at  
12 the Commission's request to give us some  
13 information. Okay?

14 MS. BARNES: Actually, if I might, it  
15 might be helpful to have Mr. Baker kind of clarify  
16 what's happened at the school. And then the  
17 question for you, Ms. Lucero, is if there's any  
18 concerns about the past -- I think there's two  
19 questions: What's happening? What's happened in  
20 the last year? And then what might happen in the  
21 future?

22 And I think Mr. Montañó, who's been trying  
23 to give us as much information as he possibly can,  
24 is -- I just want to see what's past and what's  
25 future. So maybe if Mr. Baker starts, then

1 Ms. Lucero can add.

2 MR. BAKER: Madam Chair, members of the  
3 Commission, this is the -- to continue on the  
4 summary that I've given the Chair, my understanding  
5 is that the shortfall with the school was that they  
6 did not have a certified special education teacher  
7 on the ground for the spring semester. Ancillary  
8 services were provided and paid for. And  
9 Mr. Moseley was checking in on a daily basis at the  
10 end of the school day to monitor the compliance with  
11 their IEPs. But there was not a certified special  
12 education instructor in the classroom for the spring  
13 semester.

14 And that's the issue that's been  
15 stipulated to, and the remedy that the school is  
16 proposing, is to find a teacher to come in who can  
17 either be -- is unlikely to be a full-time special  
18 education teacher, because there's not going to be  
19 sufficient demand, or there's not likely to be  
20 sufficient demand; but the teacher would be  
21 part-time, devoted exclusively to special ed, and  
22 then the balance of that person's responsibility  
23 would be general education requirements.

24 So the shortfall would be the absence of a  
25 certified special education teacher in a classroom



1 as of the spring semester.

2 THE CHAIR: Let me just clarify in my  
3 mind. Are we asking only about the spring semester,  
4 or are we even asking about the entire school year?

5 MR. BAKER: I specified that, because they  
6 had a certified special education instructor at the  
7 beginning of the year. They lost him midstream;  
8 and, therefore, there was the absence in the spring.  
9 That's why I provided the timing clarification, as  
10 well.

11 But that's the best synopsis I can give of  
12 my understanding, and hope that anybody else can  
13 volunteer if I'm mistaken on that; but that's my  
14 understanding. So then the question had been raised  
15 about what the ramifications of that were.

16 MS. LUCERO: Madam Chair, members of the  
17 Commission, that's exactly correct. Starting in  
18 January, they lost their special-education-endorsed  
19 teacher and were providing services by hiring a  
20 contractor to write IEPs and consult with general  
21 education teachers.

22 Now, generally, services cannot be  
23 provided through a consult model; so that was  
24 primarily the concern, that even though they were  
25 contracting with a gentleman to write the IEPs and

1 meet with general education teachers, that's not  
2 sufficient in meeting the needs of students.

3 So next year, when they do have a special  
4 education teacher, that teacher must provide contact  
5 hours to meet the needs of those students.

6 THE CHAIR: So are there any repercussions  
7 on the school for not having a special education  
8 teacher for the spring semester?

9 MS. LUCERO: There could be. There would  
10 need to be an additional audit by Special Education  
11 Bureau to determine if compensatory services would  
12 need to be completed by the school to make up those  
13 hours that were not made by a  
14 special-education-endorsed teacher.

15 THE CHAIR: Commissioner Bergman?

16 COMMISSIONER BERGMAN: Who would request  
17 that audit?

18 MS. LUCERO: Members -- Madam Chair,  
19 members of the Commission, that could come from the  
20 Commission; that could come from PED, either. And  
21 actually, it would be something that would be  
22 required.

23 It -- you do need to meet the needs of the  
24 IEP. If it states that they received 50 percent,  
25 more than 50 percent of the day of services, they

1 need to be met by a special-ed-endorsed teacher.

2 COMMISSIONER GIPSON: I think I've got a  
3 question.

4 THE CHAIR: All right, Commissioner.

5 COMMISSIONER GIPSON: I guess my concern  
6 is there's this list of student files that were not  
7 adequately taken care of. So my concern is the  
8 hours that a special ed student, through an IEP,  
9 should have received in services. And we've got so  
10 many files that were either unverified or  
11 unacceptable.

12 Are there just big gaps there that  
13 students won't be found because their records aren't  
14 adequate, so you won't know whether they've received  
15 those services or not? Because there's -- according  
16 to this, there's even files that can't be located.

17 So how do we know who didn't get those  
18 services or didn't get them adequately?

19 MS. LUCERO: Madam Chair, Commissioner  
20 Gipson, we were only able to review the 11 IEP files  
21 that were available. Of course, there could be  
22 files, especially since they are incomplete, that  
23 were missing, special education files; but it would  
24 be difficult to determine, because of the missing  
25 data.

1 MR. HILL: If I can add, Madam Chair,  
2 Commissioner Gipson, the -- I think it's unlikely  
3 that there's special education files that we missed.  
4 But the school has an interest in reporting those  
5 students in their SEG counts. And so the number of  
6 students that were reported in their count is  
7 11 students; and we reviewed the 11 files.

8 I think, to your question, there will have  
9 to be some audit work done by the Special Education  
10 Bureau to determine if there's compensatory services  
11 required or any sort of compliance issue. I can't  
12 speak to whether the -- the actual IEP files are  
13 going to be sufficient to show that data; and so I  
14 don't want to talk out of turn on that.

15 COMMISSIONER GIPSON: Right. That was my  
16 concern, that I understand they want to account for  
17 those students because of the money, but that they  
18 may have under-reported the services that were  
19 provided, because of the poor files that were --  
20 that have been provided.

21 MS. LUCERO: Madam Chair, Commissioner  
22 Gipson, what I can say is all 11 IEP files were  
23 current; so they were all up-to-date.

24 COMMISSIONER GIPSON: Okay.

25 THE CHAIR: Do we have other questions?

1 MR. HILL: Madam Chair, if I could go back  
2 to a question that was asked previously, just  
3 clarify. There was some questioning regarding the  
4 potential shortfall or amount of money that the  
5 school would owe back and their ability to pay and  
6 be able to operate.

7 We've just looked at some of their budget  
8 information. And this is a very preliminary number,  
9 because the process we will have to go through to  
10 determine the actual amount that has to be paid back  
11 is much more complicated than just multiplying the  
12 number of students by the unit value.

13 We're actually going to have to rerun  
14 their entire funded run through the funding formula.  
15 But given what we've looked at and what their  
16 financial situation is, at this point, it looks like  
17 they have sufficient funds in terms of receivables  
18 to pay the shortfall and then open the school year  
19 with sufficient funding.

20 Now, the other thing I would add is for  
21 school districts, or charter schools, the PED will  
22 work with them to determine if there's a funding  
23 shortfall to advance SEG payments so that the school  
24 can open at the beginning of the year and meet  
25 payroll and those sorts of things.

1           So I just wanted to clarify that for the  
2 Commission, that, one, looking at the records we  
3 have, they have sufficient funds to cover that  
4 amount that they would owe back and begin the school  
5 year; and, two, if the Commission did decide to keep  
6 the school open, the PED would work with them, if  
7 necessary, to advance SEG payments so that the  
8 school could operate.

9           So we wouldn't allow a school to not have  
10 money to start the school year. We're going to make  
11 sure that no matter what the Commission decides,  
12 that if a school needs to open, there's sufficient  
13 funding. And typically, that involves advancing an  
14 SEG payment so they get it earlier in the fiscal  
15 year, rather than waiting until the school year  
16 starts.

17           THE CHAIR: Okay. Thank you for that  
18 clarification.

19           Other questions, Commissioners?

20           I see none.

21           Julie, we thank you for coming down.

22           Thank you, Mr. Hill.

23           Mr. Baker, please? Doesn't he have to  
24 tell me he's finished with his case?

25           MR. BAKER: Madam Chair, barring

1 additional questions from the Commission, we have no  
2 other evidence to present at this time.

3 THE CHAIR: I see no further questions.

4 Thank you.

5 The next item is Public Comment. I will  
6 allow 20 minutes of public comment. There will be  
7 no further public comment allowed once the 20-minute  
8 period has run. Following public comment, we will  
9 take closing arguments from counsel.

10 I would like to remind those wishing to  
11 make public comment that your comments should be  
12 relevant to the scope of the revocation hearing.  
13 This hearing is limited to whether or not to revoke  
14 the school's charter. The Commission is not making  
15 a decision on anything outside of this scope.

16 Each speaker will have no more than five  
17 minutes to speak, and if there are more than five  
18 speakers, I will limit the time to give each speaker  
19 equal time.

20 The speakers will present in the order in  
21 which they appear on the sign-up sheet. And each  
22 speaker is allowed to offer his or her comments.

23 However, speakers are not allowed to  
24 question any witnesses, nor to introduce any  
25 evidence.

1 Counsel for both parties are entitled to  
2 question a public speaker if they so choose and/or  
3 to request that public speakers be sworn in.

4 The time taken during questioning will not  
5 count towards the time allocated for each speaker.  
6 The Commission will give each public comment speaker  
7 its due weight.

8 Ms. Barnes is handing me the sign-in sheet  
9 for public comment on today's hearing. And I have  
10 no one signed up.

11 Now, I'm seeing a gesture that possibly  
12 someone signed on the wrong sheet.

13 MR. NEVINS: Madam Chair, there's a  
14 sign-up sheet here for today's meeting.

15 THE CHAIR: Would you give it to  
16 Mrs. Friedman, please?

17 MR. NEVINS: Okay, sure.

18 THE CHAIR: What's the issue,  
19 Ms. Friedman?

20 MS. FRIEDMAN: Madam Chair, this is the  
21 sign-up sheet for the attendance at the meeting. It  
22 is not for the public comments.

23 THE CHAIR: Okay. Commissioners, is it  
24 all right if we go ahead and have five minutes'  
25 public comment, even though the gentleman signed up



1 on the wrong sheet?

2 Let me just ask, is there anyone else in  
3 the audience who thought they signed up, but they  
4 didn't?

5 Are you all on that sheet to speak; right?

6 MS. FRIEDMAN: I don't know their names.

7 THE CHAIR: How many are signed up on that  
8 sheet?

9 MS. FRIEDMAN: Five people are signed up:  
10 Raphael Nevins, Joseph Tapia, Brian Ormand, Juan  
11 Acevedo, and Sara Acevedo.

12 THE CHAIR: How many of those people want  
13 to speak?

14 MR. TAPIA: I'm Joseph Tapia.

15 THE CHAIR: I'm sorry. I cannot hear you.

16 MR. TAPIA: I'm Joseph Tapia. It depends  
17 on what Mr. Nevins has to say. If we have to rebut  
18 any of his allegations or what his statements are,  
19 we will speak.

20 THE CHAIR: Okay. I would ask, since both  
21 of you are Board members, that you choose one  
22 speaker. That's our process. People from the same  
23 group, we ask to allow -- ask them to name a  
24 speaker.

25 So is Mr. Nevins first on the list,

1 Ms. Friedman?

2 MS. FRIEDMAN: Yes, he is.

3 THE CHAIR: All right. Mr. Nevins, please  
4 come forward.

5 MR. NEVINS: Thank you.

6 THE CHAIR: And you have five minutes.  
7 And Mrs. Friedman, again, is our -- she's our timer.

8 MR. NEVINS: Madam Chair, Commissioners,  
9 thank you for the opportunity to speak with you. I  
10 think all of us are here today for one reason, and  
11 that is to determine, on the balance of the evidence  
12 before you and the consideration about the  
13 uniqueness of the school, whether to prevent it to  
14 go forward. And I applaud the time and the  
15 attention you've given to both sides.

16 The only thing that I'd like to focus on  
17 today is this set of stipulations that was provided  
18 to the public.

19 Item No. 37 says, "The former Governing  
20 Board chair of the school is married to the person  
21 who is incorporated and one-time president of  
22 Healthy Futures at the time the school had a food  
23 service contract and lease with the Healthy  
24 Futures."

25 Julia Barnes was the interim CSD director,

1 and Abby Lewis served as your counsel at the time  
2 that the lease was signed. They had an opportunity  
3 to speak with the attorney for HSA and Healthy  
4 Futures. They found no conflict of interest.

5 Indeed, my wife resigned from the Board in  
6 April. The lease was signed sometime in June. The  
7 food service contract was signed sometime in July.  
8 I believe that Ms. Barnes was a party to those  
9 discussions, as was Ms. Abby Lewis.

10 Further, it's my understanding that both  
11 Ms. Barnes and the Commission, Mr. Pahl, and Daniel  
12 Hill, received access to the documents confirming  
13 these things, even if they weren't submitted to you.

14 I know that these issues will not probably  
15 make a difference with you; but I just want to be on  
16 record that those documents were made available, and  
17 Ms. Barnes and Abby Lewis were part of the process.

18 Attorney John Kennedy, well-respected in  
19 this environment, opined on these issues of conflict  
20 of interest at Board meetings, as did Lorna Wiggins,  
21 former attorney for the school.

22 So I thank you for your time and your  
23 consideration.

24 THE CHAIR: Do either of the attorneys  
25 have questions for Mr. Nevins?

1 MR. BAKER: No.

2 THE CHAIR: Thank you.

3 Mr. Hill?

4 MR. HILL: No, Madam Chair.

5 THE CHAIR: Thank you very much.

6 COMMISSIONER CARR: Madam Chair, I have a  
7 question.

8 THE CHAIR: It says counsel for both  
9 parties are entitled to question. But --  
10 Commissioners, shall we allow Commissioners  
11 questions, or be very specific to what the script  
12 says?

13 COMMISSIONER GIPSON: I think we should be  
14 specific to what the script says.

15 COMMISSIONER CONYERS: Right. Hasn't our  
16 practice in the past been not --

17 THE CHAIR: We've only done this one time.

18 COMMISSIONER CONYERS: But this is public  
19 comment.

20 COMMISSIONER CARR: Well, can't --  
21 Madam Chair, the -- I mean, the fact of the matter  
22 is, is that Mr. Nevins has not been called as a  
23 witness. And -- and we have not had a chance to  
24 question him. And he has a great deal of hands-on  
25 information in regards to this case.

1           You know, had this been a regular trial, I  
2 would have subpoenaed him and made him come here;  
3 so -- and I know that some of the things -- I know  
4 we're not looking at any individual's guilt or  
5 innocence here. But there's -- to me, there's  
6 questions pertinent to the case.

7           I confer [verbatim] to whatever the rest  
8 of the Commission would like to do. It's not -- you  
9 know, I just -- you know, I think there's some  
10 things that need to be asked of him. But whatever  
11 the Commission would like to do, I'm fine either  
12 way.

13           THE CHAIR: Ms. Barnes, do we need to  
14 stick with the script as it's on the record? Or  
15 what's your recommendation?

16           MS. BARNES: Commissioner Carr, I'm -- the  
17 parties have stipulated to a set of facts for the  
18 school and on behalf of the PED. So unless you have  
19 a question about the accuracy of that, I'm not sure  
20 where questions would go.

21           You know, your role is quite specific  
22 today, which is to look at whether to revoke this  
23 charter now, so that the school cannot continue into  
24 the future, or to allow the school to continue, and,  
25 if that is going to be the case, then what are the

1 conditions in the future.

2 So I guess my advice to the Commission  
3 would be to stick with the fact that neither counsel  
4 wants to ask him any questions -- he's had an  
5 opportunity to provide what he thought was  
6 relevant -- and move forward, only because it's a  
7 forward-looking kind of proceeding, and that is the  
8 decision that you need to make. And then whatever  
9 decision you make could then be appealed to the  
10 Secretary. And that's what the Secretary would be  
11 looking at.

12 So my advice would be not to question  
13 anyone for public comment.

14 COMMISSIONER CARR: I'll -- yeah, I'll  
15 agree.

16 THE CHAIR: Okay. Thank you,  
17 Commissioner Carr.

18 Next speaker, please. Please be sure and  
19 identify yourself clearly.

20 MR. ACEVEDO: Madam Chair, Commissioners,  
21 my name is Juan Acevedo, and I wear many hats in our  
22 community. I'm a pastor. I've been a pastor for 20  
23 years. I've been working with families, low-income  
24 families, integration of families in our community.

25 And I can say that the school, HSA, the

1 impact that the school has made in many of our  
2 students, in many of our community children. And I  
3 have a very big interest in this school, not because  
4 I'm a Board member, because my son attends this  
5 school.

6 And in the past year, we have gone through  
7 different stages. And I can -- I can tell you that  
8 my son has -- has flourished at the school. And not  
9 only my son, but when I hear comments from other  
10 parents that come before me and say, you know, with  
11 a lot of sentiment, that they want to keep the  
12 school open, because, as parents, we don't have  
13 another option, but the regular -- the traditional  
14 school system, which sometimes our children do not  
15 fit into that system.

16 And I can tell you, as a parent, as a  
17 community, and as a Board member, that I -- I would  
18 do everything possible to make -- to do -- to keep  
19 this school open. And Mr. Nevins will not speak for  
20 us, for the school. And I'm -- I apologize for my  
21 ignorance of education, since education is not my --  
22 my area.

23 But we have been -- we have been assisted.  
24 And I know that the training that we are planning  
25 to -- to receive and the training that we have

1 received up to now, it has been very productive in  
2 us. And two others, also, they're -- two other  
3 Board members, also they are parents at the school.  
4 And I share their feelings. We share the feelings.  
5 And we will do everything possible and everything  
6 that we can to -- I know that we're heading in the  
7 right direction; but we'll do everything that we  
8 can.

9 And like I say, I wear different hats.  
10 I'm a community organizer, pastor, for 20 years,  
11 parent. So, you know, if you have any questions --

12 THE CHAIR: Do either of the counsel have  
13 questions?

14 MR. BAKER: Madam Chair, no.

15 THE CHAIR: Thank you, Mr. Baker.

16 MR. HILL: No, Madam Chair.

17 THE CHAIR: Thank you, Mr. Hill.

18 Thank you very much for your comments.

19 THE CHAIR: Commissioners, we're to the  
20 Item No. 6, which is closing arguments.

21 Each counsel will have ten minutes for  
22 their closing argument with the Department going  
23 first. Mr. Hill?

24 MR. HILL: Madam Chair, members of the  
25 Commission, I want to thank you all for -- for your



1 diligence and the work you've put into this hearing.  
2 It's evident that you all have taken this matter  
3 very seriously. You have reviewed the record  
4 extensively, and you've asked very good questions.

5 This is a very unique case, in that the  
6 evidence before you is undisputed. There's not --  
7 it's not a question of fact for you. You don't have  
8 to decide who's telling the truth and who is not.  
9 The parties have agreed to what the facts are. And  
10 your decision really comes down to the discretion  
11 that the Commission has as to whether to revoke this  
12 school or not.

13 I don't envy your position. I'm glad that  
14 I'm a lawyer and not a judge. And so I appreciate  
15 the time you've put into this and that this is a  
16 difficult decision, as is any decision to close a  
17 school.

18 I think it's appropriate to acknowledge  
19 that the members of the school Board and Mr. Montaña  
20 have been very forthcoming and, frankly, have  
21 behaved in a way that's not very common in an  
22 adversarial process. I have never had a case where  
23 the other side has stipulated to all the facts and  
24 has not contested facts. And I think that their  
25 testimony was very forthcoming, and it struck me as

1 very honest testimony.

2 That being said, it's still a difficult  
3 decision for the Commission. And I again appreciate  
4 the time and effort that has gone into this and the  
5 diligence that you've taken in this matter.

6 THE CHAIR: Thank you, Mr. Hill.

7 Mr. Baker?

8 MR. BAKER: Madam Chair, members of the  
9 Commission -- Madam Chair, members of the  
10 Commission. That sounds like it's working now.  
11 I'll be brief. I'm not going to use close to ten  
12 minutes here, primarily, because the difference here  
13 isn't going to be what I say to you now. I'm hoping  
14 that the difference is that is what you heard from  
15 Mr. Montaña and members of the Governing Board,  
16 because I don't think you're particularly interested  
17 in what we, as lawyers, necessarily have to say.

18 We can provide you factual information and  
19 help you along that; but I'm not going to try to  
20 bring down the house with a closing argument. I  
21 just want to frame this for you, as I did at the  
22 beginning.

23 There is no question that what you saw in  
24 April was a very troubling set of circumstances.  
25 And the school has now worked with PED and

1 acknowledged substantial problems that they  
2 recognize are serious. They have cut ties with  
3 people who drag the school down. This is a school  
4 that started with a fantastic idea in an underserved  
5 part of the state. And that idea still has life in  
6 it. And now that the school has cut ties from those  
7 that have dragged it down in the past, there is a  
8 future for this school. There is an opportunity for  
9 the kids that want to come back to the school, other  
10 kids that could benefit from the mission of the  
11 school to be served.

12 It doesn't make this cut and dried for  
13 you. You have to feel confident that there's a way  
14 forward. And we've tried to frame that for you and  
15 to show that this is a school with good people on  
16 the ground, solid adults to steer things forward.

17 And they can't fix all the mistakes and  
18 make them not have existed; but the alternative is  
19 shutting this off, and, for example, precluding the  
20 80 students -- the 60-plus students that would like  
21 to attend the night program and get a full diploma  
22 next year that have already indicated their interest  
23 in coming back to the school from pursuing that and  
24 pursuing an option that doesn't exist in the area,  
25 the opportunity for kids, that as Mr. Montaña

1 described to you, aren't necessarily raised to  
2 strive high and look for educations in advanced  
3 careers, such as health care, to look at that as a  
4 real opportunity for them and to see that they can  
5 achieve that and move forward with that.

6 The school recognizes, if the Commission  
7 votes to leave them open, their work starts, beyond  
8 what it's already been, today. There is going to be  
9 ongoing -- this isn't a benchmark, where they get  
10 through the day and something slows down and they  
11 can let their foot off the gas. The work is going  
12 to remain to come. And what we've tried to propose  
13 in conditions and benchmarking and things to come is  
14 that you have people you can trust to continue to  
15 move things forward on the ground; but also, there  
16 is a means available where the Commission can  
17 provide meaningful, ongoing oversight of this school  
18 into the coming year and get early indications that  
19 problems are brewing.

20 And, for example, the idea of a monitor on  
21 the ground. The thought behind that is that would  
22 provide the Commission somebody present, on the  
23 ground at the school, in a geographically remote  
24 location, to provide unfiltered feedback to you as  
25 to what's going on.

1           In addition, you would have the  
2 opportunity to hear from the Head Administrator to  
3 provide updates through counsel more periodically,  
4 even than when we meet.

5           And I firmly believe that there is a tight  
6 oversight system that can be implemented here that  
7 allows this idea, this good idea on the ground in  
8 this part of the state, to grow. And you have a lot  
9 of discretion. And I plead with you to exercise it  
10 in favor of giving this school the chance to show  
11 you that next year is going to look a lot different  
12 than this year, that the problems that plagued it  
13 for this first year have been removed, and that you  
14 have good people that will move forward and help the  
15 kids in the community of this part of the state.

16           Thank you for your attention and your work  
17 on this matter and your time listening to this  
18 today. Thank you.

19           THE CHAIR: Thank you, Mr. Baker.

20           The first part of the Hearing on  
21 Revocation is now closed. The Commission will now  
22 enter into its deliberations regarding this matter.  
23 And no one, other than the Commission members, the  
24 Commission counsel, as appropriate, will be  
25 permitted to participate in the deliberation

1 discussion.

2 After deliberation, the Commission will  
3 announce its decision, if received -- pardon me --  
4 if reached. And then the Commission's determination  
5 of this matter shall be issued in writing and  
6 submitted to the parties.

7 In the event that the Commission revokes  
8 Health Sciences Academy's charter, the school has  
9 the right to appeal that decision to the New Mexico  
10 Public Education Cabinet Secretary, pursuant to  
11 NMSA 1978 Section 22-8B-7 and 22-8B-12, in the  
12 Charter School Act.

13 Commissioners, we are, as I said, at the  
14 end of the -- this part of the revocation hearing.  
15 Do you want to take a break before we proceed with  
16 deliberations?

17 COMMISSIONER CARR: No.

18 THE CHAIR: Are we ready to move on?  
19 Okay.

20 Then the first thing that I'm being asked  
21 by our counsel to do is to adopt a motion -- pardon  
22 me -- to have a motion to adopt the Findings of Fact  
23 in this matter. Ms. Barnes, please?

24 MS. BARNES: Commissioners, what I have  
25 that I will pass out to you right now is a draft for

1 you to consider -- in fact, you've gotten a slightly  
2 earlier version of the draft. I'd like to go over  
3 with you -- it is substantially utilizing the facts  
4 that are in the stipulation. So I'd like to go over  
5 that briefly with you. You are welcome to make  
6 changes to this.

7 And -- and then after this is done, then I  
8 think it's appropriate to move on to the decision  
9 about what you want to do about the school. I'm  
10 interested, in the event there is an appeal, to have  
11 a strong finding of fact and conclusions of law from  
12 this Commission, regardless of what decision you  
13 make.

14 So I'd like to pass this out if I can,  
15 Madam Chair.

16 So why don't I walk you through it, and  
17 you're welcome to discuss it and however you want to  
18 adopt it.

19 On the first page, No. -- attorneys, we do  
20 have copies of these -- of the draft findings of  
21 fact, if you would like to look at it. I think the  
22 Commission Chairwoman has been clear that, though,  
23 you can't participate in the conversation. Are  
24 there extra copies right there?

25 MS. FRIEDMAN: There's two.

1 MS. BARNES: Well, that's a perfect  
2 number.

3 So, Commissioners, I'll walk you through  
4 it, if that's what you'd like. I'd like to get you  
5 through this as quickly as possible.

6 Numbers 1 through 5 are adopted verbatim  
7 from the stipulation.

8 5.a., I do want to identify that I have  
9 put in that you're making a finding that the school  
10 has not yet provided full information to the PED  
11 regarding the performance frameworks for this  
12 upcoming -- for this past year. That's going to  
13 come forward to you in a timely manner, just as it  
14 will with any other school, if this school is to  
15 continue. And it just reserves your right to take  
16 any action in the future on things that haven't been  
17 presented to you yet.

18 On the second page, Nos. 6 through 12 are  
19 adopted verbatim from the stipulation.

20 No. 13 is something that I think we've  
21 heard testimony from, and, again, you can eliminate  
22 this from this if you want. But the students who  
23 were disenrolled have been adversely impacted by an  
24 interruption of their education. You're welcome to  
25 leave that in or not. There's some lines after that



1 for you to add anything else.

2 No. 14, 15, and 16, at the bottom of  
3 Page 2, top of Page 3, are verbatim from the  
4 stipulation of fact, as is No. 17.

5 No. 17 starts the conversation about the  
6 student enrollment file documentation. The lines  
7 are just in case you want to add anything to that  
8 section.

9 The remedies for the schools, No. 18, is  
10 verbatim from the stipulation.

11 On Page -- let's see. I think I can go  
12 faster. On Page 4, 5, and 6, is all verbatim from  
13 the stipulation of the parties.

14 Nothing in this finding of fact references  
15 any condition. I prepared a separate document with  
16 the conditions prepared by the schools. So when I  
17 say "verbatim from the stipulation," it's those  
18 findings of fact that the school and PED did  
19 stipulate to, but none of the conditions.

20 On Page 7, Nos. 46 through 49, again, are  
21 verbatim from the stipulation. Again, no conditions  
22 were included.

23 I have added a conclusion of law, and let  
24 me go over those.

25 The first conclusion of law is that the

1 violations set forth above and admitted to by the  
2 school warrant revocation.

3 No. B is the false information in which  
4 Texas residents were listed as New Mexico residents  
5 was submitted to the New Mexico Public Education  
6 Department, in violation of NMSA 22-8-42. That is  
7 actually also a finding of fact from above. Because  
8 it referenced a New Mexico law, I also put it in as  
9 a conclusion of law.

10 Then -- and these were both of the  
11 grounds -- two of the grounds that were brought  
12 forward in the Matt Pahl memo -- the school failed  
13 to meet generally accepted standards of fiscal  
14 management, citing NMSA 8B-12K [verbatim], Section  
15 (3); and the school violated provisions of the law  
16 from which the charter school was not specifically  
17 exempted. That cites NMSA 22-8B-12K, Section (4).

18 And then the next section, E, identifies,  
19 as a conclusion of law, that because the violations  
20 set forth above warranted revocation, the Public  
21 Education Commission at no time provided the school  
22 with an opportunity to cure the violations; instead,  
23 you moved forward on your notice of intent to revoke  
24 the charter, and that the school, of its own  
25 initiative, has moved forward to correct issues

1 identified by the Public Education Department  
2 related to the school.

3 Those are all set forth above.

4 Finally, there's the Section G that just  
5 identifies that you have -- that if the school is to  
6 move forward, you have not seen the assessments of  
7 the performance framework for the last year. It  
8 reserves your rights under the contract and -- to  
9 discuss any issues of concern that were raised  
10 there.

11 I would like you to adopt the findings of  
12 fact and conclusions of law, but you're welcome to  
13 make edits to this document, as appropriate.

14 THE CHAIR: Commissioners, does anyone  
15 have additions, corrections, changes to this  
16 document?

17 Commissioner Bergman?

18 COMMISSIONER BERGMAN: I don't have  
19 additions or changes. But I think I'd like --  
20 No. 13, "The students who were disenrolled have been  
21 adversely affected."

22 That is probably true. I thought of that  
23 before we ever got to this meeting. I thought those  
24 poor kids probably lost a half year's worth of  
25 school.

1           But I do -- and the Chair commented on it  
2 during the proceedings -- I do disagree that they  
3 were totally harmless in the process. They were all  
4 asked to put down an address that they knew they did  
5 not live at; so they had to certainly suspect  
6 something was up.

7           So they were somewhat complicit, if not  
8 fully complicit, of what was going on; so -- but I  
9 still feel for them. I'm not unsympathetic. Yeah,  
10 they were certainly harmed.

11           But I do have a question about another  
12 one. I noticed this earlier, No. 16. It's just a  
13 question. I'm just kind of curious. I'm not -- I  
14 do not have the Charter School Act memorized. But I  
15 do not remember anything ever being in the Charter  
16 School Act that said a school could actually ask for  
17 a -- this -- I understand what they're trying to do  
18 here to correct the situation.

19           But can that stipulation be put on a  
20 school that applicants have to provide a utility  
21 bill to prove their address? Is that outside the  
22 scope of the Charter School Act?

23           Now, that may not be a question we can  
24 answer today. Maybe it needs to be answered down  
25 the road. We have a number of attorneys in the

1 room. I was just curious.

2 Thank you.

3 THE CHAIR: Anyone want to chance a  
4 response to that?

5 MR. HILL: Madam Commissioner, you made  
6 clear that there is to be no discussion during the  
7 deliberations; and so I would respectfully decline  
8 to make a comment, because I don't want to invade  
9 your process.

10 THE CHAIR: Thank you.

11 COMMISSIONER BERGMAN: Thank you, Madam  
12 Chair.

13 THE CHAIR: Is that it?

14 COMMISSIONER BERGMAN: That's all for me.

15 THE CHAIR: Commissioner Toulouse?

16 COMMISSIONER TOULOUSE: Madam Chair,  
17 No. 41 and 42 are the same thing.

18 THE CHAIR: It was 45 on the sheet I was  
19 looking at.

20 MS. BARNES: You're correct.

21 THE CHAIR: Yeah. 41 and 42 are the same.

22 COMMISSIONER CARR: They are redundant.

23 THE CHAIR: Anything else? Hearing none,  
24 the Chair would entertain a motion on approval of  
25 the Findings of Fact and Conclusions of Law.

1 COMMISSIONER GIPSON: So moved.

2 COMMISSIONER CARR: So moved.

3 THE CHAIR: I hear a motion from  
4 Commissioner Carr to approve the Findings of Fact  
5 and Conclusions of Law.

6 COMMISSIONER POGNA: (Indicates.)

7 THE CHAIR: Second from Commissioner  
8 Pogna.

9 Any discussion?

10 Mr. Secretary, may we have a roll-call  
11 vote, please?

12 Ms. Barnes?

13 MS. BARNES: Well, Madam Chair, just -- I  
14 think that we should strike the duplicate sentence.

15 COMMISSIONER CARR: Sure.

16 THE CHAIR: Whenever you're ready.

17 COMMISSIONER PERALTA: This is a roll-call  
18 vote for the motion to approve the Finding of Fact  
19 and Conclusions of Law.

20 Commissioner Carr?

21 COMMISSIONER CARR: Yes.

22 COMMISSIONER PERALTA: Commissioner Pogna?

23 COMMISSIONER POGNA: Yes.

24 COMMISSIONER PERALTA: Commissioner Chavez  
25 is not here.

1 Commissioner Toulouse?  
2 COMMISSIONER TOULOUSE: Yes.  
3 COMMISSIONER PERALTA: Commissioner  
4 Shearman?  
5 THE CHAIR: Yes.  
6 COMMISSIONER PERALTA: Commissioner  
7 Armbruster?  
8 COMMISSIONER ARMBRUSTER: Yes.  
9 COMMISSIONER PERALTA: Commissioner  
10 Bergman?  
11 COMMISSIONER BERGMAN: Yes.  
12 COMMISSIONER PERALTA: Commissioner  
13 Conyers?  
14 COMMISSIONER CONYERS: Yes.  
15 COMMISSIONER PERALTA: Commissioner  
16 Gipson?  
17 COMMISSIONER GIPSON: Yes.  
18 COMMISSIONER PERALTA: Commissioner  
19 Peralta votes "Yes."  
20 That is nine votes in favor of the motion.  
21 THE CHAIR: The motion to pass the -- I  
22 don't have it --  
23 COMMISSIONER BERGMAN: Not pass. Accept.  
24 THE CHAIR: Pardon me. The motion to  
25 accept Findings of Fact and Conclusions of Law

1 passes unanimously.

2 Commissioners, we're now ready to begin  
3 our deliberation. First, on revocation. If we are  
4 not -- if we do not choose to revoke the charter of  
5 this school, then we have another option to approve  
6 the school with conditions.

7 And let's move forward with our first  
8 discussion on revocation and see how that goes.

9 I think it might be appropriate if we  
10 simply go around the room and ask each person their  
11 thoughts and opinions, and that way, everyone will  
12 have an equal opportunity to speak. And then after  
13 that, if we have further discussion, we'll go forth.

14 So, Commissioner Armbruster, would you  
15 please go first?

16 COMMISSIONER ARMBRUSTER: Sure. I think  
17 this is a very -- for me -- wait -- sorry. For me,  
18 this is a -- it's heart-wrenching. Clearly, all of  
19 the proof, the conditions, look like revocation.  
20 That's the responsibility of the charter schools to  
21 take care of this. At the same time, it was due to  
22 someone who's in a whole other world.

23 My concerns are I never even heard of a  
24 school -- any school that even existed where adults  
25 could go back to a school to get a high school



1 diploma rather than getting a GED. So that -- that  
2 concerns me, because if we close the school, that  
3 goes away.

4 I'm not overwhelmed with the academic  
5 progress that the school has made, based on -- and I  
6 know it's hard to get special ed teachers; I  
7 understand all of that. But even with the regular  
8 ed students, their scores are -- it would seem as if  
9 they would have been touted if they were really  
10 high-achieving for this year, that they had done  
11 really, really well. And that concerns me. So  
12 those are my pros and cons.

13 THE CHAIR: Thank you.

14 Commissioner Carr?

15 COMMISSIONER CARR: Well, you can tug at  
16 my heartstrings all day long; and it'll work, you  
17 know, most of the time. I -- I have -- and it --  
18 this whole situation is extremely painful to me.  
19 Somebody who's dedicated my whole life to children,  
20 I -- it -- anytime anybody takes money -- and it's  
21 happened in public schools; it's happened in charter  
22 schools -- or anytime anything like that happens,  
23 it's a horrible situation.

24 Now, what I'm looking at here and what I  
25 believe that we're deciding here today on the

1 revocation is has this school committed -- this  
2 school committed material violations that require,  
3 really, a revocation by this Commission. We are not  
4 deciding the guilt or innocence of individuals in  
5 this case that are probably no longer associated  
6 with this school. We are deciding did this school  
7 commit material violations that require its  
8 revocation.

9 I feel like the situation -- it's very  
10 difficult. This is a difficult one for me. And  
11 I -- I believe if we do not revoke, that we may be  
12 very well sending a message to every charter school  
13 out there and anybody who works in those charter  
14 schools or is on their board, all they have to do is  
15 apologize -- "We'll fix it" -- and fire the people  
16 who were involved, and, "Please forgive us and let  
17 us go on about our business."

18 I don't know, you know, the law -- I don't  
19 know if the law really works that way. I, as an  
20 individual, cannot ask for that. If I commit  
21 violations, I would expect my license to be revoked  
22 and for me to be drummed out of the state as a  
23 teacher. I -- you know. And I would expect nothing  
24 less.

25 How do we look at a school? How do we

1 judge a school?

2 A school is made up of people; right? So  
3 an institution is made up of people. I don't think  
4 our laws are as such as to -- to fully help us to  
5 make a decision here.

6 However, I -- I -- I -- I am falling on  
7 the side of I am looking at the overall picture.  
8 Charter schools all over this state, what is the  
9 overall ramification? Because we are the New Mexico  
10 Public Education Commission. We don't just look at  
11 one school; we also look at the overall picture of  
12 what the ramifications are of our decision.

13 And I'm looking at the few may be harmed  
14 by revocation, but that the many will be helped by  
15 the fact that we are holding high standards here and  
16 that we're not going to suffer fools in regards to  
17 their effect on our children.

18 I -- I'm not referring to the people who  
19 are currently running the school. It's just a  
20 figure of speech, way of saying something. We need  
21 to hold strict standards. So as difficult as it is  
22 for me, I am going to vote for revocation, because I  
23 think it is for the greater good of charter schools  
24 all across this state and, more importantly, the  
25 children of this state as a whole.

1 THE CHAIR: Thank you, Commissioner Carr.  
2 Commissioner Pogna?

3 COMMISSIONER POGNA: Madam President, I --  
4 the school has been under horrendous problems. They  
5 have had such a horrendous situation and not the  
6 best people working with them.

7 I believe that they are on a good path. I  
8 do not believe in revocation, because revocation  
9 means closing a school. I do not like closing  
10 schools. There are kids out there who believe in  
11 their school.

12 I think that -- I think they will have  
13 decent progress.

14 THE CHAIR: Thank you.  
15 Commissioner Peralta?

16 COMMISSIONER PERALTA: Thank you,  
17 Madam Chair. My decision is based on -- on two  
18 simple grounds, one of which Mr. --  
19 Commissioner Carr alluded to; and that is that I  
20 concur that we should not start a precedent or a  
21 process in which, when we have schools that are  
22 broken or that are not meeting the expectations of  
23 delivering excellent schools to kids, that we  
24 just -- as he mentioned, we apologize. We say,  
25 "We're going to fix it." We change the people

1 around. We reorganize and what have you, and we go  
2 on; because that's just a bad precedent to set. And  
3 I don't want to lead to that.

4 Second thing is, as I mentioned the first  
5 time that Health Sciences Academy came before us is  
6 that I understand there are some good people  
7 presently trying to rectify situations. They have  
8 good intentions; they have a good heart.  
9 Mr. Montaña seems like a fine, excellent  
10 professional, dedicated man.

11 But from what I hear here to this day is  
12 that there are promises and guarantees and good will  
13 and good intentions, but have not seen specific  
14 plans. And to have a school that is broken, that's  
15 kind of fluttering out there, just, kind of, to me,  
16 allowing them to continue and just trying to pick up  
17 the pieces as they go along doesn't set very well  
18 with me.

19 And I really feel like a good year of  
20 planning, a good year of getting the right people  
21 back here with a good solid plan and a platform and  
22 goals and things like that, that will assure us that  
23 when they're ready to start the school all over  
24 again with a good governing board and the right  
25 people behind them, I would feel much more

1 comfortable with my decision in allowing that school  
2 to continue.

3 Thank you.

4 THE CHAIR: Thank you, Commissioner.

5 Commissioner Gipson?

6 COMMISSIONER GIPSON: I want to address  
7 Mr. Baker's first statement early on that said that  
8 the easy decision is to revoke. And that's not the  
9 case. The easy decision is to not revoke. We -- a  
10 number of us met in negotiations after we revoked  
11 the first time. And we all universally said we lost  
12 sleep that night. It was the hardest decision that  
13 we had to make, because we all are here because we  
14 care about the students. We care about the schools.  
15 It's the land of my soul at this point in time, that  
16 area.

17 But we are dealing with material  
18 violations, and not just a material violation. We  
19 are dealing with numerous material violations of  
20 this contract. And I can't get, unfortunately,  
21 beyond that. I have applauded Mr. Montaña from the  
22 first day he came here. And I wholeheartedly admire  
23 him for the work that he has tried to do. But I  
24 have to look at the school and what has happened,  
25 and I can't get beyond those material violations.

1 I firmly support what Commissioner Peralta  
2 said, that I would be very comfortable with a clean  
3 slate coming in here, another year of planning and  
4 coming back. And I think we can all universally  
5 applaud that -- I can't speak for everyone; I'm  
6 sorry -- but I would be far more comfortable with  
7 that. I cannot get beyond the material violations  
8 of what has occurred.

9 THE CHAIR: Thank you.

10 Commissioner Toulouse?

11 COMMISSIONER TOULOUSE: Madam Chair,  
12 Commissioners, like everyone else here, this is not  
13 an easy thing for me. And I spent years as a  
14 bureaucrat. And I understand the point of several  
15 of my fellow Commissioners, that they've got to go  
16 by the rules; but I also look at charter schools  
17 that were set to break some of the rules.

18 Right now, I think I am inclined to vote,  
19 with very strict supervision, to let you continue,  
20 because you've moved that way. I have a feeling  
21 that my vote won't count. But I see so much  
22 movement forward that I really hate to see all of  
23 that effort and all of that emotion -- I think that  
24 sends a message to the students, as well. And it  
25 seems to me that these are kids who need the message

1 that you can have a second chance.

2 I spent most of my bureaucratic years in  
3 the Human Services Department. I saw people who  
4 didn't get second chances and a very handful of ones  
5 who did. And those who got that second chance, they  
6 succeeded. And I think that when we do the  
7 bureaucratic thing and close this school, we're  
8 telling those kids, "Hey, you don't get another  
9 chance."

10 I would not feel this way if I had not  
11 listened to Mr. Montañó and listened to the  
12 Governance Council. I think that the Governance  
13 Council has learned a lesson. I think it's a lesson  
14 a number of other schools need to learn, because  
15 every school that I have seen in my two-and-a-half  
16 years on this Commission that have a problem, that  
17 problem starts in the Governance Council.

18 I do think we need some changes to the law  
19 to make what happens in governance councils more  
20 subject to scrutiny than it is; but that's a  
21 different point.

22 But I think if the Governance Council is  
23 new and on board with this, I'd like to give these  
24 kids -- not the adults, not even Mr. Montañó, who I  
25 respect incredibly for what he says to us, the true



1 emotion that I see in him -- but it's to those kids.  
2 I want to give them the message -- and at least with  
3 my vote, I will -- that there are second chances out  
4 there. And that's the greatest thing you can have  
5 in life.

6 Thank you.

7 THE CHAIR: Thank you.

8 Commissioner Conyers?

9 COMMISSIONER CONYERS: Thank you. I  
10 certainly agree with many of the Commissioners that  
11 the violations have been very serious, and, you  
12 know, the corrective action has been taken.  
13 Sometimes I think -- I wish it could have been more  
14 with some of the individuals; but basically,  
15 that's -- that's what you can do.

16 My own approach is one of pragmatism. I  
17 look at the school. There's a lot of problems  
18 there; but you do have a plan. I think you have a  
19 reasonable plan for improving and going where you  
20 need to go with it.

21 I also believe a lot of taxpayer money has  
22 been put into the school, and I wouldn't want to see  
23 that go for naught. Most of my life, I preach to  
24 students, you know, to correct mistakes. I think  
25 that's what you're trying to do. So I do not favor

1 a revocation at this time.

2 THE CHAIR: Thank you.

3 Commissioner Bergman?

4 COMMISSIONER BERGMAN: Again, I want to  
5 reiterate that this is -- I've said it before. This  
6 is by far the most difficult decision that we, as  
7 Commissioners, are ever asked to make. We're  
8 talking about the lives of children, the lives of  
9 employees and everything else.

10 The facts are plain, unfortunately, in  
11 this situation. I -- I am just really torn which  
12 way I would like to go on this. The school reacted  
13 in such a way -- I believe, untypically. They  
14 did -- they jumped on this and ran with it and did  
15 what needed to be done.

16 Unfortunately, the horse was already out  
17 of the stable, and the points about the precedent --  
18 setting a precedent, we must consider that,  
19 unfortunately. That has to factor into it  
20 somewhere.

21 Do we send a message to the other  
22 63 charter schools -- or 64, whatever the actual  
23 number is that fall under our State authorization  
24 and fall under our State oversight -- do we tell  
25 them, as other Commissioners have noted, "Well, you

1 can go ahead and do some of this stuff and fix it  
2 real quick, and we'll go ahead and let you go  
3 again."

4 So, boy, this is a really tough decision.

5 I guess right now, I'd be leaning towards  
6 revocation. It's breaking my heart that I have to  
7 say that because of the kids. It's been pointed out  
8 that these 13 Texas kids may have been harmed,  
9 certainly. What about the 130 New Mexico kids that  
10 are going to be left without a school for the next  
11 year, because there's nothing we can do for the year  
12 after?

13 All this school can do, if we revoke them  
14 today, is January, they can form a founders' group.  
15 They can send in their notice of intent to file a  
16 new application for a new charter school and use  
17 this school as a basis for that plan. And, of  
18 course, we would -- by next September, there would  
19 be a decision on whether we accepted that  
20 application.

21 But they're going to be out of business  
22 for two years if we follow that route.

23 So that's certainly a consideration,  
24 because then they have the planning year. So those  
25 kids -- and I, too, was impressed -- there's hardly

1 any programs out there that offer a nighttime  
2 student an opportunity to actually get a diploma.

3 We have, numerous times, had people sit  
4 down there and say a GED is an admirable thing.  
5 Most employers just -- they pass that off. That  
6 doesn't do much when you're looking for a job. A  
7 high school diploma does something when you're  
8 looking for a job.

9 So, boy, there are some real pluses here  
10 that we should consider, and there are some minuses.  
11 It's breaking my heart.

12 Right now, I'd be leaning towards voting  
13 for revocation. I'm sorry to say that; I really am.

14 Thank you, Madam Chair, Commissioners.

15 THE CHAIR: Thank you.

16 Thank you, Commissioners. I kept myself  
17 to the last, because I'm having a terrible time with  
18 this, as well.

19 But I think in every case that I try to  
20 ask myself what makes the best decision, were kids  
21 harmed? And that to me is the final analysis. Were  
22 students harmed? And I'm afraid I think they were.

23 I know those 13 kids -- students,  
24 adults -- who attended from Texas, maybe they were  
25 complicit; maybe they knew they were putting down a

1 false address.

2 But they were asked by adults, they were  
3 directed to do that by the officials of the school.  
4 I'm impressed by professionals; I'm assuming they  
5 were, too. They did what they were told to do, the  
6 best that they could do to reach their objective,  
7 which was to get a high school diploma to make their  
8 lives better and their families better.

9 And I just cannot get past those 13 people  
10 whose lives were just shut down, not because of what  
11 they did, but because of what the school did.

12 I do think the material violations, each  
13 one on their own, would be sufficient grounds to  
14 revoke the charter of this school. I think, in  
15 total, we cannot ignore what's gone on here. And I  
16 can't think we can say to other charter schools,  
17 "We'll overlook what you've done if you promise to  
18 fix it."

19 I just don't think we can do that. I  
20 have to agree. So I think my vote is going to have  
21 to be for revocation.

22 Now, we've each one had our say. You've  
23 heard what each of the other Commissioners have  
24 said. Is there any further discussion?

25 Commissioner Toulouse?

1           COMMISSIONER TOULOUSE: Madam Chair, I  
2 just want to point out, we do have at least one  
3 other school with an adult night school. And that's  
4 the GREAT Academy. So we have at least one other.  
5 And what it did for them, however, is lowered their  
6 grade, because those students' scores, they went  
7 from way up here to way down here. But they haven't  
8 dropped their adult school. So I know there's at  
9 least that one other.

10           THE CHAIR: Anything else?

11           COMMISSIONER ARMBRUSTER: Where is that  
12 school?

13           THE CHAIR: It's in Albuquerque.

14           Well -- and I know some high schools do  
15 have students that return and finish their high  
16 school diplomas. I think there's an age limit on  
17 it; but they do return.

18           Is there any further discussion?

19           All right. Ms. Barnes has some suggested  
20 language, if anyone would like to consider it, as  
21 far as a motion for this discussion. Would anyone  
22 like to look at this information, this proposed  
23 motion, as far as making the motion for revocation?

24           MS. BARNES: Or not.

25           THE CHAIR: Or not.

1 Commissioner Peralta?

2 COMMISSIONER PERALTA: Madam Chair, based  
3 on the findings of fact and considering the  
4 testimony, evidence, argument, and public comment  
5 presented at this hearing, I, Commissioner Gilbert  
6 Peralta, move to revoke the charter of Health  
7 Sciences Academy effectively June 30th, 2015.

8 THE CHAIR: You've heard the motion  
9 presented by Commissioner Peralta.

10 Do we have a second?

11 COMMISSIONER GIPSON: Second.

12 THE CHAIR: Seconded by Commissioner  
13 Gipson.

14 Is there any further discussion?

15 Hearing none, Mr. Secretary, may we have a  
16 roll-call vote?

17 COMMISSIONER PERALTA: Commissioner  
18 Toulouse?

19 COMMISSIONER TOULOUSE: No.

20 COMMISSIONER PERALTA: Commissioner  
21 Gipson?

22 COMMISSIONER GIPSON: Yes.

23 COMMISSIONER PERALTA: Commissioner  
24 Conyers?

25 COMMISSIONER CONYERS: No.

1 COMMISSIONER PERALTA: Commissioner  
2 Peralta votes "Yes."  
3 Commissioner Pogna?  
4 COMMISSIONER POGNA: No.  
5 COMMISSIONER PERALTA: Commissioner  
6 Armbruster?  
7 COMMISSIONER ARMBRUSTER: No.  
8 THE CHAIR: I'm sorry?  
9 COMMISSIONER ARMBRUSTER: No.  
10 COMMISSIONER PERALTA: Commissioner Carr?  
11 COMMISSIONER CARR: Yes.  
12 COMMISSIONER PERALTA: Commissioner  
13 Bergman?  
14 COMMISSIONER BERGMAN: Yes.  
15 COMMISSIONER PERALTA: Commissioner  
16 Shearman?  
17 THE CHAIR: Commissioner Shearman votes  
18 "Yes."  
19 COMMISSIONER PERALTA: Madam Chair, this  
20 is a five-to-four vote in favor of the motion to  
21 revoke.  
22 THE CHAIR: Thank you, Mr. Peralta. By a  
23 five-four vote, the charter of the Health Sciences  
24 Academy is revoked.  
25 Let me reiterate that now that the



1 Commission has voted to revoke Health Sciences  
2 Academy's charter, the school has the right to  
3 appeal this decision to the New Mexico Public  
4 Education Secretary, pursuant to NMSA 1978,  
5 Sections 22-8B-7 and 22-8B-12N of the Charter School  
6 Act.

7 The Commission will provide a written  
8 decision within ten days of today's hearing. The  
9 school's Governing Board may appeal any conditions,  
10 as I just noted.

11 Before we conclude the hearing, are there  
12 any questions about how and when the Commission's  
13 order will be issued?

14 Any questions?

15 Thank you. We move back to the agenda,  
16 Commissioners. We have just completed Agenda Item  
17 No. 3.

18 Item No. 4 is "Adjourn." If we're  
19 finished, may I hear a motion to adjourn?

20 COMMISSIONER TOULOUSE: Madam Chair, so  
21 move.

22 COMMISSIONER CARR: Second.

23 THE CHAIR: Motion and second to adjourn.

24 All those in favor?

25 (Commissioners so indicate.)

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THE CHAIR: Any opposed?

(No response.)

THE CHAIR: We are adjourned. Thank you.

(Proceedings concluded at 5:00 p.m.)

1 BEFORE THE PUBLIC EDUCATION COMMISSION

2 STATE OF NEW MEXICO

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4  
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6  
7 REPORTER'S CERTIFICATE

8 I, Cynthia C. Chapman, RMR, CCR #219, Certified  
9 Court Reporter in the State of New Mexico, do hereby  
10 certify that the foregoing pages constitute a true  
11 transcript of proceedings had before the said  
12 NEW MEXICO PUBLIC EDUCATION COMMISSION, held in the  
13 State of New Mexico, County of Santa Fe, in the  
14 matter therein stated.

15 In testimony whereof, I have hereunto set my  
16 hand on June 24, 2015.

17  
18  
19 

20 Cynthia C. Chapman, RMR-CRR, NM CCR #219  
21 BEAN & ASSOCIATES, INC.  
22 201 Third Street, NW, Suite 1630  
23 Albuquerque, New Mexico 87102

24  
25 Job No.: 3083L (CC)

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 843-9492

**BEAN  
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PROFESSIONAL COURT  
REPORTING SERVICE

MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com