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BEFORE THE PUBLIC EDUCATION COMMISSION
STATE OF NEW MEXICO

TRANSCRIPT OF PROCEEDINGS
SPECIAL MEETING
July 29, 2013
8:30 a.m.
Old Supreme Court Room
Bataan Memorial Building
407 Galisteo Street
Santa Fe, New Mexico

REPORTED BY: Cynthia C. Chapman, RMR-CRR, NM CCR #219
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A P P E A R A N C E S

COMMISSIONERS:

MS. CAROLYN SHEARMAN, Chair
MR. EUGENE GANT, Vice Chair
MR. VINCE BERGMAN, Secretary
MR. JEFF CARR
MR. GILBERT PERALTA
MS. MILLIE POGNA
MS. CARMIE TOULOUSE
MR. JAMES CONYERS

STAFF:

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1 THE CHAIR: I call to order this Special
2 Meeting of the New Mexico Public Education
3 Commission. Welcome, everyone here.

4 I know we're a few minutes late getting
5 started. The first item on the agenda is Call to
6 Order. The second item is Roll Call. Secretary
7 Bergman, please.

8 COMMISSIONER BERGMAN: Commissioner
9 Conyers.

10 COMMISSIONER CONYERS: Here.

11 COMMISSIONER BERGMAN: Commissioner
12 Peralta.

13 COMMISSIONER PERALTA: Here.

14 COMMISSIONER BERGMAN: Commissioner Pogna.

15 COMMISSIONER POGNA: Here.

16 COMMISSIONER BERGMAN: Commissioner
17 Toulouse.

18 COMMISSIONER TOULOUSE: Present.

19 COMMISSIONER BERGMAN: Commissioner Carr.

20 COMMISSIONER CARR: Here.

21 COMMISSIONER BERGMAN: Commissioner
22 Shearman.

23 THE CHAIR: Here.

24 COMMISSIONER BERGMAN: Commissioner Gant.

25 COMMISSIONER GANT: Here.

1 COMMISSIONER BERGMAN: Commissioner
2 Bergman is here. Madame Chairwoman, you have eight
3 members present. You have a quorum.

4 THE CHAIR: Thank you, Mr. Secretary. I
5 will declare that we do have a quorum.

6 The next item is the Pledge of Allegiance
7 and Salute to the New Mexico Flag. However, we do
8 not have flags. Can we salute a flag that's not
9 here?

10 MS. FRIEDMAN: Sure.

11 THE CHAIR: Can we? I think we should go
12 ahead and do that. We will think positive thoughts
13 as Commissioner Peralta and Commissioner Carr lead
14 us in the Pledge and the Salute.

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

17 THE CHAIR: I will remind Commissioners
18 that we have two microphones, and they do move. So,
19 when you have something to say, please ask for the
20 mic, and it will be passed to you.

21 The next item is Approval of the Agenda.

22 COMMISSIONER CARR: So move.

23 COMMISSIONER PERALTA: Second.

24 THE CHAIR: Motion and second to approve
25 the agenda. All those in favor, please say "Aye."

1 (Commissioners so indicate.)

2 THE CHAIR: Any opposed, same sign? The
3 agenda is approved.

4 Item No. 3 is Vote on La Promesa Charter
5 School Appeal. I will call on Attorney Patricia
6 Matthews to present the proposed settlement
7 agreement.

8 MS. MATTHEWS: Good morning, Commissioner
9 Shearman, members of the Commission. Thank you very
10 much.

11 I do want to -- I want to express my
12 appreciation to Mr. Bergman, Mr. Gant, and
13 Ms. Shearman for working with La Promesa to come to
14 a resolution so that we don't have to go forward on
15 an appeal hearing before the Secretary.

16 So I -- Ms. Shearman has asked me this
17 morning to outline what the parties have agreed to.
18 If, at any time, you think I've misstated it or I've
19 not stated something we did agree to, please let me
20 know. All right. This is what I have.

21 The Public Education Commission Executive
22 Committee and La Promesa Early Learning Community
23 propose the following resolution for the Commission
24 to vote on, which is to resolve the appeal that's
25 currently pending before the Secretary of Education

1 that La Promesa filed earlier this year.

2 First, the enrollment cap will be
3 increased for the 2013-2014 school year by
4 75 students. Thereafter, enrollment for La Promesa
5 will increase on the following conditions:

6 The school makes five points increase on
7 the school report card for the subsequent school
8 year. The baseline for measuring the 50 points
9 should be the 2013-'14 school report card, which is
10 out now. And that score was 39.5 for the total
11 score.

12 For each succeeding school year the
13 Charter improves the total score by five points, the
14 enrollment will increase for the next school year by
15 50 students. So, if, by the 2013-'14 school year,
16 they show a five-year improvement, for the 2014-'15
17 school year, they will get an additional
18 50 students.

19 The school may make the five-point total
20 over more than one school year to be awarded the
21 50 increase. So, if it takes them two years to make
22 that total of five -- let's say that would take them
23 into the '16-'17 school year -- they would bump
24 another 50. The total amount of the cap would be a
25 total of 300 students, which is what the school

1 originally asked for.

2 And that was what the Commission and the
3 Executive Committee and the charter school
4 discussed. So, Ms. Shearman has asked me -- I
5 believe that you could reiterate, and I believe it
6 was stated on the record. And so that would be your
7 motion, effectively what I have proposed. So,
8 effectively, someone could state [inaudible].

9 THE CHAIR: Thank you, Ms. Matthews. Very
10 well stated.

11 MS. MATTHEWS: I'm sorry. Ms. --
12 Dr. Maestas just corrected me. The request was for
13 a total of 500, the increase.

14 THE CHAIR: For a total cap increase of
15 200.

16 DR. MAESTAS: Right.

17 THE CHAIR: The total --

18 DR. MAESTAS: It's 500 over -- yeah. At
19 the end, it will be 500.

20 MS. MATTHEWS: The total cap -- I mean,
21 the total will increase to 500.

22 THE CHAIR: The ultimate number would be
23 500, but the increase that's being requested is a
24 total of 200; correct?

25 DR. MAESTAS: Yes, that's correct.

1 THE CHAIR: Thank you very much.

2 MS. MATTHEWS: All right. Got it. The
3 total will be 500.

4 (A discussion was held off the record.)

5 THE CHAIR: Thank you. Commissioners, do
6 you have questions? Hearing no questions, the Chair
7 would entertain a motion. Commissioner Bergman?

8 COMMISSIONER BERGMAN: Madame Chair, I
9 would move that the Public Education Commission
10 approve the agreement between La Promesa Charter
11 School and the Public Education Commission, as read
12 by Attorney Matthews.

13 THE CHAIR: Do we have a second?

14 COMMISSIONER CARR: Second.

15 THE CHAIR: Was that Commissioner Carr?

16 COMMISSIONER CARR: Yes.

17 THE CHAIR: Thank you very much. Motion
18 by Commissioner Bergman, second by
19 Commissioner Carr, to approve the agreement between
20 La Promesa and the Public Education Commission, as
21 detailed by Attorney Patricia Matthews. Any further
22 discussion? Secretary Bergman, shall we have a
23 roll-call vote, please?

24 COMMISSIONER BERGMAN: Commissioner
25 Conyers.

1 COMMISSIONER CONYERS: Yes.
2 COMMISSIONER BERGMAN: Commissioner
3 Peralta.
4 COMMISSIONER PERALTA: Yes.
5 COMMISSIONER BERGMAN: Commissioner Pogna.
6 COMMISSIONER POGNA: Yes.
7 COMMISSIONER BERGMAN: Commissioner
8 Toulouse.
9 COMMISSIONER TOULOUSE: Yes.
10 COMMISSIONER BERGMAN: Commissioner Carr.
11 COMMISSIONER CARR: Yes.
12 COMMISSIONER BERGMAN: Commissioner
13 Shearman.
14 THE CHAIR: Yes.
15 COMMISSIONER BERGMAN: Commissioner Gant.
16 COMMISSIONER GANT: Yes.
17 COMMISSIONER BERGMAN: Commissioner
18 Bergman votes "Yes."
19 Madame Chairwoman, by an eight-to-zero
20 vote, that motion is approved.
21 THE CHAIR: Thank you, Commissioner
22 Bergman. The motion passes unanimously. The
23 agreement is approved.
24 And I want to personally thank you,
25 Attorney Matthews, and the administration of

1 La Promesa for being so agreeable and working with
2 PEC in working out this issue. I think we've come
3 to a very good agreement for all parties involved.
4 So, thank you very much.

5 MS. MATTHEWS: Thank you all. And I will
6 prepare a draft proposed stipulated motion to
7 dismiss the appeal. Thank you all.

8 THE CHAIR: Thank you very much.

9 MS. SALAZAR: Thank you.

10 THE CHAIR: Next item on the agenda is the
11 hearing and action on The Learning Community Charter
12 School. And I have some information that I want to
13 share with you to get us started on that. By the
14 way, before we begin, let me remind everyone.
15 Restrooms are this way down the hall. We may be
16 here for quite a while.

17 We do have an official timekeeper because
18 many of the items today are under strict time rules,
19 and I've asked Ms. Friedman to take care of that
20 timing issue.

21 Let me begin. This hearing will come to
22 order at 8:43 a.m. on Monday, July 29, 2013. This
23 hearing is being held at the Old Supreme Courtroom,
24 located on the second floor of the Bataan Memorial
25 Building in Santa Fe, New Mexico. The purpose of

1 this hearing is to take evidence for proposed action
2 against The Learning Community Charter School,
3 TLC's, charter. I am Commission Chair Carolyn
4 Shearman, and I will be serving as presiding officer
5 for this hearing.

6 Assistant Attorney General Jennifer
7 Salazar will advise me in this matter. This is
8 Ms. Salazar here.

9 And I would ask that the parties please
10 rise and state their names for the record. And, if
11 your name has a unique spelling, please spell that
12 for the court reporter and be sure that you say it
13 loud enough so that she can hear it. May we start
14 right --

15 UNIDENTIFIED SPEAKER: Is there a way that
16 this door can be shut, because the outside hall
17 noise makes it very difficult to hear what's going
18 on?

19 THE CHAIR: Let me ask Ms. Friedman what
20 that's going to do to the inside temperature.

21 MS. FRIEDMAN: Let me check.

22 THE CHAIR: Okay. Thank you. We'll check
23 it. Thank you very much. Let's begin right here.

24 MR. ROSENFELT: Okay. I am Daniel
25 Rosenfelt, and I am the attorney for The Learning

1 Community Charter School.

2 THE CHAIR: Thank you. Do you need the
3 spelling?

4 THE REPORTER: No, I don't.

5 MS. McKEE: Audrey McKee, on behalf of
6 CSD, and I am the Assistant General Counsel for the
7 PED. I would ask that all witnesses that have been
8 subpoenaed or are going to testify in this hearing
9 be asked to wait outside.

10 THE CHAIR: That's on my list.

11 MS. McKEE: Thank you.

12 THE CHAIR: Thank you very much. Anyone
13 else?

14 MR. ROSENFELT: Yeah, I --

15 THE CHAIR: We'll get it to it in just a
16 minute. All right. Let me move on.

17 Item No. 2, concerning evidence. The
18 New Mexico Public Education Commission is not bound
19 by formal rules of evidence. I will exclude any
20 evidence that is incompetent, irrelevant,
21 immaterial, unduly repetitive, or otherwise
22 unreliable or of little probative value. I will
23 make all evidentiary rulings. Any exception to an
24 objection overruled by me shall be automatic and is
25 not waived by further participation in the hearing.

1 While hearsay may be introduced, I will
2 give hearsay its due weight. I shall also take
3 official notice of any matters that may be
4 judicially noticed in New Mexico courts.

5 A complete record shall be made of all
6 evidence received during the course of this hearing.
7 Testimony at this hearing shall be taken under oath
8 and shall be recorded. Please be sure to state --
9 to speak clearly, as the recording will not pick up
10 nods, gestures, or mumbled answers.

11 The sequence of the hearing:

12 It is my intention to hold a thorough,
13 fair, and impartial hearing. The hearing shall
14 proceed in the following manner:

15 No. 1. Each party will be given two hours
16 to present its case in chief. The Charter School
17 Division will present its case in chief first.

18 Each party shall be permitted to give
19 brief opening statements.

20 Each party shall be permitted to call and
21 examine witnesses and introduce exhibits as well as
22 cross-examine witnesses. The cross-examination of
23 witnesses shall be limited to the scope of the
24 direct testimony offered.

25 The rules of privilege shall apply during

1 the course of the hearing.

2 Redirect and recross-examination of
3 witnesses is not permitted.

4 After each party has examined a witness,
5 the Commission may ask brief questions of the
6 witnesses, and the official timekeeper will suspend
7 the time allotted at that time. In other words, the
8 time used by Commissioners to ask questions and to
9 receive the answers to those questions will not
10 count towards the two hours that each party is given
11 to present their cases.

12 No party shall be allowed to examine a
13 witness after the Commissioners have finished
14 questioning the witness.

15 Each party shall be permitted to present
16 closing arguments. Charter School Division shall go
17 first.

18 After each party has two hours to
19 present -- pardon me. Each party has two hours to
20 present its case in chief. After the parties have
21 presented their case in chief, I will allow
22 30 minutes of public comment. Each speaker will
23 have two minutes to address the Commission.

24 And, again, Mrs. Friedman will be the
25 timekeeper for those two minutes of public comment.

1 Members of the public comment will be
2 limited to comment, and will not be permitted to
3 question any witness or introduce any evidence.
4 There will be no further public comment allowed once
5 the 30-minute period has run.

6 The hearing record shall be closed after
7 the 30-minute public comment section.

8 We are to the session -- section of
9 administration of oath. Is everyone clear on the
10 ground rules so far?

11 Let me ask Ms. Friedman. Do you need any
12 kind of assistance during the public comment period
13 on keeping both the 30-minute and the two-minute
14 time limit?

15 MS. FRIEDMAN: No. I think I'll be all
16 right.

17 THE CHAIR: All right. You can handle
18 both? All right.

19 I shall now administer -- pardon me. I
20 asked were there any questions, and then I didn't --
21 yes, sir.

22 MR. ROSENFELT: Well, Madame Chairman, I
23 have a couple of preliminary matters related to what
24 you just said that I do want to raise, having to do
25 with due process and the procedure and so forth. I

1 would like to be able to speak. You can tell me
2 when.

3 THE CHAIR: Let me get the couple of other
4 items taken care of, and we'll go ahead to those. I
5 shall now administer the oath. Are all of your
6 witnesses, except those who are to appear
7 telephonically, present? Mr. Rosenthal --
8 Rosenfelt?

9 MR. ROSENFELT: I'm sorry. Can I speak
10 now, or are we doing the oath?

11 THE CHAIR: First, I'm asking you if all
12 of your witnesses are present.

13 MR. ROSENFELT: Yes, they are.

14 THE CHAIR: All right. Ms. McKee, I'm
15 asking you if all your witnesses are present.

16 MS. McKEE: Yes.

17 THE CHAIR: Let me ask you further. Do
18 either of you expect to have anyone appear
19 telephonically? By phone?

20 MS. McKEE: Yes. Our first -- our first
21 witness is by phone. That's Debbie Montoya.

22 MR. ROSENFELT: No, we do not.

23 THE CHAIR: All right. Please stand and
24 raise your right hand. This is all the witnesses,
25 please.

1 MS. McKEE: Rachel Stofocik was in here,
2 but -- did she step out?

3 MS. FRIEDMAN: She did, because she said
4 she was asked to step out. Do you want her --

5 MS. McKEE: Oh. I had told her that she
6 wouldn't have to step out, but she could sit here.
7 Yeah, she needs to come in.

8 (All witnesses present, except telephonic
9 witnesses, are sworn.)

10 THE CHAIR: Thank you very much. You may
11 be seated.

12 Attorneys, do you wish to have the
13 witnesses wait outside until they are called?
14 Ms. McKee?

15 MS. McKEE: Yes.

16 THE CHAIR: Mr. Rosenfelt?

17 MR. ROSENFELT: I do not. And if you rule
18 otherwise, I certainly need Ms. Martinez, who is the
19 School representative, with me. She knows about
20 everything. And I need to be able to confer with
21 her during the case. And I would be -- we would be
22 at a great disadvantage if she is excluded.

23 But I don't see any reason to exclude the
24 others. We've all had prehearing interviews. This
25 is a public meeting. I don't think there are any

1 great secrets. So I don't agree with that.

2 THE CHAIR: Thank you. Ms. McKee, you
3 have a response?

4 MS. McKEE: Yes, Madame Hearing Officer.
5 Ms. Martinez is his key witness. Absolutely, she
6 should have to sit outside. He could have brought
7 another representative of the School to assist him
8 during the hearing. We absolutely object to
9 Ms. Martinez being able to sit in the hearing.

10 THE CHAIR: Thank you.

11 (Madame Chair consults with Ms. Salazar.)

12 THE CHAIR: We're going to take a
13 five-minute recess to confer with attorneys.

14 (Recess taken, 8:57 a.m. to 9:00 a.m.)

15 THE CHAIR: We're back in session.
16 Mr. Rosenfelt, is Ms. Martinez going to testify as a
17 witness in this proceeding?

18 MR. ROSENFELT: Yes.

19 THE CHAIR: Then, as a witness, I'm going
20 to ask that all witnesses step out of the room until
21 they are called to testify.

22 MR. ROSENFELT: For the record, we object
23 on due process grounds, and I do want to further
24 elaborate on our due process concerns.

25 THE CHAIR: So noted.

1 Before we proceed to hear the merits,
2 the -- witnesses are excused to step out of the
3 room, please.

4 Before we proceed to hear the merits of
5 this case, are there any preliminary motions or
6 matters? Mr. Rosenfelt?

7 MR. ROSENFELT: Yes. May I approach the
8 podium?

9 THE CHAIR: Please do.

10 MR. ROSENFELT: I will try to be brief.
11 Can you hear me? Yes? Okay.

12 Commissioners, The Learning Community
13 Charter School has serious due process concerns
14 which I want to raise at this time. And our concern
15 is with the impartiality of this Commission.

16 Last month, you heard a one-sided
17 presentation regarding The Learning Community
18 Charter School, and The Learning Community Charter
19 School was not given an opportunity to respond, even
20 when they requested it.

21 THE CHAIR: Mr. Rosenfelt, if you're
22 giving your opening argument --

23 MR. ROSENFELT: I am not.

24 THE CHAIR: I don't know when to start the
25 time. Is this a motion that you're presenting now?

1 MR. ROSENFELT: Well, I'm specifically
2 objecting to the prehearing order and the limitation
3 on the scope of cross-examination. I think that is
4 profoundly unfair, because the charges go way back
5 to the beginning of the founding of the School.

6 That's one of them. They go back to the 2010
7 hearing, which the Secretary of Education ruled --

8 THE CHAIR: Mr. Rosenfelt. I'm going to
9 have to ask you to stop right there. I'm looking
10 for a motion.

11 MR. ROSENFELT: The motion is to revise
12 the prehearing order to permit a broad scope of
13 cross-examination, which deals with any matter
14 related to the charges, or which was raised by
15 Mr. Gerlicz, whether or not it's contained in the
16 narrow direct testimony.

17 THE CHAIR: Thank you very much for that.
18 Ms. McKee, do you have a response, please?

19 MS. McKEE: Yes, Madame Hearing Officer.
20 This issue has been ruled on. This was brought up
21 in front of Jennifer. She has already stated that
22 the prehearing order stands. And I believe she
23 talked about that with you.

24 And, of course, we are -- we are being
25 given the same opportunity to cross-examine and to

1 present testimony as TLC, and we feel that that time
2 is adequate, that it is ample, and that there are no
3 due process questions for either side. We are both
4 being given the same time period.

5 THE CHAIR: Thank you. All right. I'm
6 going to rule that the prehearing order stands,
7 because all that is required is notice and an
8 opportunity to be heard. The prehearing order
9 stands as distributed. Thank you.

10 MR. ROSENFELT: Okay. We object. And we
11 also object to the exclusion of our representative,
12 which is ordinarily allowed in any proceeding
13 consistent with due process. You can have an entity
14 as a party, but the entity is always entitled to
15 have a representative.

16 THE CHAIR: Thank you. That is duly
17 noted.

18 MR. ROSENFELT: Oh. There's a second
19 motion. I'm sorry.

20 We would move to exclude the testimony of
21 two witnesses. One is Dennis Good, who did an
22 investigation on sexual harassment. The report is
23 in the record. Both sides are introducing it. The
24 issue that is raised in the charges is whether there
25 was a legal obligation to report the fact of the

1 investigation. And going into the details of that
2 we think, is totally irrelevant, a total waste of
3 time. That's one.

4 Secondly, we move to exclude the testimony
5 of Ted Padilla, who is an employee -- who is an
6 employee at the School. He was involved in the
7 sexual harassment issue and the test security breach
8 issue. The test security breach issue was the
9 subject of an investigation by the Charter School
10 Division. There's a report. The report's
11 conclusion is part of the record. It is being
12 introduced by both sides.

13 Dr. Tom Dauphinee is a witness who likely
14 will testify about it. There's no dispute. We're
15 not arguing about anything. It happened, and the
16 Commission may want to question the School's
17 response. But digging into the surrounding details
18 is irrelevant.

19 So, on those two grounds, we think those
20 two witnesses should be excluded.

21 THE CHAIR: Ms. McKee, do you have a
22 response?

23 MS. McKEE: Yes, Madame Hearing Officer.
24 No objection.

25 THE CHAIR: Please say that again?

1 MS. McKEE: We have no objection to this
2 motion.

3 THE CHAIR: To excluding the testimony?

4 MS. McKEE: That's correct, because we
5 have agreed to allow the reports. That is not a
6 problem.

7 MR. ROSENFELT: Madame Chairman, my third
8 concern, briefly?

9 THE CHAIR: I will agree to your motion
10 and exclude the testimony of those two witnesses and
11 accept the written reports.

12 MR. ROSENFELT: Okay. My third concern is
13 the public comment. The sign-up sheet says one
14 representative from each group. And there is here,
15 on -- behind me, one group of seven or eight people.
16 They're all together. And I want to be sure that
17 the public comment is balanced by representatives of
18 different groups, not just one group. There are
19 seven or eight or ten individuals from the same
20 group here.

21 THE CHAIR: Thank you. We shall proceed
22 to the hearing. And, Ms. Friedman, our time begins
23 now.

24 Ms. McKee, you may proceed with your
25 opening statement, please.

1 MS. McKEE: Thank you, Madame Hearing
2 Officer. I would also like to begin by introducing
3 Gabe --

4 THE CHAIR: Let me ask that you use the
5 mic for the benefit of everyone, please.

6 MS. McKEE: Certainly. Certainly. I
7 would like to begin by introducing, at counsel
8 table, Mr. Gabe Long. He is a law student intern
9 with the Public Education Department.

10 Madame Hearing Officer and members of the
11 Public Education Commission, the CSD is here today
12 to present evidence for your consideration in the
13 proposed revocation of The Learning Community
14 Charter School's charter.

15 The evidence will address TLC's
16 noncompliance of instructional hours as required by
17 state law, noncompliance of the New Mexico
18 Instructional Audit, the inability of the Governing
19 Council to provide proper oversight of the school,
20 violation of the Open Meetings Act, and breaches of
21 test security and protocol.

22 CSD will present either two or three
23 witnesses, depending on the time that's allowed.
24 Debbie Montoya will be by telephone. She will be
25 our first witness. Tony Gerlicz will be our second

1 witness. And, time permitting, we will call Rachel
2 Stofocik.

3 At this time, I would like to give you our
4 exhibit notebooks, which have been agreed to. And
5 there are two -- there are two binders. TLC has a
6 binder that is a thicker binder. CSD's is the
7 thinner binder, and we will be referring to those.

8 Both Mr. Rosenfelt and myself will be
9 referring to them throughout the hearing. These
10 have been stipulated to and will be admitted into
11 evidence.

12 MR. ROSENFELT: May we present our
13 binders, too?

14 MS. McKEE: Yes, that would be fine, thank
15 you, because I will be referring to them as well,
16 those -- both sets of exhibits.

17 So, Madame Hearing Officer, and members of
18 the Commission, CSD's exhibit notebook is the
19 exhibit notebook with eleven exhibits. So it is the
20 thin exhibit notebook.

21 Madame Hearing Officer, members of
22 Commission, our first witness is Debbie Montoya.
23 She is on her way to Gallup this morning for a
24 federal program. So I am going to call her this
25 morning by telephone.

1 MR. ROSENFELT: Wait a second. Do we get
2 to make an opening statement?

3 MS. McKEE: Yes. Do you have one?

4 MR. ROSENFELT: Yes.

5 THE CHAIR: Hold on just a minute. I'm
6 not sure I'm in charge here anymore. Did you give
7 an opening statement, Ms. McKee?

8 MS. McKEE: Yes, I gave a brief overview.

9 THE CHAIR: I apologize. I did not hear
10 it, or I did not recognize that you were finished.

11 Mr. Rosenfelt, you may proceed with your
12 opening statement.

13 MR. ROSENFELT: Yes, got to be brief.
14 Okay. This my assistant, Susan Ciconte. Would you
15 hold up that first poster and bring it where the
16 Commissioners can see it, please? I would say bring
17 it in front of where you were sitting. Come closer,
18 please.

19 Can everyone see that poster?

20 Okay. In June, June 6, Tony Gerlicz came
21 here, and he told this Commission that there was no
22 other course but to revoke the charter of The
23 Learning Community Charter School. And I think you
24 can guess that we're here to say that there is
25 another course.

1 What you're going to see, and what's
2 not -- has not been made clear, is what has been
3 going on at The Learning Community Charter School
4 relates to one main issue and one secondary issue.

5 The first issue is when Ms. Martinez, the
6 long-time principal at the school, announced her
7 intent to retire, there was a lot of trouble finding
8 a successor. There was division within the staff
9 and within the Governance Council, and things were
10 heated and passionate from time to time. And this
11 was a problem that took a year to get resolved. And
12 that is behind many -- not all -- but many of the
13 charges.

14 The second issue has to do with the
15 ability of the Governance Council to function.
16 Frankly, a lot of that has to do with the ability of
17 the past president of the Council, who has now
18 resigned. The Council has new members and new
19 leadership.

20 So, what I would like to suggest is that
21 there is an easy course that you have, and you had
22 in June, and that is, let The Learning Community
23 Charter School, with their new Governance Council
24 president and their new administrator, address the
25 findings and check on them, see if they can do it.

1 Let's look at what they are.

2 Ms. McKee said there are so many and so
3 serious -- would you hold up the second poster,
4 please?

5 What you're going to see -- and I really
6 think this is very important, that you differentiate
7 first-time occurrences or one-time occurrences
8 from -- or more serious occurrences, which have been
9 or are being corrected, as opposed to things which
10 are not going to be corrected which the school
11 refuses to do, or which are so serious that you just
12 have no other course.

13 Let's look at them.

14 The first is -- quickly, I'll go through
15 it.

16 New Mexico Instructional Audit. It was
17 brand new in 2012. There was no template or
18 training for a school rated D. The F schools got
19 training and a team from the Public Education
20 Department. The D schools were left on their own.
21 They didn't do it. They didn't know how to do it.
22 That's 1.

23 2. At one point in time, the Governance
24 Council membership, over a summer, dropped below
25 five. Okay. They fixed it. Hasn't happened again.

1 One time.

2 No. 3. Instructional hours. Yeah, they
3 were a little short. They have a new calendar in
4 your exhibit book. They're going to be fully
5 compliant.

6 4. Open Meeting -- Open Meeting Act
7 violation. One occurrence. Lots of people don't
8 comply with the Open Meetings Act one time.

9 Test security protocol breach. A one-time
10 occurrence, no widespread problem.

11 Educational programs changes. There are
12 lots of them; you'll see.

13 Governance Council legal knowledge.
14 You'll see that the new members are sharp.

15 Governing Council action on the signature
16 of the principal. They did take action. The
17 principal signed off because the president wasn't
18 around. That isn't going to happen again. One
19 time.

20 Contracts with the -- oh, Governance
21 Council awareness of irregularities. They know what
22 they're doing.

23 Contract with the Foundation director,
24 slash, trainer. You'll see those contracts are
25 separate. There's no impropriety.

1 Lease signed by an administrator. Yeah,
2 but it was discussed with the Board and approved.

3 Relationship between the Foundation and
4 School. That's being straightened out.

5 And, then, current phone calls and
6 allegations. Yeah, they got some phone calls.

7 These are not -- what you don't see is
8 stealing money; you don't see criminal conduct; you
9 don't see the pervasive things that would cause you
10 reasonably to shut down a school. These are the
11 kinds of things that you say, "Well, fix it."

12 If they can't, that's -- remember, this is
13 the first time.

14 The other thing that Mr. Gerlicz did tell
15 you is they looked in the classrooms. There was
16 good learning happening, is what I think his exact
17 words. Yeah. It's a pretty good school.

18 The school grade is up from -- and,
19 therefore, you do have an easy course.

20 So with that, I will conclude and let CSD
21 present its case.

22 THE CHAIR: Thank you. Ms. McKee, you may
23 call your first witness.

24 MS. McKEE: Our first witness is Debbie
25 Montoya. And she will be appearing by phone. I

1 might -- I'm not quite sure, since I haven't checked
2 the microphone with the cell phone. I don't know if
3 there's feedback.

4 THE CHAIR: I have a statement before she
5 begins her testimony, please.

6 MS. McKEE: Okay.

7 THE CHAIR: As soon as she's on the line.

8 MS. McKEE: Okay. Good morning,
9 Ms. Montoya. This is Audrey McKee from CSD. And I
10 have you on speakerphone for the hearing. Can you
11 hear me?

12 THE WITNESS: Yes, I can. Good morning.

13 MS. McKEE: Good morning. One moment,
14 please.

15 THE CHAIR: Ms. Montoya, this is Carolyn
16 Shearman. I'm the Hearing Officer and Chair of the
17 Public Education Commission.

18 The first thing I need to do is ask you to
19 stand and raise your right hand.

20 THE WITNESS: Yes.

21 THE CHAIR: And listen to this and
22 answer -- answer fairly and truthfully, please.

23

24

25

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

4 THE CHAIR: I'm going to begin the
5 instructions again, so that she can get it all on
6 the record.

7 Ms. Montoya, please remember that you are
8 under oath and you are not to refer to any documents
9 during your testimony unless instructed to do so.

10 THE WITNESS: Okay.

11 THE CHAIR: In the event you are
12 instructed to review documents, you must clearly
13 identify the documents that you are referring to so
14 that it is clear for the record what documents you
15 are referring to.

16 THE WITNESS: Okay.

17 THE CHAIR: Do you understand these
18 instructions regarding telephonic testimony?

19 THE WITNESS: Yes, I do.

20 THE CHAIR: Ms. McKee, please continue.

21 MS. McKEE: Thank you. Ms. Montoya, I'm
22 going to try to turn up the volume. I have to get
23 some assistance.

24 THE WITNESS: Thank you. That will be
25 helpful.

1 MS. McKEE: And I'm going to speak louder.
2 It's as high as it goes.

3 Members of the Commission and Madame
4 Hearing Officer, would it be helpful if -- I mean,
5 because my voice projects, would it be helpful if I
6 put this on the hearing table for you, so that --
7 I'm afraid my members down here can't hear. I know
8 you can probably guess, from my voice.

9 THE CHAIR: Yes, I think that would be
10 helpful.

11 MS. McKEE: All right.

12 (A discussion was held off the record.)

13 DIRECT EXAMINATION

14 BY MS. MCKEE:

15 Q. Ms. Montoya, do you have the exhibit book
16 from CSD with you?

17 A. I do.

18 Q. All right. I would like you to turn to
19 Exhibit 4, please. And we'll wait for all members
20 to be able to turn to Exhibit 4 as well.

21 All right. So Exhibit 4 is titled
22 "New Mexico Public Education Collaboration with
23 WestEd."

24 COMMISSIONER GANT: It's under Tab 5.

25 THE CHAIR: It's under what?

1 COMMISSIONER GANT: Tab 5.

2 THE CHAIR: Five.

3 MS. McKEE: The exhibits are behind the
4 tab number.

5 THE CHAIR: I'll just look on yours.
6 That's fine.

7 Q. (By Ms. McKee) All right. Ms. Montoya,
8 can you identify this exhibit for me?

9 A. This is a PowerPoint presentation I put
10 together to present to schools across the state.

11 Q. Can you say that again?

12 A. This is a PowerPoint presentation that I
13 put together that was delivered in 2012 -- probably
14 the summer months of 2012 -- that was intended to
15 support D-F Priority and Focus Schools.

16 Q. And you -- this is the PowerPoint that you
17 did your training on?

18 A. Yes, I used this PowerPoint to train.

19 Q. All right. And I'm going to ask you to
20 turn five pages in.

21 A. Okay.

22 Q. What does this show?

23 THE CHAIR: First, read the page, or at
24 least one part of the page, so we're all sure we're
25 on the right page, please.

1 MS. McKEE: Certainly. This is numbered
2 1, 2, 3, 4, 5. It's -- the first one says,
3 "Literacy, Math and Systems Reflective Summaries."
4 The second one says, "Instructional Audit."?

5 THE CHAIR: Show Mr. Rosenfelt, please.

6 MR. ROSENFELT: Excuse me. Can you show
7 us?

8 Q. (By Ms. McKee) Ms. Montoya, did you give
9 training on the New Mexico Instructional Audit?

10 A. Yes.

11 Q. Then I would like you to turn three more
12 pages. And -- actually, one more page.

13 THE CHAIR: What does it look like?

14 MS. McKEE: This says "New Mexico
15 A-through-F School Grading Accountability Systems,"
16 the "Matrix of Requirements for Schools 2012 through
17 2013."

18 Q. (By Ms. McKee) Do you have that,
19 Ms. Montoya?

20 A. I do.

21 Q. And was that part of -- was that part of
22 your training?

23 A. Yes, it was.

24 Q. About how much of this training was
25 dedicated to the New Mexico Instructional Audit?

1 A. Probably a good fourth of my training
2 discussed the Instructional Audit.

3 Q. All right. Thank you. And if -- and,
4 now, would you please turn to Exhibit 3?
5 Ms. Montoya, will you identify that?

6 A. Exhibit 3 is a paper copy of a school
7 improvement plan or Web-EPSS for The Learning
8 Community.

9 Q. Was this submitted to you by The Learning
10 Community?

11 A. The Web-EPSS is a Web-based tool and is a
12 living document that lives on the Web. And it is
13 submitted to us periodically based on a schedule of
14 due dates.

15 Q. All right. Will you please turn to
16 Page 2?

17 A. Okay.

18 Q. And this -- at the top it says, the "Goal,
19 Professional Development"; "Strategy, Professional
20 Development." And then it says an "Action Step."
21 Do you see that?

22 A. Yes.

23 Q. Will you please read what's under that?

24 A. "Two members of the Leadership Team of The
25 Learning Community Charter School attended the

1 training on the new formatted Web-EPSS. This
2 training is now being taught at the building level,
3 in which the teaching staff is responsible for
4 moving the Curriculum forward. The EPSS will be
5 viewed quarterly by the teaching staff, dates TBA."

6 Q. And under that, it says, "Completed" on
7 August 20, 2012; correct?

8 A. Yes.

9 Q. What does this document tell you?

10 A. This document tells me that there were
11 members of The Learning Community team present at
12 the training that I presented at. And there's also
13 some status updates indicating that -- that they
14 were there, and they updated the plan around August
15 2012.

16 Q. Okay. And the team members that were
17 there were required to disseminate this information
18 to other members of the School; correct?

19 A. Yes. We always train with the intention
20 of their building capacity internally at the five
21 levels.

22 Q. Ms. Montoya, would you please turn to
23 Exhibit 2? I'm sorry. Exhibit 1. This appears to
24 be an e-mail to -- from you to all members of the
25 charter schools; is that correct?

1 A. This e-mail is from me to my staff at the
2 Priority Schools Bureau. But it's a forwarded
3 e-mail of an e-mail that came from the Secretary to
4 the superintendents and charter school directors
5 across the state, yes.

6 Q. So all charter schools across the state
7 got this e-mail; is that correct?

8 A. Yes.

9 Q. And what is this e-mail?

10 A. This e-mail is information about the work
11 that Priority Schools Bureau is involved with in
12 regard to the Web-EPSS, New Mexico Instructional
13 Audit, and from -- the RFA, the -- that was
14 available for Priority and Focus schools.

15 Q. And if you would now turn to Exhibit 2.
16 What is this document?

17 A. This document is a screen-shot that shows
18 the Listserv that includes both charter schools, as,
19 specifically, a recipient by the name of Viola
20 Martinez for The Learning Community and her
21 identifying information.

22 Q. So this is a screen-shot showing that
23 Viola Martinez got the e-mail in Exhibit 1; is that
24 correct?

25 A. This is the Listserv that we use at the

1 State level when disseminating information, yes.

2 Q. All right. And, now, I would like to ask
3 you to give a brief summary of when a charter
4 school, such as TLC, is required to complete the
5 New Mexico Instructional Audit.

6 A. Initially, when it occurs, the triggers
7 that causes an Instructional Audit to take place is
8 a school grade and designation. And, so, in 2012,
9 all schools that had a D-F, or designation of
10 priority of focus based on the system of support
11 that we developed were to accomplish the
12 Instructional Audit. D Focus schools were to
13 complete that by an LEA team. F Priority schools,
14 the audit occurred with a PED-lead team.

15 Q. And what school grade did TLC have?

16 A. I believe their grade was a D.

17 Q. And so who would have completed that --
18 who would have completed the NMIA for TLC?

19 A. They should have organized internally to
20 create a team to complete that for themselves. Some
21 charters used members from other charters to help
22 with that process. But it was their responsibility
23 to accomplish that.

24 Q. And that's because they were a D school;
25 correct?

1 A. Yes.

2 Q. And when you did your training, did you --
3 was that a focus area of yours?

4 A. Yes.

5 Q. What did you -- what did you tell those
6 folks that were at the training about that?

7 A. The matrix that you highlighted earlier
8 was highlighted and provided to everyone at the
9 training. So we, by grade and designation, covered
10 the requirements for those schools very thoroughly.

11 Q. Did TLC complete the New Mexico
12 Instructional Audit?

13 A. I have no indication that they did. We
14 were to get the report back to the Priority Schools
15 Bureau via the Web-EPSS. It was to be uploaded in
16 their plan. There's a function in their Web-based
17 tool that allows schools to capture evidence in what
18 we call a "File Cabinet." And I did not see it in
19 there.

20 Q. And you don't have that to date; is that
21 correct?

22 A. Correct.

23 MS. McKEE: One moment, Ms. Montoya.
24 Ms. Montoya, that's all the questions I have for
25 you. I'd like to pass the witness.

1 MR. ROSENFELT: Madame Chair, I have some
2 questions.

3 CROSS-EXAMINATION

4 BY MR. ROSENFELT:

5 MS. FRIEDMAN: Excuse me. Do I continue
6 the two-minute timing?

7 Q. Okay. Good morning, Ms. Montoya.

8 A. Good morning.

9 Q. This is Dan Rosenfelt. In 2012-2013, that
10 was the first year for the New Mexico Instructional
11 Audit; is that correct?

12 A. Correct.

13 Q. And you gave a training in the summer of
14 2012; correct?

15 A. Correct.

16 Q. And the training was about an hour; is
17 that right?

18 A. It was about an hour to an hour and
19 15 minutes.

20 Q. Okay. And one -- only one quarter of that
21 time dealt with the New Mexico Instructional Audit;
22 is that right?

23 A. Yes, about a quarter of the time.

24 Q. Okay. Now, for -- because this was a new
25 program, the Public Education Department had a team

1 to go do an audit with the F schools; is that right?

2 A. Correct.

3 Q. But the D schools, such as The Learning
4 Community Charter School, they didn't get a team
5 from the Public Education Department; is that right?

6 A. Correct.

7 Q. Okay. And they're -- you did not provide
8 a template to the D schools to show them, step by
9 step, how they needed to complete the Instructional
10 Audit; isn't that right?

11 A. No. We -- when we trained, we always post
12 all of our training materials on our Web site.

13 Those materials were on our Web site.

14 Q. And did it tell them each step they needed
15 to do, to do an internal audit?

16 A. It's a very comprehensive tool, and I
17 believe it does that, yes.

18 Q. Are you sure?

19 A. I'm rather sure, yes.

20 Q. Okay. How many D schools failed to
21 complete the New Mexico Instructional Audit in the
22 first year?

23 A. We do have that information. I don't have
24 that in front of me. I can tell you there were some
25 schools that did not complete it in a D-grade status

1 category.

2 Q. Okay. And going back -- the New Mexico
3 Instructional Audit took the place of the EPSS; is
4 that right?

5 A. No.

6 Q. Well, was there a prior tool that the
7 schools submitted information, the EPSS?

8 A. There -- they're two distinct tools. The
9 Web-EPSS or the EPSS, is a recording of priorities.
10 And the New Mexico Instructional Audit is a way to
11 discover what those priorities are. It's a tool
12 intended to highlight for schools possibly some gaps
13 around the instruction and curriculum pieces of the
14 program.

15 The tools that they may have -- that we
16 had available to use prior were part of the prior
17 system of support, called the Class Self-Reflective
18 Summaries. Those focused on gaps possibly occurring
19 in math, reading, and systems.

20 Q. Okay. My real question is, isn't it true
21 that The Learning Community Charter School got all
22 the data in in prior years that they were supposed
23 to?

24 A. I don't have that information in front of
25 me right now. I -- I would have to look.

1 Q. Okay. You testified --

2 A. [Inaudible.]

3 Q. You testified that Viola Martinez, the
4 principal, received an e-mail about NMIA. Do you
5 know whether she had access to her office in
6 November of 2012, when she was not the principal?

7 A. I do not know if she had access to her
8 office.

9 MR. ROSENFELT: That's all I have. Thank
10 you.

11 THE CHAIR: Thank you. Are there any
12 questions from Commissioners of this witness?
13 Seeing none, Ms. McKee, would you like to move to
14 your second witness?

15 MS. McKEE: Yes, Madame Hearing Officer.
16 And I'll allow Ms. Montoya to -- to sign off.

17 THE CHAIR: Please do, yes.

18 MS. McKEE: Yes. Thank you very much,
19 Ms. Montoya, for taking the time.

20 THE WITNESS: Sure. Thank you.

21 MS. McKEE: Our next witness is Tony
22 Gerlicz.

23 MR. ROSENFELT: Madame Chair, we object to
24 this witness. He was not disclosed in accordance
25 with the deadlines. This was an undisclosed

1 witness. We have CSD's list of witnesses, and he is
2 not on it.

3 THE CHAIR: Ms. McKee, your response?

4 MS. McKEE: Yes. Tony Gerlicz absolutely
5 was interviewed by Mr. Rosenfelt, and he was
6 absolutely given notice that he would be testifying.

7 MR. ROSENFELT: No, here's -- may I submit
8 their list of witnesses?

9 THE CHAIR: Yes.

10 MR. ROSENFELT: It's true, I did talk to
11 Mr. Gerlicz.

12 THE CHAIR: Yes.

13 COMMISSIONER GANT: Madame Chair? Did you
14 have any indication that he would be a witness,
15 verbally, or in writing?

16 MR. ROSENFELT: Can I just take one
17 second, okay? I named him as a witness, because I
18 wanted to interview him. The prior attorney, Abby
19 Wear, would not allow me to have access. I had no
20 intention of calling him. And I had no indication
21 from Ms. McKee that he would be called. And he's
22 not on that list. So I am surprised.

23 COMMISSIONER GANT: Did you have any
24 indication during your interview with him that he
25 would be a witness for the PED?

1 MR. ROSENFELT: No.

2 COMMISSIONER GANT: It seems strange to
3 me, but that's okay.

4 MR. ROSENFELT: And, to be more precise,
5 it was my understanding that Ms. Stofocik -- or
6 Stofonzik [ph] -- was going to be the witness that
7 basically testified on the substance that related to
8 the report.

9 MS. McKEE: And, Madame Hearing Officer,
10 Mr. Gerlicz was interviewed orally for a period of
11 time. And there are many people on my witness list
12 who I am not calling. And he had them on his
13 witness list. He absolutely had notice that he was
14 a possibility for today.

15 THE CHAIR: Do you have any other list
16 other than this?

17 MS. McKEE: No, that was submitted by
18 Ms. Wear.

19 THE CHAIR: CSD First Amended? Was there
20 a list before this? If this is "First Amended" --

21 MR. ROSENFELT: Oh, I have the prior.

22 THE CHAIR: -- "and Supplemental
23 Disclosure of Witnesses." Does that not indicate
24 there was something other than this, prior to?

25 MS. McKEE: Yes. There would have been

1 a --

2 MR. ROSENFELT: Yes.

3 MS. McKEE: -- a witness list, and then a
4 first amended witness list, yes. Pam Bowker was
5 added as a possible witness.

6 THE CHAIR: So you're saying Mr. Gerlicz
7 was on your list?

8 MS. McKEE: Mr. Gerlicz was not on our
9 list, because he was on Mr. Rosenfelt's list. And
10 that's why he was interviewed as a potential
11 witness.

12 THE CHAIR: So, Mr. Rosenfelt, he was on
13 your list?

14 MR. ROSENFELT: Again, I was not allowed
15 to talk to him. He came and spoke to the
16 Commission. He was very much involved in the
17 report. I wanted to find out some background things
18 from him. Abby Wear told me I could not talk to
19 him; I could not meet with him; I was not allowed
20 to, unless I named him as a witness. So I named him
21 as a witness.

22 I had no intention of calling him. He's
23 totally hostile. And, when I met with him, frankly,
24 we did discuss a couple of the findings, but, then,
25 we went off into other philosophical issues about

1 best practices and things that were not particularly
2 related to this hearing. But we sort of had a
3 collegial discussion on some other matters.

4 I was not preparing for his testimony, and
5 I am surprised. I did not prepare last night. I
6 have a witness book. He's not in it.

7 THE CHAIR: Was that a prehearing
8 interview that you're referring to?

9 MR. ROSENFELT: Yeah. It was a prehearing
10 meeting. But, again, I wasn't interviewing him for
11 the purpose of testimony. I was just interviewing
12 to get some more background. And, let me just say,
13 I was recently retained by the school. I'm new to
14 all this stuff. I've never appeared before this
15 Commission. I don't know what goes on. I'm just
16 trying to learn.

17 So, yeah, I wanted to chat with him as the
18 head of the Department, and I did, but not with the
19 intention of having him as a witness, because he
20 wasn't named.

21 MS. McKEE: And, Madame Hearing Officer,
22 that is -- that is why you do a witness list. If
23 you're going to call him as a witness, if he's a
24 potential witness, you put him on the witness list;
25 you have prehearing interviews. That's what you do.

1 And Mr. Rosenfelt's position that he's new to all
2 this, doesn't know -- not acceptable.

3 THE CHAIR: I'm going to rule that
4 Mr. Gerlicz may testify. And the Commissioners may
5 have -- may acknowledge his testimony and weigh it
6 to their own thoughts and training. I am going to
7 allow him to testify.

8 MR. ROSENFELT: Okay. I object, for the
9 record, on due process grounds. This is really a
10 surprise to me.

11 THE CHAIR: Duly noted. Ms. McKee?

12 MS. MCKEE: Thank you, Madame Hearing
13 Officer. We will call Tony Gerlicz.

14 THE CHAIR: Karen or Brad, will one of you
15 ask Director Gerlicz to come in, please?

16 TONY GERLICZ,
17 after having been previously sworn under oath,
18 was questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MCKEE:

21 Q. Good morning. Will you please state your
22 name?

23 A. My name is Tony Gerlicz, G-E-R-L-I-C-Z.

24 Q. Mr. Gerlicz, what is your position?

25 A. I am the Director of the New Mexico Office

1 for Options for Parents, under which Charter Schools
2 is.

3 Q. What is your educational background?

4 A. I have an undergraduate degree in
5 mathematics, and graduate degrees in mathematics,
6 education, and education administration. I have a
7 certificate from the Kennedy School of Government
8 for Charter School Leaders that I received in 2004.

9 Q. Thank you. Did you do a site visit of The
10 Learning -- The Learning Community Charter School?

11 A. I did.

12 Q. When did you do that?

13 A. April 30th, 2013, and May 3rd, 2013.

14 Q. And were you part of the team that did the
15 site visit?

16 A. I was.

17 Q. Who else was a part of the team?

18 A. Rachel Stofocik, which is the liaison to
19 The Learning Community Charter School, and Abby
20 Wear, who was then counsel for the CSD.

21 Q. Why did you conduct a site visit for TLC?

22 A. We conducted a site visit of TLC for a
23 number of reasons. Firstly, when the school was
24 renewed by the PEC in 2010, they were to submit
25 goals to the PEC that had never been yet approved.

1 When I came on board, it came to my attention that
2 we needed to do that. We needed to have TLC present
3 their goals.

4 In investigating those goals, we found
5 them to be woefully inadequate, unmeasurable, and,
6 then, worked with the then principal, Mr. Ken
7 Lairsey, to rewrite those goals. He did. And we
8 worked with him. They were approved in March of
9 2013.

10 During that time, we became aware of a
11 number of what we considered irregularities,
12 concerns, related to The Learning Community Charter
13 School that had caught our attention, issues
14 surrounding governance issues, academic
15 underperformance. I had received a call from a Ted
16 Padilla, very concerned about the way his school was
17 being operated.

18 Mr. Lairsey, the principal, had expressed
19 to me grave concerns about things that he was
20 finding. He was a new principal at the time, having
21 assumed that position in November of 2012. And the
22 more that he was sharing with me, he -- I learned
23 that there was an investigative report conducted at
24 the school addressing issues of sexual harassment.
25 There were improprieties related to governance,

1 lease issues, lack of the minimum statutorily
2 required number of Board members, and a series of
3 these things that caused us concern.

4 We learned that there was a Board meeting
5 on April 30, which coincided just very, very well
6 with the need to do a site visit to investigate
7 these matters. And that's what initially got us to
8 that school on April 30.

9 Q. Okay. And, in 2011-2012, what was the
10 school grade for TLC?

11 A. In 2011-2012, they had received a D. The
12 year prior to that, they had an F. The year prior
13 to that, they had this designation under No Child
14 Left Behind that was R2, which stands for
15 "Restructuring 2," which is a more severe
16 designation than they had the year before, which was
17 R1.

18 So, when I reference that we had concerns
19 about academic performance, there was a tendency to
20 go down. They went from R2 to -- R1 to R2, F;
21 subsequently, they received a D; and, subsequently
22 to that, for '12-'13, they received a C. But, at
23 the time that we were there, we were concerned about
24 it.

25 Q. Okay. So for how many years had they --

1 were they either a D or F school, or they had failed
2 to show Adequate Yearly Progress?

3 A. The records that we had said for the last
4 four years.

5 Q. And I'm just going to focus on each item
6 that you brought up.

7 And, first, I'd like to -- to focus on the
8 instructional hours. What did you learn when you
9 went to the site visit regarding the instructional
10 hours for TLC?

11 A. Well, we had learned that this was one of
12 the irregularities that we had become cognizant of
13 before our site visit, again, raised by the
14 principal during his short tenure there. And we did
15 investigate that issue. And we found the school to
16 be deficient in the minimally statutorily required
17 number of instructional hours.

18 Q. And what are the minimally -- the minimum
19 amount of instructional hours that are required?

20 A. The minimum amount required are 1,080, and
21 the school fell far short of that.

22 Q. Okay. I'd like to direct your attention
23 to TLC's -- or excuse me -- to CSD's -- so the thin
24 notebook, still on the thin notebook -- to
25 Exhibit -- to Exhibit 8. And that is the 2011-2012

1 school calendar; is that correct?

2 A. That's correct.

3 Q. And it says there, on No. 6, that they
4 have a five-day instructional week; is that correct?

5 A. Not only do they have a five day
6 instructional week; you see at the bottom a total
7 number of instructional days is 181.

8 Q. Is that consistent with what you found
9 when you went to the school?

10 A. Not at all. What we had found is that
11 they legitimately had a four-day-a-week school
12 calendar. The fifth day was used, I would say, in a
13 very -- in a way that did not conform with a form
14 that would say "Five days a week." It was clearly
15 anything but that.

16 Q. Were they there on Friday?

17 A. Subsequent to the site visit on
18 April 30th, we attended a Board meeting on May the
19 3rd, which was on a Friday. And, sure enough, that
20 was a Board meeting that was attended by the entire
21 staff.

22 So, as we look around the room, it was
23 very evident that there was no teaching and no
24 students going on. And that was a Friday, May the
25 3rd.

1 Q. Did anyone tell you that students were or
2 were not required to be there on Fridays?

3 A. Yes. During our site visits, when we met
4 with the then principal and his assistant, we
5 learned that Fridays had always been used as an,
6 quote, unquote, alternative day. The -- the -- when
7 I inquired about how many students attended, it
8 became clear that maybe a third or less than a third
9 of the students would typically show up on that
10 Friday.

11 Some teachers would not show up on that
12 Friday; some teachers would stay home on that
13 Friday. Allegedly, there was some professional
14 development that occurred on that Friday. But it
15 did not seem to us even near to be adequate for --
16 to count that as an instructional day.

17 Q. Were you told whether attendance was
18 taken?

19 A. We asked if attendance was taken, and we
20 were told that it was not.

21 Q. And were you given any indication how long
22 this practice had been going on?

23 A. When we inquired whether this was a new
24 phenomenon, we were told that this is a practice
25 that had been going on at The Learning Community

1 Charter School for many years.

2 Q. And, given what you found when you did
3 your site visit, did you -- did you make a
4 calculation as to the actual amount of instructional
5 hours that are being given at TLC?

6 A. I did.

7 Q. Okay. I would like to direct the Hearing
8 Officer and the members of the Commission. I'd like
9 you now to look at TLC's notebook. That's the
10 big -- the big notebook. And I would like to direct
11 your attention to Exhibit 1.

12 And if you would turn to Page 8 of
13 Exhibit 1?

14 THE CHAIR: Would you please show the
15 audience what the page looks like?

16 MS. McKEE: It's the schedule. That's it.

17 Q. (By Ms. McKee) All right. Would you
18 please explain what you found when you went to TLC
19 as far as instructional hours?

20 A. Yes. The schedule on Page 8 was forwarded
21 to us by the Administration. And you can see that
22 they have a different schedule for first semester
23 than they do for second semester.

24 The first semester comprises 340 minutes
25 in a day, which, divided by 60, turns out to 5.67.

1 We multiplied that by 181 days, and come up with
2 1,025 instructional hours.

3 In the second semester, you will see a
4 total number of minutes of 330 during the day.
5 Divided by 60 is 5.5 hours per day, times 181, their
6 annual instructional hours of 995.5. And, if you
7 average those two numbers, first semester and second
8 semester, you will see the average stated as
9 1,010.58, a full 70 hours short of the minimum. And
10 I remind you that that's a minimum.

11 Q. All right. Do you have any indication
12 about whether they were counting lunches in their
13 instructional hours?

14 A. Well, we noticed that, in the document --
15 when we returned, and we looked at the budget
16 analyst document upon which their calendar and
17 budget were approved, that they had listed 6.33
18 instructional hours. When you add that 40 minutes
19 into this schedule that we received and divide by
20 60, you do get 6.33 hours. But they are not
21 allowed, nor is any school allowed, to include lunch
22 as instructional hours.

23 Q. Okay. What did you learn regarding the
24 New Mexico Instructional Audit when you did your
25 site visit?

1 A. We asked if an Instructional Audit
2 occurred. It did not occur. That is a requirement
3 of all schools that receive a D or an F. Schools
4 that receive a D are required to perform an
5 Instructional Audit on their own. And schools that
6 receive an F are required -- the State is required
7 to do an Instructional Audit. And that did not
8 occur.

9 Q. I'm now going to ask you some questions
10 about the Governing Council. And I will remove this
11 so that you have room.

12 Okay. So, now, I'm looking at the
13 notebook with -- the thin notebook of exhibits. I'd
14 like to direct your attention to Exhibits 6 and 7.

15 When you were at the site visit, did you
16 ask to see the minutes of the Governing Council?

17 A. We did.

18 Q. Okay. Would you please identify
19 Exhibit 6?

20 A. Exhibit 6 are Governing Council Board
21 Minutes from May the 15th, 2012.

22 Q. And --

23 A. Exhibit 7 -- or just Exhibit 6.

24 Q. Exhibit 7 as well?

25 A. Exhibit 7 are Governing Council Board

1 Minutes from October the 9th, 2012.

2 Q. What did you learn regarding the number
3 of -- of Board members on the Governing Council?

4 A. Right. We learned through -- we
5 confirmed, through reading the Governance Council
6 minutes, that the school had been operating with
7 less than the minimum statutory number for a period
8 five months.

9 Q. And what did you learn about Board members
10 that were dismissed?

11 A. We inquired as to the nature of why two
12 Board members were dismissed. The answer that we
13 received, and what we learned from reading the
14 Governing Council minutes, is there was a breach of
15 Board policy and a violation of the Open Meetings
16 Act.

17 Q. And were there -- how many Board members
18 were dismissed?

19 A. Two Board members were dismissed,
20 according to the minutes that we got: Mr. Tibo
21 Chavez, and Ms. Rosalie Niebes.

22 Q. And did they give you any indication as to
23 why they were dismissed?

24 A. We did ask the Board during one of our
25 Board -- our site visits, which occurred during the

1 Board meetings. They could not tell us why. The
2 minutes reflected that there was a breach of Board
3 policy, and that they had learned there was a
4 violation of the Open Meetings Act.

5 We also learned, in reading the minutes,
6 that there was a letter to those Board members from
7 Ms. Viola Martinez dismissing them from the Board.
8 And the language that was used in those letters was
9 "for egregious behavior."

10 Q. And our -- who are the two Board members
11 again?

12 A. Mr. Tibo Chavez and Mrs. Rosalie Niebes.

13 Q. And are either of those Board members on
14 the Board now?

15 A. It is my understanding that one of those
16 Board members has been asked to return and accepted
17 and is on the board, and that is Mr. Tibo Chavez.

18 Q. And what did you learn about the Open
19 Meetings violation?

20 A. Well, we tried to inquire about specifics
21 of the Open Meetings Act violation. The only
22 message that we received from the Board was that
23 their then attorney informed them that, when an
24 offer of a principalship was made to a Mr. Ted
25 Padilla, that that process that they had used was in

1 violation of the Open Meetings Act, and, therefore,
2 that offer of that principalship to Mr. Padilla had
3 to be rescinded since it was in violation of the
4 Open Meetings Act. And that's my understanding of
5 what occurred.

6 Q. And, while you did your site visit, did
7 you learn that Dennis Good had been requested by
8 Ms. Martinez to do an investigation?

9 A. Actually, we learned that prior to the
10 site visit. That was one of the issues that was on
11 our radar screen as a grave concern, that there was
12 an investigative report.

13 Q. I'm going to stop you right there for a
14 second. And I'd like you to turn to Exhibit 10.
15 This is the investigative final report by Dennis
16 Good.

17 A. That is correct.

18 Q. Did you read this report?

19 A. I did.

20 Q. Does anything in this report concern you?

21 A. Oh, there were a number of things in this
22 report that concerned me greatly.

23 Q. Are you referring to a specific page?

24 A. I am referring to Page 2, to begin with,
25 and to Page 3.

1 Q. What concerned you on Page 2?

2 A. On Page 2, during the interview with
3 Investigator Good, he used a racial slur in front of
4 Investigator Good, as he has noticed there.

5 Q. Where are you referring?

6 MR. ROSENFELT: I'm sorry. Where?

7 A. I'm sorry. That is on Page 3. My
8 apologies. The second to last paragraph, "He made a
9 racial comment."

10 Q. Are you referring to the paragraph that
11 starts, "Mr. Ted Padilla... ."?

12 A. "Mr. Ted Padilla...," that is correct.

13 Q. What is that? What does that say?

14 A. It says, "He also made a racial comment
15 during the interview with the investigator."

16 Q. What else concerned you about this report?

17 A. Mr. Padilla self-volunteered that he uses
18 the words "cutie" and "sweetie" all the time. This
19 is a concern to me.

20 Q. What page are you referring to? Are you
21 referring to Page 4?

22 A. That is correct, on the top -- let's see.
23 Excuse me.

24 Q. Are you referring to the starred
25 statements that he made at the top, the second one

1 from the bottom of the stars, where it says, "I do
2 refer to sweetie and cutie always"?

3 A. That is correct. And, in addition to
4 that, they -- if you take that in context with
5 making a racial comment in front of the
6 investigator, there's a further piece that concerns
7 me in this report at the top of Page 4. And that is
8 that when -- and I'm looking at the second -- or the
9 third -- no, excuse me -- the fourth star from the
10 top of the page -- "These are all people who do
11 nothing." And he lists eight names of these people
12 and classifies them as "all Anglo."

13 So there is that. There is the racial
14 comment with the investigator. There's "cutie" and
15 "sweetie," which he self-volunteers that he uses all
16 the time. And there's additional things in the
17 report that concerned me gravely as well.

18 Q. Was this admission that he called the
19 students "cutie and sweetie always," was that
20 complaint given to the licensure division for
21 educator ethics?

22 A. My understanding is that complaint was
23 never forwarded to the Public Education Department,
24 as is required by the educator ethics code. Nor was
25 there any indication forwarded to the Public

1 Education Department about any of the contents in
2 this report.

3 Q. Now, I'd like to turn your attention --
4 well, actually, let me just ask you just briefly.
5 Are there any other concerns that you had when you
6 read Dennis Good's report?

7 A. Yes. And part of the concern that we had
8 with the Learning Chart- -- The Learning Community
9 Charter School -- is student learning, of course.
10 And when we see poor academic performance, we know
11 that school culture plays an incredibly important
12 role in that.

13 So when I read the report by the
14 Investigator Good that asks the following
15 questions --

16 Q. Where are you referring?

17 A. I'm on Page 2, right in the middle -- a
18 little bit below the middle, six questions.
19 Question No. 3: "Have you witnessed any acceptable
20 behavior by anyone?" [Verbatim.]

21 Q. "Unacceptable behavior"?

22 A. "Unacceptable behavior by anyone."
23 Sixteen people answered "yes"; three people answered
24 "no."

25 "Have you witnessed violations of Board

1 policies, sexual harassment, code of conduct?"

2 Sixteen people answered "yes"; three people answered
3 "no."

4 "Has there been an impact on work
5 performance?" Seventeen people answered "yes"; "no"
6 had two response.

7 "Is there a morale problem at the school?"
8 Nineteen people answered "yes"; and zero said "no."

9 That's a concern.

10 MR. ROSENFELT: And, Madame Chair, I move
11 that the discussion of the sexual harassment that he
12 just went through be stricken from the record. It's
13 not one -- the failure to report the investigation
14 is a charge. The rest of it is not a charge.

15 THE CHAIR: Ms. McKee, do you have a
16 response?

17 MS. McKEE: Yes, Madame Hearing Officer.
18 All of these are stated as concerns in -- in the
19 final report that was given to Ms. Martinez.

20 MR. ROSENFELT: Where?

21 MS. McKEE: The sexual harassment.

22 MR. ROSENFELT: The sexual harassment and
23 the failure to report the investigation is stated.
24 Nothing else.

25 THE CHAIR: Your response?

1 MS. McKEE: My response is at, of course,
2 it all relates.

3 THE CHAIR: I -- did we not earlier
4 stipulate that the witnesses were not going to be
5 called to testify because the reports had been
6 accepted?

7 MS. McKEE: That's correct.

8 THE CHAIR: And the information that is
9 being discussed here is the information in this
10 report?

11 MS. McKEE: That's correct.

12 THE CHAIR: Then -- then the information
13 is accepted, and it will be part of your testimony
14 if you choose to. Please proceed.

15 Q. (By Ms. McKee) Is there anything else in
16 that report that concerns you?

17 A. I think that's -- those four things are
18 the highlights.

19 Q. All right. If you would now turn to
20 Exhibit 11. This is a testing irregularity
21 investigation of The Learning Community Charter
22 School. And this is a report by Dr. Tom Dauphinee.
23 What did you learn about any test security or
24 protocol breach at TLC?

25 A. Again, prior to the site visit that we

1 conducted on April 30th and May the 3rd, we had
2 received a very agitated allegation from Ms. Viola
3 Martinez and Ms. Priscilla Brigham alleging that
4 there was a violation of test security as well as --
5 a violation of test security. And, so, that was on
6 our work to do before the site visit.

7 We had contacted Dr. Tom Dauphinee, who
8 handles these investigations. That was in process
9 when we made our site visit. And this report came
10 out subsequent to that.

11 What I learned in this report was that
12 there, indeed, were violations of test security
13 performed by Mr. Ted Padilla.

14 Q. And, so, as I'm listening to you, we
15 have -- we have concerns with -- with Mr. Ted
16 Padilla with sexual harassment charges. We have
17 concerns with a test -- a test breach. We have
18 concerns with calling students "sweetie" and
19 "cutie." And we have Board violations and failure
20 to complete the NMIA.

21 Do you see these -- these things as all --
22 as just a one-time occurrence?

23 A. No. In my view, and in our view, it
24 establishes a pattern of behavior that lends itself
25 to the question, "Can this school function

1 appropriately, with this Board, with this --
2 continued allegations of wrongdoing that continue to
3 occur?"

4 And it was quite a surprise, if not a
5 shock, to me, to learn that Mr. Ted Padilla was --
6 was appointed assistant principal after all of this
7 as well.

8 So, in our view, and in my view, it is
9 part of the same pattern, an inability to make those
10 kinds of decisions and choices that will move the
11 School forward.

12 Q. And what is your understanding of
13 Mr. Padilla's current position?

14 A. My understanding is that he is now the
15 assistant principal of the school.

16 Q. And do you consider -- with all of the
17 allegations against him, is this -- is this best
18 practices to put him in?

19 A. Well, no. I can certainly elaborate, but
20 I think it's self-evident.

21 Q. Who is the principal now?

22 A. I'm sorry?

23 Q. Who is the principal now?

24 A. The principal is Viola Martinez.

25 Q. And was Ms. Viola the principal -- I

1 understand she wasn't the principal last year; you
2 indicated that Mr. Ken Lairsey was.

3 A. That's correct, from November on.

4 Q. From November on? And who was the
5 principal prior to that?

6 A. Ms. Viola Martinez.

7 Q. So what you've discussed here is under her
8 principalship?

9 A. It occurred during her time, that is
10 correct. The allegations of test security did not.
11 But all of these prior instances that are in the
12 investigative report and those concerns, yes.

13 Q. And what is your understanding of who made
14 the decision to make Mr. Padilla the assistant
15 principal?

16 A. Well, if the school is functioning
17 correctly, that is a decision of the principal, to
18 assign staff and to appoint staff. Can I guarantee
19 that it occurred in this school? I'm not sure.
20 But, clearly, it is the principal's duty to assign
21 staff.

22 Q. Do you believe that this governing
23 council, can they exude the organization and the
24 capacity to exert positive leadership for the
25 school, in your opinion?

1 MR. ROSENFELT: I object. The Council has
2 changed. So if he wants to talk about the past,
3 that's okay. But I -- the question is confusing
4 because the people have changed.

5 THE CHAIR: Please continue.

6 Q. (By Ms. McKee) You may answer the
7 question.

8 A. The capacity of the Governing Council is
9 one of the critical components in the successful
10 functioning of a charter school. It makes them
11 separate and unique from traditional public schools.
12 It's imperative that governance occur correctly in a
13 charter school.

14 So one of the questions, and one of the
15 issues that we had at the May 3rd meeting -- excuse
16 me -- at the April 30th meeting -- was to inquire --
17 excuse me -- the subsequent May 3rd meeting -- was
18 to inquire as to the understanding and the knowledge
19 of the Governing Council in front of these
20 irregularities and what they were doing and what was
21 going on that would allow a school to get beyond
22 these irregularities and to institute best
23 practices.

24 So there were a number of questions that
25 were asked of the Board that the Board -- the

1 Governing Council was consistently unable to answer.
2 They were unaware that they had goals in the
3 statutorily required numbers. They had not read the
4 investigatory report, which is incredulous to me and
5 to us. They were not aware that they were in
6 violation of a minimum instructional hours and a
7 host of other things that they were unaware of.

8 Subsequent to that, they -- in the May 3rd
9 Board meeting, we had witnessed what I considered a
10 rather unusual event. And that event was an
11 enormous show of support by the existing staff
12 towards the current principal, who was trying to
13 institute some of the changes and correct some of
14 the irregularity that he had uncovered since he took
15 the role of principalship in November.

16 He's had a short period of time. He dealt
17 with inadequate goals to begin with. And the show
18 of support from the faculty at that May 3rd meeting
19 was -- was impressive, and somewhat moving, even.
20 And, so, we learned that, subsequent to that, that
21 principal was removed from office. That is another
22 indication in my mind that the School cannot move
23 forward. There's too much chaos; there's too much
24 transition.

25 Then we learned that Mr. Padilla was

1 appointed as assistant principal. Then we learned
2 that Mr. Tibo Chavez was reasked back to the Board.
3 The whole picture is one that speaks to the lack of
4 capacity on this Governing Council to function
5 appropriately.

6 MS. McKEE: Thank you. Pass the witness.

7 MR. ROSENFELT: Madame Chair, I expect to
8 have a very lengthy cross-examination. Perhaps we
9 could take a break, or do you want us to continue?

10 THE CHAIR: I think that's a very good
11 idea. Let's take ten minutes and be back here at
12 10:30. Thank you.

13 (Recess taken, 10:18 a.m. to 10:33 a.m.)

14 THE CHAIR: Let us continue,
15 Mr. Rosenfelt, please.

16 MR. ROSENFELT: Yes.

17 CROSS-EXAMINATION

18 BY MR. ROSENFELT:

19 Q. Okay, Mr. Gerlicz. Okay. You and I did
20 talk the other day; is that correct?

21 A. That's correct.

22 Q. Now, when you did the site visit in April,
23 that was your first time to visit the school; is
24 that correct?

25 A. That is correct.

1 Q. Okay. And you came back within a week.
2 But those are the two -- only two times you were at
3 the school?

4 A. That is correct.

5 Q. But you considered instructional hours and
6 academic achievement and things going back, way
7 back; is that right?

8 A. We looked at those records, that's
9 correct.

10 Q. Now, when you went to the school, you
11 spoke with the principal, appropriately. But did
12 you speak with, for instance, Ms. Martinez, who was
13 the prior principal?

14 A. She was not employed at the school at the
15 time.

16 Q. My question is, did you speak with her?

17 A. No, I didn't.

18 Q. Would she know something about the past
19 instructional hours and past practices at the
20 school?

21 A. I assume that she would.

22 Q. But you didn't talk to her?

23 A. Did not.

24 Q. Did you talk to Mr. Padilla?

25 A. Did not.

1 Q. He's the subject of some of your report,
2 but you didn't talk with him?

3 A. We did not.

4 Q. Okay. And did you talk to anybody who
5 didn't agree with Mr. Lairsey about anything?

6 A. We spoke to Mr. Lairsey and Ms. Vogel.

7 Q. They agreed about everything?

8 A. They did.

9 Q. Now, when you pulled together your site
10 visit team, you went, and Ms. Stofocik went, if I
11 pronounced her name right?

12 A. (Indicates.)

13 Q. And you didn't bring a curriculum
14 specialist; is that right?

15 A. We brought a -- the three of us,
16 Ms. Rachel Stofocik and Abby Wear, the then counsel.

17 Q. You brought a lawyer, not an educator; is
18 that right?

19 A. We brought a lawyer, an educator, and
20 myself.

21 Q. But no special education person, no
22 language arts person, no math person; isn't that
23 right?

24 A. We never do in site visits, that is
25 correct.

1 Q. That's the way that you do site visits?

2 A. That is correct.

3 Q. Now, the first thing you talked about was
4 the alleged noncompliance with the school in getting
5 their goals in; is that correct?

6 A. No, the inadequacy -- the goals had not
7 been approved by the PEC. You had to do that
8 portion first.

9 Q. Okay. And the charter required them to
10 submit goals; is that right?

11 A. They required them to be approved by the
12 PEC. That had not been done.

13 Q. But the School had no control over what
14 the PEC approves or does not approve; isn't that
15 right?

16 A. That is true.

17 Q. Okay. Now -- so, let's be clear. Let's
18 look at the charter. It's Exhibit 7 in the booklet.
19 And just so we're talking about the same thing, if
20 you turn to Page 6 in the charter, okay, it says
21 that the school will review its student performance
22 standards and then submit them so that they can be
23 approved by the PEC?

24 A. That is correct.

25 Q. But that would go through your office?

1 A. That is correct.

2 Q. Okay. Now, would you look at Exhibit 14.
3 Do you see --

4 A. I do.

5 Q. Okay. That's a letter from the head of --
6 prior head of your office; is that right?

7 A. Yes.

8 Q. And it's talking about the charter change
9 amendment request related to the conditions in the
10 charter?

11 A. That is correct.

12 Q. Do you see that? And, in the second
13 paragraph, do you see the requirement is temporarily
14 rescinded?

15 A. Yes, that is correct.

16 Q. Okay. And do you see, at the bottom of
17 this page, from your predecessor, talks about site
18 visits in the bottom paragraph. And it says it will
19 be during this visit -- that is, the site visit --
20 to be scheduled that the Charter School Division
21 will work collaborative with The Learning Community
22 to review and revise, if necessary, the student
23 performance standards. Is that right?

24 A. That's what it says.

25 Q. And, in fact, that's what happened.

1 A. That is correct.

2 Q. The School didn't do anything wrong.

3 A. The School did not have their goals
4 approved by the PEC, which is why we instituted that
5 in November-December 2012.

6 Q. Well -- and they were told the requirement
7 was rescinded, and they'd work with you, and you'd
8 get it approved. And you did.

9 A. Yes, sir.

10 Q. Okay. So everything is done.

11 A. That is not an issue.

12 Q. It is not an issue. Okay. Okay.

13 A. The issue is the goals themselves.

14 Q. Okay. But they're now approved and
15 everything is set.

16 A. They had to be reworked significantly.

17 Q. The next thing you talked about was
18 academic performance. You did talk about academic
19 performance. Now, while you were there, you looked
20 in the classrooms, and you made a comment to this
21 Commission that there was good learning happening at
22 that school; is that right?

23 A. We did visit some classrooms, and there
24 was good teaching happening.

25 Q. Good teaching. Okay. Now, the other

1 thing about this school, as you said, is their grade
2 has been constantly going up; isn't that right?

3 A. I wouldn't say constantly, but it has been
4 going up.

5 Q. Right; from F, to D, to C. That's what
6 you said?

7 A. Correct.

8 Q. Now, the instructional hours. There was a
9 change in your exhibit that reflected a reduction in
10 the instructional hours in the second semester;
11 isn't that right?

12 A. It appears that there were ten minutes
13 difference between the second semester and the first
14 semester.

15 Q. And Mr. Lairsey would have been in charge
16 at that time; is that right?

17 A. Well, it depends when that schedule was
18 written. Whether it was written at the beginning of
19 the year, it would be Ms. Martinez; whether it was
20 written subsequently, would have been Mr. Lairsey, I
21 assume. But that was a yearly schedule.

22 Q. You don't know one way or the other.

23 A. It was the yearly schedule. I don't know
24 who wrote it.

25 Q. Okay. Would you look at Exhibit 18? The

1 title of this exhibit is, "Four-Day Schools." Do
2 you see it?

3 A. I see Moreno Valley School.

4 Q. There are other tabs in Exhibit 18. Do
5 you see those?

6 A. Are you referring to Tab 18?

7 Q. They're all within 18. There's a green
8 piece of paper that separates different schools or
9 school districts.

10 A. Yes, I see them.

11 Q. Now, Moreno Valley High School is a
12 charter school, is it not?

13 A. It is.

14 Q. And it has a four-day schedule; is that
15 right?

16 A. I don't know. I have not looked at it
17 before.

18 Q. It only meets 154 days a year; isn't that
19 right?

20 A. I don't know that, since I have not
21 investigated it previously.

22 Q. Well, do you see, on the document, it
23 says, on the right column, "Total Student Days"?

24 A. I see that, yes.

25 Q. Okay. And, then, on the next page,

1 there's a rotating block schedule, which, at the
2 top, appears to have been faxed from the Moreno
3 Valley High School; is that right?

4 A. Yes.

5 Q. Now --

6 A. It seems to be.

7 Q. Do you know that Moreno Valley Charter
8 School is the number one ranked charter school in
9 this entire state?

10 A. I don't think that's correct; although, I
11 do think that they're a very fine charter school.

12 Q. Well, they were singled out by U.S. News &
13 World Report as being the best school in the state.
14 Did you know that?

15 A. I did not know that.

16 Q. They were singled out by Newsweek as being
17 a very good school; did you know that?

18 A. I did not know that.

19 Q. I think we both agree; it is a good
20 school.

21 A. Yes.

22 Q. They work a four-day week and short day --
23 fewer days than The Learning Community Charter
24 School; is that right?

25 A. I -- you know --

1 Q. Based on this.

2 A. Based on this.

3 Q. Okay. Now, let's turn to the Cimarron
4 Municipal Schools, the next page. And it looks like
5 they meet 150 days a week; is that right? Yeah.
6 One hundred fifty days a year; is that right?

7 A. Yes, that's what it says on this document.

8 Q. Okay. And, then -- do you have any reason
9 to doubt that there are schools in this state which,
10 A, have four-day school weeks, and, B, do not meet
11 the 1,080 instructional hours?

12 A. That was not a concern of our site visit;
13 nor do I have firsthand information of that.

14 Q. It's possible that there are several
15 others that are in the same category; is that
16 correct?

17 A. I'm sure there are lots of them.

18 Q. Okay. All right. But you picked out --
19 you picked out The Learning Community Charter
20 School.

21 A. The Learning Community Charter School is a
22 State-chartered school and is part of our purview,
23 that is correct.

24 Q. Okay. Is there any reason why they can't
25 submit, for next year, a calendar, and stick to it,

1 which includes all the instructional hours?

2 A. Certainly not.

3 Q. Any reason they shouldn't be given the
4 chance?

5 A. That would be a larger question, based on
6 my prior testimony. And the answer to that would be
7 yes.

8 Q. So you don't think they should be given a
9 chance?

10 A. That is correct.

11 Q. Now, you talked about the sexual
12 harassment investigation; is that correct?

13 A. That is correct.

14 Q. Okay. Let's turn to Exhibit 20, the last
15 page, under "Conclusion." Can you see that?

16 A. The last page is the invoice for the
17 report.

18 Q. I'm sorry. I'm talking about Mr. -- the
19 final investigation report. It's -- it's after the
20 invoice and after the agreement. It's the actual
21 report.

22 A. You mean Page 2?

23 Q. No, keep going. I think you go past the
24 green. There you go. The last page, under
25 "Conclusions." Do you see that?

1 A. "Recommendations," yes.

2 Q. No -- well, under "Conclusions."

3 A. Ah, yes.

4 Q. Okay. "Witness testimony shows that there
5 has not been enough evidence to show sexual
6 harassment." Do you see that?

7 A. Yes, I see that.

8 Q. Okay. So are you aware of any other
9 incidents or investigations of sexual harassment?

10 A. Other -- could you be more clear about
11 that question? About The Learning Community
12 Charter, or --

13 Q. No. In The Learning Community Charter
14 School. This was a one-time incident. There was an
15 investigation that concluded there was no sexual
16 harassment.

17 A. Oh, yes. There was no further speculation
18 on our part beyond this.

19 Q. Okay. One time.

20 A. One time, and appears to have been going
21 along for some time.

22 Q. That you know of. Okay. You talked about
23 the signature on the lease, the building lease that
24 was signed by the principal; is that correct?

25 A. It wasn't part of the questioning from

1 counsel. But it was part of our report to the PEC.

2 Q. I have it in my notes that you mentioned
3 it. Were you talking about some other lease?

4 A. No, it would have been the lease of the
5 building.

6 Q. It was in your report; it was in the
7 charges. You say the principal should not have
8 signed it. You mentioned it here.

9 A. Correct.

10 Q. Do you know whether the Governance Council
11 approved that lease?

12 A. We did not find in the minutes that the
13 Governing Council had given permission to an
14 administrator to sign the lease for the building.
15 That appeared to us to be improper.

16 Q. Okay. But if they had approved it, it
17 would be different than if they had not; correct?

18 A. It appeared that they approved it after
19 the fact.

20 Q. How do you know?

21 A. It appears. I don't have --

22 Q. You don't? Okay.

23 A. I'll take your word for it.

24 Q. Now, you went to two Governance Council
25 board meetings, on April 30th and May 3rd.

1 A. That is correct.

2 Q. Did you think those meetings were typical?

3 A. There was an agenda followed. Clearly,
4 there were issues occurring at the school. Whether
5 that's typical or not was not part of my analysis.

6 Q. Well, did you notice a large number of
7 staff members attending those meetings?

8 A. Yes, indeed.

9 Q. Do you think that happens at ordinary
10 board meetings?

11 A. Typically, not. But, at the Learning
12 Community Charter School, it's very possible.

13 Q. Did you know that the renewal of the
14 principal's contract was at issue in those meetings?

15 A. At one of those meetings, yes, we were
16 aware of that.

17 Q. And, in the prior meeting, it was
18 discussed?

19 A. Now, the prior meeting was to discuss a
20 separate meeting three days after, in which that
21 issue was raised.

22 Q. And you knew, didn't you, that this was a
23 very hot issue within the school?

24 A. Yes, we knew that it was a controversial
25 issue.

1 Q. Okay. There was a lot of tension in those
2 meetings; correct?

3 A. A lot of tension in that school for quite
4 a lot of time.

5 Q. Well, you were just there for those
6 meetings.

7 A. Correct.

8 Q. Okay. So what I want to suggest -- and I
9 hope you'll agree with me -- is you went down there,
10 and you did take a snapshot of what was going on at
11 that time. And you had some history, but you did
12 not have a complete history; isn't that right?

13 A. Oh, yes. In our site visits and
14 subsequent, that is extremely difficult to get a
15 total composite, 100-percent picture. But we felt
16 that we had a significant enough, reasonably
17 accurate picture.

18 Q. Okay. Now, on May 3rd, you said that the
19 teachers were all in the Board meeting. They
20 weren't teaching; is that right?

21 A. That's correct.

22 Q. Because there was this hot issue going on,
23 and everyone was wound up about it. So they weren't
24 having class on that Friday; isn't that correct?

25 A. For whatever reason, class was not

1 happening.

2 Q. Right. But there was a reason, wasn't
3 there?

4 A. Yeah, apparently.

5 Q. You talked about the Governance Council
6 being short members from May 2012 to October 2012.
7 What happened between May and October. Isn't that
8 the summer?

9 A. You're correct. Those are summer months.

10 Q. Okay. Now, on that occasion, they were
11 short. But it didn't happen again, did it?

12 A. Well, the Governing Council has not
13 maintained their consistency throughout. After that
14 May the 3rd Board meeting, two Board members
15 resigned. They had three Board members come in.
16 Subsequently to that, when they replaced two Board
17 members, yet another Board member resigned later.
18 So that's that short pattern that I'm aware of.

19 Q. But, in the other instances, they were
20 quickly replaced. There was no big gaps; isn't that
21 right?

22 A. That is correct.

23 Q. And they have a full Board today.

24 A. It's my understanding; although, I don't
25 think we've gotten word at the PED of who that fifth

1 replacement is after Ms. Bingham has left. So I'm
2 assuming that, but I don't have concrete
3 information.

4 Q. But you have no reason, at this point, to
5 know one way or another?

6 A. No. But we have reason to always be
7 doubtful, given what has occurred.

8 Q. Now, you noted on the May 15 minutes, that
9 there was a mention of an Open Meeting Act
10 violation. That's correct?

11 A. That is correct.

12 Q. All right. That's the only time that
13 you're aware of where that happened; isn't that
14 right?

15 A. That I'm aware of.

16 Q. Okay. Now, you read in the newspaper that
17 the University of New Mexico Board of Trustees
18 violated the Open Meetings Act the other day?

19 MS. McKEE: Object to relevancy.

20 MR. ROSENFELT: The relevance --

21 THE CHAIR: I'll sustain the objection.
22 Let's keep it rolling.

23 Q. (By Mr. Rosenfelt) You said that the
24 ethics code required the -- a report of an
25 investigation of sexual harassment to the Public

1 Education Department; is that right?

2 A. It isn't -- it would be the -- it is my
3 understanding that, when there is an investigation
4 alleging sexual harassment in a school, that the
5 Public Education Department is to be notified. It
6 certainly would be best practices to notify the
7 Public Education Department. It certainly would be
8 an expectation. And reading the severity of the
9 report, even though it did not rise to a criminal
10 charge, that would be an expectation.

11 Q. Was it a criminal investigation?

12 A. It was not a criminal investigation. It
13 was an investigation to determine whether it rose to
14 the level of criminality. And, apparently,
15 according to the investigator's report, in his
16 opinion, it did not rise to the level of
17 criminality.

18 Doesn't mean it shouldn't be reported. In
19 our view, and in my view of the investigative
20 report, there are incredibly concerning things in
21 that investigative report. At the minimum, I would
22 expect the Board to have read it.

23 Q. My question is the requirement -- you've
24 cited the regulation, which says an investigation,
25 which found no sexual harassment, needed to be

1 reported. And I would like to refer you to the last
2 page of Exhibit 20, which is the regulation you
3 cited. And I would like you to point out -- well,
4 it's Section 24 is the section that is cited. And
5 it's the last page of Exhibit 20.

6 And I would like you to show me where it
7 says they have to report an investigation where they
8 find no sexual harassment?

9 A. I'm not sure where you are now.

10 Q. Okay. I am -- I'm sorry. I'm looking at
11 the very last page of Exhibit 20. Oh, no. I'm --
12 it's the next to the last page. Section (24). It's
13 about the middle of the page, above where it says
14 "Failure... ."

15 A. Could you cite the statute? Six point --
16 which one?

17 Q. Well, if you go back, it's 6.9-something.
18 But the subsection that was cited in your report --

19 A. Ah.

20 Q. -- is subsection (24), next to last page
21 in Exhibit 20.

22 A. Yes. It says, "Shall report any knowledge
23 of inappropriate contact, as provided by
24 paragraph (7)."

25 Paragraph (7) -- let's see. Where is

1 paragraph (7)? "Shall not have inappropriate
2 contact with any student, whether or not on school
3 property, which includes, but is not limited to:
4 all forms of sexual touching, sexual relations or
5 romantic relations; inappropriate touching which is
6 [verbatim] physically embracing, petting,
7 hand-holding or kissing, that is unwelcome to the
8 student [verbatim]; any open displays of affection
9 toward mostly-boys or mostly-girls; offering or
10 giving a ride to a student, unless absolutely
11 unavoidable... ." And I would say that --

12 Q. Well, let's -- I didn't ask you to give a
13 speech. I asked you what language in this
14 regulation requires a report of an investigation.

15 A. Right. I'm getting to that. Any report,
16 as provided by paragraph (7) --

17 Q. Okay.

18 A. -- shall be reported. Paragraph (7), with
19 the admission by Mr. Ted Padilla that he frequently
20 calls "cutie" and "sweetie" -- I'm assuming that he
21 doesn't do that to boys -- but that would fit in
22 this paragraph, and should, therefore, be reported.

23 Q. Did he touch anybody?

24 A. Not that I'm aware of.

25 Q. Is there physical touching? Is there

1 sexual contact?

2 A. That was not in the report.

3 Q. Have you no reason to know that?

4 A. I have no reason to know.

5 Q. So it does not say what you claim; isn't
6 that right?

7 A. No. It says right here, in (c), (7)(c),
8 "any open displays of affection towards mostly-boys
9 or mostly-girls." "Cutie" and "sweetie" can easily
10 be assumed and interpreted as a sign of affection,
11 particularly when it's geared to one gender, not the
12 other.

13 Q. So you would make that stretch?

14 A. No, I would not make that stretch.

15 Q. You'd shut the school down over this?

16 A. No, I would not. This is just one part of
17 this and this and this and this and this.

18 (Indicates.)

19 Q. There was no finding of sexual harassment
20 by the investigator?

21 A. There are many, many findings of terrible
22 practice and terrible things going on that
23 contribute to an awful school culture at the time.

24 Q. Let's take them one at a time, because,
25 you know, you want to sort of paint with a big,

1 broad brush. And if you take them one by one,
2 they're not the same thing. And that's what we're
3 trying to do. I understand where you're coming
4 from, but that's where we're coming from.

5 Now, you talked about the inspiring moment
6 when a number of staff members stood up in support
7 of Ken Lairsey; is that right?

8 A. It was a moving moment, that is correct.

9 Q. Did you know how many of them were
10 spouses, not staff members?

11 A. No, I did not.

12 Q. Did you know that one of them was paid by
13 Lairsey out of school funds to baby-sit his
14 children?

15 A. I have no knowledge.

16 Q. And one of them got an inflated \$10,000
17 extra salary, because she was a pal of his?

18 MS. McKEE: I'm going to object as to
19 foundation laid for those questions.

20 Q. Did you know that?

21 MS. McKEE: I'm going to object. There's
22 been no foundation for the question that he's
23 asking.

24 THE CHAIR: Yes. I'm concerned you're
25 bringing up things that we don't have -- do you have

1 evidence of that in your book here, these things
2 you're bringing up?

3 MR. ROSENFELT: No, we're going to have
4 testimony. We're allowed to have testimony.

5 THE CHAIR: Have you had testimony?

6 MR. ROSENFELT: No. We will have
7 testimony. This is my only chance to question him,
8 and I want to know what he knew about those people
9 who inspired him.

10 THE CHAIR: I am concerned about
11 allegations that we have no way of knowing whether
12 or not they're true.

13 MR. ROSENFELT: You're going to know. I
14 will represent to you, you will have testimony.

15 THE CHAIR: Are we going to have time to
16 get to that?

17 MR. ROSENFELT: Well, I expect. I've got
18 two hours, and I expect we'll get those in.

19 MS. McKEE: Madame Hearing Officer, as
20 directed in the pretrial order, no cross-examination
21 is allowed or -- communications or discussions are
22 outside the scope, which this is. But, furthermore,
23 there's been no foundation laid for any of these
24 statements he's doing.

25 THE CHAIR: Thank you. I will sustain the

1 objection.

2 Q. (By Mr. Rosenfelt) With regard to the test
3 security breach, there was a finding. This was a
4 one-time event; is that right?

5 A. There were two findings. And that's the
6 only time that we engaged in an investigation for
7 test security, to my knowledge, yes.

8 Q. All right. And the report showed no
9 widespread cheating; is that right?

10 A. It showed no cheating, that is correct.

11 Q. Okay. And there was no compromise of what
12 the students were doing with regard to their test.

13 MS. McKEE: Objection. Lack of
14 foundation.

15 MR. ROSENFELT: Well, I'm asking if the
16 report showed that, yes or no.

17 THE CHAIR: Sustained.

18 Q. (By Mr. Rosenfelt) You're saying there's
19 no widespread cheating?

20 A. I believe the objection is sustained.

21 THE CHAIR: The objection has been
22 sustained.

23 Q. Well, let's go over the report. I think
24 it is in their exhibit. Let me get it. It's their
25 Exhibit 11.

1 All right. Do you see, on the last page
2 of Exhibit 11, it says --

3 THE CHAIR: Please go ahead.

4 Q. All right. The last page of Exhibit 11,
5 last paragraph, second sentence. Do you see where
6 it says, "There is no evidence to suggest that he
7 reproduced or communicated the content of the test
8 in any form that might further jeopardize the
9 security of the test"?

10 A. I see where it says that Mr. Padilla
11 breached test security by taking an end-of-course
12 booklet home.

13 Q. You didn't answer my question.

14 A. And that there is no evidence to suggest
15 that he reproduced or communicated --

16 Q. Are you aware, in the case of a test
17 security breach, of the action taken by the
18 Governance Council?

19 A. I believe the action taken by the then
20 principal was to place Mr. Padilla on administrative
21 leave, which was the correct action for any
22 administrator to do in that regard. I subsequently
23 learned that Mr. Padilla was brought back. And it
24 wasn't clear to me whether he was brought back by
25 Ms. Martinez or by the Board; it is unknown to me

1 which.

2 Q. You don't know what the Governance Council
3 did, and you don't know what Ms. Martinez did in
4 response to this report?

5 A. In response to the report, my
6 understanding is that nobody was placed on
7 administrative leave. Or this test security --

8 Q. Test security --

9 A. Yes, yes. That, I do know, that
10 Mr. Lairsey had placed Mr. Padilla on administrative
11 leave; that, I do know.

12 Q. But you do not know what Ms. Martinez did
13 or what the Governance Council did; is that right?

14 A. You mean when Ms. Martinez was
15 subsequently appointed as principal or before? It's
16 not clear to me.

17 Q. When the test security report came in.

18 A. When the test security report came in,
19 Ms. Martinez was not an employee of the school.

20 Q. So she -- as far as you know, she didn't
21 do anything, and you're not aware of anything?

22 A. Well, I certainly hope not. She is not an
23 employee of the school.

24 Q. Thank you. And, with regard to the sexual
25 harassment investigation, are you aware of any

1 action taken by the Governance Council or
2 Ms. Martinez in response to that?

3 A. I am not aware.

4 Q. If they did take action, you wouldn't know
5 about it.

6 A. No, I would definitely not say that. We
7 did not know that an investigative report occurred
8 at all until the -- the -- the winter of 2013.
9 There would be no assumption that would tell us what
10 action they took. That's a stretch.

11 THE CHAIR: Let me interrupt just for a
12 minute, Mr. Rosenfelt. There's only about
13 20 minutes left of --

14 MR. ROSENFELT: Okay. I'm pretty much
15 finished.

16 THE CHAIR: -- CSD's time. So if you
17 would be mindful of that, please?

18 MR. ROSENFELT: I am. I have pretty much
19 covered what he did in his direct. And we will be
20 prepared to deal with the rest of it in our case.

21 THE CHAIR: Thank you.

22 MR. ROSENFELT: Thank you.

23 THE WITNESS: Thank you.

24 THE CHAIR: Oh. I'm sorry, Mr. Gerlicz.
25 I forgot that the Commissioners may have questions

1 of you. If you wouldn't mind --

2 THE WITNESS: Certainly.

3 THE CHAIR: -- taking your seat? Thank
4 you. I apologize. I almost let you get out the
5 door.

6 THE WITNESS: No worries.

7 THE CHAIR: Commissioners, do we have --
8 does anyone have questions of this witness?
9 Commissioner Carr?

10 COMMISSIONER CARR: Madame Chairman,
11 members of the Commission, Mr. Gerlicz, I have a few
12 questions. It won't take up too much time, I don't
13 think.

14 EXAMINATION

15 BY COMMISSIONER CARR:

16 Q. In your visit to the school, did you -- I
17 couldn't see a note of what the passing time was
18 between classes. Do you know what the passing time
19 was?

20 A. Yes. You can determine the passing time
21 by subtracting the minutes from one period and the
22 ending of the period before.

23 Q. Oh, okay. I didn't know that. Okay. It
24 wasn't something worth noting?

25 A. No, definitely not.

1 Q. Okay. In your observation, did classes
2 start and end on time? I mean, was there teaching
3 going on the entire period? Were they fully
4 utilizing the time, in your observations?

5 A. During our observation, there was nothing
6 in the classroom that raised a concern of ours. But
7 it's a -- you know, it's a one-slice visit. So --
8 but, during our time there, we did visit a few
9 classrooms. We saw good things happening.

10 Q. I am aware of the procedure for removing a
11 school board member. I am not aware of the
12 procedures for removing a board member of a charter
13 school. Can you enlighten us on that?

14 A. Yes. There is well-defined procedures for
15 that. And it should be stated in the school's
16 bylaws what those procedures are. Typically, it --
17 depending on the size of the board, it takes the
18 vote of a majority of the Board members to remove
19 any board member, including the chair.

20 MR. ROSENFELT: Objection. That is --
21 we're talking each school is different. And,
22 "typically," is not necessarily specific to this
23 school.

24 THE CHAIR: I would ask that you not
25 interrupt the Commission's time, please. Thank you.

1 THE WITNESS: And the -- and the
2 irregularity that we saw in this case was that we
3 did find documents in the packet of minutes removing
4 the board that were signed by the then principal of
5 the school, Ms. Viola Martinez, which is highly
6 irregular. Principals don't do that. That is the
7 function of a governing council. That is the
8 function of a board.

9 Q. (By Commissioner Carr) So, in your
10 opinion, you don't feel like the proper procedure
11 was -- was taken in removing those Board members?

12 A. We do see that a vote was taken in the
13 minutes. So that procedure was properly handled,
14 seems to me. The -- and that was recorded in the
15 minutes. Why a letter was in there signed by the
16 then principal, Ms. Viola Martinez, to us, is an
17 indication of -- of a tremendous crossing of
18 boundaries between what is a principal and what is a
19 governing council and the proper roles that each of
20 those functions should serve. That's what it really
21 indicated to us.

22 Q. Okay. In what you've seen of the
23 investigation of the misconduct or the sexual
24 allegations -- and I read some of the language --
25 was -- what are the words besides "cutie" and

1 "sweetie" that were used in front of students? I
2 saw a lot of other foul language. Was that the type
3 of language that -- that was typically used in front
4 of students as well as other faculty members?

5 A. I cannot comment on that,
6 Commissioner Carr. What I can comment on is what is
7 written in the report that raised that concern. So
8 "cutie" and "sweetie" immediately raised my concern.
9 And, in fact, that it was a self-admission indicates
10 that it happens on a regular basis.

11 The fact that the group of people were
12 called Anglo is one thing. The fact that a racial
13 comment was made in front of the investigator is
14 another thing, and the fact that there was evidence
15 there in the form of a survey that the school
16 culture was severely compromised.

17 Q. You're a former member -- you're a former
18 principal of a charter school.

19 A. Commissioner Carr, I am.

20 Q. How would you have handled that situation,
21 had you had a faculty member who was using language
22 like that? What do you think the correct
23 professional method would have been to try to have
24 corrected that?

25 A. In my professional experience, and in my

1 professional appearance [verbatim], were this to
2 occur, and any principal was to get knowledge of
3 this, that faculty member would be immediately put
4 on an administrative leave, and a program of
5 improvement would be put in place, upon which the
6 ending of it would determine whether that faculty
7 member should return or not.

8 Those are, in my view, serious things. We
9 do not call students with any sort of sexual
10 innuendo or connotation from one gender to the next.
11 Doesn't matter. But we don't do that as teachers;
12 we don't do that as educators. In my view, that is
13 highly inappropriate.

14 Q. Okay. Moreno Valley Charter School was
15 brought up, a school that I have great familiarity
16 with. It is a -- a local charter school; isn't that
17 correct?

18 A. That is correct.

19 Q. The -- the document that was placed in
20 evidence showed the number of days. It's my --
21 there are a number of schools that have four-day
22 weeks. However -- and they don't have to go
23 181 days. There's a minimum number of days. But
24 they still have to have 100 -- excuse me -- 1,080
25 hours; is that correct?

1 A. Commissioner Carr, that is correct.
2 Beyond the instructional days are the instructional
3 hours. And it is the duty of the charter system and
4 the charter world is that schools and their
5 governing councils have autonomy for how those 1,080
6 hours -- hopefully more, but minimum -- are
7 delivered.

8 We have schools that have an expeditionary
9 learning model, for example. That means that they
10 take students on extended trips, for example, and
11 accumulate far more hours. That is allowed. That
12 is the beauty of the charter system.

13 So it's not just the dates that we look at
14 certainly. And you're absolutely correct. There
15 are more than one school that have four-day weeks.
16 And what typically happens is that the instructional
17 hours on Monday through Thursday are lengthened as a
18 result.

19 COMMISSIONER CARR: Yes. All right. I
20 have no further questions, Madame Chair.

21 THE CHAIR: Thank you, Commissioner.
22 Commissioner Gant.

23 EXAMINATION

24 BY COMMISSIONER GANT:

25 Q. Mr. Gerlicz, in your opinion, based upon

1 what you saw over there, how many years do you think
2 the school had been living -- or using four-day week
3 and not enough hours?

4 A. Commissioner Gant, it was our
5 understanding that this practice had been going on
6 for -- since the institution of the School, when the
7 School was originally chartered. Now, the School
8 had originally been chartered under a different
9 model than they currently have.

10 They were originally a one-to-one laptop
11 school when they were originally granted their
12 charter. That lasted but one year. And then a
13 different sort of setup had occurred. And online
14 learning has some bits and pieces of instructional
15 delivery there.

16 We know that IDEAL New Mexico is involved
17 with The Learning Community and vice versa. That
18 sometimes happens on Friday. And that's about as
19 far as I know about the history.

20 Q. Governance Council: You mentioned that
21 long extended period of May to October, I believe it
22 was; is that correct?

23 A. That is correct.

24 Q. And, of that time, only three of those
25 months are summer; is that correct?

1 A. That is correct.

2 Q. So they had plenty of time, the
3 Governance, to replace those vacancies; right?

4 A. The statutory requirement is 45 days,
5 Commissioner Gant.

6 Q. Yes, it is. Yes, it is. I would have
7 hoped they'd known that; but, apparently, they did
8 not.

9 I go back to Commissioner Carr's -- it
10 really floored me when you said the principal
11 dismissed the Council member. That one -- I had
12 never heard of that before. And I've been on school
13 boards, and that would have never happened. Thank
14 you.

15 How many of the current Council members
16 are the old Council?

17 A. Commissioner Gant, members of the
18 Commission, it would be hard for me to understand
19 what is the old -- how long they've been on the
20 Board. Is that the gist of the question?

21 Q. No, not how long. You had time when they
22 lost some, and then they got some back. Are those
23 two or three that were still there, were they
24 original, when you were there?

25 A. Original from the time of the initial

1 charter approval?

2 Q. No, no, the last couple of years.

3 A. When we were there, the then Chair of the
4 Board was Ms. Carmen Pennington, and she had been
5 Chair of the Board for two years. That was probably
6 the longest tenure of any of the Board members to
7 which we had addressed.

8 Q. Do you know if any of the current Council
9 has fulfilled the requirements, per 6.80.4.2 NMAC,
10 for their training?

11 A. They have fulfilled those requirements,
12 Commissioner Gant, and members of the Commission.
13 Yes, we did verify that.

14 COMMISSIONER GANT: Commissioner Carr has
15 already covered the Moreno Valley thing. That's
16 easy to answer. So go ahead. I'm done.

17 THE CHAIR: Commissioner Toulouse.

18 COMMISSIONER TOULOUSE: Madame Chair,
19 Director Gerlicz. I'll keep this short.

20 EXAMINATION

21 BY COMMISSIONER TOULOUSE:

22 Q. My concern, having been a long-time
23 elected board member of a community college, was how
24 long it takes when you become a new board member in
25 any educational institution to become a part of that

1 board.

2 So I'm wondering if, when you did look at
3 this, and you'd already seen a board that had
4 churned, could you tell how well the board worked
5 together or not?

6 And what would be -- and in your previous
7 experience as a principal, how long do you think it
8 takes new board members to become integrated?

9 A. Commissioner Toulouse, members of the
10 Commission, it's hard to put a defined time limit
11 that, after which, one can say it's a
12 well-constituted board. Some people acclimate to
13 that duty quicker than others. And other groups
14 acclimate quicker than others.

15 What we saw at The Learning Community
16 Charter School, and in the questions that I
17 presented to the Board, it was very, very clear to
18 me -- painfully evident -- that the Board did not
19 understand their proper functions, even if -- and it
20 was a very legitimate question posed by one of the
21 Board members who had attended the minimum five
22 hours' training. But it still takes far beyond that
23 to really get a handle of how a proper governing
24 council operate.

25 In The Learning Community Charter School's

1 case, it was very clear to me that the Board had
2 been directed by the then principal for many, many
3 years, Ms. Viola Martinez, and -- and was -- was
4 operating based on the information they were
5 receiving from her and assumed that it was all good
6 and correct, when, in reality, some of the Board
7 practices were not correct and not good. And there
8 was an unawareness of that proper oversight
9 function. So that part is clear.

10 To get to your original question, how long
11 does that take? What we look for in governing
12 council boards is stability, commitment, and is
13 there continuity, is there succession plans, is
14 there ongoing training, because of those issues.
15 But it would be hard to put a precise time limit on
16 it. My experience has been that two years with a
17 well-constituted board should be sufficient time.

18 COMMISSIONER TOULOUSE: Thank you.

19 THE CHAIR: Other questions from
20 Commissioners? Thank you, Mr. Gerlicz. Ms. McKee,
21 I know you're short on time, but do you have other
22 witnesses or --

23 MS. McKEE: Yes, Madame Hearing Officer.
24 We have Rachel Stofocik.

25 THE WITNESS: Good morning.

1 MS. McKEE: Yes, right there. Thanks.

2 MR. GERLICZ: Counselor, pardon -- pardon
3 the interruption, Madame Chair. Am I permitted, or
4 not permitted --

5 THE CHAIR: Yes. I think once a witness
6 has testified -- can they stay?

7 MR. ROSENFELT: We do not plan to call
8 Mr. Gerlicz. So as far as we're concerned, he can
9 be excused.

10 THE CHAIR: Okay. Yes.

11 MS. McKEE: And there's no rebuttal, so --

12 RACHEL STOFODIK,
13 after having been previously sworn under oath,
14 was questioned and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. McKEE:

17 Q. Please state your name.

18 A. Rachel Stofocik.

19 Q. And what is your position?

20 A. I am an education administrator in the
21 Charter Schools Division for the Public Education
22 Department.

23 Q. And are you a charter school liaison?

24 A. Yes.

25 Q. Okay. With what school -- schools? I

1 know you have more than one. Let me just ask you,
2 are you the charter school liaison for TLC?

3 A. Yes.

4 Q. Were you present at a site visit at TLC?

5 A. Yes.

6 Q. And I'm actually just going to focus on
7 what you were told regarding the instructional
8 hours.

9 A. Okay.

10 Q. What did you learn when you -- when you
11 visited TLC regarding the instructional hours?

12 A. So, when we visited TLC, we were informed
13 that, since the School's --

14 THE CHAIR: Louder, Rachel, if you can,
15 please.

16 THE WITNESS: Sure. Sure. So, when we
17 visited the School, we were informed by the
18 representatives from the School at that time.

19 Q. And who were they?

20 A. Principal Ken Lairsey and Gilda Vogel.

21 Q. Okay.

22 A. We were informed that the School had never
23 operated on Fridays, that it was never mandatory for
24 the students to be there, nor the teachers. That
25 role was not ever taken. And, then, at the time,

1 Principal Lairsey explained that he was trying to
2 change that and have students and teachers come in
3 on Friday --

4 Q. Okay.

5 A. -- in order to increase the -- the
6 students' performance and success.

7 Q. I would like you to turn to Exhibit 9.

8 A. Okay.

9 Q. And, before I have you look at this
10 2012-2013 school calendar, can you tell me on what
11 day you made the site visit? You made two, I
12 understand from the prior testimony?

13 A. I believe it was April 30 and May 3.

14 Q. All right. And what does this calendar
15 show May 3 to be? Is that an instructional day or
16 not?

17 A. It looks like it's showing that it's an
18 instructional day, if I'm reading this correctly.

19 Q. And was there instruction going on on
20 May 3rd when you were there?

21 A. No.

22 Q. What were you told regarding past site
23 visits and what day of the week they should be on?

24 A. So the Charter School Division tries to
25 work with the school when we plan a site visit to

1 make sure it fits into everyone's schedule. And we
2 were told, at the site visit on April 30, that the
3 School purposely never scheduled a site visit on
4 Friday to insure that we wouldn't see the lack of
5 instruction.

6 MS. McKEE: All right. Thank you. Pass
7 the witness.

8 THE CHAIR: Thank you. Mr. Rosenfelt?

9 CROSS-EXAMINATION

10 BY MR. ROSENFELT:

11 Q. Okay. Quickly. You are talking about
12 going back since the School's founding in terms of
13 instructional hours; is that right?

14 MS. McKEE: Objection. Outside the scope
15 of direct.

16 MR. ROSENFELT: That's just what she said.
17 She said she was told, since the School's founding,
18 they never had a class on Fridays.

19 MS. McKEE: Oh. If that's what he's
20 referring to, I withdraw my objection.

21 THE CHAIR: Thank you.

22 Q. (By Mr. Rosenfelt) Okay. My question is,
23 did you talk to anybody who had been there since the
24 School's founding?

25 A. It's my understanding that there was only

1 one teacher that had been there since the School's
2 founding, but that the principal had been there
3 since the second year of the School -- the School's
4 opening.

5 Q. Ken Lairsey?

6 A. That's right.

7 Q. Did you talk to Viola Martinez?

8 A. I did not. She was not the principal at
9 the time.

10 Q. She was sitting right with you in the
11 May 3rd meeting; correct?

12 A. It was an open meeting. And she was not
13 sitting -- I didn't have an opportunity to question
14 anyone at that meeting.

15 Q. There was a special occurrence at the
16 School on May 3, namely, voting on the contract of
17 the principal; isn't that right?

18 A. It was -- it was a Governing Board
19 meeting.

20 Q. Where that was one of the subjects;
21 correct?

22 A. I don't recall the agenda exactly, but --

23 Q. Okay. All right.

24 MR. ROSENFELT: Now, Madame Chair, I want
25 to ask one question outside of the scope of direct.

1 And I'd like to do it, and I think it's my due
2 process right.

3 MS. McKEE: No. I object to anything
4 outside the scope of direct.

5 MR. ROSENFELT: I'm going to ask one
6 question.

7 THE CHAIR: The prehearing order disallows
8 that. I will not allow it.

9 MR. ROSENFELT: Okay. I object. I
10 recall -- and point out -- that the past hearing in
11 2010, it was ruled a sham by this Commission.

12 MS. McKEE: Objection, Madame Hearing
13 Officer.

14 MR. ROSENFELT: And that's one of the
15 reasons that I want to ask --

16 THE CHAIR: Please be quiet. You're out
17 of order. Thank you.

18 Commissioners? Commissioner questions?
19 Do we have questions of this witness? Commissioner
20 Gant.

21 COMMISSIONER GANT: Madame Chair, members,
22 May 3 -- okay. Never mind, disregard. I looked at
23 the wrong calendar.

24 THE CHAIR: Okay.

25 COMMISSIONER GANT: Disregard.

1 THE CHAIR: Further questions? No
2 questions. Thank you very much.

3 THE WITNESS: Thank you.

4 THE CHAIR: Ms. McKee, do you have further
5 witnesses to call?

6 MS. McKEE: No, Madame Hearing Officer.

7 THE CHAIR: At this point, I think this is
8 a pretty good time to take a break and have some
9 time for lunch. It's getting towards the noon hour.
10 It's 11:25. Let's meet back here at 12:00. And we
11 will resume, Mr. Rosenthal [verbatim], with your
12 first witness.

13 MR. ROSENFELT: Thank you.

14 THE CHAIR: We are in recess.

15 (A recess was taken at 11:25 a.m., and
16 reconvened at 12:05 p.m., as follows:)

17 THE CHAIR: I call this hearing back into
18 session. Mr. Rosenfelt, if you're ready, call your
19 first witness.

20 MR. ROSENFELT: Okay. We call Priscilla
21 Brigham.

22

23

24

25

1 PRISCILLA BRIGHAM,
2 after having been previously sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ROSENFELT:

6 Q. Would you state your name?

7 A. Priscilla Brigham.

8 Q. And what has been your association with
9 The Learning Community Charter School?

10 A. I was first an employee for ten-and-a-half
11 years. And then I was on the Governance Council for
12 two months. And now, I'm just totally retired.

13 Q. Okay. As an employee, were you a teacher
14 for some period of time?

15 A. Yes, I was a teacher from 2002 until 2006.
16 And, then, I was teaching halftime seventh and
17 eighth grade U.S. History and New Mexico History.
18 And, then, I began -- well, I was always writing the
19 EPSS from the onset, from 2002 until the time I
20 retired. And, then, I also had an assignment of
21 curriculum supervision.

22 Q. Okay. And that was until you retired?

23 A. Yes.

24 Q. All right. Would you tell the Commission
25 what kind of student population there is at The

1 Learning Community Charter School?

2 A. We have -- the majority of our students
3 are low socioeconomic caliber of children. We have
4 several children who have learning disabilities. We
5 have several children who have had emotional
6 psychological problems. And then we have a small
7 percentage of very excelling students.

8 Q. Okay. Is the curriculum at The Learning
9 Community tailored to meet the needs of these kids?

10 A. Yes. At the present time, because we've
11 gone into the Common Core curriculum, the direction
12 from the -- from me, as the curriculum director, was
13 that teachers should take the students where they
14 are and try to advance them as -- as well as the
15 students could learn.

16 Q. I'd like to ask you about the curriculum
17 at The Learning Community Charter School, going back
18 before the 2011 site -- before the 2011 charter
19 renewal. What did you do, and what was done in
20 connection with the curriculum?

21 MS. McKEE: Objection. Relevancy.

22 THE CHAIR: Pardon me. I did not hear
23 you.

24 MS. McKEE: Objection. Relevancy.

25 THE CHAIR: Could you just give us an idea

1 of the relevance of the question, sir?

2 MR. ROSENFELT: Yes. We've heard
3 testimony from Mr. Gerlicz basically negatively
4 stating that the academic program was poor, that the
5 test scores was poor, that the school did poorly --
6 in the past, not currently. But he talked about the
7 grade that the school had in the past and gave the
8 impression, clearly, that this was a -- had a bad
9 academic program, a bad curriculum. And I want her
10 to address that.

11 THE CHAIR: I think I will allow it. But
12 let's keep it as brief as you can, please.

13 Q. (By Mr. Rosenfelt) Go ahead.

14 A. Can you repeat the question?

15 Q. Yes. Can you describe the curriculum at
16 The Learning Community Charter School before the
17 2011 charter renewal?

18 A. Well, the curriculum has -- has always
19 been a pretty strong curriculum. Teachers have
20 addressed the specific needs of the children.

21 Q. Okay. Were you in charge of dealing with
22 EPSS?

23 A. Yes. From the onset, from the time that I
24 was hired in 2002, because of my previous experience
25 working with Santa Fe Public Schools, I was given

1 that particular duty.

2 Q. Okay. And was the school in compliance
3 with all requirements for EPSS?

4 A. Yes.

5 Q. I now want to turn to what happened in the
6 2010 charter renewal and changes. Let me direct
7 your attention -- would you give Ms. Brigham an
8 exhibit book? I want to look at Exhibit 1. In the
9 third page in, counting the cover, there is a
10 Finding No. 7. Do you see that, under "Educational
11 Program"?

12 A. Yes.

13 Q. Do you see where it says that CSD found
14 little evidence that anything in the educational
15 program or approach of the school has changed?

16 A. Yes, I see that.

17 Q. Okay. Is that statement true?

18 A. No.

19 Q. Okay. What changes in the educational
20 program or approach are you aware of that have been
21 implemented since the charter renewal?

22 A. There was a big movement with the teachers
23 under direction that we were to begin reviewing. We
24 had also implemented the Short Cycle Assessment.
25 And teachers were to review the Short Cycle

1 Assessment, and where the students -- how well the
2 students had performed. And, then, we changed the
3 Short Cycle Assessment, because what we had been
4 using was not showing significant progress for our
5 students; it wasn't showing us the data that we
6 thought we had to have.

7 So we moved into the approved State
8 Department Discovery test, that showed us -- it was
9 a -- it was a good visual for both the parents, the
10 students, and the teachers to review what the
11 students were doing, what the different modalities
12 of weaknesses they showed, and where they excelled
13 with the testing that was given quarterly.

14 We had conferences with parents, for those
15 parents who would attend the conference time, to
16 talk about it. Parents were given an opportunity to
17 call me at any time to come in for a conversation.

18 The students reviewed that. Teachers were
19 responsible for reviewing those test results and
20 adjusting their lesson plans to meet the needs of
21 the students.

22 Q. Did you see positive results from these
23 changes?

24 A. I saw positive results with the changes,
25 yes, with -- as far as the students' performance was

1 concerned.

2 Q. Okay. And how was that change manifested?

3 A. Well, professional development was
4 presented. We had the Discovery consultant come in.
5 She spent a complete day with us going over the
6 options that were within the testing. There were
7 several modules that teachers can go to online and
8 pull lessons from and address those deficiencies, or
9 take students who were more accelerated to a higher
10 level of learning.

11 And the consultant also was always at hand
12 telephone-wise, where any teacher -- or I -- I
13 called her several times, because sometimes, I ran
14 into a glitch of not understanding something
15 particular. And she was always available to anybody
16 that did call her.

17 Q. Okay. Thank you. All right. Let's turn
18 to a different subject, the New Mexico Instructional
19 Audit. This is in the same exhibit, but it's in the
20 prior page, Page 2. It's the No. 1 finding. Do you
21 see that? You see that the school received a D.
22 And, even though the State requires that students
23 with a grade of D complete the New Mexico
24 Instructional Audit, TLC failed to complete it. Do
25 you know if that's true?

1 A. I don't know that, because I left in
2 December of 2012. From the time that I was there in
3 the fall, from August until December, I thought that
4 we had met all requirements. But I'm being notified
5 that this particular requirement had not been met.
6 I never saw it. I did not ever see this.

7 My understanding was it was a direct
8 e-mail. E-mails were not directed to me. If any
9 e-mails came in, they were directed to the
10 principal, the acting principal at that time. But
11 they were never forwarded to me. And that was
12 always the protocol. Anything that came in from the
13 State Department went directly through the
14 administrator's office. If it was something I
15 needed to see, it was directed, then, to me, and
16 then I addressed it.

17 Q. Did you have a template to follow, or were
18 you -- did you ever see it in the training that you
19 did have?

20 A. No. There was never any type of template.
21 It was really not clear whether it was supposed to
22 be a written report, whether it was a template I was
23 to fill out. Up to that time, meeting the
24 requirements of the Web-EPSS, we did the school
25 self-study. We looked at the data. I always

1 uploaded the Short Cycle Assessment data into the
2 File Cabinet, as instructed.

3 Q. Okay. Would you look at Exhibit 15,
4 Page 7?

5 A. (Witness complies.)

6 THE CHAIR: Mr. Rosenfelt, would you show
7 us the correct page, because they're not all
8 numbered?

9 MR. ROSENFELT: You've got a booklet that
10 says the New Mexico Instructional -- Instructional
11 Audit. That's Exhibit 15. And then the pages are
12 numbered in the bottom right. And, if you go to the
13 page numbered 7, I'm interest- -- yeah, that's the
14 page I'm interested in.

15 Q. (By Mr. Rosenfelt) Okay. Do you see that,
16 Ms. Brigham?

17 A. Yes, I do.

18 Q. The top paragraph. It talks about the
19 New Mexico Instruction- -- Instructional Audit
20 process. Do you see that?

21 A. Yes.

22 Q. Okay. Do you see where it says that the
23 audit process involves a three-day site visit --

24 A. Yes.

25 Q. -- to Priority Focus D and F schools?

1 A. Yes.

2 Q. All right. Did anyone do a three-day site
3 visit?

4 A. No.

5 Q. Then it says, "PED will be sending teams
6 to other Priority and F schools during the fall of
7 2012." Do you see that?

8 A. Yes.

9 Q. And, then, it says, "Districts are
10 responsible for auditing the remaining D and Focus
11 schools during the same time frame." Do you see
12 that?

13 A. Yes.

14 Q. Was The Learning Community Charter School
15 a district? Do you know?

16 A. Well, formerly, we had been under the
17 umbrella of APS. And, then, in the spring of 2012,
18 I believe it was, that we -- that the decision was
19 made to go under the umbrella of PED. And, so, I
20 guess we were considered a district. I don't -- I
21 don't know that.

22 Q. Okay. Did anyone tell you how to do this?

23 A. No.

24 No.

25 Q. All right.

1 A. We had heard that there was going to be a
2 three-day site visit, but we waited and waited, and
3 we never got it.

4 Q. All right. Would you look at Exhibit 4?
5 I'm changing this topic a little bit.

6 A. Okay. What is Exhibit 4?

7 A. Exhibit 4 is a documentation that I made
8 and kept of times that I called out with questions
9 to PED and left messages, sent e-mails, and never
10 got a response. That's -- that's what this is.

11 Q. Okay. Did you get the kind of response or
12 assistance from PED that you wanted?

13 A. I didn't get any response. As I indicated
14 on the responses, each and every time that I did
15 contact, I did not get a response.

16 Q. Okay. Now, let's change topics again.
17 You served -- af- -- you left your employment at the
18 School in -- when was it?

19 A. I left the employment as of December 19,
20 2012.

21 Q. And, then, you became a member of the
22 Governance Council in the following year?

23 A. In January.

24 Q. In January. Okay. I would like to go
25 back to Exhibit 1 and ask some questions about the

1 Governance Council.

2 MS. SALAZAR: Counsel, if I may interject
3 for a minute, would you mind saying "TLC Exhibit 1,"
4 just for sake of clarity of the record?

5 MR. ROSENFELT: Of course. TLC Exhibit --

6 MS. SALAZAR: Thank you.

7 MR. ROSENFELT: Thank you. No problem.

8 Q. (By Mr. Rosenfelt) Would you look at
9 Finding No. 8? It's on the third page in, under the
10 heading "Governing Council."

11 Do you see that?

12 A. Yes.

13 Q. Okay. It mentions Governing Council
14 meetings on April 30th and May 3rd. Do you see
15 that?

16 A. Yes.

17 Q. Were you there at those meetings?

18 A. Yes.

19 Q. What was happening at the School during
20 the time of those two meetings?

21 A. There was a lot of dissension among the
22 staff members. There was a lot of bickering that
23 was going on, severe tension.

24 Q. Okay. Besides the Governance Council
25 members, who else was present at those two meetings?

1 A. I'm going to say 98 percent of the staff
2 members.

3 Q. Okay. And why were they there? Do you
4 know?

5 A. To grumble. There was a lot of grumbling
6 that was going on. There was a lot of discussion,
7 accusations.

8 Q. Was the Governance Council considering the
9 renewal of the contract of the acting principal?

10 A. Yes.

11 Q. Okay. Now, did Mr. Gerlicz ask questions
12 at the May 3rd meeting of the Council members?

13 A. Well, he presented -- he presented, I
14 believe it was 18, citations. And he began what I
15 considered an interrogation --

16 Q. Okay. What was the tone?

17 A. -- of the Council.

18 Q. What was the tone --

19 A. Well, in my estimation, it was very
20 condescending; it was very accusatory. There was no
21 opportunity for any type of collaboration or any --
22 any verbiage that things could possibly be fixed.
23 It was just accusing of what -- what had gone wrong
24 with the School.

25 Q. Now, who were the questions directed to?

1 A. Well, to my recollection, the questions
2 were directed primarily to the Governance Council
3 president. There were other Council members there;
4 we were all there. It was a full Board.

5 Q. Right. But was he asking other Council
6 members questions, or primarily Carmen Pennington?

7 A. He wasn't directing questions at any one
8 person. Carmen Pennington took the lead in
9 answering the questions.

10 Q. When Mr. Gerlicz asked his questions, did
11 you think he wanted to get the answers?

12 MS. McKEE: Objection. Calls for
13 speculation.

14 MR. ROSENFELT: I'm asking her impression.

15 THE CHAIR: Sustained.

16 Q. (By Mr. Rosenfelt) What was your
17 impression when he asked the questions?

18 MS. McKEE: Again, objection. It's just
19 another way of saying it.

20 THE CHAIR: Still sustained.

21 Q. (By Mr. Rosenfelt) If Mr. Gerlicz had
22 asked you the same questions, could you have
23 answered?

24 A. I spoke up in the meeting on one specific
25 question. And I felt pretty shut down, because I

1 made a statement that I knew the answer, because I
2 had been an employee of the School and now was on
3 the Governance Council. And he immediately made the
4 comment, "I'm not asking you, as an employee. I'm
5 asking the Governance Council to answer this
6 question," which I felt was very condescending --

7 Q. Okay.

8 A. -- because I could have given the answer.

9 Q. What about other questions that he asked?
10 Could you have answered any of those?

11 A. Yes, I could have.

12 Q. Okay. Are you aware of the Open Meetings
13 Act?

14 A. Personally, yes, I am.

15 Q. Have you been trained on the Open Meetings
16 Act?

17 A. Yes.

18 Q. Okay. Are you aware of the School's
19 charter?

20 A. I'm aware that we have a charter. And,
21 yes, I've seen parts of the charter, both the
22 beginning charter and the renewal charter.

23 Q. Have you read it?

24 A. I read parts of it, yes.

25 Q. Okay. Are you aware of New Mexico Public

1 School laws?

2 A. Yes.

3 Q. Have you been trained on them?

4 A. Yes.

5 Q. Are you aware of the bylaws of the
6 Governance Council?

7 A. Yes.

8 Q. How did Mr. Gerlicz get the impression
9 that the Governance Council evinced a lack of
10 knowledge on the part of the Open Meetings Act, the
11 Charter School, or the Public School Laws and their
12 own bylaws?

13 MS. McKEE: Objection. Calls for
14 speculation.

15 THE CHAIR: Sustained.

16 Q. (By Mr. Rosenfelt) Was Carmen Pennington
17 able to answer the questions that Mr. Gerlicz asked?

18 A. No. It was very difficult for her.

19 Q. Now, I want to turn to -- oh. Let me just
20 ask you, since we're on this subject. Since that
21 time, have you and the Governance Council had any
22 additional training regarding Governance Council
23 procedure, the Open Meetings Act, and these
24 subjects?

25 MS. McKEE: Objection. Relevancy. She's

1 since retired.

2 THE CHAIR: I'll have to sustain that.

3 MR. ROSENFELT: Well, the question is the
4 capacity of the members of the Governance Council.
5 And, even if she is retired, others who are now
6 present were not. And she is going to say -- let me
7 make an offer of proof -- that she organized it and
8 brought these people together. And it's highly
9 relevant, if you're talking about the capacity of a
10 Governance Council to do anything. These people are
11 working hard. She had a lot to do with it. I think
12 you folks need to know.

13 MS. McKEE: I would object, Madame Hearing
14 Officer.

15 THE CHAIR: Again, let's -- let's give it
16 a little leeway here and see if it has some
17 relevance.

18 Q. (By Mr. Rosenfelt) Okay. Would you tell
19 us about any training subsequent to this May 3
20 meeting that the Governance Council had and who was
21 present?

22 A. Yes. Number one, all Governance
23 Council -- all Governance Council members were
24 present at the training. I organized a training
25 with a consultant, who's well-known throughout the

1 state, Ms. Vickie Smith. And she provided us with
2 training. We went over the Open Meetings Act. We
3 went through the citations that Mr. Gerlicz had
4 presented at the meeting, his audit, his preview.
5 And we determined the goals, the approach to
6 correcting.

7 This was the corrective acts that we were
8 looking at in how to make a stronger Governance
9 Council and how to correct the activity that we were
10 accused of not doing.

11 Q. And how long did the training last?

12 A. We had a seven-hour training -- six-hour
13 training -- all -- no, eight-hour training. We had
14 an eight-hour training on June the 28th and 29th in
15 Albuquerque.

16 Q. Now, could you -- let's change the topics.
17 Let's go down to paragraph 10 on the same page of
18 the findings. Says that it was evident that this --
19 at the May 3rd meeting, CSD interviewed -- it was
20 evident that this Council has been unaware of
21 irregularities in the School over time. Do you see
22 that?

23 A. Yes.

24 Q. All right. Are -- was the Council aware
25 of any irregularities over time?

1 A. I have to say that, no, they -- they
2 understood that, by the charter that had been
3 written, that the School would be a four-day
4 school --

5 Q. All right.

6 A. -- with -- with the fifth day for tutoring
7 students and for prep time. Because of the length
8 of the school day, teachers were not allowed any
9 prep time during the day.

10 Q. I'm really asking a different question.

11 A. Okay.

12 Q. Did you make the Council aware that School
13 funds were being used to pay the baby-sitter of the
14 principal?

15 A. Yes, I did.

16 Q. Okay. Did you make the -- the Charter
17 School Division aware that there was an error or
18 falsification of the Title 1 application?

19 A. Yes, I did.

20 Q. Did you make anybody aware that
21 Mr. Lairsey had reduced instructional hours?

22 A. I did not know that he had reduced the
23 instructional hours.

24 Q. Did you make anybody aware that, in
25 hiring, he had violated nepotism rules?

1 A. Yes, I did.

2 Q. Okay. So, to say that the Council was
3 unaware of irregularities is untrue, isn't it?

4 A. Yes.

5 Q. All right. Now, on May 3rd, after
6 Mr. Gerlicz and the site visit team left the school,
7 did the Board take any action -- sorry. After he
8 left the school, did the Board take any action
9 regarding the contract of the principal?

10 A. Regarding the contract of him or of her?

11 Q. Of Mr. Lairsey's contract.

12 A. Yes.

13 Q. Okay. What action was taken?

14 A. The action not to renew his contract was
15 taken, and to put him on immediate administrative
16 leave.

17 Q. Okay. And -- now, you've only -- those
18 were two separate actions, were they not?

19 A. Yes.

20 Q. But for the non-renewal of the contract,
21 you voted not to renew Mr. Lairsey's contract; is
22 that right?

23 A. Yes.

24 Q. Why did you vote to not renew his
25 contract?

1 A. Because I had seen so many
2 inconsistencies. And I had twice advised him of a
3 better practice -- understanding that I could not
4 tell him what to do -- but advised him of a better
5 practice in what -- in how to do something. And he
6 just totally disacknowledged my advice, continued
7 what he was doing, which, to me, was an
8 irregularity.

9 Q. Okay. Now, after the vote on
10 Mr. Lairsey's contract, would you characterize the
11 reaction of the staff?

12 A. Yes. There was an immediate exit of the
13 staff, calling the Board members names, telling us
14 that we were incompetent, that we were stupid, we
15 were bringing down the school, and then proceeded
16 out into the foyer. We were -- had to go into
17 another executive session, and they continued to
18 march up and down in the foyer, repeating insults
19 loud enough for us to hear.

20 It was -- it was adult temper tantrums and
21 total unprofessional behavior.

22 Q. Now, if this Commission closes the School,
23 revokes the charter and closes the School, what will
24 be the impact on the children?

25 MS. McKEE: Objection. Speculation.

1 MR. ROSENFELT: We were -- a prehearing
2 order asked us to address that specifically. It's
3 in the order.

4 MS. McKEE: Is he talking about stats? I
5 mean, I'm not sure what the question is. It sounded
6 to me like it was something different.

7 THE CHAIR: If you could rephrase and
8 clarify your question?

9 Q. (By Mr. Rosenfelt) What will be the
10 effect, if the School is closed, on the students?

11 MS. McKEE: It's the same question, Madame
12 Hearing Officer. I don't know what he means by
13 "effect"? Are you talking about emotional effect?
14 I mean, that's -- it's not what the prehearing order
15 asked for.

16 MR. ROSENFELT: Yeah. It's on Page 3 of
17 the prehearing order. And it says -- I think this
18 is responsive. If you go to paragraph 6 on Page 3
19 and count down one, two, three, four, five line --
20 well, the sentence begins, "TLC should be prepared,
21 among other things, to substantively address the
22 assertions set forth in the CSD's notification of
23 possible action and to address the consequences to
24 TLC of possible sanctions."

25 It seems to me one of those consequences

1 is what's going to happen to the students, something
2 that -- I think that's what it calls for.

3 THE CHAIR: I'll give it some leeway
4 there. Let's not spend too much time on it, please.

5 MR. ROSENFELT: No, I don't plan to spend
6 time on it.

7 THE CHAIR: Thank you.

8 MR. ROSENFELT: Just a short answer.

9 THE WITNESS: So your question is what
10 will happen to the students?

11 Q. (By Mr. Rosenfelt) Yeah.

12 A. You have to understand that the students
13 that have come to us have not done well in any other
14 school, and that's why they chose the school -- or
15 TLC to come to. We've had children -- as I
16 explained in the beginning, that we have children of
17 different learning modalities, socioeconomic status,
18 which is very low. Those students have found a home
19 at TLC.

20 And this would be like throwing the baby
21 out with the bathwater, rather than trying to
22 rectify, or collaborate to rectify, any findings
23 that PED feels have been misdirected.

24 MR. ROSENFELT: Thank you. That's all I
25 have. Your witness.

1 THE CHAIR: Ms. McKee?

2 CROSS-EXAMINATION

3 BY MS. MCKEE:

4 Q. Ms. Brigham?

5 A. Yes.

6 Q. Do you remember me? I'm Audrey McKee.

7 A. Yes.

8 Q. I did a pretrial -- a prehearing interview
9 with you.

10 A. Yes.

11 Q. You stated that this school has students
12 of low socioeconomic background, students with
13 disabilities, students with emotional problems;
14 correct?

15 A. Yes.

16 Q. Other schools have those types of students
17 also, don't they?

18 A. Well, I suppose they do.

19 Q. This isn't the only school that had --
20 that can educate children of this nature; isn't that
21 true?

22 A. Excuse me?

23 Q. This isn't the only school -- TLC isn't
24 the only school that can educate children with these
25 backgrounds and these problems; isn't that true?

1 A. No. Just like any other school, it's a
2 school of choice.

3 Q. I'd like to talk about the New Mexico
4 Instructional Audit. And I'd like to direct your
5 attention to Exhibit -- and this is in the small
6 exhibit notebook, which you have in front of you.
7 I'd like to direct your attention to Exhibit 3. And
8 it's Page 2 of Exhibit 3.

9 MS. SALAZAR: And, again, to clarify, this
10 is TLC's exhibit?

11 MS. McKEE: This is CSD's. It's in the
12 thin notebook. It's CSD's Exhibit 3, Page 2. I'll
13 give everybody a minute to locate that.

14 Q. (By Ms. McKee) Can you identify this
15 document?

16 A. Yes.

17 Q. Do you see where it says, under "Action
18 Steps," "Training on the revised Web-EPSS presented
19 by PED"? Do you see that?

20 A. Yes.

21 Q. Would you read what's below that?

22 A. It says, "Two members of the Leadership
23 Team of The Learning Community Charter School
24 attended training on the new formatted Web-EPSS.
25 This training is now being taught at the building

1 level in which the teaching staff is responsible for
2 moving the curriculum forward. The EPSS will be
3 reviewed quarterly by the teaching staff and dates
4 to be announced."

5 Q. And that was entered by you; correct?

6 A. Yes.

7 Q. And, in fact, you were at the training;
8 correct?

9 A. I was at one training, yes.

10 Q. And, in fact, the -- the training talked
11 about the New Mexico Instructional Audit, didn't it?

12 A. I don't recall that -- that particular
13 discussion, no.

14 Q. And it's your job, when you go to these
15 trainings, to disseminate to your colleagues what
16 needs to be done. That's the purpose of sending a
17 couple of people to leadership training, so that it
18 can be disseminated. And that's your job; correct?

19 A. Right.

20 Q. And, as a matter of fact, you had a
21 conversation with Ms. Martinez when you came back
22 and before you left and before she left the school
23 telling her that the New Mexico Instructional Audit
24 needed to be done, didn't you?

25 A. I don't recall that I had a conversation

1 with her saying that.

2 Q. And you also told her -- you didn't tell
3 her that there were deadlines that she needed to do
4 to complete the Instructional Audit?

5 A. Not the Instructional Audit in particular.
6 It was about the Web, the entering of the
7 information to the EPSS itself.

8 Q. And if I represented to you today that
9 that's what she told me, would you disagree with
10 that?

11 A. That she said that I had discussed the
12 audit with her?

13 Q. Yes.

14 MR. ROSENFELT: Objection.

15 Q. If I related to you today that she related
16 that to me, would you disagree with that?

17 A. I would disagree about the Instructional
18 Audit, not disagree about explaining what the
19 Web-EPSS was.

20 Q. And you also wrote here that the EPSS will
21 be reviewed -- or will be reviewed quarterly by the
22 teaching staff; correct?

23 A. Yes.

24 Q. Now, in the fall of 2012, you were only
25 there three days a week; isn't that true?

1 A. That's correct.

2 Q. And, as a matter of fact, I'm going to
3 direct, now, your attention to the TLC notebook,
4 Exhibit 4. This is what Mr. Rosenfelt asked you
5 about. You said you put together a time line of
6 communication?

7 A. Yeah. I did this a long time ago, and
8 just continued to add to it.

9 Q. Okay. Sure. I understand that. I'd like
10 you to flip the page, where you have 2009, and then
11 flip the page again, where you have calendar year
12 2010. Do you see that?

13 A. Yes.

14 Q. Do you see where you made a -- an entry on
15 May 15, 2010, and you say, "A final EPSS was
16 submitted using the old format"?

17 A. Yes.

18 Q. And, then, do you see, underneath that,
19 where you have the -- where it says "November 1st"?

20 A. Yes.

21 Q. Right? Where you submitted your EPSS,
22 and, then, January 10th, 2011, where you completed a
23 checklist? Do you see that?

24 A. Yes.

25 Q. You didn't make -- just flip to the next

1 page. It says January 11, 2011, you made an entry;
2 February 28th, you made an entry. You didn't make
3 any -- any entries after that, did you? You didn't
4 make any entries after the training that you
5 attended regarding the New Mexico Instructional
6 Audit?

7 A. No, I didn't.

8 Q. Because you never called for help. You
9 never called CSD, and you never called PED, did you?

10 A. I called in -- yes, in the fall, I did
11 call. I may not have documented it. But I did make
12 the call, yes. I left a message for Ms. Debbie
13 Montoya, and I was referred to her assistant.

14 Q. But you didn't document it, did you?

15 A. I didn't document it.

16 Q. And nowhere in here do you have any
17 documentation of the New Mexico Instructional Audit,
18 do you?

19 A. No, I don't.

20 Q. And isn't it true, Ms. Brigham, that the
21 Charter School, as of 2012, was its own LEA?

22 A. Yes. I -- I began questioning that and
23 discussing that with Mrs. Martinez and Mr. Lairsey,
24 both about what I was supposed to put in there, who
25 were we reporting to, and how is it being reported.

1 Q. I'd like you to turn to, in the small
2 notebook, Exhibit 4, CSD's exhibit notebook. I
3 apologize for that. CSD Exhibit 4.

4 And I'd like you to go nine pages in. Let
5 me re-count that and make sure I did it right. Yes,
6 nine pages in. This is the matrix of requirements
7 for schools. Do you see that?

8 A. Yes.

9 Q. And I'd like you to look in the fourth
10 column, where it says "Focus."

11 A. Yes.

12 Q. I'd like you to look down into the third
13 box, where it says, the very last bullet point,
14 "Instructional Audit completed by LEA." Do you see
15 that?

16 A. Yes.

17 Q. So, in fact, TLC was supposed to have
18 completed the New Mexico Instructional Audit,
19 weren't they?

20 A. Well, I found that out after the fact.
21 But they're still -- I never -- there was never a
22 clear understanding. There was never any real
23 explanation as to how that audit was to be
24 completed.

25 Q. Isn't it true that you didn't have a clear

1 understanding?

2 A. Okay.

3 Q. And, Ms. Brigham, didn't you also make a
4 sexual harassment complaint?

5 A. Did I make a sexual harassment complaint?

6 Q. Yes.

7 A. No, I didn't make a sexual harassment
8 complaint.

9 MS. McKEE: All right. Thank you.

10 THE CHAIR: Commissioners, does anyone
11 have questions of this witness? Mr. Carr?

12 COMMISSIONER CARR: I have a few
13 questions. Actually, one of them got answered.

14 EXAMINATION

15 BY COMMISSIONER CARR:

16 Q. How many years have you been an educator?

17 A. I'm sorry. What?

18 Q. How many years have you been an educator?

19 A. Thirty-eight.

20 Q. Thirty-eight. That's quite a -- and, in
21 all those years, as a teacher?

22 A. I went from classroom teacher into
23 administration as a principal. I've worked in HR.
24 And I've worked with Federal programs and
25 professional development.

1 Q. Okay. And how many years experience do
2 you have in submitting EPSS?

3 A. Well, I was on the ground level of
4 developing EPSS since 1995. Developing the EPSS for
5 TLC began in 2003.

6 Q. Okay. In your extensive educational
7 experience, have you ever seen teachers act as you
8 described them at this one particular Council
9 meeting?

10 A. No, never.

11 Q. It's un- --

12 A. I mean, there have been discussions; there
13 have been disagreements. There's been agreement to
14 disagree, accept disagreement. But, as far as the
15 professional behavior displayed at this school in
16 the last year have been totally, totally uncalled
17 for and misrepresenting of what a professional
18 should act like.

19 Q. Have you ever read about teachers acting
20 like that?

21 A. Well, news-wise. I mean, every once in a
22 while, you get a news clip of teachers being
23 disgruntled. You've heard of teachers shooting a
24 principal, that sort of thing, yes; but never in a
25 group as this was. This was a bullying group.

1 Q. In your -- you're calling this group "a
2 bullying group"?

3 A. They acted like bullies.

4 Q. Is this -- in your -- you were part of the
5 teaching staff; correct?

6 A. I was part of the teaching staff, yes.

7 Q. Was their behavior like this when you were
8 teaching there?

9 A. Not to the extent that was displayed
10 when -- when the Governance Council made the
11 decision to dismiss the principal. But there --
12 there have -- there was name-calling. I did observe
13 some name-calling of other teachers. I saw teachers
14 brought to tears. I did speak up.

15 Q. There was name-calling on the part of one
16 teacher to another? Is that what you're saying?

17 A. No. There would be, consolidated, three
18 at a time doing it in the lunchroom, ostracizing
19 other staff members.

20 Q. For what? Can you give me an example?

21 A. For one, they didn't like the way someone
22 ate; they didn't like the way someone dressed; they
23 didn't like certain actions that another teacher
24 made.

25 Q. Did this type of behavior happen with

1 students? Did teachers talk to students in this
2 way?

3 A. Yes. And I brought it to the attention of
4 Mr. Lairsey. And I made the suggestion to him --
5 because it was not my position, but it was his
6 position -- to get it stopped.

7 And I -- I was not privy to him, whether
8 he reprimanded or not, or whether Mrs. Martinez ever
9 reprimanded or not. That was not my business or my
10 position to follow up on that. That's the
11 administrator position. And yet it continued to
12 happen.

13 Q. Is it your observation that there was not
14 a good relationship between the teachers and the
15 students at this school, in the past? Anything that
16 you have observed? What's your observation?

17 A. You mean, whether -- well, it -- give me a
18 little bit more -- what -- I'm not quite
19 understanding.

20 Q. Well, I think you've told me about
21 instances where you have observed teachers treating
22 other teachers badly, verbally, unprofessionally.
23 And you heard that that -- or you heard, or you've
24 seen this happen with students, or you've testified
25 that you've seen this happen with students.

1 A. Yes, sir. Things were brought to my
2 attention that -- and, in one instance in my office,
3 a particular teacher brought a student to my office
4 and said that the student was a "moron." And, at
5 that point, I said, "You can't say that. Don't say
6 that in front of a child. Do not name-call a
7 child."

8 Q. Well, in your opinion, based on what
9 you're telling me, your observations, or your eyes,
10 does the environment that you're depicting -- is it
11 possible that, in that type of environment, that
12 good learning could take place?

13 A. No.

14 Q. Are you -- have you ever sat in and --
15 have you ever been delegated the -- the task of
16 observing other teachers in the school?

17 A. Yes.

18 Q. And what's your opinion, or general
19 opinion -- without giving any names -- of what --
20 you know, did you think, as Mr. Gerlicz had said
21 when he observed the classroom, that there was good
22 teaching taking place? Do you think there was good
23 teaching taking place?

24 A. I think, in the particular instance, and
25 in my experience of -- of supervising teachers as a

1 former administrator, it was a show-and-tell time, a
2 bring-and-brag time. That was not a true picture.
3 Had it been several times of an impromptu
4 visitation -- you know, people are not always going
5 to act bad when they're on camera.

6 Q. Now, I'll finish up with this. You said
7 you never filed a complaint that you were sexually
8 harassed. Were you, indeed, ever sexually harassed?

9 A. No, I wasn't sexually harassed, no.

10 Q. I was curious about why that question was
11 asked of you.

12 A. I don't know where that question came
13 from, either, because I have never been sexually
14 harassed.

15 Q. Do you know other people who have been?

16 A. In the realm of what we consider sexual
17 harassment, perhaps statements may have been made
18 that were offensive.

19 Q. Uh-huh.

20 A. I was never -- I was not present on some
21 of these allegations that perhaps have been
22 presented to you all.

23 COMMISSIONER CARR: Okay. All right.

24 Thank you. I'm done.

25 THE CHAIR: Thank you, Commissioner.

1 Other questions? Commissioner Gant?

2 COMMISSIONER GANT: Madame Chair, members.

3 EXAMINATION

4 BY COMMISSIONER GANT:

5 Q. You stated in June you had this training
6 with Ms. -- Ms. Smith --

7 A. Yes.

8 Q. -- for governance training. What training
9 prior to that did all the Governance Council receive
10 over the years?

11 A. The Governance Council members have always
12 been able to attend the Charter School Division
13 conference. And we were allowed to go to the law
14 conference. In the past, they have attended a
15 variety of conferences.

16 I know that one of our Board members
17 attended a conference last year in this -- I believe
18 it was December -- that was a law conference. I,
19 myself, attended the law conference this year in
20 June. We have one Board member that attended the
21 leadership conference down in Cloudcroft.

22 So every member, to my knowledge, met
23 their five hours of required training. The retreat
24 that we had in June was in addition, and designed
25 specifically to address how to build a stronger

1 council, because those seem to be the allegations,
2 that the Council was weak.

3 Q. You mentioned several irregularities in
4 your earlier testimony. Were all Council members
5 aware of all irregularities?

6 A. I can't say that they were aware of all
7 irregularities, no. You know, I -- I can only speak
8 for myself. I'm not in the head of other Council
9 members. But one-on-one type of discussion, if
10 there was any question, they felt free to ask
11 questions. And it only appeared to disgruntle
12 several people within the audience, at the time that
13 we were going through this turmoil, that the Council
14 members began to ask specific questions that seemed
15 to unravel other people.

16 Because, up to that point, several times
17 before I was ever on the Council, I always heard
18 several times that the Board is nothing but a rubber
19 stamp. When I came on, I was determined not to be a
20 rubber stamp, but to ask specific questions. And
21 that seemed to unnerve people, because I did ask
22 specific questions.

23 Q. All right. You mentioned earlier that you
24 told CSD of these irregularities; is that correct?

25 A. Yes, I did.

1 Q. And nothing happened.

2 A. I found out that the irregularities had
3 been corrected. And, so, it was a moot --

4 Q. Are the irregularities, like, I believe,
5 the principal paying for a baby-sitter? The
6 irregularities you mentioned, I had the impression
7 nothing had been done about them, the baby-sitter
8 and the other things you mentioned.

9 A. That was up to the principal to correct.

10 Q. Yes.

11 A. And, to my knowledge, no, nothing got
12 done.

13 Q. So wouldn't it be possible, if
14 irregularities were not being addressed by the CSD,
15 that the Council and/or members of the staff could
16 take it straight to the Secretary?

17 A. I'm sure I'm not quite understanding
18 your --

19 Q. If the irregularities had not been
20 addressed to your satisfaction, or any other Council
21 members' satisfaction, or staff, is it not possible
22 that they could have been taken to the -- to the
23 Secretary of Education for -- to be addressed?

24 A. It's possible.

25 Q. But they weren't?

1 A. Not to my knowledge that they weren't.

2 Q. All right. I'm looking at the scores --
3 let's move on to the school grades.

4 A. Uh-huh.

5 Q. The school grade. And you said there's
6 been a great improvement in the academic grades of
7 the -- of the students?

8 A. They've been small increments, yes; but
9 it's an improvement, yes.

10 Q. 2/11, we had the current, which deals with
11 math and reading. It was an F. The highest
12 performing was an F; the lowest performing was an F;
13 graduation, F; college and career, F; readiness, an
14 F.

15 A. Those got corrected.

16 Q. Now, you go to 2013. You still have
17 graduation at a D and college readiness, career
18 readiness, still a D. Do you have a comment on
19 that, please?

20 A. Well, we went from an F originally to a D.
21 And, now, we're a C.

22 Q. The C is for the overall. These are
23 individual grades within the school grade.

24 A. Uh-huh.

25 Q. You are a high school; is that correct?

1 A. Yes, sir.

2 COMMISSIONER GANT: Thank you.

3 THE CHAIR: Other questions? I just have
4 one.

5 EXAMINATION

6 BY THE CHAIR:

7 Q. As a Governance Council member, did you
8 read the investigator's report on sexual harassment?

9 A. No, I never read it. I -- I -- I never
10 read it, because I wasn't a Governance Council
11 member at the time that it came out. And it was
12 never presented at the time that I was on the Board.

13 Q. Did you know about it?

14 A. I knew about it.

15 Q. Did you know about the investigation?

16 A. Yes, I knew about the investigation.

17 Q. And, as a Governance Council member, you
18 didn't think you should know what was contained in
19 that report?

20 A. The final report, when Mr. Goodman
21 [verbatim] came in and indicated that there was no
22 grounds for this action.

23 Q. If you didn't read it, how do you know
24 that?

25 A. Because Mr. Goodman [verbatim] was the

1 person who did the investigation.

2 Q. No. I asked you, how do you know what he
3 said in the report if you did not read it?

4 A. Oh, I didn't say that I knew what was in
5 the report. I said I knew what the outcome was of
6 the report.

7 Q. How did you know what the outcome was?

8 A. He reported it at a Board meeting, which I
9 was not a Board member at that time; I was a staff
10 member.

11 Q. So he reported just the outcome?

12 A. Yes.

13 Q. But you never read the report?

14 A. No.

15 Q. Do you know if any other Council members
16 did?

17 A. No I don't know.

18 THE CHAIR: Thank you.

19 COMMISSIONER TOULOUSE: Madame Chair?

20 THE CHAIR: Commissioner Toulouse.

21 COMMISSIONER TOULOUSE: I thought of a
22 question.

23 EXAMINATION

24 BY COMMISSIONER TOULOUSE:

25 Q. Back to what I had asked earlier of

1 Mr. Gerlicz on new Board members. You were very
2 familiar with the School?

3 A. Yes.

4 Q. But you weren't familiar with the internal
5 Board function. When you became part of the Board,
6 how were you brought into the Board by the others?
7 Were you given materials that you hadn't seen
8 before, like these reports, or things like basic
9 information that you didn't have as a faculty member
10 or as an administrator, but things that you would
11 need to know to understand where the Board went?
12 Were you given those? And if you were, how was it
13 done?

14 A. I was never given a packet of any kind,
15 but -- because I had sat on two different boards;
16 not in Albuquerque, but I was on another charter
17 school board, and I sat in several -- for ten years,
18 sat at board meetings because of my position, knew
19 how the internal affairs of running a board meeting
20 were to be. And I went through the training when I
21 became a Board member. I immediately went through
22 the training to meet those certifiable hours. But I
23 did have a basic knowledge of board membership.

24 Q. I guess I was just wondering if there was
25 some sort of formal procedure. Each board is

1 different. Each charter school is supposed to be
2 unique in some facet or other. So I was just
3 wondering if there was a way to do it. Because, my
4 standpoint, there needs to be. No matter how
5 familiar you are from the outside, inside is
6 different. So that's what I was trying to get at.

7 A. Yes. And you have to understand that,
8 when I came on board, it was an entirely different
9 principal who was in that position. And, prior to
10 that, I do know that packets had been given to new
11 Board members, yes. So we were working with two
12 different principals in a very short period of time.

13 Q. I would think, however, that instead of a
14 principal, it should be the chair of the board who
15 gave you the material. So that's -- again, I
16 just -- I was trying to get my head around how --
17 because there has been such a change in this board
18 over time, how the information passed on. So, thank
19 you very much.

20 A. Yeah. And that was the reason for this
21 Board retreat, that, as a professional development
22 person, I felt that that needed to take place.

23 COMMISSIONER TOULOUSE: Thank you.

24 THE CHAIR: Other questions? Thank you.

25 THE WITNESS: Okay.

1 THE CHAIR: Commissioners, let's take a
2 short break. I have 1:08. Let's be back in about
3 five minutes. Can we do that? 1:13?

4 (Recess taken, 1:09 p.m. to 1:16 p.m.)

5 THE CHAIR: Back in session. Mr.
6 Rosenfelt, would you like to call your next witness?

7 MR. ROSENFELT: Yes. We'll call
8 Jacqueline Baca, Governance Council President.
9 Okay. Are we ready?

10 JACQUELINE BACA,
11 after having been previously sworn under oath,
12 was questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. ROSENFELT:

15 Q. State your name, please.

16 A. Jacqueline Marchi Baca.

17 Q. Okay. And what's your association with
18 The Learning Community Charter School now?

19 A. I am the president of the Governance
20 Council.

21 Q. Okay. And how long have you been on the
22 Governance Council.

23 A. I've been on the Governance Council since
24 October of 2011.

25 Q. And when did you first learn of The

1 Learning Community Charter School?

2 A. Seven years ago.

3 Q. In what capacity?

4 A. My granddaughter. My daughter was looking
5 for a school for her sixth-grader.

6 Q. Okay. And what -- and since then, have
7 you had other family members go?

8 A. Yes, I've had four grandchildren there.
9 Three are still there.

10 Q. Okay. And what was their experience in
11 The Learning Community Charter School?

12 A. They've had a great experience. It's been
13 a good school. One of my grandchildren was an at
14 risk of dropout. And he graduated and is on his way
15 to college.

16 Q. When did you become the Governance Council
17 president?

18 A. In May of 2013.

19 Q. Okay. And, from the time you first came
20 until May, what was your impression of the prior
21 Governance Council president?

22 A. The prior Governance Council president was
23 very -- she was not committed to the -- to the
24 Board. She was always making excuses or having to
25 hurry up the meeting to leave. She was very

1 argumentative. She would not let us speak up or
2 anything. She was very condescending of the rest of
3 the Board members.

4 Q. Did she know what she was doing?

5 A. Not in my opinion.

6 Q. What changes have you made since you've
7 become Governance Council president?

8 A. We have had a two-day retreat for all the
9 Board members. I am now signing checks, along with
10 the -- the administration. We have a new
11 administrator that is there now. We have been doing
12 a lot of training on Open Meetings Act.

13 Q. You hired a secretary?

14 A. We hired a private, not -- not staff -- a
15 private secretary to do our minutes.

16 Q. Did you fill the vacancies on the
17 Governance Council quickly?

18 A. We have filled all the vacancies; we have
19 five members.

20 Q. What changes do you plan in the coming
21 year?

22 A. Continued training for our Board members.
23 The School -- positive actions with the School,
24 constant -- I'm going to be in constant, constant
25 operation -- not in operations -- but I'm constantly

1 going to be knowing what's happening financially,
2 making sure that the administration follows the
3 rules and making sure that, as Board members, we
4 follow the Open Meetings Act, and we're updating the
5 policies and the procedures for the Governance
6 Council, as well as making sure that our -- our
7 teachers and our administration has a PDP plan, or a
8 plan where they look -- check to see what they're
9 doing, make sure they're doing their job. And, if
10 they need to have help, then we're going to make
11 sure that they get the assistance they need.

12 Q. What are you planning to do about the
13 findings or concerns that are expressed in the last
14 site visit?

15 A. We'll be -- I will be sure, as the
16 president, that all findings of the audit are dealt
17 with, that they resolve all of them.

18 Q. Okay. Would you turn to Exhibit 1 in the
19 TLC exhibit book? And, in -- that's the third -- go
20 to the third page in. Finding, Concern No. 8, under
21 the heading, "Governing Council."

22 A. Yes.

23 Q. Do you see where it says that the
24 Governance Council evinced a lack of knowledge?

25 A. Yes, I do.

1 Q. And you were at those two meetings; is
2 that correct?

3 A. Yes, I was.

4 Q. Are those meetings typical?

5 A. No.

6 Q. Okay. Why not?

7 A. There was a lot of -- of extra people at
8 the open meetings -- open meeting -- that were going
9 to speak. They were disgruntled staff. There was a
10 lot of -- they were speaking loudly; they were
11 cussing; they were getting carried away and
12 mad-dogging all of the Board members.

13 Q. Now, of that disgruntled staff, how many
14 of them are still employed at the school?

15 A. Probably two or three.

16 Q. The others are gone?

17 A. Yes.

18 Q. If Mr. Gerlicz had asked you the questions
19 that he directed at Carmen Pennington, could you
20 have answered?

21 A. Most of them.

22 Q. Would you look at -- changing now, would
23 you look at two pages over? There's a page that's
24 got a chart on it.

25 A. Yes.

1 Q. And, then, at the top is a sentence
2 numbered 4. Do you see that?

3 A. Yes, I do.

4 Q. Okay. Do you see where it says, "It is
5 the opinion of CSD that this Council is incapable of
6 proper oversight of the school"?

7 A. Yes, I see it.

8 Q. Do you agree?

9 A. No, I don't.

10 Q. What actions has the Governance Council
11 already taken to exercise oversight of the school?

12 A. We've hired a new business manager. We
13 have done a lot of training with our board. I'm now
14 signing checks to make sure that the finances are --
15 are -- are being handled properly, that we're
16 following the correct procedures in our governance
17 board, as well as in our hiring procedures.

18 Q. Okay. And what about the principal?

19 A. We have the old principal -- the retiring
20 principal, Ms. Martinez, who we asked to come on
21 board to help us to get the school back in -- to get
22 the school back in order and working properly.

23 Q. Do you know if that's happening?

24 A. Yes, it is happening.

25 Q. Were you present -- strike that.

1 Do you see any reason why you're not going
2 to be able to effectively run the school?

3 A. No, I don't.

4 MR. ROSENFELT: Okay. That's all I have.

5 THE CHAIR: Thank you. Ms. McKee?

6 CROSS-EXAMINATION

7 BY MS. MCKEE:

8 Q. Good afternoon, Ms. Baca. You probably
9 remember me when I did the prehearing interview.

10 A. Yes, ma'am.

11 Q. I'd like to talk for a moment about the
12 Governing Council. When Mr. Gerlicz was there doing
13 his site visit, you stated that he was directing his
14 questions to Carmen?

15 A. Yes.

16 Q. Isn't it true that, when Carmen couldn't
17 answer the questions, that he said, "Can anyone here
18 answer?" Didn't he say that?

19 A. No, I do not recall that.

20 Q. I'd like you to look at the smaller of the
21 notebooks. That's the CSD exhibit notebook. I'd
22 like you to turn to Exhibit 6.

23 THE CHAIR: Which number, Ms. McKee?

24 MS. MCKEE: It's going to be Exhibit 6.

25 And this is the minutes from the May 15 meeting.

1 And I am actually four pages in.

2 Q. (By Ms. McKee) And you were at this
3 meeting; correct, Ms. Baca?

4 A. Yes, I was.

5 Q. All right. Why was Mr. Tibo Chavez and --
6 well, let's just start with Mr. Tibo Chavez. Why
7 was Mr. Tibo Chavez removed? It says it was due to
8 violations of the school board policy.

9 A. To the best of my knowledge, due to
10 speaking outside of the -- out of the -- speaking to
11 other people about what was happening in our
12 executive meetings.

13 Q. And is that -- is that an egregious
14 violation?

15 A. I don't understand your question.

16 Q. Well, I believe that Ms. Martinez wrote a
17 letter that said that Mr. Chavez was dismissed due
18 to an egregious violation. Is this an egregious
19 violation that you've just described?

20 A. I don't know.

21 Q. And, as a member of the Governing Council,
22 when Mr. Gerlicz asked you questions, or asked, as
23 you say, Carmen questions, and Carmen couldn't
24 answer the questions, did you not feel that it was
25 your obligation, as the Governing Council for the

1 School, to answer questions when others couldn't?

2 A. No. Everything -- she was the
3 chairperson.

4 Q. Particularly when it's with a site visit?

5 A. Well, it was during a meeting. It was
6 during an Open Meetings Act -- an open meeting. It
7 was our regular meeting.

8 Q. And why was Ms. Rosalie Niebes removed
9 from the Board?

10 A. The same reason.

11 Q. Which was talking about --

12 A. Discussing things that were discussed in
13 the meeting outside of the meetings.

14 Q. I'd like to turn your attention to
15 Exhibit 10. And, actually, before we start on
16 Exhibit 10, is Ms. Niebes a member of the Board now?

17 A. No.

18 Q. Is Mr. Chavez?

19 A. Yes.

20 Q. So he was brought back, despite being
21 removed for violating Board policy?

22 A. Yes.

23 Q. And that doesn't concern you?

24 A. No.

25 Q. So, looking at Exhibit 10, this is the

1 investigatory report that Dennis Good wrote. And
2 have you read this report?

3 A. No.

4 Q. Did Mr. Good appear before the Governing
5 Council and tell you the result of his investigation
6 of sexual harassment?

7 A. Yes, he did. He gave us a verbal report.

8 Q. And, at that meeting, did Ms. Niebes ask
9 to see the sexual harassment report that he wrote --
10 or the report that he wrote?

11 A. No, not to my knowledge.

12 Q. She didn't ask?

13 A. No.

14 Q. Okay.

15 A. I don't think so.

16 Q. And Ms. Martinez didn't refuse?

17 A. No. I --

18 Q. Do you know whether Ms. Martinez read the
19 report?

20 A. I'm sure she did. She hired him.

21 Q. Okay. Then, let's talk about the report a
22 little bit.

23 I'd like to turn your attention to Page 4.

24 MR. ROSENFELT: Objection. She said she
25 hasn't read it.

1 THE WITNESS: I've not read this.

2 THE CHAIR: Pardon me. I did not hear
3 you.

4 MR. ROSENFELT: She said she had not read
5 the report.

6 THE CHAIR: Is it not possible she can
7 react to something she reads right now? Is that
8 what you're asking?

9 MR. ROSENFELT: I suppose.

10 THE CHAIR: Let's give it a try and see
11 how this goes.

12 MS. McKEE: All right.

13 Q. (By Ms. McKee) If you would, actually,
14 turn back to Page 3, so I can give you some context.
15 And I'm looking at the bottom of Page 3. It says,
16 "Mr. Ted Padilla made several accusations during his
17 interview which brought into play other staff who he
18 says are unprofessional, disrespectful." And he
19 then lists some of the things that he found.

20 And you see there, where it says, "He made
21 some of the following comments"? And we have a
22 couple of stars at the bottom. Do you see? And it
23 continues on --

24 A. Yes.

25 Q. -- to the next page. If you'd turn to

1 Page 4.

2 So these are -- this is still Mr. Padilla
3 talking to Mr. Good. And I'm focusing on the fourth
4 star from the top. It says, "There are people who
5 do nothing." And he lists several people. And he
6 says, "They're all Anglo."

7 Does that statement concern you?

8 A. No, I don't think they're all Anglo; I
9 don't.

10 Q. Does it concern you that he would make
11 this statement, that "They're all Anglo"?

12 A. No.

13 Q. If you look -- if you skip a star, it
14 says, "I am paid \$5,000 less than Level 3 people."

15 So he was -- Mr. Padilla was a teacher at
16 that time, obviously.

17 "Why should I come in on Friday? I work
18 from home."

19 Does that statement concern you?

20 A. No.

21 Q. The next star says, "I do refer to
22 students as sweetie and cutie, always." Does that
23 statement concern you?

24 A. No.

25 Q. I'd like you to go down to the results of

1 the investigation. Here is where he is addressing
2 the issues that Principal Viola Martinez asked him
3 to investigate.

4 You'll see, number one, the sexual
5 harassment claims. He says here, "Three employees
6 alleged sexual harassment, Ms. Geri Quintana,
7 Ms. Janice Gomez and Ms. Priscilla Brigham." Does
8 that concern you?

9 A. Not after he gave us the findings. After
10 he told us what -- what the results were, no, it
11 doesn't concern -- it doesn't concern me, because
12 they were allegations.

13 Q. And these admissions that he made up at
14 the top, it doesn't -- does it concern you at all
15 that he's now your assistant principal?

16 A. No.

17 Q. Does it concern you that a number -- does
18 it concern you that -- that a member of the
19 Governing Council with -- would testify in front of
20 the Commission that she never made an allegation of
21 sexual harassment, when Mr. Good's report says that
22 she does? Does that concern you?

23 A. No. I --

24 Q. Okay. When you brought back Mr. Chavez,
25 did Ms. Martinez have any input into that?

1 A. No.

2 Q. Did Ms. Martinez have any input into
3 getting rid of the Board members?

4 A. What Board members?

5 Q. Sorry. Mr. Chavez -- Tibo, Tibo Chavez
6 and Ms. Niebes. Did she have any input into that?

7 A. No.

8 Q. But she wrote a letter dismissing them;
9 correct?

10 A. Yes.

11 Q. Since you've had your children at the
12 School and you know something about the School,
13 you're aware that the School did not meet Adequate
14 Yearly Progress under Ms. Martinez' principalship,
15 aren't you?

16 A. The school is a C -- is a C grade right
17 now, gone up from an F to a D to a C.

18 Q. And the C grade came out just this summer?

19 A. Yes, it did.

20 Q. And, so, that reflects the -- the work
21 done while Mr. Lairsey was the principal?

22 A. Well, Ms. Martinez was -- Ms. Martinez was
23 there till the end of December, as his trainer.

24 Q. And you were -- I believe you were -- were
25 you the president -- you were the president from

1 May of -- of when?

2 A. May 13 -- I think it was May 28th.

3 Q. Of which year?

4 A. This year.

5 Q. This year?

6 A. 2013.

7 Q. Okay. So -- but a member when the
8 Governing Council had only three members; correct?

9 A. Yes.

10 Q. And you were part of the Governing Council
11 that decided it wasn't necessary to comply with the
12 law and -- and get another two Board members on the
13 Board to make five; is that correct?

14 A. No, that's not correct. At the -- the
15 School was closed. School -- that occurred after
16 school ended. And the School was closed for the
17 summer. And we didn't meet till August. So, then,
18 in August, we started advertising for Board members,
19 and we had them within 60 days, by October.

20 And it's -- as far as I was concerned, we
21 were following the regulations, because we didn't
22 meet during the summer.

23 Q. I see. And focusing on -- the -- the
24 report, again, that was made by Dennis Good, I asked
25 you whether or not, when he presented that report,

1 if Ms. Niebes asked to see the report. Did she ask
2 to see that report at a different meeting?

3 A. Not to my knowledge.

4 Q. And it's not true that, after she asked to
5 see the report, that Ms. Martinez asked her to
6 resign?

7 A. No.

8 MS. McKEE: No further questions.

9 THE CHAIR: Thank you. If you would wait,
10 Ms. Baca, the Commissioners may have some questions.
11 Mr. Carr.

12 EXAMINATION

13 BY COMMISSIONER CARR:

14 Q. Madame Chair, the Commission, Ms. Baca,
15 were you told at the -- in regards to the meeting
16 that Mr. Gerlicz came and asked the Chair a
17 question, were you told not to answer any questions?

18 A. No.

19 Q. You're aware that the Board and Council
20 act together, and you're under no restrictions to
21 talk, if you feel the need to, if something's -- you
22 know, if you have a concern about something, you
23 know that, as a Board member -- or a Council
24 member -- you have a right to speak up; right?

25 A. (Indicates.)

1 Q. So why didn't you?

2 A. It was regular meeting. And the -- the
3 chairperson was conducting the meeting. He was
4 asking the questions to her, and she was
5 answering -- or however she was answering. I didn't
6 find -- there was no reason for me to -- to disrupt
7 the meeting -- the meeting -- she was chairing the
8 meeting.

9 Q. But there were -- there were questions
10 that were not answered; is that true?

11 A. Yeah. Well, she said she didn't know to a
12 lot of the questions.

13 Q. But you knew the answers to some of those
14 questions?

15 A. Yes.

16 Q. Okay. And you felt like it would be a
17 disruption to the meeting if you answered them?

18 A. Correct.

19 Q. But you didn't feel pressure from
20 Mr. Gerlicz or somebody else not to talk? Did you
21 feel any pressure, or you just didn't feel it was
22 proper?

23 A. I didn't feel it was proper. And
24 Mr. Gerlicz was -- the way he was questioning was --
25 he was -- it was more like he was accusing everybody

1 of everything. And he was -- also seemed to be
2 putting on -- not really a show -- but he was
3 speaking to benefit more of the unruly staff that
4 was in there.

5 He was very condescending and -- and,
6 basically, he was rude. And the staff behind us
7 were, as they have been doing a while ago, laughing
8 and carrying on with different things, and agreeing,
9 you know, with things that Mr. Gerlicz was saying.

10 Quite frankly, it was a pretty unruly
11 meeting. It was -- they were very nasty to the
12 Board and were bullying the Board and cussing and --
13 you know, they were acting very unprofessional and
14 very unruly. And I didn't feel comfortable -- I was
15 hoping this was going to go away, as far as their --
16 the way they were acting and the way he was asking
17 the questions.

18 Q. Do you feel like they were putting on a
19 show or something --

20 A. I do.

21 Q. -- for Mr. Gerlicz?

22 A. Yes, I do. And, Mr. Gerlicz, in turn, was
23 also. I mean, they were going back and forth
24 together.

25 Q. Okay. And this brings up the question.

1 You have grandchildren?

2 A. Yes, I do.

3 Q. And how many -- how many grandchildren
4 have -- do you have in the school now? And you have
5 one that has graduated?

6 A. I've had four grandchildren at the school.
7 One graduated; two will be graduating this year; and
8 then the other one will be a sophomore.

9 Q. Have you -- have your grandchildren --
10 your children, or yourself, ever had any concerns or
11 complaints about the staff at the School in your
12 experience with the School?

13 A. Yes.

14 Q. Could you elaborate, please?

15 A. There has been concerns of one of the
16 staff -- one of the teachers talking to the kids in
17 a very disrespectful way, telling them that they
18 shouldn't be drinking Cokes or they're obese. And
19 there has been other parents also making those
20 complaints.

21 Q. Okay.

22 A. There's also been a teacher that has
23 gotten very involved in the kids' doings as kids,
24 you know, kids fighting, kids talking back and
25 forth, and the teacher telling the kids to tell the

1 other ones to go get (indicates) f'ed.

2 Q. And is there, in your opinion, a
3 continuing problem with the atmosphere of the
4 School, the professional environment, that would
5 take away from learning?

6 A. Not -- not anymore.

7 Q. Okay. But you've been happy with the
8 education that your grandchildren have received,
9 overall?

10 A. Yes, my grandchildren have been honor roll
11 students.

12 COMMISSIONER CARR: Okay. All right. I
13 have no further questions. Thank you.

14 THE CHAIR: Other questions? Commissioner
15 Toulouse.

16 COMMISSIONER TOULOUSE: Madame Chair, I
17 will bookend, again, Commissioner Carr. I want to
18 say, for the record, I have known Ms. Baca for a
19 long, long time. We worked together in an agency
20 where there was a sexual harassment problem.

21 THE WITNESS: Correct.

22 COMMISSIONER TOULOUSE: So I know she
23 recognizes it and knows it. It was a very severe
24 one at the time. And it was very hard to deal with.
25 So I want that -- and I want the fact that anything

1 I say now is me as a Commissioner to a Board Chair,
2 not to my friend, Jackie, from -- what? -- 30 years
3 or something. I also supervised her at one time.

4 THE WITNESS: Correct.

5 COMMISSIONER TOULOUSE: So that --

6 EXAMINATION

7 BY COMMISSIONER TOULOUSE:

8 Q. I want to ask you, as the new Board chair,
9 didn't you feel like you maybe needed some summer
10 Board meetings? Even though school is not in
11 session, here you are, coming to us; you're facing
12 problems; you've got what I assume is an interim
13 principal in there. Didn't it occur to you that
14 maybe you ought to be doing some summer planning?

15 A. We are doing it now, in -- last -- the
16 year when -- we didn't have the -- the two
17 different -- the five members, that was a year ago,
18 and I was not the Board president. We have been
19 having several meetings and retreats, trainings, for
20 the Board.

21 Q. And, now, you've hired Ms. Martinez back.
22 Is she there as an interim or as a permanent?

23 A. Well, she's there as an interim to get us
24 back on our feet and everything. Ms. Martinez
25 retired, and I don't think she --

1 Q. That, I know.

2 A. I don't think she wants to continue work
3 forever.

4 Q. So I wondered, then, if you're going to do
5 some kind of search, where you have very specific
6 criteria of somebody to bring back.

7 A. Yes, we do. Yes, we do.

8 Q. If you had all of those teachers who
9 aren't returning, did they choose not to return, or
10 were their contracts not renewed of those bunch that
11 you said were disruptive?

12 A. They chose not to return.

13 Q. And you filled those positions?

14 A. Every position has been filled.

15 Q. With adequate --

16 A. Very.

17 COMMISSIONER TOULOUSE: That was -- thank
18 you.

19 THE CHAIR: Thank you. Other questions?
20 Ms. Baca, I do have one.

21 EXAMINATION

22 BY THE CHAIR:

23 Q. On the minutes that are in the smaller
24 binder, the minutes of May 15, 2012 -- in my book,
25 it's after divider 5. It's on the second page down

1 at the very bottom, May 15 meeting?

2 A. 2012?

3 Q. May 15, 2012. Yes.

4 A. Correct. I've got it.

5 Q. Page 2, down at the very bottom, there's
6 an all caps, in bold, side heading that says,
7 "Ethics and Conduct." In parentheses, it says,
8 "Action Item."

9 Below that, it says two areas of interest:
10 One: "How substantial are the claims of sexual
11 harassment?" And, No. 2, "School Board policy."

12 Right below that, also in bold type, it
13 says, "Summarized orally. There are no violations
14 of sexual harassment. However, as investigative
15 report indicated, there are multiple violations
16 noted."

17 What did the Governance Council think that
18 said? Because, to me, it says -- it contradicts
19 itself. There are no violations, but there are
20 multiple violations.

21 A. Well, there were no sexual harassment
22 violations. But there was other violations, as
23 conduct, ethics, talking to people outside of the
24 meetings, outside of our executive meetings.

25 Q. And this is talking about staff.

1 A. Yes.

2 Q. Staff.

3 A. Staff and Board members.

4 Q. Staff and Board members. Okay.

5 A. Correct.

6 THE CHAIR: Okay. Thank you for that
7 clarification. I have no other questions. Does
8 anyone else? Thank you very much.

9 THE WITNESS: Thank you. Thank you, all.

10 THE CHAIR: Mr. Rosenfelt?

11 MR. ROSENFELT: Yes. We call Viola
12 Martinez.

13 COMMISSIONER CARR: Madame Chair, I think
14 it would be appropriate if we asked the audience to
15 refrain from reaction.

16 THE CHAIR: I do think -- this is a pretty
17 serious matter. And I -- I think let's all keep our
18 thoughts to ourselves, please.

19 MR. ROSENFELT: Madame Chair, may I
20 inquire how much time is left?

21 MS. FRIEDMAN: Madame Chair, there are
22 50 minutes left, five oh.

23 MR. ROSENFELT: Fifty, boy. I was going
24 to offer to basically tell you what she's going to
25 say and run right through it. So there's time for

1 you to ask questions, for the other side to ask.

2 THE CHAIR: I think we should treat this
3 witness as all the others have been questioned.

4 MR. ROSENFELT: Okay. If we run out of
5 time, I'm prepared to do it with this here.

6 VIOLA MARTINEZ,
7 after having been previously sworn under oath,
8 was questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROSENFELT:

11 Q. Okay. Would you state your name?

12 A. Viola Martinez.

13 Q. And your present employment?

14 A. I'm presently the interim principal of The
15 Learning Community Charter School.

16 Q. Would you summarize your education?

17 A. Yes, I have a BA and MA degree in
18 Educational Administration from New Mexico Highlands
19 University, and an ed specialist degree in
20 Educational Administration from the University of
21 New Mexico.

22 Q. What's your profession, Ms. Martinez?

23 A. Excuse me? I didn't hear it.

24 Q. Would you summarize your professional
25 experience?

1 A. My professional experience spans probably
2 38 -- 39-plus years in education. I have worked as
3 a teacher, principal, assistant principal, graduated
4 up to associate superintendent of public schools.

5 Q. Okay. And which school districts have you
6 worked in?

7 A. Santa Fe Public Schools, Bernalillo Public
8 Schools, Central Consolidated School District, and,
9 presently, at The Learning Community Charter School
10 in Albuquerque.

11 Q. And how long have you been at The Learning
12 Community Charter School?

13 A. Twelve-plus years, except minus six
14 [verbatim], when I tried to retire six months ago or
15 so.

16 Q. In June of 2013, did you become the
17 interim principal of TLC?

18 A. Yes.

19 Q. Okay. What have you done since June?

20 A. Since June, I have hired new staff. The
21 School is fully staffed, ready to go with highly
22 qualified teachers, have answered many of the
23 concerns parents have had who have come in there
24 daily inquiring about the School, have looked at the
25 enrollment process, prepared the School, and, also,

1 in addition, started addressing the -- the report
2 that was initiated recently and started to make
3 those corrections.

4 Q. What about the facility itself?

5 A. The facility itself needed some minor
6 improvement, like every administrator faces every
7 summer. Some painting has been done in some of the
8 classrooms. Classrooms have been cleaned up. The
9 facility is ready for school to open.

10 Q. Okay. Is the School completely ready to
11 open at this time?

12 A. It's open tomorrow, ready to go into
13 business, and could be open tomorrow.

14 Q. Would it be fair to characterize The
15 Learning Community Charter School as a going
16 operation?

17 A. It's a going operation, has been for the
18 last twelve years.

19 Q. How many students do you expect to show up
20 next month when school opens?

21 A. Approximately 175 to 180, depending on the
22 fluctuation of enrollment.

23 Q. How many of those students will be
24 returning from the last school year?

25 A. Majority. The majority would be.

1 Q. I want to address directly and briefly
2 what has been constantly brought up at this hearing:
3 sexual harassment and the report. Did you take
4 action when you got that report?

5 A. Yes, I did, immediately.

6 Q. And what immediate action did you take?

7 A. I called the School general counsel,
8 school attorney, to get some advice and make the
9 decision to hire an investigator, independent
10 investigator, who specializes in sexual harassment,
11 to come in and interview the staff and conduct their
12 investigation.

13 Q. Okay. But, then, when you got the report,
14 what did you do with it?

15 A. Based on the findings the private
16 investigator made, I immediately called a staff
17 meeting and announced it to the staff. And
18 subsequent to that, I, in addition, placed every and
19 each staff member on a professional development plan
20 in reference to misconduct.

21 Q. Okay. And what misconduct are you talking
22 about?

23 A. The private investigator shared with me
24 privately and confidentially that there was a great
25 deal of misconduct occurring, not just from the

1 individual that they were alleging, but from those
2 who were making the sexual harassment charges.

3 Q. Okay. So this was the entire staff that
4 you put on a PDP?

5 A. Every staff member was placed on a PDP.

6 Q. And did you report to the Governance
7 Council those areas where there were concerns?

8 A. Yes. I gave them a verbal report, yes.

9 Q. Okay. And, in fact, are they in the
10 minutes? Is that in the minutes?

11 A. I believe they are, but --

12 Q. Now, when you got the report on the test
13 security breach, what action did you take?

14 A. I was not the principal at the security
15 breach, the test security breach. At that time, it
16 was another individual.

17 Q. Okay. Subsequent to that time, has any
18 action been taken regarding test security?

19 A. When I stepped in the early part of June
20 of this year, 2013, yes, action has been taken. And
21 the action involves a letter of reprimand that has
22 been placed in his file.

23 Q. Have test security procedures been
24 changed, to your knowledge?

25 A. Yes, they have been greatly modified. A

1 new testing coordinator is coming on board. Intense
2 training will begin with all the staff and Board
3 members as well, just because I want -- I would like
4 the Board members to be aware of what the test
5 security measures should be.

6 And this has -- I've raised the level of
7 awareness and heightened the security measures.

8 Q. Okay. They've -- they've raised the issue
9 of the dismissal by the Governance Council of two
10 Board members and that you signed a letter. What
11 happened there?

12 A. Are you -- are you referring to recently,
13 or --

14 Q. No, no. In 2012, Tibo Chavez and Rosalie
15 Niebes, you signed a letter dismissing them; is that
16 right?

17 A. Yes, I did.

18 Q. Why did you sign the letter?

19 A. I signed it because the then Board
20 president directed me to.

21 Q. I want to talk about site visits. Did --
22 in 2010, did The Learning Community Charter School
23 choose to make public -- PED its authorizer instead
24 of Albuquerque --

25 A. In 2010, yes, that is correct.

1 Q. Okay. And, beginning in 2010, did PED
2 conduct site visits at TLC?

3 A. Beginning in November of 2010, yes, PED
4 began a site visit. The following year -- I believe
5 2012, because in the year 2011, we were going
6 through the renewal process. So, in March of 2012,
7 there was another site visit by PED. And, then, in
8 April of -- April 30th of this year, 2013, there was
9 another PED site visit.

10 Q. Okay. Would you look at TLC Exhibit 5?

11 A. Yes.

12 Q. Okay. What is in Exhibit 5?

13 A. These are affidavits that were signed by
14 the then staff, my staff, stating the failed attempt
15 of PED to conduct a thorough site visit.

16 Q. And what was it that they failed to do?

17 A. They failed to speak to anyone in that
18 building concerning the functioning and the
19 operation of the School. They failed to speak to
20 the business manager who is responsible for
21 budgeting and finance. They failed to speak -- they
22 did not speak with the curriculum director. They
23 did not speak with the dean of students. They did
24 not speak with staff members regarding instruction.
25 They did not speak with the counselor. They did not

1 speak with the STARS coordinators. They did not
2 speak with Governance Council members. They spoke
3 with no one.

4 Q. And, immediately after that site visit,
5 what happened?

6 A. Immediately after that site visit -- I was
7 quite stunned, to be honest with you -- we received
8 the news that the school was facing a non-renewal of
9 our charter.

10 Q. Okay. And is that because of the action
11 by this Commission?

12 A. It's the action of the site visit report,
13 which I believe has influenced this Commission
14 greatly, yes.

15 Q. Okay. And the Commission voted to
16 non-renew your school; is that correct?

17 A. The Commission listened to the
18 recommendation by PED, adopted that recommendation
19 in formulating action against the School's
20 non-renewal. Subsequent to that, Hanna Skandera
21 overruled on several grounds.

22 Q. But, before this Commission, did you get
23 any chance to address the findings of the site visit
24 report?

25 A. We never had a chance or an opportunity to

1 share how wrong that site visit was in 2010.

2 Q. Do you sense the same things just happened
3 with this site visit?

4 A. Yes, I do.

5 Q. What is your experience with site visits?

6 A. Oh, my goodness. After 38 years in
7 education, and being a member of the North Central
8 Accreditation Team at the University of New Mexico
9 for ten years -- I did that from, I would say, the
10 1990s going into early 2000s -- on many occasions, I
11 was a member of the North Central Accreditation Team
12 site visits, as well as a chairperson of those site
13 visits for individual school districts.

14 Q. Okay. And how many site visits would you
15 estimate you participated in, either with North
16 Central or as the principal or head of a school that
17 was being visited?

18 A. Over a period of ten years, as a member of
19 the North Central Accreditation Team at the
20 University, I probably visited about a good
21 20 schools. And, then, being on the receiving end
22 as a member of the accreditation team, when I was
23 principal of various schools in school districts,
24 probably another 20, 25, easily.

25 Q. What's the purpose of a site visit?

1 A. In my opinion, a site visit is done to
2 assess the credibility of the school, assess whether
3 or not the school is running properly and
4 procedurally correct. There are compliance areas
5 that need to be looked into. It's the --
6 encompassing the entire operation and management of
7 the school.

8 Q. Are there guidelines to how to conduct a
9 proper site visit?

10 A. As member of the North Central Team, we
11 received intense training for that processing to
12 occur procedurally correct. The process is defined;
13 the protocol is defined and clearly articulated
14 in -- in national standards for those site visits.

15 Q. And what did you do in conducting site
16 visits?

17 A. What I did, if I was -- depending on
18 whether I was a chairperson or -- or a member of
19 that team, the -- there were many, many e-mails and
20 correspondence with prospective superintendents. If
21 it was a school district, it would be the
22 superintendent; if it was a particular school, it
23 would be the principal.

24 There would be pre- and post-visits. I,
25 as a -- if I was a team chairperson of that

1 accreditation site visit, I'd organize an
2 interdisciplinary team, who would then be dispersed
3 in the school district to visit the various
4 departments, whether it be finance, whether it be
5 curriculum, whether it be instruction, whether it be
6 records, et cetera.

7 Q. How long do site visits usually take?

8 A. Anywhere from three to four days; they're
9 pretty intense. We interview -- our process
10 involved interviewing the key folks in each
11 department. And, then, we also met in the
12 evening -- this was very common with North Central
13 Accreditation Team site visits. We had focus groups
14 that would meet nightly and gather notes on a
15 particular school. If there were issues, we'd focus
16 on those issues and discuss them.

17 Q. Now, when you did site visits, did you
18 ever come into a school or district where there were
19 personnel issues?

20 A. Oh, yes.

21 Q. Okay. And what did you do?

22 A. National standards clearly dictate for
23 anyone participating in a North Central
24 Accreditation Team visit, that that is a no-no. We
25 do not get involved -- the protocol clearly outlines

1 personnel matters are not one that we -- they're
2 strictly prohibited.

3 Q. Well, what did you do if you find them?

4 A. Mention it confidentially, informally,
5 with the superintendent of a school district, or a
6 school.

7 Q. Okay. What did you do if you find
8 noncompliance in your site visits?

9 A. If there are noncompliance areas that have
10 been determined by a particular school district or a
11 school, we bring it and we raise that attention --
12 matter -- confidentially, as a team chair. And only
13 the team chair visits with the superintendent of the
14 school district -- or, in the case of a school, the
15 principal -- and share those concerns
16 confidentially, and generally.

17 Q. Okay. And, then, do you do a final
18 report?

19 A. A final report is then -- an informal.
20 Typically, when the North Central Accreditation Team
21 concludes its visit after three or four days, an
22 informal report is -- is provided to the
23 superintendent and/or principal, and, then, it's
24 mentioned that a subsequent formal report will then
25 be mailed to them.

1 Q. And when you found noncompliance, did you
2 allow a time for corrective action?

3 A. Absolutely. A time frame is critical in
4 order to address any -- any -- any findings. There
5 needs to be -- and we've been trained by national
6 standards -- there needs to be a protocol, a proper
7 time frame.

8 Q. Okay. When you were principal at TLC,
9 under Albuquerque Public Schools, did Albuquerque
10 Public Schools do site visits?

11 A. Oh, yes.

12 Q. And did they follow the process that you
13 just outlined?

14 A. They carefully, meticulously,
15 procedurally, legally, followed those rules. That's
16 what I was used to.

17 Q. Okay. Now, after the charter -- I'd like
18 to go to after your charter was renewed. I wondered
19 if you could take a look at Exhibit 8 in the TLC
20 exhibit book.

21 A. Yes.

22 Q. Okay. What is Exhibit 8? Now, let's give
23 the Commission members a chance to find it. Do you
24 have Exhibit 8?

25 A. Yes.

1 Q. Okay. What is it?

2 A. It's the first-year site visit template
3 used by PED for their first site visit to our
4 school, after the renewal and appeal.

5 Q. Okay. So they came to your school. Were
6 there any material findings of noncompliance at your
7 school?

8 A. No.

9 Q. So the first you heard of any compliance
10 issues was after this site visit in April and May of
11 2013; is that right?

12 A. That's correct. In fact, I was -- I'm
13 sorry.

14 Q. Go ahead. I'm sorry.

15 A. I was going to say I was extremely proud
16 when I presented this goal result and this report to
17 the Governance Council at that time, because, as you
18 can see, there are no material findings at all.

19 Q. Okay. Now -- all right. We've talked a
20 lot about the New Mexico Instructional Audit so far
21 today. What -- before last month, what did you know
22 about the New Mexico Instructional Audit?

23 A. Before last month, I knew nothing about
24 the New Mexico Instructional Audit.

25 Q. Did the words "New Mexico Instructional

1 Audit" ever come out of your mouth before last
2 month?

3 A. No.

4 Q. Okay. We've heard some testimony or
5 questions which suggest that you might have said
6 something about it?

7 A. No.

8 Q. If testimony was presented, is it
9 correct -- would it be correct?

10 A. It's correct to say that I have never
11 heard of NMIA.

12 Q. Oh. I do want you to look at the Charter
13 School Division exhibit book. They have --

14 All right. Would you look at Exhibit 1 in
15 the Charter School Division Exhibit book?

16 A. Exhibit 1?

17 Q. Yeah.

18 A. Yes.

19 Q. Okay. That shows -- or what does it show?

20 A. It shows a letter dated --

21 Q. Wait a second. It show --

22 A. Okay. Yes. Okay. Thank you. Okay. Now
23 I see.

24 Q. Okay. Well, that's my question. Did you
25 see it? Do you see it now?

1 A. I'm seeing it now, yes.

2 Q. The question is, did you receive it in
3 November 2012?

4 A. No.

5 Q. Okay. Would you turn to the next page,
6 which is a screen shot -- the next exhibit, I'm
7 sorry.

8 A. No. 2?

9 Q. Yeah.

10 A. Okay.

11 Q. That one, the screen shot.

12 A. Yes.

13 Q. A computer screen shot. Do you see that
14 exhibit?

15 A. Yes, I see this exhibit.

16 Q. Okay. It shows an e-mail sent with your
17 name on it. Do you see that?

18 A. Yes.

19 Q. Okay. Did you receive that e-mail?

20 A. No.

21 Q. Okay. Did you -- why didn't you receive
22 an e-mail that's addressed to you in November of
23 2012, if that's when it was?

24 A. Because I was no longer there in that --
25 in the principal's office. And the other principal

1 was in that office.

2 Q. And where was the computer?

3 A. The computer is -- it has an e-mail
4 account to an e-mail -- to a computer, a school
5 computer, that remains in the principal's office.
6 And, obviously, when he took over as principal, that
7 was his computer, and he was accessible to those
8 e-mails, not me.

9 Q. And did you get the e-mails at home?

10 A. No. Could not.

11 Q. Why not?

12 A. The school has a technology that builds a
13 firewall. And we cannot take school -- any school
14 memorandums, communication, to the home site. That
15 computer stayed there in the principal's office. I
16 was no longer there.

17 Q. Let's turn to another subject.

18 Instructional hours.

19 Would you describe the instructional
20 program in the early years, in your early years at
21 the school, in terms of hours?

22 A. When I started at this charter school,
23 the -- the school had gone through one year of
24 development prior to the school opening in the fall,
25 the -- August of 2001, I believe. And it had been

1 established originally as a virtual school. So the
2 teachers and the students were coming physically to
3 the campus.

4 And, at that time, I must say, the campus
5 was a small restaurant facility. They were coming
6 to this facility once a week, physically, to connect
7 with their teachers -- with their teachers about
8 lesson plans and their lesson assignments on their
9 individual computers. So technology was a big piece
10 of this at that time. So it was a virtual school.

11 Q. Okay. What changes did you implement when
12 you took over?

13 A. I had to take -- I had to take initiative
14 in changing that. Because, at that time, Public
15 Education Department made me fully aware -- and this
16 was under Dr. Michael Kaplan, who was then the
17 director of -- it was the CSD Department, and Ruth
18 Leblanc. And, bless her heart, every time I mention
19 her name, I -- I revere her. She was such a
20 dedicated worker to the charter schools.

21 Q. Can I ask you to be quick, because we're
22 running out of time?

23 A. Yes. I was advised that the one hour
24 physically present on this campus was not going to
25 meet the instructional time.

1 Q. And so you changed it?

2 A. Yes.

3 Q. In what fashion?

4 A. Changed it collaboratively, working with
5 Michael Kaplan and Ruth Leblanc. And we changed it
6 to four days a week of traditional delivery of
7 classes, lessons, and courses, with one day set
8 aside for the other non-traditional programs of the
9 school.

10 Q. Okay. And what instruction did take place
11 on Fridays at the school?

12 A. Various programs were initiated back then
13 that were carried through. We did service learning.
14 We did -- at that time, we didn't have IDEAL
15 New Mexico; but, gradually, as we get closer and
16 closer to recently, within the last five years,
17 we've done IDEAL and Graduate New Mexico. We also
18 focus a great deal on remediation as well as
19 acceleration programs.

20 Q. Okay. Did instruction take place at the
21 school on Fridays?

22 A. Always.

23 Q. Were the teachers required to attend on
24 Fridays?

25 A. The teachers were required to attend on

1 Fridays.

2 Q. Okay. Were students required to attend on
3 Fridays?

4 A. No. It depended on the program they were
5 in. Some of the students might be enrolled in a
6 program that did not require their Friday presence.

7 Q. Was PED aware of your program?

8 A. As far as I know, all the way through,
9 yes, they were aware.

10 Q. Okay. Was APS aware of the kind of
11 program you ran, specifically with reference to
12 Fridays?

13 A. Yes, they were.

14 Q. Were there prior site visits at The
15 Learning Community that looked at your program?

16 A. Yes.

17 Q. Okay. In the spring of 2013, who was the
18 principal?

19 A. In the spring of 2013, Ken Lairsey.

20 Q. Did Mr. Lairsey make changes to the
21 instructional hours in the program?

22 A. Dramatic changes.

23 Q. Okay. What were they, briefly?

24 A. Reduced the instructional hours
25 immediately. That was a big component.

1 Q. Was the June 2013 site visit report that
2 we're talking about today the very first time that
3 anybody from PED or Albuquerque Public Schools ever
4 questioned your instructional hours?

5 A. Absolutely not.

6 Q. "Absolutely not" what? Not the first --

7 A. They -- rephrase again. I'm a little --

8 Q. Was the June 2013 site visit report the
9 first time that anybody from PED or APS had ever
10 questioned your instructional hours?

11 A. Yes, that's correct. That was the first
12 time.

13 Q. Okay. Now, would you look at Exhibit 19
14 of The Learning Community Charter School?

15 Okay. What is Exhibit 19?

16 A. Exhibit 19 looks like the schedule that we
17 are trying implement this coming fall.

18 Q. Okay. Will it fully meet all requirements
19 with regard to instructional hours?

20 A. Yes.

21 Q. Even on Fridays?

22 A. Even on Fridays, yes.

23 Q. So you can make this adjustment; is that
24 right?

25 A. Yes.

1 Q. All right. And will you implement it?

2 A. Absolutely.

3 Q. Do you -- have you discussed the new
4 schedule with your staff?

5 A. Yes.

6 Q. Do you anticipate any problems
7 implementing the new schedule?

8 A. No, I do not anticipate any problems.

9 Q. Okay. Let's look at Exhibit --

10 MR. ROSENFELT: Could I inquire how much
11 time?

12 MS. FRIEDMAN: Nineteen minutes.

13 THE CHAIR: I'm sorry?

14 MS. FRIEDMAN: Nineteen minutes.

15 THE CHAIR: Nineteen minutes. Thank you.

16 MR. ROSENFELT: I try to be quick, but I
17 do the best -- we have a lot of allegations to
18 answer, and nobody has been able to testify.

19 Q. (By Mr. Rosenfelt) Would you look quickly
20 at Exhibit 23?

21 A. Yes.

22 Q. Okay. What is Exhibit 23?

23 A. It's my employee amended contract.

24 Q. Is that the one for the trainer?

25 A. Yes.

1 Q. Okay. And what were you hired to do?

2 A. Well, I was -- I was a principal. I
3 continued to be the principal of the school. And,
4 as we were trying to find a new, competent
5 principal, I became the trainer for the new
6 principal as sort of a mentor.

7 MR. ROSENFELT: Sorry. I don't have --

8 Q. Okay. So this contract ran from July of
9 2012, and it ended in December of 2012; is that
10 right?

11 A. That's correct.

12 Q. Did any part of the compensation you
13 received under this contract relate to the
14 Foundation?

15 A. No.

16 Q. Have you ever received a penny of salary
17 as the director or an employee of the Foundation?

18 A. No, I have not received a salary for the
19 Foundation, ever. I've carried two legal hats, worn
20 two legal hats over the years. And I've never been
21 on a salary for the Foundation. That's one of many
22 things principals do, wear many, many hats.

23 Q. Okay. I would like you to look at the
24 Legislative Finance Committee report, which is Tab 3
25 in Exhibit 22.

1 A. Yes, I see it.

2 THE CHAIR: Mr. Rosenfelt, may I remind
3 you that your time is just about up, and you're
4 almost using Ms. McKee's time of her
5 cross-examination?

6 MR. ROSENFELT: Can I summarize what she's
7 going to say, and we'll get out of here, I know.

8 THE CHAIR: No, I don't think summarizing
9 would be effective or what we could use. But I
10 really urge you to get through and --

11 Q. (By Mr. Rosenfelt) Have you saved the
12 School and the State hundreds of thousands of
13 dollars through your skillful negotiation of the
14 Foundation lease?

15 A. That's correct; I have.

16 Q. And does the Legislative Finance Committee
17 report, Exhibit 22, show that The Learning Community
18 square footage costs are way less than other schools
19 in the state? Not all of them, but many of them?

20 A. Yes.

21 Q. And you never have, personally, profited
22 from that; is that right?

23 A. That's correct.

24 Q. Now, the other thing is that the
25 Governance Council asked you, and have you been

1 working to try to set up the relationship between
2 the Foundation and the School consistent with best
3 practices?

4 A. That is what I was attempting to do this
5 year until things just didn't happen. I had
6 discussed with the Governance Council numerous
7 times, for months and months, explaining to them,
8 "We need to bring the Foundation more into
9 compliance. There are some kinks that need to be
10 ironed out. The Legislative Finance Committee,
11 together with the legislators, are working together
12 to try to standardize rules and regulations
13 regarding the foundations that are connected in
14 purchasing facilities for their charters."

15 Q. Okay. After the May 2nd Board meeting and
16 Mr. Gerlicz was there, were you present?

17 A. Yes.

18 Q. And did you, after that meeting, write a
19 memorandum to Hanna Skandera and Mr. Gerlicz and
20 others about misconduct of the staff?

21 A. Yes, I did.

22 Q. And is your memorandum Exhibit 10 of The
23 Learning Community Charter School? I was just going
24 to ask, is that it? We're out of time.

25 A. Oh, I'm sorry. Yes, I did. I'm there.

1 Q. And did you write a separate memorandum to
2 the then principal, Ken Lairsey, about misconduct of
3 the staff and employee harassment?

4 A. Absolutely. I was verbally assaulted by
5 many members of the staff. And that is unlawful.
6 It's against the law. No one should have to
7 tolerate that kind of behavior. It's
8 unprofessional.

9 Q. And those people who assaulted you are no
10 longer employed at the School; is that right?

11 A. That's correct.

12 Q. What are your plans for the School in the
13 future?

14 A. Bring stability to that school, A; B, hire
15 a competent principal in an orderly fashion; C,
16 create a working collaboration and relationship
17 between the School and the Foundation that is
18 consistent with best practices.

19 MR. ROSENFELT: I have no further
20 questions. Thank you.

21 MS. McKEE: May I inquire how many minutes
22 I have?

23 MS. FRIEDMAN: You have 12 minutes.

24 MS. McKEE: For the record, I'd like to
25 note that Mr. Rosenfelt used approximately

1 40 minutes. I have approximately 12 minutes for my
2 cross-examination.

3 CROSS-EXAMINATION

4 BY MS. MCKEE:

5 Q. I would like to direct your attention,
6 Ms. Martinez, to Exhibit 10 in the CSD
7 exhibit notebook, which is the small notebook.

8 A. It's kind of awkward. Yes.

9 Q. And I'd like to direct your attention to
10 the bottom of Page 3 --

11 A. Yes.

12 Q. -- where it talks about that Mr. Ted
13 Padilla made several accusations in his interview.
14 And, then, under that, there are some starred --

15 A. I'm sorry.

16 Q. You're on the right page. If you would
17 turn to Page 3?

18 A. Page 3. All right. Thank you.

19 Q. So, I'm looking at Page 3. I'm looking at
20 the second paragraph from the bottom, where it says,
21 "Mr. Ted Padilla made several accusations during his
22 interview." Do you see those first --

23 A. Yes, I do.

24 Q. -- words? Then, underneath that, there
25 are some starred bullets that I'd like you to flip

1 the page. These are what Mr. Padilla told the
2 investigator. And, at the top there, you see the
3 other starred bullets?

4 A. Yes.

5 Q. So, here, we talk -- here, it says -- one
6 of the things it said is -- on the fourth bullet, it
7 says, "There are people who do nothing," and he
8 lists the people. And turn to the next page. Go
9 down one, two, three, four starred bullets.

10 A. I apologize. You know what? This is in
11 such tiny print --

12 Q. It's not a problem.

13 A. -- I can barely see it. But okay.

14 Q. That's okay. I'll read it for you.

15 A. Okay.

16 Q. It says, "There are people who do
17 nothing," and then it lists eight people. And it
18 says, "They are all Anglo." Do you see that?

19 A. Yes.

20 Q. And, then, the next -- if you'll skip one,
21 and then we have another star, it says, "I am paid
22 \$5,000 less than Level 3 people. Why should I come
23 in on a Friday? I work from home." Do you see
24 that?

25 A. Yes.

1 Q. Then do you see the next bullet that says,
2 "I do refer to students as sweetie and cutie,
3 always"? You didn't share any part of this report
4 with the Governing Council, did you?

5 A. We didn't have this detailed report with
6 the --

7 Q. You had this detailed report; isn't that
8 true?

9 A. That's correct.

10 Q. And you didn't share it with the Governing
11 Council, did you?

12 A. I didn't go bullet by bullet. But I
13 explained, in general, what the sexual harassment
14 findings were, yes.

15 Q. And the sexual harassment findings at the
16 end of the report found no sexual harassment;
17 correct?

18 A. That's correct.

19 Q. But you didn't share these other concerns
20 with the Governing Council, did you?

21 A. Yes, I did, informally and generally, but
22 not bullet by bullet.

23 Q. Did you inform them at the general council
24 meeting -- the Governing Council meeting -- did you
25 tell them that this is what Mr. Padilla had said?

1 A. No.

2 Q. And Mr. Padilla was a teacher at the time;
3 correct?

4 A. That's correct.

5 Q. And he makes an admission right here that
6 he doesn't come in on Fridays, so he doesn't teach
7 on Fridays; isn't that correct?

8 A. He makes that statement there, yes.

9 Q. I'd like to turn your attention to
10 Exhibit 6. Actually, it's Exhibit 8. I'll make one
11 more correction. Exhibit 9.

12 This is the 2012-2013 school calendar that
13 was submitted by TLC. Do you recognize this?

14 A. Yes.

15 Q. I'd like you to look down on May 3. Do
16 you see May 3?

17 A. Yes.

18 Q. Okay. So -- and it says -- and this shows
19 that there's instruction on Fridays, doesn't it, on
20 May 3?

21 A. Yes.

22 Q. Which contradicts your testimony that you
23 just gave that there's -- that there -- that there
24 isn't instruction -- or that there isn't instruction
25 on Fridays; right?

1 A. I'm sorry. I'm confused by your question
2 now.

3 Q. You said first, it was a four-day week;
4 correct?

5 A. It depends on the program.

6 Q. You say there's a four-day instructional
7 week, but you have May 3 as an instructional day;
8 correct?

9 A. It's listed as a -- correct, as an
10 instructional day, yes.

11 Q. And Mr. Padilla, who's now your assistant
12 principal, says that he doesn't come in on Fridays;
13 correct?

14 A. Well, that's what was stated in that
15 report.

16 Q. And you testified that you didn't know
17 anything about the New Mexico Instructional Audit
18 when Mr. Rosenfelt asked you questions; correct?

19 A. That's correct.

20 Q. Do you remember me interviewing you?

21 A. Yes.

22 Q. Do you remember I asked you many questions
23 about the New Mexico Instructional Audit, didn't I?

24 A. Yes.

25 Q. And, in fact, you told me that you knew

1 about the New Mexico Instructional Audit and that
2 you knew it was embedded in the EPSS; isn't that
3 correct?

4 A. You indicated, either in several ways or
5 several questions, whether or not the NMIA, I was
6 aware of. And I made the comment that I thought it
7 probably is one of the audits that is embedded
8 within the EPSS, or the EPSS is embedded into the
9 NMIA.

10 Q. And, in fact, Ms. Martinez, when I
11 questioned you about the NMIA, you told me that you
12 had instructed -- that you had spoken with
13 Priscilla, and that you had both talked about the
14 deadlines that needed to be met regarding the NMIA,
15 and that you had told those to Ken Lairsey; isn't
16 that true? Isn't that what you told me when I
17 interviewed you?

18 A. I talked about the EPSS. That was a
19 discussion that I remember always having with
20 Priscilla Brigham, the EPSS.

21 Q. Do you recall telling me?

22 A. I don't recall.

23 Q. You don't recall.

24 A. No.

25 Q. Mr. Rosenfelt had you look at an e-mail,

1 which is actually Exhibit 1 in that notebook. And
2 you stated that you didn't get it because it was
3 sent in November, and you were no longer at the
4 school; is that correct?

5 A. That's correct.

6 Q. Don't you think it would have been
7 proper -- if you were no longer at the school and no
8 longer able to get e-mails, don't you think it would
9 have been proper to instruct Mr. Lairsey how to
10 either get those e-mails or to close down that
11 account, so e-mails wouldn't have been sent to you
12 which were of such importance?

13 A. I did.

14 Q. You did what?

15 A. I did instruct him, went through that very
16 carefully about how important it was to -- since
17 that was the only computer where -- I wouldn't say
18 the only computer -- held by a principal in a
19 principal's office that receives weekly and daily
20 information from PED, to always be checking that,
21 every single day, because there are critical
22 deadlines. I did.

23 Q. So you're telling this Commission that you
24 were not able to access that e-mail account that was
25 assigned to you outside of that computer located in

1 your school?

2 A. That's right. I had no access to that
3 computer. That's correct.

4 Q. And, in fact, you did talk to Mr. Lairsey
5 about the New Mexico Instructional Audit, didn't
6 you?

7 A. I talked to him about critical deadlines.

8 Q. Including the New Mexico Instructional
9 Audit; isn't that true?

10 A. I don't remember. But critical deadlines.

11 Q. That's what you told me in our prehearing
12 interview, wasn't it?

13 A. I talked about the EPSS, because that is
14 so -- that's pretty common. Every year, quarterly,
15 EPSS has to be completed.

16 Q. You stated that your school is a "going
17 school." Those were your words; right?

18 A. Yes, that's true.

19 Q. And it has been for the last twelve years?

20 A. Yes.

21 Q. And for the last twelve years, it has not
22 made adequate yearly progress, has it?

23 A. Is AYP relevant to date? I don't think it
24 is.

25 Q. You stated that your school is a going

1 school, and that it has been for the last twelve
2 years?

3 A. That's correct, it has been.

4 Q. And it didn't meet AYP?

5 A. It didn't meet AYP; neither did about
6 90 percent of the other schools statewide make it.
7 So it is a going school.

8 MS. McKEE: No further questions.

9 THE CHAIR: Thank you. Commissioners, do
10 you have questions?

11 COMMISSIONER GANT: Madame Chair, members.

12 EXAMINATION

13 BY COMMISSIONER GANT:

14 Q. Is Mr. Padilla still working?

15 A. Yes.

16 Q. What's his job?

17 A. He's an assistant principal of this
18 school.

19 COMMISSIONER GANT: Thank you.

20 THE CHAIR: That's it? Anyone else?

21 COMMISSIONER CARR: Madame Chair?

22 THE CHAIR: Commissioner Carr.

23 EXAMINATION

24 BY COMMISSIONER CARR:

25 Q. I want to apologize for asking so many

1 questions, because this is important.

2 I -- Ms. Martinez, you believe TLC is
3 doing a good job and continues to improve? Are
4 you -- do you believe that they've done a good job
5 in the past and continuing to improve? Is that
6 true?

7 A. That's correct.

8 Q. Okay.

9 A. Yes.

10 Q. You're going forth with almost a complete
11 turnover in staff?

12 A. Yes.

13 Q. And other, I guess, changes -- there are
14 changes on the Board -- or the Council. If the
15 School is continuing, has done well, and, in your
16 opinion, it continues to improve, why such a
17 turnover in the staff?

18 And, then, if this -- I mean, one would
19 lead to the -- this would lead one to the conclusion
20 that -- that the -- based on what you said, the
21 School is doing well and it's improving.

22 In that case, why -- I mean, did these
23 people leave on their own? Were they encouraged to
24 leave? Were they fired? It -- you know. So why --
25 if it's doing well, why change? Why make so many

1 changes?

2 A. It's a small charter school. We have a
3 total of 12 employees, 12 -- I'm sorry -- 12
4 instructors. A staff -- the other staff makes it
5 about 18 to 20, altogether, employees.

6 Out of the 12 instructors, five were
7 replaced. And out of those five -- I want to be
8 careful. Out of those five, two were not licensed
9 and should not have been there. At least one that I
10 know of, one that was hired, letter of intent was
11 given by the previous principal to come on board for
12 the following year. There were no licenses.

13 No one was fired. No one. Right after
14 the June 6 hearing, three of those staff members
15 directly drove straight to the unemployment office
16 without having received notice that they were
17 terminated or rehired or had any dialogue at all
18 about their status in the school. They, themselves,
19 applied for unemployment benefits.

20 Q. Okay.

21 A. So very few have needed to be -- let me
22 put it this way: Two were not licensed, should have
23 never been there in the first place, especially one
24 given the letter of intent. That narrows it down.
25 It narrows it down. There are four instructors that

1 are returning from last year, from the previous
2 years.

3 Q. I heard earlier that there were three --

4 A. Three, but staff.

5 Q. -- returning?

6 A. That could be staff, the educational
7 assistants. But, as far as instructors, it's a
8 different number.

9 Q. But four instructors are returning?

10 A. There are four instructors returning. And
11 two didn't have the proper licenses. One of them,
12 in fact, cannot teach anywhere in New Mexico. He
13 allowed his -- his license, his teaching license, to
14 lapse. They're due on June 30. He did not take the
15 proper measures to renew that license.

16 Q. Okay. You -- now, you have -- right now,
17 you have all the positions filled?

18 A. All of them.

19 Q. You're willing to commit, even though
20 you're in a precarious situation right now?

21 A. We're in a very precarious situation, yes,
22 very difficult, but we're ready to go.

23 Q. Okay. Was the Governing Council given
24 this -- well, this is in Exhibit 10. Was it given a
25 copy of that that had all the details of all the

1 statements that were made by Mr. Padilla?

2 A. No.

3 Q. They weren't given that?

4 A. They were not given the report, because
5 Dr. Dennis Good, the investigator, and I both
6 treated that as a very confidential report,
7 extremely confidential. And I relied on his
8 conclusive -- his conclusions, his findings. There
9 was no sexual harassment.

10 Q. But, in -- when you reported on this, I'm
11 sure you did this in executive meeting; right? You
12 did that in executive meeting?

13 A. Both in executive meeting and in public
14 meeting.

15 Q. And in public meeting. You didn't think
16 it was a good idea for the Board to know these
17 details?

18 A. At that time, I relied on his findings. I
19 didn't at that time. Today, I probably would view
20 that a little bit differently, based on everything
21 that's happened at that school.

22 Q. And who hired Mr. Padilla for his current
23 position?

24 A. I did.

25 Q. Did you feel like that was a good

1 decision? Do you stand by that today?

2 A. I stand by that. And let me tell you why.
3 Under the New Mexico State Personnel Act,
4 instructors are entitled to their property rights.
5 They're entitled to a due hearing process.

6 [Verbatim.] Mr. Padilla went through that.

7 Q. Okay. And you've worked with him for
8 12 years?

9 A. No. He bas- -- he is -- he came --

10 Q. Well -- yeah.

11 A. He's been there, I believe, five years. I
12 would say approximately five years.

13 Q. And you were with -- you were a colleague
14 of his for five -- for five years.

15 A. Well, I was his supervisor.

16 Q. You were his supervisor?

17 A. Yes, his supervisor.

18 Q. Okay. You mentioned your experience in
19 accreditation?

20 A. Yes.

21 Q. You have very a impressive background and
22 you present yourself very well.

23 A. Thank you.

24 Q. What would you -- you do have a great deal
25 of knowledge at TLC. Would you give TLC full

1 accreditation?

2 A. Absolutely. Absolutely.

3 Q. Without question?

4 A. And I'll tell you why. This school has
5 grown, not only enrollment-wise, but the test scores
6 have steadily increased. Since 2008 -- since
7 2008 -- there has been only one time that TLC had a
8 graduation rate of under 60 percent. And, in fact,
9 I do want to point out to you -- because I think
10 there's been an incredible influence on you, as PEC
11 Commission members, based on the reference being
12 made continually about the 2010 site visit and the
13 renewal that we went through, all that drama that we
14 went through -- in 2010, the only year since 2008
15 that we had a 56-percent graduation rate, the
16 following year, which we were up for renewal, in
17 2011, our graduation rate was 70 percent.

18 Base that against the State. The State
19 average graduation rate in 2011 was 63 percent.
20 Sixty-three percent. We scored 70 percent. And,
21 for the kind of kids -- you can't compare us to
22 La Cueva High School. You can't compare us to
23 Highland High School.

24 We deliver the needs of students who are
25 traditionally under -- under-represented. They are

1 fragile kids. Many -- we kind of have a mixed bag.
2 I try to direct the instruction of the teachers
3 towards the subgroups, because I think that's what
4 makes a big difference.

5 THE CHAIR: Ms. Martinez, I apologize for
6 interrupting you. I think we're getting into
7 editorializing here a little bit. I would ask that
8 you simply answer the questions. The day is growing
9 late, and we still have quite a bit to cover.

10 And, Commissioner Carr, I would encourage
11 to you do the same.

12 COMMISSIONER CARR: I have one more. Yes,
13 ma'am.

14 Q. (By Commissioner Carr) The -- so, do you
15 have any reason, evidence, to believe that -- that
16 the PED was acting in an arbitrary and capricious
17 manner in regards to your school?

18 A. I believe that they acted in a biased
19 manner, yes.

20 Q. What -- do you have any evidence of that?

21 A. The reference made during the June 6 PEC
22 meeting, when PED recommended to you revocation,
23 there was a reference made, quote, unquote, by
24 Mr. Tony Gerlicz, when he, quote, unquote, said, to
25 you, as PEC members, "Almost" -- Remember? "This,

1 is the school that almost got denied their renewal."

2 COMMISSIONER CARR: Okay. Thank you. I
3 have no further questions, Madame Chair.

4 THE CHAIR: Any more questions from
5 Commissioners? Commissioner Toulouse.

6 COMMISSIONER TOULOUSE: I know. I'll try
7 it keep it short, too. I think it's good
8 book-ending, instead of sitting next to each other
9 like usual. Now, we're at opposite ends.

10 EXAMINATION

11 BY COMMISSIONER TOULOUSE:

12 Q. You know, I've been saving the question,
13 because you're the one -- and I honestly think we've
14 done a little too much on the sexual harassment
15 question, and I would have had other issues, but I'm
16 not either attorney.

17 However, I keep hearing, over and over --
18 and since you're the one who didn't choose to hand
19 this on, I think a governing council has the same
20 privacy requirements that you do and your folks do.
21 So I have a concern.

22 But what I want to know is how you read
23 this statement, which is very carefully written,
24 where it says, "Witness testimony shows that there
25 has not been enough evidence to show sexual

1 harassment," as saying, "There was no sexual
2 harassment."

3 It goes on to make one other -- it says,
4 "A one-time comment does not rise to the level of
5 sexual harassment."

6 But, also, there were more indications of
7 one time, one time, one time. And I'm just
8 wondering, how did you interpret what I see as it
9 wasn't proved, but that doesn't mean it wasn't
10 there.

11 A. Right. It was a very difficult dilemma
12 for me, as the leader of the School, to see this
13 kind of behavior and conduct that was going on quite
14 frequently. It really was disheartening.

15 I do not tolerate sexual harassment, not
16 in any way. It's zero tolerance.

17 When the investigator met me in my office
18 to give me the preliminary findings, I'll never
19 forget what he told me. He said, "Ms. Martinez, the
20 sexual harassment, it didn't rise," as you said, "to
21 the egregious level that is required under law. But
22 the same people that were leveling the charges of
23 sexual harassment against Ted Padilla, were they,
24 themselves, behaving in a sexually harassing way."

25 That's exactly what he told me. So it was

1 both sides. And that's why I made the
2 determination, as a leader, I was going to place
3 every staff member on a professional development
4 plan when it comes to ethical conduct.

5 Q. Well, now that you have new staff, and if
6 this goes forward into the fall, and you have -- do
7 you plan to give training to all of your staff on
8 exactly what sexual harassment is, both from giving
9 and to determine whether you've received it, or it's
10 just camaraderie?

11 A. Absolutely. That is a must. It has to
12 happen.

13 COMMISSIONER TOULOUSE: Okay. Thank you.

14 THE WITNESS: You're welcome.

15 THE CHAIR: Further questions,
16 Commissioners?

17 COMMISSIONER BERGMAN: I have one.

18 THE CHAIR: Commissioner Bergman.

19 EXAMINATION

20 BY COMMISSIONER BERGMAN:

21 Q. Let me address this. Your own exhibit,
22 Exhibit 15, prepared by your attorney, which covers
23 the New Mexico Instructional Audit, which you have
24 stated you have never heard, now, that was issued,
25 first time, September 2011. You were the principal

1 at that time. That was a part of the new A-to-F
2 grading system.

3 You're stating that, as principal, you
4 somehow did not read this document that talked about
5 a very important part of the A-through-F grading
6 system.

7 A. You know, I -- without criticizing folks,
8 PED is such a bureaucratic machine. Some of the
9 e-mails that they meant to send don't get to us in a
10 timely manner. Some do. We need to immediately
11 follow up.

12 As the principal of a school, I had a
13 curriculum coach. I depended on that curriculum
14 coach to keep up with the EPSS at that time. I
15 didn't -- I did not see the NMIA.

16 COMMISSIONER BERGMAN: Thank you, Madame
17 Chair.

18 THE CHAIR: Thank you. Any other
19 questions? Thank you, Ms. Martinez.

20 THE WITNESS: You're welcome.

21 THE CHAIR: Commissioners, I think it's
22 time for another break before we get into the
23 closing arguments and public comment. I have 2:51.
24 Let's get back here at 3:00. Thank you.

25 (Recess taken, 2:51 p.m. to 3:03 p.m.)

1 THE CHAIR: We are back in session. We
2 are to the point of closing arguments. And I will
3 give each party ten minutes.

4 Ms. McKee, would you like to present your
5 closing argument?

6 MS. McKEE: Certainly. And, Madame
7 Hearing Officer and members of the Commission, I
8 would just like, before we start closing arguments,
9 to make sure that both exhibit notebooks have been
10 entered into evidence.

11 MR. ROSENFELT: Thank you.

12 THE CHAIR: Thank you. So I may just
13 state that the Exhibits 1 through 11 contained in
14 the CSD notebook have been accepted into evidence.
15 The Exhibits 1 through 25 in the TLC notebook are
16 also accepted into evidence.

17 MR. ROSENFELT: Madame Chair, there's 26
18 exhibits.

19 THE CHAIR: I'm sorry.

20 MR. ROSENFELT: There are 26 exhibits, not
21 25.

22 THE CHAIR: Oh, I'm sorry. I didn't see
23 the numbers begin again. The tabs actually go up to
24 35, but there is nothing after Tab 27. So it's
25 26 exhibits in the TLC notebook.

1 MR. ROSENFELT: That's correct.

2 THE CHAIR: Thank for you that correction.
3 Are we ready?

4 MS. McKEE: Yes.

5 THE CHAIR: All right. Ten minutes,
6 please.

7 MS. McKEE: Just briefly. Madame Hearing
8 Officer and members of the Commission, the evidence
9 that's been presented here today for your
10 consideration has shown a history of noncompliance
11 by TLC of their instructional hours as required by
12 the State law.

13 The evidence has shown a noncompliance
14 with of the -- with completing the New Mexico
15 Instructional Audit.

16 The evidence has shown that there is
17 inability of the Governing Council to provide proper
18 oversight of the School based on current positions
19 that have been filled within the School, and the
20 other testimony that was given.

21 The evidence has shown that there was a
22 violation of the Open Meetings Act.

23 The evidence has shown that there were a
24 couple of breaches of test security and protocol.

25 And CSD believes that the evidence put

1 forth today shows, by a preponderance of the
2 evidence, that TLC's charter should be revoked.
3 Thank you.

4 THE CHAIR: Thank you, Ms. McKee.
5 Mr. Rosenfelt.

6 MR. ROSENFELT: The site visit audit, we
7 believe, shows that there was a snapshot taken at
8 one point in time, a tumultuous point, where there
9 were problems, and they have been identified. It
10 doesn't mean, in our opinion, that the charter
11 should be revoked, because if you take these one by
12 one, each of them either is not that major, or can
13 be corrected, or happened well in the past with
14 different people who are not there; particularly,
15 frankly, the prior president of the Governance
16 Council, who did not do a good job, as you've heard
17 that testimony. We have better leadership, stronger
18 leadership now.

19 The Instructional Audit slipped through
20 the cracks, frankly. Yeah, they didn't do it. They
21 can do it. That's not impossible to do. It -- they
22 didn't -- they didn't get the notice.

23 The D schools, the evidence showed, didn't
24 get help, but the F schools did. They had a team to
25 go down and help them. These schools were sort of

1 twisting out there.

2 Governing Council membership. Yeah, one
3 time they let some extra time go by by filling the
4 vacancies. [Verbatim.] That isn't going to happen
5 again. It happened once a couple of years ago.

6 Instructional hours. You have the new
7 schedule, and you have a principal who's going to
8 see that it is in place.

9 Open Meeting Act violation, again, a
10 one-time thing where the attorney said, "You need to
11 rescind an action."

12 This happens in public bodies. It's not a
13 repeated, constant thing. It's not a reason to shut
14 down the school.

15 Sexual harassment. Again, it's
16 troublesome. The whole staff has been put on a
17 growth plan. It's going to be watched closely by
18 Ms. Martinez. It's not going to be tolerated.

19 And the same thing with the test security
20 protocols. They've tightened their procedures, and
21 they're addressing it. They have addressed it.

22 Program changes. A bunch of them have
23 been made, contrary to the report, and there are
24 results to show it.

25 Governing Council legal knowledge. You

1 heard the testimony that they are trying hard with
2 extra training to be sure they're on top of it. And
3 the finding, again, is based on the lack of
4 knowledge of the prior president who didn't know,
5 okay? They had somebody who was their president who
6 did not know what Priscilla Brigham knows or Jackie
7 Baca knows or other members know.

8 Signature of the principal. The
9 Governance Council president refused to sign -- or
10 failed to sign -- a resolution which had been
11 properly adopted by the Governance Council. She
12 instructed the principal to sign it. She signed it.
13 Shouldn't have happened. Won't happen again. One
14 time.

15 The Governing Council awareness of
16 irregularities. Well, Priscilla Brigham told you
17 she was aware, and the Governance Council certainly
18 is newly vigilant.

19 Contract with the Foundation director.
20 She hasn't got a penny from the Foundation. She
21 just did training. The lease with the administrator
22 was approved by the Governance Council.
23 Relationship by the Foundation and the School does
24 need to be worked on. But there's no financial
25 misconduct. To the contrary, the exhibits are going

1 to show that everybody has saved lots of money, and
2 there's hundreds of thousands of dollars of
3 amortization on that huge building, thanks to the
4 favorable contract negotiated by Ms. Martinez.

5 And if you revoke the charter, that's
6 going to be forfeited. There are huge consequences
7 to revoking that charter. That's one of them.

8 Current allegations and phone calls. That
9 stopped. There was terrible dissension within the
10 School, as you heard, and that's ended.

11 So the problems that Mr. Gerlicz found,
12 we're not saying they didn't exist. We're saying
13 there's a new change of circumstance, a new
14 Governance Council, and a new principal, at least a
15 new interim principal.

16 So the question is, What do you do? Do
17 you make the choice to revoke the charter, or do you
18 give them a chance to address these and come in and
19 monitor and see if they can get these concerns
20 addressed?

21 Again, nobody's stealing; nobody's
22 committing crimes. They've got even Mr. Gerlicz,
23 said, "Good learning happening," an improving grade.
24 So it seems to me your choice is easy. The hard
25 choice is to revoke the charter, to make detailed

1 factual findings, to set up the possibility of an
2 appeal, the lawyers fees, all that.

3 I don't think you want to do that. Give
4 them a chance. Thank you.

5 THE CHAIR: Thank you. We're now to the
6 Public Comments section. And I have the form that
7 was signed.

8 MR. ROSENFELT: Madame Chair, the form
9 says that members of a group, only one
10 representative can speak. And we have that group
11 from the May 3rd meeting here. And they've all
12 signed up, and they all want to speak. And it's one
13 group.

14 THE CHAIR: Right. I agree with you. Let
15 me just say that if you all are from the same group,
16 and you are going to say the same thing, please
17 select a spokesperson, okay? You will only be
18 allowed two minutes to speak, so make your -- make
19 your time count, okay?

20 The form says, "Please select one
21 spokesperson per group." If you are an acknowledged
22 group, and you're all going to say the same thing,
23 then I would ask that you select a spokesperson.
24 However, that's up to you. Okay?

25 We do have -- as you have counted, we have

1 12 names on this -- on this list. So let me read
2 this, while you all contemplate how you would like
3 to handle who speaks and who does not, perhaps.

4 I will now allow 30 minutes of public
5 comment. Each speaker will have two minutes to
6 address the Commission. The speakers shall present
7 in the same order as they appear on the sign-in
8 list. Each speaker is allowed to offer his or her
9 comments. However, speakers are not permitted to
10 question any witnesses or introduce any evidence.

11 There will be no further public comment
12 allowed once the 30-minute time period has run. The
13 Commission will give the public comments due weight.

14 Further, I ask that you please be mindful
15 of everyone who is here. We're adults; we're
16 professionals, and we're here for kids. So let's
17 please keep that in mind.

18 Has anyone made a change to who's on this
19 list? Okay. I see no one leaping up to tell me
20 you're taking your name off.

21 So we will begin. As I call your name, if
22 you will come to the podium, please, and speak
23 clearly. Be sure our court reporter has your name
24 and the correct spelling of it.

25 The first name on the list is Martha --

1 and I believe it's "Homer." I probably butchered
2 that.

3 MS. HOLMEN: Hello. My name is Martha
4 Holmen, H-O-L-M-E-N. I am a teacher who has been
5 with TLC since the day it started. I resigned this
6 summer due to the nasty and unprofessional way
7 Mr. Lairsey was treated, and due to the hostile
8 takeover by the Governance Board and administration.

9 It's true that we -- that employees were
10 angry and disgruntled about the result of the Board
11 meeting in May and June. This is because we finally
12 had a leadership principal who was leading us
13 forward, turning the school around. The staff and
14 students were looking forward to a new year with new
15 changes. We were working really hard to change the
16 culture and the environment in the school and
17 increase the test scores.

18 Contrary to what has been said,
19 instructional hours had increased. Two-thirds of
20 the students were failing one or more classes. They
21 were required to attend Friday school and had to
22 sign attendance and had consequences for not coming.
23 And I actually lost my Friday prep and was working
24 on Saturdays.

25 Mr. Lairsey had attended many trainings on

1 curriculum, as had I. And he did not ignore advice,
2 but took advice from other sources.

3 I would like to see the School remain
4 open, but it needs a new start with a new Governance
5 Board and administration. Thank you.

6 THE CHAIR: Thank you. The next name on
7 the list is Francine Perea. I'm sorry. Francie.

8 MS. PEREA: Yes. Good afternoon. My name
9 is Francie Perea, P-E-R-E-A. I was at TLC 2005
10 through 2010, and from January of this year through
11 May. It was wonderful to see the changes that were
12 being made this year. The staff was excited and the
13 students were excited. And, unfortunately, that all
14 changed, and, yes, we were very disappointed.

15 We all stood there in support of Ken
16 Lairsey, and we leave in support of Ken Lairsey.
17 Thank you.

18 THE CHAIR: Thank you. Gilda Vogel.

19 MS. VOGEL: It's V-O-G-E-L. Number one,
20 everyone does have outside access to the e-mails.
21 I'm no longer there. I retired, and I still have
22 access to my e-mails at TLC. Everybody does.

23 The staff did witness Ms. Martinez
24 removing Tibo Chavez and Rosalie at one of the Board
25 meetings. Whether or not the Board voted on it, we

1 don't know. At that meeting, Ms. Rosalie did ask
2 for a copy of the report, but Ms. Martinez told her
3 that she did not have to give her one, and she was
4 not going to give her one. The whole staff was
5 there; we witnessed that happening.

6 It was known to all staff that we were
7 short hours, that we were short instructional hours.
8 But we were given two messages: It's okay; it's in
9 the charter. But, at the same time, we were told by
10 Ms. Martinez that she would not schedule any
11 meetings from PED on Fridays. If so, she would make
12 sure that she would change it. Only students who
13 wanted to catch up on work would come in, but they
14 were not required.

15 I don't know what subgroup she's talking
16 about, maybe our IDEAL students. And they work
17 online. And that was such a small percentage, maybe
18 ten kids, if at all. And that has happened since
19 the inception of school. We did not take attendance
20 on Fridays.

21 We -- we were very disappointed that they
22 removed Mr. Lairsey and that they did not have
23 principals' interviews to replace him. I don't know
24 if I'm allowed to say this. Stop me if I'm not.
25 But I did overhear a conversation between

1 Ms. Martinez and Ms. Baca.

2 COMMISSIONER GANT: Can't say hearsay.

3 THE CHAIR: Okay. Hearsay is acceptable
4 in this hearing.

5 MS. VOGEL: So I was standing outside the
6 office of Ms. Martinez when she was talking to
7 Ms. Baca, the Board president at the time.
8 Mr. Padilla had not had his hearing for
9 reinstatement.

10 Ms. Martinez was talking about her being
11 principal and bringing Mr. Padilla in as vice
12 principal. This was before he even had his hearing
13 to be reinstated, after he was put on administrative
14 leave.

15 MS. FRIEDMAN: Your two minutes are up.

16 MS. VOGEL: Thank you.

17 THE CHAIR: Thank you. Camilla Vigil.

18 MR. VIGIL: I pass. I pass.

19 THE CHAIR: You'll pass. Thank you.
20 Steve Vogel.

21 MR. VOGEL: Thank you, members of the
22 Commission. One issue no one's ever talked about
23 all day was the -- what the law requires under
24 New Mexico law. As you know, you have not only
25 the -- you may suspend the authority of a charter

1 school. And the facts, as they have been brought
2 before this panel provides you with more than
3 sufficient information -- I would say it's almost
4 beyond a reasonable doubt, not just a
5 preponderance -- that upon suspension, the
6 Department shall act in lieu of the Board or the
7 principal. So you have that authority under the
8 law.

9 Lastly, the Secretary may delegate
10 authority to act for and create another
11 principalship or a board.

12 I think, based on what -- everything has
13 come before this Board, the evidence and the
14 witnesses, that it's clear that it probably needs to
15 be shut down and started anew.

16 I leave the panel with a commonsense
17 analysis. The only reason we're here today is
18 because the prior board and the prior principal got
19 caught. They seem to have engaged in all of this
20 illegal conduct, assuming they'd never get caught,
21 which I think a lot of entities do. As long as you
22 don't get caught, I guess you can continue doing
23 this.

24 I think PEC must send a clear message
25 that, if you're going to violate the law in the

1 state of New Mexico, you're not going to put up with
2 it; there's going to be consequences for it.

3 And then, lastly, you need to send a
4 message that when a board and principal violate the
5 law, that they will be suspended.

6 And, lastly, as I'm listening to
7 everything today, it seems to me that it's like the
8 embezzler who gets caught and then promises, "I'll
9 never embezzle again."

10 Well, they've already created and engaged
11 in the illegal actions. Thank you.

12 THE CHAIR: Thank you. Ira Loper [ph]?

13 MR. COOPER: That's "Cooper," or,
14 otherwise, two P's makes it "Copper," a common
15 mistake.

16 THE CHAIR: I'm sorry. Would you please
17 state your name?

18 MR. COOPER: Sure. Ira Cooper,
19 C-O-O-P-E-R. I feel I have to defend the staff. I
20 think splitting us into groups, even here, is
21 unfair. I'm one of the ones who is staying.

22 I would like to educate the incoming
23 eleventh-graders -- the incoming twelfth-graders,
24 who were my eleventh-graders last year. I'd like to
25 get them through. I'd like to educate the

1 tenth-graders and eleventh-graders, and, before our
2 next charter renewal, I'd like that opportunity.

3 And I don't quit easy. My position may
4 change; the things I was doing in the School may
5 have to change. I can't control this board, the
6 PEC, the PED, the administration, the
7 back-and-forth, I can't do any of that.

8 But I can stand for the cause of
9 education, which I don't think is necessarily the
10 cause of the kids. I think it's bigger. I think we
11 make a mistake when we say we're doing it for the
12 kids. I think it's a little bit of self-patting on
13 the back.

14 But I do think we have a commitment to
15 education, and I think it's worth working this out
16 on that basis. I can't control your decision
17 relative to people that I've known in many
18 capacities. I've known Mrs. Martinez for ten years.
19 I've worked only at TLC since leaving a business.

20 So I can't say -- and I've known
21 Mr. Lairsey an equal amount of time. I can say we
22 were making improvements with Mr. Lairsey, but I
23 can't say we didn't have them before.

24 But you have evidence that you have to
25 deal with. But let's not leave the staff out and

1 leave us as a group at the castle door with
2 pitchforks and other such things. That's just not
3 mature.

4 We do our job, and we educate Board
5 members' kids, and we educate parents who complain
6 about us. We educate their children, and we don't
7 make a distinction. We do our best. And yet some
8 things get said that shouldn't be said. So we
9 apologize. But give us a chance to continue
10 educating, because that --

11 MS. FRIEDMAN: Your time is up.

12 MR. COOPER: Thank you.

13 THE CHAIR: Thank you. Laurie Hall?

14 MS. HALL: Hi. My name is Laurie Hall,
15 L-A-U-R-I-E, H-A-L-L. I was charged with taking
16 Governance Board meetings this past year. And I
17 reported the meetings for the April 30th and the
18 May 3rd Board meeting.

19 Mr. Gerlicz, when he was there asking the
20 Governance Board all of these questions, because
21 there was some conversation about that earlier
22 today, did initially present the questions to
23 Ms. Pennington. But, when it became clear that
24 Ms. Pennington did not know many of the answers, he,
25 on numerous occasions, asked any of the Board

1 members to present any information that they had
2 regarding the answers to these questions.

3 And I think that's really important that
4 you know that that happened, because that's not what
5 you're hearing, or that's not what you did hear.

6 I can see how the Board members might have
7 thought that it became a little condescending as the
8 questioning continued to happen, because they didn't
9 have the answers, and he kept repeating the
10 questions. So I don't know that he meant to be
11 condescending. Maybe he did. But it may have
12 appeared condescending, because he didn't get the
13 answers, and he kept trying to find a way to ask the
14 question where he could maybe get some information.

15 I think all of us here today want to see
16 the School remain open. I don't care what side
17 you're sitting on, we want the School to remain
18 open, because it is improving, and it is meeting the
19 need for some students.

20 My concern is that there is not a clear
21 division between the principal and between the
22 Governance Board. The Board continues to look to
23 Ms. Martinez for direction as issues arise and
24 decisions need to be made. They continue to use her
25 as their mentor. And that's not how it's supposed

1 to work.

2 TLC does serve a particular student. We
3 have improved overall, but we need a principal and a
4 Board that can work together independently and
5 appropriately, according to the State statutes and
6 requirements.

7 THE CHAIR: Candice and Joe Frazier. Or
8 perhaps just Candice.

9 MS. FRAZIER: My last name is "Frazier,"
10 F-R-A-Z-I-E-R. My name is Candice Frazier. I'm a
11 parent of three students at TLC.

12 THE CHAIR: Please move closer to the
13 microphone so we can hear.

14 MS. FRAZIER: Okay. I'm sorry. I'm a
15 parent of three students at TLC, all of which are
16 honor roll students, and they have been the entire
17 time that they've been there, one of which -- two of
18 which are seniors this coming year, one of which is
19 in the running for valedictorian this 2013-2014
20 school year. My kids have been there for six years.

21 When I was looking for an alternative to
22 APS, TLC was -- came very highly recommended from
23 the elementary schoolteachers that they were at --
24 at the elementary schools they were at by the
25 teachers.

1 Ms. Martinez was the principal at that
2 time. She demonstrated dedication to the school and
3 the students. Unfortunately, when she decided to
4 retire, everything changed. Many of the teachers
5 became focused on the replacement of the principal.
6 They were no longer concerned with the students.
7 Several of the staff members demonstrated lack of
8 professionalism, disrespectful conduct and bullying
9 of the Board members, some staff, as well as
10 students.

11 I would like to point out that all three
12 of my children did attend school on Friday, so I'm
13 not sure what all these people are speaking about
14 they say that there was no school on Fridays.
15 Again, my kids are honor roll students, and I'm very
16 involved in their school, and I know they attend
17 school on Friday, so I don't know why they say we
18 don't have school on Fridays.

19 In addition, it appears to me that all of
20 these people that are involved and are speaking ill
21 of the school had no issues with TLC up until the
22 principal, dean of students, and the teachers'
23 ethics and professionalism were called into question
24 recently, after April of 2013.

25 Now, there are issues with the school's

1 policies, credibility, and following PED
2 regulations. All who are speaking against the
3 School were here not too long ago, along with myself
4 many other parents and students, speaking in support
5 of TLC when their charter was up for renewal -- or
6 revocation.

7 MS. FRIEDMAN: Excuse me. Your time is
8 up.

9 MS. FRAZIER: Okay. Thanks.

10 THE CHAIR: Okay. Thank you. Next on the
11 list is Brianna Frazier.

12 MS. B. FRAZIER: Good afternoon. My name
13 is Brianna Frazier, B-R-I-A-N-N-A, F-R-A-Z-I-E-R,
14 and I'm a senior at TLC and have been attending for
15 six years. TLC was a close, nurturing environment
16 up until last year. It had been a very close,
17 student-oriented school.

18 Before this last year, I always felt
19 comfortable at my school. Last spring, my school
20 and some of its teachers became pretty out of
21 control for the first time. But I'm confident, with
22 the new changes that our board and principal are
23 making to my school, that my senior year is going to
24 be just as good as my other years at TLC. Thank you
25 for your time.

1 THE CHAIR: Thank you. Tracy Silva.

2 MS. SILVA: Hi. I'm going to try it.

3 Everybody knows I'm the crier of the group, so bear
4 with me.

5 It saddens me that, two years ago, I
6 was -- felt like I was in the same position
7 supporting TLC and Viola and the whole staff. And,
8 now, I don't feel necessarily the same way.

9 I've worked with TLC since its inception,
10 first as a teacher, then as a test coordinator. I
11 elected not to renew my contract at TLC after a test
12 security breach was not handled in the way that it
13 should have been by the reinstated administration.

14 In my observation, the biggest problem
15 that I see is that the one person involved in the
16 sexual -- with the sexual harassment allegations, as
17 well as the major test security breach, has now been
18 promoted to a position of power as vice principal.
19 What other things might he be able to do?

20 Thank you.

21 THE CHAIR: Thank you. Yvette
22 Griego-Mathews.

23 MS. GRIEGO-MATHEWS: I'm a parent of two
24 kids that attended TLC. And I heard about what was
25 going on. And I came down and took a day off work

1 and came down here, because TLC has done amazing
2 things for my boys. I have a son, Joshua, who was
3 recently diagnosed with Asperger's. And Mr. Cooper,
4 Mr. Connors, and Ms. Brandt was amazing with him.

5 He has a social -- I don't know if you're
6 familiar with Asperger's. But socially, he really
7 struggled. And, without those teachers, he would
8 not have graduated high school. He struggled all
9 through -- all through school.

10 And I have another son, Chris. And I get
11 emotional, because without TLC, they wouldn't make
12 it. Chris is my stepson. He's gone through five
13 elementary schools banging his head, fighting,
14 tearing his clothes, bad behaviors. I put him in
15 TLC, because Joshua was there. Mr. Padilla -- they
16 said he doesn't work on Fridays.

17 I made an appointment with Mr. Padilla.
18 He is now an honor roll student at New Mexico
19 Military Institute, and I wish I would have brought
20 a picture. Mr. Padilla and Mr. Connors and
21 Ms. Vigil all worked on him to pass the Compass test
22 for him to get in, where there were some teachers,
23 one that really spoke negative about Mr. Padilla,
24 very negative, who wouldn't help, who told my son
25 that he wouldn't make it.

1 Mr. Padilla, they just all -- he's there
2 he's an honor roll student. He's cadre this year.
3 He's a private. And he returns -- he's football,
4 cadre, private, he's on dean's list, and he
5 returns -- I take him back August 4th, by his
6 choice.

7 So, without TLC, my boys wouldn't be where
8 they are today. My oldest, who has Asperger's, is
9 working at the Marriott Pyramid as a night auditor,
10 only three days, because he struggles, but with
11 their instruction and their guidance that helped
12 him. And I'm so happy I found it.

13 So when the question was brought up, "Good
14 learning" -- "Can good learning take place?" Yes,
15 it can take place at TLC.

16 MS. FRIEDMAN: Your time is up.

17 THE CHAIR: Okay. Thank you. Those are
18 all the names that are on our Open Forum.

19 Next section, after the hearing is closed,
20 the Commission will enter into deliberations
21 regarding this matter, and no one, other than the
22 Commission members, the Commission counsel, as
23 appropriate, will be permitted to participate during
24 the deliberations.

25 The Commission's deliberations of this

1 matter shall be issued in writing -- pardon me. The
2 Commission's determination of this matter shall be
3 issued in writing and submitted to the New Mexico
4 Public Education Department.

5 In the event the Commission suspends or
6 revokes TLC's charter, TLC has the right to appeal
7 that decision to the New Mexico Public Education
8 Secretary, pursuant to NMSA 1978 Section 22-8B-12N
9 of the Charter Schools Act.

10 I'm being advised that the list from the
11 public forum needs to be presented to the court
12 reporter and asked to enter into the record as
13 Exhibit A. Thank you very much, ma'am.

14 This hearing is adjourned, and the record
15 is closed. The time is 3:36 p.m.

16 The meeting will continue for the
17 Commission to deliberate this matter after a short
18 ten-minute recess. So we will reconvene this
19 meeting at 3:46. Thank you.

20 (Hearing proceedings concluded
21 at 3:36 p.m.)

22 THE CHAIR: It's 4:03, and this meeting of
23 the Public Education Commission is back in session.
24 Before we get started, I would like to have it on
25 the record that I do believe there has been a

1 misunderstanding. This is an open session while
2 Commissioners deliberate the matter of the TLC
3 School.

4 However, apparently, the representatives
5 of the School and the other people in the audience
6 were under the impression that they were not going
7 to be allowed to stay. And, so, they have all left.
8 We have made efforts to contact them. And, should
9 anyone come in, the doors are standing wide open so
10 that they have easy access to the room.

11 But the issues are -- pardon me. Are you
12 with the school?

13 MR. MONTOYA: No. I'm Matthew Montoya.
14 I'm the summer law intern in the Attorney General's
15 Office.

16 MS. SALAZAR: He's from my office, and I
17 asked him to come, just as a learning experience for
18 him.

19 THE CHAIR: Wonderful. Just wanted to be
20 sure who was here.

21 COMMISSIONER TOULOUSE: An audience of
22 one.

23 THE CHAIR: In that case, I believe we're
24 ready to begin. I'd like to ask our attorney,
25 Jennifer Salazar, to give us some guidelines before

1 we begin our deliberation. Jennifer?

2 MS. SALAZAR: Okay. So I just want to
3 turn to the statute for the Charter Schools Act.
4 And this is under Provision 22-8B-12K. And it
5 delineates what needs to happen when a charter is --
6 when a chartering authority is contemplating
7 suspending or revoking a charter.

8 So it specifically says that the
9 chartering authority, which is the Commission in
10 this case, must determine that the charter school
11 did the following: And it lists four things.

12 The first is, committed a material
13 violation of any of the conditions, standards, or
14 procedures set in the charter contract. That's the
15 first item.

16 Second, failed to meet or make substantial
17 progress towards achievement of the Department's
18 minimum educational standards or student performance
19 standards identified in the charter contract.

20 The third is failed to meet generally
21 accepted standards of fiscal management.

22 Or, 4, violated any provision of law from
23 which the charter school was not specifically
24 exempted.

25 So these -- these are the statutory bases

1 for which you can take action to revoke or suspend
2 the charter school's charter in this case.

3 So, in this case, we have the charging
4 document -- right? -- which is -- if you look in the
5 big binder, it's going to be the report that was
6 submitted by CSD staff that lays out all the
7 findings. And it was addressed many times
8 throughout the hearing.

9 So there's -- if you look at on the first
10 page, the first one is a finding of "Educational
11 Program." And then it goes on through the next
12 several pages with the findings.

13 COMMISSIONER BERGMAN: Are we talking
14 about No. 9? Is that what we're talking about.

15 THE CHAIR: I think it was under No. 1.

16 COMMISSIONER TOULOUSE: It's No. 1.

17 THE CHAIR: Oh, the first exhibit, yes,
18 and under this big binder. On top of it is the
19 letter from Paul.

20 COMMISSIONER BERGMAN: Okay. All right.

21 MS. SALAZAR: So your duty today is to
22 evaluate whether there was sufficient evidence
23 presented to show, by a preponderance of the
24 evidence, which is more likely than not, that these
25 violations occurred. And, then, once you have those

1 violations, you have to match them up to the
2 statute. Is this a violation of student progress?
3 Is this a violation of the law? That way, we can
4 clearly delineate how the findings relate to what's
5 required for a suspension or revocation in the law.

6 So those are my -- my initial thoughts for
7 guiding the discussion. If that doesn't make sense,
8 I can try to clarify a little bit.

9 THE CHAIR: Okay. So let me just be sure.
10 We're going to start on the page right after the
11 letter from Paul. We're going to look at CSD's
12 findings, and we're going to go through each one of
13 those and say, today, was there this evidence
14 presented? Do we have evidence in our binders today
15 that there was, in fact, a violation, by a
16 preponderance of evidence, to support these
17 findings.

18 And, after we do that, then we need to
19 decide --

20 MS. SALAZAR: Then we look at the statute
21 and say, "Okay. What is this a violation of? An
22 educational program failure? Is that a violation
23 of" -- you know.

24 THE CHAIR: Okay. Is everyone comfortable
25 with those directions?

1 All right. Then let's get started.

2 Mr. Security Man, I think, if you want to leave,
3 you're certainly welcome to do so.

4 SECURITY PERSON: Okay, thank you. Have a
5 good day.

6 THE CHAIR: I'm looking under CSD's
7 findings.

8 "No. 1: Educational Program: The school
9 received a 'D' for the school year 2011-12 and even
10 though the state requires that schools with the
11 grade of a D complete the New Mexico Instructional
12 Audit, TLC failed to complete it."

13 Is there substantial evidence -- was there
14 substantial evidence, do we think, presented today
15 to uphold that claim? Do we need to vote on those
16 individually, or as a group?

17 MS. SALAZAR: You can kind of come to a
18 general consensus, unless you think that it needs to
19 be a vote.

20 THE CHAIR: Okay. All right.

21 MS. SALAZAR: And one last thing.
22 Remember that the only evidence that you can
23 consider is based on what was presented today,
24 what's in your exhibit booklets and what was
25 testified to today. You can't consider any outside

1 documents or whatnot.

2 THE CHAIR: Okay. Comments? Commissioner
3 Bergman.

4 COMMISSIONER BERGMAN: Well, I'm certainly
5 concerned about that Instructional Audit. I
6 understand that it may not have been perfectly
7 implemented by PED and the -- because of the -- it
8 was noted that they are a very large bureaucracy.

9 But I am also concerned -- the only
10 comment I made during the entire hearing was that
11 the outline PED had put out in September 2011, when
12 the principal was still principal then, and with her
13 extensive background, I find it hard to believe that
14 she somehow -- it escaped her notice that this was
15 being done, especially with all the controversy over
16 the A-through-F grading system.

17 It was in the news. I know the words --
18 I, personally, heard the words "Instructional Audit"
19 on a newscast myself, at least one time, as a part
20 of that. And there was testimony that she was told
21 about it by the curriculum individual who was
22 sitting right there. She's denied that. I'm a
23 little concerned about that.

24 I -- it -- and I -- they finally
25 acknowledge they did not complete it. And, so,

1 something fell through the cracks in there
2 somewhere. And, so, that certainly concerns me,
3 yes.

4 THE CHAIR: Commissioner Conyers.

5 COMMISSIONER CONYERS: To me, it seems
6 obvious they did not complete it. I mean, everyone
7 seems to agree with that. The rationale is they say
8 they didn't get the information; although, they did
9 have representatives attending some of the
10 trainings. They were supposed to bring that back.
11 But -- and I agree, PED is tough sometimes to get
12 answers from or to deal with or to --

13 THE CHAIR: Can you all hear down there?
14 If you cannot, come around here and pull up one of
15 these chairs and get a little closer, if you'd like
16 to.

17 I know we're getting a little tired, and
18 our voices are getting a little weak. But if you
19 want to move down this way, that'll be fine. Any
20 other insights, concerns, observations?

21 COMMISSIONER CARR: Well, Madame Chair, I
22 think it would probably be easier to try to pick out
23 the -- some items that were not in violation, versus
24 going down and going through all of them, because --

25 THE CHAIR: Why don't you come down here?

1 COMMISSIONER CARR: Sure.

2 THE CHAIR: All right. Can I ask for a
3 consensus of Commissioners? All right.

4 MS. SALAZAR: Sure.

5 THE CHAIR: Commissioners, this item
6 referred for discussion, I would appreciate hearing
7 your consensus. Is there anyone who does not think
8 Item No. 1, the instructional program, specifically,
9 the Instructional Audit, failed to be proven?

10 I see no one that disagrees. So that is
11 our first item that we believe was proven by today's
12 testimony.

13 COMMISSIONER GANT: Well, I'd like to add
14 to the record, if I may, Madame Chair, is, in fact,
15 they put it in here. And it says, "It's a D." For
16 the record -- and I'm looking at it right now -- it
17 was a D, okay?

18 MS. SALAZAR: What -- could you just
19 clarify?

20 COMMISSIONER GANT: This is a form I
21 pulled together. I pulled all the school grades for
22 the State-chartered charter school, and this is my
23 reference that, in fact, they did have a D. It came
24 off the PED Web site. Okay? And I can --

25 MS. SALAZAR: This can't be considered.

1 Only the evidence that we have before us.

2 COMMISSIONER GANT: Okay.

3 MS. SALAZAR: So, based on testimony,
4 exhibits.

5 COMMISSIONER GANT: All right.

6 COMMISSIONER POGNA: Somebody testified
7 that they had brought it up to a C.

8 COMMISSIONER GANT: That's for this year.

9 THE CHAIR: No. This is the 2011-2012
10 grade. The 2012-13 grade is a C.

11 COMMISSIONER CARR: All right.

12 THE CHAIR: So, regardless of the grade, I
13 think, as has been stated, the Instructional Audit
14 was not completed, and it was required.

15 COMMISSIONER CARR: Yes.

16 THE CHAIR: Okay. Are we ready to move
17 on? We've agreed to that one?

18 MS. SALAZAR: And, just, if you could help
19 me, who do you think were the main witnesses that
20 testified to that, to the D failing grade?

21 THE CHAIR: The D failing grade?

22 MS. SALAZAR: Or the D grade. The D
23 grade.

24 THE CHAIR: I think almost every witness.
25 I don't remember anyone who didn't.

1 COMMISSIONER CARR: No one countered it.

2 COMMISSIONER BERGMAN: Even the attorney,
3 at one point, read the instructions out of one of
4 those documents, where the PED said districts had
5 to -- if you were a D school, districts had to do it
6 themselves. And I think he was trying to call into
7 question that this charter school was not a
8 district.

9 But a stand-alone charter school is a
10 district, whether they admit it -- and they tried to
11 make it sound like they're not. They are most
12 surely a district if they're a stand-alone school.

13 THE CHAIR: All right. Are we ready to
14 move on to Item No. 2, "Governing Council"?
15 "Governing Council Membership. The Governing
16 Council operated with less than the statutorily
17 required number of Council members for a period of
18 about five months from May 2012 to October 2012. As
19 of May 3, 2013, the Board had again fallen below the
20 statutorily required number of Board members. It
21 has been reported to CSD that this was rectified at
22 the May 28, 2013 Council meeting. PEC was informed
23 of this by the Governing Council on May 31st, 2013."

24 I believe we heard testimony from
25 Ms. Baca, certainly, from Director Gerlicz, and,

1 certainly, probably -- and Mrs. Martinez, all
2 verifying that they were below the required number
3 of Governing Council members for those five months
4 in 2012.

5 COMMISSIONER CARR: And the TLC
6 acknowledged that.

7 COMMISSIONER BERGMAN: And even the
8 attorney, in his closing arguments, stated that, but
9 it was a one-time thing.

10 COMMISSIONER TOULOUSE: I think, Madame
11 Chair, that the second sentence in there shouldn't
12 be there, because they acted -- I mean, they had two
13 people resign, and they acted within the 45 days
14 they had to replace them. So why that sentence on
15 the May 2013 is in there --

16 THE CHAIR: I don't know.

17 COMMISSIONER TOULOUSE: I think that
18 should not be part of any --

19 THE CHAIR: The May -- which date are you
20 questioning?

21 COMMISSIONER TOULOUSE: It's the last --
22 the second or the -- yeah -- the second sentence.
23 "As of May 3, 2013, the Board had again fallen below
24 the statutorily required number of Board members."
25 That's because they had two resignations at that

1 meeting. It was reported to us in the testimony.
2 So that's part of the testimony that was provided to
3 us.

4 THE CHAIR: But I think the issue we're
5 looking at is the five --

6 COMMISSIONER TOULOUSE: But I'm saying
7 that sentence shouldn't be --

8 COMMISSIONER BERGMAN: It may have been
9 explanatory, though. It showed it in a positive
10 light they actually acted on the second one.

11 COMMISSIONER TOULOUSE: But if it's a
12 legal document, I don't think it's part of what we
13 should be --

14 COMMISSIONER PERALTA: But this is a
15 report brought to us by PED; right?

16 COMMISSIONER BERGMAN: Final Report.

17 COMMISSIONER PERALTA: We can't change it.

18 COMMISSIONER TOULOUSE: But I'm saying
19 that one should have no consideration at all in our
20 reading of it. I know I'm being technical.

21 COMMISSIONER PERALTA: Yes.

22 COMMISSIONER TOULOUSE: But, I mean, it
23 kind of counters itself right there, to say, "Okay,
24 once they did, and now, they've fixed it." So is
25 that a charge that we need to deal with or not when

1 you do it that way?

2 MS. SALAZAR: Well, the statute
3 contemplates what did they do. So, at the time that
4 this occurred, was it a violation? And could
5 they -- could they have even acted on it?

6 COMMISSIONER TOULOUSE: Well, no, the
7 first part, I agree with. I'm just saying this is
8 under the CSD findings/concerns. So why do they
9 have a concern that they have two vacancies and they
10 filled it within the statutory limit? That
11 shouldn't be a concern.

12 THE CHAIR: Could we say that we feel the
13 first sentence has been proven?

14 COMMISSIONER BERGMAN: I make no reference
15 to what Commissioner Toulouse is mak- -- because
16 even that was acknowledged, the first part was
17 acknowledged, yeah.

18 THE CHAIR: Can we say that?

19 MS. SALAZAR: So the first part, yeah.

20 THE CHAIR: Yeah, just the first part.
21 From May 2012 to October 2012, period, we feel that
22 has been -- I need to ask, do we feel that has been
23 proven? All right. Commissioners, any more
24 discussion?

25 COMMISSIONER CARR: No.

1 THE CHAIR: I will ask, is there anyone
2 who disagrees that that first sentence under
3 "Governing Council" has been proven? Consensus says
4 it has. All right.

5 MS. SALAZAR: Yes.

6 THE CHAIR: No. 3, "Instructional Hours.
7 While at the School, CSD learned that TLCCS's --
8 apostrophe S -- schedule that was submitted to and
9 approved by the PED Budget Bureau during Budget and
10 Programmatic Review for 2012-13 showed 181 days of
11 instruction with..." 6.6 -- pardon me -- "...6.33
12 instructional hours five days week. It appears TLC
13 is counting lunch and Fridays as instructional
14 times." I think we need to get to the point where
15 we're at the meat of this.

16 COMMISSIONER CARR: I don't think you have
17 to read the whole thing.

18 THE CHAIR: Do we have to do the whole
19 thing, you think?

20 COMMISSIONER CARR: No. I don't think you
21 need to read the whole thing. I think --

22 THE CHAIR: "It appears that student and
23 teacher presence on Friday is not required, nor is
24 it enforced. TLC's hours fall short of the
25 statutory minimum amount of 1,080 hours for a high

1 school."

2 Do we need to say more than that?

3 MS. SALAZAR: Well, it -- there was some
4 conflicting testimony. You heard some people say
5 that there was Friday classes, and you heard other
6 people say absolutely not. So you have to address
7 that. Maybe reference the documents or the
8 witnesses who testified and their credibility and
9 why you think that they were below that standard.

10 COMMISSIONER PERALTA: I was convinced
11 that the Friday instruction day was optional,
12 period.

13 COMMISSIONER CARR: No, the principal
14 stated that. And she was the most --

15 COMMISSIONER PERALTA: That right there
16 just tells me, "Come if you want."

17 THE CHAIR: It's what, now?

18 COMMISSIONER PERALTA: It's optional for
19 students, staff. It really wasn't --

20 THE CHAIR: So if it's optional, that
21 means they're not meeting the number of required
22 hours.

23 COMMISSIONER CARR: There was a parent who
24 brought up the fact that her kids were there, but --

25 COMMISSIONER TOULOUSE: Her kids are A

1 students. And so they would take advantage.

2 THE CHAIR: But it's optional.

3 COMMISSIONER TOULOUSE: If it's optional,
4 you're a good student, or you're one that
5 understands that they need help, you're going to go
6 if your teacher has chosen to be there that day.

7 THE CHAIR: I have it that Attorney
8 Rosenfelt said the instructional hours, "Yeah, they
9 were some short." So their attorney said they were
10 short.

11 COMMISSIONER BERGMAN: Yeah, I heard that.

12 COMMISSIONER CARR: Principal said they
13 were short. I think --

14 THE CHAIR: Ms. Martinez said they were
15 short.

16 COMMISSIONER CONYERS: Didn't some of the
17 documents say that, what there was --

18 COMMISSIONER BERGMAN: We know from one of
19 the investigative reports, at least one teacher was
20 not showing up on Friday. He stated that himself.

21 COMMISSIONER TOULOUSE: In his own
22 statement.

23 COMMISSIONER PERALTA: No attendance was
24 taken.

25 THE CHAIR: No attendance was taken, nor

1 required.

2 COMMISSIONER CARR: Yeah. I think it was
3 overwhelming. The testimony shows that they were
4 short.

5 THE CHAIR: Of course, Director Gerlicz
6 gave us the long version of the hours, saying they
7 were short and pointing them out through the
8 exhibits that they, in fact, were short. Do we need
9 to point to a specific exhibit that --

10 MS. SALAZAR: No, just as long as you can
11 provide me a general sense, and then --

12 THE CHAIR: Because there was one -- and
13 it may have been in the big binder -- where the
14 school actually set out the number of hours itself.

15 COMMISSIONER CARR: So if they were
16 correcting something, there had to be something to
17 correct, you know. So --

18 THE CHAIR: But I don't remember which
19 number.

20 COMMISSIONER CARR: I don't, either.

21 THE CHAIR: Exhibit 19. No, no, that's
22 future.

23 MS. SALAZAR: Oh, future.

24 THE CHAIR: Yeah. Look at 18. Eighteen
25 is -- see, I pulled some of mine out. But, 18, they

1 had -- they had their -- their hours. And then they
2 also had -- remember, after that was Moreno Valley?

3 COMMISSIONER BERGMAN: No. Eighteen
4 starts with Moreno Valley, Cimarron.

5 THE CHAIR: Okay, here it is. It's in
6 the -- it's No. 8 in the CSD -- no, that's not
7 exactly the one I'm looking for. But here's where
8 they show the hours that they turned into PED. And
9 it -- it's not correct. It says it's a five-day
10 school week, 181 days. And they said that's not
11 correct. So where is that one where they actually
12 are showing --

13 COMMISSIONER CARR: That's probably a
14 material violation that they didn't make note of,
15 that they sent in a calendar that wasn't right.

16 COMMISSIONER BERGMAN: I actually know
17 what you're referring to, but I actually know myself
18 that it said "Five-day week and 181 days," right on
19 the top.

20 THE CHAIR: It may be a financial
21 violation. Somebody whose notebook is still
22 complete, would you please look at 18 and 19 in the
23 big book?

24 COMMISSIONER GANT: Whoa, whoa. Time out.
25 We need one person talking. She's taking notes,

1 please.

2 MS. FRIEDMAN: No. 18? That's '11-'12.

3 THE CHAIR: Okay. So it's No. 17, where
4 it's showing? Okay. All right. I was thinking of
5 something else. But that's fine. That should be.
6 No. 17.

7 And, just as a personal observation -- and
8 I -- I hope I'm not out of line -- I find this the
9 most egregious violation, the most -- the most
10 egregious thing, the worst thing I think they could
11 do.

12 These kids, these students, come into
13 school, particularly students who have not been
14 successful other places. And they come to this
15 school, and they -- they need all the help they can
16 get. And they don't get the number of hours of
17 instruction even that are required.

18 And I find that almost unforgivable. And,
19 when I was looking at this, I thought, "Okay, well,
20 what can they fix? If we should leave this school
21 open, what can they fix?"

22 And this is one thing that cannot be
23 fixed.

24 Going forward, it can be fixed, for future
25 students. But, for past students --

1 COMMISSIONER PERALTA: They've been
2 shortened.

3 THE CHAIR: That's it. They've been
4 shortchanged. Part of their education has been
5 stolen from them, I think. And I just -- I feel so
6 strongly about this. I think this one item, alone,
7 for me, would be enough to consider closing the
8 School. Commissioner?

9 COMMISSIONER PERALTA: Well, then, I don't
10 know, speaking back to what Jeff was saying about
11 the initial budget request -- right? -- you know
12 sending in that calendar and getting the dollars to
13 their school, and, then, all of a sudden --
14 (Indicates.)

15 THE CHAIR: I think they were paid for
16 hours that they did not hold school. And I think
17 teachers may have been paid for hours that they
18 didn't work. And those truly may get to be very
19 serious financial violations. But that has never
20 come up in this hearing.

21 COMMISSIONER TOULOUSE: But, Madame Chair,
22 that bothered me. It was not in an allegation, so
23 we can't take that into account. Because I saw that
24 right away.

25 THE CHAIR: Commissioner Gant.

1 COMMISSIONER GANT: When I looked at this
2 one, I thought, the School, you know, made promises
3 to the kids: "This is what we're going to do for
4 you, and this is how we're going to do it, and
5 you're going to get all this education based upon
6 statutes of the State of New Mexico"; made the same
7 promises to parents that wanted their kids in an
8 environment that they would do better, be
9 successful, you know; made promises to the PED, in
10 that they turned in documents and said, "We're --
11 this is what we're doing."

12 That is, to me, falsification of documents
13 to the PED.

14 THE CHAIR: Right.

15 COMMISSIONER GANT: And the PED, maybe
16 they should have caught it. I don't know. I don't
17 know how deep they dig out there. But it was a lot
18 of promises that were not kept, and, to me, this is
19 a violation of statute that they've got to be held
20 accountable on this one, this -- you know. And if
21 somebody wanted to dig deeper, there would be some
22 financial problems on this. I know we didn't talk
23 about finances.

24 THE CHAIR: Right. And we can't. It
25 can't be a part of it. And I think we all agree.

1 COMMISSIONER GANT: Anybody else?

2 THE CHAIR: Any other comments?

3 Commissioners' consensus, has Item No. 3,
4 instructional hours shortage, been proven?

5 COMMISSIONER TOULOUSE: Yes.

6 COMMISSIONER BERGMAN: Uh-huh.

7 THE CHAIR: Yes? Okay. Thank you.

8 Let's move on to Item No. 4, Item -- "Open
9 Meeting Act Violation-Sexual Harassment
10 Investigation." That's two things, it seems like to
11 me. Let's look at Open Meetings Act violation
12 first. And I'm not going to read that. You've
13 all -- you can read through it if you want to, and,
14 then, if you have discussion.

15 COMMISSIONER CONYERS: To me, that wasn't
16 very clear, and, to me, that wasn't really proven,
17 was it? They just went back and said, "Well, just
18 in case, we're going to cover ourselves," kind of
19 like we did a few meetings ago?

20 THE CHAIR: Yes, absolutely.

21 COMMISSIONER BERGMAN: I agree with that.
22 I believe their attorney, in his closing remarks,
23 admitted an Open Meeting violation, and it was one
24 time is what was said, and it's been corrected.

25 THE CHAIR: True.

1 COMMISSIONER BERGMAN: So I believe an
2 admission is there. It's been admitted.

3 THE CHAIR: He said it. Yes, he did.

4 COMMISSIONER GANT: But, also, Madame
5 Chair, he said it's one violation. But we don't
6 know if there's any others. That -- that -- see,
7 that -- you and I have been down this road with
8 school boards a lot of times.

9 THE CHAIR: Many times. Well, how many
10 does it take? They've only said "Open Meeting Act
11 Violation," not plural.

12 COMMISSIONER GANT: It only takes one.
13 And I can tell -- this is not part of what we talked
14 about. But I got two people down in Las Cruces that
15 did an Open Meetings Act violation one time. They
16 were taken to court, paid the court costs and lawyer
17 costs and \$500, because they were -- it only takes
18 one.

19 THE CHAIR: So, on the Open Meeting Act
20 violation, we heard their attorney admit to it. Do
21 we need more than that?

22 MS. SALAZAR: Madame Chair, members of the
23 Commission, I think more is needed, because, to me,
24 it was unclear in the record; unless we can point to
25 where that actually happened, perhaps.

1 COMMISSIONER PERALTA: I know the
2 underscore, the underlying thing is an Open Meeting
3 Act violation. We have to see evidence of
4 violation. But now we're saying that a violation
5 occurred.

6 THE CHAIR: They're saying there likely
7 was, but they never really proved it.

8 MS. SALAZAR: Remember that it has to be
9 shown by a preponderance of the evidence more likely
10 than not. And the closing arguments are really a
11 summary of the evidence that was presented. It's
12 not really offering evidence at that time.

13 THE CHAIR: So, Commissioners, is there
14 sufficient evidence to prove an Open Meeting Act
15 Violation.

16 COMMISSIONER GANT: Madame Chair, this is
17 how I look at something like that, based upon what
18 Jennifer just said. If I was to take it to court,
19 could I prove it in court? Probably not.

20 THE CHAIR: Probably, no. It really was
21 not a focus of any one person or a group of people.
22 They didn't focus it enough to prove it, in my
23 account. Does anyone think that the Open Meeting
24 Act violation was proven? All right. So we're
25 going to say "No" on that one.

1 What about the sexual harassment
2 investigation? Well, there was an investigation.
3 Do we believe there was sexual harassment?

4 COMMISSIONER TOULOUSE: Madame Chair, I
5 think the violation here is that the situation was
6 never reported to PED, as required by law, as
7 opposed to whether there was or wasn't.

8 THE CHAIR: Right. So is that the
9 standard that you want to take, that -- not whether
10 or not it happened but whether or not it was
11 reported.

12 COMMISSIONER TOULOUSE: Whether or not it
13 was reported.

14 COMMISSIONER PERALTA: I agree.

15 THE CHAIR: Do you want to do that?

16 MS. SALAZAR: Let's continue to document.
17 The situation was never reported to PED.

18 COMMISSIONER TOULOUSE: And we did add
19 testimony to that fact as well, that they didn't
20 report it.

21 THE CHAIR: That's what our focus is going
22 to be. The situation was never reported as
23 required. Okay? Discussion on that?

24 COMMISSIONER BERGMAN: Actually, there was
25 a fairly lengthy discussion on that. Remember, we

1 were jumping back and forth from No. 24 -- can't
2 remember what exhibit it was in -- we jumped back up
3 to No. -- it said something about paragraph (7). So
4 I remember that part. Yeah, that's the part that,
5 to me, was not reported. Their report was an
6 internal investigation by --

7 THE CHAIR: Can you remember who --

8 COMMISSIONER BERGMAN: That's the problem.
9 I think it was probably Chairman -- President Baca.
10 It was during that --

11 COMMISSIONER TOULOUSE: But we also had
12 the principal, who said she hadn't shared the
13 report, plus she hadn't reported.

14 THE CHAIR: I have that no one on the
15 Governing Council had read the report, so, of
16 course, none of them could have filed it, because
17 they hadn't read it.

18 COMMISSIONER TOULOUSE: That doesn't mean
19 they couldn't have instructed, however, their
20 principal to file it, as per law.

21 COMMISSIONER CARR: You know, there was
22 testimony there in -- you know, in this sexual
23 harassment investigation. There were clear
24 violations, ethical violations --

25 THE CHAIR: Yes.

1 COMMISSIONER CARR: -- that were not dealt
2 with.

3 THE CHAIR: Right.

4 COMMISSIONER CARR: And that's disturbing.
5 And that was presented in evidence. It was
6 presented in the --

7 THE CHAIR: But by who?

8 COMMISSIONER CARR: The principal,
9 Martinez.

10 COMMISSIONER GANT: She agreed to it.

11 COMMISSIONER CARR: She agreed. And that
12 there were -- and not only did they not take any
13 type of actions against this person, they promoted
14 him. That's -- you know, that's -- there should be
15 at least some kind of letter in the file saying,
16 "Hey, you don't use this kind of language in
17 your" -- it's an ethical violation.

18 It's -- maybe it didn't reach sexual
19 harassment, but it certainly -- there were
20 certainly --

21 THE CHAIR: But the report of, or the
22 allegations of.

23 COMMISSIONER CARR: Yeah. And that came
24 up. The other thing I would like --

25 THE CHAIR: Ms. Martinez, did you say?

1 COMMISSIONER CARR: Yeah, Ms. Martinez.

2 THE CHAIR: And who else?

3 COMMISSIONER CARR: The board president,
4 Baca, didn't.

5 THE CHAIR: Ms. Baca?

6 COMMISSIONER CARR: She didn't -- no, she
7 didn't get the whole report. She didn't get it.

8 THE CHAIR: And Ms. Brigham; I believe
9 she -- let me see. Do I have that?

10 COMMISSIONER CARR: I would have called
11 Mr. Padilla as a witness.

12 THE CHAIR: Well, of course,
13 Director Gerlicz talked about it. Is that enough?

14 MS. SALAZAR: That should be enough.

15 THE CHAIR: Pardon?

16 MS. SALAZAR: That should be enough.

17 THE CHAIR: Okay, that should be enough.

18 COMMISSIONER CARR: The other thing, in
19 total here, we can take circumstantial evidence, you
20 know. It doesn't -- you know, there's a lot of
21 other things. Circumstantial evidence can mount up
22 to show a great probability of overall guilt or
23 overall problems here. And I think just because we
24 can't necessarily prove something doesn't mean we
25 shouldn't maybe mention it as a reason.

1 THE CHAIR: I think it's like the
2 Instructional Audit. If the situation was never
3 reported to PED, then we know there was an
4 investigation. There were allegations. We also
5 know it was never reported. That's been made very
6 clear here today.

7 So have -- have we proven that
8 sufficiently, that it was not reported? Is everyone
9 on board with that one?

10 COMMISSIONER CARR: See, I was even going
11 back to No. 4, because -- talking about a
12 preponderance of the evidence and things adding up
13 over time, you know, we may not close the school
14 down just because they violated an Open Meetings Act
15 once.

16 THE CHAIR: I don't think we have to prove
17 every single one of these.

18 COMMISSIONER CARR: I don't think we do.
19 In order to cite it as a reason for our decision, I
20 don't think we necessarily have to prove it.

21 MS. SALAZAR: It -- so the Commission's
22 decision is just citing what's been proven today.
23 So it's citing all the evidence. So it's not the
24 Commission's burden to prove it, but that the
25 Commission just needs to explain why it found one

1 way or the other, based on what was presented today.

2 THE CHAIR: Remember, all these appeals
3 that we've lost? They have said it's because we did
4 not do what we're doing right now. We did not
5 sufficiently give all parties the information they
6 needed to know why we did what we did. So that's
7 what we're trying to do here.

8 COMMISSIONER BERGMAN: That's what
9 Mr. Williams told us. We've got to have an ironclad
10 letter, when this is done, when we do whatever we
11 decide.

12 COMMISSIONER CARR: But that's precisely
13 why I don't want No. 4 taken out, because I think it
14 shows an overall pattern of problems. And --

15 THE CHAIR: Okay. I tell you what, Jeff.
16 Find it. Find where it -- give us a shred of
17 evidence that's been presented today.

18 COMMISSIONER CARR: Okay.

19 THE CHAIR: Today. Would you?

20 COMMISSIONER CARR: I'll get my book.

21 THE CHAIR: And while Jeff is doing that,
22 let's move on to No. 6, which is "Test Security
23 Protocol Breach." And it said -- well, I don't
24 know. What are your feelings on the test protocol
25 breach? They really didn't talk about that one very

1 much.

2 COMMISSIONER TOULOUSE: It's present,
3 Madame Chair, in the investigative report. But it
4 was maybe commented on once, if that, maybe -- I
5 think I remember one comment only in any of the
6 testimony. So our attorney didn't address it. And
7 theirs didn't, either. So that's one that's --

8 COMMISSIONER PERALTA: Did it mention, did
9 it invalidate the test? They went through the
10 results and everything; right? It didn't invalidate
11 by this breach. The score counted; right?

12 THE CHAIR: Seems like to me I remember
13 something that said that the director of the Testing
14 Bureau said there was no breach.

15 COMMISSIONER PERALTA: I don't know.

16 COMMISSIONER CONYERS: I think what it
17 said, there was no -- it was not a test
18 irregularity, but it was a breach of security --

19 THE CHAIR: Okay.

20 COMMISSIONER CONYERS: -- in the fact
21 that, you know, he apparently took the test home or
22 had it in his --

23 COMMISSIONER GANT: He took it home.

24 COMMISSIONER CONYERS: -- secure -- which,
25 specifically, you're not allowed to do. It should

1 never leave the school.

2 COMMISSIONER BERGMAN: They admit that. I
3 don't know if that rises to the level of proof. But
4 I don't think that's what's in contention.
5 Everybody admits that somebody took a test home.
6 You're not supposed to do that.

7 COMMISSIONER CARR: These are all in the
8 findings right here in Item No. 11. They took them
9 home. It was -- I mean -- and if -- you know --
10 if -- they gave this teacher letter of reprimand.
11 Why would they give him a letter of reprimand if
12 something wasn't proven? That could also raise to
13 the level of something where a teacher loses their
14 license. That's the worst thing that can happen
15 under something like this.

16 THE CHAIR: Are you finding the proof for
17 that? I mean --

18 COMMISSIONER CARR: This is all in Item
19 No. 11, placed in evidence.

20 COMMISSIONER BERGMAN: CSD's book.

21 COMMISSIONER CARR: PED's book? But,
22 yeah, this is in --

23 THE CHAIR: By the way, I'm just looking
24 through this that's all stapled together. Here's
25 the hours, too. That's what I'm talking about.

1 COMMISSIONER CARR: So it's all stated in
2 great detail in Item No. 11. And, in the testimony
3 we heard, the principal gave that teacher a letter
4 of reprimand.

5 COMMISSIONER GANT: He's talking about the
6 test material.

7 COMMISSIONER CARR: The test material.

8 THE CHAIR: Well, here's the letter from
9 Dr. -- who is it from? Dr. -- I don't know. It's
10 just in the report.

11 COMMISSIONER CARR: And it says,
12 "Mr. Padilla breached the security of the EoC
13 assessment in U.S. History."

14 THE CHAIR: What are you reading from?

15 MS. SALAZAR: It's in CSD's Exhibit book,
16 Exhibit 11.

17 COMMISSIONER CARR: Yes, Exhibit 11, under
18 "Conclusions and Recommendations," in the third
19 paragraph.

20 COMMISSIONER PERALTA: No. It's okay.
21 The same thing happened just this past year at one
22 of the high schools in the public schools. PED
23 was -- they just -- and, eventually, it popped up.
24 But, I mean, it happened.

25 COMMISSIONER CARR: Yeah. It does happen.

1 THE CHAIR: Well, I think the letter of
2 reprimand certainly validates the fact that security
3 was breached.

4 COMMISSIONER GANT: It says -- excuse me.

5 COMMISSIONER CARR: Go ahead. Madame
6 Chair, in the last paragraph, last page,
7 "Mr. Padilla breached test security by taking the
8 EoC booklet home, and he failed to follow protocol
9 in reporting his possession of the booklet."

10 That's clear.

11 COMMISSIONER CARR: Yeah, it's a clear
12 violation.

13 COMMISSIONER GANT: It's in that report
14 that was put together. That, right there, is
15 your --

16 COMMISSIONER CARR: And the principal
17 doesn't refute.

18 THE CHAIR: Okay. So we have the -- the
19 investigation, which is in the booklet, and then the
20 letter.

21 COMMISSIONER PERALTA: It's stated in the
22 report; right? That's the key. They stated in the
23 report that it was -- an administrator; right?

24 COMMISSIONER CARR: Those people -- I
25 don't know what's gone on with that Atlanta case.

1 Those people are possibly going to prison for
2 cheating on tests. I mean, it -- it's -- it's --
3 you know, anyway, I think it's -- nobody questioned
4 that this happened.

5 THE CHAIR: Okay.

6 COMMISSIONER CARR: They're just saying
7 that they'll try to fix it in the future, which is
8 what they're saying about everything.

9 THE CHAIR: Well, that's what -- yeah,
10 like a lot of other things. So consensus, Item
11 No. 6, between the report and the letter of
12 reprimand issued, according to the -- Mrs. Martinez,
13 the principal, Item No. 6 has been proven.

14 COMMISSIONER PERALTA: It has.

15 THE CHAIR: Yes? Okay. All right.

16 Is there -- now, see, the -- these are
17 other concerns. Are there any of these other
18 concerns that we want to consider in our
19 deliberation?

20 COMMISSIONER GANT: My question --

21 THE CHAIR: No. 8, Governing Council.

22 COMMISSIONER GANT: No. I made the No. 9,
23 where Ms. Martinez signed off on the dismissal of
24 the Governance Council.

25 THE CHAIR: Just Governance Council, in

1 general; then I guess we can look at it.

2 COMMISSIONER BERGMAN: Most of the
3 Governing Council that's referenced as "evincing a
4 lack of knowledge," apparently, is gone now.

5 THE CHAIR: We can assume that. But --

6 COMMISSIONER BERGMAN: Yeah. It --

7 THE CHAIR: Did they bring in folks that
8 know more or are willing to learn more?

9 COMMISSIONER BERGMAN: We have no evidence
10 on that.

11 COMMISSIONER TOULOUSE: I do have concerns
12 that they removed Mr. Chavez, and then they put him
13 back in a year later. And Ms. Baca sat here and
14 said she didn't have a problem with that.

15 THE CHAIR: First, she dismisses him, and
16 then she brings him back. That was very
17 troublesome.

18 COMMISSIONER TOULOUSE: But it showed --
19 wasn't it a three-to-two vote on the dismissal? And
20 you don't know how they voted on the minutes. But,
21 yeah, I have concerns that we still have a Board
22 that I think is floundering.

23 THE CHAIR: Well, I have to say, I was
24 very concerned with Mrs. Baca's testimony.
25 Everything was something that had been told to her.

1 She didn't -- nothing did she know from her own
2 investigation or her own reading or her own --
3 anything. Everything was told to her.

4 She had no problem with the sexual
5 harassment investigation, not even following through
6 and even reading the information to know what the
7 allegations were.

8 So I think -- I think the Governing
9 Council, in my mind, is floundering. I think they
10 are led -- everything I've read through the
11 investigation, they are led by what the principal
12 tells them. There is no independent thought;
13 there's no independent investigation.

14 I heard Mrs. Baca say that. And I heard
15 Mrs. Martinez refer to she told the Governing
16 Council the results of the sexual harassment
17 investigation but never let them read the report.
18 She told them.

19 And I don't think that's the way it's
20 supposed to go. So that's very concerning for me.
21 I think we have an ineffective Governing Council
22 here that is not -- is just not capable of running a
23 school.

24 COMMISSIONER PERALTA: And I was hearing
25 this whole thing. The thing that comes to light in

1 the past is that we have situations in other public
2 schools. Granted, they're public schools, but,
3 again, same situations with school boards, or, in
4 this case, Governing Council, whatever, or
5 administration leadership, in which PED steps in and
6 takes oversight over the school.

7 And, to me, I'm kind of thinking that's
8 kind of, you know, sticking in the back of my head.
9 So I think the Governing Council is a big issue.

10 COMMISSIONER TOULOUSE: We had two
11 Governing Council members here who said that neither
12 one of them thought they could step in to answer
13 those questions that Dr. Gerlicz had. And I -- you
14 know, I realize that Ms. Brigham was just coming off
15 of having been a member of the school and learning,
16 but she seemed to feel uncomfortable with trying to
17 say anything to the Board chair.

18 And our other Board member who testified
19 said it wasn't up to her, it was up to the Board
20 chair; and, yet, she could have answered the
21 questions. And, again, I've been on a lot of boards
22 over time. And I would not have stayed on a board
23 where I felt that I couldn't say, "Madame Chair,"
24 or, you know, "Mr. Chair, may I answer this, or may
25 I add" --

1 THE CHAIR: Right.

2 COMMISSIONER TOULOUSE: -- "to this?" So
3 it bothers me that there was that feeling that that
4 member -- now, again, that person is not there. But
5 where do you stop, you know, in saying, "Okay,
6 changes are going to be made."

7 And -- I don't know. I am completely torn
8 by this whole situation right now.

9 THE CHAIR: It's tough. All right. Do we
10 feel that the Governing Council -- that sufficient
11 evidence has been presented to deem that the
12 Governing Council is ineffective and inefficient and
13 not knowledgeable enough to do their job? Is that
14 correct wording of your thoughts, or do we need to
15 put it a different way?

16 COMMISSIONER TOULOUSE: I would say they
17 don't currently have the skills necessary to perform
18 the difficult task of getting this school back
19 together.

20 COMMISSIONER GANT: I agree with what she
21 said.

22 THE CHAIR: Is there any disagreement?

23 COMMISSIONER PERALTA: I firmly believe
24 that the PED needs to go in and fix the Governing
25 Council, or, you know, school board, and check into

1 other school boards in the state.

2 COMMISSIONER CONYERS: I had one comment.
3 I guess I'm not sure on the current governing board,
4 their level of expertise, because they did undergo
5 some training a couple of days, I guess, recently.
6 And they have met, apparently, all met the State
7 requirements on that; is that correct? Six hours?

8 COMMISSIONER PERALTA: Yeah, the hours.

9 COMMISSIONER CARR: Yeah, they have. But
10 they didn't in the past.

11 COMMISSIONER CONYERS: I'm talking about
12 now.

13 THE CHAIR: Our deliberations are on the
14 former board, not the current board.

15 COMMISSIONER CONYERS: Okay.

16 THE CHAIR: Or, at least, that's my -- the
17 current board is --

18 COMMISSIONER CONYERS: Whether they had
19 the --

20 THE CHAIR: Not the one that's taken so
21 many of these actions.

22 MS. SALAZAR: Sorry to interrupt again,
23 Madame Chair. But, yes. So we need to -- the
24 Commission needs to be sure to link violations to
25 what's alleged in this document. So if there's

1 concern of the Governing Council, it has to kind of
2 be laid out in here, because this is what the -- the
3 charter school had the opportunity to respond to
4 today. So...

5 THE CHAIR: And that may be difficult
6 because I don't know, really, what we have that was
7 presented as specifics from the Governing Council.

8 MS. SALAZAR: Well, the Governing Council
9 is addressed on Finding 8, 9, and 10. So, if you
10 just go back to those and kind of read through them
11 and see if there's -- if there's evidence based on
12 the testimony today...

13 COMMISSIONER BERGMAN: I think, on at
14 least two occasions -- here, again, they
15 acknowledged -- referring to the former chairman of
16 their board -- that -- that she did lack knowledge.
17 I believe that was the exact words of one of them,
18 that she did lack knowledge and was not answering
19 the questions.

20 We probably have to find that in the
21 minutes. I don't remember again who said that. I
22 just remember it was said. Anybody else remember
23 that?

24 COMMISSIONER CARR: Are you talking about
25 Ms. Baca?

1 COMMISSIONER BERGMAN: No. They were
2 talking about the former -- Carmen Pennington.

3 COMMISSIONER CARR: Her not being able to
4 answer the questions.

5 COMMISSIONER BERGMAN: And having a lack
6 of knowledge.

7 COMMISSIONER CARR: Baca said she knew the
8 answers to the questions -- and she can't prove that
9 now -- but didn't know that she should step forward
10 and do that, which shows, to me, a lack of knowledge
11 on her part as well. The former chair had a lack of
12 knowledge; Ms. Baca had a lack of knowledge,
13 understanding of what her responsibilities were on
14 the Board.

15 And, to me, that was brought out in the
16 testimony. You know, there's a -- the conclusions,
17 Part 1, 2, and 3 sums everything up.

18 COMMISSIONER GANT: Do we have to address
19 the Foundation?

20 THE CHAIR: I don't think there was
21 anything said about the Foundation.

22 COMMISSIONER BERGMAN: The Foundation. We
23 never got into the Foundation. That was just kind
24 of glossed over. They showed the contract she
25 signed -- talking about Martinez. And she

1 acknowledged she signed that contract, and she
2 acknowledged that she was not paid by the
3 Foundation. I think that's the only discussion of
4 the Foundation in the entire -- so we never really
5 explored that.

6 COMMISSIONER POGNA: Madame Chair, the
7 School has been operating for ten years?

8 THE CHAIR: Twelve.

9 COMMISSIONER POGNA: Twelve years.

10 COMMISSIONER CARR: But it was brought up
11 that the Board ordered Ms. Martinez to sign a
12 document that she shouldn't have been ordered to do
13 so. I mean, it was -- that was another --

14 COMMISSIONER TOULOUSE: A letter of
15 dismissal. She said the Board chair told her to
16 sign that.

17 COMMISSIONER CARR: Yeah, a letter of
18 dismissal, yeah.

19 COMMISSIONER BERGMAN: Because she was not
20 nearby. That was Pennington. I guess she lived
21 away, not real close to Albuquerque or something.
22 Some reference was made to that. So she told
23 Martinez to sign it. And she did.

24 Here, again, it has a -- with someone with
25 as extensive a background as Martinez said, why did

1 she not say, "No, I can't sign that document. That
2 has to be signed by a member of the Board. That's
3 an official document."

4 So, I didn't raise that issue in the
5 hearing, though, so...

6 THE CHAIR: I think we're a little stuck
7 on this -- on the issue of the Governing Council,
8 because, while it was talked about somewhat, I
9 don't -- because we don't really understand we
10 needed to say who said what, we didn't make
11 extensive enough notes.

12 MS. SALAZAR: Madame Chair, I need to
13 clarify something. It looks like, at the back --
14 towards the back of this document, it -- it actually
15 lays out things in a nicer format, starting with --
16 it starts -- let me see if I can explain.

17 It says, "Recommendations" and "Public
18 Education Commission Decision."

19 And, then, it says, "On June 6, the PEC,
20 in a unanimous vote, made the following decision in
21 light of CSD's Findings and Recommendations:
22 'Possible violations include, but are not limited
23 to:'"

24 And then they cite the four sections of
25 the statute that I read to you earlier, as well as

1 the violations that go to that.

2 COMMISSIONER CARR: Yes.

3 MS. SALAZAR: So -- and I think we've
4 talked about a lot of these. But, if you'll just
5 review them again, we can kind of link up some of
6 those.

7 Like, for example, if you look under 1A,
8 "Governance Council's membership and practices."
9 Perhaps this discussion about the Governance
10 Council's actions can go -- can go to that, that
11 alleged finding -- alleged violation.

12 THE CHAIR: How specific do we need to be?

13 MS. SALAZAR: If you can just give me a
14 few.

15 THE CHAIR: See, that's what we're
16 struggling with.

17 MS. SALAZAR: A few deeds or documents.

18 THE CHAIR: We didn't know that ahead of
19 time, so we didn't mark them.

20 COMMISSIONER CARR: They were noncompliant
21 with the Open Meetings Act. They had the relevant
22 authority.

23 THE CHAIR: Has what we've done been
24 sufficient?

25 MS. SALAZAR: Yes. And then we can link

1 that -- yes, this is great.

2 THE CHAIR: So what we've got here, and
3 link it up with what's there.

4 MS. SALAZAR: To what's there, yes.

5 THE CHAIR: Do we have to do that now, or
6 can you do this?

7 MS. SALAZAR: I can write it out, yes.

8 THE CHAIR: Okay. Are you all hearing
9 what she's saying? What we have documented, what we
10 have agreed to that has been proven, can be linked
11 to these findings in the CSD report, and our
12 official document to the PED can be constructed from
13 that.

14 Now, do we need to go further than that to
15 satisfy anyone?

16 MS. SALAZAR: I just want to make sure,
17 Madame Chair, and members of the Commission, that
18 there -- the Governance Council's discussion, I
19 didn't limit that in any way. I just wanted to
20 point that out and go back to it, so --

21 THE CHAIR: Frankly, I'm a little leery of
22 the Governance Council discussion. But do you think
23 we've given you enough, or do you need more
24 information?

25 MS. SALAZAR: I think it sounds like what

1 the Commission has said so far, that most of this is
2 coming from testimony of witnesses concerning how
3 they've observed the Governing Council.

4 THE CHAIR: Correct.

5 MS. SALAZAR: So I think I can go to the
6 witness testimony.

7 THE CHAIR: And pull out the -- okay. All
8 right. So are we comfortable that the evidence, the
9 testimony that's been presented, proves -- I've lost
10 my page here -- the allegations against the
11 Governing Council? Anyone agree or disagree?

12 MS. SALAZAR: Yes. And, now,
13 Madame Chair, members of the Commission, if you'd
14 like to talk about the action that you would like to
15 take at this time.

16 THE CHAIR: Okay. Commissioners, we
17 have -- by the way, what about No. 4, the Open
18 Meetings Act?

19 COMMISSIONER CARR: I say -- yeah, they
20 list the -- the relevant legal authority for the
21 noncompliance with the Open Meetings Act,
22 NMSA 10-15. So it's listed right here.

23 THE CHAIR: But occurrences of violation
24 of the Open Meetings Act. Has that been proven?

25 (A discussion was held off the record.)

1 (The record was read as requested.)

2 THE CHAIR: So testimony by Mrs. Baca
3 delineates Open Meeting Act violations by two Board
4 members speaking about things that happened in a
5 closed executive session outside of that session; is
6 that correct?

7 COMMISSIONER CARR: Yes. So their lawyer
8 admitted it, and Ms. Baca admitted it. And the
9 evidence is that two Board members were removed
10 because of the violation.

11 THE CHAIR: Because they --

12 COMMISSIONER CARR: That's overwhelming
13 evidence that there was a violation.

14 COMMISSIONER CONYERS: Is that an Open
15 Meetings violation?

16 COMMISSIONER CARR: Yes, it is.

17 THE CHAIR: Now, then, if we have covered
18 all of the allegations -- all of the concerns that
19 we needed to look at, Ms. Salazar tells me my next
20 step is what do we want to do? What is the pleasure
21 of this group in dealing with these findings?

22 COMMISSIONER GANT: Got a hand up over
23 here.

24 COMMISSIONER BERGMAN: Madame Chair?

25 THE CHAIR: Commissioner Bergman.

1 COMMISSIONER BERGMAN: I do have a
2 question. Is that our only two options at this
3 stage is to revoke or suspend, or do we have other
4 options? Can we do something similar that we just
5 did with La Promesa? I don't know that we can
6 negotiate about this kind of stuff. I'm not sure
7 what there is to negotiate. And maybe we can -- is
8 that our only two options? Revoke or suspend?

9 COMMISSIONER GANT: Or do anything.

10 COMMISSIONER BERGMAN: Or do anything, I
11 guess.

12 THE CHAIR: Revoke, suspend, or not renew?

13 MS. SALAZAR: Yes. Madame Chair, members
14 of the Commission, it says, "Suspend, revoke or not
15 renew, or possibly take no action, if there is no
16 violation." But, it sounds like there are
17 violations.

18 So in terms of working out an agreement, I
19 don't -- it's not clear if that's contemplated in
20 the statute or not.

21 COMMISSIONER BERGMAN: Doesn't sound like
22 it, no.

23 COMMISSIONER CARR: I wouldn't try. Well,
24 the Foundation to come up with a new board, or a new
25 Council.

1 THE CHAIR: Well, not renew, if they're up
2 for renewal.

3 MS. SALAZAR: That's when they're charter
4 is up for renewal.

5 COMMISSIONER POGNA: But they're not.

6 MS. SALAZAR: No, they're not. So they're
7 not up for renewal.

8 THE CHAIR: This is an investigation we
9 asked for, because of the allegations we had heard.

10 COMMISSIONER POGNA: What is the
11 difference between "revoke" and "not renew"?

12 (Reporter requests clarification.)

13 COMMISSIONER POGNA: All I asked was, what
14 is the difference between "revoke" and --

15 MS. SALAZAR: Not renew.

16 COMMISSIONER POGNA: -- "not renew."

17 THE CHAIR: All right. Let me -- is it
18 reasonable to go around the table and ask each
19 individual person what they want to do?

20 MS. SALAZAR: Yes, Madame Chair. That
21 sounds like a good plan.

22 THE CHAIR: Would anyone volunteer to be
23 first and state what they would like -- what they
24 think needs to be done in this case?

25 COMMISSIONER CARR: I think it's clear

1 that we need to revoke.

2 THE CHAIR: Let's speak up.

3 COMMISSIONER CARR: I think it's clear we
4 need to revoke.

5 THE CHAIR: Commissioner Toulouse?

6 COMMISSIONER TOULOUSE: Madame Chair, I'm
7 new enough to this process that I still am really of
8 two minds. I would like that there was a
9 restructuring option in there, where, as has been
10 said before -- and I think, as Gilbert said, that,
11 you know, they can take over school boards. And I
12 would wish to see that this school, for a year, be
13 taken over by PED. And I know that's not an option.

14 THE CHAIR: Not an option.

15 COMMISSIONER TOULOUSE: That's why I'm
16 saying, I just -- they've tried -- they made a lot
17 of efforts this summer, way behind when they should
18 have made it, but they made it. And I really hate
19 to see a bunch of kids, really, at this point in
20 time, when school starts in a week or two, be in a
21 situation where their school is gone.

22 THE CHAIR: I honestly question if there
23 are that many kids who are planning on attending
24 that school in the fall. I think the word is out
25 that it possibly could be closed, and I'll bet most

1 of them have found other places. That is a personal
2 observation, nothing to do with anything.

3 COMMISSIONER TOULOUSE: I think,
4 countering the population this bunch serves, they
5 may not have.

6 THE CHAIR: But there are --

7 COMMISSIONER TOULOUSE: They may not even
8 know.

9 THE CHAIR: Okay. In the interest of
10 time, keep moving. Revoke? Carmie, what are you
11 saying?

12 COMMISSIONER TOULOUSE: At this point, I
13 don't have a vote.

14 THE CHAIR: Okay. Commissioner Conyers?

15 COMMISSIONER CONYERS: I'm kind of, like,
16 a superintendent. I used to work for -- I feel
17 strongly both ways on this, which doesn't help the
18 situation. I agree I'm reluctant to shut the school
19 down at this point. The argument was that -- and I
20 think what I was getting from PED was that, not
21 because they had one violation -- you know, any one
22 of these might have been overlooked -- but because
23 you had this long list. Because there are other
24 schools that no doubt have some of these violations
25 as well that are being allowed to continue.

1 The attorney for the school is saying,
2 "Well, yeah, you're right, but we fixed them. We're
3 ready to move on."

4 And, I don't know. I'm -- I mean, I think
5 the -- the evidence, you know, supports what PED is
6 saying. I mean, that's -- that's definitely there.
7 But I'm reluctant.

8 THE CHAIR: And, so, you're saying "I
9 could" -- tell me what you're --

10 COMMISSIONER CONYERS: Well, do we want --

11 COMMISSIONER TOULOUSE: Are you in my
12 corner at this point, both sitting in the corner?

13 COMMISSIONER CONYERS: I don't think we
14 want to poll a vote at this point, do we?

15 THE CHAIR: All right. We'll wait on you.

16 COMMISSIONER BERGMAN: I agree with what
17 we've just heard about a suspension. But I believe
18 a suspension would be useless. And don't take this
19 the wrong way. If Ms. Martinez is allowed to stay
20 at the school, I believe she's controlled past
21 boards. If a new board was put in there by the PED,
22 would she not then perhaps control the new board?

23 So I would only be comfortable with
24 supporting a suspension if it included Ms. Martinez
25 going back into retirement and severing all ties

1 with this school.

2 THE CHAIR: And I don't know that we have
3 the authority to do any of that.

4 COMMISSIONER BERGMAN: I don't know that
5 we have the authority. So, in that case, I would go
6 to revoke. Revoke.

7 THE CHAIR: Revoke?

8 COMMISSIONER BERGMAN: Revoke.

9 THE CHAIR: Revoke. Total -- there's a
10 preponderance -- there's too many violations here.
11 But that hours thing, that has gone on for years.
12 Folks knew about that. Administrators know how many
13 hours their kids are supposed to be in class. They
14 know, don't they, Jim.

15 COMMISSIONER CONYERS: Yes. I guess the
16 part about that, too, is lack of monitoring.

17 THE CHAIR: That's unforgivable to me.
18 The school needs to go away. If these folks want to
19 come back -- and as we told the people at Village,
20 if you guys want to come back and start a new school
21 and do it right, well, howdy, that would be great.
22 But this school -- this school -- is not good, and
23 they need to go away.

24 COMMISSIONER POGNA: But it does kind of
25 break my heart, because this is a community who need

1 that school so -- so badly.

2 THE CHAIR: But they don't need a bad
3 school. They don't. And, remember, we're committed
4 to supporting good schools and getting rid of the
5 bad ones.

6 COMMISSIONER POGNA: But there are
7 certainly people who are going who are never going
8 to make it anywhere else. That's my supposition.

9 Secondly, I always think of what Dr. Duran
10 always told us, again and again. You revoke a
11 charter school; you're closing a school for those
12 kids.

13 THE CHAIR: This one should have been
14 closed years ago.

15 COMMISSIONER POGNA: And it wasn't. To
16 me, they're working toward improving. They are
17 trying. I would say suspend. Just revoking is
18 so -- so, so severe.

19 THE CHAIR: But -- okay, suspend and what,
20 though? We don't have the authority to remove and
21 replace the board. We don't have the authority to
22 remove any of the employees. We don't have the
23 authority to tell them anything like that.

24 If we suspend their license -- their
25 charter for one year, the school closes, in essence,

1 anyway.

2 COMMISSIONER PERALTA: I tend to differ in
3 this thing about us being the authorizing agent for
4 a charter school. Because, you know, if we all
5 agree -- or shouldn't say if the majority agree --
6 to revoke the license, shut it down, you know we're
7 going to go through this appeal dance again, you
8 know? And, again -- and I don't want to do that
9 again, you know. I don't want to penalize kids on
10 the behavior of adults, you know. And that's
11 speaking of the Governing Council, administration,
12 staff, that kind of stuff, okay?

13 I still see that [inaudible] are going to
14 take control of that school. I can see that
15 happening. There's a laundry list of bad things
16 that reflects a bad school. But, again, I don't
17 want to -- like I was talking to Jeff in the
18 hallway, I mean, I totally heavily rely on CSD and
19 their expertise.

20 Tony Gerlicz was hired by Ms. Skandera
21 because she felt like he was the best guy in the
22 Charter School Division. That telling me that him
23 and his team, when they do these audits or
24 assessments or whatever, they're giving me valuable
25 information that I can make a good, solid decision

1 on these schools. And, then, when I do go with
2 that, and that's what goes on appeal, and it gets --
3 it gets overturned, I get confused about that whole
4 process, you know? That doesn't -- I don't know
5 where to go with that anymore. So, you know, I
6 don't want to do the appeal dance or what-have-you.

7 But, like Vince says, you know, there has
8 to be -- this school needs to start way over again.
9 And the only way to start way over again is to close
10 it and let them come back in a couple of years with
11 some different leadership, different direction, that
12 kind of thing. So I -- as much as I hate to, I'm
13 going to stick with what we decided last time.

14 COMMISSIONER GANT: Madame Chair, if I
15 may, this is not the only charter school in that
16 area. And there's other charter schools that I'm
17 sure they could -- some of these children, or
18 students, could go to and continue to be successful.
19 So, you know, I -- if we could -- if we don't
20 sometime establish a standard, we're never going --
21 you know, the Secretary says, "I want good charter
22 schools." CSD says, "We want" -- we all say that.

23 Well, it's time to do it, and do it right.
24 And I think we need to take a vote on this and get
25 on with it.

1 COMMISSIONER CARR: I -- well, I had a few
2 more things to add. The appeal process, I think it
3 pretty much, in this situation, is probably moot,
4 not going to be like we're going against the Charter
5 Division's recommendations here.

6 And -- and I think what we've shown in
7 district court is -- I don't -- I don't think they
8 have a leg to stand on in district court on appeal
9 on this.

10 I also believe that we would only be
11 falling down in our obligations as members of the
12 Public Education Commission if we didn't take a
13 stand here. And I have feelings for the kids, too.
14 But I don't want to -- to me, they're not doing the
15 job. And to give them another chance to not do the
16 job, you know, is not doing a favor to the kids,
17 either.

18 Yeah, it's a disruption. And all
19 disruptions are harmful to kids. They need as much
20 continuity as possible. The one thing this school
21 has proven to us is that there is no continuity.
22 And every day -- every month in that school, where
23 they make a change -- change, change, change,
24 change -- is hurting those kids, I think.

25 COMMISSIONER TOULOUSE: Madame Chair, may

1 I ask a question? If we take this action now, and
2 they appeal immediately, does the school stay open?
3 Because -- I mean, I just -- again, I'm worried.

4 THE CHAIR: Carmie, let me tell you the
5 discussion that I have had with our former attorney.
6 And I don't know that I've had it with Jennifer or
7 not. The discussion was, if the decision were --
8 should be to close the school, then close it when is
9 the decision -- is a part of that discussion and
10 will have to be part of the decision that we make.
11 As we've seen with Village Academy, you don't close
12 one overnight.

13 COMMISSIONER TOULOUSE: Right.

14 THE CHAIR: So it's been suggested by
15 Mr. Williams that we consider, you know, should we
16 decide to close the school, to revoke the charter,
17 close it at semester, or close it at the end of the
18 current school year. But nothing can be immediate.
19 We know it takes time.

20 So that's -- if we choose to revoke the
21 charter, then we would have to also define -- or
22 decide when.

23 COMMISSIONER TOULOUSE: Thank you.

24 THE CHAIR: Okay? All right. I'd asked
25 Jennifer to prepare a proposed motion for our

1 consideration. So we'll give her a minute to get
2 that done.

3 (A discussion was held off the record.)

4 THE CHAIR: Commissioners, we are still in
5 session. Let me ask you this: Ms. Salazar has
6 asked me if the Commission would grant permission
7 for me to be the authorized agent to work with her
8 on whatever documents need to be prepared after
9 today's meeting. Will you give me that permission?

10 COMMISSIONER BERGMAN: You are the
11 Chairman.

12 THE CHAIR: Anybody want to take it on?
13 I'll be glad to give it to you.

14 COMMISSIONER TOULOUSE: I'm going home.

15 MS. SALAZAR: So, Madame Chair, if we can
16 have a motion to that effect, that would be great.

17 THE CHAIR: Okay. But I think we should
18 do that after I do this.

19 MS. SALAZAR: Okay.

20 COMMISSIONER CARR: Are you saying not to
21 vote today?

22 THE CHAIR: What?

23 COMMISSIONER CARR: Are you saying not to
24 vote today?

25 THE CHAIR: I'm just telling you that vote

1 is coming. After we get our main business done,
2 then we need to have that one. I just didn't want
3 to forget.

4 The Chair recognizes Commissioner Peralta.

5 COMMISSIONER PERALTA: Madame Chair,
6 Commissioners, I have a motion. The motion is that
7 the PEC finds that the evidence presented at the
8 hearing shows, by a preponderance of evidence, the
9 following violations:

10 1. Noncompliance with instructional hour
11 requirements.

12 2. Violation of Governance Council
13 statutory requirements.

14 3. Charter school with a D rating and
15 failed to complete Instructional Audit.

16 4. The OMA -- Open Meetings Act --
17 violation.

18 5. The sexual harassment and failure to
19 report that.

20 6. Breach of test security protocol.

21 And 7. Governing Council's lack of
22 knowledge of public school laws and other laws.

23 Also, any other violation discussed in
24 deliberations that aren't expressly stated.

25 Based on these findings, I make the motion

1 to revoke TLC's Charter license.

2 COMMISSIONER GANT: Second.

3 THE CHAIR: There has been a motion and
4 second on the floor to revoke the charter of TLC
5 Charter School for the reasons listed. Is there any
6 discussion?

7 COMMISSIONER BERGMAN: I would just ask --
8 I assume we're going to flesh all those charges out
9 with suitable references and all that, all the --

10 THE CHAIR: Yes. Ms. Salazar will be in
11 charge of that.

12 COMMISSIONER BERGMAN: Okay, fine. Thank
13 you.

14 THE CHAIR: Any other discussion,
15 questions?

16 COMMISSIONER CONYERS: I wanted to
17 clarify. I think we talked about this, the options.
18 We have this option. There would be an option to --
19 what are the other -- one option was to do nothing,
20 take no action; right?

21 THE CHAIR: Revoke, suspend, or not renew.
22 But "not renew" is in the case of a school up for
23 renewal. And this one is not. So revoke or suspend
24 are the -- is the terminology that's in the law.

25 COMMISSIONER CONYERS: And what does

1 "suspend" mean in this case?

2 THE CHAIR: For a period of time.

3 COMMISSIONER CONYERS: What are the
4 implications?

5 THE CHAIR: You close the school for a
6 while. That's what "suspend" means to me, too.

7 MS. SALAZAR: It may mean, too, a
8 probationary time, maybe a time of monitoring.

9 THE CHAIR: We don't have that authority.
10 We don't have that authority.

11 MS. SALAZAR: I'm looking at the statute,
12 22-8B-12. And it states that, "After the CSD has
13 conducted its -- the investigation, that the charter
14 school may be given a reasonable opportunity to
15 remedy the problem."

16 But it sounds like this is beyond that
17 step, because we're in revocation proceedings.
18 So --

19 COMMISSIONER POGNA: Madame Chair, the
20 vote, as specified, it's either "Yes" or "No."

21 THE CHAIR: That is correct. The motion
22 is to revoke the charter.

23 COMMISSIONER POGNA: So it's "Yes" or
24 "No."

25 THE CHAIR: And "Yes" would be to revoke;

1 "No" would be not to revoke.

2 COMMISSIONER POGNA: Thank you.

3 THE CHAIR: Anything else? Any other --
4 all right. Mr. Secretary, we'll need a roll-call
5 vote, please. And, remember, "Yes" is to revoke the
6 charter. "No" is to not revoke the charter. Please
7 go ahead.

8 COMMISSIONER BERGMAN: Commissioner
9 Conyers.

10 COMMISSIONER CONYERS: Yes.

11 COMMISSIONER BERGMAN: Commissioner
12 Peralta.

13 COMMISSIONER PERALTA: Yes.

14 COMMISSIONER BERGMAN: Commissioner Pogna.

15 COMMISSIONER POGNA: Yes.

16 COMMISSIONER BERGMAN: Commissioner
17 Toulouse.

18 COMMISSIONER TOULOUSE: Reluctantly, yes.

19 COMMISSIONER BERGMAN: Commissioner Carr.

20 COMMISSIONER CARR: Yes.

21 COMMISSIONER BERGMAN: Commissioner
22 Shearman.

23 THE CHAIR: Yes.

24 COMMISSIONER BERGMAN: Commissioner Gant.

25 COMMISSIONER GANT: Yes.

1 COMMISSIONER BERGMAN: Commissioner

2 Bergman votes "Yes."

3 Madame Chairwoman, by an eight-to-zero
4 vote, that motion has carried.

5 THE CHAIR: Thank you, Mr. Secretary. The
6 motion carries unanimously. The charter of The
7 Learning -- TLC School will be revoked.

8 The next item that the Commission needs to
9 deal with is when, when do we want to activate this
10 revocation. Mr. Gerlicz, I would ask for your
11 thoughts on this and possibly even recommendation.
12 What is a time frame that is reasonable for a school
13 to close?

14 MR. GERLICZ: It's a -- our experience
15 with -- Madame Chair, members of the Commission, our
16 experience with the closure of a charter school is
17 that it's a very, very involved process, involving a
18 multiplicity of variables that are both educational,
19 related to governance, related to finances, related
20 to lots of things, assets, and et cetera, et cetera.
21 So it will be a lengthy process.

22 I wonder if we could take some time and
23 not rush into a decision on that, taking the best
24 interests of the community and the students in mind,
25 until we give this some thought as to what our

1 options are.

2 We have three options, as I see it. The
3 charter is revoked immediately. School is closed,
4 and we can -- everything that needs to happen. Or
5 the school is closed at the semester break. The
6 school has seniors. That's a significant concern to
7 those seniors.

8 So the third option is, then, at the end
9 of the year. And I would like to take some time to
10 think about that, investigate what would be the best
11 options, rather than make a decision about that
12 right now. But those are the three options that I
13 see.

14 THE CHAIR: Mr. Gerlicz, is it reasonable
15 to even consider closing the school, like, right
16 now?

17 MR. GERLICZ: Given everything that we
18 need to do, and given our past experience with
19 closing charter schools, we could do that, as far as
20 the students are concerned. But the actual
21 operation, there are contracts to be honored. I
22 don't think it's -- it's the proper course of
23 action. It's too complicated.

24 THE CHAIR: The other thought that occurs
25 to me is we do have to get this decision fleshed out

1 and published within a reasonable period of time.

2 MR. GERLICZ: And now that I -- now that
3 I -- this is why I want to give us some time to
4 think about it, because, even now, just talking
5 about it, I'm reminded that I think, Attorney
6 Salazar, there is a statutory period of 60 days that
7 the school has to decide whether to appeal or not.
8 So it would not behoove us to begin those things
9 until we hear from the school what their intention
10 might be with this.

11 So, whatever the appeal process is after
12 that, it's clearly going to take some time.

13 MS. SALAZAR: They have 30 days to appeal
14 from the date of the decision.

15 THE CHAIR: So is that from today, or from
16 the date the decision is published?

17 MS. SALAZAR: We should clarify that.
18 It's 15 days from the day that the actual written
19 decision is -- is served upon them; so 15 days from
20 today.

21 THE CHAIR: Is what?

22 MS. SALAZAR: Is the day that the appeal
23 time triggers.

24 THE CHAIR: The 30 days starts then?

25 MS. SALAZAR: Yes.

1 MR. GERLICZ: And, then, I believe,
2 Attorney Salazar, that after that, there's a period
3 of time in which the Secretary can make her
4 decision. And I think that that's a period of
5 60 days?

6 MS. SALAZAR: Yes, that's 60 days.

7 MR. GERLICZ: So, already, then, we're
8 into the fall, way into the fall.

9 COMMISSIONER BERGMAN: Madame Chair?

10 THE CHAIR: Yes.

11 COMMISSIONER BERGMAN: I would like to go
12 on record. I'm glad you said that,
13 Director Gerlicz. I don't want to hang any seniors
14 out to dry in the middle of the school year. So I
15 would be totally opposed to the middle of the school
16 year now. So it's either now or the end of school
17 year. Those seniors don't deserve that.

18 COMMISSIONER GANT: Madame Chair, I --

19 THE CHAIR: Commissioner, so what are you
20 saying? That we want to go ahead and say, "Unless
21 this decision is overturned by the Secretary, we --
22 this school will be closed at the end of the 2013-14
23 school year"?

24 COMMISSIONER BERGMAN: Yeah. I think
25 that -- we saw what the Village thing -- that really

1 is a complicated -- that's a lot of work to be done
2 It really is.

3 MR. GERLICZ: And this is a high school,
4 which has implications of futures of young people.

5 THE CHAIR: So do we want to take that
6 step right now?

7 COMMISSIONER BERGMAN: I don't think we
8 have any choice, because we have all these timed
9 deadlines. I don't think we can do it earlier
10 anyway.

11 THE CHAIR: So do we want to do a motion
12 that says that? Would that be okay?

13 COMMISSIONER CARR: I have a question.

14 THE CHAIR: Okay.

15 COMMISSIONER CARR: If the -- is it
16 possible -- I mean, when we're talking about an
17 appeal, if you've ever been in that situation, would
18 it be the same -- do they get an automatic stay on
19 the appeal?

20 THE CHAIR: No. Our attorney is saying
21 "No."

22 COMMISSIONER CARR: They don't; right? I
23 think something to be considered here is -- kind of
24 cuts both ways. Some students might have hope that
25 their school is going -- you know, say, "Oh, they're

1 going to continue."

2 And, then, you've got another set of
3 seniors coming up the next year. Do you -- if we
4 are saying that this school shouldn't be in
5 operation, but it's okay to say that they can
6 operate one more year, the other -- and, then, on
7 the other hand, would we be doing a disservice to
8 those seniors who should maybe be looking at
9 opportunities in other schools to move on?

10 You know, I think it's kind of a
11 double-edged sword either way you do this.
12 Somebody's going to possibly get hurt.

13 Also, I think it would -- you know -- so,
14 in essence, if we allow them to go a whole other
15 year, then we've voted to suspend, because we're
16 giving them another year.

17 THE CHAIR: Jeff, would you go outside,
18 please?

19 COMMISSIONER CARR: Yes, ma'am. I'll go
20 stand in the corner.

21 THE CHAIR: Mr. Gerlicz?

22 MR. GERLICZ: Again, the more we get into
23 this, I'm sure we're going to uncover additional
24 variables, such as I can foresee a scenario where
25 the announcement is made that the school is going to

1 close at the end of the year, and there's an exodus
2 from the school. This has an impact on their SEG
3 funds, which may be injurious or prejudicial to the
4 contracts they have signed for the year.

5 So I think it behooves us to stop and
6 think and write out all the implications of each of
7 the three choices in front of us. Immediately,
8 right now, end of December, or end of the year. I'm
9 not sure that we have -- this certainly will be the
10 first time that we've gone through this. And I'm
11 not sure I even know all of the implications.

12 THE CHAIR: Then we're talking about a
13 special meeting of this group.

14 COMMISSIONER PERALTA: It's going to take
15 a vote to determine.

16 THE CHAIR: If we don't do it now, we've
17 got to do it in a special meeting, unless -- can we
18 do it in August, when we're doing the community
19 input hearings, if we have a quorum?

20 COMMISSIONER BERGMAN: Will that be too
21 late, though?

22 THE CHAIR: When is that, Beverly? I've
23 forgotten.

24 MS. FRIEDMAN: The 19th through the 21st.

25 THE CHAIR: Nineteenth --

1 MS. FRIEDMAN: Nineteenth through the
2 21st.

3 MS. SALAZAR: Or, Madame Chair, the
4 Commissioners may delegate to you, Madame Chair, the
5 authority to work out the details of the revocation
6 and time line and those kinds of things, given those
7 options that were recommended today, or some
8 parameters that the Commission wants to set.

9 COMMISSIONER GANT: Madame Chair, may I
10 suggest that, instead of laying it on you to do all
11 that, we take the E.C., and let the E.C. -- let the
12 three of us work it out?

13 THE CHAIR: Personally, I would prefer
14 that.

15 COMMISSIONER BERGMAN: I'm agreeing with
16 that also.

17 COMMISSIONER CARR: I am, too.

18 THE CHAIR: Would you put that in the form
19 of a motion, or would someone, please?

20 COMMISSIONER GANT: Madame Chair, I move
21 that we -- that the Commission delegate to the
22 Public Education Commission Executive Committee to
23 establish the closing date and other parameters
24 dealing with the -- as necessary, for the closing of
25 the school. Does that meet the requirements? Okay.

1 MS. SALAZAR: That sounds great.

2 COMMISSIONER PERALTA: Second.

3 THE CHAIR: We have a second, motion and a
4 second, to allow the Executive Committee to make
5 these final decisions on closure date and other
6 details, as needed. Any discussion? Tony?

7 MR. GERLICZ: And, Madame Chair, members
8 of the Commission, I will immediately begin to work
9 with my staff and the PED on just those scenarios,
10 scenario one, two, three, pluses and minuses, and
11 begin to hash out all of the implications, so
12 that --

13 THE CHAIR: And that will be within the
14 next 15 days.

15 MR. GERLICZ: Oh, definitely.

16 THE CHAIR: Correct? Is that all right
17 with everybody?

18 COMMISSIONER TOULOUSE: Madame Chair, I
19 have a slight concern in that, while I trust all of
20 you implicitly, and you certainly are the education
21 folks that I am not, I don't know that any of you
22 know the community that these kids come from enough,
23 if you're going to make a decision to close now.
24 Because I think a whole bunch of those kids, if you
25 close now, will not go to another school.

1 There will be -- the group of them who are
2 achieving now who will find someplace else, all that
3 it might not be easy if it's another school, because
4 the better charter schools have waiting lists a mile
5 long, especially when you get to a senior year. And
6 I don't want those kids to lose. I want them to
7 have the planning time, for the ones who are not
8 seniors, to be helped to transition to something
9 that is going to get them through.

10 And there are those other schools, but
11 they're not necessarily available to this population
12 right now. And, again, I -- having spent the years
13 I've spent in Albuquerque and in various programs
14 around, I have a concern for the general population
15 they serve.

16 THE CHAIR: Thank you. Commissioner?

17 COMMISSIONER BERGMAN: Oh, I agree with
18 that. But we're -- I believe any decision that we
19 make is still going to come to the Commission for a
20 full vote, will it not? We're not delegating their
21 right to vote -- not vote; right?

22 COMMISSIONER TOULOUSE: That's what I
23 understood the motion to be.

24 COMMISSIONER CARR: We were delegating
25 responsibility to --

1 COMMISSIONER TOULOUSE: So if anybody gets
2 beaten up, it's the three of you, which doesn't seem
3 quite fair, either.

4 COMMISSIONER GANT: Madame Chair?

5 THE CHAIR: Yes, sir.

6 COMMISSIONER GANT: In reality, I really
7 don't think we're going to come down to closure real
8 fast. I think it's either semester or -- that's
9 just my opinion. Because, by the time Tony gets it
10 put together, the school is already open, you're
11 talking -- what? Ninety days with the -- with them
12 to get the stuff -- the appeal to the Secretary,
13 60 days for her to do whatever it is. So it
14 ain't -- we're not closing right away, I don't
15 think. But that's my opinion.

16 COMMISSIONER TOULOUSE: Madame Chair, I
17 had one other question. When we send them the
18 notice that we're closing, how do we send it to them
19 and say, "Well, we're going to close you, but we
20 don't know when"?

21 THE CHAIR: We'll take care of that.
22 That's part of what we will do.

23 COMMISSIONER TOULOUSE: Because I'm
24 concerned about that kind of notification to their
25 board.

1 THE CHAIR: That's why I said within
2 15 days. All right. Any other discussion?
3 All those in favor of the motion, please
4 say "Aye."

5 (Commissioners so indicate.)

6 THE CHAIR: Any opposed? Motion carries
7 unanimously.

8 Is there any other business to come before
9 this group this afternoon?

10 COMMISSIONER CARR: I move to adjourn.

11 COMMISSIONER BERGMAN: Second.

12 THE CHAIR: Wait. Wait.

13 MS. SALAZAR: I'm sorry. I don't know if
14 I caught this or not. Was there a motion to
15 delegate the authority to Madame Chair to write out
16 the decision, working with me? Did we have a motion
17 on that?

18 THE CHAIR: Is that not part of the motion
19 for the Executive Committee to do it?

20 COMMISSIONER CARR: I thought we did.

21 MS. FRIEDMAN: No, you talked about --

22 MS. SALAZAR: We talked about it, but I
23 don't think there was a motion to --

24 COMMISSIONER BERGMAN: We put it off until
25 now.

1 COMMISSIONER TOULOUSE: However, we have
2 to put off the motion to adjourn, because --

3 COMMISSIONER CARR: I withdraw my motion.

4 THE CHAIR: You're withdrawing your
5 motion? Okay.

6 Now, give us the wording of the motion we
7 need to make, off the top of your head. You can do
8 it.

9 MS. SALAZAR: The Commission delegates
10 authority to Madame Chair and Commission counsel to
11 draft the final written decision within 15 days.

12 COMMISSIONER GANT: So moved.

13 COMMISSIONER BERGMAN: Second.

14 THE CHAIR: Motion and second to allow the
15 Chairwoman and counsel to draft the -- I lost the
16 word -- to draft the --

17 COMMISSIONER GANT: Final decision.

18 THE CHAIR: Final decision. Thank you
19 very much. Any discussion? All those in favor,
20 please say "Aye"?

21 (Commissioners so indicate.)

22 THE CHAIR: Any opposed? Motion carries.
23 Is there anything else we need to deal with?

24 MS. SALAZAR: Just one more thing to
25 clarify for the record, Madame Chair, if the parties

1 request this. Just so that it's clear that the
2 written decision will be served upon them, they will
3 receive notice within 15 days.

4 THE CHAIR: Very good.

5 MS. SALAZAR: And, then, at that time,
6 their right to appeal is triggered. So...

7 THE CHAIR: Is that clear, everyone?

8 COMMISSIONER GANT: Yes.

9 THE CHAIR: All right.

10 COMMISSIONER CARR: Move we adjourn.

11 COMMISSIONER PERALTA: Second.

12 THE CHAIR: We are adjourned.

13 (Proceedings concluded at 5:47 p.m.)
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BEFORE THE PUBLIC EDUCATION COMMISSION
STATE OF NEW MEXICO

REPORTER'S CERTIFICATE

I, Cynthia C. Chapman, RMR, CCR #219, Certified Court Reporter in the State of New Mexico, do hereby certify that the foregoing pages constitute a true transcript of proceedings had before the said NEW MEXICO PUBLIC EDUCATION COMMISSION, held in the State of New Mexico, County of Santa Fe, in the matter therein stated.

In testimony whereof, I have hereunto set my hand on August 7, 2013.

Cynthia Chapman

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