

**COMMONWEALTH OF MASSACHUSETTS  
BOARD OF ELEMENTARY AND SECONDARY EDUCATION**

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**In the Matter of** )  
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**ROBERT M. HUGHES ACADEMY** )  
**CHARTER PUBLIC SCHOOL** )

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**DOCKET NO. CSO-2010-01**

**HEARING OFFICER’S INITIAL DECISION**

On January 26, 2010, the Board of Elementary and Secondary Education for the Commonwealth of Massachusetts voted its intent to revoke the renewal charter granted to the Robert M. Hughes Academy Charter Public School in January 2009. The School exercised its legal right to an administrative hearing, and I was appointed as Hearing Officer to conduct the hearing. This is my report to the Board, which is presented in five parts:

- I. Procedural History (pages 2-4)
- II. Statutory and Regulatory Framework (pages 5-7)
- III. Findings of Fact (pages 8-86)
- IV. Analysis and Conclusions of Law (pages 87-95)
- V. Initial Decision (page 96)

## **I. PROCEDURAL HISTORY.**

On January 27, 2009, the Board of Elementary and Secondary Education (State Board) renewed the charter for the Robert M. Hughes Academy Charter Public School (School) for a five-year term. Exhibit (Exh.) 184, page 8. It was the School's second charter renewal, both issued with conditions imposed by the State Board. Shortly after the charter renewal, the School administered the Massachusetts Comprehensive Analysis System (MCAS) examinations in April and May 2009 to its students in grades 3 through 8. On December 10, 2010, the Commissioner of Elementary and Secondary Education (Commissioner), after prior notice and an investigation, informed the School that the 2009 MCAS results were "permanently invalidated." Exh. 90.

The Commissioner, on December 14, 2009, updated the members of the State Board regarding the allegations of "widespread cheating" on the 2009 MCAS examination and stated his intent to recommend that the State Board revoke the School's charter at its January 2010 meeting. Exh. 188. The matter was discussed at the State Board meetings on December 15, 2009, and January 26, 2010. Representatives of the School addressed the Board at the January meeting. Exhs. 187 and 189.

At the January 26, 2010, meeting the members of the State Board voted unanimously their intent to revoke the School's charter, effective June 30, 2010. Exh. 189, pages 3-5. The State Board's vote was expressly made "conditional" on the School's right to claim an adjudicatory hearing pursuant to the State Administrative Procedure Act (G.L. c. 30A) and other statutes and regulations, and the Commissioner promptly notified the School of the terms of the State Board's vote and its hearing right. On February 12, 2010, the School filed its notice of appeal, and the State Board sought

the services of an attorney outside the Department to conduct the hearing. On March 3, 2010, the Board designated me as the hearing officer in its Order of Reference, and its General Counsel, in a letter dated the same day, informed counsel for the School and the Department of my appointment.

I conducted the first case management conference by telephone with counsel for the School and the Department on March 4, 2010. I subsequently conducted five more case management conferences and issued a number of orders or decisions before the evidentiary hearings began on Monday, March 29, 2010. I conducted full-day evidentiary hearings on ten consecutive days, ending on Friday, April 9, 2010. The Department prepared seven volumes of proposed exhibits (Tabs 1 - 197) and the School prepared four volumes of proposed exhibits (Tabs 1 - 81), not all of which were subsequently offered into evidence. Additional exhibits that were not contained in these volumes were also admitted into evidence (Exhibit 198 and Exhibits 301- 317).

I heard testimony from 29 witnesses and also viewed a portion of the videorecording (Exh. 101) of proceedings before the State Board at its January 26, 2010, meeting that was presented by the School. The witnesses included 9 of the School's teachers and staff members who testified for the Department under pseudonyms in closed hearings because other investigations are still ongoing,<sup>1</sup> who are identified as Teachers N, T, R, Q, E, F, K, O and H. The publicly named witnesses who were called by the parties are as follows:

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<sup>1</sup> For example, the Federal Bureau of Investigation (F.B.I.) executed a search warrant at the School's administrative offices on February 19, 2010. See Exh. 311 (search inventory).

For the Department

Katherine Viator – Department’s Director of Special Assessment

Matthew Pakos – Department’s Manager of School Improvement Grant Programs

Terry Roy – Department’s Manager of Investigations

Janet Henry – School’s Principal

Simone Lynch – Department’s Teacher Quality Team Leader, Office of Educator  
Policy and Preparation

Mary Street – Department’s Director of Charter School Office

William C. Walls, Jr. – Chairman, School’s Board of Trustees (since resigned)

For the School

Norma Baker – Former Trustee (officer of School Street Properties and  
Executive Director of Northern Educational Services)

Emily Lichtenstein – Department’s Coordinator of Accountability, Charter School  
Office

Mary Street – Director of Charter School Office (called by both parties)

Douglas Greer – Former Principal

Kim Alston – Trustee

Lucinda Ealy – Parent

Brian Calandruccio – Academic Director

Linda Tierney – Grandparent

Daniel Stern – New Teacher

Isaac Williams – New Parent Community Coordinator and Parent

Jennifer Bergendale – Parent

Myesha Hannans – Parent

Michelle Belanger – PTO President and Parent

Joelle Jenkins – New Principal

After the evidentiary hearings ended, the parties submitted proposed findings of fact on the MCAS test administration to the Hearing Officer on April 22, 2010. The parties' other proposed findings of fact and proposed conclusions of law were filed on April 29, 2010.

I emailed my Initial Decision to counsel for the parties on May 7, 2010. The School and Department have agreed that they both will file written objections, if any, with the Department's General Counsel on May 13, so that the matter may be presented to the State Board at its May 2010, meeting.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

The Massachusetts Legislature provided for the creation of commonwealth charter schools in G.L. c. 71, sec. 89.<sup>2</sup> A commonwealth charter school operates under a charter granted by the Board after an application process, is independent of the local school committee, and is managed by its board of trustees. Sec. 89(c) (formerly 89 (a)). A charter school must operate in accordance with both the terms of its charter and the provisions of law regulating other public schools. Sec. 89(s) (formerly sec. 89 (t)). The legal requirements include requesting criminal record information (CORI) for all employees and volunteers. Sec. 38R. The trustees are specifically made accountable for a charter school's curriculum and its annual budget. Sec. 89(w) (formerly 89 (x)).

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<sup>2</sup> The Massachusetts Legislature recently amended G.L. c. 71, sec. 89, by striking the original sections and substituting a new section 89. The amendment alters the numbering within section 89. Both the new and the former subsection numbers will be provided.

A charter is granted for five years. Sec. 89(dd) (formerly sec. 89 (kk)). The Board may “revoke” a school’s charter within the five-year period if the school has either “not fulfilled any conditions imposed by the board in connection with the grant of the charter” or if the school has “violated any provision of its charter.” Sec. 89(ee) (formerly sec. 89(kk)). The Board may also place a charter school on “probationary status to allow the implementation of a remedial plan” after which the charter may be summarily revoked if implementation of the remedial plan is unsuccessful. Id.; 603 CMR 1.13(4) (probation for 60 days or such longer period as Board may specify).

The Board is charged to develop procedures and guidelines for both the revocation and renewal of charters. Sec. 89(dd) (formerly sec. 89 (ll)). The Board has adopted a regulation, 603 CMR 1.13, that governs the revocation of charters.

Under the Board’s regulation, a charter may be revoked for “cause.” 603 CMR 1.13 (1). Cause is defined as “*including but not limited to*” seven grounds:

- (a) a material misrepresentation in the application for approval of the charter;
- (b) *failure to comply substantially with the terms of the charter, with any of the applicable provisions of M.G.L. c. 71, or with any other applicable law or regulation;*
- (c) financial insolvency;
- (d) misappropriation, conversion, mismanagement, or illegal withholding of funds or refusal to pay any funds that belong to any person otherwise entitled thereto and that have been entrusted to the charter school or its administrators in their fiduciary capacities;

*(e) fraud or gross mismanagement on the part of the charter school administrators or Board of Trustees;*

(f) criminal convictions on the part of the charter school or its Board of Trustees;  
or;

*(g) failure to fulfill any conditions imposed by the Board of Education in connection with the grant of a charter.*

603 CMR 1.13(1) (emphasis added).

The regulations also require that the Board notify the charter school in writing that it intends to revoke the charter. 603 CMR 1.13(2). If the Board revokes a charter, the charter school has fifteen days to request an administrative hearing under the provisions of the State Administrative Procedure Act, G.L. c. 30A. 603 CMR 1.13(3). In that event, the revocation does not take effect until the Board renders a final decision after the hearing is conducted. See G.L. c. 30A, sec.13 (defining license to include a “charter”).

At the administrative hearing – called an “adjudicatory proceeding” in G.L. c. 30A, sec. 1(1) – the charter school has an “opportunity for a full and fair hearing,” including the right to present witnesses, introduce exhibits, cross-examine witnesses, and submit rebuttal evidence and to obtain a decision based on the evidence made part of the record at the administrative hearing. G.L. c. 30A, secs.10, 11(3), 11(4). Judicial rules of evidence do not apply, but the administrative proceeding must observe the rules of privilege recognized by law. G.L. c. 30A, sec.11 (2). However, evidence can be admitted and given probative effect only if it is the kind of evidence that reasonable persons rely on in the conduct of serious affairs. Id.

The hearing is conducted pursuant to the Standard Rules of Adjudicatory Practice and Procedure, 801 CMR 1.01. G.L. c. 30A, sec. 9. A charter school may seek judicial review by the Superior Court of the Board's final decision revoking its charter. G.L. c. 30A, sec.14.

### **III. FINDINGS OF FACT**

I find the following facts based on the credible testimony and exhibits that were presented at the administrative hearing and the reasonable inferences drawn from the testimony and exhibits. The standard of proof in this proceeding is the preponderance of the evidence. Craven v. State Ethics Commission, 390 Mass. 191, 199-201 (1983).

#### **OVERVIEW**

##### **School's Location and Demographics**

1. The School is located at 91 School Street in Springfield, Massachusetts. The School leases the school building from School Street Properties, Inc. (The lease will be the subject of additional findings below.)

2. The School has operated for eleven years. It currently serves grades K through 8. The School is approved for 180 students, is fully enrolled, and has a waiting list. Exh. 72, page 17.

3. In 2008, the School's students were 71.5% African-American, 22.6% Hispanic, 3.2% White, and 54.3% low income. The School did not have any "limited English proficient" students, and 3.2% of its students speak English as a second language. Special education students accounted for 9.7% of the School's enrollment. Exh. 72, page 2 (Department's December 2008 Summary Review).

4. The School's academic performance exceeds the Springfield public school performance. Exh. 72, pages 9, 11 ("statistically significant higher level"). The School surpassed state CPI performance targets for English Language Arts (ELA) in 2004, 2005, and 2006 but fell below the state performance targets in 2007 and 2008. Exh. 72, page 9. For Mathematics, the School surpassed state CPI performance targets in 2004 and 2005, but fell below the state performance targets in 2006 and 2007. Exh. 72, page 11.

5. Although the School's financial condition is not an issue in this proceeding, the School's income exceeded its expenditures for the 2007-2008 school year, according to the independent financial auditor's report filed with the Department, and the School appears to be fiscally sound. Exh. 219, page 6; Exh. 72, page 17 ("currently a fiscally viable organization").

#### **Charters, Renewal Conditions, and Intent to Revoke**

6. On January 26, 1999, the State Board<sup>3</sup> granted an initial charter to the "Board of Trustees of the Robert M. Hughes Academy Charter School" for a five-year term ending on June 30, 2004. The School is a "Commonwealth" charter school. Exh. 3.

7. On February 24, 2004, the State Board renewed the School's charter for a five-year term with five conditions. Exh. 57.

8. On January 27, 2009, the State Board again renewed the School's charter with three conditions. The second five-year renewal term ran from July 1, 2009, to June 30, 2014. Exhs. 74, 75.

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<sup>3</sup> I will refer to the Board of Elementary and Secondary Education as the "State Board" in my findings of fact to avoid any possible confusion between the State Board and the School's Board of Trustees.

9. Conditions on charter renewals are unusual. For example, in the most recent year the State Board imposed conditions in only 2 two of 19 charter renewals. Street, 8 Transcript (Tr.) 115.<sup>4</sup>

10. The 2004 and 2009 charter renewals each contained one condition addressed to the School's academic performance.

11. In 2004, Condition No. 1 required that the School "make Adequate Yearly Progress in the aggregate" on the 2004 and 2005 MCAS tests. Exh. 57. The School subsequently satisfied this condition. Exh. 70 (Former Commissioner Driscoll's 9/18/06 update memorandum to State Board).

11A. In 2009, Condition No. 1 required as follows for academic success:

1. By December 2010, [the School] shall demonstrate that it is an academic success by:

a. providing evidence that, by 2010, the school has met academic growth targets in English language arts and mathematics, as established by the [Department], or

b. has achieved Adequate Yearly Progress in the aggregate and for all statistically significant subgroups in English language arts and mathematics in 2009 and 2010.

Exh. 74. (The 2009 academic success condition will be the subject of additional findings below.)

12. The 2004 and 2009 charter renewals also contained conditions related to the School's governance.

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<sup>4</sup> The format that I am using for citations to the transcripts of the evidentiary hearings is as follows: the witness's surname is listed first; next is a prefix that indicates the volume number of the transcript that contains the witness's testimony, which corresponds to the day of the hearing (Days 1 through 10); the abbreviation "Tr." (for Transcript); and finally the page(s) of the transcript where the testimony appears.

13. In 2004, the charter renewal contained four conditions related to the School's governance (conditions 2 through 5). Exh. 57.

14. 2004 Condition No. 2 required that members of the School's Board of Trustees who also served as officials at the D. Edward Wells Federal Credit Union request and opinion from the State Ethics Commission concerning their failure to disclose this interest on their financial disclosure forms and "their participation in any decisions made concerning deposits of the funds of the school with the D. Edward Wells Federal Credit Union, including deposits made in excess of the 'maximum insured sum' as noted in the school's auditor's report for FY03." Condition No. 2 also provided that if the State Ethics Commission determined that if any members of the School's Board of Trustees violated the conflict of interest or financial disclosure laws, those Trustees must resign immediately. (Related party issues will be the subject of additional findings below.)

15. 2004 Condition No. 3 required that the Trustees hire a consultant to evaluate the Board of Trustees' "performance of its governance and oversight duties" and to submit a report to the Department. Condition No. 3 also required the Board of Trustees to submit an "action plan" to the Department for approval and use in ongoing evaluation of the School.

16. 2004 Condition No. 4 concerned term limits for the Board of Trustees. It required that the Board of Trustees "must comply with, or revise in a manner acceptable to the Department of Education, the bylaws for the School regarding terms of members by June 30, 2004. (Term limits will be discussed further below.)

17. 2004 Condition No. 5 required that the Board of Trustees "cooperate" with the Department and the Office of the State Auditor "to fully address the questions and

issues raised by the Department.” (The State Auditor’s subsequent report (Exh. 63) will be the subject of further findings below.)

18. On September 18, 2006, former Commissioner Driscoll updated the State Board on the School’s performance on the governance conditions in the 2004 charter renewal, in a memorandum that summarized his conclusions as follows:

Condition No. 2 – “not met”

Condition No. 3 – “met”

Condition No. 4 – “Completion of this condition is still in progress.”

Condition No. 5 – “not met”

Exh. 70. Commissioner Driscoll summarized the reasons for his conclusions and provided more information concerning the State Auditor’s findings. The Department subsequently determined that the School had satisfied all but one of the 2004 charter renewal conditions (cooperation with the State Auditor in 2005). Exh. 72, page 1. (Dec. 2008 Summary of Review). Based on the hearing evidence, I concur with both Commissioner Driscoll’s earlier assessment and the Department’s more recent assessment, except that I will set forth reservations about term limits later.

19. In 2009, the charter renewal contained two conditions concerning the School’s governance (conditions 2 and 3). Exhs. 74, 75.

20. 2009 Condition No. 2 provided that the Board of Trustees shall “comply with the term limits” for Trustees and “maintain the minimum number of board members, as contained in the school’s approved bylaws.” Exh. 74. (Term limits and membership will be the subject of additional findings below.)

21. 2009 Condition No. 3 required that, by September 2009, the Board of Trustees shall have “identified, recruited, and received approval from the Commissioner for new members with educational and financial expertise.” Exh. 74. (The Board of Trustees and new members will be the subject of additional findings below.)

22. On January 26, 2010, the State Board unanimously voted its “intent to revoke” the School’s charter, effective on June 30, 2010. The vote was expressly made “conditional on the right of the [School’s] board of trustees” to request an “administrative hearing.” Exh. 189, page 5.

23. The State Board’s vote of intent to revoke the School’s charter was made in a public meeting after five members of the public (including the School’s PTO President) spoke and after five representatives of the School (William Walls, then the Chairman of the School’s Board of Trustees; Fred Swan, the School’s development officer and interim principal; Joelle Jenkins, the School’s new Principal; Ronald Veins and Rev. Isaac Williams, School employees) addressed the members of the State Board and showed a student video. The School’s representatives also presented a written investigative report concerning the 2009 MCAS examinations prepared by an attorney for the School (The Chasen Report, Ex. 98). Commissioner Chester and members of his staff also addressed the State Board and answered questions from members of the State Board. Exh. 189, pp. 3 –5. An audio-video recording was made of the January 26, 2010, State Board meeting, in addition to the written minutes of the meeting. Exh. 101.

24. The State Board also had a preliminary discussion of the School’s charter at its December 15, 2009, public meeting. The Commissioner distributed memoranda to the members of the State Board before the December 2009 and January 2010 meetings that

explained the reasons for his recommendation and also supplied copies of his two memoranda to the School. Exh. 188 (dated 12/14/09) and Exh. 190 (dated 1/15/10). Exhibits 191 and 192 were attachments to the Commissioner's January 15, 2010, memorandum (Exh. 190).

25. On January 27, 2010, the Commissioner notified the School's Board of Trustees of the State Board's vote of its intent to revoke the School's charter and informed them of their right to an administrative hearing.

26. On February 12, 2010, the School notified the Department that it was exercising its right to an administrative hearing. Exh. 104.

27. Counsel for the School and the Department presented witnesses who testified before me, as the designated hearing officer, on ten consecutive days, beginning on March 29, 2010, and ending on April 9, 2010. The administrative hearing was conducted pursuant to the state Administrative Procedure Act (G.L. c. 30A), the Standard Adjudicatory Rules of Practice and Procedure (801 CMR 1.01), the Department's charter school statute (G.L. c. 71, § 89), and the Department's regulations (603 CMR 1.13).

## **2009 MCAS TEST ADMINISTRATION**

### **Overview**

28. The evidence of pervasive and egregious misconduct by Principal Henry and Teachers during the School's administration of MCAS tests in April 2009 and May 2009 is overwhelming. I will make additional findings that provide detailed support for this finding below.

29. The misconduct during the MCAS test administration provides the factual support for the Department's decision, dated December 10, 2009, to "permanently invalidate" the School's 2009 MCAS results. Exh. 90. The misconduct was so widespread and so openly orchestrated (through regular teaching staff meetings and the School's closed circuit television/audio system connecting classrooms to the School's administrative offices, among other means) that it could not be determined that any particular grade or classroom of students was not affected. No evidence was presented that any classes in grades 3 – 8 (the grades where the MCAS test was administered) were not affected by the test administration misconduct.

30. The School presented an internal written investigative report (the Chasen Report ) to the State Board at its January 26, 2010, public meeting at which it voted its intent to revoke the School's charter. The attorney who conducted the investigation for the School was retained for this purpose on January 18, 2010, and conducted confidential interviews with 11 staff members, a member of the School's Board of Trustees, and the Interim Administrator on January 18, 19 and 21. Exh. 98. I find that the School's internal investigation supports my finding of widespread and egregious misconduct during the School's administration of the 2009 MCAS tests and that the testimony presented at the evidentiary hearings before me is consistent with the School's internal investigation. I also conclude that the internal investigation constitutes an evidentiary admission by the School.

31. The Department's Manager of Investigations (Terry Roy) also presented a written summary of his investigation (dated January 15, 2010) that was presented to the State Board as an attachment to the Commissioner's recommendation (Exh. 190). Mr.

Roy reported that 8 of the 16 staff members that he and representatives of the Massachusetts Attorney General's office interviewed admitted that they had engaged in misconduct during the administration of the 2009 MCAS tests. Exh. 191. I find Terry Roy's testimony before me concerning his investigation and the his findings of widespread misconduct is credible and that his summary investigative report to the State Board is consistent with the testimony by Teachers and other witnesses at the evidentiary hearings before me. See Roy, 3 Tr. 3, passim.

### **Circumstances Surrounding the 2009 MCAS Tests**

32. The School failed to meet the Adequate Yearly Progress (AYP) standard in the aggregate for the 2006–2007 and 2007-2008 school years. The School also failed to meet the AYP standard for all subgroups for the 2005-2006, 2006-2007, and 2007-2008 school years. “Aggregate” refers to the results for all students at the School; “subgroups” to defined populations within the School (e.g., African-American and Low Income). Exh. 80; Pakos, 1 Tr. 177-179.

33. The AYP standard is required for all public schools (including charter schools) in the United States by the federal No Child Left Behind law (NCLB). Pakos, 1 Tr. 174, 176-177; Viator, 1 Tr. 127. AYP measures a school's annual progress toward the law's requirement that all of its students must satisfy the “proficient” standard by the end of the 2013- 2014 school year for English Language Arts (ELA), Mathematics, and Reading. A school must meet the AYP standard in the aggregate and for all subgroups. Pakos, 1 Tr. 174-178.

34. The Department uses a Composite Performance Index (CPI) to measure AYP progress each year. The CPI formula will be described in more detail later. See Exh. 81

(School's 2008 AYP Data Report, with 2009 CPI performance objective and 2008 performance baseline).

35. For the 2008-2009 school year, the School was ranked as "Improvement Year 2 – Subgroups" as a sanction under the No Child Left Behind law as a result of its failure to meet the AYP standard. The School was also required to provide supplemental educational services to its students. Exh. 80; Pakos, 1 Tr. 203-206. The School hired Knowledge Points to offer supplemental educational services after school to its students, beginning in calendar year 2009. Alston, 9 Tr. 89; Walls, 5 Tr. 165-166.

36. In January 2009 the State Board also imposed a requirement that the School meet the AYP standard for 2009 and for 2010 in both English Language Arts (ELA) and Mathematics as a condition on the School's 2009 charter renewal. Exh. 74.

37. The Department uses the MCAS tests, which it first administered in 1998, as the data source to calculate the AYP standard for each public school (including charter schools) in Massachusetts. Viator, 1 Tr. 128; Pakos, 1 Tr. 174. All states are now required by the No Child Left Behind law to administer a standardized test similar to the MCAS. Pakos, 1 Tr. 176-177. The MCAS tests rate each student as "Advanced," "Proficient," "Needs Improvement," or "Warning/Failing." Pakos, 1 Tr. 179. See Exhs. 77, 78 and 81.

38. In January 2009 Joseph Seay resigned as the School's principal. Mr. Seay served as the School's principal for the 2007-2008 school year and the first half of the 2008-2009 school year. Walls, 5 Tr. 137-139. See Exh. 37 (1/22/09 resignation email to C. Lopes and N. Baker).

39. The Board of Trustees appointed Janet Morris Henry as the School's Interim Principal in March 2009, and she was the administrative head of the School when the 2009 MCAS tests were administered. 3/6/09 Trustee Minutes, Exh. 175, page 319. Ms. Henry had been hired as the School's Vice Principal in 2007.

40. The School administered the ELA MCAS tests to grades 3 through 8 in April 2009. On April 16, 2009, Principal Henry separately certified the results of the ELA MCAS tests for each grade to the Department. Exhs. 106 – 111.

41. The School administered the Mathematics MCAS tests to grades 3 through 8 in May 2009. On May 26, 2009, Principal Henry separately certified the results of the Mathematics MCAS tests for each grade to the Department. Exhs. 112 – 117.

42. I find that Principal Henry's certifications of the School's April and May 2009 MCAS results are genuine. The certifications were submitted electronically on a secure portal using a procedure prescribed by the Department (or its contractor) for all public schools in Massachusetts and using a unique password issued to Principal Henry by the Commissioner for this purpose. Viator, 1 Tr. 31-43, 105-114. In addition, there is no evidence that a second set of 2009 MCAS results was certified to the Department, that someone other than Principal Henry submitted the results, or that otherwise disputes the MCAS results submitted to the Department for the School.

43. I find that that the certifications made by Principal Henry to the Department concerning the 2009 MCAS results are false for reasons described in more detail below. She falsely certified, among other matters required on page 3 of the certification form, that the School "followed proper MCAS administration procedures as described in the Principal's Administration Manual." Exh. 106.

44. The Department returned preliminary English Language Arts (ELA) 2009 MCAS results to Principal Henry in July 2009, who promptly emailed members of the Board of Trustees that the School's students "made outstanding improvement on this assessment." 152 (7/16/09 email). Copies of the ELA scores were attached to the email and were also distributed at the July 2009 Board of Trustees Meeting. 7/21/09 Trustees Minutes, Exh. 175, page 337. The graph that Principal Henry attached to her email to the Board of Trustees provided a "three-year comparison" of the School's MCAS scores. Exh. 152.

45. Several days later, Principal Henry reported at a Board of Trustees meeting that the School would hold a celebration regarding the MCAS results on August 27, 2009. 7/21/09 Trustee Minutes, Exh. 175, page 334.

46. In August 2009, Principal Henry reported to the Board of Trustees on the Mathematics 2009 MCAS results. 8/18/09 Trustee Minutes, Exh. 175, page 338. At the August meeting, Principal Henry explained graphs to the Trustees concerning the School's 2009 MCAS performance. Id.

47. I find that the members of the Board of Trustees had detailed knowledge of the 2009 MCAS results before the Department's first contact with the School questioning the results.

48. The Department's Charter School Office began to question the improvement in the School's 2009 MCAS performance after reviewing the MCAS results for all charter schools. Mary Street, the Director, contacted Katherine Viator, the Department's Director of Special Assessment, and Terry Roy, the Department's Manager of

Investigations concerning the School's 2009 MCAS results. Street, 4 Tr. 167; Viator, 1 Tr. 46.

49. The Department's Office of Special Assessment, which is responsible for the MCAS tests and all other tests in all public schools (including charter schools), did an initial statistical review of the School's 2009 MCAS results and recommended that the Commissioner "suppress" public release of the MCAS results pending further investigation. Viator, 1 Tr. 49. Suppression is not a final determination of the validity of the test results. Results have sometimes been released after they are suppressed. Viator, 1 Tr. 54-55.

50. The Office of Special Assessment reviewed the School's 2009 MCAS results using several methodologies. Its Chief Analyst, Robert Lee, performed a statistical analysis and concluded that the School's results were an "extreme outlier." The estimate is that there were greater than one in one million odds against making the reported improvement from 2008 to 2009 on the MCAS tests. Viator, 1 Tr. 53-54.

51. The Office of Special Assessment also conducted an "erasure analysis," which measures the rate at which students change test answers from incorrect to correct and from correct to incorrect in the MCAS test booklets based on research that establishes the expected range of erasure. The determination was that the rate at which answers were changed from incorrect to correct was "statistically anomalous." Viator, 1 Tr. 61-63.

52. I credit the statement by Katherine Viator that she had never seen a comparable outcome in her experience, which she described as "theoretically possible, but it just doesn't happen." Viator, 1 Tr. 60. A comparison of Exhibit 77 (School's 2008

MCAS scores) and Exhibit 79 (School's 2009 MCAS scores before invalidation) provides some examples of the improvement:

- Eighth grade Math – 0% of students ranked Advanced in 2008; 83% Advanced in 2009
- ELA – 2% ranked Advanced in 2008; 24% Advanced in 2009 (all grades)
- Math – 43% ranked Needs Improvement in 2008; 5% in 2009 (all grades)
- ELA and Math (combined) – 17% ranked Warning/Failing in 2008; none in 2009

Mary Street, Director of the Department's Charter School Office, prepared a two-page composite document that compared the School's 2008 and 2009 MCAS scores for ELA and Mathematics for grades 3 through 8 that illustrates what she called "extraordinary gains" in 2009. Exh. 83. Street, 3 Tr. 166, 169. However, I note that the School's MCAS scores had also exhibited some volatility in the past. For example, the 8<sup>th</sup> grade ELA scores declined by 20% on the CPI index from 2007 to 2008. For 3d grade Mathematics, the percentage of students ranked Proficient increased from 22% in 2007 to 82% in 2008. Exh. 72, pages 9, 11 (Department's Dec. 2008 Summary of Review).

53. Ms. Viator was a credible witness with 20 years of experience in large scale educational test assessment and who had been involved with MCAS since the first test was administered in 1998. Viator, 1 Tr. 12, 14, 60. See also Exh. 196 (resume).

54. Terry Roy, the Department's Manager of Investigations, initiated an investigation of the MCAS results in September 2009. Mr. Roy and the Massachusetts Attorney General's Office subsequently interviewed 16 School employees and presented

two written reports. Exhs. 85 and 191. Redacted notes of the witness interviews that were admitted into evidence appear at Exhibits 118-119, 122,124-127, 134, and 145-150.

55. On September 14, 2009, Commissioner Chester wrote to Principal Henry to inform her that there “appear to be anomalies” in the 2009 MCAS results for all grades levels (grades 3 through 8). The letter informed the School that the Department would conduct an “investigation,” that the MCAS results would be “suppressed” during the investigation, and that the School would not receive any individual Parent/Guardian reports while the investigation was pending. Exh. 84. Viator, 1 Tr. 85.

56. At a Board of Trustees meeting the next day, Principal Henry informed the Board about the Department’s letter that the Department would investigate anomalies in the 2009 MCAS scores. 9/15/09 Trustee Minutes, Exh. 175, page 340.

57. On December 10, 2009, the Commissioner wrote to William Walls, Chairman of the Board of Trustees, to inform him that the Department had “permanently invalidated” the School’s 2009 MCAS results based on the Department’s investigation. Exh. 90. The December 10 letter is the Department’s first direct written communication to the Board of Trustees concerning the 2009 MCAS results.

58. The Commissioner’s December 10 letter also directed the School to notify all parents and guardians in writing that results of the 2009 MCAS results would not be issued. Exh. 90. There is no evidence in the hearing record that the School sent this letter. Some parents testified that they learned about what came to be known as the “cheating” incident or “scandal” from the news media, not from the Trustees.

59. On December 14, 2009, Commissioner Chester also wrote Chairman Walls that the Department was referring the matter to the State Auditor’s Office. Exh. 92. No

evidence was presented on the State Auditor's response, if any, to the referral. This is the second time that the Department has made a referral to the State Auditor's Office concerning the School. The first referral resulted in a written report (dated August 3, 2005) that will be the subject of further findings. Exh. 63.

### **MCAS Preparation and Administration**

60. A school principal is the on-site administrator who has responsibility for a school's preparation for, and administration of, a MCAS test. Viator, 1 Tr. 20. Principal Henry was the School's Interim Principal during the April and May 2009 MCAS tests. Principal Henry had also held academic administrative positions (Vice Principal) at the School during the 2008 MCAS tests.

61. The Department provides extensive support and instructions for all public schools (including charter schools) for the administration of MCAS tests. This includes a detailed MCAS Principal's Administration Manual (Principal's Manual), which is prepared by the Department and available on the Department's website. Exh. 174. Viator, 1 Tr. 15-17. Support is also available by telephone, email, and website through a MCAS Service Center and the Student Assessment Services Center. Exh. 174, page i. The Department also provides workshops and telephone conference calls throughout the state. Viator, 1 Tr. 15.

62. The Principal's Manual also includes multiple MCAS Test Administrator's Manuals, which the Department prepares and distributes for the MCAS tests at various grade levels and subject matters. See Exh. 174 at Tabs B – I. A "test administrator" is the teacher or other school staff member who is present in the classroom and oversees the administration of a MCAS test. See Viator, 1 Tr. 24.

63. The Principal's Manual also includes a "checklist" that references other parts of the Manual as a guide to the required tasks. Viator, 1 Tr. 21. See Exh. 174, pages 36 – 39.

64. The MCAS administration instructions are standardized to assure the test's integrity so that the test results provide a true measure of a student's performance on the test. The standardization also allows the Department to compare student results, school results, school district results, and state results. Viator, 1 Tr. 19. See, e.g., Exh. 77 (comparing the Hughes Charter School to state-wide results for 1999-2000 through 2007-2008 school years).

65. The MCAS administration instructions are drawn from the standards for large scale test administration developed by three organizations: the American Educational Research Association, the American Psychological Association, and the National Counsel on Measurement in Education. Viator, 1 Tr. 16.

66. The School administered the 2009 MCAS tests in two stages: (1) March 30 through April 14, and (2) May 11 through 28, which I have referred to as the April and May 2009 MCAS tests. See Exh. 174, pages 36, 50.

67. The Department presented testimony by 7 teachers (including paraprofessionals) who were involved in the classroom administration of the 2009 MCAS tests at the School. See 2 Tr. 4, 71, 103, 118, 147, 182, 228. These teachers were identified for the record as Teachers N, T, R, Q, E, F, and K.<sup>5</sup> The School also presented

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<sup>5</sup> Before the evidentiary hearings began, I entered an order that allowed the School's staff members to be identified by pseudonyms. Order to Use Pseudonyms and Impound. The list of the teacher's actual names and assigned pseudonyms is entered in a separate Impounded Docket. At the conclusion of the first day of hearings I also entered an oral order that closed the hearings to the public while persons were testifying under

testimony by 3 teachers, but none of these teachers were involved in the administration of the 2009 MCAS tests.

68. Based on their testimony, I find that the Teachers were not experienced in the administration of MCAS tests. Five of the Teachers who testified were first year teachers at the School. Only two of the Teachers had been involved in the administered an MCAS test before, but only in a limited or subordinate role. Teacher N, 2 Tr. 16; Teacher T, 2 Tr. 78-79.

69. The School's internal investigative report (the Chasen Report) concurs with the foregoing finding. All but 2 of the 11 teachers that Chasen interviewed were "very young and inexperienced." Seven of the teachers had never taught before. Only 2 had administered a MCAS test before, in a subordinate role. Chasen Report, Exh. 98, page 3. (Since the Chasen Report does not provide the identity of the persons interviewed, I cannot determine what overlap may exist between the Chasen witnesses and the Teachers who testified for the Department at the evidentiary hearing.)

70. Prior to the 2009 MCAS tests, the Teachers administered practice tests -- called "CFAs" -- to the School's students that used actual questions from prior MCAS tests. I find that the CFAs (Charter Formative Assessments) were not administered according to the standards that apply to the administration of an actual MCAS test.

71. During a CFA, Principal Henry instructed the Teachers to roam around the classroom inspecting the student answers on a test. The Teachers were to point to test questions and indicate that the student should redo the answer. One Teacher captured the instruction that he received from Principal Henry that is typical of the testimony given by

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pseudonyms in order to protect the confidentiality of ongoing investigations. See 1 Tr. 207-209.

many of the Teachers. “This is where we make our bread and butter. You go around and check over the kids’ shoulders, and you see if they’re putting [down] a crazy answer. You have to tell them they’re putting down a crazy answer. You don’t just sit there.” Teacher N, 2 Tr. 11. See also Teacher R, 2 Tr. 108.

72. The Chasen Report also finds that teachers were instructed to check student answers on the MCAS tests and to direct the students to recheck their answers. Exh. 98, pages 2-4.

73. Principal Henry did tell her teachers not to give students the answers. Teacher N, 2 Tr. 13. I find that on a multiple choice test pointing out a wrong answer is equivalent to giving the student an answer.

74. One Teacher was publicly chewed out by Principal Henry when he suggested that the CFAs were not good practice because Teachers would not be able to provide students with assistance during the actual MCAS test. Teacher N, 2 Tr. 19. This incident took place at the beginning of the school year, in September or October 2008. 2 Tr. 18-19.

75. I find that Principal Henry was in charge of the MCAS preparation long before Principal Seay resigned his position in January 2009, and that the School’s preparation for the 2009 MCAS tests was not affected by Principal Seay’s resignation. In addition to the incident described in the preceding paragraph that took place early in the 2008-2009 school year, the other Teachers who testified regarded Janet Henry as their boss. E.g., Teacher R, 2 Tr. 114. Principal Henry had also hired all of the Teachers who testified, except for Teacher F. 2 Tr. 183.

76. The Chasen Report also finds that the teachers regarded Principal Henry as their boss, that former Principal Seay did not attend staff meetings (where the teachers were instructed how to administer the 2009 MCAS tests) and that Principal Henry had hired all 11 teachers that Chasen interviewed. Exh. 98, pages 2, 6.

77. I find that Principal Henry instructed the Teachers to administer the actual MCAS tests in the same way that the Teachers had administered the CFA practice tests. See, e.g., Teacher T, 2 Tr. 77-78, 93-94. See also Chasen Report, Exh. 98, page 4 (For the real MCAS, Ms. Henry directed the teachers to “do what they had been doing throughout the year” on the CFA exams.).

78. Principal Henry held staff meetings for the School’s teachers on Monday, Wednesday, and Friday mornings, and the CFAs or MCAS preparation were frequently the topic of the staff meetings. E.g., Teacher N, 2 Tr. 77-78. See also Chasen Report, Exh. 98, page 2 (events at staff meetings increased the probability of cheating).

79. Teachers were intimidated by being told that the students had to pass the MCAS test or the School would be closed and teachers would lose their jobs. E.g., Teacher F, 2 Tr. 196-197. The Chasen Report also found that the staff meetings “focused on getting their students to improve” and that if the students did not perform well teachers would be “personally responsible and lose their jobs.” Exh. 98, pages 3-4. I find that the message given to the teachers expressed the Board of Trustees’ view that this was a “crisis year for getting our scores up.” 11/17/09 Trustees Minutes, Exh. 175, page 1.

80. I find that Principal Henry did not train her teachers in the proper administration of the MCAS tests. The Principal’s Manual explicitly requires the

Principal to provide “training before each [MCAS] administration,” even if the teachers have prior experience in the administration of the MCAS test. Exh. 174, page 2. See also Chasen Report, Exh. 98, page 4. Principal Henry falsely certified to the Department that she had “ensured compliance with all MCAS administration requirements.” Exh. 106, page 3. See, e.g., Teacher T, 2 Tr. 78.

81. I find that Principal Henry did not distribute the Test Administrator’s Manual to her teachers. The Principal’s Manual specifies that the Principal is “responsible for providing a copy of the appropriate Test Administrator’s Manual to every test administrator.” Exh. 174, page 2. None of the Teachers who testified stated that they had been given a copy of the Test Administrator’s Manual. See, e.g., Teacher R, 2 Tr. 110.

82. When Teacher T asked Principal Henry for a copy of the Test Administrator’s Manual, Principal Henry told her that she could not see the Manual and that Teacher T should use Principal Henry’s method to administer the MCAS test. Teacher T, 2 Tr. 78-79.

83. I find that Principal Henry did not train the Teachers about a script to read at the beginning of a MCAS test. The Test Administrator’s Manual requires that Teachers “read the script in the Test Administrator’s Manuals verbatim to students.” Exh. 174, App. B, page 16.<sup>6</sup> None of the Teachers testified that they had read a script to the School’s students at the 2009 MCAS tests. See 2 Tr., passim.

84. I find that Principal Henry did not instruct Teachers to remove or conceal classroom displays from the walls before the MCAS tests were administered. See also

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<sup>6</sup> I cite to the Test Administrator’s Manual for Grades 5, 6 and 8 at Exh. 174, App. B, as the exemplar for the test administrator instructions for all grades and all subjects.

Chasen Report, Exh. 98, page 4. The Test Administrator's Manual requires that materials containing content in the subject matter being tested must be "obscure[d] or remove[d] from the testing space." Exh. 174, Exh. B, page 17.

85. I find that Principal Henry falsely certified that "[e]ach test administrator in my school followed the instructions given in the Test Administrator's Manual." Exh. 106, page 3.

86. I find that Principal Henry required that her Teachers monitor their students test performance during the 2009 MCAS tests. Monitoring meant that Teachers were instructed to walk around the classroom, observing student answers. When a Teacher saw that a student's answer was incorrect, Teachers were instructed to advise the student to recheck his or her answer to that question. E.g., Teacher Q, 2 Tr. 123-124; Teacher T, 2 Tr. 76; Teacher R, 2 Tr. 111.

87. I find that the that the so-called monitoring activity by Teachers and students is consistent with the erasure analysis performed by the Department on the School's MCAS tests that concluded that the number of incorrect answers that were changed to correct answers exceeded statistical norms. See Viator, 1 Tr. 61-63.

88. The monitoring activities that Teachers engaged in pursuant to Principal Henry's instruction constitute "educator misconduct" under the Test Administrator's Manual which states that a teacher cannot "provid[e] hints or clues during a test administration" or "directly or indirectly assist[] students with responses to test questions." Exh. 174, App. B, pages 6, 7. It is also deemed educator misconduct in the Principal's Manual. Exh. 174, page 8.

89. The monitoring required by Principal Henry is also inconsistent with the requirements in the Test Administrator’s Manual that a teacher cannot “coach a student during testing or alter or interfere with a student’s responses in any way,” including by “offering hints, clues, cues, facial expressions, nods, [or] voice inflections,” and is responsible for ensuring that students provide answers that are “strictly their own.” Exh. 174, App. B, page 4. The monitoring is also inconsistent with the requirement that Teachers cannot “review student responses during or after a test administration.” Exh. 174, App. B, page 3.

90. The monitoring required by Principal Henry is also inconsistent with the type of monitoring required as part of the MCAS Test Security Requirements in the Principal’s Manual. See Exh. 174, page 1. As a security requirement, monitoring requires that: “Test administrators are responsible for focusing their full attention on the testing environment at all times during the test administration. Test administrators should continually *monitor* the testing process by moving unobtrusively about the room.” Exh. 174, page 5. The same requirement is repeated verbatim in the Test Administrator’s Manual. Exh. 174, App. B, page 4.

91. Principal Henry’s admonition to her Teachers that “this is where we earn our bread and butter” or “the day that teachers really earned their pay” referred to the active role that she instructed her Teachers to play by monitoring the MCAS test administration. Teacher N, 2 Tr. 11; Teacher T, 2 Tr. 75-76, 85-86. By contrast, I find that proctoring an examination is designed to assure the integrity and fairness of the test and to measure a student’s own ability to perform. Teachers properly earn their bread and butter when

they prepare students by teaching subject matter content and skills before the MCAS test begins.

92. I find that Principal Henry retaliated against Teacher T when she objected to Principal Henry's MCAS monitoring directive during a staff meeting and immediately thereafter stated privately to Principal Henry that she was not going to risk her teacher's license to help someone cheat. The next day Principal Henry called Teacher T to her office and switched her teaching assignment from the middle school to the second grade, where no MCAS test is administered. The new teaching assignment occurred just prior to the MCAS tests. At the end of the school year, Principal Henry informed Teacher T that she would not be employed by the School for the following year. Teacher T, 2 Tr. 71-87. There is no evidence that any other teacher was not reemployed by the School for the 2009-2010 school year.

93. I find that other Teachers were threatened with retaliation. When Teacher R, a new employee, told the School's lead paraprofessional that she was not comfortable with the MCAS administration instructions he reported her to Principal Henry. Principal Henry called Teacher R out of her classroom and told Teacher R that her choice was to administer the MCAS as instructed or that she should "grab my bags now" and Principal Henry would "escort" her from the School. Teacher R, 2 Tr. 110, 116-117.

94. I find that other Teachers feared that their employment would be terminated if they questioned Principal Henry's MCAS test administration instructions. E.g., Teacher Q, 2 Tr. 141; Teacher N, 2 Tr. 66.

95. The monitoring activity described above applied to MCAS multiple choice questions. For essay questions, Teachers were instructed to read the student essays and

make sure that the answers were structurally sound and well written. Teacher T, 2 Tr. 102.

96. I find that at least some Teachers saw the MCAS tests before the tests were administered to students. For example, Teacher C called Teacher Q to his office and showed him both the ELA and Math test books before the tests were given. Teacher Q was instructed to take the test books with him and to show them to his co-teacher, Teacher R. Teacher Q thought that he was shown the Math test book because he did not have a mathematics background. I find that during the administration of the MCAS tests, Teacher Q walked around the classroom and pointed out wrong answers to students. Teacher Q, 2 Tr. 125-128.

97. I find that Teacher F was also called to Teacher C's office and shown copies of the MCAS test books before the tests were administered. Teacher C instructed Teacher F to read through the test book to determine if there was anything on the MCAS test that Teacher F had not covered in his class. Teacher F, 2 Tr. 190-192, 194-195.

98. Teacher C, who showed the MCAS test books to other Teachers, was the School's Curriculum Director when the 2009 MCAS tests were administered.

99. I find that at least some Teachers returned MCAS test books to students after the students turned in the test and required that the students redo their work. For example, a few students who were watching a movie after the MCAS test were required to return to the classroom and fix their MCAS answers. Teacher E, 2 Tr. 154-155; Teacher F, 2 Tr. 199. See also Teacher N, 2 Tr. 36-40 (science tests returned). In some instances, Teachers reviewed the test books to make sure that students had answered all

the questions and returned the MCAS test books to students with instructions to complete their work. Teacher K, 2 Tr. 237.

100. I find that Principal Henry falsely certified that she had reported any MCAS testing “irregularities” to the Department. Exh. 106, page 3. See also Principal’s Manual, Exh. 174, page 2; Viator, 1 Tr. 30.

101. None of the Teachers who testified or any other member of the School’s teaching or administrative staff reported the MCAS testing irregularities to the Department, contrary to the requirement in the Test Administrator’s Manual that all irregularities must be reported. See 2 Tr., passim; Exh. 174, App. A, page 2. Teacher N voluntarily contacted the Department in September 2009, after Commissioner Chester notified the School on September 14, 2009, that the MCAS scores would be suppressed and that the Department would conduct an investigation. Thereafter, Teacher T also voluntarily contacted the Department. Teacher N, 2 Tr. 45-46, Teacher T, 2 Tr. 87-89.

102. I find that all of the Teachers were afraid of being fired if they contacted either anyone outside the School or the members of the Board of Trustees concerning the 2009 MCAS administration. E.g., Teacher R, 2 Tr. 116. Many of the Teachers had seen Principal Henry fire teachers arbitrarily in either the 2007-2008 school year (when Henry was Vice Principal) or in 2008-2009 (when she was Vice Principal and Interim Principal) or had heard about such incidents.

103. None of the Teachers had employment contracts. Their salaries were set arbitrarily by Principal Henry, their salaries varied greatly because the Board of Trustees had not adopted salary scales or guidelines, and their salaries were sometimes changed by Principal Henry. Chasen Report, Exh. 98, page 5. For example, Teacher N was paid

\$4,000 less than he was promised when he was hired. Principal Henry restored \$3,000 after he complained. 2 Tr. 42.

104. The Teachers were also fearful of Principal Henry because they were aware that Principal Henry observed and listened to them in their classrooms on the School's closed-circuit TV system. I find that all of the Teachers were aware that the "walls have ears." Teacher N, 2 Tr. 46. See also Chasen Report, Exh. 98, page 2.

105. The message that the Teachers received from Principal Henry about the MCAS tests was to "do whatever it took to make it." Teacher R, 2 Tr. 107. Principal Henry spurred her staff on: "Do you think that [another charter school] kids got all 'proficient' without helping the kids a little bit?" Teacher N, 2 Tr. 14.

106. The Teachers were also aware that the State Board had imposed an academic achievement standard as a 2009 charter renewal condition and that the stakes were high, for the School and their own future employment.

107. I found the Teachers who testified were credible, especially the two teachers who contacted the Department's investigator in the Fall. The teachers were aware that they had done something wrong and that it was likely their actions would bring adverse consequences. I also find that the Department made no promises of favorable treatment for their testimony. See 2 Tr., passim.

### **Special Education**

108. The School did not report that any special education students or section 504 students took the 2009 MCAS test with accommodations, although 9.7% of the student body were special education students with an individualized education plan (IEP). See Exhs. 81 and 72, page 2.

109. Michelle Bellanger, a parent and the PTO President, had a section 504 child at the School in the 2008-2009 school year. I credit her testimony that her child took the 2009 MCAS test with accommodations. 10 Tr. 96-97.

110. There were special education students at the School in the 2008-2009 school year, as several Teachers testified to working with special education students. E.g., Teacher N, 2 Tr. 6; Teacher E, 2 Tr. 150. The academic director was initially hired to in 2009-2010 school year to prepare individual education plans (IEPs) for special education students, even though he lacked the qualifications to do so. He did not participate in the 2009 MCAS tests. Teacher J, 10 Tr. 118, 123, 129. .

#### **Obstruction of the Department's Investigation**

111. At a staff meeting early in the 2009-2010 school year, Principal Henry informed her teachers that the School had performed well on the 2009 MCAS tests but that the Department was conducting an investigation of the test results. Teacher N, 2 Tr. 29.

112. Thereafter, Principal Henry began to meet with her Teachers to discuss the anticipated visit and interviews by a Department investigator. In these meetings, Principal Henry played the role of the Department's investigator.

113. I find that in her role play interview with Teacher N, Principal Henry asked Teacher N questions that she anticipated the Department's investigator would ask and coached Teacher N on how to provide the answers. After Teacher N gave Principal Henry the answers that he understood she wanted – that he had not cheated on the test and had not helped students with MCAS answers, even though those answers were not

the truth – Principal Henry asked Teacher O (the business manager) to enter the room and Teacher N was told that he would be paid a \$500 bonus. Teacher N, 2 Tr. 41-42.

114. Other middle school teachers were waiting in the hallway to be interviewed by Principal Henry in preparation for the Department’s investigator. Teacher N, 2 Tr. 43. Principal Henry also gave a \$500 financial bonus in Fall 2009 to other Teachers after role playing for the Department’s investigation.. Teacher O (business manager), 2 Tr. 263; Teacher N, 2 Tr. 43. I find that the purpose of Principal Henry’s meeting with teachers and the bonus payments was to obstruct the Department’s investigation into the 2009 MCAS results.

115. The Chasen Report also finds that Principal Henry held individual meetings with the teaching staff to prepare them for the Department’s investigation, that she prepared a list of possible questions, and that all teachers were given a \$500 bonus at the conclusion of the meetings with Principal Henry except for one teacher who refused to go along with Principal Henry. Exh. 98, pages 4, 5, 6.

116. Principal Henry also called Teacher E to a private meeting to prepare her for a meeting with the Department’s investigator. When Teacher E said that she would say that teachers had “coached” the students on the MCAS tests, Principal Henry responded that coaching sounded like teachers helped students on the MCAS tests and that Teacher E’s salary would be reviewed. Teacher E, 2 Tr. 162-167. I find that the purpose of the threatened salary review was to persuade Teacher E not to speak truthfully with the Department’s investigator.

117. Principal Henry also convened a meeting of all teachers at which she distributed “bullets” of all the things that were done correctly to prepare students for the

MCAS tests. Teacher E, 2 Tr. 161. I find that the purpose of providing this information was to mislead the Department's investigation.

118. Principal Henry also sought to ferret out Teachers who spoke to the Department's investigator. Acting on information that she said she received from inside the Department, Principal Henry called Teacher N to her office a second time and asked if Teacher N had spoken to the Department's investigator. Teacher N untruthfully denied that he had spoken with the investigator although he had already met with Terry Roy away from the School. Teacher N, 2 Tr. 43-47; Roy, 3 Tr. 11.

119. Principal Henry also called Teacher E to another meeting with her at which she accused Teacher E of speaking to the Department's investigator. Teacher E responded that she had spoken only to her brother (an attorney), but she subsequently contacted the Department's investigator and spoke to investigators at the Attorney General's office. Teacher E, 2 Tr. 163-167.

120. At another staff meeting, Principal Henry asked what paraprofessional told the Department that she had been writing lesson plans. Teacher E responded that Principal Henry had hired her for that purpose. Teacher E, 2 Tr. 169.

121. Principal Henry submitted a list of six names to the Department's investigator, Terry Roy, which she represented were the teachers who administered the 2009 MCAS tests. Roy, 3 Tr. 10; Exh. 162. I find that more than six teachers were involved and that the list was an effort to contain and impede the Department's investigation.

122. The Department called Janet Henry as a witness. Apart from identifying herself, Principal Henry invoked her Fifth Amendment privilege against self-

incrimination and declined to answer questions posed to her. I find that the personal identification information that Principal Henry provided confirms that all the criminal records introduced into evidence involve Principal Henry. Henry, 3 Tr. 34-54.

123. I have not based any findings of facts on adverse inferences drawn from Principal Henry's invocation of the privilege against self-incrimination.<sup>7</sup>

**Board of Trustees and the 2009 MCAS Tests**

124. There is no direct evidence that the members of the School's Board of Trustees instructed Principal Henry or the Teachers to engage in misconduct in the administration of the 2009 MCAS tests.

125. Similarly, there is no direct evidence that the members of the Board of Trustees were informed about the misconduct by Principal Henry and the Teachers in the administration of the 2009 MCAS tests. Based on their testimony before me, I find that none of the Teachers spoke to members of the Board of Trustees about the MCAS test administration. See 2 Tr., passim.

126. The Department communicates with a charter school's principal, and through the principal with the teachers (test administrators), concerning the proper administration of MCAS tests. Viator, 1 Tr. 20. See also Exh. 174 (Principal's Manual), Exh. 174, App. B – App. I (Test Administrator's Manuals).

127. I find that the sheer number of people and the span of time involved is reason to doubt that the members of the Board of Trustees lacked any information about the way the MCAS tests had been administered. The 2009 MCAS tests were

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<sup>7</sup> For that reason, I have not ruled on the Department's and the School's contending legal arguments whether an adverse inference can be drawn against the School based on Principal Henry's invocation of the privilege against self-incrimination.

administered in two one-week periods with a one-month gap between the tests. On each occasion, 180 students were involved in the MCAS tests along with the teachers and administrators, backed by the students' families.

128. Chairman Walls said that he was "elated" when the MCAS scores became available in July. "I couldn't believe that we had done it in the first year." Walls, 5 Tr. 165-166. But some Trustees began to ask questions later, as people began to realize just how good the scores were. Alston, 9 Tr. 92.

129. I find that members of the Board of Trustees were remarkably reticent to inquire about the MCAS test administration after Commissioner Chester informed the School on September 14, 2009, that the MCAS results would be suppressed due to anomalies while the Department conducted an investigation. Exh. 84. When Principal Henry informed the Trustees about the Commissioner's letter at a regularly scheduled Board of Trustees meeting the next day, the sole response was an assurance by Fred Swan (who was then serving as the School's Development Director, not as a Trustee) that the Department would "look at all aspects of the data and this should not be a problem at all." 9/15/10 Trustee's Minutes, Exh. 175, page 340. The Board's posture continued unchanged until Mary Street contacted the Board's Chairman on November 23, 2009, as described further below.

130. The Board of Trustees did not contact Terry Roy, the Department's Manager of Investigations, as suggested in Commissioner Chester's September 14, 2009, letter (Exh. 84). There were, however, subsequent communications between Principal Henry and Mr. Roy about scheduling meetings that Principal Henry shared with the Board of Trustees. Walls, 5 Tr. 169-170; Exhs. 159,160.

131. Mary Street, the Director of the Department's Charter School Office, telephoned William Walls, Chairman of the School's Board of Trustees on November 23, 2009, to inform him that Principal Henry was at the Department's office in Malden, that the Department was initiating disciplinary action against Principal Henry for cheating on the 2009 MCAS tests, and that the School should secure Principal Henry's office, records, and computer. Walls, 5 Tr. 173-174; 11/23/09 Executive Committee Minutes, Exh. 175, page 344A.

132. At this point, the Board of Trustees responded by securing Principal Henry's office as requested by the Department and by placing Principal Henry on a paid administrative leave. Walls, 5 Tr. 174; 11/23/09 Executive Committee Minutes, Exh. 175, page 344A.

133. According to Chairman Walls, the Board had faith in the 2009 MCAS results based on (1) Principal Henry's performance and her assertion that the Teachers and students had worked hard, (2) use of the Marva Collins method, and (3) the services of Knowledge Points, a contractor. Walls, 5 Tr. 165. The surrounding constellation of facts is inconsistent with this explanation and gives cause to doubt the reason for the Board's inertia in light of the Department's investigation of the validity of the MCAS results. However, the evidence supports the assertion that the Teachers and students worked hard, since they devoted every Friday in the 2008-2009 school year to MCAS preparation. E.g., Teacher N, 2 Tr. 10.

134. Since the School had used the Marva Collins method since its original charter was granted in 1999, I find that cannot be the reason for the School's success on the 2009 MCAS results, after a failing effort on the 2008 MCAS tests. See, e.g., Exh. 1,

page 4 (charter application); 6/28/08 Board Retreat Minutes, Exh. 175, pages 292 (“None of our classes met the 100% proficiency goal.”). None of the Teachers who testified referred to the Marva Collins method. See 2 Tr., passim.

135. Knowledge Points was engaged to provide after-school instruction at the School beginning in calendar year 2009, or shortly before the MCAS tests began. Allston, 9 Tr. 89. If the School had engaged Knowledge Points at the beginning of the 2008-2009 school year there might be some reason to believe that this additional input improved the MCAS scores. In addition, there is no evidence of the type or quantity of services that Knowledge Points provided or how many students participated. Consequently, I do not find that Knowledge Points’ engagement is sufficient reason to support the 2009 MCAS results.

136. The Board of Trustees had been quite slow to implement the Knowledge Points after-school program. As stated earlier, the School hired Knowledge Points to provide the required supplemental educational services to its students because it had failed to meet the AYP standard under the No Child Left Behind law. See Exh. 80; Walls, 5 Tr. 165-166.

137. Knowledge Points first made a presentation to the Board at its September 25, 2007, meeting. Exh. 175, page 248. Knowledge Points was placed on the Board’s agenda for October 16, 2007, but it was not discussed. Exh. 175, pages 253, 254. It was not until calendar year 2009, that Knowledge Points began to provide services to the School. Allston, 9 Tr. 89, Walls, 5 Tr. 165. The Knowledge Points presentation in September 2007 came immediately after the Board’s discussion of the School’s “very

disappointing” 2007 MCAS scores at the August 2007 Board retreat. Exh. 175, page 244.

138. Persistent teacher turnover is another reason to question the Board of Trustee’s faith in the reported improvement in the 2009 MCAS scores. The School experienced 44% teacher turnover in the 2007-2008 school year, so it entered the 2009 MCAS testing period with a substantial number of new teachers. The teacher turnover in prior years was 50% in 2006-2007, 38% in 2005-2006, and 47% in 2004-2005. Exh. 72, page 16 (Department’s Dec. 2008 Summary of Review, reporting data from the School’s charter renewal application).

139. The high teacher turnover bracketed the AYP academic progress condition that the Department placed on the charter renewal in January 2009 (Exh. 74) and the School’s failure to meet the AYP standard in the aggregate for the two prior school years. Exh. 81.

140. The Board’s relationship with Janet Henry is another reason to regard with skepticism the belief that her effort produced the School’s 2009 MCAS scores. Ms. Henry had been the School’s Vice Principal at the time of the School’s unsuccessful performance on the 2008 MCAS tests. Thus, I find that her presence for the 2009 MCAS tests is insufficient reason for the Board of Trustees to believe that the School attained a significant performance increase on the 2009 MCAS tests.

141. After the disappointing 2007 MCAS scores, the Board of Trustees called for an “Improvement Plan.” 8/25/07 Board Retreat Minutes, Exh. 175, page 244. Then-Principal Seay and then-Vice Principal Henry jointly presented the improvement plan to the Board of Trustees at its December 18, 2007, meeting. Exh. 175, page 257. The improvement plan is blandly general. It states that students who fail MCAS need more help and if their poor performance persists, the

School should “explore the idea of getting in more help to bring them up to speed before this year’s [2008] testing.” There is no evidence that the School got more help for its students until it hired Knowledge Points shortly before the 2009 MCAS tests.

142. The December 2007 improvement plan also stated that teachers need “more training in how to administer the MCAS,” and that teachers should “encourage the children to work carefully and take what extra time they have to check over what they have written.” Exh. 175, page 257. There is no evidence that the School provided additional teacher training until the Department assumed responsibility for the 2010 MCAS test administration at the School

143. The December 2007 improvement plan did not produce satisfactory results on the 2008 MCAS tests. See Exhs. 79, 82.

144. I find that the School’s administration of the 2009 MCAS tests is consistent with, and flows from, the terms of the December 2007 improvement plan endorsed by the Board of Trustees. Teachers were given incorrect instructions or training in how to administer the 2009 MCAS tests and they were told to actively intervene during the student test-taking. The School implemented this approach after it failed to satisfy its AYP target on the 2008 MCAS tests and the Board imposed the academic progress condition on the 2009 charter renewal.

#### **Bonuses and Employment Contracts**

145. The salary and contractual history between Janet Henry and the Board of Trustees is another reason for doubt.

146. At the August 2008 Board of Trustees meeting, Janet Henry had been given a \$5,000 raise plus a 3% merit increase and a one-year contract in her then-role as Vice Principal. Principal Seay was not given a raise then or at any time during the two years

that he served as Principal. 8/19/08 Trustee Minutes, Exh. 175, page 304; 3/6/09 Trustee Minutes, Exh. 175, page 319.

147. Janet Henry took a maternity leave in February 2009. After she returned from her maternity leave, she was promoted from Vice Principal to Interim Principal in March 2009 to replace Principal Seay, who had tendered his resignation in January 2009. 1/27/09 Trustee Minutes, Exh. 175, pages 315, 316; 2/6/09 Executive Committee Minutes, Exh. 175, page 318; 3/6/09 Trustee Minutes, Exh. 175, page 319.

148. In March 2009, Henry received an additional \$3,000 salary increase for her 90-day appointment as Interim Principal. 3/24/09 Trustee Minutes, Exh. 175, page 322. The position was not posted externally before Ms. Henry was selected for this position. Alston, 9 Tr. 44. The 2009 MCAS tests began one week later.

149. In November 2009, the Board gave Principal Henry a \$5,000. bonus due to the 2009 MCAS results. 11/17/09 Trustee Minutes, Exh. 198, page 1 (“for the excellent job in moving her staff towards excellent scores in the MCAS and teacher retention.”); Teacher O (business manager), 2 Tr. 267, 270. (I note that the minutes of this meeting were not included in Exhibit 175, the Board of Trustee meeting minutes produced by the School. Instead, they were identified (and later produced) by Teacher O during her testimony. See 2 Tr. 279, 297.

150. When the Trustees awarded this \$5,000 bonus to Principal Henry, they had known since Commissioner Chester’s September 14, 2009, letter that the Department was investigating anomalies in the 2009 MCAS results and that the matter was still unresolved. Walls, 5 Tr. 46. The October minutes expressly refer to the fact that the

School is “still waiting for feedback from the Department” and that “our MCAS scores has [sic] not yet been released.” 10/27/09 Trustee Minutes, Exh. 175, page 343A.

151. In May 2009, the Board of Trustees delegated to the Personnel Committee and Executive Committee the task of determining Janet Henry’s status at the end of her initial 90-day appointment as Interim Principal. 5/19/10 Trustee Minutes, Exh. 175, page 329. The Personnel Committee, then chaired by William Walls, prepared a written report that recommended that Henry be appointed Principal and Chief Executive Officer, effective June 5, 2009. The salary was \$90,000 per year under a multi-year renewable contract, with provisions for “financial recognition of meritorious service, especially in the area of MCAS scores.” Exh. 175, page 364.

152. The Board’s delegation proved to be far-reaching. In the same report, the Personnel Committee appointed Fred Swan to a new position as a full-time Development Officer for \$79,000 a year under a renewable multi-year contract with “provisions for the financial recognition of meritorious service.” Exh. 175, page 364. Mr. Swan was Mr. Walls long-time friend and his sponsor as a Trustee, as well as the husband of one Trustee (Lorraine Swan) and the brother-in-law of another Trustee (Norma Baker). Walls, 5 Tr. 7-9. The position was not posted. Walls, 5 Tr. 31. The Personnel Committee was aware that Mr. Swan had a recent criminal conviction for a financial crime, but it did not request a CORI check. Walls, 5 Tr. 35-36.

153. In the same report, the Personnel Committee also appointed Tina Pimpare as Curriculum Coordinator for \$48,000 per year under a one-year contract as an at-will employee. Exh. 175, page 364. Ms. Pimpare had been serving in this role since Principal Seay’s resignation earlier in 2009.

154. The employment contract between Principal Henry and the Board of Trustees is also irregular. A written contract was drawn up in June 2009 when Janet Henry was named Principal, but the contract was not executed by the School. Walls, 5 Tr. 27-28. See Exh. 89 Attachment (contract). The two-year contract stated that it commenced on June 5, 2009. *Id.* At the same November 2009 Board of Trustees meeting that awarded Principal Henry a \$5,000 bonus for her MCAS performance, the Board moved to “accept Ms. Henry’s contract with RMH [the School]” that had never been signed. The Trustees stated that they would review the contract and sign it at their next meeting. 11/17/09 Trustee Minutes, Exh. 198, page 1.

155. The timing surrounding the contract execution stands out. The contract was not signed in June 2009 when Henry was named Principal. At that point the School did not yet have the preliminary MCAS results. The contract was not executed in September 2009, at the Board’s first meeting for the new school year, when the preliminary MCAS results were available. At that point the Trustees had just learned that the Commissioner had suppressed the MCAS results while the anomalies were under investigation. The Department’s pending investigation might have been good reason to delay further the execution of the contract, but the Trustees moved to execute the contract in November 2009 when, as noted earlier, the MCAS results were still under investigation. At the same time, as noted earlier, the Trustees also approved a \$5,000 bonus to “reward our Principal for her efforts.” 11/17/09 Trustee Minutes, Exh. 198, page 1.

156. I find that the combination of financial rewards and contractual insecurity in what the Trustees recognized was a “crisis year for getting our scores up” effectively bound Janet Henry to the Board of Trustees during the 2009 MCAS tests and later during

the Department's investigation of the MCAS results. See 11/17/09 Trustee Minutes, Exh. 198, page 1. In addition to the AYP academic success condition that the State Board imposed in the January 2009 charter renewal, the Trustees were aware that the recent Mass. Mutual grant to the School was tied to improved MCAS scores. Walls, 5 Tr. 15.

157. I also find that the Board of Trustees' failure to provide employment contracts or salary guidelines for its teaching staff effectively created the culture in which there was widespread misconduct in the administration of the 2009 MCAS tests. See Chasen Report, Exh. 98, page 5.

158. I do not credit the Personnel Committee's report that as part of its evaluation of Janet Henry for her appointment as Principal it sought comments from parents and teachers. See Personnel Committee Minutes, Exh. 175, page 363. The first reason is that Mr. Walls, who was then the Personnel Committee chairman, testified that no evaluation of Janet Henry was performed. Walls, 5 Tr. 22.

159. In addition, all of the Teachers who testified for the Department and the teachers, parents and PTO President who testified for the School expressed reservations about Principal Henry. See 2 Tr., passim; 9 Tr., passim; 10 Tr., passim. The Personnel Committee was acting in June 2009 -- after the MCAS tests had been administered -- so that the actions that are central to this proceeding had taken place. The School's subsequent internal investigation had no difficulty obtaining information about Principal Henry and the administration of the MCAS tests in short order. See Chasen Report, Exh. 98, passim. Although I realize that people may have felt freer to criticize Principal Henry after she was fired, it is still true that teachers who spoke up knew that their continued employment was at risk. See, e.g., Chasen Report, Exh. 98, page 1 (Trustees still have

not identified the teachers); Walls, 5 Tr. 62 (“still haven’t received any concrete information as to the six people that are implicated.”).

160. I also find that the Board of Trustees either knew or should have known that \$500 bonuses were being paid to Teachers by Principal Henry -- with the participation of the School’s other administrative personnel -- in the Fall 2009 while the Department’s investigation was pending. At the September 15, 2009, Board meeting Principal Henry stated that the Trustees had voted “some time before” to give “lead teachers” a \$500 increase due to teacher retention and MCAS scores, but this predates the \$500 bonuses paid during the Department’s investigation after this meeting to all teaching staff (not just lead teachers) that administered the 2009 MCAS tests. 9/15/09 Trustee Minutes, Exh. 175, page 340. It was during this meeting that members of the Board were informed about the Commissioner’s September 14, 2009, letter suppressing the MCAS scores pending and investigation. Id.

#### **Teaching Staff and Assignments**

161. The School’s teaching staff and the shifts in teaching assignments are yet another reason to treat the Board of Trustee’s faith in the 2009 MCAS scores with skepticism.

162. The problem of teacher turnover coupled with uncertified teachers and shifting classroom assignments persisted into the 2008-2009 school year when Janet Henry was responsible for hiring and teaching assignments, first as Vice Principal and later as Interim Principal. Consequently, I find that the Board of Trustees could not have believed that an improvement in staffing was the basis for an improvement in the 2009 MCAS results.

163. The School experienced a 47% teacher turnover in the 2004-2005 school year, 38% in the 2005-2006 school year, 38% in the 2006-2007 school year, and 44% in the 2008-2009 school year. I base this finding on data from the Department's December 2008 Summary of Review. Exh. 72, page 16.

### **Trustees' Accessibility**

164. Throughout the evidentiary hearings, the School asserted that photographs of the members of the Board of Trustees were posted at the School as its way of emphasizing that the Teachers could have reported Principal Henry's directives on how to conduct the 2009 MCAS tests. See, e.g., Walls, 5 Tr. 99-100; 2 Tr., passim (School's cross-examination of Teachers). The repetitive passivity of this assertion without any further evidence of a connection between the Trustees and the teachers lends support to the teaching staff's lack of familiarity with the Board of Trustees and, more importantly, to their belief that they could not complain to the Board of Trustees. See, e.g., Teacher R, 2 Tr. 116 (Henry made it "very, very clear you don't go to anybody but her. You do not contact the Board of Directors."). In 2008-2009, the year at issue, the Board did not have either a parent or a teacher representative or liaison on the Board.

165. Two events that are separate from the MCAS tests support the teachers' sense that approaching the Board of Trustees was likely to be either futile or damaging to their employment. In one event, Principal Henry objected that Chairman Walls instructed her in the Fall 2009 that she was not to inform the Trustees that she had discovered that Norma Baker (more accurately, School Street Properties) was the School's landlord. Teacher H, 3 Tr. 157-159. In another event in late 2009, Fred Swan (who was then the interim principal) reprimanded Teacher H (a member of the administrative staff) for

forwarding a parent complaint about Mr. Swan and Teacher J to Chairman Walls. The parent had lodged a complaint about Mr. Swan and Teacher J. Teacher H was informed that she should not communicate with the Trustees again or attend Board meetings, although that had been part of her job assignment. Teacher H, 3 Tr. 127. A more appropriate organizational structure would make clear that such a complaint about the principal should be referred to someone other than the principal.

166. The teaching staff does credit Chairman Walls with being more visible and accessible within the School, but only after Principal Henry was fired and the School's future was pending before the State Board in December 2009 and January 2010. Teacher Q, 2 Tr. 135. Some teachers were acquainted with Amy Hughes (widow of the School's namesake and Trustee) because she would sometimes participate in arranging and attending School events. Teacher N. 2 Tr. 51-53.

## **VIOLATION OF THE 2009 RENEWAL CONDITIONS**

### **Academic Success (AYP) Condition**

167. The State Board, as stated earlier, made the School's achievement of the Adequate Yearly Progress (AYP) standard in 2009 and 2010 in ELA and Mathematics a condition of the School's 2009 charter renewal. Exh. 74 (Condition 1(b)).

168. The Department's decision to invalidate the School's 2009 MCAS results for misconduct in the administration of the ELA and Mathematics tests means that the School cannot achieve the State Board's AYP charter renewal condition for 2009. This result follows from the fact that the Department relies on the MCAS results to measure the AYP standard imposed by the federal No Child Left Behind law. Pakos, 1 Tr. 195, 197; Viator, 1 Tr. 128; Street, 8 Tr. 107.

169. Because the School's 2009 MCAS scores were invalidated, the Department has withdrawn its Preliminary 2009 AYP report for the School (Exh. 81), which was based on the MCAS scores before they were first suppressed and then invalidated. No final 2009 AYP report will be issued. Pakos, 1 Tr. 195.

170. There is no "make up" MCAS test (except for tenth grade students who must meet the high school graduation requirement). The Department has not re-administered a test in the many years that MCAS tests have been given. Viator, 1 Tr. 161.

171. The Department uses a Composite Performance Index (CPI) as a summary data reference point to measure a school's AYP status. Viator, 1 Tr. 127; Pakos, 1 Tr. 179-180.

172. CPI is based on a four-factor formula. For grades 1 through 8, the formula is A (Participation – did 95% of students take the MCAS test) + B (Performance – did student group meet or exceed the State performance target) OR C (Improvement – did student group meet or exceed the improvement target) + D (Attendance – did student group meet 92% school attendance). See Exh. 82. Under the CPI formula, a school must satisfy A and D and either B or C in order to satisfy the AYP standard. Pakos, 1 Tr. 181, 184-185.

173. The School satisfied parts A and D of the CPI formula for the 2008-2009 school year. See Exh. 81. It did not satisfy either part B or part C because the 2009 MCAS test results are required to calculate both B (Performance) and C (Improvement). Pakos, 1 Tr. 195-197.

174. The Department determines a school's "Improvement" goal for the current year based on each school's CPI from the prior year. The "Improvement" goal is unique to each school (or public school district, a measure that is irrelevant for charter schools). Pakos, 1 Tr. 183-184.

175. The "Performance" goal requires that a school meets or exceeds the annual academic performance target (a specific CPI score) originally set by the Department in 2003 as required by the No Child Left Behind law. Pakos, 1 Tr. 182-183.

176. The gist of the CPI index is that it measures annual progress (for a student and for a school) toward the federal No Child Left Behind requirement that all students test "Proficient" by 2014 in ELA, Mathematics and Reading. Pakos, 1 Tr. 176, 179.

177. Under the CPI, a score of 100 is given to students who test scores rank them as either "Advanced" or "Proficient." The amount of improvement that a school must make yearly is based on the difference between its current index and the 100 point goal, divided by the number of years between the current year and 2014. Pakos, 1 Tr. 183-184.

178. The Department's 2008 AYP Data Report contains the School's performance data for both factors B (Performance) and C (Improvement) for the 2007-2008 school year. Exh. 82; Pakos, 1 Tr. 183. The School does not have an adjusted AYP baseline for the 2008-2009 school year because the 2009 MCAS results were invalidated. Pakos, 1 Tr. 195.

179. MCAS test results are not yet available for 2010. Barring any unanticipated information, the Department would have confidence in the reliability of the School's 2010 MCAS results because the Department sent monitors to the School to oversee the MCAS testing and because many teachers from the School attended formal MCAS test

administration training that the Department provided in Springfield. Viator, 1 Tr. 82, 163-165. See Exh. 105.

180. The CPI and AYP are calculated on an annual basis, using data from consecutive years. Pakos, 1 Tr. 200.

181. It is apparent from the text of the 2009 charter renewal condition that the State Board intended that the School demonstrate adequate progress from its 2008 MCAS test results on the 2009 MCAS tests. See Exh. 74 (Condition 1(b)). The School has not made that demonstration.

182. Nevertheless, it would be “theoretically” possible to measure the School’s improvement using data from the 2008 and 2010 MCAS tests. Pakos, 1 Tr. 201. Further progress in 2010 was specified as a second AYP measure point in the State Board’s 2009 charter renewal conditions. See Exh. 74; Street, 8 Tr. 107 (condition was that School would meet AYP in 2009 and 2010).<sup>8</sup>

183. Even though the School did not meet the ELA AYP standard for the 2007-2008 school year (based on the accepted 2008 MCAS results), its “Proficient” score for all grades (45) was nearly as good as the score (50) for all public schools in

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<sup>8</sup> Mary Street, the Department’s Charter School Director, also testified in response to a question posed by the School’s lawyer concerning the calculation of AYP using MCAS scores from 2008 and 2010. I reproduce Ms. Street’s answer in full:

A. I agree with Mr. [Pakos] that, theoretically, you could take any two years of scores and calculate something that might resemble AYP. It’s called adequate yearly progress because it’s an annual calculation. Without annual scores, I do not believe it’s possible to calculate AYP.

Theoretically, which is the word he [Pakos] used in his testimony, it could be calculated. Actually, I don’t believe that the Department would do that. That’s what I believe.

Street, 8 Tr. 110.

Massachusetts. Exh. 77 (final page). Although the scores vary from grade-to-grade and from rank-to-rank, Ms. Viator generalized that overall the School performed as well, and in some cases better, than the state average. Viator, 1 Tr. 147. I cannot, based on the evidence presented, explain the significance of a score of 45 versus a score of 50.

184. The State Board's January 2009 charter renewal also stated that academic progress could be shown by "providing evidence that, by 2010, the school has met academic growth targets" in ELA and Mathematics "as established by the Department of Elementary and Secondary Education." Exh. 74 (Condition 1(a)).

185. No evidence was offered by either party on Condition 1(a). Consequently, I must conclude that the alternate academic success condition has not been satisfied.

186. Katherine Viator explained that an "MCAS alternate assessment" refers to the "alternative way that students with severe cognitive disabilities participate in the MCAS program." Viator, 1 Tr. 102.

187. For the 2009 MCAS tests, the Preliminary AYP Data report shows that 8 Special Education students were enrolled at the School but that they were not assessed on the ELA or Mathematics tests. Exh. 81.

### **Governance Conditions**

188. I find that the School has satisfied the governance conditions that the State Board imposed in the January 2009 charter renewal.

189. Condition 2 required that the School comply with "term limits" for its Trustees and that the School maintain the minimum number of Trustees required by its Bylaws. Condition 3 required that the Board of Trustees recruit, elect, and secure the

Department's approval for new Trustees with educational and financial expertise. Exh. 74.

190. Nine new members joined the Board of Trustees in 2009 (Isaac Williams, Sophia Jeffrey, Amaad Rivera, Ernest Washington, Dale Parker, John Johnson, Andrew Robinson, William Baymon, and William Strother). The Department approved the new trustees on May 7, 2009. Exh. 199 (Department's list). See also Walls, 5 Tr. 94 (describing qualifications of new trustees).

191. Four founding members resigned from the Board of Trustees in mid-2009, all of whom had served as trustees since 1999 (10 years) (Norma Baker, Rance O'Quinn, Candice Lopes, and Carol Moore-Cutting). Exh. 199 and Exh. 72, page 13.

## **THE TRUSTEES' GOVERNANCE OF THE SCHOOL**

### **Overview**

192. A charter school's board of trustees hold the charter for the school and are responsible for governing the school. Lichtenstein, 7 Tr. 19.

193. Since its inception, the School has experienced a high rate of turnover in its principals and teaching staff and, conversely, has experienced little change in its Board of Trustees until recently, leading to disputes with the Department over adding Trustee term limits provisions to its bylaws. I will make additional findings on term limits and the Board's membership later.

194. The School has had 11 principals in its 11 years of operation. The most recent principal, Dr. Joelle Jenkins, was hired in January 2010 to replace Principal Henry. Jenkins, 10 Tr. 123, 170. Her predecessors as principal are: Bobbie Rennick (1 month in

1999), Bryant Robinson (one year), Henry Payne (asked to leave after 4 months in 2000), English Bradshaw (resigned after 4 months in 2001), O'Rita Swan (2 ½ years, hired with two aunts – Norma Baker and Lorraine Swan -- on Board of Trustees), Douglas Greer (2 ½ years as interim principal and principal until July 2006), Marlina Duncan and C. Sterling Davis (7 months as interim co-principals), Joseph Seay (2 years ending January 2009), Janet Henry (9 months as interim principal and principal), and Fred Swan (2 months as interim principal). Exhs. 28 and 175, pages 84, 136, 189. See also Street, 4 Tr. 153-155.

195. The School has experienced a “significant amount of teacher turnover.” Exh. 72, page 15 (Department’s Dec. 2008 Summary of Review). The Department’s year seven, eight and nine site visits found that most teachers were new to the School, many lacked prior training or experience in education, and a majority did not meet the highly qualified teacher (HQT) standard required by the No Child Left Behind law. *Id.* I will make additional findings on the teaching staff below.

196. In addition to the need to introduce new members with energy and ideas (an issue faced by many organizations), the Board of Trustees over the years has faced a number of related party, financial disclosure or conflict of interest issues in its membership. I will also make additional findings on some of these issues.

197. The Board of Trustees meets monthly (with rare exceptions), has good attendance at its meetings, and keeps regular minutes of its meetings. See Exh. 175 (Trustee Minutes).

198. The Board of Trustees has five standing committees (Executive, Finance, Personnel, Facilities and Operations, and Education Policy). 3/1/10 Trustee Minutes, Exh. 175, page 360.

199. The School appears to have adequate financial resources, as I stated earlier, and Dr. Jenkins (the new principal) anticipates another surplus this year. Jenkins, 10 Tr. 168-169. I note that while the School sought to offer testimony concerning budget and financial oversight by the Trustees, it did not present any monthly or quarterly financial statements that would enable the Board of Trustees to monitor revenue and expenses. Walls, 5 Tr. 106-119. Consequently, I am unable to make any finding of the sufficiency of the Board's budget oversight.

### **Teaching Staff**

200. The School has a young, inexperienced teaching staff. For example, of the 11 teachers interviewed during the School's internal investigation in January 2009, 9 teachers were described as young and inexperienced and 7 of them had never taught before. Only half of the teachers were licensed. Chasen Report, Exh. 98, pages 3, 6.

201. The Department's year seven, eight, and nine site visits to the School reached a similar conclusion: most teachers were new to the School, a majority did not meet the Highly Qualified Teacher qualification, and many teachers had not prior education training or experience. Exh. 72, page 15.

202. Only 2 teachers who were at the School in July 2006 when Douglas Greer resigned as the School's principal still work at the School. Greer, 8 Tr. 193-194.

203. In the 2008-2009 school year only 18% of the teachers were rated as Highly Qualified Teachers (HQT) under the federal No Child Left Behind law. By comparison,

96% of the teachers in the average Massachusetts public school in that school year were HQT. Lynch, 4 Tr. 17, 28.

204. The School's HQT in 2008-2009 (when the invalidated MCAS tests were administered) declined from 2007-2008, when 23% of the teachers were HQT. Lynch, 4 Tr. 28.

205. Since the School receives federal Title I funding, all of its teachers were required to be rated as Highly Qualified Teachers by the end of the 2005-2006 school year, deadline that was later extended to June 30, 2007. Lynch, 4 Tr. 12, 24.

206. Simone Lynch, who is the Teacher Quality Team Leader in the Department's Office of Educator Policy and Preparation and who has worked at the Department for 16 years, described the School's 18% HQT as "low." Lynch, 4 Tr. 6-7, 37.

207. The gist of HQT qualification is a teacher's demonstration of subject-matter competency in the core subject area(s) that he or she teaches. The qualifications differ somewhat for public schools and for charter schools. Charter school teachers must either be certified to teach in Massachusetts or pass the MTEL examination (Massachusetts Tests for Educator License) within one year of their employment. Lynch, 4 Tr. 11-12; Street, 4 Tr. 50-51. See Exh. 167, page 34.

208. At its October 2007 meeting the Board heard complaints from parents about teacher attrition and the transfer of teachers to new classrooms. 10/16/07 Trustee Minutes, Exh. 175, page 254. The parent complaints came shortly after the August 2007 Board retreat discussed the disappointing 2007 MCAS scores and the need to get the School's teachers certified. 8/25/07 Board Retreat Minutes, Exh. 175, page 244.

209. The parent complaints about teacher turnover were supported just two months later by a Department report that 15 out of 20 faculty members had been hired in the past two years. Exh. 22, page 16 (Year Nine Site Visit Report (Dec. 2007)).

210. Teacher turnover was 47% in the 2004-2005 school year, 38% in 2005-2006, 50% in 2006-2007, and 44% in 2007-2008. Exh. 72, page 16 (Department's Dec. 2008 Summary of Review, based on School's charter school renewal application). I find that teacher turnover over these four years averaged 45%.

211. In April 2008, Vice Principal Henry sent a memorandum to the Board of Trustees that attached a list of the teaching staff and their certification. I find that only 5 of the 18 teachers were certified (28%). Exh. 175, page 279.

212. The evidence about teacher hiring for the 2008-2009 school year is incomplete, but it is not a portrait of success. Of the 7 classroom teachers who testified as Department witnesses, 5 were in their first year at the School and only 2 were licensed. 2 Tr., passim. Of the 3 teachers who testified as School witnesses, all were in their first year at the School and 2 were licensed. 9 Tr., passim.

213. I find that the Teachers who testified for the Department were also teaching outside the area of their undergraduate or graduate school degrees or license and their teaching assignments were often switched during the 2008-2009 school year:

- Teacher N – hired by Vice Principal Henry for 2008-2009 school year, preliminary license as language arts teacher, B.A. in theater and modern dance, M.A. in theater, middle school science teacher when he testified, originally hired as full-time substitute teacher, started in 8<sup>th</sup> grade where he worked with special education students, switched to 6<sup>th</sup> grade, switched

- Teacher T – Hired by Vice Principal Henry for 2008-2009 school year, licensed for Elementary Education (grades 1 – 6), B.A. Business Administration, M.A. Elementary Education, hired for 2d grade, placed in middle school (ELA teacher for grades 6, 7 and 8) the week before School started. 2 Tr. 73-75.
- Teacher R – hired by Vice Principal Henry for 2008-2009 school year as paraprofessional, not licensed, does not have B.A., or Associates Degree, worked with special education students (IEPs and 504s). 2 Tr. 104-105.
- Teacher Q – Hired by Vice Principal for 2007-2008 school year, licensed for Social Studies, grades 5 – 12, B.A. in Communications and History, teaching middle school Social Studies at time of testimony, teaching middle school Science in 2008-2009 school year with no science training. 2 Tr. 119- 122
- Teacher E -- Hired by Vice Principal Henry in March 2009 (right before MCAS tests), not licensed (received license for Elementary Education, grades 1 – 6 in March 2010), B.A. Fine Arts, pursuing M.A. degree, told she was hired as 2d grade teacher but assigned to be Special Education aide and worked as a paraprofessional. 2 Tr. 148-150.

- Teacher F – Hired by Marlena Duncan (former Curriculum Coordinator) in February 2007 because teachers had left the School, not licensed (failed MTEL examination twice), B.S. in Criminal Justice (studying for M.A. in Education), taught Mathematics, Science and Social Studies in 2008-2009 school year. 2 Tr. 183-186.
- Teacher K -- Hired by Vice Principal Henry for 2008-2009 school year, not licensed, B.A. Elementary Education (reading concentration). Hired for Reading First program, library added as responsibility after hiring. 2 Tr. 229-231.

### **School's Lease**

214. In the Fall 2009, the Board of Trustees asked Principal Henry to gather information about the School's lease of the property at 91 School Street, which it has occupied for all but the first two years of its existence. The context was whether the lease should be renewed when it expired in a year as well as perceived limitations in the current facilities and a possible plan to seek to expand the School's enrollment from 180 students to 450 students. Exh. 175, 9/15/09 Trustee Minutes, page 341; 10/27/09 Trustee Minutes, page 343A.

215. Chairman Walls refused to let Principal Henry inform the Board of Trustees what she learned about the School's lease. Teacher H, 3 Tr. 157-159; see Walls, 5 Tr. 198-200. Immediately after she was fired, Principal Henry circulated a four-page letter entitled "Corruption in a Charter School" that included statements about the lease, among a number of other items. Exhibit 88 (dated 11/24/09). See also Exh. 88A (transmittal of

letter to Department with attached newspaper article concerning Fred Swan's 2007 criminal conviction).

216. In her "corruption" letter, Principal Henry alleged that members of the Board of Trustees profited from the rental of the property, stating that the School paid \$8,638.50 per month in rent, while the mortgage cost for the property was only \$5,326.12 per month. She alleged that SSP pocketed the \$3,312.38 difference. Exh. 88, page 2.

217. Norma Baker testified about the lease during the evidentiary hearings. Ms. Baker is a founding member of the School and a member of its Board of Trustees from its inception until June 2009, when she resigned due to the Trustee term limits condition in the 2004 charter renewal conditions that was negotiated with the Department over the ensuing years. Ms. Baker is the long-time Executive Director of Northern Educational Services (NES) and a self-described "principal" (i.e., officer or director) of State Street Properties, Inc (SSP). The other two principals in SSP are Rance O'Quinn and Henry Twiggs. Exh. 301 (Secretary of State certificate).

218. Ms. Baker, Ms. O'Quinn, and Mr. Twiggs all served on the School's Board of Trustees. Exh. 199; Baker, 6 Tr. 56; 7 Tr. 59-60.

219. In testimony that I found credible, Ms. Baker explained that SSP was formed as a nonprofit corporation to purchase the property at 91 School Street in Springfield when the School had to move from Cambridge College. At that time, the School could not get a bank mortgage and suitable rental properties were not available. SSP bought the property and NES guaranteed the mortgages. Baker, 6 Tr. 13-16, 33.

220. On August 7, 2001, the School and SSP entered into a lease under which the School paid rent in the amount of "1.1 times the monthly payment obligations" that SSP

paid to the mortgage holders. The lease was signed by only one person, E. Henry Twiggs, acting on behalf of both the School (as Trustee) and SSP (as President). Exh. 302; Baker, 7 Tr. 97-102. See also Exh. 63, pages 21-25

221. The State Auditor's Office subsequently investigated the terms of the original lease, among other items, acting on a referral by the Department in connection with the 2004 charter renewal conditions. See Exh. 57. The State Auditor, in a report dated August 3, 2005, concluded that the School's rent payments had been "inflated by [School Street Properties] over the past three years" -- the first three years of the original lease -- resulting in an excessive charge to the School in the amount of \$55,856. Exh. 63, pages ii-iii, 21-25, 29.

222. I adopt the State Auditor's findings concerning the excess lease payments under the original lease as my own findings. I note that the School's response to the State Auditor's findings was to claim that the excess payments were approximately \$39,000. Exh. 63, page 29. There is no evidence that the School ever sought to recover the excess rent payments, or that SSP repaid the excess to the School. See Baker, 6 Tr., passim; 7 Tr., passim.

223. I also note that Exhibit A, setting forth the terms of the mortgages that are the basis for the rent calculation is not attached to the original lease introduced into evidence (Exh. 302). Norma Baker represented that she had, and would produce, Exhibit A during the evidentiary hearings but she did not do so. Baker, 7 Tr. 103-106; 10 Tr. 227-228.

224. The State Auditor similarly reported in 2005 that SSP was "unwilling to share any documents with us relative to this matter." Exh. 63, page 21. In addition, the

State Auditor reported that the School itself stated that the “requested financial records [concerning rent payments] were unavailable.” Exh. 63, pages iii, 30-32. Chairman Walls, who worked for 20 years at the State Auditor’s Office, called his “buddies over at the auditors” who confirmed that they did not get the materials during their 2005 audit. Walls, 5 Tr. 185.

225. Immediately after the State Auditor’s Office issued its report, Norma Baker filed a Disclosure of Financial Interest as a Charter School Trustee that stated she was the School’s Treasurer and identified herself as a School Street Properties Board Member, but stated that she had “no financial interest” in SSP. Exh. 306; Baker, 6 Tr. 63.

226. On January 18, 2006, SSP and the School entered into an “amended and restated lease.” Exh. 304. The amended lease, like the original lease, does not set forth the amount of the School’s monthly or annual rent payment. Instead, the amended lease provided that the monthly rent would be “\$6.50 per square foot.” Exh. 304, ¶ 5 (page 2).

227. The lease was for a 10-year term, except that it was backdated to September 1, 2001 (the date that rent payments began under the original lease), so that the effective term is 5 years. The School has the option to renew for another 10-year term. Exh. 304, ¶¶ 3, 4, 5. Under the amended lease, the School must pay for utilities, taxes (if any), all structural and other repairs, including repairs to mechanical and utility systems, and insurance. Exh. 304, ¶¶ 6, 7, 8, 12. The School’s independent auditor agrees that the lease term under the amended lease ends on September 1, 2011. Exh. 219, page 13. See also 10/27/09 Trustee Minutes, Exh. 175, page 343A (in last year of lease).

228. The amended lease does not state how many square feet the premises contain. In a separate letter dated February 1, 2006, Norma Baker informed the School

that the monthly rent would be \$8,638.50 since SSP would charge for only 15,948 square feet and not the entire 28,884 square feet at the property. Exh. 305. The City of Springfield commercial property tax records state that the property contains 28,884 square feet. Exh. 303.

229. I find that the School is actually paying \$8,638.50 per month for rent. Teacher O, 2 Tr. 269. See also Baker, 7 Tr. 186 (“about \$8,600”). The School’s potential liability under the express terms of the amended lease that the Board of Trustees agreed to sign is much greater, however, due to the \$6.50 per square foot provision.

230. The Board of Trustees entered into the amended lease based on a presentation by “Norma Baker, representing School Street Properties.” The amount of the monthly rent is not stated in the Trustee minutes (except for \$6.50 per square foot), but the meeting minutes say that the School would be charged only for the building and not for the use of the grounds. Norma Baker left the room during the Board’s discussion. 1/18/06 Trustee Minutes, Exh. 175, page 165.

231. I find that the amended lease increased the rent from the original lease. Baker, 7 Tr. 186. According to Baker, the School paid SSP approximately \$7,700 per month under the original lease, and the School pays approximately \$8,600 per month under the amended lease. Baker, 7 Tr. 186.

232. I calculated the rent due under the original lease using the State Auditor’s report of SSP’s mortgage payments in FY 04 (July 1, 2003 – June 30, 2004). Exh. 63, page 22. SSP’s total for the three mortgages was \$71,538 per year, or \$5,961.50 per month. At 1.1 times the mortgage obligation (the original lease rate), the rent due is \$6,557.65 per month. (The State Auditor reports that SSP’s mortgage obligation varied

each year. The amount for FY 04 that I used is approximately \$20,000 more than FY 02 and \$8,000 less than FY 03.)

233. Although I cannot verify that SSP's costs for the School's premises were only \$5,326.12 per month as set forth in Janet Henry's "corruption" letter, her reported figure is in the proximate range of my calculation. See Exh. 88, page 2. Even though Ms. Henry's letter provides no supporting material or information (and she is not an impeccable source, given the context in which her letter was written), I also note that she correctly reported the amount of rent that the School was paying.

234. I find that SSP benefits from the School's rent payments under the amended lease. Norma Baker confirmed that periodically SSP would lend money to Northern Educational Services (NES) so that NES could cover its operating costs. Baker, 7 Tr. 174-178. Since the School is SSP's only source of revenue, I also infer that the School's monthly rental payments exceed SSP's costs. Baker, 7 Tr. 179.

235. Since NES benefited from the SSP loans, I infer that NES employees also benefited from the SSP loans, including Norma Baker as the NES Executive Director.

236. In addition, when Ms. Baker testified that SSP periodically transferred funds to NES, she said that the fund transfers were "usually a loan" but that "it isn't all the time." NES. The nature and extent of financial transfers that were not loans was not explained. Baker, 7 Tr. 175. I find that NES benefited when SSP transferred funds to NES that did not have to be repaid as loans.

237. I do not credit Ms. Baker's answer that "I don't know" if SSP also made payments to Fred Swan. Baker, 6 Tr. 56. Fred Swan is Ms. Baker's brother-in-law and a major figure at the School, where his wife (Ms. Baker's sister) also serves on the Board

of Trustees. Ms. Baker was typically confident and assertive when testifying about financial matters. She was also careful to point out that her financial disclosure forms do not require disclosures concerning in-laws. I therefore infer that SSP did make some payments to Mr. Swan.

238. I do not find that \$6.50 per square foot is an unreasonable rate to rent the School's premises. There is no evidence that the rate was unreasonable, and any reliable estimate of value would have to factor in all the other financial terms and relationships between the School and SSP that are not in evidence. The Board of Trustees apparently believed that the School's rental cost was less than other charter schools were paying. 11/18/06 Trustee Minutes, Exh. 175, page 165.

239. I find that SSP's costs are minimal. Ms. Baker testified that SSP pays a financial consultant to maintain SSP's records, since SSP has no employees. She also referred to an "insurance clause," but the amended lease requires that the School maintain and pay for insurance coverage. Baker, 7 Tr. 177-178; Exh. 304, ¶¶ 8, 12.

240. The rent payments under the current amended lease are an on-going unresolved issue that raises questions of the duty of loyalty that a Trustee owes to the School and Trustees' obligation not to benefit from financial dealings with the School. See Exh. 167, page 2 (Department's Governance Guide).

241. The principal concern arises from the fact that the amended lease is a related-party transaction, echoing the State Auditor's concerns about financial benefits to related parties under the original lease. See Exh. 63, pages 21-22. There is a close tie between NES, SSP and the School, including a requirement that NES have 2 representatives on the School's Board of Trustees. See Exh. 72, page 3.

242. In addition to the fact that all the SSP officers were members of the School's Board of Trustees, Lorraine Swan, another School Trustee, is Ms. Baker's sister and is married to Fred Swan. Although Ms. Baker abstained, her sister voted in favor of the amended lease on a roll call vote (4 trustees and then-Principal Greer voted yes, no votes against the amended lease). 1/18/06 Trustee Minutes, Exh. 175, page 165.

243. I find that the Board of Trustees have not inquired into Janet Henry's allegations about the School's lease (or her other allegations). See Walls, 5 Tr. 198-202. But see 11/25/09 Trustee Minutes, Exh. 175, page 357 (Fred Swan offered to answer questions from new trustees, who may have a "fiduciary responsibility to make inquiries into the veracity of Ms. Henry's allegations"). I recognize that the State Board's vote of intent to revoke the charter and the shift in School leadership means that this is a busy time for a volunteer board.

#### **Criminal Offender Record Information (CORI)**

244. Only after the Board of Trustees fired Principal Henry in December 2009 for her role in the MCAS tests did the Board learn that Ms. Henry had a criminal record. See Baker, 6 Tr. 108. The January 8, 2010, Executive Committee Minutes state that no CORI information was found in Principal Henry's personnel file after she was fired. Exh. 175, page 369. Since the Federal Bureau of Investigation (F.B.I.) did not execute its search warrant at the School's offices until February 19, 2010, the missing records are not the result of the F.B.I.'s actions. See Exh. 311 (search inventory).

245. In fact, Principal Henry has a fairly substantial record before the Massachusetts criminal courts when the School hired her in 2007, though most of the offenses are dated 1999 or earlier. See Exhs.137-143.

246. The School sought to explain its lack of knowledge about Ms. Henry's CORI record on the grounds that (1) Principal Seay was responsible for hiring her as Vice Principal in 2007, and (2) only later did the School learn that the School's Human Resources Manager was Ms. Henry's sister, but the School's Personnel Committee never reported back to the Board of Trustees whether a CORI check had ever been performed. Allston, 9 Tr. 45-46.

247. Nevertheless, it is clear that when the Board of Trustees promoted Ms. Henry in 2009 to act as Interim Principal and then as Principal, that the Board did not do a CORI check on Ms. Henry. A CORI check is not mentioned among multiple the steps that the Personnel Committee stated that it performed or reviewed part of its evaluation of Ms. Henry's fitness to be the School's principal, even though, as principal, she was hired by, and reported directly to, the Board of Trustees. 6/1/09 Personnel Committee Minutes, Exh. 175, pages 363-364. This was not a time-pressured event since, as noted earlier, Principal Seay tendered his resignation in January 2009 and Ms. Henry was not named as Interim Principal until March 2009 or as Principal until June 2009.

248. The Governance Guide that the Department prepares for charter school trustees and administrators states that a charter school "must conduct a criminal background check on all current and prospective employees, volunteers . . . and others who have direct and unmonitored contact with children before they are hired and at least every three years during their term of service," citing G.L. c 71, sec 38R and 603 CMR 1.05(2)(d). Exh. 167, page 33.

249. From the evidence in the hearing record, it is not clear if the School had a written CORI policy. The School did not maintain a log to track CORI requests and responses. 10 Tr. 192-195.

250. The evidence does establish that the Board of Trustees was aware of its responsibility to perform CORI checks. In February 2003, the Board adopted, at Norma Baker's request, a resolution that "we don't hire anyone or use any volunteers until we have completed a CORI on them." 2/19/03 Trustee Minutes, Exh. 175, page 47.

251. The CORI policy has not been administered consistently or properly. For example, Michelle Balanger, the current PTO President and former Vice President, testified that she had been a classroom volunteer at the School for 10 years, but that no CORI check had been performed on her. Belanger, 10 Tr. 95. Ms. Ballanger's name does not appear among the 43 names on the School's list of persons for whom it performed a CORI check. Exh. 315.

252. For the 2009-2010 school year, most of the names on the School's CORI checklist are dated 10/1/09, indicating that the CORI check was not done until after the school year began. See Exh. 315 (Aussant, Anderson-Lee, Barnes, Barrett, Basile, Calandruccio, Grant, Mann, Stern, Sullivan, Williams). For the 2008-2009 school year, many names are dated 10/23/09. Exh. 315 (Aleaxander, Lataille, Ringler, Wellington, Welner). Other names are dated in August 2008, indicating that they were checked before the school year began. Exh. 315 (Johnson, O'Strander).

253. Other employment information also confirms that the School did not request and obtain CORI checks before its employees started to work:

- Teacher N was hired in August 2008; the CORI request is dated 10/23/08.  
Teacher N, 2 Tr. 5.
- Teacher T was employed August 2008 – June 2009; no CORI request was made. Teacher T, 2 Tr. 73.
- Teacher R started on September 18, 2008; her CORI request is dated 10/1/09.  
Teacher R, 2 Tr. 104.
- Teacher E started in March 2009; her CORI request is dated 10/1/09. Teacher E, 2 Tr. 149-150.
- Teacher F started in February 2007; her CORI request date is unknown.  
Teacher F, 2 Tr. 184.
- Teacher A started in December 2006; his CORI request is dated 10/23/08.  
Exhs. 119 and 315.

254. In March 2010, the School’s new principal (Joelle Jenkins) dismissed an employee when, acting on a parent’s complaint, she found a criminal record in his personnel file. Jenkins, 10 Tr. 187-188.

255. For the two new teachers that Principal Jenkins has hired, the School made a CORI request before they started to work but did not receive a response until after they started to teach. Jenkins, 10 Tr. 222.

256. I find that the Board of Trustees did not do a CORI check on Fred Swan when it hired him as Interim Principal in December 2009 after Principal Henry was fired. A CORI check was not required when Mr. Swan served as a consultant or as Development Director because he did not have “direct and unmonitored contact with children” in either of those capacities. See Exh. 167, page 33. As Interim Principal, Mr.

Swan did have such contact. It was not enough that the Board was already aware of Mr. Swan's conviction for contract rigging, through newspaper stories or personal knowledge, as the Board had to do the required CORI check to make certain that there were no other criminal offenses in order to protect the School's children. See Alston, 8 Tr. 231-236.

257. I do not credit the School's reconstructed CORI list that includes Mr. Swan as "no date on document" for this purpose. Exh. 315. If a CORI check had been performed as recently as the events in December 2009, the approximate date would either be known, reflected in the Trustee minutes, or remembered by one of the witnesses. Chairman Walls testified that no CORI check was performed. 5 Walls 35.

258. The Board of Trustees did perform a CORI check when it hired Joelle Jenkins as principal in January 2010 to replace Mr. Swan. Alston, 8 Tr. 237.

259. In July 2008, the Personnel Committee determined that "all personnel files should be reviewed for completeness" and it reported its conclusion to the Board of Trustees later the same month. 7/11/08 Personnel Committee Minutes; 7/15/08 Trustee Minutes, Exh. 175, pages 295, 298. There is no evidence that the review was ever performed.

### **Trustee Term Limits**

260. The protracted struggle between the School and the Department over term limits for members of the Board of Trustees appears to have ended but for one disquieting sign. In May 2008, the Board, acting on a motion by Norma Baker and Buford Holloway voted to add an "emeritus" trustee position to the Board "for the founding members" of the School. 5/28/08 Trustee Minutes, Exh. 175, page 283. At that

time it was expected that the founding members, including Ms. Baker, would retire that year from the Board, but they did not do so for another year.

261. The one trustee who testified about the emeritus position recalled that it was presented as an advisory committee that would include community members, but the text of the motion does not support that interpretation. Allston, 9 Tr. 38. Nor can one tell from the text how many emeritus positions might be created or whether they would have voting rights. If the emeritus trustees were granted voting rights, I find that it is likely that they could effectively control the Board of Trustees.

262. In brief, the term limits debate derives from the bylaws that the School proposed with its original charter application that the original members of the Board of Trustees would serve until they resigned. Exh. 1, page 44. See also Exh. 1, pages 8-9, 20 (identifying founding members). Changing this provision was a condition of the State Board's 2004 charter renewal, and an agreement on three consecutive 3-year terms (9 years total) was slowly reached. Exh. 9 (Department's approval letter dated 3/23/07). See also Exh. 192 (former Commissioner Driscoll's September 2006 update to State Board).

263. At the same Board of Trustees meeting that adopted the "emeritus" trustee position, the Board unanimously approved the By-Laws Committee's proposal to provide that, "No Trustee may serve more than four consecutive terms." 5/20/08 Trustee Minutes, Exh. 175, page 283. Commissioner Chester, in a July 25, 2008, letter to Candice Lopes, then the Board's chairperson and herself a founding member, denied the request to adopt term limits (four consecutive 3-year terms, or 12 years total) that the

Department had rejected previously. Exh. 5. The Board's subsequent request for reconsideration was also denied. Exhs. 6, 7, and 72, page 13.

264. In June 2009, four founding members of the Board of Trustees (Norma Baker, Rance O'Quinn, Candice Lopes, Carol Moore Cutting) resigned, having served continuously since 1999 (10 years total). Exh. 199 (Department's trustee list); Exh. 72, page 13.

265. I find that it took over 5 years to achieve adoption and compliance with term limits by the Board of Trustees. The State Board first made term limits a condition of the 2004 charter renewal. Term limits were again conditions in the 2009 charter renewal. It was not until mid-2009 that the four founding members complied with the term limits by resigning from the Board of Trustees. See Exh. 190 (Commissioner Chester's 1/15/10 Memo to State Board).

266. I also find that under the term limits provision (three consecutive 3-year terms), as reported, the four founding members who resigned in mid-2009 would be eligible for nomination to a new term on the Board of Trustees in mid-2010.

267. Although new members have joined the Board of Trustees, several Trustees have identified ties to Northern Educational Services (NES), where Norma Baker is still the executive director. Shakeena Williams serves on the NES board of directors and has known Ms. Baker since she was the School's first business manager. John Johnson is the Chief Financial Officer at NES, where he has worked for 20 years, under Ms. Baker. Baker, 7 Tr. 62-64, 148.

268. Other current members of the School's Board of Trustees also have past ties to either the School or NES. William Strothers, who joined the Board in 2009, was the

School's computer consultant when the State Auditor's Office criticized the School's failure to use competitive bid procedures and the inferior quality of the equipment that was purchased. Exh. 63, pages iv, 41. Kim Alston, who joined the Board in 2007, was nominated by Ms. Baker after she acted as a realtor for NES, and she knew Fred Swan before she joined the Board. Her husband also formerly worked as the NES youth director. Alston, 8 Tr. 213; 9 Tr. 14-15, 24; Baker, 7 Tr. 142-143.

**Fred Swan**

269. Fred Swan is a founding member of the School, who has remained closely tied to the School though he is not a member of the Board of Trustees. See Exh. 199. Mr. Swan's wife (Lorraine Swan) and sister-in-law (Norma Baker) were both Board members until Ms. Baker resigned in June 2009 due to term limits. Walls, 5 Tr. 7-8.

270. I find that Mr. Swan exercises great influence over the School. One illustration is that Mr. Swan recruited his long-time friend William Walls to serve on the Board of Trustees, and Chairman Walls acknowledged that he relies on Mr. Swan's "take" on issues concerning the School. Walls, 5 Tr. 7-9, 13.

271. Mr. Swan most recently served as the School's Interim Principal after Janet Henry was first placed on a paid administrative leave and then fired in December 2009 until Joelle Jenkins was hired as Principal in January 2010.

272. In recent years, Mr. Swan has served as both a consultant and as a salaried Development Director at the School. The Personnel Committee hired him as a consultant in July 2007. 7/17/07 Trustee Minutes, Exh. 175, page 243.

273. As consultant, Mr. Swan worked on a fee-basis. Principal Seay refused to sign his invoices because he could not vouch for the information. Chairman Walls

acknowledged that the Board of Trustees approved payment of the invoices, but did not seek verification of the time charges. Walls, 5 Tr. 20-21, 132-136.

274. The 2007-2008 annual celebration dinner, a fund-raising event, was one of Mr. Swan's responsibilities as consultant. Mr. Swan reported that there was a slight profit on the dinner (\$1,200) and that "we didn't lose any money." 2/26/08 Trustee Minutes, Exh. 175, page 271. In fact, the dinner lost \$34,208. Exh. 219, page 6 (independent financial auditor's report). The Board of Trustees never obtained an accounting of the reasons for the loss. See Exh. 175, passim.

275. Members of the Board of Trustees were aware that Mr. Swan had been convicted in 2007 of a crime involving financial manipulation in a contracting situation. Walls, 5 Tr. 35-37. See attachment to Exh. 88A.

276. In December 2008, the Trustees voted to give Mr. Swan a 3% cost-of-living raise and to renegotiate his consulting contract in March. 12/11/08 Trustee Minutes, Exh. 175, page 314.

277. In March 2009 the Executive Committee appointed Mr. Swan to a full-time position as the School's Development Director at a salary of \$79,000 per year. 3/18/09 Executive Committee Minutes; 3/06/09 Trustee Minutes, Exh. 175, pages 319, 321. The position was not posted before Mr. Swan was hired. Walls, 5 Tr. 31.

278. When the Board of Trustees hired Mr. Swan as Interim Principal, it was a controversial decision within the School due to his criminal record. Walls, 5 Tr. 48-56. The following month the Board paid Mr. Swan a \$5,000 bonus for his work as Interim Principal. Walls, 5 Tr. 56; Alston, 9 Tr. 69-70.

279. Mr. Swan's accomplishments as Development Director were obtaining a \$20,000 grant from Massachusetts Mutual and spearheading the Springfield Coalition. He resigned from the School in mid-March. Allston, 9 Tr. 71.

## **THE SCHOOL'S REMEDIAL PLAN<sup>9</sup>**

### **Corrective Action Plan**

280. When then-chairman William Walls addressed the State Board as one of the School's representatives at its January 26, 2010, meeting, he asked the State Board to "accept an alternative proposal that would require the school's board of trustees to develop an acceptable corrective action plan within 90 days to demonstrate and ensure the school's viability. That plan would include a revised accountability plan and benchmarks." State Board Minutes, Exh. 189, page 3.

281. The School did not outline its corrective action proposal to the State Board at its January 26, 2010, meeting. Exh. 189, page 3. The School had known since December 14, 2009, that Commissioner Chester intended to recommend that the State Board revoke the School's charter. Exh. 188 (Commissioner's Memo to State Board). It had known since the November 23, 2009, telephone call from Mary Street to Chairman Walls that the Department was initiating license revocation proceedings against Principal

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<sup>9</sup> I note that remedial authority, including probation and remedial plans, is entrusted to the State Board's discretion and is beyond the scope of the Order of Reference to me as hearing officer. In the context of this case, however, I confronted the problem of assuring that some information is available to the members of the State Board if they wish to consider alternatives to charter revocation and (to a lesser extent) of addressing certain conclusions of law requested by the School. The Department's lawyers preserved their objection to the introduction of evidence after the State Board's January 26, 2010, vote of intent to revoke the School's charter on the ground that the evidence does not address the issue of "cause" under 603 CMR 1.13(1).

Henry for her misconduct on the 2009 MCAS exams and that the School should secure the building against Principal Henry. Walls, 5 Tr. 173. It had known since December 10, 2009, that the Department had permanently invalidated the School's 2009 MCAS scores. Exh. 90.

282. The State Board unanimously voted its intent to revoke the School's charter (effective June 30, 2010) without affording the School an opportunity to prepare a corrective action plan for future consideration by the State Board. Exh. 189, page 5.

283. Chairman Walls testified before me for a full day on Friday, April 2, 2010, at the end of the first week of evidentiary hearings, but his testimony did not include any reference to a corrective action plan. Walls, 5 Tr., passim. After the lawyers for the Department and the School had asked all their questions, I asked Chairman Walls if the Board of Trustees had adopted a corrective action plan. His response was that "the corrective action plan is work in progress which will include the replacement of teachers as well as the restructuring of the Board." He provided no further information. 5 Tr. 209-210.

284. On Wednesday afternoon, April 7, 2010, Kim Alston, a member of the Board of Trustees, testified before me. She said that the Board had deliberated on a "preliminary reconstruction plan." Ms. Alston stated tersely that the Board had developed options to "stabilize[]" the School so that it would function at a level of "high excellence" with a "academic plan" and "governance plan." She added that the Trustees were "looking at reconfiguring the board in a major fashion," without suggesting what that might entail. Alston, 8 Tr. 219.

285. On the final day of the evidentiary hearings (Friday, April 9, 2010), the School introduced the minutes of a Special Board meeting that had been held on Tuesday, April 6, 2010, through its new principal, Joelle Jenkins. Exh. 312. Principal Jenkins also stated that William Walls had resigned from the Board of Trustees earlier in the week, in the hope that it would encourage others to do likewise. Jenkins, 10 Tr. 204.

286. The School's Board of Trustees voted to adopt the "Preliminary Reconstruction Plan to be completed and put into action by mid-May." 4/6/10 Trustees Minutes, Exh. 312, page 2. Since the plan is short, I will attach a copy of it (Exh. 312) to my Initial Decision when it is transmitted to the State Board, rather than trying to summarize or characterize the preliminary plan. I do note that the preliminary plan gives 20% of the voting rights on the proposed 10-member Board of Trustees to Northern Educational Services (NES), the organization headed by Norma Baker who is a founding member of the School who resigned from its Board of Trustees in mid-2009 under the term limits on membership. Exh. 312, page 3.

287. Attached to the Preliminary Reconstruction Plan, marked as Exhibit 312A, is Spring Semester Plan of Action that Principal Jenkins prepared at the request of the Board of Trustees as part of her job interview process. It is a plan that Principal Jenkins has been implementing for the period February through June 2010. Jenkins, 10 Tr. 153, 156.

**Commissioner Chester's Recommendation to the State Board**

288. Throughout the evidentiary hearings the School objected to the recommendation that Commissioner Chester made to the State Board that it should vote its intent to revoke the School's charter. The recommendations are set forth in two

memoranda that the Commissioner sent to the State Board in December 2009 and January 2010 and his statements to the State Board at its January 26, 2010, meeting. Exh. 188 (12/14/09); Exh. 190 (1/15/10), 1/26/10 State Board Minutes (Exh. 189), and Exh. 101 (audio-video recording of the 1/26/10 State Board Meeting).

289. The Commissioner's written recommendations to the State Board speak for themselves. They provide a concise history of the School and the Commissioner's reasons for recommending that the charter be revoked. The Commissioner summarized his position during the colloquy with Board members before the vote:

Between the history of governance and now the widespread cheating, I do not have confidence that the board of trustees and the school management are ready to take this school where it needs to be. I believe that the adults in this case have systematically failed the students. It is for that reason that I [make] this recommendation to you.

Chester, 8 Tr. 79.

290. The Commissioner conferred with his senior staff before he made his recommendation to the State Board, and they considered whether probation was appropriate in this case under the charter school revocation regulation. The Commissioner decided that he would recommend revocation of the charter as the proper course. Street, 8 Tr. 105-106.

291. The Commissioner's written recommendations cited the charter school revocation regulation (603 CMR 1.13), and the General Counsel was present at the State Board meeting if the Board members wanted legal advice about the options available under the regulation. 8 Tr. 71 (Rhoda Schneider).

292. During the January 26, 2010 meeting, the Commissioner informed the State Board members about two possible alternative actions. First, the Commissioner said that

the Springfield Public School Superintendent was not inclined to absorb the school as a whole into the school district. Second, he said that some unnamed individuals had expressed interest in taking over the School, “but he did not see any authority to take the charter from the board of trustees that holds it and hand it off to a new board of trustees.”<sup>10</sup> State Board Minutes, Exh. 189, page 4.

293. During the evidentiary hearings, the School did not present a proposal for transferring the School to a new entity or a new board of trustees. Nor did the School present a proposal for the resignation of the current board of trustees or the reorganization of the School and its administration. There is no extant plan ready for consideration.

#### **Input from Parents and Teachers**

294. At the January 26, 2010, meeting, five individuals (Michelle Belanger, the PTO President, Fannerie Baymon, Olivia Walter, Kathryn Gibson, and Gerald Root) spoke to the State Board about the School. Two School representatives (Chairman William Walls and Development Officer Fred Swan) addressed the State Board and answered questions. The School’s new principal (Joelle Jenkins) and two staff members (Ronald Veins and Rev. Isaac Williams) also testified before the State Board. The School

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<sup>10</sup> The School asks that I rule, in essence, that the Commissioner’s quoted statement was erroneous. I decline to make a ruling because the request is hypothetical and premature since there is no indication in the hearing record that the current Board of Trustees wishes to transfer the charter granted to them to a third party and thus the Board of Trustees has not suffered prejudice by the Commissioner’s statement. I do not wish to risk exceeding the scope of my authority or intruding into the Board’s remedial authority on such a hypothetical basis, particularly where the State Board may confront a different situation under changed circumstances. See Exh. 3 (charter granted to the “Board of Trustees of the Robert M. Hughes Academy Charter School”). See also G.L. c. 71, sec. 89(ee) (Board may “revoke” a charter or place the school on “probationary status.”). Section 89(ee) was formerly sec. 89(kk).

also showed Board members a student videotape. State Board Minutes, Exh. 189, pages 3-5.

295. The School presented similar evidence before me, including testimony by Ms. Belanger, Chairman Walls, Principal Jenkins, and Rev. Williams who had addressed the Board. In addition, I heard testimony from four parents and five teachers that I have summarized below.

Lucinda Ealy (9 Tr. 98)

296. Ms. Ealy's grandson, who is in the fourth grade, has attended the School for two years. Her granddaughter is in kindergarten. Both children are precocious: her grandson has read all the Harry Potter books; her granddaughter is learning phonics and can distinguish vowels from consonants.

297. Her grandson had a negative experience in the Springfield public schools. She would not like for the children to return to the public school system.

298. The School has been a very positive experience. She has met and is impressed by the School's new principal.

299. There was a wait list when her grandchildren entered the School; she is not sure how they got in.

300. Ms. Ealy is a classroom volunteer. She was not asked to sign a CORI form. The School did not do a CORI check on her. See Exh. 315.

Brian Calandrucio (9 Tr. 117)

301. Principal Henry hired Mr. Calandrucio in June 2009, after the MCAS tests were administered, as the Academic Coordinator. He is not a licensed teacher. He

evaluated teacher classroom performance for Principal Henry and also mentors students. His CORI check is dated 10/1/09. Exh. 315.

302. He writes IEPs for special education students (approximately 12) though he lacks the qualifications for that job.

303. When Fred Swan was named Interim Principal to replace Ms. Henry, he was named the Academic Coordinator.

304. His prior employment is as an assistant lacrosse coach at a Florida college and as teaching aide in the pediatrics unit at a rehabilitation and nursing center in Massachusetts, where he worked with severely retarded children (ages 7-21).

Linda Tierney (9 Tr. 138)

301. Ms. Tierney started as a Kindergarten teacher at the School in Fall 2009, so she was not at the School during the 2009 MCAS tests. She is a licensed in Early Childhood Education.

302. Principal Henry hired her two days before she started to work after a five-minute interview in the School parking lot. The School has not done a CORI check on her. See Exh. 315.

303. She is passionate about her students and attributes her desire to teach to her mother, who loved her job as a teacher for 30 years.

304. She described Principal Henry as a “commander-in-chief,” and she was afraid to step out of her classroom into the hallway for fear that she would encounter Principal Henry. The School atmosphere was very negative under Principal Henry. Teachers were afraid of the camera and could not talk among themselves.

305. The atmosphere at the School is much more positive under the new principal, Dr. Jenkins.

306. There has been contact with members of the Board of Trustees since the MCAS scandal. Chairman Walls sometimes comes to Monday teacher meetings.

307. The MCAS scandal “makes me sad.” Teachers “see themselves as less.”

Daniel Stern (9 Tr. 154)

308. Mr. Stern is a licensed teacher, who started at the School in September 2009 (after the MCAS tests). He teaches 5<sup>th</sup> grade and mentors five students. Mr. Stern’s CORI check is dated 10/1/09. Exh. 315.

309. He is positive about the changes at the School under Principal Jenkins. The School was a “very constricted environment” under Principal Henry.

310. He does not know if Principal Henry answered to anyone. He learned about the Board of Trustees only after Principal Henry was gone.

Isaac Williams, Jr. (10 Tr. 5)

311. Rev. Williams served on the Board of Trustees for one month (August 2009) before he resigned because he was hired as the School’s Parent-Community Coordinator by Principal Henry. He was not present at the School during the cheating scandal. His CORI check is dated 10/1/09. Exh. 315.

312. He is the pastor of a local non-denominational church and a bishop in the church. He had B.S. (1981) and M.B.A. (1990) degrees.

313. He has two sons. One is in college, the other attended the School but he had moved to a private school and was not enrolled at the School during the 2009 MCAS tests.

314. Rev. Williams did not know Fred Swan, but he was impressed by his administrative abilities while he served as Interim Principal. Some people were relieved after Principal Henry left.

315. Principal Jenkins has integrity and energy. She is goal oriented and loves children.

Jennifer Bergendale (10 Tr. 40)

316. Ms. Bergendale's daughter in the 4<sup>th</sup> grade at the School, which she has attended since 2005. Her older child attends another charter school.

317. She likes the fact that the teachers will not let her daughter, who is a good student, get away with anything.

318. Her only opportunity to see Dr. Jenkins is after-hours, so she has not observed her in the role of principal. Dr. Jenkins is inspirational and goes out of her way to say "hi."

319. Principal Henry was kind of a "bully" – at the opposite end of the spectrum from Dr. Jenkins.

Myesha Hannans (10 Tr. 60)

320. Ms Hennans has four children, two at the School and two at public schools.

321. One daughter is in the 6<sup>th</sup> grade in her second year at the School. Her younger daughter is in Kindergarten and loves her teacher. Her older daughter is an honor student who Ms. Hannans describes as being "sad" when she attended public school.

322. She described Principal Henry as "mean." She likes the fact that teachers welcome her when she drops in at the School.

Michelle Belanger (10 Tr. 75)

323. Ms. Belanger is the PTO President, after serving as Vice President last year.

324. Her sons have attended the School for a number of years, and she would like to see the School stay open..

325. Her older son finished at the School last year. His new school is repeating most of what he was taught last year. Her younger son has attention deficit disorder and is a straight “A” student. He took last year’s MCAS with special accommodations. She is very pleased with his education at the School.

326. Her view is that Fred Swan’s criminal conviction meant that he should not be at the School.

327. Teachers and parents did not like Principal Henry, who she described as a “general.”

328. The lack of communication between parents and the Board of Trustees is a major issue, but it is getting better now. The Board did not communicate with parents about the Department’s investigation of last year’s MCAS results. The Board was in charge and it should step down.

Joelle Jenkins (10 Tr. 119)

329. Dr. Jenkins has a Bachelor’s degree in Psychology from the University of Texas at Austin with a teaching emphasis in English. She taught in Texas and then 7<sup>th</sup> and 8<sup>th</sup> grade in Harlem, where she also got a Master’s degree in Education Administration from Columbia Teacher’s College. Last year she got a Ph.D. in Curriculum Studies at the University of Texas. See Exh. 313 (resume).

330. She dealt with the FBI when agents spent a day at the School executing a search warrant and removing documents and computer records. See Exh. 311 (F.B.I. search inventory).

331. She has been working to rebuild morale among the teaching staff. She attends Board of Trustee meetings and all PTO meetings. She believes that the Board wants to move forward and is working on plans to do so.

#### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

The Board of Elementary and Secondary Education may revoke a charter that it granted to a charter school board of trustees before the end of its five-year term only for “cause” under the Department’s charter school regulations. 603 CMR 1.13(1) (as amended through Dec. 15, 2009).<sup>11</sup> The legal standard requiring “cause” to revoke a charter is different from the legal standard for refusing to renew a charter. Compare 603 CMR 1.12 (renewal) and 1.13 (revocation). Cause requires more than a “difference of opinion over policy” before the Board can revoke the School’s charter. Levy v. The Acting Governor, 436 Mass. 736, 737 (2002).

Cause exists in this case, as I shall explain later. Where there is cause, the Board has several options available to it under the revocation regulation. It may decide to “suspend or revoke” the charter school’s charter under 603 CMR 1.13(1), or it could decline to revoke the charter. The Board may also place a charter school on “probation”

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<sup>11</sup> The Legislature authorized the Board to revoke a charter school’s charter and to adopt regulations for the revocation of a charter. G.L. c. 71, sec. 89(dd) and (ee), as amended by St. 2010, c. 12, sec. 7. These provisions formerly appeared in secs. 89(kk) and (ll). See also G.L. c. 71, sec. 89(mm) (authorizing regulations).

instead of revoking its charter. 603 CMR 1.13(4). The purpose of probation under section 1.13(4) is to allow for the “implementation of a remedial plan” approved by the Board. The regulation provides that 60 days after a charter school is placed on probation (or such longer period as the Board may specify), the Board may “summarily revoke” the charter if the remedial plan is “unsuccessful in remedying the problem or alleviating the causes of the probation.” 603 CMR 1.13(4). The regulations do not prescribe a procedure for summarily revoking a charter under this provision.<sup>12</sup> The School has raised the question of probation as an alternative to charter revocation in this case.

The regulations also provide that the Board may also impose “conditions” on a school’s charter for either violations of law or for failure to comply with the terms of the school’s charter. 603 CMR 1.13(5). The Board can “withhold payments” to a charter school placed on probation that has failed to comply with the conditions imposed by law or under section 1.13(5). 603 CMR 1.13(6).

The regulations do not set forth any standards or guidelines for deciding whether to revoke a charter or to impose another remedy, such as probation, available under the regulations. The choice, therefore, is committed to the Board’s sound discretion.

#### 2009 MCAS Administration

The core issue in this case is the allegation of cheating or misconduct in the School’s administration of the April and May MCAS tests. As I said earlier in the findings of fact, the evidence of pervasive and egregious misconduct by the School’s

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<sup>12</sup> The probation provision in the regulation mirrors a provision in G.L. c. 71, sec. 89(ee) (“The board may place conditions on a charter or it may place a charter school on a probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.”). This provision formerly appeared in sec. 89(kk).

principal, its other administrative leaders, and its teachers is overwhelming. Cheating or educator misconduct on MCAS tests is not specifically mentioned in the charter revocation regulation. That does not pose a barrier to action in this case, however, because the regulation expressly provides that Board may revoke a charter for cause “including but not limited to” the seven grounds for cause set forth in subsections (a) through (g) of the regulation. 603 CMR 1.13(1).

The administration of the MCAS test, a statewide student and school performance assessment system administered in Massachusetts for over a decade and now required by the federal No Child Left Behind law,<sup>13</sup> is so central to the educational enterprise that the misconduct evidence in this case would also constitute cause to revoke the School’s charter under the “fraud or gross mismanagement on the part of charter school administrators or board of trustees” provision in the charter school regulation. 603 CMR 1.13(e). Since the eye is drawn naturally, in a cheating case, to the “fraud or gross mismanagement” phrase at the beginning of this provision, I emphasize that the regulation allows revocation for activities by either the School’s administrators “or” its board of trustees. Thus, under the express terms of the regulation, it is sufficient that the evidence in this case shows persuasively that Principal Henry directed the educator misconduct on the 2009 MCAS tests and that other administrators also participated in the test administration misconduct (e.g., by showing copies of the test to teachers in advance) or in the attempted cover up (e.g., by paying bonuses to teachers for giving the “right” answers in the investigator role-plays). Under the text of the regulation, the evidence

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<sup>13</sup> 20 U.S.C. sec. 6301, et seq. (No Child Left Behind). See also G.L. c. 69, sec. 11 (requiring that Board adopt a system for evaluation of schools);

need not demonstrate that the School's board of trustees directed or participated in the test administration misconduct.<sup>14</sup>

However, the Board does not have to choose between "fraud" and "gross mismanagement" under this provision in the regulation if it decides to revoke the School's charter based on the administration of the 2009 MCAS tests. The evidence, in my opinion, constitutes both fraud and gross mismanagement. It is fraud because the School misrepresented the MCAS test results as the product of the students' own work and gave false answers to the Department on the required MCAS certifications. It is gross mismanagement because the School intentionally ignored and perverted the clear test administration instructions that the Department set forth in the Principal's Manual and the Test Administrator's Manual. The facts demonstrate that far more is involved here than an isolated mistake, an oversight, or a misinterpretation of an instruction.

The Board may, of course, consider whether it regards the Board of Trustees as culpable in the MCAS test administration, even if that is not required by the regulation. On the one hand, I found, based on the hearing evidence, that the teachers did not report their behavior to the Board of Trustees, either before or after the MCAS tests. On the other hand, the School's own internal investigation (the Chasen Report) reported a culture at the School that fostered these untoward events. The hearing testimony showed that the teaching staff was unfamiliar with the Board of Trustees, was fearful of Principal Henry personally, and was subject to her whims due to the Board's failure to adopt either employment contracts or salary guidelines.

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<sup>14</sup> See Nuclear Metals, Inc. v. Low-Level Radioactive Waste Management Board, 421 Mass. 196, 212 (1995) ("word 'or' is given a disjunctive meaning"); Sarvis v. Boston Safe Deposit & Trust Co., 47 Mass. App. 86, 91 (1999) ("Use of the disjunctive 'or' indicates that a plaintiff need establish only one of the three alternatives.").

The Board of Trustees also assured that Principal Henry was personally tied to them. It gave her a “performance” bonus when it knew that the Department was actively investigating the 2009 MCAS test administration. It tendered her a written employment contract when she was named Principal shortly after the 2009 MCAS tests, but it never signed her contract until months later – until late in the Department’s investigation.

The Board of Trustees was passive in response to the Department’s initial notification that the MCAS scores were suppressed. Later it seemed more concerned with identifying the culprit teachers, not on finding out what happened. The Board did not conduct its own inquiry until the week before the January 26, 2010, State Board meeting.

#### 2009 Charter Renewal Conditions

The Board may also revoke the School’s charter under another provision in the regulation due to the School’s “failure to fulfill any condition imposed by the Board in connection with the grant of a charter.” 603 CMR 1.13(g). One of the conditions that the Board imposed as part of its January 2009 decision to renew the School’s charter for a new five-year term stated that the School must “demonstrate that it is an academic success” by having “achieved Adequate Yearly Progress . . . in 2009 and 2010.” Condition 1(b) (emphasis added) (Exhibit 74).

The School cannot make that demonstration because it does not have any AYP rating for 2009. Since the AYP rating cannot be calculated without MCAS test results, the Department’s justified decision to invalidate the School’s 2009 MCAS results for misconduct in the administration of both the ELA and Mathematics tests means that the School does not satisfy the AYP condition for 2009.

AYP is an annual measure required by the federal No Child Left Behind law that measures student and school progress from year-to-year.<sup>15</sup> Even if it is theoretically possible to skip 2009 and reinstitute an AYP standard for 2010 (after the 2010 MCAS test results become available), Condition 1(b)'s requirement that the School satisfy the AYP standard for 2009 would not be met.<sup>16</sup>

The Board could not, however, revoke the School's charter under the governance conditions that it imposed in the January 2009 charter renewal. Based on the evidence produced during the hearing, I made a finding of fact that the School satisfied Conditions 2 and 3. Hence, there is not "cause" to revoke the charter for a violation of either of these governance conditions.

#### Gross Mismanagement

"Cause" also exists to revoke the School's charter separate from the 2009 MCAS test administration misconduct and the consequent failure to demonstrate academic progress under the AYP condition in the January 2009 charter renewal. After a decade in

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<sup>15</sup> 20 U.S.C. sec. 6311(b)(2)(B) (Adequate Yearly Progress). See 20 U.S.C. sec. 6311(b)(2)(C)(v) (AYP defined to include "measurable annual objectives for continuous and substantial improvement"). See also G.L. c. 69, sec. 1I (par. 1) (Board shall adopt system for evaluation on an "annual basis")

<sup>16</sup> Since Condition 1(a) requires academic success by 2010 under a separate standard, I reproduce the entire text of Condition 1 from Exhibit 74 (the 2009 charter renewal conditions):

1. By December 2010, [the School] shall demonstrate that it is an academic success by:
  - a. providing evidence that, by 2010, the school has met academic growth targets in English language arts and mathematics, as established by the [Department], or
  - b. has achieved Adequate Yearly Progress in the aggregate and for all statistically significant subgroups in English language arts and mathematics in 2009 and 2010.

existence, one might expect a thriving institution that is focused on its educational mission, rather than being distracted by questions about its leadership, investigations by the State Auditor's Office and other law enforcement officials, or conditions placed on its charter at both the 2004 and 2009 charter renewals.

The Board of Trustees' repeated failure to address glaring problems in the teaching staff amounts to gross mismanagement. One measure is that two years after the extended deadline set by the No Child Left Behind law, the School not only failed to meet the goal of 100% "highly qualified teachers" (HQT) but still has only 18 % of highly qualified teachers on its staff. See 603 CMR 1.13(1)(b) (cause to revoke for "failure to comply substantially with . . . any other applicable law or regulation").<sup>17</sup> Continuous high teacher turnover is a parallel problem. Shifting teachers around and having them teach outside their subject-area qualifications is yet another consequence of management breakdown. The Board of Trustees has recognized these problems, it just has not settled on a plan to address them. As a consequence, the State Board has placed the School on a form of academic probation for two consecutive charter renewals – a rare occurrence among charter schools. After the 2004 charter renewal, the School met the AYP academic success condition and then fell back again.

The Trustees have likewise failed to provide stable leadership within the School. Dr. Jenkins, hired early this semester, is the School's eleventh principal in its eleven years of existence.

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<sup>17</sup> See also G.L. c. 71, sec. 89(ii) ("No teacher shall be hired by a commonwealth charter school who is not certified pursuant to section 38G unless the teacher has successfully passed the state teacher test as required in said section 38G.").

The CORI check requirement exists for the safety of the children. The obligation under G.L. c. 71, sec. 38R, is simple. It takes only the adoption of policy, practices and systems and sensible oversight to succeed. The School's inconsistent administration of its CORI checks shows that the Trustees lack the dedication to assure that such management policies and practices are in place.<sup>18</sup> The evidence showed that the School fairly consistently (but not always) had teachers start work before a CORI check was performed or, more frequently, before a response was received.

The evidence about the School's lease shows that the problem of related-party transactions that can also adversely affect the School's finances and indirectly benefit some of its Trustees persists. This matter was also the subject of the 2004 charter renewal conditions and State Auditor's 2005 investigation and findings. Yet the Board of Trustees relied on a presentation by the conflicted Trustee (Norma Baker) to enter into a new lease with the same party, exercising little caution for the terms of the deal or exploring the possible alternatives.<sup>19</sup> Chairman Wall's telling Principal Henry that she

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<sup>18</sup> I deny the School's request for a ruling that the Department should not have been able to introduce Principal Henry's criminal record into evidence. The statute cited by the School, G.L. c. 233, sec. 21, does not apply by its express terms because it forbids the use of older criminal convictions to impeach the credibility of a witness. That is not the context here, especially since Principal Henry invoked her Fifth Amendment privilege when her testimony was sought. The School misses the point that the criminal convictions evidence was probative on the School's failure to exercise care concerning its CORI check obligation under G.L. c. 71, sec. 38R, when it hired or promoted Ms. Henry.

I also decline to make the School's requested rulings concerning negligent hiring or retention. The cases cited by the School hold that an employer may be liable for damages in a tort action for the actions of its employees, which is not the situation here. See Ellingsgard v. Silver, 352 Mass. 34, 39 (1967); Foster v. The Loft, Inc., 26 Mass. App. Ct. 289, 291 (1988).

<sup>19</sup> The School requested a ruling that the Department waived its right to present evidence on matters that were not set forth in the 2009 charter renewal conditions. I deny the

should not inform the Trustees what she had learned about the School's lease arrangement reflects the same management decision-making that led to past allegations of financial improprieties at the School (whether founded or unfounded) and gives the appearance that he was protecting the sister-in-law of an old friend with close ties to the Board of Trustees. The Board is still unable to deal with conflict of interest situations or sound business practices, especially under the standards that apply to a public body.<sup>20</sup>

Trustee term limits, by contrast, do not provide cause to revoke the charter since the School is finally in compliance with the 2004 and 2009 charter renewal governance conditions. They do bespeak the Board of Trustees' historical difficulty in shifting its norms.

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School's request for several reasons. First, it is a well-settled principle that there is no estoppel against the government. The Risk Management Foundation of the Harvard Medical Institutions, Inc. v. Commissioner of Insurance, 407 Mass. 498, 509-510 (1990). Second, the Department can enforce the other provisions in the charter revocation regulation, even if there no condition has been imposed under 603 CMR 1.13(g). In addition, the Department may point to the history and context of a problem to show that charter revocation is appropriate. Finally, I have exercised discretion in how far and wide to carry the case or to make findings of fact based on some of the evidence presented on events from the past.

<sup>20</sup> The School requests that I rule that Norma Baker's involvement in the lease dealings is consistent with conflict of interest provisions. The Department's Charter School Administrative and Governance Guide provides that an individual trustee's duty of loyalty forbids board members from "profiting personally" from their involvement in the charter school. Exh. 167, page 2. I made a finding of fact that Northern Educational Services benefited from fund transfers from State Street Properties and that NES employees indirectly benefit from these transfers, even if they do not receive direct remuneration. See also G.L. c. 268A, sec. 7 ("state employee who has a financial interest, directly or indirectly, in a contract made by a state agency") (cited by School). The Legislature has provided that individuals may obtain authoritative opinions from the State Ethics Commission on such matters.

## V. INITIAL DECISION

I find that cause exists under the Department's regulation (603 CMR 1.13(1)) and statute (G.L. c. 71, sec. 89(ee) (formerly (kk)) to revoke the charter granted to the Robert M. Hughes Academy Charter Public School.

*/s/ John E. Bowman, Jr.*

Date: May 7, 2009

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John E. Bowman, Jr.  
Hearing Officer