

COMMONWEALTH OF MASSACHUSETTS
BOARD OF ELEMENTARY AND SECONDARY EDUCATION

In the Matter of)	
)	
)	DOCKET NO. CSO-2010-01
ROBERT M. HUGHES ACADEMY)	
CHARTER PUBLIC SCHOOL)	
)	

PETITIONER’S OBJECTIONS TO THE HEARING OFFICER’S INITIAL DECISION

Petitioner, Robert M. Hughes Academy Charter Public School (the “School”), respectfully submits the following Objections to the Hearing Officer’s Initial Decision:

PRELIMINARY OBJECTIONS

As a preliminary matter, the School objects to the Initial Decision as a whole because the Hearing Officer failed to issue a ruling as to which party had the burden of proof. This was despite that fact that both sides had briefed the issue. From the School’s perspective, the Department had the burden of proof and failed to meet that burden. The Hearing Officer’s failure to rule on this issue prior to the Hearing was plain error.

A second material legal error by the Hearing Officer is his failure to limit the scope of the hearing to the School’s conduct subsequent to January 27, 2009, the date of the second Charter renewal.

A third legal error was committed by the Hearing Officer is his reliance on the School “CORI Check List” log to support certain factual findings concerning the dates when the School conducted criminal background checks on various persons. The CORI Check List should not have been used for this purpose. To resolve a discovery dispute between the Department and the School, the CORI Check List log was created by the School in lieu of producing the actual CORI records which contained confidential information. The log contains the names of individuals and the corresponding dates that appeared on the CORI record documents. Where there was no date listed on the document, no date was provided on the List. It was error to conclude that the absence of a date on the School’s CORI Check List log implied that the School did not perform a CORI check on a particular person.

A fourth legal error was committed by the Hearing Officer in his reliance on an internal investigative report known as the “Chasen Report” prepared by an Attorney retained by the School to investigate the allegations of cheating on the MCAS test. The document was prepared in anticipation of litigation and its contents were protected from disclosure by the attorney/client and/or work product doctrine.

OBJECTIONS TO HEARING OFFICER'S FINDINGS OF FACT

The School makes the following objections to the Hearing Officers Findings of Fact:

Charters, Renewal Conditions, and Intent to Revoke

FINDING NO. 18:

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.

OBJECTION TO FINDING NO. 18

The statement in Finding No. 18 is inconsistent with the School's Year Eight Site Visit Report, dated March 2007 which the Department offered into evidence at the Hearing. This site visit report stated that the 2004 Charter renewal conditions placed on the school had been “lifted” and that the Board of Education accepted Commissioner Driscoll's recommendation that “no further conditions be placed on the [S]chool.” (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007). The Site Visit Report specifically stated:

1. Finding: Conditions imposed on the school's charter at the time of renewal have essentially been lifted.

RMH's charter renewal was granted with five conditions based on the school's performance, one for academic concerns and four regarding continuing issues relating to governance and fiscal management of the school. In September, 2006, the MA Board of Education accepted the Commissioner's recommendation that no further conditions be placed on the school.

(Id.).

The statement in Finding No. 18 is also inconsistent with the School's September 29-October 1, 2008, Renewal Inspection Report which was also admitted into evidence at the Hearing. This inspection report again note that the 2004 Charter renewal conditions had been “lifted”:

In 2004, the Board of Education renewed the School's Charter with five conditions relating to the School's Adequate Yearly progress performance, governance, and financial management and business operations; these conditions were lifted during the current charter period, according to the Year Nine Site Visit Report prepared by the Department in December 2007. The Hearing Officer's failure to credit or give any weight to the Department's own

statements in the RMH Year Eight Site Visit Report concerning the lifting the 2004 renewal conditions constitutes an error.

2009 MCAS TEST ADMINISTRATION

Overview

FINDING NO. 29:

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.

OBJECTION TO FINDING NO. 29

The School objects to Finding No. 29 on the grounds that it assumes facts that were never admitted into evidence. There was no evidence presented at the Hearing that the alleged misconduct was "openly orchestrated." For example, although there was testimony that there were closed circuit television/audio systems in classrooms at the school, it was never established that these systems were on during the administration of the 2009 MCAS exam. Further, it was never established whether all the teaching staff attended the regular teaching staff meetings.

FINDING NO. 30:

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.

OBJECTION TO FINDING NO. 30

The School Objects to Finding No. 30 on the grounds that the Chasen Report should never have been admitted into evidence. The report was a document prepared by an attorney retained by the school in anticipation of litigation. Accordingly, its contents were protected from disclosure by the attorney/client and/or work product doctrine. Further, while the School did

produce a copy of the Chasen Report to the Board of Education at its January 26, 2010 meeting, the report should not be construed as an evidentiary admission due to its lack of reliability. Significantly, the 11 staff members referenced in the report have not been identified.

Circumstances Surrounding the 2009 MCAS Tests

FINDING NO. 32:

32. The School failed to meet the Annual 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.

OBJECTION TO FINDING NO. 32

The School objects to Finding No. 32 on the grounds that it does not take into account the School’s overall record of meeting AYP. For example, in RMH’s Year Seven Site Visit Report dated June 21, 2006, the Department found that “[t]he school ha[d] made AYP in the aggregate and for subgroups since 2003.” (See Department Ex. 19 at p. 5, RMH Seven Year Site Visit Report dated June 21, 2006). Further, the School objects to Finding No. 32 on the ground that the Hearing Officer exceeded the scope of his assignment by reviewing evidence on the AYP for years other than 2009.

FINDING NO. 35:

35. For the 2008-09 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.

OBJECTION TO FINDING NO. 35

The School objects to Finding No. 35 on the same grounds as its objection to Finding No. 137.

FINDING NOS. NOS. 44-47

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.

OBJECTION TO FINDING NOS. 44-47

The School objects to Finding Nos. 44-47, to the extent that it implies that the Board of Trustees should have reason to question the results of the 2009 MCAS test as reported to them by Principal Henry. Indeed, there was evidence at the Hearing that Ms. Henry made a representation to the Board of Trustees that the improvement in the test scores was directly related to the CFAs which were old MCAS tests that the student took and the hard work of the staff. Significantly, the August 18, 2009 RMH Board of Trustees Meeting Minutes which were admitted into evidence indicate that Ms. Henry made the following representations to the Board of Trustees at the meeting:

We did wonderful and have passed in advanced proficient and proficient. We have improved our scores which were identified by [the Department], as one of the conditions we needed to improve on. We have moved in the right directions as far as what they have put on our charter. This year we have significantly improved although we told charter that we will improve in two (2) years. Ms. Henry interpreted the graphs to the [BOT]. She also discussed the testing she does throughout the year using CFA’s or old MCAS from different years. Also teachers are held accountable for finding weaknesses that students have, it’s all about discipline and training students for lengthy testing. This is our success in getting the scores up so fast. ... the staff worked hard, were dedicated and followed through.

(See Department Ex. 175 at p. 338, RMH Board of Trustees Minutes dated August 18, 2009).

In addition, at the March 24 2009 Board of Trustees Meeting, Ms. Henry informed the Board of Trustees that the “MCAS testing begins next week and that there has been before-school tutoring and Knowledge Point has been in charge of the after-school program for MCAS preparation.” (See Department Ex. 175 at p. 322, RMH BOT Minutes dated March 24, 2009).

At the meeting, Ms. Henry reported to the BOT that she is “confident that our students are well prepared.” (Id.).

There was no evidence presented at the Hearing that the Trustees knew or should have known that Ms. Henry was lying or that they should have disbelieved any of Ms. Henry’s representations. In fact, the evidence demonstrated that Ms. Henry had a prior track record of improving student MCAS performance. Chairman Walls testified at the Hearing that Ms. Henry had been previously employed by the Springfield public school system and had a successful track record of improving student performance on the MCAS test. (See Walls Testimony, Trans. Vol. V. at pgs. 143-144).

FINDING NO. 55

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.

OBJECTION TO FINDING NO. 55

The School objects to Finding No. 55 on the grounds that it omits an important fact from the chronology concerning the notice provided to the School. Significantly, the Commissioner’s September 14, 2009 letter did not allege any wrongdoing on the part of the School, neither did he allege any knowledge on the part of the School or the Trustees. (See Department Ex. 84., Commissioner Chester’s letter to Janet Henry dated September 14, 2009).

FINDING NOS. 57 - 58

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 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 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.

OBJECTION TO FINDING NOS. 57-58

The School objects to Finding Nos. 57-58 on the grounds that they assume that the School did not notify all the parents that the results of the 2009 MCAS test would not be issued. There was no evidence one way or the other as to whether the letter was sent or not sent.

MCAS Preparation and Administration

FINDING NO. 69

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.)

OBJECTION TO FINDING NO. 69

The School objects to Finding No. 69 on the same grounds as its objection to Finding No. 30.

FINDING NO. 71

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 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.

OBJECTION TO FINDING NO. 71

The School objects to Finding No. 71 on the grounds that the use of the word "Teachers" is overly broad because it assumes that all the teachers at the School participated in the conduct described in the finding.

FINDING NO. 72

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.

OBJECTION TO FINDING NO. 72

The School objects to Finding No. 72 on the same grounds as its objections to Finding No. 30.

FINDING NO. 73

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.

OBJECTION TO FINDING NO. 73

The School objects to the second sentence in Finding No. 73 on the grounds that it assumes facts not in evidence. The Department did not present evidence at the Hearing to support the contention that pointing out a wrong answer on a multiple choice test is equivalent to giving the student the answer. Further, it is unclear how one could possibly reach this conclusion given that the Department did not seek to enter into evidence any sample MCAS tests to show the number of possible answers that the students could select from to answer a question on the test.

FINDING NO 76

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.

OBJECTION TO FINDING NO. 76

The School objects to Finding No. 76 on the same grounds as its objections to Finding No. 30.

FINDING NO. 77

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 approached, Ms. Henry directed the staff to "do what they had been doing throughout the year" on the CFA exams.).

OBJECTION TO FINDING NO. 77

The School objects to Finding No. 77 on the grounds that it assumes that Ms. Henry instructed all the teachers at the school to administer the actual MCAS tests in the same way that

the Teachers had administered the CFA practice tests. The School also objects to the reference to the Chasen Report in Finding No. 77 for the same reasons set forth in its objections to Finding No. 30.

FINDING NO. 79

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.

OBJECTION TO FINDING NO. 79

The School objects to Finding No. 79 on the same grounds as its objections to Finding No. 30.

FINDING NO. 80

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.

OBJECTION TO FINDING NO. 80

The School objects to the reference to the Chasen Report in Finding No. 80 for the same reasons set forth in its objections to Finding No. 30.

FINDING NO. 84

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 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.

OBJECTION TO FINDING NO. 84

The School objects to the reference to the Chasen Report in Finding No. 80 for the same reasons set forth in its objections to Finding No. 30.

FINDING NO. 86

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.

OBJECTION TO FINDING NO. 86

The School objects to Finding No. 86 on the grounds that the use of the word "Teachers" is overly broad because it assumes that all the teachers at the School participated in the conduct described in the Finding.

FINDING NO. 91

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.

OBJECTION TO FINDING NO. 91

The School objects to the statement in last sentence of Finding No. 91 that "Teachers properly earn their bread and butter when they prepare students by teaching subject matter content and skills before the MCAS test begins", on the grounds that it assumes facts that were not offered into evidence by the Department. There was no testimony or documents admitted into evidence at the Hearing to support this statement.

FINDING NO. 102

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.

OBJECTION TO FINDING NO. 102

The School objects to the first sentence of Finding No. 102 on the grounds that it does not comport with the evidence presented at the Hearing. Significantly, there was testimony from Teacher T that she chose not to contact the Board of Trustees to express any of the concerns that

she may have had about the way in which the 2009 MCAS test was to be administered for the simple reason that she “did not want to rock the boat.” (See Teacher T Testimony, Trans. Vol. II at pgs. 98-101). This was despite the fact that Teacher T testified that prior to being hired by Ms. Henry, she had dealings with Trustee, Norma Baker in her capacity as head of NES. (See Teacher T Testimony, Trans. Vol. II at pgs. 90-92).

FINDING NO. 103

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.

OBJECTION TO FINDING NO. 103

The School objects to the reference to the Chasen Report in Finding No. 103 for the same reasons set forth in its objections to Finding No. 30.

FINDING NO. 104

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.

OBJECTION TO FINDING NO. 104

The School objects to Finding No. 104 on the grounds that the use of the word “Teachers” is overly broad because it assumes that all the teachers at the School were aware that the “walls have ears.” Further, there was no evidence that anyone ever observed Ms. Henry monitoring the closed circuit TV system. However, there was evidence that a closed circuit TV system was used for security purposes only. This use was recognized by the Department in its 2002 Site Visit Report. In that report, the Department’s site visit team favorably commented as follows:

Is the School safe?

The small student body and class size help create a physically and psychologically safe environment for individuals [at the School]. Additional features, including monitored access to the building, security cameras located throughout the school, as well as a full time school nurse, increase safety. The school reports there have been no smoking or drug violations.

(See Department Ex. 17 at pp. 6-7, RMH Third Year Site Visit Report dated May 20, 2002)

Obstruction of the Department's Investigation

FINDING NO. 115

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.

OBJECTION TO FINDING NO. 115

The School objects to Finding No. 115 on the same grounds as its objections to Finding No. 30.

Board of Trustees and the 2009 MCAS Tests

FINDING NO. 127

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

OBJECTION TO FINDING NO. 127

The School objects to Finding No. 127 on the grounds that it assumes facts that were not offered or admitted into evidence. There was no evidence that the Board of Trustees either knew or should have known that there was any misconduct relative to the 2009 MCAS tests. This finding is also inconsistent with Finding No. 125 which states that: "... 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." (See Finding No. 125). Further, the Hearing Officer's assertion that 180 students were involved in the MCAS is misleading and without factual basis. There is an abundance of evidence that only grades 3-8 took the MCAS exam and that there are between 18-20 second graders. Further, the Hearing Officer's so called Finding No. 127 is more speculation by him without any factual support.

FINDING NO. 129

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.

OBJECTION TO FINDING NO. 129

The School Objects to Finding No. 129 on the grounds that it is inaccurate and does not comport with the evidence presented at the Hearing. The Commissioner's September 2009 letter does not declare that there were actual anomalies in the 2009 MCAS test results. Rather, the letter simply stated that the Department had discovered what "appear[ed] to be anomalies" in the school's test results. (See Department Ex. 84, Commissioner Chester's letter to Janet Henry dated September 14, 2009). The letter did not indicate that there was any misconduct of any kind. Further it is noteworthy that the letter was addressed to Ms. Henry and not the Board of Trustees. The evidence further demonstrated that after Ms. Henry received the Commissioner's September 14, 2009 letter, she telephoned Mr. Walls (See Walls Testimony Trans. Vol. V at pgs. 37-38) who then contacted Fred Swan, the School's Leader for Administration and asked him to get in touch with Marc Kennan, the Executive Director of the Massachusetts Charter Association to find out what the letter was about. (See Walls Testimony, Trans. Vol. V. at pgs. 37-38). Mr. Walls testified at the Hearing that he also spoke personally with Mr. Kennan and had understood from his conversation with him that the scores could possibly be adjusted. (See Walls Testimony, Trans. Vol. V at pgs. 170-171). However, Mr. Walls did not receive any information from Mr. Kennan to suggest that there had been any misconduct at the school relative to the way the test was administered. (See Trans. Vol. V at pgs. 170-173). There was no evidence presented at the Hearing that anyone from the Department ever contacted the Board of Trustees in either September or October of 2009 to inform them that the Department was investigating anything other than what "appear[ed] to be anomalies" in the 2009 MCAS test results.

Jeff Wulfson, Deputy Commissioner of the Board of Education, testified at the Board of Education's January 26, 2010 Regular Meeting that the Department did not provide information to the Board of Trustees or anyone else concerning the subject of the Department's investigation into the alleged cheating because the Department "was bound by due process as to the subject of the investigation." (See Wulfson Recorded Testimony, Trans. Vol. VIII at pp. 82-83).

FINDING NO. 130

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.

OBJECTION TO FINDING NO. 130

The School objects to the first sentence contained in Finding No. 130 on the grounds that it is misleading. The Commissioner's September 21, 2009 letter referencing what "appeared to be anomalies" was addressed to Ms. Henry, not the Board of Trustees. The Department did not have any contact with the Board of Trustees. Further, as for the School's governance structure which the Department supported and approved, the Board relied on the Principal to provide it with the information that it needed to distance its duties. There was no evidence at this time that the Department informed Ms. Henry that it was investigating allegations of misconduct for her to report to the Board of Trustees. In fact, the Department's Deputy Commissioner, Jeff Wulfson, testified at the Board of Education's January 26, 2010 Regular Meeting that the Department did not provide information to the Board of Trustees or anyone else concerning the subject of the Department's investigation into the alleged cheating because the Department "was bound by due process as to the subject of the investigation." (See Wulfson Recorded Testimony, Trans. Vol. VIII at pp. 82-83). The Hearing Officer's failure to credit or give any weight to the Department's own testimony concerning what it did not disclose to Ms. Henry constituted error.

FINDING NO. 131

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.

OBJECTION TO FINDING NO. 131

While the first sentence of Finding No. 131 is technically accurate, it leaves out an important fact about the communication between the Department and Mr. Walls. Significantly, the phone call from Ms. Street to Mr. Walls was the first notice that the Board of Trustees received from the Department alleging that there were improprieties related to the administration of the 2009 MCAS test. (See Walls Testimony, Trans. Vol. V at pgs. 167-173). Prior to this time, there had been no correspondence from the Department to the Board of Trustees concerning the school's 2009 MCAS scores (See Walls Testimony, Trans. Vol. V at p. 169, at lines 1-10).

As previously stated, the Department's Deputy Commissioner, Jeff Wulfson, testified at the Board of Education's January 26, 2010 Regular Meeting that the Department did not provide information to the Board of Trustees or anyone else concerning the subject of the Department's investigation into the alleged cheating because the Department "was bound by due process as to the subject of the investigation." (See Wulfson Recorded Testimony, Trans. Vol. VIII at pp. 82-83).

FINDING NO. 133

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.

OBJECTION TO FINDING NO. 133

The School objects to Finding No. 133 on the grounds that it is misleading. (See Objection to Finding No. 134).

FINDING NO. 134

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.

OBJECTION TO FINDING NO. 134

The School objects to Finding No. 134 on the grounds that it is misleading. The 2008 Renewal Inspection Report prepared by the Department's independent charter renewal contractor, Class Measures, which was admitted into evidence, indicates that the School switched from Marva Collins model to the Lorraine Monroe Leadership Institute model in 2001. (See Department Ex. 71 at p. 4, Class Measures Renewal Inspection Report September 29-October 1, 2008). According to the Department's Summary of Review dated December 2008, the Lorraine Monroe Leadership Institute model "emphasizes the use of the Lorraine Monroe black board configuration (BBC) which consists of four essential components: students record their homework assignment upon entering the classroom, they complete an opening activity (Do Now), the teacher states lesson goals, and students can see the lesson steps written out on a class agenda." (See Department Ex. 72 at p. 3, RMH Summary Review dated, December 2008).

In addition to the implementation of the Lorraine Monroe Leadership Institute Model, the Class Measures Renewal Inspection Team found that the School had "developed an intellectually challenging curriculum that is aligned with the Massachusetts Curriculum Frameworks and designed to enable RMH students to achieve proficiency on the [MCAS] tests." (See Department Ex. 71 at p. 10, Class Measures Renewal Inspection Report September 29-October 1, 2008). In addition to the above curriculum changes, the Class Measures site visit team noted that the School had established partnerships with other public schools in Springfield and created

two models for replication: “an after-school MCAS enhancement program and the [Springfield Urban School Consortium] (SUSC) Professional Development Initiative.” (See Department Ex. 71 at p. 46, Class Measures Renewal Inspection Report September 29-October 1, 2008). However, these were not the only measures implemented by the School to improve students’ performance on the MCAS tests. Significantly, in 2008 the Department found that the School had been using a data warehouse called “Testformance” to drive curriculum development and instructional practice. (See Department Ex. 72 at p. 5, RMH Summary Review dated, December 2008). Further, it was noted by the Department that the Class Measures Renewal inspection team found during their 2008 site visit to the School that the “[S]chool’s leadership team analyzes areas of the school and individual student MCAS weaknesses, identifies problematic MCAS questions, and requires teachers to add those questions to the “Do Now” component of the [Lorraine Monroe Black Board Configuration Model]. (Id.). More significantly, the Department stated in the Summary Review Report that “[b]ased on the MCAS data, the [School’s] leadership team also develops strategies to improve performance on next year’s [(2009)] test such as reviewing benchmarks, instituting use of science journals, provide teachers with professional development about open response questions, and using MCAS like questions at all grade levels.” (See Department Ex. 72 at p. 5, RMH Summary Review dated, December 2008). Based on the overwhelming weight of the documentary evidence presented at the Hearing, it is clear that the School implemented substantial changes to its curriculum to improve student performance on the 2009 MCAS test.

FINDING NO. 135

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.

OBJECTION TO FINDING NO. 135

The School objects to Finding No. 135 on the grounds that there was no evidence at the Hearing that the after school instruction provided by Knowledge Point was ineffective. Further, as stated in the School’s Objection to Finding No. 134, the documentary evidence demonstrated that the School did not exclusively rely on Knowledge Point to improve student performance on the MCAS test, but rather had implemented a comprehensive curriculum enhancement plan.

FINDING NO. 136

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.

OBJECTION TO FINDING NO. 136

The School objects to Finding No. 136 on grounds that it is misleading. There was no evidence that the school exclusively relied on the Knowledge Points after-school program to improve student performance on the MCAS tests. As previously stated, the documentary evidence demonstrated that the School did not exclusively rely on Knowledge Point to improve student performance on the MCAS test, but rather had implemented a comprehensive curriculum enhancement plan.

FINDING NO. 137

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.

OBJECTION TO FINDING NO. 137

The School objects to Finding No. 137 on ground that it is misleading. There was no evidence that the school exclusively relied on the Knowledge Points after-school program to improve student performance on the MCAS test. There was evidence that in addition to having students take old MCAS tests (CFAs), the school had implemented the other curriculum enhancements as documented by the Class Measures site visit team during its 2008 Renewal Inspection site visit to the School. (See Department Ex. 71, Class Measures Renewal Inspection Report September 29-October 1, 2008).

FINDING NO. 138

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).

OBJECTION TO FINDING NO. 138

The School objects to Finding No. 138 on the grounds that it is misleading because it completely ignores the findings issued by Class Measures in its 2008 Renewal Inspection Report. According to the 2008 Renewal Inspection Report, the School had a corrective action plan in place to address the teacher turnover problem. The 2008 Renewal Inspection Report states as follows:

In an interview with the team, the Vice Principal stated that RMH is addressing the teacher turnover problem by working to ensure that newly hired teachers are well suited to the school and that they receive appropriate support. As discussed above, new teachers must undergo a 90-day probationary period, and all new teachers are mentored by more experienced teachers. Teachers interviewed by the team cited the mentoring system as a positive program that has helped newly hired teachers. RMH is also working with the school's paraprofessionals holding bachelor's degrees to help those who want to become teachers achieve this goal. The school's modified co-teaching model allows the paraprofessionals to develop their capacity to provide instruction in a supportive environment, and the school also provides professional development to paraprofessionals.

The Vice Principal also cited RMH's efforts to ensure that teachers are highly qualified: she noted that the board of trustees now allows teachers one year to attain certification or licensure, whereas the board used to allow three years, and that the board has instituted a policy of paying once for a teacher to take the Massachusetts Tests for Educator Licensure (MTEL), whereas the board used to pay for teachers to take the tests multiple times. Board members interviewed by the team noted that some teachers are enrolled in graduate programs and that some of these graduate program classes are taught at RMH. Board members also discussed the Springfield Urban School Consortium (SUSC) formed by four Springfield schools. One of the conditions of the SUSC memorandum of agreement states:

- Licensure and compliance with No Child Left Behind policy will be a key goal for all consortium members. Licensure and compliance requirements as set forth by the policy and interpreted by the consortium will be absolute priorities within all professional development activities.

The Vice Principal conducts formal teacher evaluations twice yearly using an evaluation form consisting of 23 criteria-based standards that are based on RMH's current instructional model and practices, such as the BBC model and the modified co-teaching model, and other professional expectations. The team reviewed ten completed teacher evaluations. The Vice Principal evaluates teacher performance on each of these standards using a point scale of 1 to 3: a rating of 1 is defined as "exceeds job standards," a rating of 2 is defined as "meets job standards," and a rating of 3 is defined as "needs improvement." The evaluation form includes a short narrative performance summary section containing the Vice Principal's summary of the teacher's key strengths and areas for improvement and provides an overall performance rating; the form also includes a space in which the teacher may respond with comments on the evaluation.

(See Department Ex. 71 at p. 40, Class Measures Renewal Inspection Report September 29-October 1, 2008).

Based on the corrective action plan that the School had in place to address teacher turnover and the other curriculum changes that the school had implemented as documented by Class Measures, the Board had no reason to question the results of 2009 MCAS test as reported to them by the Principal.

FINDING NO. 139

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.

OBJECTION TO FINDING NO. 139

The School objects to this finding on the grounds that teacher turnover was not listed as one of the conditions of the School's 2009 Charter Renewal. (See Department Ex. 74, Board of Education's January 27, 2009 Charter Renewal Vote). It is particularly noteworthy that prior to the Board of Education's vote, the Commissioner, Mitchell D. Chester, sent a Memorandum to the Members of the Board of Education dated January 15, 2009 outlining his recommendations to the Board of Education. The Memorandum makes absolutely no reference to teacher retention as an issue of concern to the Department. (See Dept. Ex. 73, Memorandum from Mitchell D. Chester to the Members of the Board of Education dated January 16, 2009).

FINDING NO. 140

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.

OBJECTION TO FINDING NO. 140

The School objects to Finding No. 140 on the grounds that it is vague and misleading. As stated in the School's Objection to Finding No. 134, the school had implemented a number of curriculum enhancements to improve student performance on the MCAS test. Moreover, it is unclear what is meant by the "Board's relationship with Janet Henry" and there is no evidence in the records to support an inference that an adverse or mistrustful relationship existed between the Board and Ms. Henry prior to November 23, 2009.

FINDING NO. 141

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.

OBJECTION TO FINDING NO. 141

The School objects to the first sentence of Finding No. 141 on the grounds that it is inconsistent with the August 25, 2007 Board Retreat Minutes. The Minutes of that meeting make absolutely no reference to an “Improvement Plan.” Further, the minutes do not indicate that the Board discussed the 2007 MCAS results at the meeting (See Department Ex. 175 at p. 244, August 25, 2007 Board Retreat Minutes).

The School objects to the second sentence of Finding No. 141 on the grounds that that the Minutes of the December 18, 2007 Board of Trustees Meeting do not make any reference to any “Improvement Plan.” (See Department. Ex. 175 at p. 257). The School objects to the findings in the third and fourth sentences of Finding No. 141 on the grounds that they assume that there was an “improvement plan” that was adopted by the Board of Trustees.

The School objects to the last sentence of Finding No. 141 on the grounds that it is inconsistent with the 2008 Charter Renewal Inspection Report. As stated in the School’s Objection to Finding No. 134, the school had implemented a number of curriculum enhancements to improve student performance on the MCAS test.

FINDING NO. 142

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

OBJECTION TO FINDING NO. 142

The School objects to first sentence of Finding No. 142 on the same grounds as its objections to Finding No. 141. The School objects to the second sentence of Finding No. 142 on the grounds that the finding is inconsistent with findings made by the Department in its December 2008 Summary of Review Report. The Department’s 2008 Summary Review Report indicated that the School provided teachers with professional development training relative to MCAS questions. (See Department Ex. 72 at p. 5, RMH Summary Review dated, December 2008).

FINDING NO. 143

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

OBJECTION TO FINDING NO. 143

The School objects to Finding No. 144 on the grounds that it is misleading and inconsistent with the evidence, since it appears to suggest that the Board of Trustees adopted an “Improvement Plan” in December of 2007.

FINDING NO. 144

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.

OBJECTION TO FINDING NO. 144

The School objects to the first sentence of Finding No. 144 on the grounds that it is misleading and inconsistent with the evidence, since it appears to suggest that the Board of Trustees adopted an “Improvement Plan” in December of 2007. The School to objects to the second sentence of Finding No. 144 on the same grounds. In addition, this Finding is conclusory and assumes facts that were not admitted into evidence.

Bonuses and Employment Contracts

FINDING NO. 145

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

OBJECTION TO FINDING NO. 145

The School objects to Finding No. 145 on the grounds that the statement is not supported by the evidence presented at the Hearing.

FINDING NO. 146

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.

OBJECTION TO FINDING NO. 146

The School objects to Finding No. 146 on the grounds that it is conclusory and assumes facts that were not evidence. The Department did not present any evidence to suggest that Ms. Henry was not entitled to the raise that she received in August of 2008. Further, there was no evidence that Mr. Seay was not adequately compensated during the period in which he served as the School's Principal or that his performance warranted a raise in pay. Further, the evidence showed that Ms. Henry's reign of terror began under Mr. Seay's tenure and that he praised her for her performance repeatedly, and even said the team of Seay and Henry were "the best one-two combination in the nation." (See Walls Testimony, Trans. Vol. V at pp. 13, 141-142).

FINDING NO. 148

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.

OBJECTION TO FINDING NO. 148

The School objects to Finding No. 148 on the grounds that there was no evidence presented at the Hearing that Ms. Henry did not deserve the \$3,000 increase for her 90 Day appointment as Interim Principal. The fact that the position was not posted externally is of no consequence since there was no evidence that there were any governance guidelines issued by the Department requiring charter schools to conduct external searches for school principals.

FINDING NO. 149

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.

OBJECTION TO FINDING NO. 149

The School objects to Finding No. 149 to the extent that it suggests that the Board of Trustees has any reason to suspect that there was any misconduct associated with Principal Henry's work in moving her staff towards excellent MCAS scores or teacher retention.

FINDING NO. 150

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.

OBJECTION TO FINDING NO. 150

The School Objects to Finding No. 150 on the grounds that it is conclusory. There was no evidence to suggest that either Mr. Walls or the members of the Board of Trustees should have understood “anomalies” to mean that the Department was investigating some form of misconduct.

FINDING NO. 151

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.

OBJECTION TO FINDING NO. 151

The School objects to Finding No. 151 on the grounds that the finding mischaracterizes the Minutes of the May 19, 2010 Report of the Personnel Committee Submitted to the Board of Trustees. Significantly, the finding conveniently omits from the description of Principal Henry’s contract two important provisions required by the Board of Trustees: (1) that it was to be contingent upon “acceptable performance”, and (2) that it also be tied to “faculty performance and rate of licensure.”

FINDING NO. 152

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.

OBJECTION TO FINDING NO. 152

The School objects to the fourth sentence in Finding No. 152 regarding the posting of the Development Officer position. There was no evidence presented at the Hearing that charter

school's are required to post positions. The School objects to the last sentence of Finding No. 152 regarding Mr. Swan's criminal record on the grounds that the Department's Charter School and Governance Guide which was admitted into evidence states that criminal background checks are only required on persons "that have direct and unmonitored contact with children." (See Department Ex. 167 at p. 33, Charter School Administrative and Governance Guide, November 2007). There was no evidence presented at the Hearing that Mr. Swan had any direct and unmonitored access with children in his role a Development Officer or Interim School Administrator. Mr. Walls was wrong in his testimony that no CORI check was done on Mr. Swan. Subsequent to her testimony for the Department, Ms. Barrett, the Business Manager, disclosed that she conducted a CORI check on Mr. Swan prior to his hiring.

FINDING NO. 154

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.

OBJECTION TO FINDING NO. 154

The school objects to Finding No. 154 on the grounds that it is conclusory and assumes facts that were not admitted into evidence. There was no evidence presented at the Hearing that there was anything "irregular" about the Board of Trustees' delay in executing Principal Henry's contract.

FINDING NO. 155

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.

OBJECTION TO FINDING NO. 155

The School objects to Finding No. 155 on the grounds that it assumes facts not in evidence concerning the mental state of the Trustees. Further, it should be noted that on October

28, 2009, Ms. Henry sent an email communication to the Board informing them that that there was an article in the newspaper that day which reported that “[the School] [was] the top ranked school in both English and Math.” (See Department Ex. 161, Henry e-mail to Board of Trustees dated October 28, 2009 re: MCAS).

FINDING NO. 156

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.

OBJECTION TO FINDING NO. 156

The School Objects to Finding No. 156 on the grounds that it is prejudicial and assumes facts that were not admitted into evidence in that it infers that Principal Henry’s alleged scheme to cheat on the 2009 MCAS exam was motivated by financial rewards offered by the Board of Trustees and the retention of grant funds. Because Ms. Henry invoked the fifth amendment privilege against self incrimination there was no evidence to support any finding regarding what her motivations were relative to the administration of the 2009 MCAS test. Further, there is no evidence in the record that the School would have to repay the Mass Mutual grant if it did not raise its MCAS scores.

FINDING NO. 157

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.

OBJECTION TO FINDING NO. 157

The School objects to Finding No. 157 on the grounds that it is prejudicial and assumes facts not in evidence in that the alleged lack of employment contracts or salary guidelines for teaching staff played any role in the alleged misconduct. There was no testimony from any of the teachers to support such a finding. Further, there is no evidence in the record that supports or even suggests that employment contracts are required for teachers in Charter Schools.

FINDING NO. 158

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.

OBJECTION TO FINDING NO. 158

The School objects to Finding No. 158 on the grounds that it is inconsistent with the Minutes of the June 1, 2009 Personnel Committee Meeting Minutes and the testimony of Mr. Walls. Significantly, the evidence demonstrated that on June 1, 2009, the Personnel Committee of the Board of Trustees met as a follow up to the Board of Trustees' May 19, 2009 Meeting. (See Department Ex. 175 at p. 363). At the June 1, 2009 meeting, the Personnel Committee discussed the evaluation process that it would undertake to evaluate Ms. Henry's performance. The June 1, 2009 Personnel Committee Meeting Minutes indicate that as part of the evaluation process, the Board of Trustees asked Ms. Henry to submit a list of her accomplishments during her tenure as the Interim principal/CEO. (Id.) According to the Minutes, at some point in time prior to the June 1, 2009 Personnel Committee Meeting, the committee conducted a series of telephone meetings with other members of the BOT and compared the feedback that it received from the individual members with Ms. Henry's list of accomplishments. (See Ex. 175 at p. 363). In addition, the Personnel Committee solicited comments from several parents and staff members. (Id.). Mr. Walls testified at the Hearing that the Personnel Committee also sought comments from teachers at the school. (See Walls Testimony, Trans. Vol. V, at pgs. 24-25). Mr. Walls testified that the result of these inquiries was that there was "nothing unfavorable" from anyone who commented on Ms. Henry's performance of her duties. (Id.). As a result of this evaluation process, the Personnel Committee recommended that Ms. Henry be appointed to serve in the role of Principal/CEO effective June 5, 2009. (See Department Ex. 175 at p. 364).

FINDING NO. 159

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.").

OBJECTION TO FINDING NO. 159

The School objects to Finding No. 159 on the grounds that it is misleading in that there was no evidence from any of the witnesses who testified for either the Department or the School that anyone ever expressed reservations about Principal Henry to the Board of Trustees. Further, the Hearing Officer gave great weight to teachers' testimonies when these were the teachers who helped with the cheating scheme; their testimonies should be disregarded and not relied on.

FINDING NO. 160

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.

OBJECTION TO FINDING NO. 160

The School objects to Finding No. 160 on the grounds that it is misleading in that it assumes that the Board of Trustees either knew or should have known that the Department was investigating misconduct at the time that the bonuses were given. There was no evidence to support this finding.

Teaching Staff and Assignments

FINDING NO. 161

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

OBJECTION TO FINDING NO. 161

The School objects to Finding No. 161 on the grounds that it is not supported by the evidence.

FINDING NO. 162

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.

OBJECTION TO FINDING NO. 162

The School objects to Finding No. 162 on the grounds that it is misleading because as stated in the School's Objection to Finding No. 138, the Finding completely ignores the findings issued by Class Measures in its 2008 Renewal Inspection Report. According to the 2008 Renewal Inspection Report, prior to start of the 2008/2009 academic year, the School had a

corrective action plan in place to address the teacher turnover problem. (See Department Ex. 71 at p. 40, Class Measures Renewal Inspection Report September 29-October 1, 2008).

Accordingly, the Board of Trustees would have been justified in believing that an improvement in staffing could form the basis for an improvement in the 2009 MCAS results. Further, there was no evidence presented by the Department at the Hearing that the Board of Trustees had notice of any teaching assignment issues in the 2008-2009 school year.

FINDING NO. 163

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.

OBJECTION TO FINDING NO. 163

The School objects to this finding on the grounds that that teacher retention was not a condition of its 2009 Charter Renewal. Further objecting, the Finding is unfairly prejudicial because the Class Measures 2008 Renewal Inspection Report confirmed that the School was taking active steps to address the teacher turnover problem. (See Department Ex. 71 at p. 40, Class Measures Renewal Inspection Report September 29-October 1, 2008).

Trustees' Accessibility

FINDING NO. 164

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.

OBJECTION TO FINDING NO. 164

The School objects to Finding No. 164 on the grounds that it is misleading. Although there was testimony at the Hearing that some of the teachers involved in the alleged cheating scheme did not contact the Board of Trustees because they were afraid that Ms. Henry would terminate them, there was no evidence that the Board of Trustees did make itself accessible to the teachers and staff at the school. Moreover there was no testimony that any teacher sent any anonymous note to the Board of Trustees. Chairman William Walls testified that all Trustee meetings were open to the public and publicized in advance. (See Walls Testimony, Trans. Vol. V at p. 104). Staff members at the school

also had the contact information for the Board of Trustees should they wish to communicate with them. (See Walls Testimony, Trans. Vol. V at p. 98-99). Further, there was Testimony from Mr. Walls the members of the BOT attended events at the school and made an “effort to meet and get to the know the staff of the school.” (See Walls Testimony, Trans. Vol. V at pgs. 105-106). There was Testimony from Teacher N that one particular member of the Board of Trustees, Amy Hughes, attended many of the events at the school and was known to be a caring and engaged person. (See Teacher N Testimony, Trans. Vol. II at pgs. 51-53). Although Teacher N saw Mrs. Hughes at events at the school, Teacher N did not attempt to contact her to inform her of any alleged improprieties related to the administration of the 2009 MCAS test. (See Teacher N Testimony, Vol. II. at pgs. 51-53 and 67-68). Moreover, Teacher T testified that she had known Trustee Norma Baker, prior to being hired to work at the school. (See Teacher T Testimony, Trans. Vol. II at pgs. 90- 92). Yet, despite this relationship, Teacher T did not contact Ms. Baker to express any of the concerns that Teacher T may have had about the way in which the 2009 MCAS test was to be administered. (See Teacher T Testimony, Trans. Vol. II at pgs. 98- 101).

It is also noteworthy, that the Department’s site visit team found in its Eight Year Site Visit Report that “[t]here appears to be an effective two-way flow of information from the Board to administration to faculty to parents. Administrators and teachers reported that the Board, and especially the new Board chair, are much more accessible than was the case in the past, and that communication is open and straightforward.” (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007).

There is evidence that some teachers were aware of the management and oversight structure of the School; therefore, the Hearing Officer should have inferred that the teachers chose not to report on the cheating even though they knew the cheating was wrong.

FINDING NO. 165

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.

OBJECTION TO FINDING NO. 165

The School objects to the first sentence of Finding No. 165 on the grounds that it is unfairly prejudicial and misleading. There was no evidence that Board of Trustees had ever punished any of the teachers for reporting misconduct or that such reporting would be futile.

The School objects to the second sentence of Finding No. 165 on the grounds that the Finding relies on hearsay. There was no testimony from Ms. Henry 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.”

The School objects to the third sentence of Finding No. 165 on the grounds that it is misleading in that Fred Swan was never the “Interim Principal” of the School. There was testimony from the School’s Parent Coordinator, Isaac Williams that after Ms. Henry was placed on administrative leave that her duties were split between Mr. Swan (who’s role was limited to administration) and Brian Calandruccio (who handled the educational part). (See Williams Testimony Trans. Vol. 10 at p. 24).

FINDING NO. 166

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.

OBJECTION TO FINDING NO. 166

The School objects to the second sentence of Finding No. 166 on the grounds that it is misleading. As stated in the School’s objection to Finding No. 164, the Trustees had made themselves accessible to the teaching staff long before Principal Henry was terminated. Indeed, the Department’s Year Eight Site Visit Report commented that the communication between the teachers and the Board of Trustees was “open and straightforward.” (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007).

VIOLATION OF THE 2009 RENEWAL CONDITIONS

Academic Success (AYP) Condition

FINDING NO. 168

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.

OBJECTION TO FINDING NO. 168

The School Objects to Finding No. 168 on the grounds that it is inconsistent with the evidence at the Hearing in that it mischaracterizes Mr. Pakos' testimony. Mr. Pakos testified at the Hearing that it is possible, on a theoretical level, to measure AYP with MCAS test results for 2008 and 2010, because "it would be possible to measure improvement with those two years of data." (See Pakos Testimony, Trans. Vol. I at pp. 200-201). This means that the School may have the opportunity to satisfy its academic performance condition. The Department would have confidence in the reliability of the School's 2010 MCAS results because the administration of the test was monitored by the Department and many of the School's teachers received test administration training that the Department provided in Springfield. (See Viator Testimony, Vol. 1 at pp. 163-165). The Department required the School to demonstrate by December 2010 that it has achieved AYP. Ms. Street testified that the MCAS test results cannot be released before August 2010. Even so, the School could demonstrate AYP if it is permitted to utilize the 2010 MCAS test records once they become available in August 2010.

FINDING NO. 169

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.

OBJECTION TO FINDING NO. 169

The School objects to this finding on the grounds that the Department's invalidation of the 2009 MCAS scores was a unilateral decision. There was no evidence presented at the Hearing that the Department does not have the statutory or regulatory authority to replace the 2009 scores with the results from 2010 test once the scores have been released.

FINDING NO. 170

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.

OBJECTION TO FINDING NO. 170

The School objects to this finding on the grounds that it is misleading in that there was no evidence that Department does not have the statutory or regulatory authority to use the School's 2010 MCAS scores once the scores have been released in place of the 2009 scores.

FINDING NO. 173

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.

OBJECTION TO FINDING NO. 173

The School objects to the second sentence of Finding No. 173 on the grounds that it mischaracterizes Mr. Pakos' Testimony. Mr. Pakos testified at the Hearing that it is possible, on a theoretical level, to measure AYP with MCAS test results for 2008 and 2010, because "it would be possible to measure improvement with those two years of data." (See Pakos Testimony, Trans. Vol. I at pp. 200-201). Further, there was no evidence presented at the Hearing that the Department does not have the statutory or regulatory authority to replace the 2009 scores with the results from 2010 test once the scores have been released.

FINDING NO. 175

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.

OBJECTION TO FINDING NO. 175

The school objects to Finding No. 175 on the grounds that there was no evidence that the Department does not have the statutory or regulatory authority use the school's 2010 MCAS results to meet the Performance goal.

FINDING NO. 176

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.

OBJECTION TO FINDING NO. 176

The School objects to the second sentence of Finding No. 176 on the grounds that it mischaracterizes Mr. Pakos' Testimony. Mr. Pakos testified at the Hearing that it is possible, on a theoretical level, to measure AYP with MCAS test results for 2008 and 2010, because "it would be possible to measure improvement with those two years of data." (See Pakos Testimony, Trans. Vol. I at pp. 200-201). This means that the School may have the opportunity to satisfy its academic performance condition. Further, there was no evidence presented at the Hearing that the School could not meet the requirement that all students test Proficient" by 2014 in ELA, Mathematics and Reading.

FINDING NO. 177

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.

OBJECTION TO FINDING NO. 177

The school objects to Finding No. 177 on the grounds that there was no evidence that the Department does not have the statutory or regulatory authority use the school’s 2010 MCAS to meet the requirements of AYP.

FINDING NOS. 184 -185

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.

OBJECTIONS TO FINDING NOS. 184-185

The School objects to Finding Nos. 184-185 on the grounds that the findings unfairly shift the burden of proof on the School to establish that it has met the academic growth targets in ELA and Mathematics as established by the Department. The Hearing Officer failed to issue a ruling as to which party had the burden of proof at the Hearing even though the issue had been extensively briefed by the parties well before the Hearings began. In failing to issue a ruling on this important issue, the School has been prejudiced.

THE TRUSTEES’ GOVERNANCE OF THE SCHOOL

Overview

FINDING NO. 192

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.

OBJECTION TO FINDING NO. 192

The School objects to Finding No. 192 on the grounds that it is too simplistic and overbroad. There was testimony from Mary Street that there is no uniform governance model for charter schools to follow. (See Street Testimony Vol. VIII at pp. 7-8). It should be noted that

during the first few years of operations, the Department criticized the Board of Trustees for micromanaging the day to day operations of the school. (See Baker Testimony, Trans. Vol. VI, pgs. 113-119; Department Exs. 15, 17, 18, RMH Site Visit Reports for the years 2001, 2002, and 2003). The evidence demonstrated that in response to the Department's concerns, the Board of Trustees hired consultants on two occasions to assist them with issues relating to governance policy. (See Baker Testimony, Trans. Vol. VI at pgs 119-120). After obtaining advice from consultants, the Board of Trustees adopted a policy whereby the principal would be responsible for overseeing the day to day operations of the school, including hiring the staff and would provide the Board of Trustees with the information that it generally needed. (See Baker Testimony, Trans. Vol. VI at pgs. 101, lines 12-16, 127-128; Baker Testimony Vol. VII at pgs. 154-156). This policy was found to be satisfactory to the Department's Charter School Office. Significantly, the Department made the following comment in its 2003 Site Visit Report regarding the governance structure of RMH: "[p]revious site visit reports noted that staffing concerns had triggered direct involvement from Board members in management and administration of the school. Those situations have since been resolved, and the Board now appears to be properly focused on its policy setting and oversight roles." (See Department Ex. 18 at p. 10, RMH 2003 Site Visit Report).

FINDING NO. 193

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.

OBJECTION TO FINDING NO. 193

The School objects to Finding No. 193 on the grounds that it is prejudicial. This finding is beyond the scope of the Hearing Officer's assignment. The Department did not establish at the Hearing the reasons for the principal and staff turnover.

FINDING NO. 195

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.

OBJECTION TO FINDING NO. 195

The School objects to Finding No. 195 on the grounds that it is misleading and unfairly prejudicial because as stated in the School's objection to Finding 138, the finding completely ignores the findings issued by Class Measures in its 2008 Renewal Inspection Report. According to the 2008 Renewal Inspection Report, prior to start of the 2008/2009 academic year, the School

had a corrective action plan in place to address the teacher turnover problem. (See Department Ex. 71 at p. 40, Class Measures Renewal Inspection Report September 29-October 1, 2008). In addition, it should be noted that improving teacher retention was not one of the conditions listed in the School 2009 charter renewal.

FINDING NO. 196

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.

OBJECTION TO FINDING NO. 196

The School objects to Finding No. 196 on the grounds that it is misleading. The evidence demonstrate that before its 2009 charter renewal, the School had made satisfactory progress on all issues related to governance such that in 2008, the year before the School's next application for the renewal of its charter, the Department's Charter School office did not recommend any changes to the organizational structure of RMH. (See Street Testimony, Vol. VIII at pp. 17- 18). Id.). There was testimony from Ms. Street that what can be inferred from this was that "there were not problems [with the School's governance structure] that raised it to the level of requiring a condition on the school [in its 2009 renewal]." (See Street Testimony at Vol. VIII at pp. 18-19). To the extent that the Department believed that there were still unresolved governance issues that were not included in the conditions of 2009 renewal, those issues were expressly waived by the Department.

Teaching Staff

FINDING NO. 200

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.

OBJECTION TO FINDING NO. 200

The School objects to Finding No. 200 on the grounds that it is misleading and prejudicial and fails to consider the efforts made by the School to train and mentor less experienced teaching staff. As noted in the School's Objection to Finding No. 138, these efforts were noted by Class Measures in its 2008 Renewal Inspection Report. (See Department Ex. 71 at p. 40, Class Measures Renewal Inspection Report September 29-October 1, 2008). The School also objects to the reference to the Chasen Report on the grounds that the report was a document prepared by an attorney retained by the school in anticipation of litigation. Accordingly, its contents were protected from disclosure by the attorney/client and/or work product doctrine.

FINDING NO. 206

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.

OBJECTION TO FINDING NO. 206

The School Objects to Finding No. 206 on the grounds that it is misleading and prejudicial in that Ms. Lynch testified that the School has a plan to meet the Highly Qualified Teacher requirement. (See Lynch Testimony Vol. IV at p. 28). In fact, the Department noted in the School's Year Nine Site Visit Report that the school was working to increase the number of Highly Qualified Teachers. (See Department Ex. 22 at p.16, Year Nine Site Visit Report dated December 2007). The Department's site visit team commented that "... the school has taken steps to address [the HQT] problem including paying for MTEL courses ..." Further there was testimony from Ms. Lynch at the Hearing that the School could increase the percentage of Highly Qualified teachers that it currently has by "reassigning teachers to a core subject area in which they are highly qualified to teach." (See Lynch Testimony at Vol. IV at p. 34).

FINDING NO. 207

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.

OBJECTION TO FINDING NO. 207

The School Objects to the second sentence of Finding No. 207 on the grounds that it misstates Ms. Lynch's testimony. Ms. Lynch testified that the certification only applies to teachers hired after the year 2000. (See Lynch Testimony at p. 50). In addition, Ms. Lynch's testimony was somewhat contradicted by the Department's Nine Year Site Visit Report which stated that "[a]lthough not required by charter school regulations, RMH is having its teachers pursue licensure..." (See Department Ex. 22 at p.16, Year Nine Site Visit Report dated December 2007).

FINDING NO. 209

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)).

OBJECTION TO FINDING NO. 209

The School objects to Finding No. 209 on the grounds that it is inaccurate, in that the Year Nine Site Visit report did not support parent complaints concerning teacher turnover. Quite the opposite, the Department commented in the report that the “parents are pleased with the academic program” and the School “holds all students to high academic standards, all needs are met, and communication with the school is excellent.” (See Department Ex. 22 at p. 16, Year Nine Site Visit Report dated December 2007). With respect to the teaching staff, the report noted that “with two teachers generally available at all times, there is plenty of support.” (*Id.*)

FINDING NO. 210

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%.

OBJECTION TO FINDING NO. 210

The School objects to Finding No. 210 on the grounds that it is highly prejudicial because it says nothing of the reason for the high turnovers. Further the findings fail to take into account the efforts made by the school to improve teacher retention. Further, as previously noted there was evidence that the School has a plan in place to address this issue. Moreover, it should be noted that if the Department was truly concerned that if the School could not adequately address the teacher turnover problem, it would have sought to make progress in this area a condition of the 2009 charter renewal.

School’s Lease

FINDING NO. 215

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).

OBJECTION TO FINDING NO. 215

The School objects to Finding No. 215 on the grounds that it is highly prejudicial, conclusory, based on hearsay, and does not accurately reflect the testimony of Mr. Walls. Teacher H's testimony regarding Chairman Walls' alleged refusal to let Principal Henry inform the Board of Trustees about what she learned about the School lease is unreliable hearsay because it is based on statements allegedly made by Ms. Henry who did not testify on this issue at the Hearing. Further, the finding lends no credence to statements made by Ms. Henry who was facing many legal problems at the time and wrote that it and was casting blame in order to earn the support of law enforcement officials. (See Teacher H Testimony, Vol. 3 pp. 157-159. The reference to Chairman Walls' testimony is inaccurate because he did not provide any testimony to support the conclusion that he refused let Ms. Henry discuss the issue with the Board. (See Walls Testimony, Vol. 5 at pp. 198-200).

FINDING NO. 216

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.

OBJECTION TO FINDING NO. 216

The School objects to Finding No. 216 on the grounds that the letter is prejudicial and based on unreliable hearsay. Further, the document was created by Principal Henry in retaliation for the School placing her on administrative leave. In addition, there was evidence that showed that Ms. Henry has no understanding of the legal ownership structure of the Lessor. She also made many false statements in the document, and the Hearing Officer admitted the document into evidence over the objection of the School and now seeks to give credence to Ms. Henry's false statements.

FINDING NO. 217

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).

OBJECTION TO FINDING NO. 217

The School objects to the second sentence of Finding No. 217 on the grounds that it mischaracterizes Ms. Baker's testimony, in that she never described herself as "Principal" of SSP. Rather, Ms. Baker described herself as either an officer or director of SSP, a non-profit corporation organized under GL. c. 180.

FINDING NO. 220

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.

OBJECTION TO FINDING NO. 220

The School objects to the first sentence of Finding No. 220 on the grounds that it is misleading in that it infers that there were no carrying costs associated with SSP's ownership of the Property. The finding failed to mention that Mr. Twiggs received clearance from the State Ethics Commission for the leasing arrangement. Moreover, the Department failed to demonstrate at the Hearing that the monthly rental payment that SSP received from the School covered all of SSP ownership costs.

FINDING NO. 221

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.

OBJECTION TO FINDING NO. 221

The School objects to the first sentence of Finding No. 221 on the grounds that it is misleading in that the State Auditors report dated August 3, 2005 did not consider whether SSP had any other carrying costs associated with its ownership of the Property beyond mortgages. Therefore, there was no basis to conclude that the School's rent payment had been inflated. In any event, there was evidence that the lease issue had been resolved to the satisfaction of the Department when the school entered into an Amended and Restated Lease in 2006. If the Department still took issue with the School's leasing arrangement with SSP it would have sought to include it as a condition of the School's 2009 charter renewal. Further, in admitting into evidence the State Auditor's Report, the Hearing Officer deprived the School of the ability to cross-examine anyone about the contents of the Report.

FINDING NO. 222

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.

OBJECTION TO FINDING NO. 222

The School objects to Finding No. 222 on the grounds that it is misleading in that the State Auditors report dated August 3, 2005 did not consider whether SSP had any other carrying costs associated with its ownership of the Property beyond mortgages. Therefore, there was no basis to conclude that the School's rent payment had been inflated. In addition, as previously stated, if the Department still took issue with the School's leasing arrangement with SSP it would have sought to include it as a condition of the School's 2009 charter renewal.

FINDING NO. 223

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.

OBJECTION TO FINDING NO. 223

The School objects to this Finding on the grounds that it is inconsequential since the Department would have had copies of all the lease documents in its records. There was no evidence presented by the Department that it did not receive the subject exhibit or that it cautioned the School leasing arrangement.

FINDING NO. 224

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.

OBJECTION TO FINDING NO. 224

The School objects to this Finding on the grounds that there was no evidence presented by the Department that it did not receive the subject financial records. In any event, there was no evidence that issues raised by the State Auditor had not been resolved to the satisfaction of the

Department. Significantly, the Department never sought to include rent payment issue as a condition of the School's 2009 charter renewal.

FINDING NO. 226

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).

OBJECTION TO FINDING NO. 226

The School objects to this finding on the grounds that it is misleading in that there was no evidence that the monthly and annual rent could not be calculated on a square footage basis. Further, the Department failed to demonstrate that there was anything unusual about the terms of the Amended and Restated Lease.

FINDING NO. 227

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).

OBJECTION TO FINDING NO. 227

The School objects to Finding No. 227 to the extent that it assumes that there was anything improper about the terms of the Amended and Restated Lease. In addition, as previously stated, if the Department took issue with the School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal.

FINDING NO. 228

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.

OBJECTION TO FINDING NO. 228

The School objects to Finding No. 228 to the extent that it assumes that there was anything improper about the terms of the Amended and Restated Lease. Further, as previously stated, if the Department took issue with the School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal.

FINDING NO. 229

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.

OBJECTION TO FINDING NO. 229

The School objects to Finding No. 229 on the grounds that it is conclusory and not supported by the evidence in that there was no evidence that the School's potential liability under the Amended and Restated Lease is greater than the amount of the lease payment. Further, as previously stated, if the Department took issue with the School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal.

FINDING NO. 230

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.

OBJECTION TO FINDING NO. 230

The School objects to the first sentence of Finding No. 230 on the grounds that it is misleading. There was no evidence presented at the Hearing the Board of Trustees that exclusively relied upon a presentation made by School Street Property in deciding whether to enter into the leasing arrangement with SSP.

FINDING NO. 231

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.

OBJECTION TO FINDING NO. 231

The School objects to Finding No. 231 on the grounds that it misstates Norma Baker's testimony. There was no testimony that the exact figure paid by the school was "\$7,700"; rather this was an approximation. (See Baker Testimony Vo. VII at p. 186). In any event this of little consequence since the Department had always known what the School was paying for rent. Further, if the Department had any lingering concerns about School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal.

FINDING NO. 232

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.).

OBJECTION TO FINDING NO. 232

The School objects to this finding in that the Hearing Officer is testifying that no evidence of costs to SSP was offered by either party and there is no provision for a reserve which means SSP will lose the building or be forced into bankruptcy if it loses the School as a tenant and is unable to find another tenant. Further, if the Department had any lingering concerns about the School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal.

FINDING NO. 233

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.

OBJECTION TO FINDING NO. 233

The School objects to Finding No. 233 on the grounds that Ms. Henry's "corruption" letter constituted unreliable hearsay and should never have been admitted into evidence.

FINDING NO. 234

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.

OBJECTION TO FINDING NO. 234

The School objects to Finding No. 234 on the grounds that there was no evidence that SSP financially benefited from the School rent payments. The evidence demonstrated that SSP was a nonprofit organization. (See Baker Testimony, Vol. VI at p. 16; Exh. 301, Secretary of the Commonwealth Corporations Division, School Street Properties, Inc. Summary Screen). The Department did not offer any evidence to question SSP's nonprofit status. The Hearing Officer's finding no. 234 lacks factual foundation. He asserts that SSP benefited from the lease with the School and that it makes a profit from the lease. There was no evidence before the Hearing Officer that suggests that SSP agreed to lease the Property at costs or that it would not benefit from the transaction. Further, the Hearing officer fails to take into account Ms. Baker's testimony that SSP will lose the Property if it loses the School as tenant and is unable to find a successor tenant.

FINDING NO. 235

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.

OBJECTION TO FINDING NO. 235

The School objects to Finding No. 235 on the grounds that it does not comport with the evidence presented at the Hearing. There was no evidence that NES benefit from any SSP loans. In addition, there was no evidence that any person affiliated with NES financially benefited from any such loans, including Norma Baker. Similar to SSP, NES is a nonprofit organization. (See Baker Testimony, Vol. VI at pp. 5). The Department did not offer any evidence to question NES' nonprofit status.

FINDING NO. 236

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.

OBJECTION TO FINDING NO. 236

The School objects to Finding No. 236 on the grounds that it mischaracterizes Norma Baker's testimony. Ms. Baker only acknowledged that SSP occasionally made loans to NES but could not remember the exact number. She testified that the loans were "documented." (See Baker Testimony Vol. VII at pp. 175-176). Ms. Baker did not testify that SSP provided any funds to NES that were not loans.

FINDING NO. 237

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.

OBJECTION TO FINDING NO. 237

The School objects to Finding No. 237 on the grounds that it is conclusory, speculative, and highly prejudicial. The fact that Ms. Baker testified that she did not know if SSP made any payments to Fred Swan does not mean that there were such payments. There was no evidence offered by the Department that Fred Swan received any payments from SSP at anytime.

FINDING NO. 239

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.

OBJECTION TO FINDING NO. 239

The School objects to Finding No. 239 on the grounds that it is conclusory, speculative, and highly prejudicial. There was no evidence that SSP costs are minimal. Further, the fact that the Amended and Restated lease requires the School to maintain and pay for insurance coverage does not lead to the conclusion that SSP did not have its own separate insurance policy. The Department failed to demonstrate that SSP did not maintain a separate insurance policy in connection with its ownership of the Property or that its operating costs were minimal.

FINDING NO. 240

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).

OBJECTION TO FINDING NO. 240

The School objects to Finding No. 240 on the grounds that it is speculative and not supported by the evidence. Further, as previously stated, if the Department had any lingering concerns about the School's leasing arrangement with SSP it should have sought to include a change in rent terms in the conditions attached to the School's 2009 charter renewal. In addition, the State Ethics Commission found no ethical problems with the leasing arrangements between the School and SSP.

FINDING NO. 241

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.

OBJECTION TO FINDING NO. 241

The School objects to Finding No. 241 on the grounds that it is misleading and not supported by the evidence. There was no evidence that any member of the School's Board of Trustees that were associated with either NES or SSP financially benefited from either the original lease or the Amended and Restated Lease. Both NES and SSP were nonprofit corporations. Further, as required by the Department, the Trustees disclosed their interest in 91 School Street Properties and even sought an opinion from the State Ethics Commission regarding any potential conflict of interest. (See Baker Testimony, Vol. VI at pp. 30-31). The State Ethics Commission responded to the inquiry by confirming that there was no problem with leasing Property to the School as long as none of the officers who sit on RMH's Board of Trustees receive a financial benefit from the lease arrangement. (See Baker Testimony, Vol. VI at pp. 56-57). Further, the Hearing Officer omits to mention that NES was a founding entity of the School or that NES is the guarantor of the SSP loans which were used to finance the purchase of the Property.

FINDING NO. 242

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.

OBJECTION TO FINDING NO. 242

The School objects to finding No. 242 on the grounds that it is highly prejudicial. There was no evidence that Ms. Baker received any financial benefit from either the original or

Amended and Restated Lease between SSP and the school. Further objecting, the Department's Charter School office had approved Lorraine Swan as a Trustee along with all the other current and former Trustees of the School.

FINDING NO. 243

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.

OBJECTION TO FINDING NO. 243

The School objects to Finding No. 243 on the grounds that it is misleading in that there was no evidence that the Board of Trustees has not inquired into Ms. Henry's allegation about the School's lease or her other allegations. Further it should be noted that the evidence demonstrated that Ms. Henry made the allegations after she was placed on administrative leave by the School. It was clear that this was a retaliatory act designed to damage the School. The allegations themselves are prejudicial hearsay and should never have been admitted into evidence. Moreover, the Trustees have been consumed by the impending Charter Revocation proceeding, leaving them little time to attend to any other business. Finally, the Hearing Officer neglects to acknowledge that the Trustees are volunteers with their jobs and families to attend to.

Criminal Offender Record Information (CORI)

FINDING NO. 244

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).

OBJECTION TO FINDING NO. 244

The School objects to the last sentence of Finding No. 244 on the grounds that it is speculative in that it implies that the CORI record for Ms. Henry was removed from Ms. Henry's personnel file by the School. There was no evidence at the Hearing to support such a finding. Further, the Department's favored witness did not testify about any tampering with the CORI records which she controls.

FINDING NO. 245

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.

OBJECTION TO FINDING NO. 245

The School objects to Finding No. 245 on the grounds that there was no evidence that Ms. Henry's criminal convictions (which were more than ten years old) had any impact on the performance of her job duties. Despite Ms. Henry's criminal record, nothing in her application suggested that she was unsuitable or incompetent to serve in the capacity of a school administrator. The School's former principal Mr. Seay who hired Ms. Henry went as far as to tell the Board of Trustees that he and Ms. Henry "were the best one-two combination in the nation." (See Walls Testimony, Trans. Vol. V at pp. 13, 141-142). The Chairman of the Trustees reviewed Mr. Seay's evaluation of Ms. Henry in which he gave her an above average rating. (See Walls Testimony, Trans. Vol. V at pp. 141-142). Ms. Henry had the qualifications necessary to successfully assume the position she held at the School.

FINDING NO. 246

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.

OBJECTION TO FINDING NO. 246

The School objects to Finding No. 246 on grounds that it is misleading in that there was no evidence that a CORI check was not performed on Ms. Henry when she was hired by Mr. Seay.

FINDING NO. 247

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.

OBJECTION TO FINDING NO. 247

The School objects to Finding No. 247 on the grounds that there was evidence presented at the Hearing that the Board of Trustees had a duty to perform a CORI check on Ms. Henry at the time of her promotion to as Interim Principal. At the time of her promotion, Ms. Henry had been an existing employee of the School for two years. Under the Department's charter school Governance Guide, a CORI check on an existing employee need only be run every three years. (See Dept Exh. 167 at pg. 33, Charter School Administrative Governance Guide, November 2007). Furthermore, the Personnel Committee has no authority to either conduct CORI checks or to see the results of CORI checks.

FINDING NO. 248

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.

OBJECTION TO FINDING NO. 248

The School objects to Finding No. 248 on same grounds as it objected to Finding No. 247. Further, although schools are required to conduct CORI background checks for the individuals described by the statute, a school is not prohibited from hiring individuals with criminal records.

FINDING NO. 249

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.

OBJECTION TO FINDING NO. 249

The School objects to Finding No. 249 on the grounds that there was no evidence that the School did not have a written CORI policy or that it did not maintain a log to track requests and responses.

FINDING NO. 251

251. The CORI policy has not been administered consistently or properly. For example, Michelle Ballanger, 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.

OBJECTION TO FINDING NO. 251

The School objects to Finding No. 251 on the grounds that it is misleading. The School produced a CORI “Check list” to the Department as part of the Hearings in lieu of the actual CORI records. This production was agreed to by the Department. The CORI Check List simply listed the names and dates that appeared on the CORI Records. Where a person’s CORI record did not have a date listed, the CORI Check List simply stated “no date on record.” However, this did not mean that there was no CORI record for that person. It should be noted that there was testimony at the Hearing that every School employee had a CORI record on file. (See Jenkins Testimony, Vol. 10 at p. 221). However, it was unclear whether the FBI had taken some of the School CORI records as part of its investigation involving Ms. Henry. (Id.)

FINDING NO. 252

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).

OBJECTION TO FINDING NO. 252

The School objects to Finding No. 252 on the same grounds as its objection to Finding No. 251.

FINDING NO. 253

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.

OBJECTION TO FINDING NO. 253

The School objects to Finding No. 253 the same grounds as its objection to Finding No. 251.

FINDING NO. 256

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.

OBJECTION TO FINDING NO. 256

The School objects to Finding No. 256 on same grounds as its objection to Finding No. 251. The School also objects to Finding No. 256 on the grounds that there was no evidence that Mr. Swan ever served as “Interim Principal” or had any direct and unmonitored contact with children which would make him subject to a CORI check. (See Dept Ex. 167 at pg. 33, Charter School Administrative Governance Guide, November 2007).

FINDING NO. 257

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.

OBJECTION TO FINDING NO. 257

The School objects to Finding No. 257 on the same grounds as its objections to Finding Nos. 251 and 256. The School further objects to Finding No. 257 on the grounds that it mischaracterizes Mr. Walls’ testimony. Mr. Walls never testified that “no CORI check was performed.” Rather Mr. Walls testified that he did not believe that a CORI check was performed on Mr. Swan. However, this cannot be construed to say that the School did not perform a CORI check on Mr. Swan.

FINDING NO. 259

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.

OBJECTION TO FINDING NO. 259

The School objects to Finding No. 259 on grounds that it is misleading in that the Department failed to demonstrate that the “review” referenced in this finding was not performed.

Trustee Term Limits

FINDING NO. 260

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.

OBJECTION TO FINDING NO. 260

The School objects to Finding No. 260 on the grounds that it is unfairly prejudicial in that there was no evidence that the term limit issue was some kind of “protracted struggle.” In any event, the Department has conceded that the School has fully complied with the 2009 renewal conditions governing term limits for members of the Board of Trustees, so this issue is now moot. (See Street Testimony, Vol. VIII, at pp. 107-108).

FINDING NO. 261

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.

OBJECTION TO FINDING NO. 261

The School objects to Finding No. 261 on the same grounds as its objection to Finding No. 260. Furthermore, the Hearing Officer could find no evidence to support his arguments; therefore, he has turned to creative conjectures.

FINDING NO. 262

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).

OBJECTION TO FINDING NO. 262

The School objects to Finding No. 262 on the same grounds as its objection to Finding No. 260.

FINDING NO. 263

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.

OBJECTION TO FINDING NO. 263

The School objects to Finding No. 263 on the same grounds as its objection to Finding No. 260.

FINDING NO. 265

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).

OBJECTION TO FINDING NO. 265

The School objects to Finding No. 265 on the same grounds as its objection to Finding No. 260.

FINDING NO. 266

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.

OBJECTION TO FINDING NO. 266

The School objects to Finding No. 266 on the grounds that it is highly prejudicial and speculative. There was no evidence that the Department ever objected to the possibility of the founding trustees serving on the Board of Trustees at some future date. Nor was there any evidence that any of the founding trustees plan to serve on the Board of Trustees at some future date. In any event, this is a non-issue given that all trustee candidate applications must be reviewed and approved by the Department's Charter School Office. (See Lichtenstein Testimony Vol. VII at pp. 12-13).

FINDING NO. 267

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.

OBJECTION TO FINDING NO. 267

The School objects to Finding No. 267 on grounds that there was no evidence that the Department ever raised this as an issue. To the contrary, there was evidence that the Department's Charter School Office reviews and approves all charter school trustee candidates. (See Lichtenstein Testimony Vol. VII at pp. 12-13). The Department failed to produce any evidence that the Department's Charter School Officer ever objected to the applications of Shakeena Williams or John Johnson.

FINDING NO. 268

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.

OBJECTION TO FINDING NO. 268

The School objects to Finding No. 268 on grounds that it is highly prejudicial. As previously stated, there was evidence that the Department's Charter School Office reviews and approves all charter school trustee candidates. (See Lichtenstein Testimony Vol. VII at pp. 12-13). The Department failed to produce any evidence that the Department's Charter School Officer ever objected to the applications of William Strothers or Kim Alston.

Fred Swan

FINDING NO. 269

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.

OBJECTION TO FINDING NO. 269

The School objects to Finding No. 269 on the grounds that there was no evidence that Fred Swan continues to be "closely tied to the School."

FINDING NO. 270

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.

OBJECTION TO FINDING NO. 270

The School objects to Finding No. 270 on grounds that it does not reflect the evidence presented at the Hearing. The Department did not produce any evidence that Mr. Swan exercised "great influence" over the School or the Board of Trustees. Nor was there any evidence that the Board of Trustees did not exercise its independent judgment in recruiting board members or in making decisions.

FINDING NO. 271

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.

OBJECTION TO FINDING NO. 271

The School objects to Finding No. 271 on grounds that there was no evidence that Mr. Swan served as the "Interim Principal" of the School.

FINDING NO. 273

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.

OBJECTION TO FINDING NO. 273

The School objects to Finding No. 273 on grounds that it is speculative. There was no evidence presented at the Hearing that Mr. Swan did not perform the work referenced in his consulting invoices.

FINDING NO. 274

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.

OBJECTION TO FINDING NO. 274

The School objects to Finding No. 274 on grounds that it is misleading in that there was no evidence as to what the total budget was for the event. There was no evidence that the "slight profit" referenced by Mr. Swan was not solely limited to the dinner portion of the event as opposed to the budget for the entire event. The Department failed to demonstrate at the Hearing that an accounting was warranted.

FINDING NO. 275

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.

OBJECTION TO FINDING NO. 275

The School objects to Finding No. 275 on the same grounds as its objection to Finding No. 256.

FINDING NO. 276

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.

OBJECTION TO FINDING NO. 276

The School objects to Finding No. 276 on grounds that there was no evidence that Mr. Swan did not deserve the 3% cost-of-living increase.

FINDING NO. 277

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.

OBJECTION TO FINDING NO. 277

The School objects to Finding No. 277 on grounds that there was no evidence that Charter Schools are required to "post" positions before making a hiring decision.

FINDING NO. 278

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.

OBJECTION TO FINDING NO. 278

The School objects to Finding No. 278 on the grounds that there was no evidence that Mr. Swan was hired as the "Interim Principal." As previously stated, the evidence demonstrated that when Principal Henry was placed on administrative leave, her duties were split between Mr. Swan (who's role was limited to administration) and Brian Calandrucchio (who handled the educational part). (See Williams Testimony Trans. Vol. 10 at p. 24).

THE SCHOOL'S REMEDIAL PLAN

Corrective Action Plan

FINDING NO. 281

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 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.

OBJECTION TO FINDING NO. -281

The School objects to Finding No. 281 on the grounds that it is highly prejudicial in that it appears to suggest that the Board of Trustees had been slow in reacting to the MCAS cheating incident. The evidence demonstrated that this was far from the case. Significantly, in December of 2009 the School conducted its own internal investigation into the cheating incident. The School did not outline its corrective action proposal at the January 26, 2010 Board of Education meeting because it was still a work in progress. It should be noted that as of the date of the meeting, the Department had not shared with the School the names of the teachers who had been involved in Ms. Henry's alleged cheating scheme.

FINDING NO. 283

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.

OBJECTION TO FINDING NO. 283

The School objects to Finding No. 283 on grounds that it is highly prejudicial and mischaracterizes the efforts made by the School's lawyers to offer into evidence the School's corrective action plan. At the start of the Hearings, the Hearing Officer had made known to the parties that he was not interested in receiving any information about such a plan. Only after the lawyers for the Department and the School had finished their examination of Mr. Walls, did the Hearing Officer ask Mr. Walls about the School's plan.

FINDING NO. 284

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.

OBJECTION TO FINDING NO. 284

The School objects to Finding No. 284 on the grounds that it mischaracterizes Ms. Alston's testimony. Ms. Alston testified that the Board of Trustees are willing, for the well being of the School, to resign and allow the appointment of new trustees to be approved by the Department. (See Alston Testimony, Vol. IX at p. 96, lines 6-17).

FINDING NO. 286

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.

OBJECTION TO FINDING NO. 286

The School objects to Finding No. 286 on the grounds that it omits the testimony of Ms. Alston that the Board of Trustees are also willing, for the well being of the School, to resign and allow the appointment of new trustees to be approved by the Department. (See Alston Testimony, Vol. IX at p. 96, lines 6-17).

FINDING NO. 289

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.

OBJECTION TO FINDING NO. 289

The School objects to Finding No. 289 on the grounds that it is misleading. The audio video tape of the Board of Education's January 26, 2010 Meeting demonstrated that the Commissioner misled the Board of Education about the range of options available to it as an alternative to revocation. Significantly, the video shows that during its deliberations, the Board of Education asked the Commissioner whether the board had any options available to them other than revocation of the charter. The Commissioner failed to inform the Board of Education that probation was a potential option under the charter school regulations found at 603 CMR 1.13(4). (See Commissioner Chester's Recorded Testimony; Street Testimony Trans. Vol. VIII at pp. 86 to 88).

FINDING NO. 291

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).

OBJECTION TO FINDING NO. 291

The School objects to Finding No. 291 on the grounds that it is misleading. The evidence demonstrated that prior to the Board of Education's January 26, 2010 Board Meeting, the Commissioner sent a Memorandum to the Board of Education dated December 14, 2009 updating the board members on the alleged MCAS cheating incident involving the School. (See Department Ex. 93). In the Memorandum, the Commissioner advised the Board of Education that "... pursuant to 603 CMR 1.13(e), the [Board of Education] may vote to provide notice of its intent to revoke charter based upon evidence of fraud or gross mismanagement on behalf of the school." (See Department Ex. 93 at p. 2, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009). The Commissioner further advised the Board of Education that "[s]imilarly pursuant to CMR 1.13(g), the [Board of Education] may vote to provide notice of its intent to revoke charter for the additional and independent reason that because the School's MCAS results have been permanently invalidated, the School cannot fulfill the academic condition imposed on RMH by the [Board of Education] in January 2009." (Id.). However, the Commissioner's Memorandum, did not inform the Board of Education that there were any alternatives to revocation such as probation. (See Department Ex. 93 at p. 2, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009).

FINDING NO. 293

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.

OBJECTION TO FINDING NO. 293

The School objects to Finding No. 293 on the grounds that it is a mischaracterization of the evidence. As previously stated, trustee, Kim Alston testified at the Hearing that the Board of Trustees is willing, for the well being of the School, to resign and allow the appointment of new trustees to be approved by the Department. (See Alston Testimony, Vol. IX at p. 96, lines 6-17).

Input from Parents and Teachers

FINDING NO. 300

300. Ms. Early 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.

OBJECTION TO FINDING NO. 300

The School objects to Finding No. 300 on the grounds that there was no evidence that a CORI check was required for Ms. Early. Significantly, the Department failed to demonstrate that she had any direct and unmonitored contact with children.

FINDING NO. 301

Brian Calandruccio (9 Tr. 117)

301. Principal Henry hired Mr. Calandruccio 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.

OBJECTION TO FINDING NO. 301

The School objects to Finding No. 301 on the same grounds as its objection to Finding No. 251.

FINDING NO. 302

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

OBJECTION TO FINDING NO. 302

The School objects to Finding No. 302 on grounds that it is misleading in that there was no evidence that the IEPs plans were written solely by Teacher J. Teacher J. testified at the Hearing that he received assistance from the Principal in writing IEPs and worked as part of an “IEP team” with other educators at the school. (See Teacher J Testimony at Vol. IX at pp. 129 - 130). Further, Teacher J. did not teach in the classroom. (Id at p. 129). There was no evidence that Teacher J. was not qualified to perform his duties.

FINDING NO. 303

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

OBJECTION TO FINDING NO. 303

The School objects to Finding No. 303 on the grounds that it is a mischaracterization of the testimony of the witnesses. There was no evidence that Fred Swan ever served as the “Interim Principal” of the School. As previously stated, the evidence demonstrated that when Principal Henry was placed on administrative leave, her duties were split between Mr. Swan

(who's role was limited to administration) and Brian Calandrucchio (who handled the educational part). (See Williams Testimony Trans. Vol. 10 at p. 24).

FINDING NOS. 301[SIC] -302[SIC]

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.

OBJECTION TO FINDING NOS. 301[SIC]- 302 [SIC]

The School objects to Finding Nos. 301[SIC]-302[SIC] on the same grounds at its objection to Finding No. 251.

FINDING NO. 308 [SIC]

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 5th grade and mentors five students. Mr. Stern's CORI check is dated 10/1/09. Exh. 315.

OBJECTION TO FINDING NO. 308 [SIC]

The School objects to Finding No. 308[SIC] on the same grounds at its objection to Finding No. 251.

FINDING NO. 310 [SIC]

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

OBJECTION TO FINDING NO. 310 [SIC]

The School objects to Finding No. 310 on the grounds that it does not comport with the evidence in that the School demonstrated that photos of the Trustees were posted in the school for everyone to see. (See e.g., Teacher E Testimony, Trans. Vol. II at pgs. 173-174, 177-178). Therefore, it is simply not plausible that the Teacher referenced in the finding No. 310 was not aware that the School had a Board of Trustees.

FINDING NO. 311 [SIC]

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.

OBJECTION TO FINDING NO. 311 [SIC]

The School objects to Finding No. 311 on the same grounds as its objection to Finding No. 251.

FINDING NO. 328 [SIC]

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.

OBJECTION TO FINDING NO. 328 [SIC]

The School objects to the second sentence of Finding No. 328 on the grounds that it is misleading. There was evidence that the Department found that the Board of Trustees did have an effective line of communication with the parents. Significantly, the Department's site visit team commented in the School's Year Eight Site Visit Report that "[t]here appears to be an effective two-way flow of information from the Board to administration to faculty to parents." (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007). As for the last sentence of Finding No. 238, the Board of Trustees have expressed a willingness to step aside in order to save the School. (See Alston Testimony, Vol. IX at p. 96, lines 6-17).

OBJECTIONS TO ANALYSIS AND CONCLUSIONS OF LAW

The School objects to the Hearing Officer's Conclusions of Law and incorporates by reference the above objections. The School further incorporates its Proposed Findings and Conclusions of Law. The School further incorporates the following objections:

The School objects to the Hearing Officer's Analysis and Conclusions of Law with respect to the following points:

1. That cause exists for charter revocation;
2. That the teachers at RMH were unfamiliar with the Board of Trustees;
3. That the Board of Trustees failed to adopt employment contracts and salary guidelines;

4. That the Board of Trustees was personally tied to Principal Henry;
5. That the Board of Trustees was passive in responding to notification of the suppression of the 2009 MCAS scores;
6. That RMH has failed to fulfill academic progress Condition 1(b) of its 2009 charter renewal;
7. That RMH's AYP rating cannot be calculated because of the invalidated 2009 MCAS scores;
8. That the Board of Trustees' conduct with relation to the teaching staff amounts to gross mismanagement;
9. That the Board of Trustees has failed to provide stable leadership within RMH;
10. That the Board of Trustees lack the dedication to assure that management policies and practices, such as those related to CORI are implemented;
11. That there exist party-related transactions that adversely affect RMH's finances; and
12. That the Board of Trustees has a historical difficulty in shifting its norms.

HEARING OFFICER’S ERRONEOUS AND OMITTED FINDINGS

The following is a comparison table of the Hearing Officer’s Erroneous and Omitted Findings and relevant proposed findings that were previously submitted by the School:

Topic	Erroneous Finding	Omitted RMH Proposed Findings
Charters, Renewal Conditions, and Intent to Revoke	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.	There are approximately 60 charter schools, all of which are not renewed each year; Ms. Street’s testimony only speaks of 2009 charter renewals
	10. The 2004 and 2009 charter renewals each contained one condition addressed to the School’s academic performance.	5. According to the Director of Charter Schools, Mary Street, conditions are imposed “if there are particular evident issues going on in the school that [the Department] feel[s] need to be addressed that don’t justify not renewing the charter[.]” (See Street Testimony, Trans. Vol. IV at p. 53, lines 10-13).
	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	The 2004 Charter Renewal 18. In July 2003, RMH submitted an application to renew its charter for the 2004-2009 period. On February 17, 2004, the Commissioner of the Department of Elementary and Secondary Education, David P. Driscoll, sent a Memorandum to the Members of the Board of Education recommending that the Board of Education vote to renew RMH’s charter with conditions concerning academic performance and governance. (See Department Ex. 56, Commissioner Driscoll Memorandum dated February 17, 2004). 19. On February 24, 2004, the Board of Education voted to renew RMH’s charter with following five conditions: 1. The Robert M. Hughes Academy Charter School (“School”) will make Adequate Yearly Progress in the aggregate as determined by the Department of Education based upon the results of the spring 2004 and spring 2005 administration of the Massachusetts Comprehensive Assessment System.

	later.	<p>2. Members of the Board of Trustees who also served as members of the board of directors, officers, executives, advisors, consultants, and in any other capacity for the D. Edward Wells Federal Credit Union must immediately request an opinion from the State Ethics Commission regarding their failure to disclose this interest on their financial disclosure forms and their participation in any decisions made regarding 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 on page 14 in number 14 of the Notes to Financial Statements. If the State Ethics Commission determines that any members of the Board of Trustees violated either the Commonwealth’s conflict of interest or financial disclosure laws, those members must immediately resign from the Board of Trustees.</p> <p>3. The Board of Trustees must hire a consultant by April 15, 2004 with experience working with boards of trustees of charter schools regarding board practice and governance. Such consultant must be acceptable to the Department of Education and must not have any personal relationships with any members of the Board of Trustees. The consultant shall perform an evaluation of the Board of Trustees’ performance of its governance and oversight duties and submit a written report to the Department of Education by</p>
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		<p>June 30, 2004. The Board of Trustees shall submit an action plan based upon this report by September 13, 2004 to the Department of Education for approval and for use in the ongoing evaluation of the School.</p> <p>4. 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.</p> <p>5. Members of the Board of Trustees must cooperate with the Department of Education and the Office of the State Auditor to fully address the questions and issues raised by the Department.</p> <p>(See Department Ex. 57, Department letter to Carol Arango dated March 30, 2004 with attached Minutes of the Board of Education's February 24, 2004 Regular Meeting).</p> <p>C. <u>The Department has acknowledged that RMH Met all the Conditions of its 2004 Charter Renewal.</u></p> <p>RMH's Compliance with the 2004 Renewal Conditions</p> <p>20. The evidence demonstrated that after RMH received notice of the Department's 2004 renewal vote, the School worked diligently to comply with each of the renewal conditions. For example, with regard to the first condition concerning AYP, there was testimony at the Hearing from former RMH Principal, Douglass Greer that the School imposed an academic plan to achieve AYP by placing a "focus on academics" at the School and used the Department's site visit reports as baseline to guide</p>
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		<p>the School’s plan. (<u>See</u> Greer Testimony, Trans Vol. VIII at p.132). ¹</p> <p>21. On August 26, 2005, the Department sent a letter to the Trustees providing them with an update on “where the school stands from the [Department’s] perspective regarding the conditions imposed on the charter during the renewal in 2004.” (<u>See</u> Department Ex. 61, Department letter to Trustees dated August 26, 2005). With regard to the first condition, the Department confirmed that the School made AYP in 2004, but was still waiting for the release of the AYP determinations for 2005. (<u>Id.</u>).</p> <p>22. On the second condition, the Department indicated that it had received a letter from RMH, trustee, Mary Lane, who was also associated with the Edward D. Wells Credit Union with an attached determination from the State Ethics Commission indicting that she did not violate the conflict of interest law. (<u>See</u> Department Ex. 61, Department of Education letter to Trustees dated August 26, 2005). With regard to Trustees, Carol Arango and Ms. Baker, the Department acknowledged receipt of a letter from Holland and Knight which had reached the conclusion that there was no conflicts of interest involving either Norma Baker or Carol Arango in connection with their affiliation with the Edward D. Wells Credit Union because neither of them had any financial interest in the organization. (<u>See</u> Ex. 308, Holland & Knight Memorandum dated July 12, 2004). Although the Department claims that this response was inadequate and that it forwarded the matter to the State Ethics Commission, the Department failed to present any evidence at the Hearing that it took any further action on this issue.</p> <p>23. With respect to the third condition regarding the retention of a consultant to work with the Trustees on “board practice and governance”, the Department acknowledged in its the August 26, 2005 letter that the Trustees did retain a governance</p>
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¹ Mr. Greer had previously served as the school’s academic director from 2001 to 2003. In his role as principal/CEO Mr. Greer was responsible for the “Overall facilities—overall management of the budget ... which included the finances, hiring of teachers, the overall meeting the goals of the [the school’s] accountability plan, enrollment. (See Greer Testimony, Trans. Vol. VIII at p. 127, lines 8-13). Mr. Greer testified that he reported to the Trustees and worked directly with the Department during site visits to the school. (Id. at pp. 127-128). In 2006 and after RMH had made AYP, Mr. Greer voluntarily separated from school as “a change in career” to take a position at another Charter School in Springfield. (See Greer Testimony, Vol. VIII at p. 141).

² In March of 2004 and at the behest of the Department's Associate Commissioner of Charter School's, the State Auditor conducted a review of RMH's financial operations. In connection with the audit, the State Auditor produced an Audit Report dated August 3, 2005. (See Department Ex. 63, Independent State Auditors Report dated August 3, 2005).

³ In January of 2006, RMH's lease for the Property was amended and restated shifting the lease payment from being tied to the mortgage to a \$6.50 per square footage basis). (See RMH Ex. 304, Amended and Restated Lease dated January 18, 2006). Under the terms of the Amended and Restated Lease, the monthly rent to be paid by RMH was approximately \$6.50 per square foot or \$8,638.50 per month for a 10 year term without any adjustments during the Term. (Id.).

⁴ In connection with the terms of the Amended and Restated Lease, in a letter dated February 1, 2006, SSP informed the School that it was only charging the school for the use of the building and not the entire space of the property which included a parking lot, several garages, and a playground area. (See RMH Ex. 305, SSP Letter to RMH Fiscal Department dated February 1, 2006; Baker Testimony Vol. VI, pp. 50-54). The February 1, 2006 letter stated:

This letter is to inform you that the rent invoice that has been submitted for February 2006 denotes the new amount indicated in the amended lease with School Street Properties in the amount of \$8,638.50. The entire scope of the property that is to your avail is 28,884 sq. ft; however, we are only charging RMH Academy Charter School for the space associated with the use of the building which is 15,948 sq. ft. (see referenced in amended lease)...

(See RMH Ex. 305, SSP Letter to RMH Fiscal Department dated February 1, 2006)

⁵ As further elaboration on this point, the Department's site visit team commented that:

All stakeholders spoke positively about the lines of communication within the school. There appears to be an effective two-way flow of information from the Board to administration to faculty to parents. Administrators and teachers reported that the Board, and especially the new Board chair, are much more accessible than was the case in the past, and that communication is open and straightforward. Board members visit the school frequently and sometimes attend staff -meetings. This year the Board chair has held weekly meetings with the interim Co-Principals, and has stated that he plans to continue meeting regularly with the new Principal. Teachers and administrators hold frequent meetings, including a daily morning check-in, and weekly whole staff meetings. Teachers and administrators communicate frequently with parents. Parents reported that teachers call home at least once or twice a month, with both positive and negative feedback about their children. They also receive weekly or biweekly progress reports that provide them with detailed and immediate information about their child's academic progress. The Dean of Students attends monthly Parent Teacher Organization meetings.

(See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007).

⁶ Although the Department's site visit team noted that hiring qualified teachers was an area of concern, the report indicates that the Trustees identified teacher retention as a priority. As noted by the site visit team in its report, one of the challenges facing RMH at that time was that the "[t]eachers [were being] paid a starting salary that is considerably lower than what the local public district offers." (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007). In response to this problem, The Trustees reported to the Department that it planned to "implement regular salary increments and rewards for meritorious service." (Id.).

⁷ Significantly, the site visit team commented:

Teachers who were interviewed indicated that they are pleased with the level of support they have received from the school and, in particular, praised the efforts of the vice-principal in providing

		<p>consultant to work with the Trustees and that the consultant submitted a written report to the Department dated July 15, 2004. (See Department Ex. 61, Department of Education letter to Trustees dated August 26, 2005).</p> <p>24. On the fourth condition, the Department acknowledged in its August 26, 2005 letter that it had received by-law revisions concerning the terms of trustees. (<u>Id.</u>). The Department specifically indicated in the letter that the revised by-laws met the specific conditions of the 2004 charter renewal. (See Department Ex. 61, Department of Education letter to Trustees dated August 26, 2005).</p> <p>25. On the fifth condition, the Department indicated that the State Auditor had completed its findings on August 3, 2005 and that the Auditor's report was being reviewed by the Department. (See Department Ex. 61, Department letter to Trustees dated August 26, 2005).² Because the State Auditor expressed some concern about the amount of monies that RMH was paying to SSP to lease the School Street Property, at the behest of the Department, the School worked with SSP to amend the lease.³ The Department failed to demonstrate at the Hearing that the leasing arrangement between SSP and RMH was not an arms length transaction or that RMH did not benefit from the terms of the Amended and Restated Lease. In fact, SSP did not charge RMH for the full use of the space that the School was using for its operations.⁴</p> <p>Seventh Year Site Visit Report (June 2006)</p> <p>26. In its Seventh Year Site Visit Report of June 2006, the Department's site visit team found that "...[the Trustees] are clear on the oversight responsibilities ... It was clear to the site visit team that the board is coming to understand the line between, oversight and management, and</p>
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feedback, mentoring, and professional development. They reported that all teachers were provided with a week of orientation during the summer, professional development occurs every Monday after school, new teachers are paired with mentor teachers, and the vice principal has modeled effective instruction. They also stated that there are no set times for new teachers and their mentors to meet and did not articulate a formalized process for the mentoring.

(See Department Ex. 22 at p. 5, RMH Year Nine Site Visit Report dated December 2007).

trustees are working to support the academic program at the school. Trustees stated that the principal was responsible for the day-to-day operations of the school and that they are responsible for approving systems and structures. ... R.M. Hughes has met most all of its Accountability Plan goals in the area of finance.” (See Department Ex. 19 at p.11, RMH Seven Year Site Visit Report dated June 21, 2006).

27. As detailed below, by the time of its Year Eight Site Visit, RMH met all the conditions of its 2004 renewal:

Year Eight Site Visit Report (March 2007)

In its Year Eight Site Visit Report, the Department’s site visit team found that “the [Trustees] ... held a retreat (in August, 2006), revised the School’s bylaws, and added new members with expertise in a variety of areas, such as technology and business.” (See Department Ex. 20 at pgs 10-11, Year Eight Site Visit Report, dated March 2007). In addition, the Department’s site visit team found that that there “were effective lines of communication between the [Trustees], administration, faculty and parents.” (See Department Ex. 20 at p. 12, RMH Year Eight Site Visit Report, dated March 2007).⁵ With regard to the question of whether RMH was operating in a manner consistent with legal and regulatory requirements, the Department’s site visit team commented that the “[c]onditions imposed on the school’s charter at the time of renewal have essentially been lifted.” (See Department Ex. 20 at p. 12, RMH Year Nine Site Visit Report, dated March 2007).

28. The Department’s Year Eight Site Visit Report further indicates that due to the progress made by the School that the Board of Education “accepted the Commissioner’s recommendation that no further conditions be placed on the school.” (Id.).⁶

Year Nine Site Visit Report (December 2007)

29. In its Year Nine Site Visit Report, the Department’s site visit team noted that the five

		<p>conditions connected to the School 2004 charter renewal had been “lifted.” (<u>See</u> Department Ex. 22 at p. 1, RMH Year Nine Site Visit Report dated December 2007). With regard to the faculty, the site visit team found that the teachers at the School “report[ed] a high level of support from the administration.”⁷ With regard to governance, the site visit team commented that the “[t]he [Trustees] appear[ed] to be well informed about issues that face the school and what the principal and vice principal are doing to address those issues.” (<u>Id.</u> at p. 18).</p> <p>Year 10 Federal Programs Renewal inspection Report (September 2008)</p> <p>30. In September of 2008, the CSO prepared a report summarizing the results of its year 10 Federal Programs Renewal Inspection. (<u>See</u> Department Ex. 23, RMH Year 10 Federal Programs Renewal inspection Report). The report did not mention the issue of governance but rather discussed academic support at the School for certain population groups. (<u>Id.</u>).</p> <p>September 29-October 1, 2008, Renewal Inspection Report</p> <p>31. From September 29- October 1, 2008, the Department’s independent charter renewal contractor, Class Measures, conducted a three-day renewal inspection site visit at RMH. (<u>See</u> Department Ex. 71, Class Measures Renewal Inspection Report September 29-October 1, 2008). With regard to the issue of governance, the Class Measures site visit team found that the Trustees were “actively engaged in overseeing and directing the school[.]” and that the “[r]oles of the board and the school leadership are clear.” (<u>Id.</u> at p. 37). More specifically, the site team commented that the Trustee members interviewed indicated that it was the board’s role to create policy and a vision for the School and be the “watchdog and monitoring body.” (<u>See</u> Department Ex. 71 at p.38, Class Measures Renewal Inspection Report September 29-October 1, 2008). The site visit team noted that the Trustees did not get involved with staff and administrative issues, but discussed any issues with the principal. It was further noted by the site team that the Trustees’ education policy committee reviews the School’s curriculum and conducts walk-throughs of</p>
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		<p>classrooms. The walk-throughs are not evaluative but instead are used to make suggestions to the principal. (<i>Id.</i>). The site visit team was informed by the Trustees that the Vice Principal is the academic leader of the School and reports to the Principal. (<i>See</i> Department Ex. 71 at p.38, Class Measures Renewal Inspection Report September 29-October 1, 2008). However the site visit team noted that the Trustees formally evaluate both the principal and Vice Principal, who is evaluated by the Principal. (<i>Id.</i>). There was no evidence at the Hearing that the Department ever raised any concern to RMH about this governance structure.</p>
<p>Circumstances Surrounding the 2009 MCAS Tests</p>	<p>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.</p>	<p>RMH is an Academic Success</p> <p>39. Overall, RMH has proven to be an academic success. For example, in its Year Seven Site Visit Report the Department found that “[o]verall students at [RMH] have a strong record of performance on the ELA MCAS exams” and RMH students “out perform students in the Springfield Public Schools, and in math outperform students in the state.” (<i>See</i> Department Ex. 19 at p. 5, RMH Year Seven Site Visit Report, dated June 21, 2006). In its Year Eight Site Visit Report, the Department reported that all stake holders interviewed by the site visit team spoke with approval of the academic rigor of the School. (<i>See</i> Department Ex. 20 at p. 14, RMH Year Eight Site Visit Report dated March 2007).</p>
	<p>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.</p>	<p>After school tutoring options were offered prior to the implementation of Knowledge Point</p> <p>E. Preparation for the 2009 MCAS Test</p> <p>9. At Some point in time prior to 2009, RMH had implemented a program to improve student MCAS preparation. The program included student tutorials conducted by an outside vendor, Knowledge Point, and having teachers administer MCAS practice tests downloaded from the DESE's website known as CFAs. There was testimony from Teacher T that the CFAs were to be used a "teaching tool to find weaknesses in the gaps for students' learning and to fill in those gaps in the succeeding months" for the purpose of "prepar[ing] them for taking the test." (<i>See</i> Teacher T Testimony, Trans. II at pgs. 93-94).</p> <p><i>Taken from Petitioner’s Proposed Findings of Fact Regarding the Administration of the MCAS and</i></p>

		<p><i>Allegations of Cheating</i></p> <p>10. At its March 24 2009 BOT meeting, Ms. Henry informed the BOT that the "MCAS testing begins next week and that there has been before-school tutoring and Knowledge Point has been in charge of the after-school program for MCAS preparation." (See DESE Ex. 175 at p. 322, RMH BOT Minutes dated March 24, 2009). At the meeting, Ms. Henry reported to the BOT that she is "confident that our students are well prepared." (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	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.	
	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	
MCAS Preparation and Administration	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.	
	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	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	

	<p>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.</p>	
	<p>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.</p>	
Special Education	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	

	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.	
	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.	
	123. I have not based any findings of facts on adverse inferences drawn from Principal Henry's invocation of the privilege against self-incrimination. ⁸	
Board of Trustees and 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.	
	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	35. At no time prior to the launch of the DESE's investigation did any of the Teachers at RMH ever inform the BOT that Ms. Henry or anyone else had engaged any improprieties relative to the

⁸ 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.

	<p>lacked any information about the way the MCAS tests had been administered. The 2009 MCAS tests were 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.</p>	<p>administration of the 2009 MCAS. (See Teacher Testimony in Trans. Vol 11). Although there was testimony at the Hearing that some of the teachers involved in the alleged cheating scheme did not contact the BOT because they were afraid that Ms. Henry would terminate them, there was no evidence that the BOT did not make itself accessible to the teachers and staff at the school. Significantly, during the 2008/2009 academic year, pictures of the individual BOT members were displayed in the front entry area of the school. (See Walls Testimony, Trans. Vol. V. at pgs. 98-99). In addition, all BOT meetings were open to the public and publicized in advance. (See Walls Testimony, Trans. Vol. V at p. 104). Staff members at the school also had the contact information for the BOT should they wish to communicate with them. (See Walls Testimony, Trans. Vol. V at p. 98-99). Further, there was Testimony from Mr. Walls that members of the BOT attended events at the school and made an "effort to meet and get to the know the staff of the school." (See Walls Testimony, Trans. Vol. V at pgs. 105-106). There was Testimony from Teacher N that one particular member of the BOT, Amy Hughes, attended many of the events at the school and was known to be a caring and engaged person. (See Teacher N Testimony, Trans. Vol. 11 at pgs. 51-53). Although Teacher N saw Mrs. Hughes at events at the school, Teacher N did not attempt to contact her to inform her of any alleged improprieties related to the administration of the 2009 MCAS test. (See Teacher N Testimony, Vol. 11. at pgs. 51-53 and 67-68).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>36. Teacher T testified that prior to being hired by Ms. Henry at RMH that Teacher T had known RMH BOT Member, Norma Baker, as a former business associate. (See Teacher T Testimony, Trans. Vol. I1 at pgs. 90- 92). Yet, despite this relationship, Teacher T did not contact Ms. Baker to express any of the concerns that Teacher T may have had about the way in which the 2009 MCAS test was to be administered. (See Teacher T Testimony, Trans. Vol. I1 at pgs. 98- 101). Teacher T testified that Teacher T "did not want to rock the boat." (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact</i></p>
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		<p><i>Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>37. Teacher E was aware of the fact that there were pictures on the walls of the school identifying each of the members of the BOT. Despite this knowledge, Teacher E did not contact any of them to express concern about the way the test was administered. (See Teacher E Testimony, Trans. Vol. II at pgs. 173-174, 177-178).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>38. At no time did the BOT ever tell Ms. Henry to engage in any improprieties or improper or unlawful conduct relative to the performance of any of her duties including her administration of the 2009 MCAS. (See Walls Testimony, Trans. Vol. V at pgs. 158-159; Baker Testimony, Trans. Vol. VI. at pgs. 129-130). In addition, there was testimony from Teacher H, a school administrator who was present at BOT meetings in 2009, that Ms. Henry did not report any test administration improprieties to BOT at any of the BOT meetings. (See Teacher H Testimony, Trans. Vol. I11 at p. 166 at lines 15-19).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	<p>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.</p>	<p>I. Ms. Henry's Communications with the BOT Regarding the 2009 MCAS Results</p> <p>15. On July 16, 2009, Ms. Henry sent an email to several members of the BOT which enclosed the school's 2009 ELA MCAS results. (See DESE Ex. 152, Henry E-mail dated July 16, 2009 re: 2009 Preliminary ELA MCAS results). Ms. Henry's e-mail enthusiastically stated to the BOT that the students "made outstanding improvement on this assessment." (Id) The email further stated that she was "very proud of all the teachers and students who worked so hard this school year." (Id). Ms. Henry also contacted Mr. Walls personally to tell him the good news. (Trans. Vol. V. at pgs. 162-163).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and</i></p>

		<p><i>Allegations of Cheating</i></p> <p>16. On July 21, 2009, Ms. Henry reported to the BOT at their July BOT Meeting as part of the "Principal's Report" that "there will be a celebration at the school on August 27 at 5:30pm in honor of the [the] students' fine achievement on the 2009 ELA MCAS." (See DESE Ex. 175 at p. 334, RMH BOT Meeting dated July 21, 2009). Ms. Henry further reported to the BOT that "[as part of the school's action plan [relative to the] Charter renewal, [the school's] ELA scores need to go up and this was accomplished." (Id.). At the same meeting, Ms Henry informed the BOT that she was "still waiting for our MCAS Math scores ... [but] we are checking daily." (& DESE Ex. 175 at p. 335-336, RMH BOT Meeting dated July 21,2009).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>17. On August 18, 2009, Ms. Henry provided the BOT with a Principal's Report at their BOT Meeting relative to the results of the Math, Science and ELA scores. (See DESE Ex. 175 at p. 338, RMH BOT Minutes dated August 18, 2009). The BOT Meeting Minutes indicate that Ms. Henry made the following representations to the BOT:</p> <p style="padding-left: 40px;">We did wonderful and have passed in advanced proficient and proficient. We have improved our scores which were identified by [DESE], as one of the conditions we needed to improve on. We have moved in the right directions as far as what they have put on our charter. This year we have significantly improved although we told charter that we will improve in two (2) years. Ms. Henry interpreted the graphs to the [BOT]. She also discussed the testing she does throughout the year using CFA's or old MCAS from</p>
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		<p>different years. Also teachers are held accountable for finding weaknesses that students have, it's all about discipline and training students for lengthy testing. This is our success in getting the scores up so fast. ... the staff worked hard, were dedicated and followed through.</p> <p>(Id.)</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>18. BOT Chairman, William C. Walls, was personally elated by Ms. Henry's August 18, 2009 Principal's Report to the BOT regarding the improvement in the school's MCAS scores. (See Walls Testimony, Trans. Vol. V at pg. 165-166). During this period, he spoke to several members of the BOT regarding the measures that the school put in place to improve the students' performance of the test such as Knowledge Point and the Mama Collins Model. (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>19. On August 27, 2009, Ms. Henry sent an e-mail to the BOT thanking them for attending the school's MCAS results celebration. (See DESE Ex. 157, Henry e-mail to BOT re: "Thank You", dated August 27,2009).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	<p>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</p>	<p>K. Ms. Henry's Communications to the BOT Regarding Commissioner Chester's September 14,2009 Letter</p> <p>21. Some point in time after Ms. Henry received the Commissioner's September 14, 2009 letter</p>

	<p>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.</p>	<p>referencing what "appear[ed] to be anomalies" in the school's 2009 MCAS results, Mr. Walls received a telephone call from Ms. Henry informing him of the letter. (See Walls Testimony Trans. Vol. V at pgs. 37-38). After speaking with Ms. Henry, Mr. Walls contacted Fred Swan, the school's Development Director and asked him to get in touch with Marc Kennan, the Executive Director of the Massachusetts Charter Association to find out what the letter was about. (See Walls Testimony, Trans. Vol. V. at pgs. 37-38). Mr. Walls also spoke personally with Mr. Kennan and had understood from his conversation with him that the scores could possibly be adjusted. (See Walls Testimony, Trans. Vol. V at pgs. 170-171). However, Mr. Walls did not receive any information from Mr. Kennan to suggest that there had been any misconduct at the school relative to the way the test was administered. (See Trans. Vol. V at pgs. 170-173).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>22. At the September 15, 2009 Meeting of the BOT, Ms. Henry reminded the BOT that the BOT had previously voted to give the lead teachers a "\$500 increase" due in part to an improvement in the MCAS scores. (See DESE Ex. 175 at p. 340, RMH BOT Minutes dated September 14, 2009). Ms. Henry also reported to the BOT that teacher salaries were much lower than the public schools. (Id.). At the same BOT Meeting, Ms. Henry formally reported to the BOT that she had received the Commissioner's September 14, 2009 letter indicating what "appear[ed] to be anomalies" in the school's 2009 MCAS results. (See DESE Ex. 175 at p. 340, RMH BOT Minutes dated September 14, 2009). The Meeting Minutes indicate that Mr. Swan reported to the BOT that "the [DESE] looks at all aspects of the data and that this should not be a problem at all." (See DESE Ex. 175 at p. 340, RMH BOT Minutes dated September 15, 2009). The Minutes also indicate that Mr. Swan reported to the BOT that "this was the second time that the DESE was doing this." (Id.). There is an additional statement made by Mr. Swan that "the [DESE comes] to observe, talk to people and look at the data." DESE Ex. 175 at p.340, RMH BOT Minutes dated September 15, 2009).</p>
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		<p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>23. On September 22, 2009 the DESE's investigator, Terry Roy, indicated in an email to Mary Street, the Director of Charter Schools, and Katherine Viator, the Director of Student Assessment that he relayed the DESE's concerns to Ms. Henry regarding "what appeared to be abnormally high increases in the MCAS scores." (See DESE Ex. 76, Roy E-mail to Mary Street and Katherine Viator dated September 22, 2009; Trans. Vol. 111, at pgs. 8-9). In this e-mail, Mr. Roy reported to his colleagues that Ms. Henry had been very cooperative and assured him that the increases were "due to the hard work of the teachers and students." (Id.) Mr. Roy further indicated in the e-mail that he planned to meet with Ms. Henry and the MCAS administrators at the school on October 7, 2009. (See DESE Ex. 76, Roy E-mail to Mary Street and Katherine Viator dated September 22, 2009).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>24. On September 23, 2009, Ms. Henry sent an e-mail to the BOT informing them that Mr. Roy had contacted her regarding the anomalies referenced in the Commissioner's September 14, 2009 letter. (See Ex. 159, Henry e-mail to BOT re: MCAS letter dated September 23, 2009). In the email Ms. Henry informed the BOT that Mr. Roy would be visiting the school on October 7, 2009 to speak with her and the teachers that administered the tests. (Id.). Ms. Henry further stated in the e-mail that Mr. Roy had informed her that "he would be coming [to the school] with an open mind and [that] it's up to us at the school to show him how [the school] improved [its] test scores." (See Ex. 159, Henry e-mail to BOT re: MCAS letter dated September 23, 2009). Ms. Henry also stated in this e-mail to the BOT that she had informed the teachers of Mr. Roy's visit and that she would "keep the board updated as [she] is apprised with further information." (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
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25. Although there was testimony from several teachers who were involved in the administration of the 2009 MCAS test that Ms. Henry met with them and provided them with instructions on how respond to questions posed by the DESE investigator, there was no evidence presented at the Hearing that anyone communicated this information to the BOT.

Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating

26. On October 8, 2009, Ms. Henry sent another e-mail to the BOT informing them that the DESE's visit to the school had been postponed. (See DESE Ex. 160, Henry e-mail to BOT dated October 8, 2009 re: DESE visit). In the e-mail Ms. Henry further stated that [Mr. Roy] had indicated to her that he had to go out of town and that he would get back to her to reschedule the visit when he is back in town. (See DESE Ex. 160, Henry e-mail to BOT dated October 8, 2009 re: DESE visit). Unbeknownst to either Ms. Henry or the BOT, Teachers N and T secretly contacted and met with Mr. Roy away from the school. Teacher N informed Mr. Roy that he had been part of the 2009 MCAS administration at the school and that at the direction of Ms. Henry he had cheated on the test. (See Teacher N Testimony, Trans. Vol. III at pgs. 12-13). Subsequently, Teacher T met separately with Mr. Roy and informed him that she too had been asked by Ms. Henry to cheat on the 2009 MCAS test but she had refused. (See Teacher T Testimony, Trans. Vol. III at pgs. 14-15). At no time during this period did anyone from the DESE communicate to the BOT or Ms. Henry about the allegations made by Teachers N and T or that the DESE had met with them.

Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating

27. On October 28, 2009, Ms. Henry sent an enthusiastic email to the BOT informing them that that there is an article in the newspaper that day which reported that "[RMH] [was] the top ranked school in both English and Math." (See DESE Ex. 161, Henry e-mail to BOT dated October 28, 2009 re: MCAS). At the end of the e-mail, Ms. Henry

		<p>tells the BOT to "[have a wonderful day" and closes with smiley face symbols. (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>28. On November 15, 2009, Ms. Henry sent another e-mail to the BOT reminding them that the next scheduled BOT Meeting would take place on November 17, 2009. (See DESE Ex. 163, Henry e-mail to BOT dated November 15, 2009 re: Board Meeting). At the November 17, 2009 BOT Meeting, the Personnel Committee of the BOT made a recommendation to the BOT to give Ms. Henry a bonus of \$5,000 "for an excellent job in moving her staff toward excellent scores in the MCAS and teacher retention." (See DESE Ex. 198, RMH BOT Minutes dated November 17, 2009). The Minutes also state that all the teachers received a \$500 bonus which was previously approved by the BOT. There was Testimony from Teacher H, a school administrator who was present at the meeting that when the bonuses were discussed that the BOT noted "how well of a job that the teachers did as well as Ms. Henry in leading the school." (See Teacher H Testimony, Trans. Vol. 111, pgs. 145-146). There was no evidence presented at the Hearing that the BOT had been informed of any alleged improprieties relative the administration of the 2009 MCAS test at this time.</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>29. On November 18, 2009, Ms. Henry informed the BOT via e-mail that she had received an e-mail from Mr. Roy concerning the DESE's scheduled visit to the school to interview the test administrators. (See DESE Ex. 164, Henry e-mail to BOT dated November 18, 2009). Ms. Henry states in the e-mail that Mr. Roy informed her that he would not be coming to the school hut instead requested that she meet with him at his office in Malden on November 23, 2009. (Id.). In the November 18, 2009 email to the BOT, Ms. Henry advises the BOT that she will keep them "updated as to the [school's] progress in settling the matter concerning the release of [the school's] MCAS scores." (Id.).</p>
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		<i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i>
	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.	
	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.	
	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	

	<p>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.</p>	
	<p>138. Persistent teacher turnover is another reason to question the Board of Trustees' 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).</p>	
	<p>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.</p>	
	<p>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.</p>	<p>L. The DESE's First Communication with the BOT Regarding Allegations of Cheating</p> <p>30. On November 23, 2009, Mr. Walls reported to the Executive Committee of the BOT that he had received a telephone call from Ms. Street "informing him that the [Commissioner] was beginning the process of revoking the license of Ms. Henry .. ." (See DESE Ex. 175 at p. 344A, RMH BOT Minutes dated August 18, 2009, Trans. Vol. V. at pgs. 173-174). Mr. Walls further reported to the Executive Committee that the DESE "had testimony from two RMH teachers that Ms. Henry instructed them to exercise inappropriate measures in the administration of the [MCAS] . . ." (See DESE Ex. 175 at p. 344A, RMH BOT Minutes dated August 18, 2009). Mr. Walls reported to the Executive</p>

		<p>Committee of the BOT that Ms. Street did not disclose the names of the teachers who had provided the information to the DESE. (Id.). The phone call from Ms. Street to Mr. Walls was the first notice that the BOT had from the DESE alleging that there were improprieties related to the administration of the 2009 MCAS test. (See Walls Testimony, Trans. Vol. V at pgs. 167-173). Prior to this time, there had been no correspondence from the DESE to the BOT concerning the school's 2009 MCAS scores (See Walls Testimony, Trans. Vol. V at p. 169, at lines 1-10). There was testimony at the Hearing from DESE personnel that the DESE chose not to contact the BOT to inform them that the DESE was investigating allegations of cheating by the principal because of a pending criminal investigation brought by the Attorney General's office.</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>31. As a direct result of the information provided by Ms. Street to Mr. Walls, the BOT placed Ms. Henry on immediate administrative leave. (See Walls Testimony, Trans. Vol. V at p. 47, lines 7-21). Mr. Walls also took action to have the building and Ms. Henry's office secured. (See Walls Testimony, Trans. Vol. V at p. 174, 14-21).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>32. On the evening of November 23, 2009, Mr. Walls spoke with Ms. Henry via telephone. (See Walls Testimony, Trans. Vol. V at pgs. 174-175). During the conversation, Ms. Henry denied any wrongdoing. (Id.)</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	<p>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</p>	

	<p>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.</p>	
	<p>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.</p>	
Bonuses and Employment Contracts	<p>145. The salary and contractual history between Janet Henry and the Board of Trustees is another reason for doubt.</p>	
	<p>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</p>	

	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	

	<p>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.</p>	
	<p>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.</p>	
	<p>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,</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>158. I do not credit the Personnel</p>	

	<p>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.</p>	
	<p>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.”).</p>	
	<p>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</p>	<p>5. From the DESE's perspective, the administration of the day to day operations of a charter school is overseen by a principal/CEO who reports to the Board of Trustees. The principal/CEO's duties include hiring and supervising the school's administrative staff and faculty. In addition, there was testimony from Emily Lichtenstein, the Coordinator of Accountability of the DESE's</p>

	<p>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.</p>	<p>Charter School Office, that Board of Trustees do not typically get involved with supervising staff. (See Lichtenstein Testimony, Trans. Vol VII p. 20, lines 21-24).</p> <p>6. During first few years of operations, the DESE criticized the RMH BOT for micromanaging the day to day operations of the school. (See Baker Testimony, Trans. Vol. VI, pgs. 113-119; DESE Exs. 15, 17, 18, RMH Site Visit Reports for the years 2001, 2002, and 2003). In response to the DESE's concerns, the BOT hired consultants on two occasions to assist the BOT with issues relating to governance policy. (See Baker Testimony, Trans. Val VI at pgs 119-120). After obtaining advice from consultants, the BOT adopted a policy whereby the principal would be responsible for overseeing the day to day operations of the school, including hiring the staff and would provide the BOT with the information that it generally needed. (See Baker Testimony, Trans. Vol. VI at pgs. 101, lines 12-16, 127-128; Baker Testimony Val. VII at pgs. 154-156). This policy was found to be satisfactory to the DESE's Charter School Office. Significantly, the DESE made the following comment in its 2003 Site Visit Report regarding the governance structure of RMH: “[p]revious site visit reports noted that staffing concerns had triggered direct involvement from Board members in management and administration of the school. Those situations have since been resolved, and the Board now appears to be properly focused on its policy setting and oversight roles.” (See DESE Ex. 18 at p. 10, RMH 2003 Site Visit Report).</p>
Teaching Staff and Assignments	<p>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.</p>	
	<p>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</p>	

	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.	35. At no time prior to the launch of the DESE's investigation did any of the Teachers at RMH ever inform the BOT that Ms. Henry or anyone else had engaged any improprieties relative to the administration of the 2009 MCAS. (See Teacher Testimony in Trans. Vol 11). Although there was testimony at the Hearing that some of the teachers involved in the alleged cheating scheme did not contact the BOT because they were afraid that Ms. Henry would terminate them, there was no evidence that the BOT did make itself accessible to the teachers and staff at the school. Significantly, during the 2008/2009 academic year, pictures of the individual BOT members were displayed in the front entry area of the school. (See Walls Testimony, Trans. Vol. V. at pgs. 98-99). In addition, all BOT meetings were open to the public and publicized in advance. (See Walls Testimony, Trans. Vol. V at p. 104). Staff members at the school also had the contact information for the BOT should they wish to communicate with them. (See Walls Testimony, Trans. Vol. V at p. 98-99). Further, there was Testimony from Mr. Walls the members of the BOT attended events at the school and made an "effort to meet and get to the know the staff of the school." (See Walls Testimony, Trans. Vol. V at pgs. 105-106). There was Testimony from Teacher N that one particular member of the BOT, Amy Hughes, attended many of the events at the school and was known to be a caring and engaged person. (See Teacher N Testimony, Trans. Vol. II at pgs. 51-53). Although Teacher N saw Mrs. Hughes at events at the school, Teacher N did not attempt to

		<p>contact her to inform her of any alleged improprieties related to the administration of the 2009 MCAS test. (See Teacher N Testimony, Vol. II. at pgs. 51-53 and 67-68).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>36. Teacher T testified that prior to being hired by Ms. Henry at RMH that Teacher T had known RMH BOT Member, Norma Baker, as a former business associate. (See Teacher T Testimony, Trans. Vol. II at pgs. 90-92). Yet, despite this relationship, Teacher T did not contact Ms. Baker to express any of the concerns that Teacher T may have had about the way in which the 2009 MCAS test was to be administered. (See Teacher T Testimony, Trans. Vol. II at pgs. 98-101). Teacher T testified that Teacher T "did not want to rock the boat." (Id.).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>37. Teacher E was aware of the fact that there were pictures on the walls of the school identifying each of the members of the BOT. Despite this knowledge, Teacher E did not contact any of them to express concern about the way the test was administered. (See Teacher E Testimony, Trans. Vol. II at pgs. 173-174, 177-178).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>38. At no time did the BOT ever tell Ms. Henry to engage in any improprieties or improper or unlawful conduct relative to the performance of any of her duties including her administration of the 2009 MCAS. (See Walls Testimony, Trans. Vol. V at pgs. 158-159; Baker Testimony, Trans. Vol. VI. at pgs. 129-130). In addition, there was testimony from Teacher H, a school administrator who was present at BOT meetings in 2009, that Ms. Henry did not report any test administration improprieties to BOT at any of the BOT meetings. (See Teacher H Testimony, Trans. Vol. II at p. 166 at lines 15-19).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact</i></p>
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		<i>Regarding the Administration of the MCAS and Allegations of Cheating</i>
	<p>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.</p>	
	<p>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</p>	

	and attending School events. Teacher N. 2 Tr. 51-53.	
	<p>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)).</p>	<p>(xi) The 2009 Charter Renewal</p> <p>33. On January 16, 2009, the Commissioner sent a Memorandum to the members of the Board of Education recommending that RMH’s charter be renewed with conditions related to AYP and term limits for the Trustees. (<u>See</u> Street Testimony, Vol. VIII at pp. 23-26).</p> <p>34. Mary Street testified that there were no other conditions proposed other than those stated in the Commissioner Chester’s January 16, 2009 Memorandum to the Board of Education. (<u>See</u> Street Testimony Vol. VIII at p. 26, lines 2-20). The evidence demonstrated that the Department expressly waived its right to challenge RMH’s alleged noncompliance with any past conditions which the Department did not seek to include as part of the condition set forth in the 2009 charter renewal.</p> <p>35. On January 27, 2009, the Board of Education voted to renew RMH’s Charter for another five-year period. (<u>See</u> Department. Ex.184, Minutes of Regular Meeting of the Board of Education, January 27, 2009 Vote). The Board of Education approved the charter renewal with the following three conditions:</p> <ol style="list-style-type: none"> 1. By December 2010, Robert M. Hughes Academy Charter Public School shall demonstrate that it is an academic success by: <ol style="list-style-type: none"> a. providing evidence that, by 2010, the School has met academic growth targets in English language arts and mathematics, as established by the Department of Elementary and Secondary Education, 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. 2. The Robert M. Hughes Academy Charter Public School Board of

		<p>3. By September 2009, the Robert M. Hughes Academy Charter Public School Board of Trustees shall have identified, recruited, and received approval from the Commissioner for new members with educational and financial expertise.</p> <p>(See Department Ex. 184, Minutes of Regular Meeting of the Board of Education, January 27, 2009 Vote).</p> <p>36. On February 3, 2009, the Commissioner sent a letter to RMH Trustee, Chair Candice Lopes, congratulating the School on the renewal of its charter.⁹ (See Department Ex. 75, Commissioner's Letter to Candice Lopes dated February 3, 2009).</p> <p>D. <u>The Department has acknowledged that RMH has Already Met Two of the Three Conditions of its 2009 Charter Renewal and can Potentially Meet the Third Condition to Demonstrate Academic Progress if Given an Opportunity to do so.</u></p> <p>37. RMH and has already met two of the three conditions set forth in its 2009 charter renewal. Ms. Street testified at the Hearing that RMH met the second condition of the renewal requiring the Trustees to comply with the term limits and maintain the minimum number of board</p>
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⁹ Significantly, Commissioner Chester stated in the letter:

Congratulations on the renewal of the charter for [RMH]. Based upon the evidence gathered over the last four years regarding the school's academic success, organizational viability, and faithfulness to the terms of its charter, the [Board of Education] voted at its January 27, 2009 meeting to renew the school's charter with conditions under Massachusetts General Law c. 71, § 89. The charter term is five years, beginning July 1, 2009 and expiring on June 30, 2014. Attached is a copy of the motion adopted by the [Board of Education].

I wish you great success as you continue to provide choice to the children of the Commonwealth.

(See Department Ex. 75, Commissioner Chester's Letter to Candice Lopes dated February 3, 2009).

		members, as defined in the School's approved bylaws. (<u>See</u> Street Testimony, Vol. VIII at pp. 107-108). She also confirmed that the Trustees met the third condition of the renewal that required the Trustees have identified, recruited, and received approval from the Commissioner for new members with educational and financial expertise. (<u>Id.</u>).
	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.	38. As a result of the 2009 MCAS cheating allegations, the 2009 MCAS test scores for RMH students were “suppressed” and later invalidated. (<u>See</u> Viator Testimony, Trans. Vol. I at p. 159). Since RMH’s 2009 MCAS results were invalidated, the Department took the position at the Hearing that AYP could not be measured for 2009 because a school cannot achieve AYP without the MCAS test data. According to Matthew Pakos, a Department employee responsible for overseeing AYP reporting, it is possible, on a theoretical level, to measure AYP with MCAS test results for 2008 and 2010, because “it would be possible to measure improvement with those two years of data.” (<u>See</u> Pakos Testimony, Trans. Vol. I at pp. 200-201). This means that the School may have the opportunity to satisfy its academic performance condition. ¹⁰
	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.	

¹⁰ The Commissioner’s recommendation for charter revocation was a drastic measure considering that the academic performance condition attached to the 2009 renewal allowed a deadline of December 2010 for academic improvement to be made. Based on Mr. Pakos’ testimony, a deadline of December 2010 would allow RMH to collect MCAS test results for 2010 and possibly have its AYP calculated with those results.

	Exh. 81.	
	<p>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.</p>	<p>5. From the DESE's perspective, the administration of the day to day operations of a charter school is overseen by a principal/CEO who reports to the Board of Trustees. The principal/CEO's duties include hiring and supervising the school's administrative staff and faculty. In addition, there was testimony from Emily Lichtenstein, the Coordinator of Accountability of the DESE's Charter School Office, that Board of Trustees do not typically get involved with supervising staff. (See Lichtenstein Testimony, Trans. Vol VII p. 20, lines 21-24).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>6. During first few years of operations, the DESE criticized the RMH BOT for micromanaging the day to day operations of the school. (See Baker Testimony, Trans. Vol. VI, pgs. 113-119; DESE Exs. 15, 17, 18, RMH Site Visit Reports for the years 2001, 2002, and 2003). In response to the DESE's concerns, the BOT hired consultants on two occasions to assist the BOT with issues relating to governance policy. (See Baker Testimony, Trans. Val VI at pgs 119-120). After obtaining advice from consultants, the BOT adopted a policy whereby the principal would be responsible for overseeing the day to day operations of the school, including hiring the staff and would provide the BOT with the information that it generally needed. (See Baker Testimony, Trans. Vol. VI at pgs. 101, lines 12-16, 127-128; Baker Testimony Val. VII at pgs. 154-156). This policy was found to be satisfactory to the DESE's Charter School Office. Significantly, the DESE made the following comment in its 2003 Site Visit Report regarding the governance structure of RMH: "[p]revious site visit reports noted that staffing concerns had triggered direct involvement from Board members in management and administration of the school. Those situations have since been resolved, and the Board now appears to be properly focused on its policy setting and oversight roles." (See DESE Ex. 18 at p. 10, RMH 2003 Site Visit Report).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact</i></p>

Regarding the Administration of the MCAS and Allegations of Cheating

B. The Department has Acknowledged that RMH has Made Satisfactory Progress in all Essential Areas of Governance.

Year Two Site Visit Report (June 2001)

12. In its 2001 site visit report, the Department expressed concerns about two particular areas of governance. The first concern was that the Department felt that the Trustees were getting too involved in the day to day operations of the school. (See Department Ex. 15, RMH Year-Two Site Visit Report, dated June 8, 2001). After obtaining advice from consultants, the Trustees adopted a policy whereby the principal would be responsible for overseeing the day to day operations of the school, including hiring the staff and would provide the Trustees with the information that it generally needed. (See Baker Testimony, Trans. Vol. VI at pgs. 101, lines 12-16, 127-128; Baker Testimony Vol. VII at pgs. 154-156). This policy was found to be satisfactory to the Department's Charter School Office. (See Department Ex. 18 at p. 10, RMH 2003 Site Visit Report).

13. As a second issue, the Department expressed concern that some of the RMH trustees were affiliated with SSP. (See Department Ex. 15, RMH Year-Two Site Visit Report dated June 8, 2001). The Department directed the Trustees to have Ms. Baker, Mr. Twiggs and Mr. O'Quinn obtain opinions from the State Ethics Commission on the appropriateness of them serving on the Board of RMH and SSP. (See Baker Testimony, Vol. VI at pp. 30-31; Department Ex. 15, RMH Two-year Site Visit Report dated June 8, 2001 at pp. 5-6). The State Ethics Commission found that there were no conflicts so long as the RMH trustees who were affiliated with SSP received no financial benefit from SSP. (*Id.* at pp. 31-33). Ms. Baker testified at the Hearing that neither she nor Henry Twiggs or Rance O'Quinn received any financial distributions from SSP. (See Baker Testimony, Vol. VI at pp. 56-57).

14. The Department failed to prove that any of the RMH trustees who were involved in SSP benefit financially from the leasing of the School Street Property to RMH transaction or that the issue had not been resolved to Department's satisfaction.

Site Visit Report (May 2002)

15. In its Third Year Site Visit report dated May 20, 2002, the Department site visit team found that with regard to issues related to governance, the Trustees had made significant progress since 2001 site visit. Significantly, the Department site visit team commented that: "[t]here appears to have been significant changes since last year's site visit report regarding Board stability and management of the school ...[t]he definition of roles have been clarified, and with the hire of the new administration, the Board has been able to pull back from most of the day to day management that it had been involved with in the past ...[t]he organization has proved very responsive to many of the findings in their second year site visit report. ..." (See Department Ex. 17 at pp. 7-8, RMH Third Year Site Visit Report, dated May 20, 2002).

(iii) The January 2003 Site Visit Report (Third)

16. In its Third Site Visit Report dated January 30, 2003, the Department's site visit team commented that the Trustees continued to make progress in several key areas of governance. Significantly, the Department's site visit team stated:

From the evidence gather during the site visit, it is clear that the governing Board is closely involved in setting policy for [RMH] and overseeing its implementation. As noted earlier, Board members along with administrators, parents and teacher were directly involved in seeing the Lorraine Monroe approach as the new direction for the School. Board members reported that they have also contributed directly to the revised

		<p>Accountability Plan, setting academic as well as organizational targets. With the principal's evaluation closely linked to the accountability plan, regular Board oversight of the School's progress is also built into their monthly meetings.</p> <p>(See Department Ex. 18 at p. 10, RMH Site Visit Report dated January 30, 2003).</p> <p>November 2003 Charter Renewal Inspection</p> <p>17. From November 4-7, 2003, the DESE's independent charter renewal contractor, School Works, conducted a four-day renewal inspection site visit at RMH. As an answer to the question "[i]s the school a viable organization", the site visit team found that "[t]he Board of Trustees provides clear expectations and consistent direction to the Leadership Team to have in place a structure and system that supports academic achievement." (See Department Exhibit 52 at p. 17, School Works RMH Renewal Inspection Report, dated November 4-7, 2003).</p>
	<p>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</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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).</p>	
	<p>198. The Board of Trustees has five standing committees (Executive, Finance, Personnel,</p>	

	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.	40. It is the Department's contention that the future viability of RMH as a charter school has been jeopardized. RMH is currently a viable organization and there is no question that it will remain as such in the future. As recently as December 2008, the Department described RMH as a "fiscally viable organization." (See Department Ex. 72 at p. 17, RMH Summary of Review, December 2008). There was testimony from the School's Principal, Joelle Jenkins that RMH is currently operating with a budget surplus. (See Jenkins Testimony Vol. 10 at pp. 168-169). In addition, the School has a lengthy waiting list of potential students.
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 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	

	<p>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.</p>	
	<p>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.</p>	
	<p>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)).</p>	
	<p>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</p>	

	<p>application). I find that teacher turnover over these four years averaged 45%.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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:</p> <ul style="list-style-type: none"> • 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 8th grade where he worked with special 	

	<ul style="list-style-type: none"> • 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 	
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	<ul style="list-style-type: none"> • 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, 	
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	<ul style="list-style-type: none"> 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	<p>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.</p>	<p>11. In August of 2001, SSP purchased the building and land at 91 School Street from 91 School Street Realty Trust through its Trustee, Attila Coraopolis. (<u>See</u> RMH Ex. 303, Commercial Property Record; Baker Testimony, Vol. VI at pp. 42-46). During the same month, SSP leased the Property to RMH. (<u>See</u> RMH EX. 302, Lease dated August 7, 2001). The written lease document provided that the term of the lease was 50 years. (<u>Id.</u>). However, it was later determined by that the length of term was a mistake, as the lease was intended to be for a five year term. (<u>See</u> Baker Testimony, Vol. VI at pp. 38-39). Under the terms of the lease, the monthly lease payment was tied to the mortgage payments made on the building pursuant to the financing obtained by SSP. (<u>See</u> RMH Ex. 302, Lease dated August 7, 2001).</p> <p>25. On the fifth condition, the Department indicated that the State Auditor had completed its findings on August 3, 2005 and that the Auditor's report was being reviewed by the Department. (<u>See</u> Department Ex. 61, Department letter to Trustees dated August 26, 2005).¹¹ Because the State Auditor expressed some concern about the amount</p>

¹¹ In March of 2004 and at the behest of the Department's Associate Commissioner of Charter School's, the State Auditor conducted a review of RMH's financial operations. In connection with the audit, the State Auditor produced an Audit Report dated August 3, 2005. (See Department Ex. 63, Independent State Auditors Report dated August 3, 2005).

		of monies that RMH was paying to SSP to lease the School Street Property, at the behest of the Department, the School worked with SSP to amend the lease. ¹² The Department failed to demonstrate at the Hearing that the leasing arrangement between SSP and RMH was not an arms length transaction or that RMH did not benefit from the terms of the Amended and Restated Lease. In fact, SSP did not charge RMH for the full use of the space that the School was using for its operations. ¹³
	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	

¹² In January of 2006, RMH's lease for the Property was amended and restated shifting the lease payment from being tied to the mortgage to a \$6.50 per square footage basis). (See RMH Ex. 304, Amended and Restated Lease dated January 18, 2006). Under the terms of the Amended and Restated Lease, the monthly rent to be paid by RMH was approximately \$6.50 per square foot or \$8,638.50 per month for a 10 year term without any adjustments during the Term. (Id.).

¹³ In connection with the terms of the Amended and Restated Lease, in a letter dated February 1, 2006, SSP informed the School that it was only charging the school for the use of the building and not the entire space of the property which included a parking lot, several garages, and a playground area. (See RMH Ex. 305, SSP Letter to RMH Fiscal Department dated February 1, 2006; Baker Testimony Vol. VI, pp. 50-54). The February 1, 2006 letter stated:

This letter is to inform you that the rent invoice that has been submitted for February 2006 denotes the new amount indicated in the amended lease with School Street Properties in the amount of \$8,638.50. The entire scope of the property that is to your avail is 28,884 sq. ft; however, we are only charging RMH Academy Charter School for the space associated with the use of the building which is 15,948 sq. ft. (see referenced in amended lease)...

(See RMH Ex. 305, SSP Letter to RMH Fiscal Department dated February 1, 2006)

	criminal conviction).	
	<p>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.</p> <p>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).</p>	
	<p>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.</p>	<p>45. The Department has expressed concerns over the fact that some current and former members of the RMH Board of Trustees, Norma Baker, E. Henry Twiggs, and Rance O’Quinn, are also officers of SSP, the company that leases the School building to RMH. According to the Department of Education, trustees cannot hold a financial interest in contracts entered into with the School by a company for which they are an agent or have a contract with. G.L. c. 268A § 7. (See Department</p>

		Ex. 167 at p. 4, Charter School Governance Guide, November 2007). As required by the Department, these three Trustees disclosed their interest in 91 School Street Properties and even sought an opinion from the State Ethics Commission regarding the conflict. (See Baker Testimony, Vol. VI at pp. 30-31). The State Ethics Commission responded to the inquiry by stating that there was no problem with leasing property to the School as long as none of the officers who sit on RMH's Board of Trustees receive a financial benefit from the lease arrangement. The three board members have never received any financial benefit from the leasing arrangement between RMH and 91 School Street Properties. (See Baker Testimony, Vol. VI at pp. 56-57).
	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	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>224. The State Auditor</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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).</p>	
	<p>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),</p>	

	<p>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).</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>230. The Board of Trustees</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.)</p>	
	<p>233. Although I cannot verify that SSP’s costs for the</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	

	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	

	<p>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.</p>	
	<p>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).</p>	
	<p>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.</p>	
	<p>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.</p>	

	<p>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 inquires 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.</p>	
Criminal Offender Record Information (CORI)	<p>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</p>	<p>7. At the start of the 2008-2009 school year, Joseph Seay served as the principal of RMH. Janet Henry served as the assistant principal. Prior to the 2008-2009 academic year, Ms. Henry had served in the role of the Academic Coordinator at the school. (See Walls Testimony, Trans. Vol. V. at p. 141, lines 5-12). Ms. Henry was hired by Mr. Seay in 2007 (See Baker Testimony, Trans. Vol. VI at p. 101, lines 5-6).¹⁴ Before arriving at RMH, Ms.</p>

¹⁴ In his role as principal/CEO of RMH, Mr. Seay reviewed Ms. Henry performance of her duties at the school. (See Walls Testimony, Trans. Vol. V at pgs. 12-13). As far as Mr. Seay was concerned, Ms. Henry had proven to be more than competent administrator, as he raved to the BOT that "they were the best one two combination in the nation." (See Walls Testimony, Trans. Vol. V. at p. 141, lines 13-20). During his tenure as Chairman of the Personnel Committee of the BOT, William C. Walls, personally reviewed Mr. Seay's performance evaluation of Ms. Henry and found her to be an "above average employee." (See Walls Testimony, Trans. Vol. V at pgs. 12-13), At no time during Mr. Seay's tenure as the principal/CEO of the school did the BOT ever receive any information from Mr. Seay in which he expressed displeasure concerning Ms. Henry's performance of her duties. (See Walls Testimony, Trans. Vol. V. pgs. 141-142). In addition, at the time when Mr. Seay hired Ms. Henry, the school had a policy in place that required employees to be subject to Criminal Offender Records Information ("CORI") checks. (See Baker Testimony, Trans. Vol. VI p. 101-102). This policy was set forth in the school's personnel policy which was a published document that was shared with the principal. (See Baker Testimony Trans. Vol. VI pgs. 102-103). The principal was responsible for sharing the CORI policy with the staff. (Id.).

When Mr. Seay was hired, the school had completed a CORI check on Mr. Seay. (See Baker Testimony, Trans. Vol. VI pgs. 101-102). At the time when Mr. Seay hired Ms. Henry, he informed the BOT there had been a CORI check on her and that her record was clean. (See Baker Testimony, Trans. Vol. VI pgs. 103, lines 12-16, 107-109). Mr. Seay also informed the BOT that Ms. Henry passed a reference check. (See Baker Testimony, Trans. Vol. VI pgs. 105-106).

	<p>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).</p>	<p>Henry had been employed by the Springfield public school system and had a successful track record for improving student performance on the MCAS test. (See Walls Testimony, Trans. Vol. V. at pgs. 143-144).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	<p>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.</p>	
	<p>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.</p>	
	<p>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</p>	<p>G. Ms. Henry's Appointment to the Role of Principal/CEO</p> <p>12. At its May 19, 2009 BOT Meeting, the BOT discussed Ms. Henry's position as Interim Principal. The Personnel Committee indicated that it "would like to see Ms. Henry named to the position of Principal/ CEO by June 5, 2009 ..." (& DESE Ex. 175 at p. 329, RMH BOT Minutes dated May</p>

	<p>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.</p>	<p>19,2009).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p> <p>13. On June 1, 2009, the Personnel Committee of the BOT met as a follow up to the BOT's May 19, 2009 Meeting. (See DESE Ex. 175 at p. 363). At this meeting, the Personnel Committee of the BOT discussed the evaluation process that it would undertake to evaluate Ms. Henry's performance. As part of the evaluation process, the BOT asked Ms. Henry to submit a list of her accomplishments during her tenure as the Interim Principal/CEO. (Id.) At some point in time prior to the June 1, 2009 Personnel Committee Meeting, the committee conducted a series of telephone meetings with other members of the BOT and compared the feedback that it received from the individual members with Ms. Henry's list of accomplishments. (See Ex. 175 at p. 363). In addition, the Personnel Committee solicited comments from several parents and staff members. (Id.). The Personnel Committee also sought comments from teachers at the school. (See Walls Testimony, Trans. Vol. V, at pgs. 24-25). The result of these inquiries was that there was "nothing unfavorable" from anyone who commented on Ms. Henry's performance of her duties. (Id.). As a result of this evaluation process, the Personnel Committee recommended that Ms. Henry be appointed to serve in the role of Principal/CEO effective June 5, 2009. (See DESE Ex. 175 at p. 364).</p> <p><i>Taken from Petitioner's Proposed Findings of Fact Regarding the Administration of the MCAS and Allegations of Cheating</i></p>
	<p>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 <u>before</u> they are hired and at least every three years during their term of service,"</p>	

	<p>citing G.L. c 71, sec 38R and 603 CMR 1.05(2)(d). Exh. 167, page 33.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>251. The CORI policy has not been administered consistently or properly. For example, Michelle Ballenger, 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. Ballenger'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.</p>	
	<p>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,</p>	

	<p>Basile, Calandrucchio, 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).</p>	
	<p>253. Other employment information also confirms that the School did not request and obtain CORI checks before its employees started to work:</p> <ul style="list-style-type: none"> ■ 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. 	
	<p>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.</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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</p>	

	was performed. 5 Walls 35.	
	<p>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.</p> <p>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.</p>	
Trustee Term Limits	<p>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.</p>	
	<p>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</p>	

	<p>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).</p>	
	<p>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.</p>	
	<p>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</p>	

	Tr. 142-143.	
	<p><u>Fred Swan</u></p> <p>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.</p>	<p>46. Another conflict of interest issue that concerns the Department is the fact that Fred Swan, a former consultant to RMH and the former Director of Development at the School, is the brother-in-law of former Trustee, Norma Baker. Under the Massachusetts statute concerning the Conduct of Public Officials and Employees, for purposes of determining a conflict of interest in familial relations, "immediate family" include "the employee and his spouse, and their parents, children, brothers and sisters." G.L. c. 268A § 1(e). There is no evidence that Ms. Baker voted on the hiring of Fred Swan. In fact, Mr. Baker was not on the Board in Fall 2009 when Mr. Swan was elevated as interim Chief Administrative Officer. The RMH Board of Trustees never violated this statute because Fred Swan and Norma Baker are not immediate family as defined by the statute.</p> <p>51. The CORI law does not apply to Mr. Swan because he was not a teacher at RMH. In his capacity as consultant and Director of Development, he never had direct or unsupervised contact with students or other children at RMH because his responsibilities did not provide for that. (See Alston Testimony, Vol. VIII at pp. 232-233). It is noteworthy that the Department's own Charter School and Governance Guide states that criminal background checks are only required on persons "that have direct and unmonitored contact with children." (See Department Ex. 167 at p. 33, Charter School Administrative and Governance Guide, November 2007). However, a criminal background check was done on Mr. Swan before he started working for RMH.</p> <p>52. Mr. Swan was competent to carry out his duties as a consultant and Development Officer based on his education and professional experience. There was never any indication to the Board of Trustees that Mr. Swan was engaging in unsuitable conduct that was harmful to the School or its students. To the contrary, there was testimony that during his affiliation with the School, Mr. Swan was able to obtain a \$20,000 grant for the School from Mass. Mutual. (See Teacher O Testimony, Trans. Vol. II at pp. 256-257) and that he was responsible for establishing the Springfield Consortium, a</p>

		<p>partnership between RMH, three other Schools and the University of Massachusetts School of Education. (See Alston Testimony, Vol. VIII at pp. 231-232). Although the Department attempted to demonstrate at the hearing that Mr. Swan was frequently absent during the period in which he was employed as the School's development officer, there was testimony that Mr. Swan had flexible hours and that he often worked at night and from home. (See Alston Testimony, Trans. Vol. VIII p. 233, lines 6-16; Teacher O Testimony, Trans. Vo. II at p. 276).Mr. Swan's criminal background was only used by Ms. Henry to smear the School's reputation when the allegations of cheating on the 2009 MCAS test surfaced, which he had no part in.</p>
	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>273. As consultant, Mr. Swan worked on a fee-basis. Principal Seay refused to sign</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
	<p>277. In March 2009 the Executive Committee appointed Mr. Swan to a full-time position as the School's Development</p>	

	<p>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.</p>	
	<p>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.</p>	
	<p>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.</p>	
<p>Commissioner Chester's Recommendation to the State Board</p>	<p>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:</p> <p style="padding-left: 40px;">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</p>	<p>F. <u>The Commissioner Misled the Board of Education About the Range of Options Available to it as an Alternative to Revocation.</u></p> <p>The Commissioner's December 2009 Memorandum to the Board of Education</p> <p>56. On or about December 14, 2009, the Commissioner sent a Memorandum to the Board of Education updating them on alleged MCAS cheating incident involving RMH. (See Department Ex. 93, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009). In the Memorandum, the Commissioner gave notice</p>

	<p>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.</p> <p>Chester, 8 Tr. 79.</p>	<p>to the Board of Education that it was his intention "...to request that the Board, at its January 2010 meeting, vote its intent to revoke RMH's charter based on evidence that during the administration of the 2009 MCAS test there was pervasive, systematic cheating at the behest of adults at RMH." (<u>See</u> Department Ex. 93 at p. 2, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009).</p> <p>57. In the Memorandum, the Commissioner advised the Board of Education that "... pursuant to 603 CMR 1.13(e), the [Board of Education] may vote to provide notice of its intent to revoke charter based upon evidence of fraud or gross mismanagement on behalf of the school." (<u>See</u> Department Ex. 93 at p. 2, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009). The Commissioner further advised the Board of Education that "[s]imilarly pursuant to CMR 1.13(g), the [Board of Education] may vote to provide notice of its intent to revoke charter for the additional and independent reason that because the School's MCAS results have been permanently invalidated, the School cannot fulfill the academic condition imposed on RMH by the [Board of Education] in January 2009." (<u>Id.</u>).</p> <p>58. In the December 14, 2009 Memorandum, the Commissioner did not mention to the Board of Education that there were any alternatives to revocation. (<u>See</u> Department Ex. 93 at p. 2, Commissioner Chester's Memorandum to the Board of Education dated December 14, 2009). Nor did the Memorandum indicate that it was theoretically possible for RMH to fulfill the academic condition of the 2009 renewal by using the School's MCAS scores for 2008 and 2010. (<u>Id.</u>). Neither did the Commission advise the Board of Education that Ms. Street had briefed him on all of the options available to the Board of Education under 630 CMR 1.13 and that revocation was only one option. (<u>See</u> Street's testimony.)</p>
	<p>290. The Commissioner conferred with his senior staff before he made his recommendation to the State Board, and they considered</p>	

	<p>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.</p>	
	<p>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).</p>	
	<p>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."¹⁵ State Board Minutes, Exh. 189, page 4.</p>	<p>The Board of Education's January 26, 2010 Regular Meeting</p> <p>59. On January 26, 2010, the Board of Education held its Regular Board Meeting. As part of the agenda for the meeting, the Board of Education deliberated on the recommendations made by the Commissioner supporting the revocation of RMH's charter.</p> <p>The Commissioner's Misrepresentations Concerning the Options Available to the Board of Education</p> <p>60. During its deliberations, the Board of Education asked the Commissioner whether the board had any options available to them other than revocation of the charter. In response, the Commissioner informed the Board of Education that he did not see any viable options. The Commissioner represented</p>

		<p>to the Board of Education that he had considered only two alternatives but rejected both of them. The first alternative was turning the charter over to a new board of Trustees. Significantly, the Commissioner informed the Board of Education that a he had been contacted by a couple of different individuals who were interested in taking over the trusteeship of the School. The Commissioner stated to the Board of Education that he did not see this as an option. (<u>See</u> Commissioner Chester’s Recorded Testimony, Vol. VIII at pp. 70-71). The Commissioner specifically represented to the Board of Education that that “a charter is awarded to a board of trustees and one option that the [B]oard does not have is to take the charter from that board of trustees and give it to a different board of trustees.” (<u>See</u> Commissioner Chester’s Recorded Testimony, Vol. VIII at p. 70). But the Commissioner did not mention to the Board that as recent as July 2009, his office had caused the RMH Board to replace 9 of its Trustees.</p> <p>61. The second alternative that the Commissioner considered was to make RMH part of the Springfield Public School System. Specifically, the Commissioner represented to the Board of Education that he consulted with the Springfield Superintendent of Schools on this issue, but the Superintendent was not interested in entertaining such a scenario. (<u>See</u> Commissioner Chester’s Recorded Testimony, Street Testimony, Vol. VIII at pp. 75 and 86).</p> <p>62. The Commissioner failed to inform the Board of Education that probation was a potential option under the charter school regulations found at 603 CMR 1.13(4). (<u>See</u> Commissioner Chester’s Recorded Testimony; Street Testimony Trans. Vol.</p>
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		<p>VIII at pp. 86 to 88). There was testimony at the Hearing from Mary Street that the Commissioner discussed internally with his staff and general counsel the possibility of probation as an alternative to revocation. (See Street Testimony at Vol. VIII pg 105-106). However, the Commissioner rejected probation as an option. (Id). According to Ms. Street, the Commissioner and his staff also considered the imposition of additional conditions but rejected that as an option because RMH was already operating under conditions but was unable to meet those conditions. (See Street Testimony at Vol. VIII p. 106, lines 15-22). This somewhat contradicted Ms. Street's testimony that RMH successfully met two of the three conditions of its 2009 charter renewal. The Board of Education prematurely voted its intent to revoke without having the knowledge required to make an informed decision in such a delicate matter.</p>
	<p>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.</p>	<p><u>G. RMH Presented Evidence at the Hearing that the Trustees are Willing to Work with the Department to Address any Linger Concerns that the Department may Have Relative to Issues of Governance.</u></p> <p>63. Following the unraveling of the 2009 MCAS cheating scandal, the Trustees took numerous reconstructive steps. The first was to conduct an independent and internal investigation on the cheating allegations, which resulted in the firing of Janet Henry. Following Ms. Henry's dismissal, RMH engaged in a search for a new principal.</p> <p>64. In January 2010, the Trustees hired Dr. Joelle Jenkins as principal after a thorough interviewing process and investigation of her history and</p>

		<p>qualifications. (<u>See</u> Jenkins Testimony, Trans. Vol. X, pp. 121-123). Prior to accepting the job at RMH, Dr. Jenkins was made aware of the circumstances that led to the principal vacancy. As part of the interview process, she was asked to present the Trustees with a principal's transition plan for the School, going forward. (<u>See</u> Jenkins Testimony, Trans. Vol. X, p. 122). Over time, Dr. Jenkins has worked with the Trustees to convert her initial plan into a reconstruction plan for the School which was eventually adopted by the Trustees. (<u>See</u> Jenkins Testimony, Trans. Vol. X, pp.. 155-156).</p> <p>65. Dr. Jenkins has also provided professional development opportunities for the faculty, especially in the area of MCAS test administration. Since starting at RMH, Dr. Jenkins has held in-house training sessions and sent teachers to the Department's training program in Springfield. (<u>See</u> Jenkins Testimony, Trans. Vol. X, pp.158-160).</p> <p>66. In April of 2010, the Trustees held a Special Board Meeting to discuss and develop a further "preliminary reconstruction plan" for the School. (<u>See</u> RMH Ex. 312, Minutes of Special Board Meeting, April 6, 2010; Jenkins Testimony Vol. X at p. 163-164). The reconstruction plan is intended to address any concerns that the Department may have regarding the School's academic program, board governance, and in general accountability in all phases of the School's operations. (<u>See</u> RMH Ex. 312, Minutes of Special Board Meeting, April 6, 2010).</p> <p>67. One other condition to explore is a reorganization of the RMH Board of Trustees. Certain individuals have volunteered to take over the trusteeship of RMH. (<u>See</u> Street Testimony, Trans. Vol. VIII at pp. 70-71). Indeed there was</p>
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		<p>testimony from Trustee, Kim Alston, that the current Trustees are willing, for the well being of the School, to resign and allow the appointment of new trustees to be approved by the Department. (See Trans. Vol. IX at p. 96, lines 6-17).</p>
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Input from Parents and Teachers	<p><u>Brian Calandruccio</u> (9 Tr. 117)</p> <p>301. Principal Henry hired Mr. Calandruccio 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.</p> <p>302. He writes IEPs for special education students (approximately 12) though he lacks the qualifications for that job.</p> <p>303. When Fred Swan was named Interim Principal to replace Ms. Henry, he was named the Academic Coordinator.</p> <p>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</p>	

¹⁵ 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).

	<p>worked with severely retarded children (ages 7-21).</p>	
	<p><u>Linda Tierney</u> (9 Tr. 138)</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>305. The atmosphere at the School is much more positive under the new principal, Dr. Jenkins.</p>	

	<p>306. There has been contact with members of the Board of Trustees since the MCAS scandal. Chairman Walls sometimes comes to Monday teacher meetings.</p> <p>307. The MCAS scandal “makes me sad.” Teachers “see themselves as less.”</p>	
	<p><u>Daniel Stern</u> (9 Tr. 154)</p> <p>308. Mr. Stern is a licensed teacher, who started at the School in September 2009 (after the MCAS tests). He teaches 5th grade and mentors five students. Mr. Stern’s CORI check is dated 10/1/09. Exh. 315.</p> <p>309. He is positive about the changes at the School under Principal Jenkins. The School was a “very constricted environment” under Principal Henry.</p> <p>310. He does not know if Principal Henry answered to anyone. He learned about the Board of Trustees only after Principal Henry was gone.</p>	
	<p><u>Isaac Williams, Jr.</u> (10 Tr. 5)</p> <p>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</p>	

	<p>cheating scandal. His CORI check is dated 10/1/09. Exh. 315.</p> <p>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.</p> <p>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.</p> <p>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.</p>	
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Respectfully submitted,

ROBERT M. HUGHES ACADEMY
PUBLIC CHARTER SCHOOL,

By its Attorneys,
s/s/ Denzil D. McKenzie
/s/ Garrett J. Lee

Dated: May 17, 2010

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CERTIFICATE OF SERVICE

I, Garrett J. Lee, hereby certify that on May 17, 2010, I served a copy of the above,
PETITIONER'S OBJECTIONS TO THE HEARING OFFICER'S INITIAL DECISION,
on:

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/s/ Garrett J. Lee

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