

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 EDC 01392

<p>Crossroads Charter High School Petitioner,</p> <p>v.</p> <p>N C Department Of Public Instruction/North Carolina State Board of Education Respondent.</p>	<p><b>FINAL DECISION</b></p>
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THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Selina Malherbe Brooks, on May 25-27 and June 20, 2016, in Charlotte, North Carolina. Based on a consent Order entered on June 20, 2016, the decision of the State Board of Education not to renew Petitioner's charter effective June 30, 2016, was STAYED through July 15, 2016 and the record was left open for the Parties' submission of additional testimony via video-recorded depositions held on June 13, 2016. After filings by Petitioner and Respondent on June 27, 2016 with the Clerk of the Office of Administrative Hearings (OAH) and receipt by the Undersigned on that same date, the record was closed.

**APPEARANCES**

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**ISSUE**

Petitioner has claimed in this action that the decision of the State Board of Education not to renew Petitioner’s charter is: (1) erroneous; (2) arbitrary and capricious; (3) in violation of law or rule; and/or (4) in violation of proper procedures.

**EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner (“Pet. Ex.”): 5, 6, 13, 18, 28, 29, 35, 38, 45, 53, 55, 61-68, 73, 74, 81-84  
For Respondent (“Resp. Ex.”): 1-44, 47, 49, 50-61

**APPLICABLE AUTHORITIES**

North Carolina Constitution Article IX, Section 4-5  
N.C. Gen. Stat. §§150B-22 & -23  
N.C. Gen. Stat. §§115C-218(b), -218.1, -281.10, -218.15 & -218.55  
State Board of Education Policies TCS-U-006, -007 & -010

**PETITIONER’S MOTION *IN LIMINE***

On May 26, 2016, after testimony was given by the first witness on the second day of the contested case hearing, Petitioner made a Motion *In Limine* to exclude various of Respondent’s exhibits from evidence on the ground that Respondent had not complied with Petitioner’s public records request under North Carolina Public Records Law. Oral argument was held on the record. The motion was denied. (Transcript (“Tr.”) pp. 358-392; *see* Conclusion of Law 15 below.)

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing and through video recorded depositions, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case. In addition, the Undersigned viewed the videotaped depositions taken on June 13, 2016 of Dr. Chance Lewis and Ms. Alexis Schauss, and transcripts were available for reference for hearing dates May 25-27, 2016.

**FINDINGS OF FACT**

1. The North Carolina State Board of Education (SBE) is constitutionally mandated to “supervise and administer the free public school system and the educational funds provided for its support.” N.C. Const. art. IX, §5.
2. The Charter School Advisory Board (CSAB) oversees all public charter schools in North Carolina and is charged with making recommendations for rules and matters concerning

charter schools, including renewal and nonrenewal recommendations, to the SBE. N.C. Gen. Stat. §115C-218(b)(10)c.

3. The North Carolina Department of Public Instruction (DPI) is the administrative agency that implements the State’s K-12 public education laws and SBE policies.

4. The Office of Charter Schools (OCS) is a division of DPI tasked with overseeing and managing public charter schools in the State of North Carolina. The Office of Charter Schools makes reports to the CSAB and SBE.

5. Charter schools in North Carolina are public schools operated by nonprofit corporations. A nonprofit corporation applies to the SBE for approval and, if granted a charter, is entitled to receive public monies to operate a charter school. Charter schools are governed by North Carolina General Statutes, by the charter issued by the SBE, and by policies and rules adopted by the SBE. In addition, charter schools must comply with any applicable federal laws and regulations. N.C. Gen. Stat. §§ 115C-218.10, -218.15 & -218.55.

6. In order to receive a charter to operate a charter school, a nonprofit corporation must submit a detailed application outlining its plans for operation of a public school. The application is developed by the OCS, contains at a minimum the requirements set forth in N.C. Gen. Stat. § 115C-218.1(b), and is approved by the SBE.

7. During the time relevant to this contested case, a charter application was reviewed first by the OCS, external evaluators, other divisions within DPI, and then by the Charter School Advisory Committee (“CSAC”). The CSAC was an advisory board whose members were appointed by the SBE and whose job it was to oversee charter applications, renewals, and operations, and to make recommendations as appropriate to the SBE.

8. In 2013, the General Assembly created the Charter School Advisory Board (“CSAB”) which replaced the CSAC. N.C. Sess. Laws 2013-355 s.1. The CSAB was established to advise and report to the SBE on matters regarding the creation, oversight, and termination of charter schools. Its members are appointed by various agencies and officials, including the Governor and General Assembly, and are required to possess “strong experience and expertise” in various areas such as nonprofit governance, finance, education, and charter schools. N.C. Gen. Stat. § 115C-218(b).

9. Among other duties, the CSAB is required to “make recommendations to the State Board on actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocation of charters.” N.C. Gen. Stat. § 115C-218(b)(10). The CSAB reviews applications, both for initial charters and for renewals, and reviews any requests for changes to the charter, such as enrollment increases, changes to the by-laws, or changes to the location of the school. In addition, if a school is experiencing difficulty, the CSAB often requests or requires that the board of directors for the school, or representatives from the school, appear at a CSAB meeting and respond to questions by the Board. Most of the members of CSAB have extensive experience and involvement in operating a charter school.

10. The CSAB is staffed by the OCS and works closely with other divisions in DPI – including the Exceptional Children Division (“EC Division”) and the Office of Financial and Business Services – in order to stay apprised of all issues involving charter schools, both individually and collectively. In addition, the OCS reports regularly to the Education Innovation and Charter Schools Committee (EICS), a standing committee of the SBE for which charter schools are a primary and ongoing focus.

11. Upon approval by the SBE, a charter school is issued a charter that entitles it to begin operation and to begin receiving federal, state, and local public funds. The charter document contains numerous provisions regulating various aspects of charter school operation. The charter school is bound to comply with the representations in its application, the terms of the charter, any relevant SBE policies, and federal and state laws. Any request by a charter school to deviate from its application must be approved in advance by the SBE. N.C. Gen. Stat. §§ 115C-218.1 & 115C-218.15.

12. Crossroads Charter High School (“Crossroads”) is a high school in Charlotte, North Carolina that received a 5-year charter from the SBE effective July 1, 2001 through June 30, 2006. (See Resp. Ex. 5) Prior to the scheduled expiration of the school’s charter on June 30, 2006, Petitioner submitted a request to the SBE for a 10-year renewal of the charter.

13. Prior to the CSAC meeting on June 9, 2005, Crossroads had been placed on Governance Cautionary Status due to a decrease in board members and continued conflicts of interest resulting from board involvement in administrative affairs. (Resp. Ex. 7)

14. As part of the renewal process, representatives from Crossroads attended a meeting with the CSAC on June 9, 2005, to discuss concerns in the areas of governance, academic accountability, and school safety. Specific issues discussed included: instability on Crossroads’ board of directors, the proper role of a charter school board of directors, several years of academic low performance, and inadequate student and testing data reports. Crossroads’ new board chair, Ms. Cowan, and the school’s interim principal, Dr. Elmore (the school’s fourth principal since the school began in 2001), spoke on behalf of and in support of the school. (Resp. Ex. 7)

15. After the CSAC meeting, Crossroads was charged by the OCS to create a plan addressing several items, including a plan for reconstruction of the board and replacement of the current school administration. The plan was due to the OCS on or before June 18, 2005. (Resp. Ex. 7a)

16. On June 16, 2005, Crossroads submitted a final Plan of Reorganization to the OCS. Thereafter, Crossroads received a 10-year renewal charter from the SBE effective July 1, 2006 through June 30, 2016. (Resp. Ex.(s) 8 & 11)

17. In compliance with Crossroads’ Plan of Reorganization, a new principal, Kenneth Simmons, was hired for the 2005-2006 school year. Throughout the 2005-2007 school years, in light of the concerns that had arisen about the school during the period of the initial charter, staff from the OCS increased the number of visits to the school to meet with the school principal and

administration in order to continuously monitor the academic and professional conditions at Crossroads. (Resp. Ex.(s) 9, 14-17)

18. In 2006, the SBE adopted the current “Policy Regarding Charter Schools Renewal Process” (SBE Policy TCS-U-007). By its plain language, this Policy states that the “Renewal Report,” is the process for charter school renewals. Per the timeline set out in the SBE Policy, the renewal process is a two-year process and it is referred to as a school’s “renewal cycle.” (Resp. Ex. 2)

19. On February 16, 2007, Paul LeSieur, Director of the Division of School Business for DPI, sent a Financial Warning Notification to Crossroads. The school was placed on Financial Cautionary Status for failure to have specific language required by state law in all contracts and leases. N.C. Gen. Stat. § 115C-238.29H. The school was on Financial Cautionary Status for 60 days. (Resp. Ex. 12)

20. On April 26, 2007, OCS staff visited Crossroads in connection with a Title II Monitoring Visit conducted by DPI. The Title II Monitoring Visit Team Report found that in school year 2004-2005, Crossroads provided “incomplete documentation to substantiate that the professional development opportunities were grounded in scientifically based research, focused on improving student achievement, evaluated for impact on teacher effectiveness, or aligned with the state’s academic content standards.” (Resp. Ex. 13) Additional findings included the misuse of Title I funds. (Resp. Ex.14)

21. On May 24, 2007, OCS staff visited Crossroads to follow up with Mr. Simmons and to discuss the steps he was taking as a result of the Monitoring Visit in April. OCS staff noted a concern that “professional development is needed for staff in safe schools area and a mock crisis plan with review of lock-down procedures.” (Resp. Ex. 15)

22. OCS staff also visited Crossroads on September 14, 2007. OCS staff learned that over the summer, Crossroads interviewed every student who applied to attend the school and after the interview process, Crossroads excluded some students who were otherwise eligible to enroll. OCS staff informed Mr. Simmons that this was an illegal practice and that Crossroads was required to admit every student who met the statutory residence requirements up to the school’s average daily membership (ADM) maximum number of 240 students and, that if more than 240 students applied, the school was required to hold a lottery. (Resp. Ex. 16)

23. For the 2008-2009 school year, the school principal for Crossroads was replaced by Gentry Campbell and several members of the board were replaced, including the board chair. (See Resp. Ex. 17)

24. On January 16, 2009, Ben Putnam conducted an introductory visit with Ms. Campbell to introduce himself as a new OCS consultant. During that visit, Ms. Campbell described the school environment as challenged and divided by disagreements between administration and Crossroads’ board members. Mr. Putnam agreed to attend the next scheduled board training meeting for Crossroads. (Resp. Ex. 32)

25. On March 10, 2009, Mr. Putnam participated in Crossroads' board training. Afterward, he noted that the relationship between the board and the administration was improving and that they "were working to all get on the same page for the benefit of the students and the school." Mr. Putnam observed, however, that the board was "somewhat unclear as to the expectations of a Board", and there "still appear[ed] to be some leftover tension between the Board and the administration." (Resp. Ex. 17)

26. On or about December 3, 2009, the SBE modified its policy, TCS-U-010 – Revocation of Charter for Lack of Academic Performance, to eliminate the "alternative status" designation for charter schools which designation had exempted those schools so designated from meeting certain academic performance standards set by the SBE. Under that policy, the SBE could revoke the charter of any charter school when, for two of three consecutive school years, the school did not meet or exceed expected growth and had fewer than 60% of its students scoring at or above grade level. (Resp. Ex. 3A)

27. Consequently, beginning with the 2010-2011 school year, Crossroads, previously designated as an "alternative status" school, would be required to meet the mandates of TCS-U-010.

28. On or about May 19, 2010, representatives from the OCS met with Ms. Campbell and Crossroads board members, including a new board chair, Ruth Amerson, to explain the implications of the SBE policy change and to share concerns over historical End-of-Course (EOC) data for the school. OCS staff presented reports from the prior three years of Crossroads' academic data and informed the board that if there were no significant changes to EOC data over the next year, the school would not achieve the new standards under SBE policy TCS-U-010. (Resp. Ex. 18)

29. As part of its duties, the SBE reviews the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards. N.C. Gen. Stat. § 115 C-218.5(d).

30. On May 27, 2011, as part of the five-year review process, the OCS sent a request for information about the school to Crossroads about how the school was fulfilling its SBE-approved mission, purpose, curriculum education plan, and charter school bylaws. (Resp. Ex. 21)

31. The information provided by Crossroads in response to the request indicated that EOC proficiency levels remained low in both reading and math, and for three of three consecutive school years the school had fewer than 60% of its students scoring at or above grade level:

- For 2007-2008 school year, 48.6% of the tested students were proficient in reading and 24.6% were proficient in math.
- For 2008-2009 school year, 11.1 % tested students were proficient in reading and less than 5% were proficient in math.
- For 2009-2010 school year, 35.5% of the tested students were proficient in reading and 33.3% were proficient in math.

(Resp. Ex. 21)

32. On or about May 19, 2014, Alexis Schauss (Director, Division of School Business (“DSB”) within DPI’s Office of Financial and Business Services), sent Ms. Campbell a letter informing her that Crossroads fell below the requirement of the No Child Left Behind (NCLB) Act of 2001 “to maintain fiscal effort from non-federal funds from one year to the next in order to receive federal funds under certain programs.” As a result, the DSB was required to reduce the 2013-2014 allotments for Crossroads for covered programs by 11.14%. (Resp. Ex. 22)

33. On May 30, 2014, Ms. Schauss sent another letter to Ms. Campbell in response to a review by the DSB of an audit report for Crossroads for the fiscal year ending June 30, 2013. Under state laws, as an agency that provides state and federal funds to sub-recipients, DPI is required to review audit reports in order to determine that the sub-recipients spent such funds in accordance with applicable laws and regulations. Upon review of Crossroads’ audit report, the Schedule of Findings and Questioned Costs disclosed a finding, namely “Finding 2013-1,” that required a refund to DPI in the amount of \$21,531.00. (Resp. Ex. 23)

34. Finding 2013-1 revealed several deficiencies and areas of concern about Crossroads’ fiscal management practices, including that “[d]ocumentation of goods and services purchased using [Crossroads’] credit card did not include receipts for the majority of credit purchases, evidence that the Finance Officer had the opportunity to reconcile receipts to the credit card statements, ... evidence that the purchases were known to have been within [Crossroads’] budget, or, evidence of Board approval before the statements invoicing the School were presented to the third party recordkeeping provider for payment.” Crossroads was notified that if the school was unable to provide supporting documentation for the questioned costs, Crossroads would be required to refund the State from local funds in the amount of \$21,531.00 on or before June 13, 2014. (Resp. Ex. 23)

35. In response to the letter sent from Ms. Schauss, Crossroads sent DPI additional documentation which DPI determined to be incomplete and insufficient to support the questioned costs identified in Finding 2013-1. DPI then made an additional request to Ms. Campbell for complete supporting documentation for the school’s credit card and, in an effort to be helpful, included presentation materials that outline the expectations for procurement and contractual processes. (Resp. Ex.(s) 57 & 58)

36. On or about July 7, 2014, Ms. Campbell called a DSB accountant at DPI and stated that in lieu of providing additional supporting documentation, she would repay the full amount of questioned costs totaling \$21,531.00 by personally delivering a check to DPI on July 9, 2014. Ms. Campbell failed to deliver the check to DPI on July 9, 2014, and also failed to notify DPI that payment would not be made. (See Resp. Ex. 24)

37. In the following months, DPI received no additional communication from Ms. Campbell regarding repayment of the questioned costs of \$21,531.00. Eventually, as a result of the school’s inability to provide adequate documentation regarding the purchase of goods and services with the school’s credit card and because Crossroads failed to respond to DPI’s request for repayment, the school was placed on Financial Probationary Status effective September 4,

2014. Ms. Campbell and Crossroads' newest board chair, Larry TraBue, were also notified that the school was required to repay from local funds the questioned costs totaling \$21,531.00 to DPI no later than September 19, 2014, and that failure to repay the questioned costs by that deadline would result in the school being placed on Disciplinary Status and the school would be referred to the SBE. (Resp. Ex. 24)

38. On September 18, 2014, Crossroads sent a letter to DPI requesting to be removed from Financial Probationary Status and for an extension of time for the school to continue its pursuit of documents needed to support the expenditures. Ms. Campbell also provided additional documentation to the DSB for its review and consideration. (*See* Resp. Ex. 25)

39. DSB staff reviewed the additional documentation provided by Ms. Campbell and found it to be duplicative of the insufficient documentation previously provided by the school on June 23 and 26, 2014. Therefore, on September 19, 2014, Ms. Schauss sent a letter to Mr. TraBue, informing him that DPI would not honor the school's request to be removed from Financial Probationary Status nor would it grant an extension for the school to continue to attempt to locate documentation in support of the questioned costs as identified in the school's 2012-2013 audit. In addition, the DSB requested a meeting with the school's principal and board chair for the following week. (Resp. Ex. 25)

40. On September 30, 2014, OCS Consultant Robin Kendall visited Crossroads, conducted a site visit and reported that when she asked Ms. Campbell about the financial inquiry sent by the DSB to the school, Ms. Campbell stated that the issues had been clarified and that the financial issues of the school were behind them. (Resp. Ex. 32)

41. On or about October 3, 2014, Ms. Schauss and Leigh Ann Kerr from the DSB met with Ms. Campbell and Mr. TraBue to discuss the \$21,531.00 in questioned costs that were still outstanding and required to be refunded to DPI. Ms. Schauss and Ms. Kerr assumed they were talking to Mr. TraBue as board chair; however, during the course of the meeting, Mr. TraBue informed Ms. Schauss and Ms. Kerr for the first time that he was not the board chair for Crossroads and that, instead, the board had elected another new board chair, Brian Willis. (*See* Resp. Ex. 52)

42. In follow-up email correspondence with Ms. Kerr and Ms. Campbell, Ms. Gentry agreed to provide documentation regarding questioned costs related to the use of the school credit card as identified in the 2013 audit and for re-evaluation of Crossroads' financial noncompliance status. (Resp. Ex. 53)

43. On or about October 6, 2014, the Director of OCS, Dr. Joel E. Medley, notified Crossroads by letter that the school was in danger of receiving an "inadequate performance" designation for a charter school with "no growth in student performance and has annual performance composites below sixty percent (60%) in any two years in a three-year period. The letter advised that based upon the school's assessment results from the previous two years that if the school did not meet state standards in the 2014-2015 school year, it might result in the termination of the school's charter. Dr. Medley's letter also notified Crossroads that for the 2012-2013 school year, less than five percent of the school's tested students were grade-level proficient,



and for the 2013-2014 school year, 22.2 % were grade-level proficient. (Pet. Ex. 66; Resp. Ex. 26)

44. On November 3, 2014, the DSB sent Crossroads a fourth letter informing the school that Crossroads did not maintain adequate documentation of goods and services purchased using the school's credit card, and that documentation provided by Crossroads was insufficient to avoid repayment of the questioned costs. DPI informed Crossroads that the school must repay from local funds the questioned costs totaling \$21,531.00 by November 10, 2014 or Crossroads would be placed on Disciplinary Status and referred to the SBE. (Resp. Ex. 27)

45. Crossroads repaid the State for the disallowed costs of \$21,531.00 on November 10, 2014. Ms. Schauss sent Crossroads a letter on November 18, 2014 to notify the school of the resolution of the debt owed to the State and to recommend that Crossroads monitor its existing policies for documentation of all invoices. (*See* Resp. Ex. 33)

46. On or about December 4 and 5, 2014, an on-site Program Compliance Review was conducted at Crossroads by the EC Division of DPI. Noncompliance was found in individual students' records and the EC Division worked with Crossroads to ensure proper corrections were made. (*See* Resp. Ex. 33)

47. For the 10-year charter renewal process, Petitioner's renewal cycle was 2014-2016. The OCS collected and analyzed compliance documents, academic and enrollment data on the school, conducted site visits to the school and then compiled a renewal portfolio which was presented to the CSAB for its review and consideration. (Resp. Ex. 40)

48. Per SBE Policy, a charter school's Renewal Report must include the school's self-study and a report prepared by DPI which is composed of all information pertinent to the evaluation of the charter school for renewal purposes from the relevant DPI divisions. The policy cites examples of sources of documentation from DPI including audit reports, financial records, concern brought to the OCS, interviews, school site visits by the OCS educational consultants, ABC accountability results, and EC Division compliance records. (Resp. Ex. 2)

49. On or about December 5, 2014, as part of its request to have its charter renewed, Crossroads submitted the Renewal Self-Study document to DPI. (Resp. Ex.(s) 28 & 2) The Renewal Self-Study document indicated that the Crossroads' board chair as of December 5, 2014, was Brian Willis and that for the 2011-2012 school year, only 84% of the school's teachers were highly trained and for the 2012-2013 school year, only 80% were highly trained. (Resp. Ex. 28)

50. On January 28, 2015, DPI completed an on-site Title I and federal programs fiscal monitoring review of Crossroads, and a final Fiscal Monitoring Report was sent to Ms. Campbell on March 3, 2015. The Fiscal Monitoring Report identified multiple areas of fiscal monitoring deficiencies. Some of the deficiencies included the school's: (a) inability to provide documentation to support that it had conducted the required minimum quarterly comparisons of actual costs to budgeted distributions; (b) not having policies and procedures in place for managing equipment purchased with public funds; (c) payment of prior year invoices with current year

federal funds; and (d) lack of adequate fiscal policies in place regarding critical financial compliance. (Resp. Ex. 31)

51. On February 10, 2015, Ms. Schauss sent notification of the school's financial noncompliance status and placement of the school on a monthly allotments schedule to Crossroads' board chair, Brian Willis, and to Ms. Campbell. This action by the DSB was caused by the school's failure to provide its audited financial statements for the fiscal year ending June 30, 2014, to the Local Government Commission (LGC) as of February 10, 2015. The school was also notified that it would be referred to the CSAB due to the school's financial noncompliance. (Resp. Ex. 29)

52. The CSAB discussed Crossroads at its meeting on March 9, 2015. DSB staff presented their concerns about the school's finances. OCS staff presented information to the CSAB concerning Crossroads' "significantly low academic performance that is not comparable to the [local school district]." In response, the Crossroads' board chair Mr. Willis told the CSAB that the current board had only been together for 90 days and had been dealing with issues attributable to the previous board. Alex Quigley, a member of the CSAB, noted that the school needed to make a lot of growth in the area of academics and then made a recommendation that Crossroads continue to work on becoming fiscally up to date since the school would be before the CSAB in the fall of 2015 as part of the renewal process. No action was taken on Crossroads' charter at the conclusion of the meeting. (Resp. Ex. 33a)

53. David Jean testified at the contested case hearing that he presented information as a member of the Crossroads' board on behalf of Crossroads to the CSAB at this meeting, that the Board was "satisfied" with the school's presentation and that in response the board gave "a compliment" to the school and encouraged the school to "keep doing what you're doing". (Tr. pp. 584-585)

54. As part of the process for considering Crossroads' request for renewal of its charter, OCS staff conducted on-site visits at Crossroads in March 2015. The purpose of these visits was for the OCS to collect information and documentation about Crossroads to present to the CSAB, along with academic and enrollment data about the school, to assist the CSAB in its review and consideration of the school's request for renewal.

55. OCS consultant Darrell Johnson visited the school on or about March 4, 2015. Prior to visiting the school, Mr. Johnson completed several pre-site visit documents with information and data about how the school was performing in the areas of academics, finances, and operations, based on data and information about the school collected by and/or provided to DPI. He specifically noted that there was "very low academic performance" at the school:

- For the 2011-2012 school year, 22.9% of Crossroads' Math I students were grade level proficient; 45.8% of the school's English I/English II students were grade level proficient; and 14.5% of the school's Biology students were grade level proficient;
- For the 2012-2013 school year, less than 5% of the school's Math I students were grade level proficient; 5.4% of the school's English I/English II students were grade

level proficient; and less than 5% of the school's Biology students were grade level proficient; and

- For the 2013-2014 school year, 13.5% of the school's Math I students were grade level proficient; 27.1% of the school's English I/English II students were grade level proficient; and 25.8% of the school's Biology students were grade level proficient.

(Resp. Ex. 32)

56. OCS staff conducted an on-site visit of the school on March 26, 2015 after which they reported that the school needed to "continue striving to improve the student proficiency and growth," and that the school should work with both the EC Division and the DSB to ensure compliance in those areas. (Resp. Ex. 32)

57. On July 9, 2015, DPI sent a letter to Crossroads advising that the deficiencies identified in the Fiscal Monitoring Report dated March 3, 2015 had been satisfied. (Pet. Ex. 84)

58. On or about July 13, 2015, DSB staff sent a letter to Crossroads' board chair Mr. Willis regarding an Audit Report for Crossroads for the fiscal year ended June 30, 2014. The Audit Report disclosed several deficiencies concerning the school's noncompliance with various laws and regulations that were outlined as Findings 2014-1, 2014-02, 2014-03, 2014-04, and 2014-05. The letter included a summary of DPI's position on the findings and determined that Crossroads must reimburse the State a total of \$27,948.00 in questioned costs from local funds and must provide evidence that corrective action was taken. The Audit Report also revealed that a total questioned cost of \$53,893.00 was referred to Charlotte-Mecklenburg County Schools for determination of repayment of local funds. (Resp. Ex. 35)

59. The July 13, 2015 letter also stated that DPI determined Crossroads remained on Probationary Financial Noncompliance Status which had been in effect since September 2014. The school was notified that its noncompliance status would be reassessed upon receipt and review of the school's audited financial statements for the year ending June 30, 2015. (Resp. Ex.(s) 35 & 24)

60. Throughout the 2014-2015 school year, Crossroads continued to have board turnover and in July 2015, board chair Brian Willis was replaced by David Jean.

61. During August 2015, the State Auditor's Office, Petitioner's Counsel and DPI corresponded via email concerning whether Crossroads was delinquent in paying its employees. (Pet. Ex. 28)

62. In October 2015, an informal meeting was held between the State Auditor's Office and DPI concerning Petitioner. (Pet. Ex.(s) 29 & 38)

63. At its November 17, 2015 meeting, in accordance with the timeline for renewal set forth in SBE Policy TCS-U-007, the CSAB noted that Crossroads was "noncompliant in finances and there [sic] academics were not comparable to the local school district." (Resp. Ex. 37) A

letter was sent to Crossroads notifying the school that its request for renewal would be considered at the December 7, 2015 meeting, that representatives from the school would be required to attend, and that the OCS recommended that “at a minimum [the school’s] lead administrator and board chair attend the meeting.” (Resp. Ex. 38)

64. Representatives from Crossroads attended the December 7, 2015 CSAB meeting. The new Board Chair David Jean, presented information to the CSAB and addressed concerns regarding the school’s reported noncompliance in the areas of academics, governance and finances. Crossroads’ Dean of Students, Adrian Sundiata, also presented to the CSAB on the topic of the school’s academics. It was explained that “the 2012-2013 audit was late due to record keeping issues” and “the 2014-15 audit was late because of concerns that the bank’s documentation was inaccurate.” (Resp. Ex. 39 & 39A)

65. Mr. Jean testified at the contested case hearing that he and Mr. Sundiata “were blindsided” at this meeting, that their presentation was disrupted by board members who interrupted and had “outdated information”, and that Crossroads was not given a fair opportunity to share information. (Tr. pp. 585-589)

66. Members of the CSAB asked questions of the Crossroads’ representatives and expressed their concerns about the academics and financial situation at the school.

67. Alex Quigley, chairman on the CSAB, noted his concerns with the school’s academic performance which involved “two consecutive years of not meeting growth followed by one year of meeting growth, [and] two consecutive F grades” for the school under the State’s accountability model. (Resp. Ex. 39a, pp. 13, 30)

68. Steven Walker, vice-chair of the CSAB, expressed his concerns that although the school had met growth standards, the percentage of students who were grade-level proficient had gone down, as well as the percentage of students who were deemed college and career ready. In addition, Mr. Walker expressed his concerns that: the school’s enrollment had declined significantly; the school did not meet growth two out of three years; the school had received an “F” grade twice; the school’s proficiency level was 41% below the level of the local school district; the school had a three-year history of late audits; the school had repeat findings around tens of thousands of dollars in questioned costs; and the school had continued with the same school administrator despite ongoing issues regarding finances, many of which involved allegations of questionable or undocumented expenditures by that administrator. (Resp. Ex. 39A, pp. 28-30)

69. Following the presentation and interview of Crossroads, and consideration of the Renewal Report, the CSAB deliberated and then CSAB member, Joe Maimone, made a motion to recommend to the SBE non-renewal of Crossroads’ charter. Mr. Maimone is a long-time charter school operator and has been a member of both the CSAC and the CSAB, stating, “this is as clear a case as I’ve seen in all the years I’ve been on this advisory board that this is not a case for renewal. If we’re going to stick to being accountable to the State of North Carolina for student achievement, I cannot in good conscience vote to renew this charter.” The vote to recommend non-renewal of Crossroads’ charter to the SBE carried unanimously. (Resp. Ex.(s) 39, 39A p. 31, 37 & 38)

70. Cheryl Turner, a CSAB member, testified about the CSAB's concerns about the school's poor academic performance over the years, the low academic performance of the school compared to other schools in Mecklenburg County and in the State, the financial struggles of the school, the declining enrollment at the school, and the instability of the board. (Testimony on June 22, 2016.)

71. On December 7, 2015, the Charter School Advisory Board (CSAB) voted to recommend the nonrenewal of Petitioner's charter to the State Board of Education (SBE) based on "substantial noncompliance in finances and academics." (Pet. Ex. 82)

72. Crossroads had retained Elizabeth Gomes (formerly Elizabeth Keels and also known as "BJ" and "Beth") to prepare the school's annual audits for school years 2012-2013, 2013-2014 and 2014-2015. (Tr. pp. 552-554, 560)

73. Mr. Jean testified that the Crossroads' board had multiple issues with Ms. Gomes's auditing firm: incorrect explanations of information; incorrect billing for services; appearing uninvited at a board meeting and expecting the board to immediately review and approve an audit report; and in December 2015, Ms. Gomes attempted to renegotiate the terms of her contract before the contracted work was completed. (Tr. pp. 554-571; Pet. Ex.(s) 73 & 74) At some point, the board learned that in July 2015, Ms. Gomes's firm failed a peer review of "the system of quality control of her accounting and auditing practice for the year ended December 31, 2014." (Pet. Ex. 62) In spite of these issues, the Board did not want to terminate her contract because the audit was late. (Tr. p. 571)

74. At its regularly scheduled meeting on January 7, 2016, the SBE took up as a discussion item the slate of charter schools with charters set to expire on June 30, 2016 that were being considered for renewal. The SBE's EICS Chair, Rebecca Taylor, noted that the renewal recommendation for each school had been thoroughly discussed during the EICS meeting the prior day and it was unanimously recommended that Crossroads' charter not be renewed. (Resp. Ex. 43, pp. 38-44)

75. During its consideration, discussion and action on the request for renewal of Crossroads' charter, the SBE had access to information and data about the school's academics, finances, and governance (as that information is posted online and sent to SBE members in advance of the SBE meeting), including the Renewal Report prepared by OCS. (Resp. Ex. 43)

76. DPI provided financial information to the CSAB and SBE in the Renewal Report. The financial information that DPI uses and analyzes as part of the renewal process is based on the Petitioner's audited financial statements. During Petitioner's renewal cycle, DPI made this operating procedure known through its statement that "DPI works based on information provided by the independent auditor." (Resp. Ex. 57; *see also* Resp. Exs. 23, 60).

77. The Renewal Report included a document of statistics that reports the academic performance of Crossroads students compared to the local school district as follow:

- For 2013, Crossroads <5%, local school district 47.2%;
- For 2014, Crossroads 22.2%, local school district 59.2%; and
- For 2015, Crossroads 18.8%, local school district 59.4%.

(Pet. Ex. 5; *see* Resp. Ex. 40)

78. Based upon Findings of Fact 55 and 77 above, the Undersigned finds that Crossroads's academic performance was lower than 60% for the school years ending in June of 2012, 2013, 2014 and 2015 and, therefore, did not meet the mandates of SBE Policy TCS-U-010. (*See* Findings of Fact 26, 27 & 43 above.)

79. The Renewal Report included a chart of data for Crossroads' financial performance framework which notes that the school was in noncompliance status for the years 2011, 2012, and 2013, and on probationary status for the years 2014 and 2015. This information was derived from Petitioner's audits. (Resp. Ex. 40)

80. In addition to the renewal portfolio, the SBE had access to any and all correspondence sent to it from or about any charter school that was being considered for non-renewal including from Crossroads' board chair, David Jean, who corresponded with SBE members via e-mail on February 2, 2016, advocating for the renewal of the school's charter. (Resp. Ex. 45)

81. The Crossroads' audit for the fiscal year ended June 30, 2015 was received in January 2016.

82. On January 20, 2016, DSB notified Crossroads that due to "significant signs of financial insolvency" that the school's Financial Compliance Status was elevated from Probationary to Disciplinary, effective immediately. The financial issues noted in the 2015 audit included: "Notice of Going Concern; material contingent liabilities and obligations; unassigned general fund balance deficit; and an annual decline in ADM from 232 in 2013 to 163 in 2016, a 30% reduction." (Resp. Ex. 42)

83. By letter dated February 4, 2016, the DSB notified Crossroads that "while on Financial Disciplinary Status the school will receive its third and final state fund allotment in four monthly installments beginning in February." (Resp. Ex. 46)

84. At its regularly scheduled meeting on February 4, 2016, the SBE voted on each school with a charter set to expire on June 30, 2016 that was being considered for renewal. The SBE voted unanimously not to renew Crossroads' charter. (Resp. Ex. 44, pp. 39-41)

85. On or about February 6, 2016, Crossroads filed a Petition for Contested Case Hearing in the Office of Administrative Hearings, challenging the SBE's decision not to renew the school's charter and requesting a three (3) year renewal term, among other things.

86. Subsequently, Crossroads responded to the independent auditor's findings on March 10, 2016 which were accepted by DPI on April 27, 2016, resolving the audit for the fiscal year ending June 30, 2014. (Resp. Ex.(s) 48 & 49)

87. On March 24, 2016, DPI sent a letter to Board Chair David Jean, advising that the SBE voted not to renew Petitioner's charter on February 4, 2016. (Pet. Ex. 83)

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels.

2. Petitioner has claimed in this action that it is entitled to relief on grounds that the State Board of Education has (a) deprived it of property; (b) ordered it to pay a fine or civil penalty; and (c) otherwise substantially prejudiced its rights.

3. Petitioner has also claimed in this action that the State Board of Education has (a) exceeded its authority or jurisdiction; (b) acted erroneously; (b) failed to use proper procedure; (d) acted arbitrarily or capriciously, and (e) failed to act as requested by law or rule. The Petitioner, Crossroads Charter High School, has the burden of proof by a greater weight or preponderance of the evidence regarding its claims. The Undersigned finds and concludes that Petitioner has failed to carry its burden of proof with respect to any of the claims asserted in the Petition.

4. As an initial matter, Petitioner has no right in a continued charter and a non-renewal of a charter does not implicate a property right. *Board v. Regents v. Roth*, 408 U.S. 564 (1972). Because the Petitioner cannot show that it has a right to a continued charter, it, therefore, cannot prove any deprivation of property rights or that any of its other rights have been substantially prejudiced by the SBE's decision not to renew the school's charter. In addition, Petitioner has not been ordered to pay a fine or civil penalty. Accordingly, Petitioner has not satisfied the first prong of the test for bringing a claim under N.C. Gen. Stat. § 150B-23.

5. Assuming arguendo that Petitioner has stated a claim that the SBE's decision to non-renew the school's charter substantially prejudiced its rights, the Undersigned finds that the Petitioner has failed to carry its burden of proving by a greater weight or preponderance of the evidence that by not renewing the Petitioner's charter, the agency's decision was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health and Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-475 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015)

6. In North Carolina the State Board of Education is constitutionally mandated to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, §5.

7. In accordance with *Painter v. Wake County Bd. of Educ.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.” See also *Huntley v. Potter*, 122 S.E. 2d 681, 255 N.C. 619 (1961). The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff’d*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm’r of Ins. v. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E. 2d 882, 888 (1977). “It is more than a scintilla or a permissible inference.” *Lackey v. Dep’t of Human Res.*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982). In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Exam’rs*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

8. N.C. Gen. Stat. § 115C-218.95(a) sets forth the grounds for non-renewal of a charter by the SBE and includes, *inter alia*, the following:

.....

- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violations of any of the conditions, standards, or procedures set forth in the charter; . . .
- (6) Other good causes identified.

9. In this case, the SBE voted to non-renew Petitioner’s charter. The SBE did so based upon many factors, information provided by CSAB and considered by CSAB in its recommendation including enrollment, academics, finances, changes in administration and lack of board governance. The Petitioner’s record in all these areas was extremely weak despite having had 15 years to prove itself a school entitled to a charter and entitled to receive public monies.

10. The obligations that a charter school assumes by accepting an award of a charter is to provide the opportunity for all its students to receive a sound basic education consistent with the mandates and guarantees of the North Carolina Constitution. Likewise, the obligation of the State Board of Education, under the Constitution and laws of the State, is to ensure that every child has the opportunity to receive a sound basic education. *Leandro v. State of North Carolina, et al*, 346 N.C. 336, 488 S.E. 2d 249 (1997).

11. Consistent with its Constitutional mandate, the SBE must continually monitor charter schools and must hold charter schools to a standard that complies with the Constitutional guarantee. This includes terminating or non-renewing a charter when circumstances indicate the school’s failure to provide academic services. Likewise, the SBE owes a fiduciary obligation to the public and to the taxpayers to ensure the integrity of the financial dealings of the charter school.

12. The CSAB heard from DPI staff and from the school’s representatives on more than one occasion. The CSAB considered all of the evidence before it as well as historical information and the readily available information about the current academic health of the school. Consistent



with its statutory duties, the CSAB determined that the Petitioner was not of a caliber that deserved another charter and recommended to the SBE that the latter not renew the charter.

13. Petitioner argued that Respondent bore some level of responsibility for relying upon audits prepared Ms. Gomes, the auditor retained by Petitioner, and had some level of responsibility to investigate her credentials and apprise Petitioner of those credentials. (Tr. pp. 12-14) The Undersigned finds this argument unpersuasive. Petitioner retained Ms. Gomes's service and as problems arise with her work over the years, Petitioner bore the responsibility of terminating their relationship with her and retaining another auditor.

14. The Undersigned finds that the SBE had grounds, well supported by the evidence before it, not to renew the Petitioner's charter.

15. Petitioner argued throughout this case that Respondent violated the Public Records Law in failing to turn over numerous documents requested pursuant to that law and made a Motion *In Limine* upon it. N.C. Gen. Stat. 132-01 *et seq.* The Undersigned finds this argument without merit. First, the Undersigned finds that it has no jurisdiction over requests made pursuant to the Public Records Law. There are specific remedies provided for that in law which require action by the Superior Court, not this tribunal. (N.C. Gen. Stat. § 132-9) Second, the Petitioner did not file any motion or other documents with this tribunal claiming any violations of the discovery rules, over which matters this tribunal does have jurisdiction. (N.C. Gen. Stat. § 150B-33) Therefore, it is presumed that Respondent has complied with discovery requests in this case. Third, it appears that Respondent has attempted, in good faith, to comply with the public records request and Petitioner has not shown what documents have not been provided and has not shown any prejudicial results from any alleged nonproduction. Fourth, a Motion *In Limine* is a prehearing motion and any claim that opposing counsel has failed to produce requested discovery is properly brought before the commencement of a hearing and the admission of evidence.

16. Petitioner contended at the hearing of this matter that Respondent should not be permitted to present evidence regarding its deficiencies if that evidence was not actually presented to the CSAB and the SBE. Petitioner essentially wants this tribunal to disregard any document that was not before the boards when they decided to non-renew the Petitioner's charter. In essence, Petitioner is claiming that nothing "outside the record" is properly considered in determining the propriety and legality of the SBE's ultimate decision not to renew the school's charter even if it was in the Agency's records but not specifically produced to the SBE for review.

17. Upon Petitioner's objection to this historical evidence at the contested case hearing, the Undersigned informed Petitioner she would limit consideration of the historical evidence as appropriate. This tribunal is charged with determining whether the decision of the agency is legally correct and is also charged with making a final decision. Accordingly, whatever evidence is relevant to the decision in this case is properly considered and will be given appropriate weight. The Undersigned gives the same latitude to both parties in considering evidence and determining the weight to be given.

18. Furthermore, even if the Undersigned were charged with rendering the Final Decision based solely upon the specific evidence that was before the SBE, she finds and concludes

that the decision of the SBE is supported by that evidence standing alone, even disregarding the allegedly historical evidence as presented at the hearing.

19. The Undersigned finds and concludes that the Petitioner has failed to meet its burden to show that the SBE (1) exceeded its authority or jurisdiction; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule.

20. “[A]gency action is considered ‘arbitrary and capricious’ only if it indicates a lack of fair and careful consideration and fails ‘to indicate any course of reasoning and the exercise of judgment.’” *Watson v. N.C. Real Estate Comm’n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987) quoting *State ex rel. Comm’r of Ins. v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980). Conduct is only arbitrary and capricious when there is no rational basis for a decision, the decision is motivated by bad faith or ill will, or the decision is “whimsical.” *Comm’r of Ins. v. Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980). This standard is a difficult one to meet. *Teague v. W. Carolina Univ.*, 108 N.C. App. 689, 424 S.E.2d 684 (1993).

21. The Petitioner has failed to overcome the presumption set forth by law that the SBE’s decision not to renew Petitioner’s charter was lawful and correct. As such, the presumption granted by law remains that the SBE did not fail to use proper procedure, or act arbitrarily or capriciously, as alleged in the Petition.

22. The preponderance of the evidence in the record supports the SBE’s decision not to renew Petitioner’s charter to operate a public school in North Carolina. Petitioner has failed to carry the burden of proof assigned to it by law.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

### **DECISION**

Petitioner failed to carry its burden of proof by a preponderance of the evidence to show that the Respondent (1) exceeded its authority or jurisdiction; (2) acted erroneously; (3) failed to use proper procedure; (4) acted arbitrarily or capriciously; or (5) failed to act as required by law or rule. Based upon the foregoing, the Undersigned concludes that the State Board of Education’s decision not to renew Petitioner’s charter to operate a charter school should be upheld.

### **NOTICE**

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within**

**30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 13th day of July, 2016.

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Selina Malherbe Brooks  
Administrative Law Judge