STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANATEE COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 19-4155

LINCOLN MEMORIAL ACADEMY, INC.,

Respondent.
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FINAL ORDER

A final hearing was held in this matter before Robert S. Cohen, Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), on August 26 through 29, 2019, in Bradenton, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether, pursuant to section 1002.33(8)(a)2., 3., and 4., and (c), Florida Statutes (2019), Petitioner has proved violations of law and other good cause to immediately terminate a charter school agreement with Respondent dated February 27, 2018, due to the immediate and serious danger to the health, safety, and/or welfare of the students of Lincoln Memorial Academy, Inc. ("LMA" or "Respondent").

PRELIMINARY STATEMENT

Respondent is a conversion of the former Lincoln Memorial Middle School. The conversion changed the school from a Manatee County School District ("School District") public school to a free public charter school run by a section 501(c)(3), Internal Revenue Code, organization. The conversion process was one that took over a year to complete and involved informational meetings for the staff, parents, and community at large.

At a regularly scheduled meeting on July 23, 2019, the School Board of Manatee County, Florida ("Petitioner," "Sponsor," or "School Board"), voted to terminate the charter school contract ("Contract") between the School Board and LMA. On July 24, 2019, pursuant to section 1002.33(8)(c), the School Board issued a Notice of Termination of the Contract dated February 27, 2018, between the School Board and LMA. The initial notice identified statutory and contractual grounds for the

immediate termination of the Contract. Specifically, the School Board explained that the termination was due to the immediate and serious danger to the health, safety, and/or welfare of the charter school students in material violation of law based on two major factors: 1) Eddie Cantrel Hundley remained as chief executive officer ("CEO") of LMA despite the fact that he posed a danger to the health, safety, and/or welfare of students due to acts that resulted in the revocation of his educator's certificate for five years pursuant to section 1012.795, Florida Statutes, and the requirement that he not be employed in a capacity that would require direct contact with students; and 2) LMA's fiscal mismanagement presented an immediate and serious danger to the health, safety, and/or welfare of the students, which violated both the Contract and the law.

The initial notice was amended on August 5, 2019. The amended notice was provided to all Governing Board members, Mr. Hundley, Kamara Ramsey, and the Department of Education. Specifically, the School Board explained that the termination was due to the immediate and serious danger to the health, safety, and/or welfare of the charter school students in material violation of law based on facts and circumstances that predated the July 23, 2019, decision to terminate, but that were not all fully realized until after the School District entered LMA on July 25, 2019, in an attempt to meet its obligations under the

terms of the Contract and section 1002.33(8)(c) to continue operation of the school. The particular facts and circumstances that resulted in the immediate termination of the charter school were set forth in the Amended Notice. Those facts and circumstances continued to be based on Mr. Hundley being permitted to remain on campus in his role as CEO following the issuance of an Order by the Education Practices Commission ("EPC") that he was not to be employed or working in a position that required direct contact with students, as well as the administrative and fiscal mismanagement of LMA, which led to dire circumstances, including: 1) A water "Shut-Off Notification" dated July 22, 2019, due to the inability to pay the utility bill; 2) Failure to make required contributions to the Florida Retirement System ("FRS"), despite withholding those contributions from employees' paychecks; 3) Failure to pay teachers their earned Best and Brightest awards from the state; 4) Failure to properly pay employees; 5) Failure to timely pay the Internal Revenue Service ("IRS"), despite withholding taxes from employees' paychecks; 6) Having a negative fund balance and being unable to meet the financial obligations required to run the school; 7) Termination of contracts with its food and dairy supplier due to failure to pay invoices; 8) Failure to properly screen food for allergens before serving it to the students; 9) Failure to maintain required records for the National Food

Service Program ("NFSP"), placing LMA at risk of losing its funding to provide food to its students, who were all dependent upon that food; and 10) Failure to maintain student insurance for student athletes.

Respondent filed a Petition for Administrative Hearing, which was forwarded to DOAH on August 6, 2019. Due to the expedited nature of this matter, a pre-hearing scheduling conference was noticed and held on August 7, 2019. By notice issued August 8, 2019, the case was scheduled for hearing on August 26 through 29, 2019.

During the expedited period between the filing of the petition and the final hearing, numerous motions to compel, for protective orders, and for clarification of already-issued Orders were filed with DOAH. Each of these was disposed of by the undersigned by Order, many after hearing oral argument from the parties prior to issuance of Orders. However, the undersigned reserved ruling on sanctions for LMA's refusal to cooperate with many of these Orders and its obligations to comply with discovery requests. Additionally, the School Board filed a Motion for Sanctions on September 17, 2019, based on LMA's late production of documents, some while the hearing was underway, and some following the completion of the hearing, as well as newly discovered information that LMA had withheld additional documents.

The final hearing began on August 26, 2019, and concluded on August 29, 2019. At the hearing, Petitioner presented the testimony of 13 witnesses: Mitch Teitelbaum, Weston Watson, Mark Smith, Emily Roach, Heather Jenkins, Regina Thoma, Wendy Mungillo, John Jorgenson, and Elena Garcia, and read into the record excerpts from the depositions of Christine Dawson, Cornelle Maxfield, Eddie Hundley, and James Ward. The School Board offered six binders of exhibits into the record, numbering 256 exhibits in total, which were admitted into evidence, broken down as follows: Binder 1 consists of 14 tabbed exhibits; Binder 2 consists of 30 tabbed exhibits; Binder 3-1 consists of 70 tabbed exhibits; Binder 3-2 consists of 76 tabbed exhibits; Binder 3-3 consists of 39 tabbed exhibits, 11 loose exhibits, and one thumb drive with index; and Binder 3-4 consists of 15 numbered exhibits. Respondent presented the testimony of four witnesses: proffered expert Corey Smith, Esquire, whose testimony was not accepted into the record or considered for this Final Order; Saul Johnson; Eddie Hundley; and DeAnna King. LMA offered ten exhibits into evidence, two of which (Respondent's Exhibits 5 and 10) were not admitted into evidence.

The seven-volume Transcript of the proceeding was filed on September 6, 2019. Prior to the hearing, the undersigned had agreed to equally divide the time remaining until the final order was due pursuant to statute (September 30, 2019). Petitioner and

Respondent timely submitted their Proposed Final Orders ("PFOs") on September 18, 2019. On September 19, 2019, a day later than the filing of its PFO, Petitioner filed a Motion for Leave to Exceed Page Limit. While such permission is generally requested in advance of the filing of the PFOs, based upon the high volume of exhibits and witnesses called at the hearing, the undersigned would have granted a timely filed motion. A one-day-late motion to exceed the page limit does not prejudice any party to the proceedings and it was, therefore, granted on September 19, 2019. Respondent thereafter filed a motion to reconsider the undersigned's Order granting the motion to exceed the page limit, along with a request that Petitioner's PFO be stricken in its entirety. The undersigned issued an Order denying these post-hearing requests on September 23, 2019. Both Petitioner's and Respondent's PFOs have been considered in their entirety, except for those portions of Respondent's PFO that raise issues not previously raised at hearing, for preparing this Final Order.

References to statutes are to Florida Statutes (2019), unless otherwise noted.

FINDINGS OF FACT

1. LMA converted to a charter school from Lincoln Memorial Middle School by receiving a majority vote of the parents and a majority vote of the teachers by an election pursuant to Florida

Administrative Code Rule 6A-6.0787 (Ballot Process for Teacher and Parent Voting for Charter School Conversion Status).

2. On August 22, 2017, the School Board approved Lincoln Memorial Middle School's application for conversion charter school status, which allowed Lincoln Memorial Middle School to become LMA. In February 2018, the School Board and LMA entered into a charter school contract memorializing the agreed-upon terms between the School Board and LMA with the School Board acting as LMA's sponsor. Then Governing Board Chair Edward Viltz and Governing Board Secretary Cornelle Maxfield signed the Contract on LMA's behalf. LMA officially began its operations on July 1, 2018, with the 2018-2019 school year being LMA's first year as a conversion charter school.

3. As a conversion charter school, LMA technically remained a public school within the School District, but LMA's day-to-day operations ran independently from the School District. LMA had its own Governing Board completely separate from the School Board. Pursuant to the Contract (discussed in more detail below) and applicable statutes, LMA's Governing Board was dominantly and/or solely responsible for LMA's operations—-not the School District or School Board. In fact, according to LMA Founder and CEO Eddie Cantrel Hundley, this level of autonomy afforded to charter schools was one of the benefits of converting. Further, although LMA could have opted into several of the School

District's services, including, but not limited to, the School District's food services program and transportation, LMA chose to independently render such services.

4. The Contract under which LMA operated is a model state contract that Florida school districts and charter schools must use per Florida law. It sets forth LMA's obligations with respect to various topics, including, but not limited to, governance, hiring and screening of employees, financial management, federal funding, and other matters of compliance, in addition to circumstances upon which either party may choose not to renew or terminate the contract.

5. Pursuant to the Contract, LMA's governance was regarded to be in accordance with its by-laws. Therefore, the general direction and management of LMA's affairs was required to be vested in the Governing Board. All meetings and communications involving members of the Governing Board were to be held in compliance with Florida's Sunshine Law.

6. The Governing Board and principal were charged with specific duties and responsibilities:

a. The Governing Board's primary role will be to set policy, provide financial oversight, annually adopt and maintain an operating budget, exercise continuing oversight over the school's operations, and communicate the vision of the school to community members.

b. It shall be the Governing Board's duty to keep a complete record of all its actions and corporate affairs and supervise all officers and agents of the school and to see that their duties are properly formed.

c. The Governing Board will serve as the sole responsible fiscal agent for setting the policies guiding finance and operation. School policies are decided by the Governing Board, and the principal ensures that those policies are implemented.

d. The Governing Board shall exercise continuing oversight over school operations and will be held accountable to its students, parents/guardians, and the community at large, through a continuous cycle of planning, evaluation, and reporting as set forth in section 1002.33.

e. The Governing Board will be responsible for the over-all policy decision making of the school, including the annual approval of the budget.

f. The Governing Board shall perform the duties set forth in section 1002.345, including monitoring any financial corrective action plan or financial recovery plan. Additionally, the Contract stated that LMA would be a public employer and would participate in the FRS, that upon nomination and "prior to appointment to the Governing Board," a member must undergo a background screening in accordance with section 1002.33(12)(g),

and that LMA must allow reasonable access to its facilities and records to duly authorized School District representatives.

7. Regarding the employment of teachers and other staff, LMA was responsible for selecting its own personnel. However, in selecting its own personnel, LMA was required to employ only teachers certified pursuant to chapter 1012. LMA was to (1) refrain from employing any individual to provide instructional services or to serve as a teacher's aide whose certification or licensure as an educator is suspended or revoked by the State of Florida or any other state; and (2) refrain from knowingly employing an individual who has resigned from a school or school district in lieu of disciplinary action with respect to child welfare or safety or who has been dismissed for just cause by any school or school district with respect to child welfare or safety or who is under current suspension from any school or school district.

8. Further, the Contract states that the school shall implement policies and procedures for background screening of all prospective employees, volunteers, and mentors and the school shall require all employees and members of the Governing Board to be fingerprinted. The results of all background investigations and fingerprinting "will be reported in writing to the Superintendent and/or his/her designee[;] . . . [n]o school employee or member of the Governing Board may be on campus with

students until his/her fingerprints are processed and cleared"; and "the School shall ensure that it complies with all fingerprinting and background check requirements."

9. Regarding financial management, the Governing Board shall be responsible for the operation and fiscal management of LMA, and the school must submit a monthly financial statement to the Sponsor (the School District) no later than the last day of the month being reported. LMA agreed to provide the School District, upon request, proof of sufficient funds or a letter of credit to assure prompt payment of operating expenses associated with the school, including, but not limited to, teacher and other staff salaries and benefits.

10. Regarding federal funding, the School Board agreed to reimburse LMA on a monthly basis "for all invoices submitted by the School for federal funds."

11. Regarding the renewal or termination of the Contract, the Contract's terms closely mimic terms of the applicable statute, section 1002.33. Specifically, the School Board may choose not to renew or terminate the charter for reasons set forth in section 1002.33(8) including, but not limited to, failure to meet generally accepted standards of fiscal management, violation of law, and other good cause shown.

12. The Contract further provides that the School shall have 30 days from written notice of default to cure, "absent any

circumstances permitting immediate termination." There is no requirement that the Sponsor issue written notice to the school before it immediately terminates a charter for reasons that pose a serious and immediate danger to the health, safety, and welfare of the students.

LMA's Fiscal Mismanagement was an Immediate and Serious Danger to the Students' Health, Safety, and Welfare

13. Pursuant to the Contract and applicable statute, LMA was responsible for submitting monthly financial reports. On or about May 15, 2019, School District Chief Financial Officer ("CFO") Heather Jenkins learned that LMA's January, February, and March 2019 financials showed a negative fund balance—meaning that LMA's expenditures exceeded their revenues. When the School District received LMA's monthly fund balance for April 2019, it again showed a negative fund balance. By this time, LMA's net deficit totaled $235,438.00.

14. LMA's negative fund balance triggered LMA and the School District's statutory obligation to report LMA's financial situation to the Florida Department of Education, pursuant to section 1002.345(b). Pursuant to statute, if the School District and LMA were unable to reach a consensus on a corrective action plan within 30 days, intervention would be necessary by the Florida Commissioner of Education. § 1002.345(1)(d), Fla. Stat.

LMA and the School District had until June 28, 2019, to reach a consensus on a corrective action plan.

15. As the School District began receiving monthly financials showing LMA's negative fund balance, the School District also began receiving notices from various sources reporting that LMA was delinquent on certain payments, including, but not limited to, the Florida Department of Management Services regarding LMA's failure to make payments on behalf of its employees to the FRS; LMA employees reporting LMA's failure to make payroll; and LMA's failure to pay Best and Brightest bonuses to teachers, who had been awarded those bonuses by the State.

16. The School District made repeated attempts to reach a consensus on a corrective action plan with LMA by having numerous meetings with LMA's CFO Cornelle Maxfield and providing feedback on LMA's proposed corrective action plan. Each time, Ms. Jenkins identified numerous issues with LMA's proposed corrective action plan, including, but not limited to LMA's failure to segregate federal funds because such funds cannot be used to balance the budget. Each time, Ms. Jenkins also requested the documentation and information necessary to develop a corrective action plan, including requests for a detailed budget, support for revenue increases estimated by LMA, documentation supporting LMA's cash flow analysis and documentation evidencing payment of payroll taxes, workers' compensation, FRS, all utilities, and Best and

Brightest bonus payments. Each time, LMA failed to provide the requested documentation or correct the issues identified. The School District also continued to remind LMA that the next School Board meeting was scheduled for July 23, 2019, and that the School District hoped to have a recommendation for LMA's solvency at that time. Even so, LMA repeatedly failed or refused to respond to these requests. As a result, LMA and the School District were unable to reach a consensus on a corrective action plan.

17. LMA's financial mismanagement and the danger this mismanagement posed to the students' health, safety, and/or welfare rendered it unable to adequately provide the most basic services for its students, including food and water. The testimony and evidence presented by the School Board on this issue remains undisputed that LMA could not pay the invoices and debts identified below, as they came due. Further, LMA offered no evidence to rebut the severity of LMA's financial mismanagement and its inability to protect the health, safety, and welfare of its students. Given LMA's inability to protect student health, safety, and welfare, the School Board had substantial bases to immediately terminate the Contract pursuant to section 1002.33(8)(c).

18. Within two days of the issuance of the initial Notice of Immediate Termination, the School Board requested the

assistance of Carr, Riggs, & Ingram, LLC ("CRI"), to complete a forensic audit of LMA's documents, data, and other information. Although the School Board already possessed significant information at the time of termination showing that LMA's financial mismanagement posed an immediate and serious danger to student health, safety, and/or welfare, LMA's refusal to cooperate and produce financial records resulted in the School Board not knowing the full extent of LMA's debt. CRI's task was to fully review the revenues and expenses of LMA to determine whether all funds due to LMA had been received and properly spent by the charter school. CRI completed its Forensic Investigation Report ("CRI Report"), dated August 23, 2019. However, although LMA attempted to justify why documents had not been provided to CRI, as will be discussed at length later in this Final Order, at the time of the hearing, the School Board still could not fathom the true extent of LMA's debt, since LMA had not produced the required financial records despite numerous requests from the School Board and Orders from the undersigned. Therefore, CRI explained that the CRI Report was based on findings as of August 23, 2019, because they still lacked information to paint a complete picture of LMA's finances.

19. As of August 23, 2019, LMA's outstanding liabilities totaled $1,539,476.29. This amount includes $780,127.43 in unpaid invoices/liabilities, $499,636.23 in debt funding, and

$259,712.63 in payroll owed. As of August 3, 2019, LMA's operating account had a negative balance of $526.97.

20. Of the $780,127.43 owed in unpaid invoices and liabilities, LMA owed $373,852.01 to the IRS. A review of available employee payroll records showed that taxes were deducted from employee gross pay, but were not always remitted to the IRS. When asked about these payments at deposition, both Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights and refused to answer the questions. Mr. Hundley did not attempt to offer testimony at hearing regarding the unpaid payroll taxes. Ms. Maxfield was not called by LMA to testify at hearing.

21. The CRI Report also revealed that LMA owes $81,917.45 to the FRS. Beginning as early as March 2019, the Florida Department of Management notified both LMA and the School Board of LMA's failure to pay statutory dues pursuant to section 121.78, Florida Statutes, which requires that contributions made to FRS shall be paid by the employer, including the employee contributions, to the Division of Retirement by electronic funds transfer no later than the fifth working day of the month immediately following the month during which the payroll period ended. The statute further provides that employers, who fail to timely provide contributions and accompanying payroll data, shall be assessed a delinquent fee and/or be required to reimburse each

member's account for market losses resulting from late contributions. § 121.78(3)(a)-(c), Fla. Stat. Despite LMA's failure to remit FRS payments, FRS contributions were deducted from employee gross pay throughout the 2018-2019 school year. When asked about these payments at deposition, both Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights.

22. As of August 23, 2019, LMA owed $76,118.88 to Humana for employee's health insurance coverage. Although payments to Humana remained unpaid at the time of the hearing, LMA did deduct contributions for Humana insurance coverage from employee gross pay throughout the 2018-2019 school year. When asked about these payments at deposition, both Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights.

23. At the time of hearing, LMA also owed a total of $74,306.76 to various technology service vendors that LMA relied upon for the provision of internet, voice services, and support for equipment used by students. For example, LMA owed $43,542.00 to Indian River Networks for various services, including, but not limited to, webhosting; network management site support; helpdesk services for faculty, staff, and board members; technology support services for student computers; monthly site visits; and onsite emergency services. LMA owed Spectrum Business a total of $539.90 for internet and voice services. When asked about Indian

River Networks at deposition, Ms. Maxfield chose to assert her Fifth Amendment right.

24. With respect to educational services for its students, LMA owes $35,895.00 to Children's Therapy Solutions, Inc. Child Therapy Solutions, Inc., provided speech language pathology services to LMA students. Because LMA was not eligible for any direct funding pursuant to the Individuals with Disabilities Education Act ("IDEA") for the 2018-2019 school year, LMA's Exceptional Student Education ("ESE") funding came through its monthly Florida Education Finance Program ("FEFP") payments from the School District. As evidenced by the unpaid invoices from Children's Therapy Solutions, Inc., LMA did not properly allocate these funds.

25. In addition to the foregoing vendors, LMA failed to pay teacher recruitment and retention awards earned in the form of Best and Brightest bonuses. On or about March 26, 2019, LMA received $19,531.74 from the State of Florida pursuant to the Best and Brightest program. LMA possessed a list of the employees, who were entitled to receive these funds. In fact, on May 30, 2019, Ms. Jenkins e-mailed Ms. Maxfield, notifying her that two Best and Brightest recipients contacted the School District because they had not received their Best and Brightest checks. When asked about these payments at deposition, both

Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights.

26. LMA failed to properly pay its employees. It owes approximately $259,712.63 in unpaid salaries. When asked about these payments at deposition, Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights. When asked at that same deposition whether she continued to be paid when LMA was unable to pay their other employees, Ms. Maxfield chose to assert her Fifth Amendment right. Payroll records show that LMA paid Ms. Maxfield through July 15, 2019.

27. Payroll records show that Mr. Hundley received a salary of $175,000.00, while Ms. Maxfield received a salary of $92,500.00 for the 2018-2019 school year. In addition to their base salaries, Mr. Hundley was paid an additional $32,150.00 and Ms. Maxfield was paid an additional $31,300.00 prior to LMA's opening on July 1, 2018, ostensibly for work performed in advance of the school year. LMA also paid Mr. Hundley an additional $2,450 per month and Ms. Maxfield an additional $1,150 per month for expenses during the 2018-2019 school year and 2019 summer. Neither of these additional monthly payments, allegedly for "expenses," required documentation of how the additional compensation was spent. This equates to $29,400.00 annually in addition to Mr. Hundley's $175,000.00, and $13,800.00 annually in addition to Ms. Maxfield's $92,500.00. Mr. Hundley's salary was

nearly double what he previously received as principal of Lincoln Memorial Middle School, where he earned $105,560.00. When asked at their depositions about these salaries and expenses and the purposes of the additional compensation labeled "expenses," Mr. Hundley and Ms. Maxfield asserted their Fifth Amendment rights.

28. To obtain additional funding to continue operations, LMA was issued promissory notes by third parties and employees and sold receivables prior to and throughout the 2018-2019 school year to raise additional capital. As of August 23, 2019, LMA owed approximately $499,636.26 to numerous promissory note holders in addition to the $780,127.43 owed in unpaid invoices and liabilities.

29. With respect to its sales of receivables, LMA entered into purchase agreements with several holders, including Charter School Capital, Pearl Capital Funding, CFG Merchant Solutions, and ROC Funding Group. By entering into these agreements, LMA authorized some of these holders to make daily deductions from LMA's bank account. For example, bank statements show that there was a daily debit of $1,479.00 by CFG Merchant Solutions, a daily debit of $725.00 by ROC Funding Group, and a daily debit of $1,499.00 by Pearl Capital Funding. This equates to $18,515.00 each Monday through Friday workweek. Further, on July 15, 2019, Mr. Hundley signed an ACH Debit form, additionally allowing Pearl

Capital to debit $7,495.00 from LMA's operating checking account. When asked about these promissory notes and loans at their depositions, Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights. These facts went unrebutted by LMA at hearing.

30. LMA also allowed its insurance for student athletes to lapse while LMA students were on campus participating in student athletics. Although outrage was expressed by Mr. Hundley that such an accusation was made, no credible evidence was offered into the record to rebut this fact. Instead, at his deposition, Mr. Hundley asserted his Fifth Amendment right, when asked whether Ms. Maxfield kept him apprised of outstanding invoices related to student health, safety, and welfare. As a school within the School District, LMA was required to offer insurance to its student athletes. Maintenance of insurance for student athletes ensures that the student athletes are able to pay any necessary medical bills and, therefore, furthers the health, safety, and welfare of LMA's student athletes. As such, this failure to maintain coverage alone constitutes a danger to student health, safety, and/or welfare.

31. The School Board disbursed all funds owed to LMA, which amounted to a total of $4,095,973.08 in federal, state, and local funding. Funding disbursed by the School Board to LMA included $150,256.00 for Title I, $133,067.16 for the 21st Century

program, and $19,531.74 for Best and Brightest bonuses. When asked at her deposition whether the School Board paid all FEFP payments to LMA in a timely manner, rather than responding to such a direct and verifiable question as that, Ms. Maxfield asserted her Fifth Amendment right. When asked whether LMA timely received Title I funds, Ms. Maxfield asserted her Fifth Amendment right. When asked whether LMA timely received all allocations from the School Board, she asserted her Fifth Amendment right. When asked whether the School Board ever withheld funds from LMA to which LMA was entitled, she asserted her Fifth Amendment right. When asked if LMA timely received all 21st Century program funding owed, she asserted her Fifth Amendment right. When asked whether LMA timely received all federal, state, and local funding distributed through the School Board, Ms. Maxfield asserted her Fifth Amendment right.
Ms. Maxfield, as LMA's highly compensated CFO, was in the best position to know what the state of the finances were of LMA, yet refused throughout the hearing process to provide documentation or testimony to clarify the issues raised by the School Board in its Notice of Immediate Termination.

32. After the close of the hearing, the School Board received for the first time a copy of an agreement signed on July 1, 2019, by Mr. Hundley on behalf of Total Life Prep, LLC ("TLP"), and Ms. Dawson on behalf of LMA. In the agreement, LMA

agrees to pay TLP an annual fee of $275,000.00 in year one, the greater of $500 per student or $280,000.00 in year two, $285,000.000 in year three, $290,000.000 in year four, and $295,000.00 in year five to pay for TLP products. Mr. Hundley is TLP's registered agent. Although this document was clearly responsive to discovery requests, it was never produced to the School Board by LMA. The School Board filed a Motion for Leave to Submit Supplemental Evidence Supporting Petitioner's Proposed Order on September 18, 2019 (a subsequent amended and second amended motion were filed on September 19, 2019, but changed only the paragraph concerning conferring with opposing counsel), including an affidavit from School Board General Counsel Mitchell Teitelbaum, as to when and how he received the document. The School Board was deprived of the opportunity to cross-examine Mr. Hundley, Ms. Maxfield, and Ms. Dawson about this agreement, because it was not produced in discovery. Based upon these facts, and the fact that LMA either concealed or refused to produce such a substantive piece of evidence, the undersigned hereby accepts the document and grants the School Board's motion to include the additional evidence in the record as Petitioner's Exhibit 52 in Binder 3-3.

33. Although LMA, based upon the verified $4 million in state, federal, and local funds it actually received, should have been able to meet its employees' payroll, insurance, and FRS

benefits, as well as pay for its students' food deliveries and the water utility bill, LMA decided to enter into an agreement that would require it to pay TLP (and/or Mr. Hundley) approximately $1,425,000.00 over a five-year period. Since the document was not produced, no explanation was given by LMA as to why it sought this additional funding or whether TLP was a company-owned or controlled by Mr. Hundley or any employees of LMA. This contract is indicative of a pattern of behavior by LMA leaders, who continuously made decisions that presented a serious and immediate danger to the health, safety, and/or welfare of LMA students for self-gain. Further, it appears that this agreement was entered into in an attempt to circumvent section 1012.795, by paying Mr. Hundley as TLP rather than as CEO of LMA. Regardless of the fact that LMA could not pay its employees' payroll, insurance, or FRS benefits and could not pay for its students' food deliveries or the water utility bill, the charter school decided to enter into an agreement that would require it to pay TLP (and/or Mr. Hundley) approximately $1,425,000.00 over a five-year period.

34. Regardless of how this agreement is characterized, Mr. Hundley and the Governing Board acted in direct violation of the EPC Order revoking Mr. Hundley's certification as an educator, and were dismissive of the Commissioner of Education's clear warnings to LMA, the EPC's Final Order, the ALJ, and, most

recently, the School Board throughout the discovery period. This put the School Board at a distinct disadvantage in preparation for and presenting its case at hearing.

35. Ultimately, by the limited testimony they chose to offer at hearing, LMA has not disputed the fact that it has a debt of at least $1,539,476.29. By invoking their Fifth Amendment rights, Ms. Maxfield, the CFO of LMA, and Mr. Hundley, the CEO of LMA, have not denied their knowledge of the shortfall in funds for the first-year operations of LMA. LMA's actions in seeking outside funding, issuing promissory notes, and withholding payments to teachers and staff, speak far louder than two individuals' refusal under the Fifth Amendment to answer any pertinent questions about LMA's financial picture.

36. LMA has not offered any evidence challenging the fact that its financial mismanagement was a consequence of poor decision-making and inadequate oversight by LMA's Governing Board, CEO and Principal Hundley, and CFO Maxfield. A lengthy discussion will follow below concerning LMA's contention that all their woes were the result of the School Board not directly intervening in the day-to-day operations of LMA, an independent charter school. However, regardless of such a claim by LMA, the poor decision-making by the leaders of LMA directly interfered with LMA's ability to ensure student health, safety, and welfare. Accordingly, and in the absence of any evidence to the contrary,

the School Board had substantial basis to immediately terminate LMA's charter pursuant to section 1002.33(8)(c).

LMA's Failure to Adequately Comply with Nutritional and Recordkeeping Requirements and Inability to Pay Invoices for Food Services was a Danger to Student Health, Welfare and/or Safety

37. The Contract requires LMA to provide food services to its students consistent with applicable law and to comply with federal requirements for free and reduced meal service. If the charter school chooses to participate in the NFSP, the Contract additionally requires that the charter school follow all applicable federal rules and regulations. Records of all property acquired with federal funds must be maintained. Although the Contract expressly states that the school is entitled to receive all funds provided by the federal and state government for its food service program, it also expressly states that the School Board "shall provide no administrative support for the School's food service program."

38. LMA chose to independently run its food services program. LMA also chose to participate in the NFSP and had its own agreement with the Florida Department of Agriculture and Consumer Services ("Florida Department of Agriculture") regarding implementation of the NFSP. Because LMA had its own agreement with the Florida Department of Agriculture, it would have been inappropriate for the School Board to become involved unless LMA specifically requested the School Board's involvement.

39. By participating in the NFSP, LMA was able to serve 100 percent of its students a free breakfast, lunch, and snack on a daily basis. The NFSP provides federal funding in the form of reimbursement to schools for the purpose of providing free and/or reduced priced lunches for students. As a reimbursement program, funding is issued based on the content of the meals served. To be reimbursable, the meals must comply with certain nutritional standards. Such standards include the meal pattern requirements issued by the United States Department of Agriculture. For example, according to the meal pattern, a reimbursable lunch must include two full components and a fruit or vegetable. Additionally, during the 2018-2019 school year, all grains served had to be whole grain. If a meal does not meet these requirements, it is not reimbursable. Unlike other sources of federal, state, and local funding that is disbursed by the School Board, the Florida Department of Agriculture directly issued reimbursement to LMA.

40. During the 2018-2019 school year, LMA received $390,277.46 in NFSP reimbursements. Of the $390,277.46, approximately $173,381.93 was spent on food-related expenses. Of the food related expenses, $162,828.90 was paid to U.S. Foods, Inc., and Borden Dairy, while $10,553.03 was spent at local grocery stores, such as Sam's Club, Publix, and Aldi. Of the total $390,277.46 received, CRI was able to account for

$268,339.71 spent on food services expenses, leaving $121,937.75 in excess reimbursement.

41. When asked at deposition whether he knew where NFSP funds were deposited, Mr. Hundley asserted his Fifth Amendment right. When asked whether he had any knowledge regarding how NFSP funds were utilized, Mr. Hundley asserted his Fifth Amendment right. When asked whether he had knowledge regarding how LMA spent the excess reimbursement from NFSP, Mr. Hundley asserted his Fifth Amendment right.

42. LMA received another $40,402.01 in NFSP funding for May 2019 and $17,250.43 for June 2019. As of August 3, 2019, LMA's operating account was $526.97 in the negative. LMA currently owes U.S. Foods, Inc., $18,900.59 and Borden Dairy $3,704.59. How LMA spent this excess $121,937.75 remains unknown.

43. To receive this reimbursement, LMA was required to send the number of reimbursable meals served to the Florida Department of Agriculture on a monthly basis. All reimbursable meals must be accounted for. One way to account for and substantiate the reimbursable meals served is through the maintenance of food production records. Production records detail what is served on a particular day and serve as backup documentation showing that the school followed the U.S. Department of Agriculture's meal pattern with respect to meals claimed for reimbursement.

44. The Florida Department of Agriculture conducts an administrative review of records belonging to schools participating in the NFSP every three years. When such a review is done, the Florida Department of Agriculture generally reviews the production records to substantiate the meals claimed for reimbursement and to ensure that the meals claimed followed the meal patterns. Copies of any child nutritional labels or other nutritional information for products served may also be required. In light of these administrative reviews, participating schools are required to maintain these records for a period of five years.

45. If a school's claims for reimbursement cannot be substantiated, the Florida Department of Agriculture may request repayments of the funds previously distributed. The Florida Department of Agriculture may also suspend or terminate its services pursuant to the NFSP.

46. Despite numerous requests by the School Board, LMA has not produced any food production records. And following its termination of LMA's charter, the School Board (with the assistance of CRI) was only able to recover one week's worth of LMA's production records for the 2018-2019 school year.

47. Director of Food and Nutrition for the School District, Regina Thoma, explained that LMA's Cafeteria Manager, Angela Enrisma, told her that she no longer had access to the production

records or the software that held the production records. Ms. Enrisma also told Ms. Thoma that CFO Maxfield took the paper production records. Ms. Enrisma similarly testified during her deposition that she kept the production records in a box in her office, and that Ms. Enrisma gave Ms. Maxfield the box of productions on the last day of school. Ms. Enrisma additionally testified that she did not make electronic copies of the production records and that she did not know where the production records were presently located.

48. Despite the fact that LMA's qualified representative Christopher Norwood advised the undersigned that he would ask Ms. Maxfield to produce the box of production records, neither Ms. Maxfield nor anyone else at LMA has produced those records. The location of LMA's production records remains unknown, as is whether these records remain accessible digitally, or even exist. LMA has also failed to rebut the fact that, in the absence of such records, LMA would be liable for penalties for failing to preserve these records, including, but not limited to, repaying funds already received totaling $390,277.46 and suspension or termination of the NFSP program.

49. During the hearing, the School Board requested that the undersigned apply an adverse inference with respect to LMA's failure to comply with the law if LMA failed to produce the requested production records. In response, the undersigned

stated that "either these records exist, or they have been destroyed or misplaced or lost. And if they're destroyed, misplaced, or lost, then the inference will be that no such records exist." The undersigned further advised that "there have to be records . . . [a]nd if there aren't records, the inference I make is that the records have been destroyed or hidden." In the conclusions of law to follow, a ruling on the use of adverse or negative inferences will be made concerning both this issue and the invoking of the Fifth Amendment by the CEO and CFO of LMA on all questions relating to the fact and location of LMA funds that remain unaccounted for.

50. The location of these records--aside from the one week CRI (not LMA) was able to find--remains unknown. As will be discussed below, the defense from LMA that the School Board took over the school and had access to all records that existed on the day control was assumed, does not absolve LMA from protecting records either electronically or with back-up copies. Concerning the food service program at LMA, the undersigned must infer that the production records do not exist, were hidden, destroyed and/or were lost and that, consequently, LMA failed to comply with applicable law, rules, and regulations pursuant to the NFSP.

51. As noted previously, LMA served 100 percent of its students a free breakfast, lunch, and snack on a daily basis using funds received from the NFSP. Many students were dependent

upon these meals as their only daily nourishment. To the extent that students relied upon the provision of free meals given pursuant to the NFSP, discontinuation of this service would clearly pose a danger to the students' health, safety, and/or welfare. Given LMA's failure to comply with NFSP's requirements, the School Board had substantial basis to immediately terminate the Contract pursuant to section 1002.33(8)(c). Moreover, school was scheduled to start within just a few weeks of the July 23, 2019, School Board meeting.

52. As proof of another lack of attention to detail, LMA has not produced any records showing that it properly screened student meals for allergens. For example, the School District uses software that notifies cafeteria employees when a student has an allergy. Once the software notifies the cafeteria employee of a student's allergy, the employee checks the student's tray to make sure the student does not have any products containing the allergen. Such precautions are implemented because food allergies can be life threatening.

53. LMA refused or failed to produce any records showing that it implemented a similar process or otherwise screened for allergens when serving student meals. LMA also did not offer any rebuttal evidence during the course of discovery or during the hearing showing that LMA screened for allergens. As already noted, the undersigned acknowledged during the hearing that in

the absence of records or rational explanation, LMA would be unable to rebut issues raised by the School Board in its Notices of Immediate Termination. The undersigned further advised that, in the absence of requested records or rebuttal evidence, the undersigned would infer that these records did not exist or were hidden and/or destroyed. Accordingly, in the absence of any records or rebuttal evidence, the undersigned finds that LMA failed to properly screen student meals for allergens. Given the serious and potentially life-threatening nature of allergies, any failure to screen student meals for allergens clearly poses a danger to student health, safety, and/or welfare. In the case of a school that boldly claims it was formed to do better by its community, such lack of institutional control is disheartening at best. Accordingly, LMA had substantial basis to immediately terminate LMA's charter pursuant to section 1002.33(8)(c).

54. LMA was not able to pay for its food deliveries. A case in point involves U.S. Foods, a mainline food distributor that provides food service, food, and related supplies to restaurants, schools, and other institutions. Schools, especially those that participate in the NFSP, use mainline distributors, such as U.S. Foods, Inc., because their products include child nutrition labels. Child nutrition labels contain information specifically used to assist in complying with the U.S. Department of Agriculture's meal patterns. Without child

nutrition labels, it is much more difficult, although not impossible, to ensure that meals meet the meal pattern and are, therefore, reimbursable.

55. Throughout the 2018-2019 school year, LMA had issues paying U.S. Foods, Inc., for its food deliveries. On May 8, 2019, U.S. Foods, Inc., stopped making deliveries to LMA altogether due to nonpayment. LMA currently owes U.S. Foods, Inc., $18,900.59.

56. Borden Dairy was LMA's milk provider. Borden Dairy stopped delivering to LMA on May 24, 2019, due to nonpayment. LMA currently owes Borden Dairy $3,704.59.

57. After U.S. Foods, Inc., and Borden Dairy stopped making these deliveries, Ms. Enrisma, began purchasing foods from local grocery stores, including, but not limited to, Sam's Club, Aldi, Winn Dixie, and Publix. Products purchased from Sam's Club, Aldi, Winn Dixie, and Publix do not have child nutrition labels. At least three receipts, one for purchases made at Sam's Club and two for purchases made at Winn Dixie, contained food items that do not meet the U.S. Department of Agriculture's meal patterns. If LMA served students any items that did not meet meal pattern requirements, such meals would not be reimbursable pursuant to the NFSP. Notably, LMA sought reimbursement for meals pursuant to the NFSP after U.S. Foods, Inc., stopped making deliveries to LMA. When asked at deposition whether he was aware that LMA

purchased food from Publix and Aldi to be served to LMA students, Mr. Hundley asserted his Fifth Amendment right.

58. Ms. Thoma visited LMA for the first time since the July 23, 2019, termination of LMA's charter on July 29, 2019. When she arrived, Ms. Enrisma expressed relief because school was starting in two weeks and she was not sure how they were going to feed the students.

59. LMA failed to offer any rebuttal to the following: (1) LMA's financial mismanagement resulted in U.S. Foods, Inc., ceasing services due to nonpayment; (2) the discontinuation of these deliveries resulted in LMA's cafeteria manager purchasing products from local grocery stores that did not have child nutrition labels; (3) products purchased from these local grocery stores did not meet NFSP's meal patterns; (4) these products were not screened for allergens; and (5) despite all of this, the food was served to students.

60. Further, LMA has failed to offer any evidence or rebut the fact that LMA's inability to provide free and nutritional meals to its students posed a serious and immediate danger to student health, safety, and/or welfare. For example, it remains undisputed that upon Ms. Thoma's arrival at the school, LMA's own cafeteria manager expressed that she was unsure how she was going to feed the students moving forward. It is also undisputed that LMA students depended upon LMA's provision of these meals. In

light of the foregoing, the School Board had substantial basis to immediately terminate the Contract pursuant to section 1002.33(8)(c).

61. Perhaps the most inexplicable failure to pay issue in this case involved LMA's water utility bill. On or about July 22, 2019, LMA received a water shut-off notification from the City of Palmetto, Florida ("City"), due to an unpaid balance of $3,216.67. In the notice, the City indicated that LMA's payment was 45 days past due and that the payment must be made by 5:00 p.m. on July 29, 2019. The City further indicated that it would shut off LMA's water on July 30, 2019, if LMA failed to make this payment.

62. On July 10, 2019, just twelve days earlier, LMA had received $281,229.85 in FEFP funds. By August 3, 2019, LMA's operating account had a negative balance of $526.97.

63. Notably, this was not LMA's first water shut-off notice from the City. On or about June 17, 2019, LMA received a water shut-off notification due to an unpaid balance of $12,439.23. The notice advised that the City would turn off LMA's water if payment was not made. Mr. Hundley testified that he was aware that LMA received water shut-off notices in both June and July. Accordingly, it is undisputed that LMA received notices from the City threatening to turn off LMA's water due to nonpayment. Further, LMA began receiving notices from the City regarding

their failure to pay the water bill as far back as April 2019. For example, the City records state that on April 1, 2019, Ms. Maxfield admitted to a City representative that LMA has not paid "in a while" and that she would make payment that day. However, she did not pay that day. The City representative called her three more times and left a voicemail. The following day, the City representative again attempted to contact Ms. Maxfield. Ms. Maxfield indicated that "state funds are slow coming in." When the City representative attempted to follow up later that day, the City representative was informed that Ms. Maxfield was gone for the day. On April 3, 2019, the City representative was unable to reach Ms. Maxfield, but did speak with Mr. Hundley. Mr. Hundley informed the City representative that, "Lincoln Memorial have exhausted their reserves and that is why they haven't paid for the last four months." The City representative subsequently made numerous attempts to create a payment plan, but Mr. Hundley and Ms. Maxfield--"the only ones that can help"--were consistently unavailable.

64. It is undisputed that a school cannot operate without running water. It is also undisputed that LMA's failure to have running water would pose a serious and immediate danger to the students' health, safety, and welfare. Even Christine Dawson, chair of LMA's Governing Board, admitted that protecting student safety means ensuring students have adequate access to water.

The failure of LMA to ensure the school was able to provide such a basic necessity as running water further demonstrates that the School Board had substantial basis to immediately terminate the Contract pursuant to section 1002.33(8)(c).

LMA's Failure to Background Screen Employees was an Immediate and Serious Danger to the Health, Safety, and Welfare of Charter School Students

65. The Contract sets forth the processes that LMA must follow with respect to background screening and fingerprinting its employees. As discussed previously, the Contract expressly states that the school shall implement policies and procedures for background screening of all prospective employees, volunteers, and mentors, and the school shall require all employees to be fingerprinted. The Contract further provides that the results of all background investigations and fingerprinting "will be reported in writing to the Superintendent and/or his/her designee"; that "[n]o school employee or member of the Governing Board may be on campus with students until his/her fingerprints are processed and cleared"; and that "the School shall ensure that it complies with all fingerprinting and background check requirements." "Cleared" means that any criminal history that shows up as a result of such background screening is reviewed.

66. LMA was solely responsible for hiring and background screening its personnel. The School Board was not responsible

for interviewing, hiring, selecting, or background screening LMA employees.

67. The terms of the Contract mimic Florida statutory law requiring that instructional personnel, non-instructional personnel, and governing board members undergo a Level 2 background screening prior to hire, pursuant to section 1012.32(2). If the results of a background screening reveal that an individual has been arrested for and/or charged with certain offenses, the law forbids the school from employing the individual. Examples of such offenses include felony theft in excess of $3,000.00. See §§ 1012.315(1)(z) and 435.04(2)(cc), Fla. Stat.

68. LMA contracted with DeAnna King and her company, King HR Services, LLC ("King"), to operate LMA's human resources ("HR") department. Pursuant to King's contract with LMA, the company was hired to provide "complete employee support," recruit employees, and implement policies and procedures for background screening of employees, volunteers, and mentors. The School Board was not a party to LMA's contract with King. Despite King's contractual duties to properly background screen and fingerprint employees prior to hire, LMA never shared the Contract with Ms. King.

69. Despite this, Ms. King testified that she was familiar with Florida statutory law and legal requirements regarding

employment of school employees, including sections 453.04 and 1012.32, Florida Statutes. Ms. King also testified that she understood that employees must undergo a Level 2 background screening before setting foot on campus, that she needed to submit fingerprints to the Florida Department of Law Enforcement ("FDLE") to adequately complete a Level 2 background screening, and that an offer of employment at a school is conditional pending the results of a Level 2 background screening.

70. Following the School Board's immediate termination of LMA's charter, the School District was required to validate that LMA had properly subjected LMA employees to a Level 2 background screening. During the validation process, the School District discovered that LMA did not have fingerprint results or clearance letters on file for 13 of LMA's employees. Pursuant to the Contract, clearance letters should have been on file for each of these individuals prior to their beginning employment with LMA. Among the individuals listed were CFO Maxfield and a "security official" named John Walker.

71. LMA initially hired John Walker on July 30, 2018. Once properly screened by the School District, Mr. Walker's background results revealed that he was arrested for felony grand theft in the third degree in February 2016, and was re-arrested for violating his probation for grand theft on July 10, 2018, less than two weeks before LMA hired him. Based on these results, the

School District would not have cleared him to work at LMA. In fact, absent any evidence of disposition, the statute forbids it. See §§ 435.04(2)(cc) and 1012.315(1)(z), Fla. Stat.

72. Ms. King admitted that she never received the fingerprinting results for any LMA employees. Ms. King also admitted that she allowed the 13 employees identified by the School District to start working at LMA, but never reviewed their background screening results.

73. When asked at deposition whether she understood the background screening process, Ms. Maxfield, who supervised Ms. King, asserted her Fifth Amendment right. When asked whether she was aware that LMA allowed employees to work that did not pass their background screening, Ms. Maxfield asserted her Fifth Amendment right. When asked to describe LMA's hiring process, Ms. Maxfield asserted her Fifth Amendment right. When asked whether Ms. Maxfield was responsible for overseeing the background clearance process, Ms. Maxfield asserted her Fifth Amendment right.

74. As evidenced by the foregoing, LMA has failed to offer any evidence rebutting the fact that LMA allowed individuals to start working at the school prior to reviewing their background screening results or receiving clearance letters from the School District; that Ms. King never reviewed the fingerprint results for any employees, including the 13 employees identified by the

School District, before allowing them to work at LMA; that the School District would not have cleared at least one of these individuals, John Walker, to work at LMA; and that failure to subject individuals to a Level 2 background screening prior to employment poses an immediate and serious danger to student health, safety, and welfare.

75. The very purpose of background screening is to protect students and ensure their safety. LMA's failure to adequately protect its students and ensure their safety further supports the fact that the School Board had substantial basis to immediately terminate the Contract pursuant to section 1002.33(8)(c).

Eddie Cantrel Hundley's Presence on Campus, with Permission of LMA's Governing Board, Constituted an Immediate and Serious Danger to the Student's Health, Safety, and Welfare

76. Eddie Cantrel Hundley served as LMA's founder, principal, and CEO for the 2018-2019 school year.

77. Mr. Hundley's employment agreement described his responsibilities as principal to include managing and overseeing all of the day-to-day operations of the school, which encompassed effective management of all functions, including, but not limited to: facilities, transportation, staff, faculty, food service, safety and security.

78. With respect to his role as CEO, Mr. Hundley described his job responsibilities to include maintaining a "visible and accessible presence to the school's families and the local

communities"; "supervising and directing the corporation's day-to-day activities and affairs"; and executing all decisions approved by the Governing Board. According to Mr. Hundley, he was "always" CEO.

79. Although he appeared to be reluctant to admit this when testifying at hearing, as CEO, "the buck stopped" with Mr. Hundley. No others supervised Mr. Hundley, except for LMA's Governing Board. Also, no other individuals directly reported to the Governing Board, except Mr. Hundley.

80. According to Mr. Hundley, as both CEO and principal, he was responsible for ensuring that the appropriate people were hired for the appropriate roles.

81. LMA Governing Board Chair, Christine Dawson, testified that Mr. Hundley only acted as principal "when necessary" since the role of principal was not required. Ms. Dawson further explained that Mr. Hundley's role as principal was only necessary when "the district needed to require that a principal be at their meetings" or when the district, media, school, and board "recognized and noted" Mr. Hundley as principal.

82. When asked about Mr. Hundley's duties as principal, Ms. Maxfield asserted her Fifth Amendment right. When asked about Mr. Hundley's duties as CEO, Ms. Maxfield asserted her Fifth Amendment right. When asked whether Mr. Hundley worked at the school each day when he was not CEO or principal,

Ms. Maxfield asserted her Fifth Amendment right. When asked whether Mr. Hundley came to school each day, Ms. Maxfield asserted her Fifth Amendment right.

83. On March 8, 2019, ALJ Lynne A. Quimby-Pennock issued a Recommended Order to the EPC (DOAH Case No. 18-5733PL), recommending that Mr. Hundley's educator's certificate be revoked for a period of five years pursuant to section 1012.795(1), thereby denying him the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students. Judge Quimby-Pennock recommended revocation due to Mr. Hundley's decision to give a positive reference in his official capacity as principal to another school district in support of a former employee, who was under investigation for having an inappropriate relationship with a minor. With respect to her findings of fact, Judge Quimby-Pennock concluded that, at the time Mr. Hundley gave the reference, which included Mr. Hundley answering "no" to the question of whether he had any reason to believe that the individual should not work with children, Mr. Hundley was aware of three different investigations into the employee, all involving allegations of inappropriate conduct with a student.

84. Ms. Dawson testified that in response to the Recommended Order, the Governing Board decided on April 24, 2019, to remove Mr. Hundley's title as principal. The Governing Board

also allegedly decided that Mr. Hundley would only have "supervised access" to students moving forward, meaning that Mr. Hundley would "not be alone with students." However, no one exceeded Mr. Hundley's rank at the school, and no one was assigned to accompany or supervise Mr. Hundley's interactions with students. The Governing Board placed no real restrictions on Mr. Hundley.

85. Although Mr. Hundley's title as principal was eliminated, he remained CEO. The Governing Board did not remove or change Mr. Hundley's duties or restrict Mr. Hundley's ability to walk around campus or speak with students. Mr. Hundley also continued to use his same office on campus. Mr. Hundley found no reason to move his office.

86. On May 13, 2019, the EPC issued a Final Order adopting Judge Quimby-Pennock's Recommended Order, including the revocation of Mr. Hundley's educator's certificate for a period of five years pursuant to section 1012.795(1).

87. Even though the Governing Board members received the EPC's Final Order, they did not take any additional action with respect to Mr. Hundley's role as CEO or with respect to Mr. Hundley's presence on campus with students.

88. On or about May 30, 2019, Ms. Dawson received a letter from Chief Randy Kosec, Jr., of the Florida Department of Education's Office of Professional Practices Services. In that

letter, Chief Kosec notified Ms. Dawson of the EPC's revocation of Mr. Hundley's educator's certificate and asked if Mr. Hundley was still employed by or working on behalf of LMA. In the event that the answer was yes, Chief Kosec asked Ms. Dawson to explain Mr. Hundley's duties and how those duties could be carried out without Mr. Hundley having direct contact with students.

89. Ms. Dawson waited until nearly a month later to respond to Chief Kosec's May 30 letter. When Ms. Dawson did finally respond on June 25, 2019, she explained that the Governing Board decided at its last board meeting that Mr. Hundley would no longer serve as principal, but would continue to serve as CEO/Founder of LMA. According to Ms. Dawson, LMA's last board meeting was held on April 24, 2019. Ms. Dawson further explained that Mr. Hundley's "executive functions," included "senior level leadership and oversight, strategic planning, program selection, and development of partnerships and resources beneficial to LMA." Mr. Hundley did not limit his future activities to these designated areas of responsibility.

90. Subsequent to April 24, 2019, and throughout the month of June, Mr. Hundley continued to go to LMA's campus approximately three-four days per week to perform his duties as CEO. Video surveillance introduced into evidence shows Mr. Hundley in the cafeteria, while students are present, on June 18, 2019, throwing a ball with students in the cafeteria on June 20,

2019, and speaking with students in the gym on June 24, 2019. When asked whether LMA paid Mr. Hundley in June for work performed at LMA, Mr. Hundley asserted his Fifth Amendment right.

91. LMA students were present on LMA's campus in both June and July of 2019 to take classes for credit recovery and as a part of the 21st Century Community Learning Centers Program ("21st Century"). The 21st Century is a program that supports the creation of community learning centers to provide academic enrichment opportunities, "particularly students who attend high-poverty and low-performing schools." Programs must include remedial educational activities and academic enrichment learning programs, mathematics and science education activities, tutoring services, and recreational activities. The state awards eligible entities funds to carry out 21st Century programing. LMA was the recipient of such funds, and had over 100 students enrolled during the 2019 summer months.

92. On or about July 2, 2019, Chief Kosec responded to Ms. Dawson's June 25 letter, stating that he understood that Mr. Hundley would be serving as CEO/Founder of LMA, but that Ms. Dawson's response failed to explain how Mr. Hundley could carry out his duties without direct contact with students "which would mean that he would not be on campus at times when students are present, especially the function of 'senior level leadership and oversight.'" Ms. Dawson never responded.

93. On July 16, 2019, Florida Commissioner of Education Richard Corcoran e-mailed Ms. Dawson and others, including, but not limited to, Governing Board members James Ward, C.J. Czaia, School District Superintendent Cynthia Saunders, and School Board General Counsel Mitchell Teitelbaum, to discuss his concerns regarding Mr. Hundley's ongoing presence on LMA's campus. In that letter, Commissioner Corcoran summarized the ruling of the EPC and the restrictions imposed upon Mr. Hundley as the result of the five-year revocation received by Mr. Hundley. The Commissioner stated that Mr. Hundley's actions giving rise to the revocation "had in fact jeopardized the healthy [sic], safety, and welfare of students. . . . As a result of the actions taken by the EPC, Mr. Hundley cannot legally perform the duties of a school administrator." If he cared as much about LMA and its students as he professes to, this language alone should have resulted in Mr. Hundley removing himself from any active administrative duties with LMA.

94. When asked what action, if any, was taken in response to Commissioner Corcoran's July 16 correspondence, Ms. Dawson testified that "[t]he action taken happened on April 24th," when the Governing Board removed Mr. Hundley's title as principal and "addressed the direct contact with students, our interpretation of it, through our research and the law."

95. The School Board argued that, notwithstanding the Governing Board's alleged interpretation of law, the plain meaning of the applicable statute is clear. An administrator whose educator's license is revoked cannot be employed in any capacity requiring direct contact with students for the duration of the revocation period, pursuant to section 1012.795. The Florida Department of Education has additionally interpreted this statute to mean that an individual cannot be employed in a position that would require him to be on campus while students are present.

96. Despite the law's clear language and the Commissioner of Education's letter quoting the same, Mr. Hundley was back on campus the following day, July 17, 2019. In fact, video surveillance on this date shows Mr. Hundley speaking with students and hugging a student in the cafeteria. When asked at his deposition in what capacity he worked in July 2019, Mr. Hundley asserted his Fifth Amendment right.

97. On July 16, 2019, Commissioner Corcoran also e-mailed Superintendent Cynthia Saunders and School Board Chair Dave Miner. Analogous to his July 16 correspondence to the LMA Governing Board, Commissioner Corcoran expressed extreme concern regarding Mr. Hundley's presence on campus.

98. After receiving Commissioner Corcoran's detailed letter expressing his concerns with Mr. Hundley being on the LMA campus

following the revocation of his certification, Superintendent Cynthia Saunders, School Board Member Reverend James Golden, and School Board General Counsel Mitchell Teitelbaum met with two of LMA's Governing Board members, individually, to ask that they remove Mr. Hundley from campus. The Governing Board did not cooperate.

99. On July 22, 2019, Mr. Hundley sent an e-mail to LMA staff with the subject title, "moving forward." The e-mail included an attachment, which stated:

> After careful consideration and appreciation for the events of the past several years and with specific interest in obtaining the peaceful resolution of the issue of my leadership at LMA, I am stepping down from my position as Principal, effective immediately. . . . The revocation of my licensee [sic] was an action taken by an overreaching law judge that is being exploited by a biased school district and misinformed commissioner of education. Our own LMA Board disagreed with their erroneous findings in consideration of a state statute and kept their confidence in me as I remained in place in my role at LMA. . . . Rest assured, I will continue to provide the needed guidance and direction to the school leadership to ensure the progress of our mission of providing the best possible teaching and learning experience for all students . . . .

Prior to that date, despite the testimony that the Governing Board had removed Mr. Hundley as principal of LMA on April 24, 2019, LMA staff was unaware of any changes with respect to Mr. Hundley's role as CEO or principal. Mr. Hundley's last day

on campus was July 24, 2019, the same day that the School Board issued its Notice of Immediate Termination pursuant to section 1002.33(8)(c).

100. It is undisputed that Mr. Hundley continued to come to campus until the School Board terminated the charter. It is undisputed that Mr. Hundley remained CEO even after issuance of the May 13, 2019, EPC Order, since even his e-mail of July 22, 2019, "stepping down" as principal after having been removed from the post by the Governing Board on April 24, 2019, did not include a statement that he was stepping down as CEO. It is undisputed that students were on campus for the 21st Century program and for credit recovery during the summer months. It is undisputed that Mr. Hundley continued to have direct contact with students while on campus. Finally, even if Mr. Hundley did nothing to harm any student while on campus after his certification was revoked by the EPC, it is undisputed that his presence on campus, by operation of law, posed a danger to the students' health, safety, and/or welfare, due to the revocation of his educator's certificate. This evidence remains unrebutted due primarily to his refusal to testify to the essential elements leading to the Notice of Immediate Termination.

Respondent Failed to Rebut Any of the Foregoing Evidence and Failed to Otherwise Prove Any of the Allegations Asserted in its Defense

101. On July 23, 2019, the School Board held its regularly scheduled School Board Workshop ("Workshop"). The Workshop had an agenda item for the discussion of the financial condition of LMA. During the Workshop, Mitchell Teitelbaum addressed the School Board regarding the immediate and serious danger to the health, safety, and welfare of LMA students, including the concern related to Mr. Hundley's continued presence on campus despite the Final Order of the EPC revoking his educator's certificate pursuant to section 1012.795. Tammy Taylor, director of finance, and CFO Heather Jenkins addressed the dire financial condition of LMA. During the Workshop, Mr. Teitelbaum presented multiple documents to the School Board regarding LMA's continuous failure to cooperate with the School Board and refusal to provide essential information necessary to ensure that the health, safety, and welfare of its students were being met. During the Workshop, 13 members of the public signed up for the public comment portion of the meeting, and approximately 12 community members spoke in support of LMA.

102. At the end of the Workshop, School Board Member Scott Hopes requested that Chairman Dave Miner amend that evening's School Board meeting agenda to address whether the School Board

should assume the responsibility of the continuing operation of LMA and immediately terminate its charter.

103. Later that same day, July 23, 2019, the School Board hosted its regularly scheduled meeting. At the beginning of the meeting, School Board Member Hopes moved to amend the agenda to include the issue of LMA. School Board Member Golden seconded the motion. The amended agenda was adopted unanimously.

104. During the public comment portion of the School Board meeting, 41 members of the public signed up to participate, including a teacher from LMA who spoke about her 2018-2019 employment contract and unpaid wages. Approximately 23 members of the public spoke in support of LMA. Notably, Ms. Maxfield spoke in support of LMA, and Mr. Hundley was in the audience.

105. At the conclusion of the public comments, Chairman Miner opened the discussion on the LMA topic. The School Board discussed the immediate and serious danger to the health, safety, and welfare of LMA students. School Board Member Hopes made the following motion:

> Approval of the Manatee County School Board to:
>
> 1. Terminate the Charter of Lincoln Memorial Academy immediately in accordance with section 1002.33(8)(c), Florida Statutes, and section 1(d) of the Charter between the School Board of Manatee County and Lincoln Memorial Academy, Inc., d/b/a Lincoln Memorial Academy;

> 2. Take over the operational control of Lincoln Memorial Academy Charter School and assume and continue the operation of the Charter School;
>
> 3. Forthwith appoint an appropriate person to act as Interim Principal of the Charter School after requesting the School District administration to provide, if available, the names of appropriate candidates with their qualifications who are willing to serve as Principal;
>
> 4. Direct the School District Administration to take steps to immediately secure all Lincoln Memorial Academy Charter School property;
>
> 5. Take steps to prepare the Charter School to timely open for the 2019-2020 school year with appropriate staff, supplies and equipment;
>
> 6. Authorize a forensic audit of the finances and property of the school.

106. The School Board voted on the motion made by School Board Member Hopes, adopting the motion four to one, with James Golden, Scott Hopes, Gina Messenger, and Dave Miner approving the motion, and Charles Kennedy rejecting the motion.

107. The day after the School Board meeting, on July 24, 2019, the School Board issued a written Notice of Immediate Termination. The School Board then issued an Amended Notice of Immediate Termination on August 5, 2019.

108. As previously addressed, the Contract only allows LMA 30 days from written notice of a breach to cure "absent any circumstances permitting immediate termination." Under

circumstances presenting grounds for immediate termination, such as a serious and immediate danger to the health, safety, and/or welfare of the students, the Contract does not require the Sponsor to issue written notice to the school before it immediately terminates a charter.

109. However, even if Petitioner had an obligation to provide LMA notice and an opportunity to cure, as LMA argued at hearing, Petitioner adequately provided such notice. For example, following numerous meetings with Ms. Maxfield and unfulfilled requests for documentation and information, School District CFO Heather Jenkins notified Ms. Maxfield on May 29, 2019, that LMA was in a deteriorating financial condition pursuant to section 1002.345 and as a result, both LMA and the School District had a statutory obligation to reach a consensus on a corrective action plan by June 28, 2019. Ms. Jenkins followed up on both June 10, 2019, and June 21, 2019, with additional requests for information and documentation and proposed revisions to LMA's corrective action plan. LMA failed to adequately respond or otherwise address the issues identified by Ms. Jenkins.

110. On or about July 8, 2019, Ms. Jenkins summarized her numerous attempts to work with LMA in a Notice of Non-Compliance addressed to LMA's Governing Board. This notice included a copy of each attempt by the School Board to work with LMA to reach a

consensus on a corrective action plan, demonstrating that LMA knew long before receipt of this July 8, 2019, notice that it had a statutory obligation to develop a corrective action plan with the School Board. Regardless, however, and consistent with Petitioner's overall contention that additional notice was not required prior to immediate termination, section 1002.345(5) provides that "[t]his subsection does not affect a sponsor's authority to terminate or not renew a charter pursuant to s. 1002.33(8)."

111. During this same time frame, the School District also issued LMA numerous notices of noncompliance and/or contractual breach regarding a variety of other related topics. For example, on April 1, 2019, Director of District Support Frank Pistella notified Ms. Maxfield that the School District had received a letter from the Florida Department of Management Services, Division of Retirement, stating that LMA had not paid FRS contributions for two months.

112. On June 25, 2019, Ms. Jenkins e-mailed Ms. Maxfield to notify her that the School District received an alert that LMA failed to make payroll despite the fact that LMA cashed its final 2019 Referendum Disbursement in the amount of $61,288.75 and its June FEFP disbursement in the amount of $261,009.97. Ms. Jenkins requested confirmation and documentation that LMA fully paid all employment contracts and confirmation that LMA fully paid FRS

payments due to employees. Ms. Jenkins also sent this e-mail to Mr. Hundley, Ms. Dawson, and other members of the Governing Board.

113. On or about July 3, 2019, Dr. Pistella notified LMA's Governing Board members of their failure to comply with sections 121.78 and 1002.33(9)(k)2. Specifically, section 1002.33(9)(k) requires the governing body of a charter school to annually report its progress to the Sponsor and the Commissioner of Education. Section 1002.33(9)(k) additionally requires the charter school to report its financial status, "which must include revenues and expenditures at a level of detail that allows for analysis of the charter school's ability to meet financial obligations and timely repayment of debt. In the July 3, 2019, letter, Dr. Pistella not only quoted the statutory language, but also listed every single time that the School District requested proof of LMA's FRS payments and included attachments evidencing the same.

114. On or about July 16, 2019, Dr. Pistella sent the LMA Governing Board and Mr. Hundley a letter summarizing each and every time the School District attempted to notify LMA of statutory and contractual breach and/or requested unfulfilled requests for information between April 1, 2019, and July 12, 2019. This July 16, 2019, correspondence served as a cumulative notice and summary of all prior correspondence with LMA regarding

these issues. This letter also included every prior notice cited therein as an attachment. The School Board again sent this correspondence, and all of its attachments, to LMA as an exhibit to the Notice of Immediate Termination sent to LMA on July 24, 2019. LMA received this correspondence and was notified of all prior attempts by the School Board to notify LMA of its statutory and contractual violations not once, not twice, but at least three times.

115. LMA does not dispute that it received the foregoing notices. And more importantly, LMA has not offered any evidence rebutting the fact that the circumstances identified above as grounds for Petitioner's immediate termination of LMA, i.e., Mr. Hundley's ongoing presence on campus, LMA's financial mismanagement, LMA's inability to pay for food deliveries, LMA's inability to pay the water bill, and LMA's failure to properly background screen employees, posed an immediate and serious danger to LMA students. Regardless of whether notice was issued, substantial basis existed to terminate LMA's charter pursuant to section 1002.33(8)(c). As evidenced by the plain terms of section 1002.33(8)(c) and the Contract, opportunity to cure is not afforded under these circumstances.

116. During the hearing and his deposition, Mr. Hundley did not dispute the fact that LMA is in significant debt, but suggested that Petitioner was to blame with respect to LMA's

current financial state and current inability to ensure the health, safety, and welfare of its students. For example, Mr. Hundley testified that LMA did not receive Title I funds when it should have and that LMA should have received "at least" $283,000.00 in Title I funds, with a per pupil allocation of at least $800. According to Mr. Hundley, this alleged delay of LMA's receipt of Title I funds and receipt of less Title I funds than initially projected, impacted LMA because "[w]hen you need to extend [sic] funds before you can get them back, if you don't have a sizeable reserve, that can become problematic if those funds are not being reimbursed on [sic] a timely manner and you're having to pay them out continuously."

117. Mr. Hundley's contentions that LMA's current financial state and current inability to ensure the health, safety, and welfare of its students is a result of any act or omission by the School Board, are not supported by any evidence in the record. To the contrary, the undisputed evidence shows that the School District paid LMA a total of $4,095,973.08 in federal, state, and local funding. Included in the $4,095,973.08 is the $3,096,731.26 in FEFP funding that LMA received between July 2018 and July 2019, with the last payment of $281,229.85 being issued on or about July 10, 2019. The $4,095,973.08 total also includes $150,256.00 in Title I funds.

118. Title I is a federal program designed to mitigate the impact of poverty on students. The application for Title I funds is district-wide, meaning one application is submitted on behalf of the entire School District. Poverty rankings are based on a school's Community Eligibility Provision ("CEP") classification or free and reduced lunch applications. The amount of funds distributed to each school depends upon two factors: (1) the number of enrolled students and (2) the school's poverty level pursuant to a "rank and serve" system.

119. "Rank and serve" means that the School District cannot give a school with a lower poverty level more funds than a school with a higher poverty level. As such, it is not only the school's poverty that matters, but also the school's poverty level in relation to the poverty of other schools. Accordingly, the amount of Title I funds issued may fluctuate from year to year.

120. While FEFP funds, and other state and local funding, can be used to run a school's core program, federal funding, such as Title I funds can only be used "to supplement, not supplant." As such, Title I funds can be used for supplemental materials, supplemental positions, parent involvement, and after-school programs. Whether a school is properly using Title I funds for supplementing, rather than supplanting, depends upon whether the school can operate without relying on the Title I funds. The

school must be able to run its program even in the absence of Title I funds.

121. As a result of the charter school conversion, LMA was considered a new school; it was no longer Lincoln Memorial Middle School. As a new school, the Department of Education assigned LMA a master school ID number. Because LMA was a new school, it had to establish its eligibility as a Title I school, despite any prior history as Lincoln Memorial Middle School. As a new school, the allocation set forth in LMA's application was based upon projections for the 2018-2019 school year. Accordingly, the School District assigned LMA a "K Code," signifying that LMA was projected to be a Title I school, but that LMA's eligibility could not be proven until their receipt of Survey 2 data in October 2018. Once received, the Survey 2 data would then replace the initial projections with actual numbers. Title I applications are generally approved between September and December. In the meantime, LMA was permitted to submit requests for reimbursement to the School District based upon the projected allocation.

122. The School District worked with LMA on an individual basis to assist in planning, purchasing, and reimbursement with respect to Title I funds. In correspondence and meetings with LMA, the School District repeatedly reminded LMA that its initial application for Title I funds was based on projections and that

LMA's projections would be updated with the October 2018 Survey 2 data.

123. In September 2018, the Department of Education notified the School District and LMA that LMA must revise its application by removing the 1.6 multiplier generally assigned to CEP schools because it was a new school. The School District admitted its error in previously informing LMA that the multiplier would apply. With the multiplier removed, LMA's per pupil allocation changed from a projection of $283,000.00 to $117,000.00. Despite the $117,000.00 allocation, the School District used other funds to increase LMA's total allocation to $150,256.00, the most the School District could give pursuant to the rank and serve system.

124. Although Mr. Hundley disagreed with the amount of Title I funds LMA was entitled to receive, he did not disagree with the fact that Title I funds can only supplement, not supplant. When asked how Title I funds can be used during his deposition, Mr. Hundley answered: "It can be used to supplement. It cannot be used to supplant. It can be used for certain materials." When asked a similar question during the hearing, Mr. Hundley again admitted that LMA could not rely on Title I funds for core costs and expenses, yet his testimony consisted in part of the statement that "I was absolutely relying on Title I funds to run my school."

125. As evidenced by the foregoing testimony, Mr. Hundley admits that LMA could not use Title I funds for core costs and expenses while also admitting that he was relying on Title I funds to do just that. Yet, Mr. Hundley, who has 20 years of experience working in Title I schools and is "the most senior Title I principal in Manatee County," continues to suggest that LMA's receipt of $150,256.00 versus the $283,000.00 initially projected in Title I funds caused LMA's financial woes and related failure to ensure student health, safety, and welfare. While the difference between $283,000.00 and $150,256.00 is a significant amount ($132,744.00), it is less than 10 percent of the LMA shortfall discovered by CRI of more than $1.5 million. This suggestion that the reduced amount of Title I funds caused the downfall of LMA is both completely unreasonable and completely unsupported by any evidence or facts. Neither Mr. Hundley nor anyone else at LMA has explained, or even attempted to explain, how LMA could prevent the serious and immediate danger posed to the health, safety, and welfare of its students by being unable to meet its financial obligations for its utilities, food, insurance, and salaries of its teachers by such a large amount.

126. LMA's CFO, Ms. Maxfield, the individual charged with overseeing LMA's budget and financials, also failed to provide any evidence in support of Mr. Hundley's suggestion that LMA's

current financial situation is a result of any failure by the School District to properly disburse funds to LMA. Rather, when asked a series of financial questions on her deposition, Ms. Maxfield, in every instance, asserted her Fifth Amendment right. When asked whether LMA timely received Title I funds, Ms. Maxfield asserted her Fifth Amendment right. When asked whether LMA timely received all allocations from the School District, she asserted her Fifth Amendment right. When asked whether the School District ever withheld funds from LMA to which LMA was entitled, Ms. Maxfield asserted her Fifth Amendment right. When asked whether LMA timely received all federal, state, and local funding distributed through Manatee County, Ms. Maxfield asserted her Fifth Amendment right.

127. When Mr. Hundley further contends that the School District's alleged rezoning of LMA impacted LMA's funding, such contention also misses the mark. During the hearing, Mr. Hundley testified that "zoning changes, as well as other actions" negatively impacted LMA's enrollment, and that this enrollment, in turn, impacted LMA's financial viability. However, when asked whether it was Mr. Hundley's testimony that he could zone children to LMA as a school of choice, he answered, "no." When asked whether Mr. Hundley understood that students who desire to go to LMA would affirmatively have to choose to go there as a school of choice, Mr. Hundley answered, "[a]s a charter school,

yes, they can choose to go to LMA." As admitted by Mr. Hundley, enrollment by students at LMA is based on the affirmative choice of students and parents, not upon zoning. Mr. Hundley's contention regarding zoning restrictions is without merit.

128. As evidenced by the foregoing, LMA has received all funds to which it is entitled. LMA's financial deterioration and the debilitating effects of that deterioration on LMA's ability to ensure student health, safety, and welfare are the result of poor decision making, large payments to its administrators, and misuse of funds by LMA leadership, not the result of any failure by the School District or any other entity to disburse funds. These facts remain unrebutted.

LMA Attempted to Paint a Wholly Different Picture of the Events Leading to the Notice of Immediate Termination of the Charter School

129. With its CEO/principal, Mr. Hundley, and its CFO, Ms. Maxfield, invoking their Fifth Amendment rights against self-incrimination hundreds of times in their depositions, LMA was left with an impaired case in trying to give its defense to the immediate termination of the charter. By invoking the Fifth Amendment on any matters regarding LMA's expenditures, payment of payroll taxes, FRS contributions, unpaid invoices to food and educational vendors, payment of earned Best and Brightest awards by hard-working teachers, and even payment of the water utility bill, LMA focused only on its position of the reason LMA was

created. LMA attempted repeatedly to place blame for any issues raised in the Notice of Immediate Termination on the School District, accepting no responsibility whatsoever.

130. The hearing room was filled throughout the proceedings with concerned LMA parents, teachers, and staff, none of whom were identified by name or called to testify on any issues, let alone those relevant to whether LMA should lose its charter. Ostensibly, the respectful and close-listening audience was there to support the fact that the charter school was created by a groundswell of concerned parents and community members, who wanted a better education for their children and neighbors than they believed was previously being offered at Lincoln Memorial Middle School. The undersigned has no reason to doubt their sincerity and desire to want the best possible education for the students, but LMA did not take advantage of this resource to support its case.

131. None of the parents, teachers or staff, with the exception of LMA's head custodian, Mr. Saul Johnson, its HR vendor through its leader Ms. King, and Mr. Hundley testified. With the limitations on their knowledge of the essential facts leading to the immediate termination (Mr. Johnson and Ms. King) and the limitation of what Mr. Hundley would testify about once he repeatedly invoked his Fifth Amendment right, the picture of a

high-functioning charter school painted by LMA was incomplete, at best.

132. The substance of Mr. Johnson's testimony was that the School District, prior to the creation of LMA, allowed persons having "no contact with students" restrictions to be in buildings where students could be found during the school day. This testimony was offered, presumably, to support the fact that Mr. Hundley should be allowed on campus during the 21st Century program, regardless of the fact his certification as an educator had been revoked by the EPC. The testimony offered by Mr. Johnson, while earnest and factual to the best of his knowledge, is not relevant to the issues in this matter. Mr. Hundley's contact appeared, via video and photographs admitted into evidence, to be direct and substantial when he entered LMA while the summer program was underway. Mr. Johnson's testimony that a staff member may have been on some part of campus where students could be present was based wholly on hearsay and without knowledge of the restrictions, if any, imposed on that specific individual. Even if true and accurate, the staff member discussed by Mr. Johnson was neither in a supervisory role, nor in a role that required direct contact with students. The gentleman described was a custodian. The testimony is discredited as inadmissible hearsay.

133. Further, testimony offered by Mr. Hundley, although limited by his asserting his Fifth Amendment right, conflicted with that given by LMA's Governing Board chair, Ms. Christine Dawson. Ms. Dawson and Mr. Hundley contradicted each other and themselves when attempting to answer simple questions, such as when the Governing Board removed Mr. Hundley's title as principal. Specifically, Ms. Dawson testified that Mr. Hundley's job title changed following a Governing Board meeting on April 24, 2019, while Mr. Hundley testified that his job title changed in mid-June. As found previously, Mr. Hundley notified the staff at LMA that he was "stepping down" as principal on July 16, 2019.

134. To further compound the lack of consistent testimony regarding when Mr. Hundley's responsibilities as principal ceased, Ms. Maxfield simply asserted her Fifth Amendment right when asked about the subject at deposition.

135. Even when Mr. Hundley "formally" renounced his title as principal, he notified the LMA staff that he would "continue to provide the needed guidance and direction to the school leadership." When asked at her deposition about Mr. Hundley's responsibilities as CEO as opposed to principal, Ms. Maxfield again asserted her Fifth Amendment right. The facts presented by Mr. Hundley, Ms. Dawson, and the reasonable inferences drawn from Ms. Maxfield's asserting the Fifth Amendment when asked about

Mr. Hundley's duties compel the undersigned to conclude that Mr. Hundley acted dishonestly towards LMA's staff, the very parents he testified stood behind him as the individual to bring Lincoln Memorial Middle School to a place of prominence in the educational system of Manatee County as LMA, School District personnel, and in these proceedings.

136. One fact rings true here regarding Mr. Hundley: the undersigned believes that the parents, staff, and community served by LMA put their faith in him to lead them to better educational opportunities for their children and neighbors. His actions in more than doubling his salary and expense account when compared with his previous experience in Manatee County, in hiring Ms. Maxfield at a high salary and with an expense account, in hiring an HR vendor with whom he has a personal relationship, and in not taking any responsibility for the whereabouts of more than a $1.5 million shortfall out of an annual allocation of slightly more than $4 million, as significantly proven by the CRI Report, leave the undersigned with only one conclusion. Namely, while Mr. Hundley's motives in helping found LMA may have started as pure, they quickly became about the riches he could accumulate at the expense of the education, health, safety, and welfare of LMA's students and their families, as well as the staff, who bought into the college preparatory program he promised to provide them.

137. At the center of LMA's case at hearing lies the pointing of fingers at the School District. Repeatedly throughout LMA's presentation of its case, their Qualified Representative, Mr. Norwood, asked School District personnel how many times they had visited LMA during the first year of its operations; why had they not visited more frequently, especially those who testified they had never visited the campus since that was not part of their job duties; and, above all, why the School District did not intervene and attempt to take over or counsel LMA's staff on the School District's concerns.

138. Moreover, Mr. Norwood asked witnesses for the School District why they did not send more "Notice Letters of Breach of Contract," every time a real or perceived shortcoming on the part of LMA was made known to the School District. The response was invariably from the School District witnesses was that they repeatedly attempted to have serious questions answered concerning payroll taxes, FRS contributions, payment of allocated funds for Best and Brightest award winners, and why the water utility bills were constantly in arrears. LMA refused every request to respond to these issues, leading, ultimately, to the School District, after the vote by the School Board, to proceed with the most drastic measure (and the only one remaining) imaginable, issuing a Notice of Immediate Termination of LMA's charter. The testimony presented by both parties to this

proceeding leads the undersigned to the conclusion that no tools were left for the School District in dealing with a charter school that failed to address their repeated efforts at gathering information.

139. Another factor that has not gone unnoticed by the undersigned in the course of these expedited proceedings is that LMA's pattern of refusing to respond to requests for information made by the School District during discovery has continued into these proceedings. The undersigned can only imagine Petitioner's frustration with the constant refusal of LMA to provide the documents requested during discovery, with the common refrain of "you already have the documents because you (the School District) seized all of LMA's records, computers and laptops, leaving us (the former staff) with nothing to provide you." However, this cry by LMA fails to ring true. No HR company, CFO, school principal, or school CEO, in this 21st century digital age, can continuously be deemed credible when asserting that no backup, whether hard copy, DVD, thumb drives, or in the Cloud, exists. When forensic accountants and long-time public officials cannot find all of the necessary records to continue the operation of the school, just two days after being taken over by the School District, to answer the questions about payroll taxes, FRS contributions, Best and Brightest awards, food service menus and purchases, and utilities payments, someone is hiding the ball.

No evidence was presented through testimony, and certainly not through documentation, that LMA provided the complete records of their activities in this first year of the charter school's operations. The presumption here must be that the complete records were destroyed, lost, or intentionally withheld from production by LMA to the School District. Even with limited records available, however, the School District has made a strong case for immediately terminating the charter.

140. When the two principal leaders of LMA refused to answer most of the questions posed to them in deposition on the grounds their answers might tend to incriminate them, no conclusion can be reached by the undersigned other than that those records have been kept from the view of the School District intentionally and improperly. Therefore, following the issuance of this Final Order, the undersigned will reserve jurisdiction on the issue of sanctions for refusal or failure by LMA to provide all the documents in its or its vendors' possession. A hearing will be held solely on the issue of the appropriate sanctions to be imposed. The parties will be given the opportunity to state they intend to rely on the previous motions and responses filed regarding sanctions, or, in the case of LMA, to offer additional reasons for not complying with the reasonable discovery requests, even when given the opportunity to continue to do so after the hearing. LMA will also be permitted to provide any defenses and

mitigating factors, as permitted by law, concerning their ability to pay any monetary sanctions that might be awarded by the undersigned.

141. To summarize, the facts, corroborating evidence, and corroborating testimony offered by Petitioner in support of its decision to immediately terminate LMA's charter remain unrebutted and undisputed. Testimony by itself without any records is not sufficient. Moreover, the testimony provided by LMA is, largely, not credible. LMA has failed to produce any records or documentation corroborating or supporting the inconsistent, evasive, and ultimately non-credible testimony of its witnesses.

CONCLUSIONS OF LAW

142. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569, 120.57, and 1002.33(8)(c), Florida Statutes.

143. In Florida, charter schools are nonsectarian public schools that operate pursuant to a charter contract with a public sponsor, in this case a school board. See § 1002.33(1), Fla. Stat.; Sch. Bd. v. Survivors Charter Sch., Inc., 3 So. 3d 1220, 1227 (Fla. 2009). All charter schools in Florida are public schools. Id. Flexibility and parental choice are at the heart of the charter school statute. The Florida statute governing charter schools (chapter 1002) is titled: "STUDENT AND PARENTAL

RIGHTS AND EDUCATIONAL CHOICES." One of the statutorily recognized guiding principles for charter schools is that they provide "parents with the flexibility to choose among diverse educational opportunities within the state's public school system." § 1002.33(2)(a)1., Fla. Stat.; Survivors Charter, 3 So. 3d at 1227. A charter school is open to any student residing in the school district in which the charter school is located. § 1002.33(10)(a), Fla. Stat.

144. The ALJ has final order authority to resolve the dispute pursuant to section 1002.33(8)(c), which provides in pertinent part that upon receiving written notice from the sponsor of an immediate termination, the charter school's governing board has ten calendar days to request a hearing. A requested hearing must be expedited, and the final order must be issued within 60 days after the date of request. § 1002.33(8)(c), Fla. Stat.

145. The burden of establishing grounds for the immediate termination of the charter school contract pursuant to section 1002.33(8)(c) falls on the School Board as the Sponsor, which must prove the allegations through clear and convincing evidence. In re Watson, 174 So. 3d 364, 369 (Fla. 2015) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

146. What constitutes clear and convincing evidence was described in Slomowitz v. Walker, 429 So. 2d at 800, as follows:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

147. The Florida Supreme Court later adopted the Slomowitz court's description of clear and convincing evidence. See In re Davey, 645 So. 2d 398, 404 (Fla. 1994). The First District Court of Appeal also followed the Slomowitz test, adding the interpretive comment that "[a]lthough this standard of proof may be met where the evidence is in conflict . . . it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 988 (1991) (citations omitted), rev. denied, 599 So. 2d 1279 (Fla. 1992).

148. Pursuant to section 1002.33(8)(c),

> A charter may be terminated immediately if the sponsor sets forth in writing the particular facts and circumstances indicating that an immediate and serious danger to the health, safety, or welfare of the charter school's students exists. . . . The sponsor shall notify in writing the charter school's governing board, the charter school principal, and the department if a charter is terminated immediately. The sponsor shall clearly identify the specific issues that resulted in the immediate termination and provide evidence of prior notification of issues resulting in the immediate termination when appropriate.

The sponsor's decision to immediately terminate the contract may be appealed by timely filing a request for hearing pursuant to chapter 120. See § 1002.33(8)(c), Fla. Stat.

149. The School Board complied with the procedural requirements of section 1002.33(8)(c). The School Board issued a Notice of Immediate Termination on July 24, 2019. The School Board then issued an Amended Notice of Immediate Termination on August 5, 2019. Both notices clearly identified the specific issues that resulted in the immediate termination and provided voluminous attachments evidencing such issues. Therefore, the School Board did not violate due process requirements, as it provided LMA with the required notice of identifying the specific issues that resulted in the immediate termination as a charter school. LMA's consistent and persistent argument that its due process rights were violated is not supported by the evidence and testimony of record that prior to the Notice of Immediate Termination being issued, Petitioner repeatedly attempted to secure records to address major concerns the School District held concerning the operations and expenditures of LMA.

150. Addressing the contention by LMA that the School Board was required to issue notice, regarding its consideration of whether it would immediately terminate, in the form of an agenda

item for the School Board meeting, such notice is not required by the Sunshine Law. Section 286.011(1), Florida Statutes, states:

> All meetings of any board or commission . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The statute only requires that the meeting be open to the public, that reasonable notice be given, and that minutes be taken. § 286.011(1), Fla. Stat.

151. The Sunshine Law does not mandate that a board provide notice of each agenda item to be discussed at a workshop or meeting. See Hough v. Stembridge, 278 So. 2d 288, 290-91 (Fla. 3d DCA 1973) (holding that the Sunshine Law does not prohibit a board from taking action on an item that has not been placed on the agenda, noting that the agenda only "plots the orderly conduct of business to be taken up at a noticed public meeting"). In Hough, the court noted that the Sunshine Law does not embody or contemplate the conduct of business at a board meeting, rather "the necessity of items to appear on an agenda before they could be heard at a meeting would foreclose easy access to such meeting to members of the general public who wish to bring specific issues before the governmental body." Id. at 291. Similarly, in Yarbrough v. Young, 462 So. 2d 515 (Fla. 1st DCA 1985), the court

found that the Sunshine Law "does not expressly require reasonable public notice for a City Council to hold a 'public meeting.' The better view, however, is that reasonable notice is mandatory, although a posted agenda is unnecessary." Id. at 517. The court noted that postponing a meeting because of an inaccurate newspaper article which discussed a matter to be addressed at the meeting was not only unnecessary under the Sunshine Law, but also unreasonable. Id. See also Law & Info. Servs., Inc. v. City of Riviera Beach, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996) ("[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature."). Therefore, while Florida courts have recognized that notice of public meetings is mandatory pursuant to the Sunshine Law, an agenda which details every matter that will be addressed in such meeting is not a requirement.

152. As statute and case law reflect, no requirement exists that each matter addressed at a board meeting be published on the agenda ahead of time. In the instant case, there has been no question that the School Board provided reasonable notice of the School Board Workshop and meeting. Furthermore, the spirit of the law is "to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to

make an appearance if they wished." Rhea v. City of Gainesville, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (citing Op. Atty. Gen. Fla., 73-170 (1973)). LMA had that opportunity at the regularly noticed School Board Workshop and meeting. As found in the findings of fact above, numerous community members, including LMA teachers, staff, and board members, participated in the public comments at both the Workshop and meeting. In fact, 35 people spoke in public comment on the topic of LMA's charter contract--12 at the Workshop and 23 at the School Board meeting. The School Board did not violate LMA's due process rights by not having the LMA matter on its July 23, 2019, School Board meeting agenda.

153. Even if there had been a violation of due process during the Workshop or School Board meeting held on July 23, 2019, any such violation was remedied by the ability of LMA to petition for an administrative hearing over disputed material facts, conduct discovery, and participate in the four-day administrative hearing that was held. During the hearing, LMA was afforded ample opportunity to address its concerns and challenge the Notice and Amended Notice of Termination. LMA was duly noticed and had an opportunity to be heard by virtue of its appeal of the School Board's immediate termination of the Contract.

154. Moreover, to the extent that LMA argues that it was denied due process due to failure to follow some internal policy, the violation of an internal administrative rule does not constitute a violation of due process. "The right to due process is conferred not by legislative grace, but by constitutional guarantee." Beary v. Johnson, 872 So. 2d 943, 946 (Fla. 5th DCA 2004). Due process is a flexible concept and requires only that the proceeding affecting protected rights be "essentially fair." See Gilbert v. Homar, 520 U.S. 924, 930 (1997) (recognizing that "[i]t is now well established that 'due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances'") (quoting Cafeteria & Rest. Workers v. McElroy, 367 U.S. 886, 895 (1961)).

155. To the extent LMA asserts that there was a duty under the Contract to give LMA notice and an opportunity to cure the issues that posed a serious and immediate danger to the health, safety, and/or welfare of the students, LMA's assertion is patently incorrect. Section 1002.33(8)(c) provides for "immediate" termination, meaning notice need not be given before action is taken. Section 1002.33(8)(c), regarding immediate termination of a charter, provides that the Sponsor shall notify the charter school's governing board and principal "if a charter is terminated immediately." § 1002.33(8)(c), Fla. Stat. The statute further reads that the Sponsor "shall clearly identify

the specific issues that resulted in the immediate termination." (Id.; see, e.g., Survivors Charter, 3 So. 3d 1220, 1233 (Fla. 2009):

> The word "immediately" [in section 1002.33(8)(c)] means "without interval of time. . . ." Accordingly, the Legislature's use of the word "immediately" in section 1002.33(8)(d) [renumbered in 2018 to (8)(c)] indicates that the charter may be terminated "without interval of time." Therefore, termination of a charter "immediately" means something different than termination accomplished over a period of weeks or months . . . . Our conclusion that "immediate" contemplates prompt action is strengthened by the fact that the reasons for which section 1002.33(8)(c) may be invoked are limited to situations where "the health, safety, or welfare of the students is threatened . . . ."

Survivors Charter, id. at 1233.

156. Indeed, the plain language of the statute indicates that written notice is to be given after the fact, identifying the specific issues that "resulted in the immediate termination." § 1002.33(8)(c), Fla. Stat. The Contract mimics the statute and explicitly states that the "Sponsor may immediately terminate this charter pursuant to section 1002.33(8)(d), which as of 2018 was renumbered to 1002.33(8)(c)." To the extent that the Contract could be read to provide for notice before action is taken, such a reading contravenes statute and public policy, as protection of children is paramount and a requirement of notice and time to correct is injurious to the public good. Contractual

provisions, which contravene statute or legislative intent that violate public policy and that are injurious to the public good, are unenforceable. Franks v. Bowers, 116 So. 3d 1240, 1247 (Fla. 2013).

157. The School Board carried its burden of establishing, by clear and convincing evidence, facts and circumstances that indicated an immediate and serious danger to the health, safety, or welfare of the charter school students exists. Specifically, as set forth in greater detail in the findings of fact above, the School Board established the following:

a. As of August 23, 2019, LMA's outstanding liabilities total $1,539,476.29. This amount includes $780,127.43 in unpaid invoices/liabilities, $499,636.23 in debt funding, and $259,712.63 in payroll owed. As of August 3, 2019, LMA's operating account had a negative balance of $526.97.

b. On or about July 22, 2019, LMA received a water shut-off notification from the City of Palmetto, Florida, due to an unpaid balance of $3,216.67. The City indicated in the notice that LMA's payment was 45 days past due and that the payment must be made by 5:00 p.m. on July 29, 2019. The City further indicated that it would shut off LMA's water on July 30, 2019, if LMA failed to make this payment.

c. LMA served 100 percent of its students a free breakfast, lunch, and snack on a daily basis using funds received from the

NFSP. Many students were dependent upon these meals. To the extent that students relied upon the provision of free meals given pursuant to the NFSP, discontinuation of this service would clearly pose a danger to the students' health, safety, and/or welfare. Given LMA's failure to comply with NFSP requirements, students scheduled to start school in August 2019, were at risk of not receiving food.

d. LMA still has not produced any records showing that it screened for allergens when serving student meals. As already noted, the undersigned acknowledged during the hearing that in the absence of records, LMA would be unable to rebut issues raised by the School Board in its Notice and Amended Notice of Immediate Termination. The undersigned further advised that, in the absence of virtually all requested records or rebuttal evidence, the undersigned would infer that these records did not exist or were hidden and/or destroyed. Accordingly, in the absence of any records or rebuttal evidence, it is found that LMA failed to properly screen student meals for allergens. Given the serious and potentially life-threatening nature of allergies, any failure to screen student meals for allergens clearly poses a danger to student health, safety, and/or welfare.

e. LMA has failed to offer any rebuttal to the following: (1) LMA's financial mismanagement resulted in U.S. Foods, Inc.'s, ceasing services due to nonpayment; (2) the discontinuation of

these deliveries resulted in LMA's cafeteria manager purchasing products from local grocery stores that did not have child nutrition labels; (3) products purchased from these local grocery stores did not meet NFSP's meal patterns; (4) these products were not screened for allergens; and (5) despite all of this, the food was served to students.

f. With respect to educational services for its students, LMA owes $35,895.00 to Children's Therapy Solutions, Inc. Child Therapy Solutions, Inc., provided speech language pathology services to LMA students. Students were at risk of losing these needed services due to LMA's failure to pay the provider.

g. LMA failed to pay teachers recruitment and retention awards earned in the form of Best and Brightest bonuses; it failed to keep current with payments for employees' health insurance; and it failed to properly pay its employees. LMA owes approximately $259,712.63 in unpaid salaries. When asked about these payments, Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights.

h. LMA owes $373,852.01 to the IRS. A review of available employee payroll records showed that taxes were deducted from employee gross pay, but were not always remitted to the IRS. When asked about these payments, both Ms. Maxfield and Mr. Hundley chose to assert their Fifth Amendment rights.

i. LMA also owes $81,917.45 to the FRS.

j. LMA allowed its student athlete insurance to lapse, placing students in danger of not having appropriate insurance coverage for injuries. Further, LMA does not dispute that its inability to pay for internet, speech pathology services for ESE students, health insurance for its employees, payroll, and taxes posed a serious and immediate danger to the health, safety, and/or welfare of its students. Rather, when confronted with questions regarding LMA's finances, Mr. Hundley and Ms. Maxfield generally chose to assert their Fifth Amendment rights instead of providing answers or explanations.

k. LMA has failed to offer any evidence rebutting the fact that LMA allowed individuals to start working at LMA prior to reviewing their background screening results or receiving clearance letters from the School District; that Ms. King never reviewed the fingerprint results for any employees including the 13 employees identified by the School District before allowing them to start working at LMA in or about August 2018; that the School District would not have cleared at least one of these individuals, John Walker, to work at LMA; and that failure to subject individuals to a Level 2 background screening prior to employment, regardless of what the results might be, poses an immediate and serious danger to student health, safety, and/or welfare.

l. It is undisputed that Mr. Hundley remained CEO, the duties of which the undersigned finds impossible to distinguish from those of the principal of LMA even after issuance of the May 13, 2019, EPC Final Order, and well after he was removed by the LMA Governing Board from the position of principal on April 24, 2019. It is undisputed that Mr. Hundley continued to come to campus until the School Board terminated the charter. It is undisputed that students were on campus for the 21st Century program and for credit recovery during the summer months. It is undisputed that Mr. Hundley continued to have direct contact with students while on campus. Finally, and most importantly, it is undisputed that Mr. Hundley's presence posed a danger to the students' health, safety, and/or welfare since he refused to answer direct questions as to what his role, duties, and responsibilities were with LMA following the April 24, 2019, Governing Board action removing him as principal of LMA.

158. When LMA's Governing Board failed to act in the interest of the health, safety, and/or welfare of LMA's students by removing Mr. Hundley more than symbolically, the School Board had a duty to act. The clear and convincing evidence demonstrates that the School Board had sufficient basis to act by immediately terminating LMA's charter pursuant to section 1002.33(8)(c).

159. Further, LMA's reliance on section 1002.421 and claim that only allowing supervised interaction with students would be in compliance with section 1012.795 and would not constitute "direct contact with students" is not correct. Section 1002.421 addresses private school educational scholarship programs, not public schools, and it does not address a circumstance where an employee's educator's certificate has been revoked. See § 1002.421, Fla. Stat. The statute expressly provides that the definition is only for the programs specified and that it applies only to that paragraph. § 1002.421(1)(m)1., Fla. Stat. LMA's qualified representative even admitted during the hearing that the statute does not relate to public school students. Even if the statute could be read to allow supervised contact, there is no evidence in the record that Mr. Hundley was supervised when he was interacting with students from May 13, 2019, through July 23, 2019. In fact, Mr. Hundley was the highest ranked individual at the school, regardless if he was called "principal" or "CEO." He could not be "supervised" by a subordinate. And, in any case, LMA has not offered any evidence that Mr. Hundley was actually accompanied by any employee while interacting with students. The only evidence available at hearing, surveillance footage and photographs, showed Mr. Hundley interacting directly with students.

160. The focus by LMA on its alleged underpayment of what was owed the charter school as Title I funds, was an attempt on its part to divert attention away from the fact that more than $1.5 million from funding actually provided to LMA from state, federal, and local sources was unaccounted for at the time of the Notice of Immediate Termination. Whether LMA should have received $280,000.00 instead of the $150,000.00 it actually received in Title I funding fails to address the elephant in the room: the missing $1.5 million. While additional Title I funds would have been useful to LMA, the only reason they received no additional funding was because the school was not entitled by the federal government's own regulations to additional funding. This was not an action taken by the School District to penalize LMA. The School District admitted it made a mistake in calculating the Title I funds to be received, and its personnel attempted to remedy that the best way they could, by increasing the funding to $150,000.00 from the lesser amount approved by the federal government.

161. While the undersigned recognizes that Mr. Hundley and Ms. Maxfield invoked their Fifth Amendment right to remain silent when their testimony might tend to incriminate them in a criminal or penal proceeding, their silence in this administrative proceeding means that most of the testimony from the forensic experts and the School District staff, whether expert or lay

testimony, went unrebutted. When confronted with the most direct questions that fall squarely within the duties and responsibilities of CEOs and CFOs, namely, "Where is the money?" the two top employees of the charter school refused to answer. The reasonable inference that the undersigned can draw is that either they honestly do not know what happened to the $1.5 million; that they know, yet are concealing the whereabouts of the money; or that they played an active role in the concealment and possible conversion of the funds in question.

162. A person who invokes the Fifth Amendment when offering testimony may remain silent and not fear that the testimony may be used as evidence against him or her in a criminal proceeding. Appel v. Bard, 154 So. 3d 1227, 1229 (Fla. 4th DCA 2015). However, that restriction does not apply in most civil, and by extension, in most administrative cases. In Baxter v. Palmigiano, the Supreme Court held that Fifth Amendment protections do not preclude courts from drawing adverse inferences against persons in civil proceedings who refuse to testify in response to probative evidence offered against them. 425 U.S. 308, 318 (1976). Thus, a person involved in a civil case may choose to remain silent if a real possibility exists that the testimony might incriminate that witness, but the judge may give some weight to the silence.

163. An adverse inference should not be given undue weight, but may be used to bolster circumstantial evidence in a civil or administrative case. In Miami-Dade County School Board v. Deborah Swirsky-Nunez, Case No. 10-4143TTS, n.13 (Fla. DOAH May 16, 2012; MDCSB Dec. 20, 2012), the judge held that culpability can be demonstrated by circumstantial evidence enhanced by adverse inference. In that case, the Miami-Dade County School Board demonstrated by a preponderance of the circumstantial evidence that Respondent created false documents to receive undeserved scholarship funds for her daughter. The evidence included false statements, attempts to destroy evidence after an anonymous complaint was made about her actions, and a forged signature. The adverse inference based on Respondent's silence was only an addition to the already strong circumstantial evidence. The parallels to this case are striking. Forensic accountants, even with incomplete financial data from LMA, due to its failure or refusal to provide the full financial picture, were able to demonstrate by clear and convincing evidence that more than $1.5 million out of $4 million allocated to LMA was unaccounted for. Mr. Hundley's and Ms. Maxfield's refusal to answer any questions about the unaccounted for funds merely supported the evidence of record, thereby assisting the undersigned to further establish the significant mismanagement or

misappropriation of funds entrusted to LMA to provide a complete educational experience for its students.

164. The sum of the facts and evidence presented in these proceedings, along with the fact that most of the allegations remain completely unrefuted by the two principal officers of LMA, the CEO and CFO, proves that LMA's Governing Board failed to act in the interest of the health, safety, and/or welfare of LMA's students by failing to address the gross financial mismanagement of LMA in their capacity as the responsible fiscal agents. This lack of fiscal responsibility by the Governing Board and lack of cooperation by LMA's CEO and CFO in responding to reasonable requests for information and documentation prior to the Notice and Amended Notice of Immediate Termination required the School Board to act. Clear and convincing evidence demonstrates that the School Board had sufficient basis to act by immediately terminating LMA's charter pursuant to section 1002.33(8)(c).

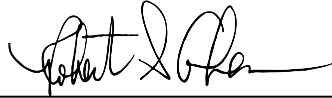
165. When LMA's Governing Board and its principal officers failed to act in the interest of the health, safety, and/or welfare of LMA's students by failing to ensure proper background screening was conducted on employees hired by LMA, the School Board had a duty to act. The clear and convincing evidence demonstrates that the School Board had sufficient basis to act by immediately terminating LMA's charter pursuant to section 1002.33(8)(c).

166. The extensive amount of evidence and testimony at hearing in this matter support no other conclusion than the School Board met its burden by clear and convincing evidence and that LMA's charter contract was appropriately immediately terminated due to a serious and immediate danger to the health, safety, and/or welfare of LMA's students.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the appeal filed by Lincoln Memorial Academy, Inc., is DENIED, and the charter school contract is terminated. The undersigned reserves the right to address whether attorney's fees, costs, and sanctions are awardable to the School Board of Manatee County. Any such request shall be by motion filed within ten days of this Final Order.

DONE AND ORDERED this 27th day of September, 2019, in Tallahassee, Leon County, Florida.



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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.