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BEFORE THE ARIZONA STATE CHARTER BOARD

FOR CHARTER SCHOOLS

In the Matter of: **ASCENDING ROOTS SCHOLASTIC & ATHLETIC PREMISE, INC., a non-profit corporation; and ASCENDING ROOTS SCHOLASTIC & ATHLETIC PREMISE, a Charter School.**	**No. O8F-RV-002-BCS** **MOTION FOR REHEARING OR REVIEW**

Ascending Roots Scholastic & Athletic Premise, Inc., and Ascending Roots Scholastic & Athletic Premise (a charter school), hereby request rehearing or review of the Board's Order dated August 19, 2008 pursuant to ARS § 41-1092.09. The basis of the request is that substantial irregularities occurred that deprived Ascending Roots Scholastic & Athletic Premise, Inc., and Ascending Roots Scholastic & Athletic Premise of their procedural and substantive due process rights, and because the findings and conclusions of the Administrative Law Judge, adopted by this Board, were incorrect. In addition, the refusal to allow the charter school to participate in the hearing violated ARS § 40-1092.07(B) and (D).

If given a rehearing, Ascending Roots Scholastic & Athletic Premise, Inc., and Ascending Roots Scholastic & Athletic Premise respectfully submit that an Administrative Law Judge will not recommend revocation.

A. BACKGROUND.

1. Ascending Roots Scholastic & Athletic Premise, Inc., is a validly authorized and operating non-profit corporation, authorized and doing business in Maricopa County, State of Arizona.

2. Ascending Roots Scholastic & Athletic Premise is a charter school operating in Phoenix, Arizona (the "School"), under the auspices of Ascending Roots Scholastic & Athletic Premise, Inc. It operates K through 8th grades at 7310 N 27th Avenue, Phoenix, Arizona 85051 -- essentially, 27th Avenue and Orangewood. The School was granted a charter in 2002, and has operated under the charter continuously since that time.

3. Rita White and Kisha Spellman are authorized charter representatives of the charter school. They are the two primary individuals behind the School. Rita White is the mother of Kisha Spellman. Ms. White has a BA from the University of Pittsburgh in Secondary Education, and has over 26 years experience in education. Ms. Spellman has a BA from Arizona State University in Interdisciplinary Studies (comprised of Black History and Business Administration). Ms. Spellman was a star player on ASU's Woman's basketball team from 1998 through 2000, and played for the Phoenix Mercury in the WNBA in 2001.

4. For two years in a row, the School has been designated a "performing school." It raised itself from underperforming in 2004-2005 to performing, and has maintained performing status since then. For seven years in a row, the School has met its Annual Yearly Progress requirements (AYP) under the No Child Left Behind Act.

5. The School has met the performing standards and AYP requirements even though it serves a student population that is almost completely "at risk." Almost 100% of the student population is considered "Title 1." Many are homeless, and many lack parents at home. (In fact, one parent left her student at the School after the first day and never returned; Ms. Spellman and her husband have since adopted the child and are in the process of becoming guardians for another child who also was abandoned at the School.)

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6. Per the Arizona Department of Education website, the School's "report card" is consistent with nearby schools. Nearby public schools in the Washington Elementary School District perform generally the same, or worse. Washington Elementary School (K-6), Cactus Wren (K-6), and Royal Palm (middle) schools are "performing" schools but did not meet their AYP requirements in the last reported period (2005-2006). Alta Vista, Roadrunner, and Maryland schools have the same report card as the School. Thus, the School, serving a student population that is practically 100% "at risk," performs as well or better than other nearby schools. Edupreneurship Student Center ("ESC"), a charter school, does not serve a predominantly "at risk" student population, and is "highly performing."

7. In fact, the School has been so successful in turning around troubled students, that administrators with the State Charter Board frequently refer such students to the School.

8. The School serves a predominantly minority student population, comprised primarily of black students. Currently, only three charter schools remain in Arizona that are comprised of black management which primarily serve black students. Only a few years ago, approximately one dozen existed in Arizona.

9. The School successfully serves a vulnerable and at risk student population. Many of the students have moved on to successfully complete high school and have started to attend college or university.

10. Until these instant proceedings, no revocation proceedings had ever been initiated against the School. However, the School has been the subject of an incredible five separate random site visits during the last two years (which is unheard of), and has been questioned directly by administrators with the State Charter Board to explain why the School has such a high percentage of black students. Indeed, a few years back, administrators with the State Charter Board initiated an expansive federal investigation into the School by the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) regarding alleged illegal firearms possession and stockpiling. These claims were blatantly

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false and no charges were ever filed; however, several employees of the School were threatened, detained, and questioned for hours, and students of the School were followed home. The School later learned that administrators with the State Charter Board collaborated with the ATF to try and launch the investigation based upon an alleged single anonymous tip, which they refused to disclose to the School. The State Charter Board never called the police even after the alleged single anonymous tip which supposedly alleged that the children were on the same campus where firearms were kept. The School was so appalled at the allegations and demeaning actions of the State Charter Board that it filed a report with the Tempe Police (the School used to be located in Tempe), reporting the incidents.

B. THE PROCEEDINGS.

11. The School was not represented by counsel and the Administrative Law Judge refused to allow its charter representative and vice-president, Rita White, to say or do anything during the hearing. The Administrative Law Judge asked Ms. White if she was authorized to speak for the School; she stated she was a co-owner. Nevertheless, the Administrative Law Judge refused to let Ms. White participate unless and until a vote was taken formally authorizing her to represent the School. Since Ms. White was unable to call a Board meeting on such notice, she was not allowed to participate. The State put on its entire case without allowing the School to have any input whatsoever. When Ms. White was able to speak, on the second day, she was unable to question any of the witnesses who had testified the day before. The School therefore was deprived of its Constitutional right of Cross-Examination.

12. The School was caught off guard by the hearing. While it is true the School had received notice of the hearing and the revocation proceedings, it had satisfied the request for the financial records and the fingerprint card issue. The School believed that revocation was no longer being sought. They did not realize the State was proceeding with revocation, and believed the hearing was simply to appear and have it dismissed. About one week before the hearing date, Ms. White spoke with DeAnna Rowe and

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explained that Ms. Spellman would be out of town in Atlanta. She explained that a major basketball tournament was taking place and that four of the students had been invited to play. Ms. Spellman was driving the students to the tournament. Ms. Rowe gave Ms. White the facsimile number and told her what to say and reference in the request to postpone the hearing. It did not seem to be a major issue, and Ms. Spellman left with the students for the tournament. After all, the School continued up to the date of the hearing to provide information and records to the Charter Board and continued to have dialogue about resolution of the issues.

13. When Ms. White appeared, the Administrative Law Judge refused to let her participate, leaving the School unrepresented. It was, essentially, a default proceeding, especially since the hearing was scheduled only for one day.

14. Ms. White was not allowed to participate even though she is a charter representative, is a vice-president, and is in charge of the educational side of the School.

15. When Ms. White learned the revocation hearing had not been postponed and that the State was still trying to revoke the Charter, she did not have time to locate counsel. Her request to postpone the hearing in order to obtain legal counsel was denied. Moreover, Ms. Spellman was the one most knowledgeable about several of the topics that were in issue, but she was in Atlanta and unable to assist the School. In addition, Ms. White did not know that statements would be ascribed to people affiliated with the School, and she did not have sufficient time to bring those people in to challenge the testimony, such as Mr. Matthews and Ms. Smith.

16. Had the School not been deprived of its right to defend itself at the hearing, and to cross-examine witnesses, the School respectfully submits a very different result would have been reached, as explained below.

17. The Findings adopted by the Board cover three areas: (1) instructional hours; (2) NCLB Funds; and (3) alignment with state standards.

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C. THE FINDINGS AND CONCLUSIONS.

18. The findings regarding the amount of instructional hours are incorrect, and it appears that the State, knowing the real reason for the alleged deficit in hours, may not have explained the issue to the Administrative Law Judge. When the School was being questioned about the hours, a basic issue arose; the School has thirty minutes at the end of each day for the 7th and 8th grade to review the day's instruction and to uncover any deficit so students may be given guidance to address any short falls that are uncovered during the review. The State claims that this review period does not constitute direct instruction; the School asserts that it does. This is the issue as to whether the School offers sufficient hours of direct instruction, yet this issue was apparently never raised with the Administrative Law Judge.

19. The School has found that these thirty minute review sessions, each day, are a tremendous teaching tool that allows the School to reinforce its instruction for the day, to help students with individualized deficits, and to uncover possible broader weaknesses from the instruction and to address any such weaknesses in a timely fashion. The School points out that auditors in the past have agreed that the 30 minute review sessions do not count as direct instruction.

20. Even though the School believes that it should be given credit for the thirty minute review, due to the State's claims, the School held classes on weekends that were attended by the students to cure the alleged deficiencies in hours. Thus, for this school year, there are no instructional hour deficiencies because extra instruction has taken place and will continue to take place until the School receives notice that it can count the review sessions as direct instructional time.

21. The findings regarding the NCLB funds are absurd. The findings imply that the School received federal funds for English as a Second Language (ESL). This implication is patently false. The School does not have a single ESL student and has not received any monies for an ESL program. The School did not know that it would be required to prove at the hearing that it had not received any such funds. The State did not

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prove the School had received such funds. In fact, the School has not received any entitlements for any other funds for the school years 2007-08 and 2008-09.

22. Consequently, revoking a charter because the School did not comply with requirements to obtain funding, when it has not requested and has not received such funding, is, with all due respect, absurd.

23. Despite the fact the School has no intention of seeking ESL funds, due to the insistence by administrators with the State Charter Board, the School submitted paperwork, and believes the paperwork tendered shortly before the hearing satisfies any paperwork issues. The School has been working cooperatively with Karen Legrand for several years, responding to her requests within 1 to 2 days and speaking with Cecily Downes to clarify the issue a number of times. In addition, the School received notification from Bobbie Orlando, that confused the School. Ms. Orlando stated that if the School did not receive funds any longer, then there would be no need for any submittals of paperwork.

24. With respect to the Academic Standards, issues were raised at the hearing regarding the curriculum, combined classes, lesson plans, and a computerized instruction program. The School would like to emphasize that it is a performing school and has satisfied the AYP requirements for seven years, so the notion that it is ignoring State Standards is inconsistent with its established, objective performance. It also is incompatible with the fact that the School has passed every audit.

25. The School follows the State Standards. The School uses remedial books published by McGraw Hill, called SRA for "struggling readers." DeAnna Rowe actually referred the School to this source for the text books. The SRA series is approved by the State of Arizona and complies with State Standards. To the extent claims are made that the textbooks are not comprehensive, without any accompanying detail, it is difficult to address. The SRA textbooks are deliberately written for remedial students.

26. Using the SRA textbooks satisfies State Standards. It is true that supplemental materials also are used, which is why the students had supplemental books

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studying post-Civil War US history. The fact they were using a supplemental book for post Civil War history does not mean that the students are not taught pre-Civil War history. It just means that at the time of the unannounced inspection, the students were studying post-Civil War history, and therefore were using as a supplement, that particular book. The School does teach pre-Civil War history, as is set forth in the SRA textbooks.

27. The classes were combined when the School relocated and they lost a number of students due to the baseless ATF investigation, and thus merged classes together. However, the combined classes allow the School to more effectively address individualized student needs The School was not aware that the Administrative Law Judge would allow the hearsay claims that its teacher, Mr. Matthews, denied differentiating between the grades in his classes. To the contrary, Mr. Matthews will testify in person that he told DeAnna Rowe he did differentiate between grades. He has no idea why Ms. Rowe testified to the contrary.

28. The claim that a significant number of its teachers were missing (¶ 49) was misleading. The School has five teachers. Ms. Rowe was told that one was with a class on a field trip and one was on maternity leave. Out of five regular teachers, two were absent, in theory, but with good cause and substitutes were present.

29. The reference to Odyssey Ware is misplaced and apparently was misunderstood by administrators with the State Charter Board and hence, by the Administrative Law Judge. The School had used Odyssey Ware with its computers but it experience burglaries and lost the teachers' computers to theft. An insurance claim is pending and once the funds are paid, then the plan is to acquire computers and use the programs in each of the classrooms. The School thought it had explained to administrators with the State Charter Board that the program had been used, but was not currently available in each classroom under these circumstances, but would become available in the future. Until then, the School still has the Odyssey Ware available in the office on the main computer. Teachers are able to access it from the main computer and use it in their classes by printing off the relevant segments, and primarily use the SRA

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textbooks. Notably, Odyssey Ware does have the syllabus that has been followed by the teachers, in conjunction with the SRA textbooks.

30. Despite the fact the Charter Board acknowledges the School satisfied its financial reporting requirements, which is why it exercised a hold on 10%, the Board still refuses to release those funds.

D. CONCLUSION

Revocation of the School's charter is a gross miscarriage of justice. This is one of the few remaining minority based charter schools in the State; it successfully serves an at risk student population and has an established track record of doing so.

Ms. White and Ms. Spellman thought the specter of revocation was behind them after they complied with the financial reporting and finger print card issues and did not realize that revocation was still being pursued. They had met and had explained the other issues to administrators with the State Charter Board, and believed those issues had been addressed. Ms. Spellman left with four students to attend an invitational basketball tournament in Atlanta and they did not hire counsel to assist them -- all because they believed the revocation threat had been resolved.

When the proceedings commenced, the proceedings effectively were handled as a default; Ms. White, although a charter representative and officer of the School, was expressly refused an opportunity to participate. She was relegated to listening to the State present its case without the opportunity to question witnesses. The School therefore had no representation at all while the State put on its case. When she finally was able to speak, no witnesses were present and she was limited to what could be presented. The handling of the hearing deprived the School of its right to cross-examination and deprived it of its rights to substantive and procedural due process. Moreover, there may be Equal Protection violations as well. In addition, the refusal to allow the School to participate in the hearing violated ARS § 40-1092.07(B) and (D).

Significantly, the School has several legitimate good faith defenses and explanations that rebut the claims made by the State and the findings of the

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Administrative Law Judge that were approved by this Board. If given the opportunity to defend itself against these charges, the School respectfully submits that it will succeed and that revocation will not be recommenced.

Ascending Roots Scholastic & Athletic Premise, Inc., and Ascending Roots Scholastic & Athletic Premise (a charter school) therefore respectfully request that the Board's Order of August 19, 2008 be rescinded, and that the School have the opportunity to present its defenses and explanation in a rehearing. A hearing on the merits should be had, rather than a default proceeding, especially given the established success of the School.

DATED this 17th day of September, 2008.

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By: _____

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Of September, 2008, to:

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ARIZONA STATE BOARD FOR CHARTER SCHOOLS
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