



## **IDAHO PUBLIC CHARTER SCHOOL COMMISSION**

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## **PUBLIC CHARTER SCHOOL COMMISSION SPECIAL MEETING**

September 5, 2014  
304 N. 8th Street, Boise, ID, Room 242  
Public Charter School Commission Office

**Friday, September 5, 2014 – 304 N. 8th Street, Boise, ID, Room 242, 11:30 a.m.**

### **A. COMMISSION DISCUSSION: Consideration of Hearing Officer's Schedule of Review**

If auxiliary aids or services are needed for individuals with disabilities, please contact the PCSC office at 332-1561 before the meeting opens. While the Commission attempts to address items in the listed order, some items may be addressed by the Commission prior to or after the order listed.

**SUBJECT**

Commission Discussion: Consideration of Hearing Officer's Schedule of Review

**APPLICABLE STATUTE, RULE, OR POLICY**

I.C. 33-5209C(7)  
IDAPA 08.02.04.303

**BACKGROUND**

On August 28, 2014, Hearing Officer Jean Uranga issued Findings of Fact, Conclusions of Law, and a Recommended Order regarding the Public Charter School Commission's (PCSC's) Notice of Intent to Revoke the Charter for Odyssey Charter School. The document was followed by a Schedule of Review of Recommended Order.

**DISCUSSION**

The Schedule of Review of Recommended Order contains a significant error regarding the agency who appointed the hearing officer. That agency is the Public Charter School Commission, rather than the State Board of Education as indicated in the Schedule of Review.

Additionally, the Schedule of Review of Recommended Order is based on sections of the Administrative Procedures Act (APA) that do not apply to the PCSC. The Public Charter School Act of 1998 includes limited references the APA; these references are solely for establishing procedures for conducting a hearing, not for establishing procedures for reviewing a hearing officer's decisions.

**IMPACT**

Adherence to the Schedule of Review of Recommended Order would result in considerable delay in the PCSC's consideration of the hearing officer's recommendation regarding Odyssey Charter School.

Given the exigency of the situation at Odyssey, where the school year has recently started and stakeholders are uncertain about the future of the school, the PCSC may wish to establish an expedited procedure to review the hearing officer's recommendation and reach a final decision. This could be accomplished through PCSC issuance of a Rescission of Hearing Officer's Schedule of Review of Recommended Order.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends that the Public Charter School Commission issue a Rescission of Hearing Officer's Schedule of Review of Recommended Order; retitle the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order as Findings of Fact and Conclusions of Law; and adopt a new procedure for PCSC consideration of the Findings of Fact and Conclusions of Law.

**COMMISSION ACTION**

This motion will be in several parts and includes the following explanation:

**September 5, 2014**

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First, the Hearing Officer was mistaken about the agency who appointed her and who will review her decision. She was appointed by the Idaho Public Charter School Commission pursuant to Idaho Code § 33-5209C(7) and it is this Commission that reviews her decision, not the State Board of Education. Appeals of our decision go to the State Board of Education, see § 67-5209C(8), but it is this Commission, not the State Board, that reviews the Hearing Officer and makes the first decision under § 33-5209C(7).

Second, the Idaho Public Charter School Commission's decision-making in and following hearings is not generally subject to the contested case procedures of the Idaho Administrative Procedures Act, Idaho Code § 67-5240 and the following sections. The Public Charter School Act of 1998 does not use contested case terms like "order" to describe determinations under the Act and uses other terms like "decision" to describe this Commission's ultimate determinations under the Act. The Public Charter School Act's limited references to the Administrative Procedure Act are solely for establishing procedures for conducting a hearing, not for establishing procedures for reviewing Hearing Officer's decisions. This Commission has not adopted the Attorney General's Rule of Procedure under the Administrative Procedure Act because review of its hearings and decisions are not governed by the Administrative Procedure Act. See Idaho Administrative Code 08.03.01, Rules of the Public Charter School Commission.

Accordingly, this motion is to rescind the Hearing Officer's Schedule of Review of Recommended Order and direct staff to issue a Rescission of Hearing Officer's Schedule of Review of Recommended Order.

Further, this motion is to retitle the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order as Findings of Fact and Conclusions of Law.

Lastly, this motion is to adopt the following procedure for review of the Hearing Officer's Findings of Fact and Conclusions of Law:

Due to an exigency that requires a rapid decision on this matter to prevent children attending an unaccredited school whose charter could be revoked, the Commission will consider the Hearing Officer's Findings of Fact and Conclusions of Law on Wednesday, September 10, 2014, at 12:30 p.m. MDT. At that meeting, we will hear oral arguments of counsel. The Commission will allow twenty minutes of argument per side.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

JEAN R. URANGA  
Hearing Officer  
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Boise, Idaho 83701  
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Idaho State Bar No. 1763

BEFORE THE PUBLIC CHARTER SCHOOL COMMISSION  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN RE: ODYSSEY CHARTER SCHOOL, )	
INC., )	Case No. 2014-01
)	
A Public Charter School, )	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND RECOMMENDED ORDER
)	
)	
_____ )	

This matter came on for hearing on August 15, 2014 based upon the Notice of Intent to Revoke the Charter for Odyssey Charter School, Inc., issued by the Idaho Public Charter School Commission by letter dated June 18, 2014. The Idaho Public Charter School Commission, hereinafter referred to as the "Commission", was represented by its Deputy Attorney General, Jennifer Swartz. Odyssey Charter School, Inc., hereinafter referred to as "Odyssey" was represented by its attorney, Mark Fuller. Both parties submitted testimony and documentary evidence.

**FINDINGS OF FACT**

On February 28 through March 1, 2011, Karl Peterson, Jason Richardson, James Park and John Adams, founding members of Odyssey Charter School, attended the Charter Start Workshop at which Michelle Clement-Taylor presented information on the necessity of obtaining accreditation for charter schools. The next year, Lisa Nolan and Monica Couch, founding members of Odyssey,

attended the Charter Start! 101 Workshop from March 8 and 9, 2012 at which Michelle Clement-Taylor again provided information regarding the necessity of obtaining accreditation. A Charter School Boot Camp was also conducted on April 4 and 4, 2013 which included training on required steps to attain accreditation. Karl Peterson, the Odyssey Principal, attended a day long NWAC training on the accreditation process June 14, 2013.

The initial charter petition for Odyssey was submitted to the Commission on or around April 5, 2012. The charter petition for Odyssey was approved by the Commission December 31, 2012. Exhibit C2 is an excerpt from the petition. Page 40 of the petition clearly indicates that Odyssey would apply to the Northwest Accreditation Commission, hereinafter referred to “NWAC”, “before opening its doors” to obtain accreditation as required by Idaho Code §§33-5205(3)(e) and 33-5210(4)(b) and IDAPA 08.02.02.140. Odyssey clearly expressed its intent to achieve accreditation candidacy status during the 2013/2014 school year and complete the full external review during the 2014/2015 school year. The petition further acknowledges that, until Odyssey gets accredited, students attending grades 7 through 12 will not receive transferable credits. Idaho Code §33-119.

Minutes of the Odyssey Board of Trustees for January 16, 2013, indicates that the Board considered creating an accreditation committee and Monica Couch submitted an accreditation report. The Odyssey Board minutes for February 27, 2013, included a report on the status of the accreditation status. Vikki Reynolds recommended that Odyssey apply for accreditation around July 1, 2013. NWAC would make their visit after the first round of student testing in the fall and the full visit in the spring. The minutes state:

Odyssey must follow all requirements exactly, because Advanc-ED will need to complete a year and a half’s work in about six months. They are prepared to do this, and we must have our accreditation completed within the first year so that the credits for 9<sup>th</sup> and 10<sup>th</sup> graders can be counted. (Exhibit C5.)

It is clear that the Odyssey Board was well aware of the need for accreditation and knew and represented that the accreditation candidacy process would need to be completed during their first year. The school opened for the 2013/2014 school year.

In Idaho, accreditation of secondary grades is handled by the Northwest Accreditation Commission (NWAC). The three stages of the accreditation process consist of applicant status, candidacy status and full accreditation. NWAC will allow schools to remain in applicant status for up to two years, but it is not common or desirable for schools to take two years. The school's failure to achieve candidacy status in its first year of operation will result in credits earned by the students not being recognized or accepted at other schools or institutions. Odyssey's Board was well aware of the importance of accreditation. NWAC has a detailed website which explains the steps in the accreditation process and what needs to be done. The evidence also indicates that NWAC was available and did offer to provide any assistance to Odyssey that NWAC could.

During the 2013 Legislative Session, the Idaho Legislature adopted a statute requiring that all charter schools sign performance certificates with their authorizing entity. A collaborative process was established by the Commission to accomplish that. Tamara Baysinger and Alison Henken participated in conversations with the Odyssey School Administrator, Karl Peterson and Odyssey Board members, to discuss the terms of the Odyssey Performance Certificate. Those collaborative telephonic meetings occurred on February 10, March 4 and March 13, 2014. During those meetings, Tamara Baysinger reminded Odyssey that the subcommittee would be meeting on March 20, 2014 to review the Odyssey Performance Certificate. During those collaborative telephonic meetings, it was fully disclosed that the Commission was proposing that candidacy status needed to be achieved by Odyssey by June 30, 2014.

There was a meeting of the Performance Certificate sub-committee on March 20, 2014, which Odyssey did not attend. The evidence indicates Odyssey did not receive written notice because

of email address problems, but the evidence establishes Odyssey received oral notice of that subcommittee meeting.

At the March 20, 2014, the subcommittee voted not to make any recommendation on whether to approve the terms of Appendix A because Odyssey had not been in attendance. Odyssey was notified of the results of the subcommittee meeting March 24, 2014 and Odyssey was advised they did need to attend and participate in the Commission meeting scheduled for April 17, 2014.

Odyssey representatives did participate in the April 17, 2014 meeting. The minutes of that meeting were admitted as Exhibit C9. Page 11 of Exhibit C9 indicates that Carrie Reynolds, Andrew Whitford, Chris Peterson and Karl Peterson represented Odyssey by telephone at that Commission meeting. Pages 11 and 12 indicate that discussion occurred regarding the status of the Odyssey accreditation process. Dr. Kleinert with NWAC indicated the candidacy status is usually achieved within the first year and full accreditation in year two. Dr. Kleinert indicated it would be “really difficult” but not impossible, to achieve candidacy status by June 30, 2014.

At the meeting of April 17, 2014, the Public Charter School Commission approved the Performance Certificate. Odyssey signed the Performance Certificate on April 21, 2014. That Performance Certificate clearly provided that accreditation candidacy status be achieved by June 30, 2014.

As part of the accreditation process, Odyssey did not apply with NWAC for accreditation until late September, 2013, rather than July 1, 2013, which Vikki Reynolds had recommended. A NWAC representative, Steve Young, first met with the school administrator on November 13, 2013. The accreditation process could not begin on that date because Odyssey failed to correctly complete the necessary self assessment forms. Mr. Young reported that Karl Peterson had completed the self-assessment himself, rather than obtaining staff input into the process as required by NWAC.

Another readiness review was scheduled for December 16, 2013. That Report of Readiness was admitted as Exhibit E1.vii. Mr. Young's Report of Readiness for Accreditation: Schools is dated January 6, 2014. Mr. Young recommended that Odyssey be accepted for candidacy status. However, on February 13, 2014, the State Director, Dr. Kleinert, refused to approve Odyssey for candidacy status because he felt there were too many areas which still needed improvement. NWAC policies provide that report should have been provided 30 days after the visit.

Dr. Kleinert sent Karl Peterson a letter dated February 13, 2014, with an itemized list of what additional areas needed improvement. He indicated that those areas were not insurmountable and must be addressed before candidacy could be approved. The letter further indicates that NWAC was available to assist Odyssey to prepare for the next steps in accreditation. That letter reaffirmed the NWAC policy that schools could remain in applicant status for up to two years from the initial application date. However, at the hearing, Dr. Kleinert testified that the Performance Certificate requirements would control over NWAC policies.

Between February 13, 2014, and April 16, 2014, Odyssey made no contact with NWAC. On or around April 16, 2014, Odyssey submitted a summary responding to the identified areas which needed improvement and Dr. Kleinert promptly provided his written response to their proposals with further recommendations. (Exhibit E1, ix.)

In an email sent to Karl Peterson on April 30, 2014, Dr. Kleinert acknowledged another email from Karl Peterson on April 29, 2014, indicating Odyssey was working toward meeting requirements. Dr. Kleinert again offered to provide help to get Odyssey moved to candidacy.

On April 30, 2014, a member of the Board, Andrew Whitford, sent Dr. Kleinert an email indicating that the Board was working hard to meet the accreditation deadline and asked Dr. Kleinert to contact him to obtain clarification on what Odyssey was lacking. Dr. Kleinert forwarded his prior email to Karl Peterson on those issues.

The third readiness review visit was scheduled for May 28, 2013, just before the end of the school year. No evidence was presented on why Odyssey did not schedule the third visit sometime between February 14, 2014, and May 28, 2014.

On May 28, 2014, a team of four members conducted an almost all day review at Odyssey. The review report is admitted as Exhibit E1, xi. The review still found multiple areas needing improvement. By letter dated June 11, 2014, NWAC notified Odyssey that candidacy status had not been approved.

Consequently, by letter dated June 17, 2014, the Public Charter School Commission issued a Notice of Intent to Revoke Odyssey's charter for failure to comply with Performance Certificate by failing to obtain candidacy status by June 30, 2014.

During the evidentiary hearing, Odyssey contended that it was impossible to meet the June 30, 2014 deadline. However, the evidence clearly establishes that if Odyssey had actively pursued its accreditation application, the process could have been completed.

Odyssey further argues that the Commission knew that the Odyssey administrator was ineffective and that it was impossible to meet that condition. It is not the responsibility of the Commission to select school administrators or to control their performance. In the Performance Certificate, Section 4 clearly provides that is not the Commission's role or responsibility to control personnel or the manner in which the school operates. The Commission's role is clearly to evaluate the school's outcomes.

The Hearing Officer finds that Odyssey has failed to comply with its Performance Certificate requiring that candidacy status be achieved by June 30, 2014.

## CONCLUSIONS OF LAW

Idaho Code §33-5205B is the statute adopted by the 2013 Legislature which requires that charter schools execute Performance Certificates with their authorized chartering entity.

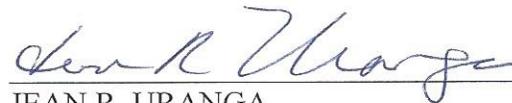
Idaho Code §33-5209C(7) allows an authorizing entity to revoke a charter if a charter school fails to meet required conditions. The right to revoke is discretionary with the authorizing entity.

IDAPA 08.02.04.303 sets forth the administrative rules governing proceedings for revocation. That rule allows the authorized chartering entity to revoke a charter, pursuant to the Administrator Procedure Act, if the public charter school has failed to meet any of the specific, written conditions set forth in the Performance Certificate. IDAPA 08.02.04.303.03 clearly states that the authorizing entity “may” revoke a charter. Consequently, an authorizing chartering entity also has the authority not to revoke a charter, in their discretion.

## RECOMMENDED ORDER

It is recommended that the Commission, in the exercise of its discretion, determine whether Odyssey’s charter should be revoked.

DATED This 28 day of August, 2014.



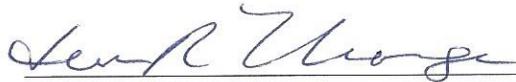
JEAN R. URANGA  
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 28 day of August, 2014, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER by emailing copies thereof to:

Jennifer Swartz  
Deputy Attorney General  
Office of the Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0036  
**VIA EMAIL: [jennifer.swartz@osbe.idaho.gov](mailto:jennifer.swartz@osbe.idaho.gov)**

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JEAN R. URANGA

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Idaho State Bar No. 1763

BEFORE THE PUBLIC CHARTER SCHOOL COMMISSION  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN RE: ODYSSEY CHARTER SCHOOL, )  
INC., ) Case No. 2014-01  
)  
A Public Charter School, ) SCHEDULE OF REVIEW OF  
) RECOMMENDED ORDER  
)  
\_\_\_\_\_ )

The Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order ("the Recommended Order") shall be reviewed by the agency head, the Board, in accordance with the following schedule:

1. This is a Recommended Order of the Hearing Officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this Recommended Order with the Hearing Officer issuing the Order within fourteen (14) days of the service date of this Order. The Hearing Officer issuing this Recommended Order will dispose of any petition for reconsideration within twenty-one (21) days after filing of the petition, or the petition will be considered denied by operation of law. *See* Idaho code §67-5243(3).

2. Within twenty-one (21) days after (a) the service date of this Recommended Order, (b) the service date of a denial of a petition for reconsideration from this Recommended Order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this

Recommended Order, any party may in writing support or take exceptions to any part of this Recommended Order and file briefs in support of the party's position on any issue in the proceeding.

3. Written briefs in support of or taking exceptions to this Recommended Order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final Order. The Board will issue a final Order within fifty-six (56) days of receipt of the written briefs or oral arguments, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final Order.

DATED This 28 day of August, 2014.



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JEAN R. URANGA  
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 28 day of August, 2014, I served true and correct copies of the foregoing SCHEDULE FOR REVIEW OF RECOMMENDED ORDER by emailing copies thereof to:

Jennifer Swartz  
Deputy Attorney General  
Office of the Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0036  
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JEAN R. URANGA