



February 19, 2015

Ernest Green  
Board Chair  
Dorothy I. Height Community Academy Public Charter School  
1351 Nicholson Street, NW  
Washington, DC 20011  
*Via Electronic Mail (egreen@matrixadv.com)*

**Re: Dorothy I. Height Community Academy Public Charter School**

Dear Mr. Green:

This letter serves to inform you that at its meeting held on February 19, 2015, the DC Public Charter School Board (“PCSB”) unanimously voted to revoke the charter of Dorothy I. Height Community Academy Public Charter School (“CAPCS”), effective June 30, 2015. PCSB determined that CAPCS engaged in a pattern of fiscal mismanagement, and CAPCS’s Board of Trustees breached its fiduciary duties in violation of the School Reform Act.

Please find enclosed PCSB’s written decision addressing the reasons for the revocation in detail. We look forward to working with CAPCS to ensure that students are able to effectively complete this school year and enroll in new schools next year. Should you have any questions, please feel free to call Scott Pearson, PCSB’s Executive Director, at 202-328-2660.

Sincerely,

John H. “Skip” McKoy  
PCSB Board Chair

cc: A. Scott Bolden, Counsel to CAPCS  
Jennie Niles, Deputy Mayor of Education  
Phil Mendelson, Council Chair  
Kenyan McDuffie, Councilmember, Ward 5  
Dr. Amy Maisterra, Interim State Superintendent of Education



## **Charter Revocation Decision Statement Dorothy I. Height Community Academy Public Charter School**

In a public meeting held on December 15, 2014, the DC Public Charter School Board (“PCSB” or “Board”) voted to initiate charter revocation proceedings against Dorothy I. Height Community Academy Public Charter School (“CAPCS”) pursuant to the District of Columbia School Reform Act of 1995, D.C. Code Ann. §§ 38-1800 *et seq.* (the “SRA”). On January 27, 2015, at CAPCS’s request, PCSB held an informal hearing, as required by the SRA, concerning the proposed revocation. During the informal hearing, representatives of CAPCS and members of the public made statements on the record regarding the proposed revocation, and CAPCS and other members of the public subsequently provided PCSB with additional materials for consideration in its decision. Having carefully studied the available evidence, including oral and written testimony, public statements, and written submissions, PCSB has determined that CAPCS has engaged in a pattern of fiscal mismanagement and that its Board of Trustees has breached its fiduciary duties. Accordingly, the CAPCS charter must be revoked. This Decision Statement further explains the basis for the PCSB’s determination.

### **I. BACKGROUND**

#### **A. The D.C. Public Charter School Board**

In 1996, Congress passed the SRA, authorizing the creation of public charter schools in the District of Columbia and naming PCSB as an eligible chartering authority. D.C. Code § 38-1800.02(17)(B). Initially, PCSB shared oversight of the city’s public charter schools with the

District of Columbia Board of Education (“BOE”), but with the passage of the Public Education Reform Amendment Act of 2007 and subsequent dissolution of the BOE, PCSB became the sole chartering authority for the District. As part of that transition, responsibility for all charter schools that were authorized by the BOE was transferred to PCSB in 2008.

The SRA grants PCSB discretion to revoke the charter of any public charter school that (1) violates applicable law (including the SRA’s own mandate that a charter school’s board of trustees serve as fiduciaries, *see infra* at 30); (2) materially violates its charter; or (3) fails to meet its student achievement goals. D.C. Code § 38-1802.13(a). In cases where PCSB determines that a school has engaged in a pattern of fiscal mismanagement, PCSB is statutorily required to revoke the school’s charter. *Id.* § 38-1802.13(b). At least every five years, PCSB must review a school’s charter to determine if the charter should be revoked for any of these reasons. *Id.* § 38-1802.12.

The SRA sets forth a straightforward set of procedures PCSB must follow to revoke a charter. *See id.* § 38-1802.13(c). PCSB must (1) provide “written notice” to the school of the initiation of revocation proceedings, “stating the reasons for the proposed revocation” and the school’s right to request an “informal hearing”; (2) hold an “informal hearing” on the proposed revocation within 30 days of the school’s request for such a hearing; and (3) render a final written decision on the matter within 30 days of the notice if no hearing is requested or within 30 days of the informal hearing if one is held. *Id.*

## B. CAPCS

CAPCS was founded in 1998 by Kent Amos and was granted an initial 15-year charter by the BOE that same year. Mr. Amos served as CEO of CAPCS until 2004. Since its establishment, CAPCS has opened a total of six campuses, including one online campus. Two of those campuses were required to close for academic reasons. According to PCSB records, as of

December 3, 2013, the remaining four campuses served 1,573 students. (*See* PCSB Internal Enrollment Data for CAPCS.)

In November 2011, PCSB conducted a periodic review of CAPCS and concluded that CAPCS was in violation of certain terms of its charter and had failed to meet goals and student academic achievement expectations, particularly with respect to one of its campuses, Rand. As a result, PCSB voted to propose revocation of the CAPCS charter. After the CAPCS Board voted to close the Rand campus at the end of the 2011-2012 school year, PCSB decided not to pursue revocation of the CAPCS charter. (*See* 2012-13 Preliminary Charter Renewal Report, Community Academy Public Charter School, Mar. 11, 2013 (“2013 Charter Renewal Report”), at 4.)

In 2013, CAPCS applied for a charter renewal, as its initial 15-year charter was expiring. As part of the charter renewal process, PCSB reviewed financial and academic performance data concerning CAPCS. PCSB concluded that CAPCS substantially met its goals and student academic achievement expectations, except at its Amos 3 campus. (*Id.* at 4.) At that time, PCSB found no indication of fiscal mismanagement based on the evidence then before it and therefore raised no concerns with respect to the school’s accounting and internal controls. (*Id.* at 50.)

PCSB, however, did raise an issue concerning CAPCS’s contract and relationship with a management company, Community Action Partners and Charter School Management LLC (“CAPCSM”), and requested additional information regarding CAPCSM from CAPCS. (*Id.* at 40-46.) PCSB expected to gain further “clarity in the distinction between the roles and responsibilities of the CAPCS Board of Trustees and that of the management company” from its continued conversations with CAPCS.<sup>1</sup> (*Id.* at 47.) Ultimately, PCSB voted to renew the

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<sup>1</sup> CAPCS ultimately never complied with this request, nor with any of the many similar requests PCSB has made to CAPCS concerning the role of CAPCSM.

CAPCS charter on the condition that it close the one academically underperforming campus, Amos 3. (*Id.* at 3.) That campus closed at the end of the 2013-2014 school year, leaving four active campuses, including the online school. (*Id.*)

Also in 2013, PCSB placed CAPCS in “Fiscal 3” status, which indicates that the school’s weak financials required monthly monitoring by PCSB to attempt to mitigate the risk of insolvency. Specifically, CAPCS ran an operating deficit of \$2.77 million during that year and saw its net assets decline by almost 50%. It also reported a negative cash flow of almost \$500,000 and had a current ratio of 0.5, which means its short-term liabilities were twice its short-term assets. (*See* D.C. Public Charter School Financial and Audit Review (“FAR”) Report, FY 2013, at 23.) These weak financials also led CAPCS in October 2013 to notify the insurer of its \$25 million bond issue that it had breached one of the financial covenants of these bonds, resulting in an “event of default.” (*Financial Review for ACA Financial Guaranty Corp.*, Afton Partners (“Afton Report”), at 4; Letter from ACA Fin. Guar. Corp. to PCSB, Jan. 30, 2015, Annex A, at 2.) As a result, the insurer imposed a regime controlling disbursement of cash to CAPCS based on an approved budget. (*Id.*) Around the same time, S&P downgraded CAPCS’s bond rating. (*See* Naomi Jagoda, *S&P Downgrades Bonds for D.C. Charter School due to Pending Litigation*, THE BOND BUYER, (Sept. 30, 2014), available at <http://www.bondbuyer.com/news/regionalnews/s-and-p-downgrades-bonds-for-dc-charter-school-due-to-pending-litigation-1066549-1.html>.)

### C. **CAPCSM**

In 2004, Mr. Amos left his employee position at CAPCS to serve as Chief Executive Officer of Community Action Partners and Charter School Management, LLC (“CAPCSM”), a for-profit company, which, according to Mr. Amos, would provide management services to CAPCS and other charter schools. In proposing that the CAPCS Board retain CAPCSM to

manage its operations, Mr. Amos explained that he and many other current employees of CAPCS would perform the same duties they previously performed but would be employed through the management company rather than the school, thus amounting to a “change in form rather than substance.” (CAPCS Board Minutes, July 19, 2004.) CAPCSM initially consisted of three members: Mr. Amos, the CEO, who owned 60% of the company; Wendell T. Butler, who served as Chief Operating Officer and owned 20% of the company; and Leonard A. Upson, who served as Chief Academic Officer and also owned 20% of the company. (CAPCSM Operating Agreement, Feb. 1, 2002, at ¶ 27; Hall Decl. ¶ 22.) Both Mr. Butler and Mr. Upson had performed those same roles as employees of CAPCS before moving to CAPCSM. (CAPCS 2003 IRS Form 990.) Mr. Butler and Mr. Upson left CAPCSM in June 2012, at which point their interests were repurchased by the company, thus leaving Mr. Amos as sole owner. (CAPCSM Financial Statements 2011 and 2012, at 8; Interview of Leonard (Tony) Upson, Mar. 12, 2014 (“Upson Interview”), at 18:5-10; CAPCS Board Minutes, Nov. 14, 2012.)

The CAPCS Board of Trustees agreed to Mr. Amos’s proposal and retained CAPCSM pursuant to a management agreement in 2004. (*See* The Community Academy Public Charter School, Inc. and The Community Action Partners and Charter School Management LLC Management Agreement, dated July 19, 2004 (“2004 Management Agreement”).)<sup>2</sup> That agreement required CAPCSM to provide to CAPCS an operations plan and budget each year, including “salaries for . . . all senior CAPCSM staff.” (*See* 2004 Management Agreement at 8.1(c).) The 2004 Management Agreement provided for a management fee not to exceed 10% of CAPCS’s per-pupil allocation without prior Board approval, but it was amended in June 2005 to

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<sup>2</sup> According to testimony, CAPCS did not engage in a formal RFP process for the 2004 management agreement because the Board of Education, which regulated CAPCS at the time, did not require such a process. (*District of Columbia v. Community Action Partners and Charter School Management, LLC and Kent Amos*, 2014 CA 3399, Preliminary Injunction Evidentiary Hr’g Tr., Sept. 23-26, 2014, at 525:10-20.)

provide for a fee not to exceed 5% of the annual school revenue, unless otherwise determined by the Board. (*See* 2004 Management Agreement at 8.1(c); CAPCS Board Minutes, June 21, 2005.)

The 2005 Amendment also required the CAPCS Board to approve the salaries of senior CAPCSM staff on an annual basis. (CAPCS Board Minutes, June 21, 2005.)

The management agreement between CAPCSM and CAPCS was renewed in 2007. (*See* The Community Academy Public Charter School, Inc. and The Community Action Partners and Charter School Management LLC Management Agreement, dated March 28, 2007 (“2007 Management Agreement”).)<sup>3</sup> Like the 2004 Management Agreement, the 2007 Management Agreement required CAPCSM to include the “salaries and benefits for all CAPCSM LLC staff working under this Agreement” in the annual budget it provided to the Board of Trustees for approval. (*See* 2007 Management Agreement at 8.1(c).) Under the 2007 Agreement, CAPCSM received a “fixed-fee,” which could not exceed 9% of the CAPCS annual gross revenue and which was intended to “represent[] CAPCSM LLC staffs [sic] salaries and benefits working under th[e] Agreement.” (*Id.*) The 2007 Agreement also allowed for a contingency fee of up to 3% of CAPCS gross revenue per year based on “satisfactory management of CAPCS operations.” (*Id.*)

In January 2013, during the fifteen-year charter renewal process, PCSB informed CAPCS that its five-year contract with CAPCSM had expired the year before and that CAPCSM and CAPCS were operating the school without an effective contract. (Letter from S. Pearson and B. Jones to T. Chili, Jan. 11, 2013.) As a result, CAPCS and CAPCSM retroactively amended the 2007 Management Agreement to extend its term to June 30, 2013. (*See* Letter from E. Green to

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<sup>3</sup> According to testimony, CAPCS did not engage in a formal RFP process for the 2007 management agreement because that agreement was essentially a renewal or extension of the 2004 agreement, which had not expired. This renewal was prompted by certain requirements imposed by a bank that made a loan to CAPCS. (*District of Columbia v. Community Action Partners and Charter School Management, LLC and Kent Amos*, 2014 CA 3399, Preliminary Injunction Evidentiary Hr’g Tr., Sept. 23-26, 2014, at 524:24-525:9.)

S. McKoy and S. Pearson, Mar. 6, 2013.) Subsequently, in June 2013, CAPCS issued a public Request for Proposals (“RFP”), seeking bids for outside companies to provide management services to CAPCS. (*See* Request for Proposals, Wash. Post, June 21, 2013.) The RFP was open for seven calendar days. (*See id.*) Although CAPCS received interest from several companies, only CAPCSM submitted a final proposal. (CAPCS Board Minutes, July 8, 2013.) The CAPCS Board of Trustees reviewed and approved the CAPCSM proposal and, in August 2013, CAPCS and CAPCSM entered into a new 15-year agreement for management services. (*See* Dorothy I. Height Community Academy Public Charter School, Inc. and The Community Action Partners and Charter School Management LLC Management Agreement, dated August 8, 2013 (“2013 Management Agreement”).)

In the 2013 Management Agreement, the parties amended the section on fees, removing the requirement—found in both the 2004 and 2007 Agreements—that CAPCSM include salaries for its employees working under the Agreement in the annual operations plan and budget. (*Compare* 2004 Management Agreement at 8.1(c) and 2007 Management Agreement at 8.1(c), *with* 2013 Management Agreement at 8.1(c).) While the 2013 Management Agreement still provided for a fixed-fee, the agreement set CAPCSM’s fee<sup>4</sup> at 10% of CAPCS’s annual gross revenue.<sup>5</sup> (*See id.*) CAPCSM was also entitled to a contingency fee for up to 3% of CAPCS’s gross annual revenue under the 2013 Management Agreement. (*See id.*)

Each of the management agreements set forth the responsibilities of CAPCSM with respect to the school. Under the 2004, 2007, and 2013 Management Agreements, CAPCSM was

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<sup>4</sup> In January 2014, the CAPCS Board voted to amend the 2013 Agreement so that “in no event shall the Fixed Fee exceed 10% of CAPCS gross annual revenue.” (*See* CAPCS Board Minutes, Jan. 16, 2014). Nonetheless, CAPCS has not provided PCSB with an amendment to the 2013 Agreement signed by both parties.

<sup>5</sup> The 2013 Management Agreement provided CAPCS with the right to a 10% reduction in the fee in order to ensure that it would meet its operational expenses for a given year. In addition, the parties could agree to a reduction beyond 10% of the fee if necessary. CAPCSM, however, had the right to “recapture” the reduced fee for any year during the term of the agreement. (*Id.* at 8.1(c)(6).)



responsible for: (1) “management of repairs and capital improvements at all CAPCS facilities”; (2) “development of a technology program,” including “curriculum development and the acquisition and installation of devices and equipment”; (3) ensuring board consultation and approval for all acquisitions and improvements not contained in the budget; (4) “management of the cleaning, maintenance, and operation of the school facilities”; and (5) “providing food service for CAPCS” and “arrang[ing] for transportation of CAPCS students if and to the extent requirement by the Charter Contract or applicable law.” (2004 Management Agreement at 4.2; 2007 Management Agreement at 4.2; 2013 Management Agreement at 4.2.) The 2013 Management Agreement gave CAPCSM several additional areas of responsibility, including: (1) “operat[ing] in accordance with Generally Accepted Accounting Principles and other generally accepted standards of fiscal management and sound business practices”; and (2) “comply[ing] with the public notice and bid requirement” for “all contracts entered into on behalf of CAPCS in the amount of \$25,000 or greater.” (2013 Management Agreement at 4.2.)

Under all of the management agreements, CAPCSM is given “power and authority” over: (1) “prepar[ing] a budget”; (2) “performing the personnel services set forth [in the agreements],” including “maintain[ing] responsibility for all personnel records and payroll services, develop[ing] and maintain[ing] employee policy manuals and policy and procedures manuals, [and] determin[ing] and implement[ing] staff training and development needs”; and (3) “perform[ing] the business administration of the school,” including “maintain[ing] responsibility for all of CAPCS’s financial records” and “prepar[ing] all required audits.” (See 2004 Management Agreement at 3.2; 2007 Management Agreement at 3.2; 2013 Management Agreement at 3.2.)

CAPCSM was further responsible for: (1) “developing, in consultation with the [CAPCS] Board and CAPCS staff, an educational design and school philosophy” and “providing a comprehensive and detailed curriculum, pedagogical materials, grade-by-grade learning standards and assessments, and methods and tools that will be standardized across all grades and categories of students,” (*see* 2004 Management Agreement at 3.4; 2007 Management Agreement at 3.4; 2013 Management Agreement at 3.4); (2) “recruitment of students for CAPCS,” in conjunction with CAPCS, (*see* 2004 Management Agreement at 6.1-6.2; 2007 Management Agreement at 6.1-6.2; 2013 Management Agreement at 6.1-6.2); (3) “select[ing] and hold[ing] accountable the teachers and the non-instructional staff of CAPCS,” (*see* 2004 Management Agreement at 9.3; 2007 Management Agreement at 9.3; 2013 Management Agreement at 9.3); and (4) “providing training in its methods, curriculum, program, and technology to all teaching personnel on a regular and continual basis,” (*see* 2004 Management Agreement at 9.5; 2007 Management Agreement at 9.5; 2013 Management Agreement at 9.5).

Based on the management agreements, CAPCS paid CAPCSM increasingly large fees each year, as demonstrated in the chart below.

<b><u>Time Period</u></b>	<b><u>Fee Amount</u></b>	<b><u>Source</u></b>
August 1, 2004 to September 30, 2005	\$784,349	CAPCS 2004 IRS Form 990
July 1, 2005 to June 30, 2006	\$993,138	CAPCS 2005 IRS Form 990
July 1, 2006 to June 30, 2007	\$1,445,620	CAPCS 2006 IRS Form 990
July 1, 2007 to June 30, 2008	\$1,359,743	CAPCS 2007 IRS Form 990
July 1, 2008 to June 30, 2009	\$1,030,348	CAPCS 2008 IRS Form 990
July 1, 2009 to June 30, 2010	\$1,300,000	CAPCS 2009 IRS Form 990
July 1, 2010 to June 30, 2011	\$1,100,000	CAPCS 2010 IRS Form 990
July 1, 2011 to June 30, 2012	\$2,056,536	CAPCS 2011 IRS Form 990
July 1, 2012 to June 30, 2013	\$2,372,970	CAPCS FY 2013 Audit
August 8, 2013 to June 30, 2014	\$2,190,000	CAPCS Board Minutes, Jan. 16, 2014
July 1, 2014 to June 30, 2015	\$2,330,000	CAPCS Board Minutes, Jan. 16, 2014

In January 2013, as part of the charter renewal process, PCSB asked CAPCS to provide additional information regarding CAPCSM's fee structure, including: (1) information on the operations plan and invoices submitted from CAPCSM to CAPCS under the then-effective 2007 Management Agreement; (2) invoices for contingent fees paid to CAPCSM; and (3) a schedule of the salaries for the three highest-paid employees of CAPCSM. (*See* Letter from S. Pearson and B. Jones to T. Chili, Jan. 11, 2013.) CAPCS responded to PCSB's request by stating that it had not received operations plans or invoices from CAPCSM (even though such documentation was required by the 2007 Management Agreement), and that it did not have information on the salaries of CAPCSM's employees, which CAPCS contended was CAPCSM's confidential business information. (*See* Letter from E. Green to B. Jones, Feb. 14, 2013.) Eventually, CAPCS provided PCSB with a budget submitted by CAPCSM for the 2011-2012 school year. (*See* Letter from E. Green to S. McKoy and S. Pearson, Mar. 6, 2013.) The budget, however, did not include salaries for individual employees, as required by the 2007 Management Agreement. According to this budget, CAPCSM estimated its total costs for 2011-2012 at \$1,472,516. (*See id.* (Attachment - CAPCSM Statement of Activities for the Periods Ended FY 2011-12).) In contrast, the management fee for that same school year was \$2,056,536. (Charter Audit Resource Management Annual Financial Report, June 30, 2012 ("CHARM Report") at 2.)

Since its creation in 2004, CAPCSM has not provided management services to any charter school besides CAPCS. (CAPCSM Financial Statements 2011 and 2012 at 8; *see also* Declaration of Nancy Hall, Aug. 19, 2014 ("Hall Decl.") at ¶ 21; Declaration of Albert A. Vondra, Aug. 20, 2014 ("Vondra Decl.") at ¶ 12(e).) In addition, CAPCSM does not maintain its own offices, but instead uses space in one of CAPCS's campuses. (Interview of Sandy Wallace, Mar. 11, 2014 ("Wallace Interview") at 52:2-5; Interview of Wesley Harvey, Mar. 12,

2014 (“Harvey Interview”) at 44:7-21.) CAPCS also provides both email services and health insurance for CAPCSM employees. (*District of Columbia v. Community Action Partners and Charter School Management, LLC and Kent Amos*, 2014 CA 3399 (“*D.C. v. CAPCSM*”), Preliminary Injunction Evidentiary Hr’g Tr., Sept. 23-26, 2014 (“PI Hr’g Tr.”) at 522:16-523:10.) Mr. Amos and other employees of CAPCSM frequently hold themselves out as employees of CAPCS. (Vondra Decl. ¶ 10(e); Hall Decl. ¶ 27; CAPCS 2005-2010 IRS Forms 990.)

**D. OAG Investigation and Litigation**

On June 2, 2014, the D.C. Office of the Attorney General (“OAG”) filed a civil lawsuit in D.C. Superior Court against CAPCSM and Mr. Amos, seeking declaratory relief for alleged violations of the D.C. Nonprofit Corporation Act, D.C. Code §§ 29-401 *et seq.* (*See D.C. v. CAPCSM*, Complaint, June 2, 2014.) The complaint alleged that CAPCS improperly diverted its operating revenues derived from public funds to the benefit of CAPCSM and Mr. Amos. (*Id.* ¶¶ 1, 17.) For example, the OAG alleged that CAPCSM was paid to provide services that were already being provided by CAPCS staff. (*Id.* ¶¶ 24-26.) The OAG further alleged that CAPCSM fees increased over the years even though its number of employees and the services provided declined. (*Id.* ¶ 28.) On July 23, 2014, the OAG amended the complaint to add CAPCS as a co-defendant, after the CAPCS Board of Trustees declined to terminate its contract with CAPCSM. (*See D.C. v. CAPCSM*, Amended Complaint, July 23, 2014.)

The OAG moved for a preliminary injunction in August 2014 to halt further payments from CAPCS to either CAPCSM or Mr. Amos. (*See D.C. v. CAPCSM*, Docket: Motion for Preliminary Injunction, Aug. 20, 2014.) A six-day evidentiary hearing was held before Judge Neal Kravitz in September and October 2014. (*See D.C. v. CAPCSM*, Docket: Preliminary Injunction Evidentiary Hr’g, Sept. 23-26, 2014; *D.C. v. CAPCSM*, Preliminary Injunction

Decision Hr'g Tr., Oct. 27, 2014 (“PI Decision Hr'g Tr.”) at 3:25-4:8.) At the hearing, CAPCS was represented by counsel. (*See* PI Decision Hr'g Tr. at 3:10-14.) The court heard live testimony from various experts, through direct and cross examination, as well as from members of the CAPCS Board of Trustees. (*See, e.g., id.* at 16:20-25, 17:8-11, 22:5-24.) The court also reviewed documents presented by both sides. (*See, e.g., id.* at 10:25, 11:1-4, 38:18-20.) On October 27, 2014, Judge Kravitz announced orally his findings of facts and conclusions of law and granted the OAG’s preliminary injunction motion. (*See generally id.*)

Based on the documentary and testimonial evidence presented, Judge Kravitz concluded, “it is essentially undisputed that for the past several years, CAPCS employees have performed many of the duties and responsibilities to be undertaken by CAPCSM under the terms of the 2007 and the 2013 management agreements.” (*Id.* at 24:24-25:2.) Judge Kravitz further found, “[w]ith CAPCS employees covering so many of the duties and responsibilities assigned to CAPCSM under the management agreement, the overall administrative and management costs for CAPCS have gone up to nearly double what they should be and CAPCSM has been able to pay well over a million dollars a year to Mr. Amos in income.” (*Id.* at 25:13-18.) With respect to the CAPCS Board of Trustees, Judge Kravitz concluded that the “record is abundantly clear that the CAPCS Board has not acted with reasonable care and diligence in protecting the funds and other resources of CAPCS,” (*id.* at 28:11-13), and that its conduct was “an abdication of the responsibility of the Board.” (*Id.* at 29:13-14). Judge Kravitz also concluded that the CAPCS Board of Trustees breached “the public trust.” (*Id.* at 31:3.) Judge Kravitz granted the

preliminary injunction, restraining CAPCS from making any further payments to CAPCSM or Mr. Amos. (*See D.C. v. CAPCSM*, Preliminary Injunction Order, Oct. 27, 2014.)<sup>6</sup>

E. **Revocation Proceedings**

Upon obtaining and reviewing the documents and testimony from the OAG litigation, as well as Judge Kravitz's October 27, 2014, factual findings, PCSB considered whether the SRA required it to revoke the CAPCS charter based on a pattern of fiscal mismanagement. As a result of its review of the relevant evidence and the charter revocation provisions of the SRA, PCSB staff drafted a memorandum for the PCSB members summarizing its findings with respect to CAPCS's fiscal mismanagement and recommending that the PCSB initiate revocation proceedings. (*See* PCSB Memorandum re: Initiating Revocation of CAPCS's Charter, Dec. 15, 2014 ("December 15 Memorandum").) PCSB staff provided this memorandum to CAPCS before placing the memorandum on the public record. (*See* Email from N. Streeter to A. Scott Bolden, Dec. 15, 2014, 2:27 PM.) PCSB then held a public meeting on December 15, 2014 to determine whether PCSB should initiate charter revocation proceedings against CAPCS. (*See generally* Public Charter School Board, Public Meeting Transcript, Dec. 15, 2014.) At the meeting, PCSB staff presented its recommendation that PCSB initiate revocation proceedings. PCSB staff's presentation included information about the relationship between CAPCS and CAPCSM, the allegations of a pattern of fiscal mismanagement of CAPCS funds, and the allegations of breach of the Board of Trustee's fiduciary duties. (*See id.* at 4-27.) Counsel for CAPCS then made a statement challenging PCSB staff's proposal. (*See id.* at 27-40.) Counsel for Mr. Amos also presented at the meeting in support of CAPCS. (*See id.* at 40-55.) At the

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<sup>6</sup> The court issued an order on December 1, 2014, clarifying that under its preliminary injunction ruling, CAPCS could make payments to Mr. Amos as a direct employee of CAPCS. (*See D.C. v. CAPCSM*, Preliminary Injunction Clarifying Order, Dec. 1, 2014.)

conclusion of the meeting, PCSB voted to initiate charter revocation proceedings against CAPCS. (*See id.* at 57:5-20.)

Two days after the vote, on December 17, 2014, PCSB's General Counsel formally notified CAPCS, via letter sent by email to its legal counsel, that PCSB had initiated charter revocation proceedings. (*See* Email from N. Streeter to A. Scott Bolden, Dec. 17, 2014, 2:52 PM; Letter from N. Streeter to A. Scott Bolden, Dec. 17, 2014.) Pursuant to the SRA, the notice letter informed CAPCS of its right to an informal hearing, (*see* Letter from N. Streeter to A. Scott Bolden, Dec. 17, 2014), and included a memorandum stating the reasons for the initiation of charter revocation proceedings, (*see* December 15 Memorandum). In particular, the December 15 Memorandum provided information about the relationship between CAPCS and CAPCSM, including the relevant contracts and fees paid. (*See* December 15 Memorandum at 2-6.) The December 15 Memorandum also indicated that PCSB staff, in its proposal, concluded that the relationship between CAPCS and CAPCSM, and the CAPCS Board of Trustees' role in approving that relationship, were sufficient grounds for PCSB to initiate revocation proceedings on the grounds of (1) a misuse of public funds that amounted to a pattern of fiscal mismanagement and (2) breach of the Board of Trustees' fiduciary duties. (*See id.* at 7-9.)

On December 31, 2014, counsel for CAPCS informed PCSB that the CAPCS Board of Trustees "requests an informal hearing" pursuant to D.C. Code § 38-1802.13(c)(2). (*See* Email from A. Scott Bolden to N. Streeter, Dec. 31, 2014, 1:47 PM.) The informal hearing took place on January 27, 2015 at 6:30 PM at one of the CAPCS school campuses, Amos 5. At the hearing, PCSB staff made a fifteen-minute presentation outlining the reasons for the proposed revocation. Counsel for CAPCS then made a thirty-minute opening statement and subsequently questioned a CAPCS Board of Trustees member, Robert Hagans, regarding the CAPCS-CAPCSM

relationship for approximately 40 minutes. Finally, Mr. Amos made an approximately 30-minute statement on the record. At the conclusion of these presentations, PCSB members listened to statements from over 60 students, teachers and parents. (*See generally* CAPCS Response to Public Hr’g of Proposed Revocation of CAPCS, Feb. 2, 2015 (“CAPCS Post-Hr’g Submission”).) The hearing lasted approximately three-and-one-half hours.

After the informal hearing, PCSB kept the record open for five business days, as previously announced. PCSB received a post-hearing submission, including a memorandum, several sworn declarations, and multiple exhibits, from CAPCS. PCSB also received submissions from interested third parties, including the holder of a bond taken out by CAPCS. PCSB has included all such submissions as part of the official record.<sup>7</sup>

## II. **DECISION STATEMENT**

Based on a careful consideration of the evidence in the record, including but not limited to the management agreements, sworn testimony from the CAPCS Board, statements from Mr. Amos, numerous declarations, and various third-party reports and audits, PCSB finds that (1) CAPCS has engaged in a pattern of fiscal mismanagement and (2) the CAPCS Board of Trustees has breached its fiduciary duties. Before reaching this conclusion, PCSB considered all of the arguments presented by CAPCS, but finds them either unpersuasive or irrelevant for the reasons set forth more fully below. Accordingly, pursuant to its statutory authority and obligation under the SRA, PCSB hereby revokes the CAPCS charter effective June 30, 2015.<sup>8</sup>

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<sup>7</sup> Since before the informal hearing, PCSB has been engaged in negotiations with CAPCS to allow for an asset transfer, which would allow the CAPCS campuses to remain open under the control of another charter school. These negotiations failed to produce an agreement, however, because CAPCS has refused to relinquish its charter prior to such asset transfer. (*See* CAPCS Post-Hr’g Submission at 10-11; Email from A. Scott Bolden to M. Walsh & S. McKoy, Jan. 26, 2015, 8:37 PM.)

<sup>8</sup> In its post-hearing submission, CAPCS suggests that, should PCSB find a pattern of fiscal mismanagement or breach of fiduciary duty, it should nevertheless give CAPCS an opportunity to cure these problems, rather than revoke the charter. (CAPCS Post-Hr’g Submission at 4-5.) CAPCS points to several other schools, including Options Public Charter School, as to which PCSB decided, at least initially, not to revoke the charter. (*Id.*) But



A. **CAPCS Has Engaged In A Pattern of Fiscal Mismanagement**

The SRA requires PCSB to revoke the charter of a school if it determines that the school “[h]as engaged in a pattern of fiscal mismanagement.” *See* D.C. Code § 38-1802.13(b)(2).<sup>9</sup> The SRA does not define the term “a pattern of fiscal mismanagement,” nor does the legislative history provide any guidance on its interpretation. Thus, PCSB looks to the ordinary meaning of these words in determining what conduct constitutes a pattern of fiscal mismanagement. *See 1618 Twenty-First St. Tenants’ Ass’n v. Phillips Collection*, 829 A.2d 201, 203 (D.C. 2003) (“[T]he words of [a] statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. . . . In finding the ordinary meaning, the use of dictionary definitions is appropriate in interpreting undefined statutory terms.”) (internal citations and quotation marks omitted). PCSB views repeated misuse of public funds as “a pattern of fiscal mismanagement.” *Cf.* 19 Tex. Admin. Code § 8.1(10) (2014) (defining “gross fiscal mismanagement” to include “misuse of state funds”); *see also* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 857 (unabr. 1993) (defining “fiscal” as “of or relating to taxation, public revenues, or public debt management and policies” or “of or relating to financial matters generally”); *id.* at 1444 (defining “mismanagement” as “corrupt or improper management”); *id.* at 1657 (defining “pattern” as “a reliable sample of traits, acts, or other observable features

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none of those situations involved a finding of a pattern of fiscal mismanagement at the time the alternative measure was approved. The SRA mandates that PCSB revoke the charter in such cases; it does not permit PCSB to preserve a school’s charter notwithstanding a finding of a pattern of fiscal mismanagement in hopes that it will correct that conduct. *See* D.C. Code § 38-1802.13(b).

<sup>9</sup> Because Judge Kravitz has enjoined CAPCS from making further payments to CAPCSM, CAPCS contends that any “former concern over the use of public funds” cannot serve as a basis for revocation. (CAPCS Post-Hr’g Submission at 2.) CAPCS is mistaken for several reasons. First, the injunction entered by Judge Kravitz is only temporary and could lapse should the OAG proceedings terminate for any reason. Second, there is no requirement that a pattern of fiscal mismanagement produce an ongoing harm to serve as the basis for revocation. PCSB’s obligation under the SRA to revoke the charter of a school found to have engaged in a pattern of fiscal mismanagement exists regardless of whether anyone has been injured thereby, or whether that injury is solely in the past or will continue into the future. *See* D.C. Code § 38-1802.13(b)(2). In any event, CAPCS’s prior excessive payments to CAPCSM has had a lasting adverse impact on the students and schools, which have been deprived of those funds unjustifiably paid to the private company.

characterizing an individual”); BLACK’S LAW DICTIONARY 753 (10th ed. 2014) (defining “fiscal” as “[o]f, relating to, or involving financial matters” or “[o]f, relating to, or involving public finances or taxation”); *id.* at 1308 (defining “pattern” as “[a] mode of behavior or series of acts that are recognizably consistent.”).

In this context, “misuse” of public funds includes wasting the funds or not employing them for their intended purpose. As a public charter school, CAPCS receives funds from the District of Columbia according to a per-student formula. *See* D.C. Code §§ 38-1804.01, 38-1804.03; 38-2906.02. These funds are then used by CAPCS for the operation of the school. D.C. Code. § 38-1802.04(b)(3) (a public charter school has the power “to receive and disburse funds for public charter school purposes”); 38-1802.04(c)(16) (the public charter school’s “sole purpose shall be the operation of the public charter school.”); *see also* Articles of Incorporation of CAPCS, Feb. 5, 1998 (“CAPCS Articles of Incorporation”) at 1 (“The corporation is organized and shall be operated exclusively for educational, charitable, and scientific purposes. The primary object to be carried out by the corporation is the operation of community-based public charter school.”).

Based on its review of the record, PCSB finds that CAPCS engaged in a pattern of fiscal mismanagement because, for the past decade, CAPCS has been paying CAPCSM for services it has not received. The record identifies no marginal benefit that CAPCS has derived from its agreements with CAPCSM, as any services CAPCSM provided to the school were already being provided, in many cases by the exact same people, before the management company was created. Regardless, it is clear that, as CAPCS paid increasing fees to CAPCSM between 2004 and 2014, the services provided by CAPCSM to CAPCS decreased (if they were ever received at all), in direct violation of CAPCSM’s contractual obligations. *See infra* at 18-25. Instead of benefitting

the school, these fees were increasingly and improperly being used to unjustifiably enrich Mr. Amos (and, to a lesser extent, his wife, who was not even an employee of CAPCSM). *See infra* at 26-30. Public funds are not to be so carelessly wasted, and in light of this pattern of fiscal management, PCSB has a statutory duty to intervene.

1. **CAPCS Engaged in a Pattern of Fiscal Mismanagement By Paying Excessive Management Fees to CAPCSM For Services That CAPCSM Did Not Actually Provide.**

The record shows that, over the years, CAPCS grossly overpaid CAPCSM for various services that CAPCSM did not actually provide. Often, the services that CAPCS paid CAPCSM to provide were actually provided by CAPCS employees, resulting in what amounts to a double payment by CAPCS and a waste of public dollars. From August 2004 through June 30, 2013, CAPCS paid more than \$12,442,700 in fees to CAPCSM. As noted above, the fees have steadily increased each year,<sup>10</sup> beginning with \$784,349 for the 2004-2005 school year and culminating with \$2,190,000 for the 2013-2014 school year and \$2,330,000 for the 2014-2015 school year.<sup>11</sup> *See supra* at 9. Despite these substantial fees, the record demonstrates that CAPCSM either (1) never provided services it was contractually obligated to provide under the management agreements in the first instance, or (2) stopped providing such services over time. CAPCS, however, ignored these failures and continued to pay CAPCSM, while at the same time paying CAPCS employees to perform the services it paid CAPCSM to perform.

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<sup>10</sup> CAPCS has pointed out, and PCSB understands, that over these years, the student population, and thus school revenue, grew. (*See* CAPCS Post-Hr'g Submission at 22.) As a result, the management fee, as a percentage of school revenue, likewise increased. That fact is irrelevant to PCSB's conclusion that CAPCS misused the public funds it received by paying for services it did not receive. Similarly, while PCSB recognizes that CAPCS has never paid the maximum fee available under the agreements, this argument also misses the point: any amount paid to CAPCSM for services not provided, whether or not the full amount under the contracts, is a misuse of public funds.

<sup>11</sup> In October 2014, the Superior Court of the District of Columbia enjoined the payment of any subsequent fees under the 2013 Management Agreement. (*See D.C. v. CAPCSM*, Preliminary Injunction Order, Oct. 27, 2014.)

a. **CAPCS Paid CAPCSM For Services CAPCSM Never Provided.**

The record is clear that, since 2004, CAPCS paid CAPCSM for services that CAPCSM never provided. For example, CAPCS paid CAPCSM to develop a technology program, including a curriculum, as part of CAPCS's educational program. (2007 Management Agreement 4.2(b); 2013 Management Agreement 4.2(d).) While there is testimony from Wesley Harvey, Mr. Amos's stepson and a former CAPCSM employee, that he supervised the installation of devices and equipment, he explicitly disavowed any involvement with curriculum development and instead stated that the director of technology or the head of schools—both CAPCS employees—was responsible for the technology program. (Harvey Interview 21:11-22:19; 46:16-47:10.) There is no evidence that CAPCSM ever employed anyone to develop a technology curriculum for CAPCS. To the contrary, the record shows that a CAPCS employee filled that role for the duration of the management agreements. Yet CAPCS continuously paid CAPCSM to develop the technology curriculum.

Likewise, under the management agreements, CAPCS paid CAPCSM to provide various human resources services, particularly paying instructors and staff and maintaining personnel records. *See supra* at 7-9. But until the OAG filed its lawsuit CAPCSM never employed a human resources supervisor.<sup>12</sup> (Wallace Interview at 34:16-21.) In contrast, while paying CAPCSM to provide human resource services, CAPCS has employed directly a Director of Human Resources,<sup>13</sup> a Human Resources Coordinator, a Human Resources Generalist, and a Human Resources/Payroll Coordinator during this time. (*See, e.g.*, 2012-2013 CAPCS Staff-Volunteer Background Checks, dated Apr. 16, 2013; 2013-2014 CAPCS Staff-Volunteer Roster

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<sup>12</sup> In mid-2014, after the OAG initiated its lawsuit, CAPCSM hired a Director of Human Resources. (PI Hr'g Tr. at 577:1-15.)

<sup>13</sup> The last Director of Human Resources for CAPCS, Jennifer Edwards, left CAPCS in 2013 and was not replaced by the school. (Wallace Interview 18:6-13.)

and Background Checks, dated Feb. 21, 2014.) There is no testimony or documentary evidence showing that any of these CAPCS employees report to or are otherwise supervised by a corresponding CAPCSM employee.<sup>14</sup> Yet, CAPCSM continued to receive payments from CAPCS for providing these human resources services.

In addition, CAPCSM was obligated under the contracts to “provid[e] food service for CAPCS” and was further granted authority to subcontract for the provision of such services. (2007 Management Agreement 4.2(e); 2013 Management Agreement 4.2(g).) There is no evidence in the record that CAPCSM provided the food services or subcontracted for them. At most, Mr. Harvey supervised the food service employees hired by CAPCS. (Harvey Interview 20:17-20:22.) Once again, CAPCS paid CAPCSM for a service that it did not receive.

**b. CAPCS Continued to Pay CAPCSM For Services CAPCSM Stopped Providing.**

CAPCS also paid CAPCSM to provide oversight services for CAPCS’s academics, operations, and finances. While the record shows that CAPCSM did provide those oversight services for a period of time, CAPCSM steadily ceased to provide such services over time. Yet CAPCS did not stop paying CAPCSM for those services. For example, CAPCSM initially had a Chief Operations Officer (Mr. Butler) and a Chief Academic Officer (Mr. Upson), but the record shows that those positions have been vacant since Mr. Upson and Mr. Butler left CAPCSM in June 2012. (Upson Interview 18:5-10; CAPCS Board Minutes, Nov. 14, 2012; Wallace Interview 46:3-48:21.) Mr. Harvey also provided oversight of operations as “Director of Operations” from 2006 to 2013, but that position remained open from his departure in December 2013 until mid-2014, when CAPCSM hired Waydal Sanderson. (Declaration of Wesley Harvey, Jan. 30, 2015; PI Hr’g Tr. at 580:15-18; Afton Report at 25.) In addition, the record shows that,

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<sup>14</sup> To the extent CAPCS would suggest these CAPCS employees are “supervised” by Mr. Amos himself, the record lacks credible evidence as to the nature or extent of his management of these CAPCS human resource employees.

although CAPCSM once employed a financial officer, Winston Harbin, the company did not hire a replacement after Mr. Harbin passed away several years ago. (Hall Decl. ¶ 22; Wallace Interview 66:2-9, 70:22-71:12.) With one exception, the record lacks evidence that other CAPCSM employees assumed the various duties of the former CAPCSM executives.<sup>15</sup> Yet, CAPCS never reduced CAPCSM's fee when CAPCSM was not providing these services. Rather, CAPCS continued to pay the fee as if the same level of services was being provided after these four senior employees left the company.

CAPCS also directly employed individuals who provided the supervision and oversight that CAPCSM was contractually obligated, and paid, to provide. For example, with respect to academics, CAPCS employs "Academy Leaders" and a "Head of Schools," both of whom are responsible for the day-to-day operations of the campuses. (Wallace Interview 15:21-16:6, 30:4-31:1, 42:17-22; CAPCS Leadership Chart (Wallace Interview Ex. 1); CAPCS Organizational Chart (Wallace Interview Ex. 2).) In fact, Mr. Upson, a CAPCSM employee, transferred some of his responsibilities, such as communication with the Board regarding educational issues, to the CAPCS-employed Head of Schools even prior to his departure from the management company. (See Upson Interview at 27:9-18.) CAPCS, however, did not reduce the management fee it paid to CAPCSM even though there is no evidence that Mr. Upson took on other responsibilities to justify the continued payment. In addition, through at least 2011, the school employed a Director of Curriculum & Instruction—Elementary and a Director of ESL/ELL Support Services, (Wallace Interview 18:6-12, 19:7-20:1, 21:18-21, 23:21-24:4, 29:8-15; CAPCS Leadership Chart (Wallace Interview Ex. 1)), and, as of at least May 2014, CAPCS retained a Director of Special Education and a Director of Early Childhood Education. (Wallace Interview 44:6-46:2; CAPCS Key

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<sup>15</sup> Mr. Harvey testified that he temporarily took over Mr. Harbin's responsibilities until CAPCS hired its own Controller, at which point those responsibilities transferred to the CAPCS employee. (Harvey Interview 18:10-19:12.)

Personnel, printed Mar. 10, 2014 (Wallace Interview Ex. 3).) There is similarly no evidence of CAPCSM's oversight of these CAPCS employees. Likewise, CAPCS employed various employees to deal with oversight of CAPCS's finances (another area of CAPCSM's responsibility): in 2009, CAPCS hired a Chief Financial Officer, (Hall Decl. ¶ 23), and it currently employs its own Controller and Accounting Manager, (Wallace Interview 19:7-20:6).

Each of these school employees collected a publicly-financed salary commensurate with their duties. For example, from July 1, 2008 to June 30, 2009, the CFO employed by the school earned \$109,674 (CAPCS 2008 IRS Form 990). From July 1, 2008 to June 30, 2009, the school's Director of Curriculum earned \$121,710. (*Id.*) Thus, even as CAPCSM's fees increased, the degree of management services it provided decreased, and CAPCS increasingly had to use its own resources and employees to provide services that it was paying CAPCSM to provide.

c. **In Light of CAPCSM's Failure to Provide Contracted-for Services, CAPCS's Payments to CAPCSM Over the Past Decade Were a Waste of Public Funds.**

Despite CAPCSM's failure to provide the services CAPCS had paid CAPCSM to provide, CAPCS continued to contract with CAPCSM, making more than \$12 million in payments to the management company over the last decade. CAPCS defends these payments by arguing that the management agreements only required CAPCSM to provide "oversight" of the designated tasks, and that CAPCSM did, in fact, "oversee" CAPCS employees as they performed those tasks. However, the management agreements clearly state that CAPCSM was required to provide some direct services to CAPCS, which the record demonstrates were never provided.

*See supra* at 19-20. The record also shows that CAPCSM did not provide many of the oversight services it was required to provide under the management agreements. *See supra* 2-22.<sup>16</sup>

Before mid-2014 (*after* the OAG initiated its investigation), CAPCSM never employed the robust staff necessary to provide all the services—direct or oversight— CAPCSM was paid to provide.<sup>17</sup> As of May 2014,<sup>18</sup> CAPCSM had *only four* employees besides Mr. Amos, and only one, Norma Barfield, as the Director of Development and Planning, had any oversight responsibility for CAPCS,<sup>19</sup> (Wallace Interview at 46:3-48:21), though she left that position in approximately April 2014 to become the CAPCSM Chief-of-Staff (PI Hr’g Tr. at 558:13-20).<sup>20</sup> When Ms. Barfield joined CAPCSM from CAPCS in September 2013 as Director of Development and Planning, she performed the same administrative duties—not new, oversight functions—as she did when employed directly by CAPCS as an assistant to Mr. Amos. (PI Hr’g Tr. at 560:5-23; Interview of Norma C. Barfield (“Barfield Interview”) at 6:6-7:8, 9:10-15, 18:12-19:3.)<sup>21</sup>

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<sup>16</sup> It is also worth noting that if CAPCS paid CAPCSM between \$750,000 and \$2.3 million dollars per year just to provide “oversight,” it grossly overpaid for such services.

<sup>17</sup> Even CAPCS agrees that “[t]he sheer size and breadth of CAPCS’s non-profit organization necessitates a strong and capable supervisory body.” (CAPCS Post-Hr’g Submission at 19.)

<sup>18</sup> In the summer of 2014, after the OAG filed its lawsuit, CAPCSM apparently hired several new employees, including Doris Collins, Director of Human Resources; an assistant to Ms. Collins; a second maintenance employees; an IT manager, Francisco Ribeiro; and a new Director of Operations and Business Opportunities, Waydal Sanders. (PI Hr’g Tr. at 360:2-361:12, 578:8-581:20.) It remains unclear what these new employees do on a day-to-day basis, as they were hired after the OAG conducted its interviews and CAPCS has not provided any additional information to PCSB regarding their roles. It is therefore impossible to determine whether their duties overlap with duties of CAPCS employees.

<sup>19</sup> The other three employees were Sandra Wallace, Mr. Amos’s executive assistant; Mary Toussaint, Ms. Wallace’s administrative assistant; and Christina Revolla, a maintenance employee. (PI Hr’g Tr. at 560:5-23; Interview of Norma C. Barfield (“Barfield Interview”) at 6:6-7:8, 9:10-15, 18:12-19:3.) The record shows that Mrs. Amos also received payments from CAPCSM at this time, but there is no evidence she was an employee of CAPCSM or that she provided any services to CAPCS through CAPCSM. *See infra* at 28-29.

<sup>20</sup> Curiously, Ms. Barfield testified during the OAG hearing, which took place in September 2014, that her position changed from Director of Development and Planning to Chief-of-Staff in April 2014 but in a sworn declaration attached to CAPCS’s post-hearing submission, she claims that the change occurred *after* the OAG hearing, in November 2014. (*Compare* PI Hr’g Tr. at 558:13-20, *with* Declaration of Norma Barfield, Feb. 2, 2015, at ¶ 3.)

<sup>21</sup> PCSB has also reviewed a chart posted by CAPCS on its website in January 2014 that identified six positions that were supposedly filled by CAPCSM employees. (CAPCS Organizational Chart (Wallace Interview Ex. 2).) While CAPCS suggests that these positions were “aspirational” and reflected CAPCSM’s business growth plans,



It is therefore not surprising that several outside experts concluded that CAPCS continuously overpaid CAPCSM for services that CAPCS employees were providing. For example, an expert retained by the OAG concluded: “My opinion is that the management company began providing a level of service using their own staff. And as time went on those staff left. And instead of replacing those staff with employees of the management company, those tasks were taken on by the school itself.” (PI Hr’g Tr. at 248:5-9). Another expert determined, “Based on my review of the relevant documents, resources and personnel of the Charter School were used to perform tasks that should have been performed using Management Company resources and personnel.” (Hall Decl. ¶ 18.) Similarly, an independent auditor<sup>22</sup> testified that responsibilities that should have been performed by employees of the management company, including financial functions such as preparation of the budget and oversight of human resources and education, were being performed by CAPCS employees due to the vacancies at the management company. (PI Hr’g Tr. at 170:25-171:21.)

PCSB has provided CAPCS with numerous opportunities to justify the management fees by clarifying the contractual obligations of CAPCSM and the services CAPCSM provided. CAPCS has failed to do so.<sup>23</sup> Rather than provide evidence about CAPCSM employees, job

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(Declaration of Norma Barfield Feb. 2, 2015 (“Barfield Decl.”) at ¶¶ 14-15; CAPCS Post-Hr’g Submission at 17), each of these positions covered areas for which CAPCS paid CAPCSM to provide services. PCSB therefore finds it relevant that only two of these positions (Director of Operations and Director of Human Resources) are currently filled (and only since mid-2014), (*see* PI Hr’g Tr. at 577:13-582:20); that one of them (Director of Communications) has never been filled; and that another one (Director of Development & Planning) was only filled for six months by Ms. Barfield, (*see* PI Hr’g Tr. at 558:9-16).

<sup>22</sup> Afton Partners was retained by ACA Financial, the reinsurer of a bond taken out by CAPCS, to perform a financial review of CAPCS in 2013. (*See generally* Afton Report.)

<sup>23</sup> During the 2013 charter renewal process, PCSB asked CAPCS to provide documentation regarding the people employed by the management company and the roles that those individuals were playing with respect to the management of CAPCS. CAPCS repeatedly refused to respond to those requests. Subsequently, during the charter revocation proceeding, PCSB repeatedly gave CAPCS the opportunity to provide this information, both at the informal charter revocation hearing and in the five days afterwards that the official record was kept open.

CAPCSM has similarly rebuffed all efforts by the OAG to obtain information concerning its activities and salaries. When served with a subpoena requesting “[d]ocuments sufficient to show all management activities performed by CAPCSM for CAPCS” for two school years, CAPCSM responded that it did not possess any

descriptions, and salaries, CAPCS has offered conclusory statements, such as, “CAPCS-M personnel are the supervising administrator’s [sic] for CAPCS 500-plus employees.” (CAPCS Post-Hr’g Submission at 18.) Similarly, Mr. Amos stated at the informal charter revocation hearing that “no employee ever did the same job in the management company and in the school.” (Public Hr’g of Proposed Revocation of CAPCS Tr., Jan. 27, 2015 (“Public Hr’g Tr.”) at 89:15-22.) Without additional explanation of what, in fact, the few CAPCSM employees actually did, these statements carry little weight.

CAPCS appears to believe that PCSB is basing its conclusion of a pattern of fiscal mismanagement on the fact that the management fees were not directly linked to CAPCSM salaries or CAPCSM actual costs. (See CAPCS Post-Hr’g Submission at 24-27.) This is not the case. PCSB has not found a pattern of fiscal mismanagement because CAPCS did not tie CAPCSM’s management fee to CAPCSM’s costs. CAPCSM’s costs are irrelevant. Rather, PCSB has concluded that over a period of ten years, CAPCS repeatedly paid CAPCSM for services it did not receive. CAPCS also paid its own employees to perform the services that CAPCSM failed to provide. Those payments constitute a pattern of fiscal mismanagement.<sup>24</sup>

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responsive documents. It further “respectfully decline[d] to produce documents showing payments from CAPCSM to Mr. Amos. (Letter from F. Cooke to J. Rock, Mar. 27, 2014; Subpoena to CAPCSM, Feb. 3, 2014; see also Harvey Interview 4:22-5:18; 50:20-51:9 (refusing to answer questions regarding salary or payments from CAPCSM).)

<sup>24</sup> CAPCS also argues in its post-hearing brief that PCSB erroneously suggested in its December 15 Memorandum proposing revocation that, based on the titles of employees at CAPCS, CAPCS and CAPCSM were duplicating services. According to CAPCS, CAPCSM provided oversight services different from the services provided by CAPCS employees, even though the job titles of CAPCS employees sounded managerial themselves. (See CAPCS Post-Hr’g Submission at 18.) But CAPCS misses the point: there is no evidence in the record that CAPCSM was actually providing management services for many of these areas during the more than ten years it held contracts with CAPCS, yet CAPCS paid CAPCSM substantial fees for such services. Nothing in CAPCS’s post-hearing submission suggests otherwise.

In addition, PCSB is not persuaded by CAPCS’s argument that fiscal mismanagement could not have occurred because the school’s financial audits were clean and it was meeting its financial obligations. (CAPCS Post-Hr’g Submission at 14-16.) PCSB has never suggested that CAPCS’s financial statements were the basis for revocation. Rather, PCSB has found evidence that CAPCS was not using its public funds for their intended purpose, *i.e.*, the operation of the school, because CAPCS was paying CAPCSM for services that CAPCSM was not providing and that CAPCS was not receiving. Those payments amount to a waste of the public funds and thus constitute fiscal mismanagement, regardless of whether or not CAPCS otherwise demonstrated adequate financial performance.

**2. CAPCS Repeatedly Approved Substantial Fee Payments to CAPCSM Despite Excessive Compensation Paid to Mr. Amos and His Wife.**

PCSB further finds that CAPCS misused public funds by repeatedly and knowingly approving the payment of excessive management fees to CAPCSM, which were used not to pay for services provided (because, as noted above, many services were not provided) but instead for the private benefit of CAPCS's founder and former CEO, Mr. Amos, and his wife. Mr. Amos and his wife personally collected excessive compensation—more than \$1 million in 2012 and again in 2013—through CAPCSM, despite the absence of any evidence showing that Mr. and Mrs. Amos provided a level of services to CAPCS commensurate with this compensation. To the contrary, the record shows that as Mr. Amos's compensation increased, the level of services that CAPCSM provided to CAPCS decreased, in large part due to the departure of multiple CAPCSM employees. CAPCS, however, continued to approve the \$2 million-plus annual management fees to CAPCSM, knowing that a substantial portion of the fees would flow directly through to Mr. Amos, without any expectation of receiving services from the company, and Mr. Amos, worth that amount.<sup>25</sup> This decade-long arrangement, which permitted the enrichment of Mr. Amos with public funds, constitutes a pattern of fiscal mismanagement.

In 2004, the last year in which Mr. Amos served as CEO of CAPCS as a direct CAPCS employee, he received a salary of \$160,000. (Vondra Decl. ¶ 12(b); CAPCS 2004 IRS Form 990.) During the first two years that Mr. Amos served as CEO through his management company, he earned \$186,000. In 2007, he earned \$210,549. (Vondra Decl. ¶ 12(c); CAPCSM Financial Statements 2011 and 2012.) By 2010, Mr. Amos' publicly financed annual

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<sup>25</sup> As noted above, CAPCSM never met all of its contractual obligations and never employed a sufficient staff to do so—facts that CAPCS was all too aware of since its own staff were themselves providing these services. And CAPCS was further aware that Mr. Amos became the sole owner of CAPCSM after its two other owners, Mr. Upson and Mr. Butler left the company in June 2012. PCSB thus finds that CAPCS knew or should have known that a majority of the fees it paid to CAPCSM were increasingly and unjustifiably going directly to Mr. Amos and his wife over the years. As the management fees increased (and Mr. Amos's ownership in the company increased), so did the direct compensation to Mr. Amos and his wife.

compensation had increased to approximately \$402,158, more than double his 2004 salary, and an estimated \$477,096 in 2011. (Vondra Decl. ¶ 12(g).) Mr. Amos and his wife collectively received approximately \$1,153,000 from CAPCSM in 2012 and a total of \$1,378,623 in 2013. (PI Decision Hr'g Tr. at 20-21.) To put these numbers in context, an outside experts testified that the “appropriate” compensation for a school CEO (the role Mr. Amos was playing, albeit through his for-profit management company) begins around \$250,000 “with the top range of perhaps \$400,000.” (PI Hr'g Tr. at 253:4-5.)

The record is devoid of any explanation for these dramatic increases in compensation to Mr. Amos. As Mr. Amos himself noted, using CAPCSM to manage the school was “a change in form rather than substance.” (CAPCS Board Minutes, July 19, 2004.) The record does not suggest differently. In fact, the record does not show precisely what services Mr. Amos provided to the school as CEO of the management company, let alone contain evidence of additional responsibilities for Mr. Amos that would justify an increase in compensation of approximately one million dollars between 2004 and 2013.

None of CAPCS attempts to justify the substantial payments to Mr. Amos are persuasive. At the informal hearing, CAPCS argued that Mr. Amos deserved the high compensation he received, particularly in the last several years, because he: (i) has “17 years . . . in the business of education”; (ii) is “a leader and one of the first African Americans to be hired as an executive with IBM”;<sup>26</sup> (iii) is a war veteran; (iv) has been profiled by Oprah Winfrey; and (v) has been awarded “Medals of Hono[r]” by two presidents. (Public Hr'g Tr. at 32:18-33:5; *see also id.* at 33:12-13 (arguing that Mr. Amos’s compensation is justified partly because “[h]e built a school from zero to five or more campuses”); *id.* at 34:12 (“We owe [Mr. Amos] money.”).) But, regardless of Mr. Amos’s background, PCSB cannot ignore the disturbing facts before it

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<sup>26</sup> PCSB understands that Mr. Amos was employed by Xerox, not IBM.

concerning the disparity between the amount of payments CAPCS made to Mr. Amos' company and to himself, and the value of the services CAPCS received in return for those payments.

In its post-hearing submission, CAPCS also noted that Mr. Amos obtained a tax-exempt bond issue for CAPCS in 2006-2007 and developed a plan to balance the school's budget in 2013. (CAPCS Post-Hr'g Submission at 22; Barfield Decl. ¶¶ 19-20.) But the fact that Mr. Amos helped obtain a bond in 2006 and 2007 does not justify his compensation of more than \$1 million in 2012 and 2013. PCSB also does not understand how Mr. Amos's role in 2013 in balancing the budget—a task CAPCSM has been obligated to perform since its retention in 2004—entitled him to such excessive compensation. Indeed, the record contains compelling, credible, and uncontradicted evidence showing that the increases in Mr. Amos' compensation over the course of two years were unreasonable. *See supra* at 27 (noting that the appropriate salary range for a school CEO is between \$250,000 and \$400,000).

Similarly, the record raises disturbing questions about the payments made to Mrs. Amos from the public tax dollars CAPCSM received through its contract with CAPCS. From 2005 through June 30, 2014, Mrs. Amos earned a total of \$430,000 from CAPCSM, including \$103,000 in 2013. (Vondra Decl. ¶12(e); District of Columbia Department of Employment Services.) There is no evidence that Mrs. Amos provided any services to CAPCS or CAPCSM. CAPCSM's Chief-of-Staff, Norma Barfield, testified that Mrs. Amos was not an employee of CAPCSM. (PI Hr'g Tr. at 586:11-14.) Despite ample opportunity and, indeed, every incentive to do so, CAPCS has provided no documentation or testimony to explain the payments to Mrs. Amos. Mr. Amos suggested during the informal hearing that his wife deserved compensation for "cook[ing] day in and day out when [they] had children in [their] home for 11 years, and she had a job." (Public Hr'g Tr. at 94:10-12.) But Mr. Amos never described the services his wife

provided for CAPCS or CAPCSM. PCSB therefore concludes that the payments to Mrs. Amos were unjustified.

It is clear from the record that CAPCSM is a vehicle through which CAPCS could pay public funds to Mr. Amos and his wife in the form of compensation from CAPCSM. CAPCSM's only source of income for CAPCSM was the fee it earned from its retention by CAPCS, (CAPCSM Financial Statements 2011 and 2012 at 8; PI Hr'g Tr. at 583:24-584:3), CAPCSM has never provided services for a charter school other than CAPCS (*see id.*), and, as one expert testified during the OAG litigation, "the types of typical infrastructure that you would see of a company that would operate on its own does not exist. . . . In effect, [CAPCS and CAPCSM] were one and the same." (PI Hr'g Tr. at 65:10-16.) CAPCSM's only real purpose appears to have been insulating from PCSB's scrutiny the amount of compensation CAPCSM paid to Mr. Amos and the paucity of services CAPCSM provided in return. Indeed, by 2012, over 51% of the total fees CAPCSM received that year were then directly paid to Mr. Amos and his wife. (*See* CAPCSM Financial Statements 2011 and 2012.) PCSB thus concludes that CAPCS engaged in a pattern of fiscal mismanagement by approving the arrangement through which such excessive payments were made.

CAPCS has argued that it does not have control over the compensation paid to CAPCSM employees and that it was under no obligation to ensure that any such compensation was within an appropriate range, as long as it was satisfied with the services being provided. (*See* Public Hr'g Tr. at 20:14-21:7; 77:11-78:14; CAPCS Post-Hr'g Submission at 32.) But as previously noted, CAPCS knew or should have known that CAPCS paid substantial fees to CAPCSM for services that were not rendered and that a large majority of those fees went to Mr. Amos and his

wife in the form of excessive compensation.<sup>27</sup> Indeed, CAPCS seemed to have appreciated the importance of understanding how the fees it paid were distributed to CAPCSM employees when it negotiated the 2004 and 2007 Management Agreements, both of which required that the salaries of Mr. Amos and other CAPCSM “senior staff” be disclosed on an annual basis. *See supra* at 5-7. Under these circumstances, PCSB concludes that CAPCS’s continued retention of CAPCSM and approval of the excessive compensation paid to Mr. Amos and his wife constitute misuse of public funds and a pattern of fiscal mismanagement.

**B. CAPCS’s Board of Trustees Breached its Fiduciary Obligations to the School.**

The SRA also grants PCSB authority to revoke a school’s charter if it determines that the school “[c]ommitted a violation of applicable law or a material violation of the conditions, terms, or procedures set forth in the [C]harter.” D.C. Code § 38-1802.13(a)(1). Among “applicable law[s]” triggering PCSB’s authority to revoke is the SRA itself, which obligates all public charter schools to have, as their “sole purpose[,] . . . the operation of the public charter school,” and which establishes the charter school’s Board of Trustees as fiduciaries of the school entrusted with ensuring the “sole[-]purpose” requirement is met. *See* D.C. Code. §§ 38-1802.04(c)(16);38-1802.05(d) (“The Board of Trustees of a public charter school shall be fiduciaries of the school and shall set overall policy for the school.”). CAPCS’s Articles of Incorporation, which is included as a term of the school’s Charter, reaffirms the SRA’s mandate: it requires that CAPCS “shall be operated exclusively for educational, chartable, and scientific

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<sup>27</sup> That Amos’s excessive compensation coincided with a downturn in CAPCS’s financial situation makes CAPCS’s inaction all the more troubling. As CAPCSM continued to receive millions of dollars, a large share of which went to Mr. Amos and his wife, PCSB gave CAPCS “Fiscal 3” status in 2013 for being at risk of insolvency. CAPCS’s bond rating was also downgraded, and it was found to be in violation of certain loan covenants, resulting in an audit and stricter control of CAPCS’s use of funds. *See supra* at 4. <sup>28</sup> In June of 2005, the CAPCS Board voted to amend the 2004 agreement to require not only disclosure of all CAPCSM salaries, but CAPCS Board approval as well. (*See* CAPCS Board Minutes, June 21, 2005.) Only the reporting requirement appeared in the final 2007 agreement, however. *See* 2007 Management Agreement.

purposes.” (CAPCS Articles of Incorporation at 1.) Furthering this mission, the Articles of Incorporation contain an outright ban on use of school funds for private benefit.

(*Id.* at 2 (“No part of [CAPCS’s] assets or net earnings . . . shall at any time inure to the benefit of, or be distributed to its members, directors, officers, or other private persons . . .”).)

PCSB finds that CAPCS’s Board of Trustees failed to meet its fiduciary obligations to the school under the SRA and the school’s Charter. CAPCSM initially held itself out to CAPCS as capable of providing “cost-effective and efficient administrative and management services” to the school. (*See* 2004 Management Agreement at 1.) But, as already discussed, *see supra* at 18-25, CAPCSM failed to provide many of the services that it is contractually obligated to provide, which have often been provided by CAPCS employees instead. (*See also* Vondra Decl. 4–12) (discussing how the creation of CAPCSM added to CAPCS costs and decreased accountability, without any corresponding gains in efficiency); PI Hr’g Tr. at 249:6-9 (“The management contract remained the same but the people doing the job were no longer all management company employees but appeared to be people that were replaced with employees of the school.”).) Worse still, Mr. Amos’ wife apparently received hundreds of thousands of dollars in school funds as compensation from the management company, despite the absence of any documentation showing that she ever provided any services to the management company or the school. (*See* Vondra Decl. ¶ 12(e).)

As the disparity between the sums CAPCSM received and the value of the services performed increased over time, the Board’s apparent confidence in CAPCSM only deepened. The Board extended the school’s relationship with CAPCSM in 2013 without signaling any misgivings about CAPCSM’s ongoing failure to provide the services it was contracted to provide to CAPCS. In fact, their actions revealed just the opposite. When the existing management



agreement expired in 2013, the Board ran a perfunctory RFP process that elicited only one formal bid. (*See* Vondra Decl. ¶ 11 (“Between 2004 and 2013 there is no credible evidence of a competitive bidding process for selection of CAPCSM by the School.”); PI Hr’g Tr. at 461:19-462:22 (admitting that the Board only received “one proposal” during the 2013 RFP process).) After the Board accepted that bid and agreed to renew CAPCSM’s agreement, the Board approved a contract *eliminating* the prior requirement that CAPCSM employee salaries be reported to CAPCS as part of CAPCSM’s annual budget. (*Compare* 2007 Management Agreement at 8.1(c) (requirement that CAPCSM to provide an annual budget that “include[s] salaries and benefits for all CAPCSM LLC staff working under [the] agreement”), *with* 2013 Management Agreement at 8.1(c) (requiring only that the budget include the total management fee to be paid).) Even before 2013, CAPCS admits that it “did not always hold CAPCS-M strictly accountable for providing [salary] information.” (*See* CAPCS Post-Hr’g Submission at 31.) When asked whether the Board of Trustees inquired into the compensation of CAPCSM’s officers and employees, Robert Hagans, the Board’s Treasurer, admitted that he “didn’t feel a need to do that” and that he “didn’t feel it was important for the board to have information on the salaries and benefits paid by” CAPCSM. (PI Hr’g Tr. 487:12-15, 508:21-24.) Considering this lack of oversight, it is not surprising that a 2014 independent audit recommended “immediate action” be taken to address “transparency and efficiency of CAPCSM and its service to CAPCS.” (Afton Report at 15.)

CAPCS defends the elimination of the employee-salary reporting requirement by arguing that it was only necessary to satisfy a condition placed on the school by a loan from Eagle Bank in 2007. After its loan obligation had been discharged, CAPCS contends, the reporting requirement was no longer needed. (*See* CAPCS Post-Hr’g Submission at 31–32.) CAPCS

misstates the facts. Though the loan in question may have required CAPCS to add new conditions to the management agreement, the salary-reporting requirement was not one of them. To the contrary, the initial 2004 Agreement between CAPCS and CAPCSM mandated that CAPCSM's annual budget include salaries for "all senior CAPCSM LLC staff." (2004 Management Agreement at 8.1(c).) CAPCS has not provided any evidence that this language in the 2004 Management Agreement was included because of a loan guarantee. This obligation was repeated, and arguably expanded, in the 2007 Management Agreement, only to be eliminated, with the CAPCS Board's permission, in 2013.<sup>28</sup> The result was the CAPCS Board's acquiescence to "progressively less and less transparency" of CAPCSM's performance under the management agreements and, hence, its misuse of public funds.<sup>29</sup> (PI Hr'g Tr. at 80:8-9.)

In light of the foregoing, it is unsurprising that Judge Kravtiz found that it was "abundantly clear" that CAPCS's Board of Trustees "had not acted with reasonable care and diligence in protecting the funds and other resources of CAPCS." (PI Decision Hr'g Tr. at 28:11-13.) To the contrary, Judge Kravtiz further determined, the CAPCS Board's conduct constituted "an abdication of the responsibility of the Board . . . to safeguard the institution's public funds and resources." (*Id.* at 29:13-16.)

Having reviewed all of the evidence for itself, PCSB agrees. As the questions over CAPCSM's value continued to mount, CAPCS's Board of Trustees stood by, failing to sufficiently inform itself regarding CAPCSM's compliance with the management agreements.

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<sup>28</sup> In June of 2005, the CAPCS Board voted to amend the 2004 agreement to require not only disclosure of all CAPCSM salaries, but CAPCS Board approval as well. (*See* CAPCS Board Minutes, June 21, 2005.) Only the reporting requirement appeared in the final 2007 agreement, however. *See* 2007 Management Agreement.

<sup>29</sup> CAPCS also contends that the CAPCS Board has no duty to inquire into the salaries a vendor pays to its employees before entering into a contract with that vendor. (*See* CAPCS Post-Hr'g Submission at 32.) But CAPCSM was not just any vendor—it was a vendor founded by CAPCS's own CEO at that time—and CAPCS's assertion to the contrary is troubling. When CAPCS contracted with CAPCSM, it was hiring the current CEO of the school to provide services at least similar to those he was already providing. Coupled with the fact that CAPCSM continued to earn 100% of its revenue from CAPCS fees, CAPCS's Board should have maintained sensitivity to questions of salary and self-dealing that might have, and indeed did, arise.

*See Beckman v. Farmer*, 579 A.2d 618, 655 (D.C. 1990) (breach of fiduciary duty for director to “fail[] to inform himself sufficiently to permit exercise of management authority, and [to] permit[] negligent mismanagement by others” (citing *Stern v. Lucy Webb Hayes Training School*, 381 F. Supp. 1003, 1014 (D.D.C. 1974))). No doubt in part due to its extraordinary deference toward Mr. Amos and CAPCSM, the Board also endorsed and renewed a management contract that wasted school resources and permitted public funds to inure improperly to the private benefit of CAPCSM, Mr. Amos, and his wife. *See Willens v. 2720 Wisconsin Ave. Co-op. Ass’n, Inc.*, 844 A.2d 1126, 1136 n.13 (D.C. 2004) (breach of fiduciary duty to “effectuate a transaction between the corporation . . . that is not substantively fair to the corporation” (internal quotation marks omitted)). These failures, PCSB concludes, constitute breaches of the Board’s fiduciary obligations to the school and constitute separate grounds for the decision to revoke.

### III. **REMEDY**

In conclusion, PCSB has found that CAPCS engaged in a pattern of fiscal mismanagement and that its Board of Trustees has breached its fiduciary duties. Accordingly, as required by the D.C. School Reform Act, D.C. Code § 38-1802.13(a), PCSB hereby revokes the charter of the Dorothy I. Heights Community Academy Public Charter School, effective June 30, 2015. This revocation is not only statutorily mandated but also appropriate given the circumstances. PCSB cannot permit CAPCS to continue holding a public charter entitling it to receive public funds when it has increasingly, over the past ten years, used such funds to grossly overpay the private individual who founded and, for many years, ran the school. Those public funds are intended to be used for the operation of the school and the betterment of its students, and it is PCSB’s duty under the SRA to ensure that those scarce resources be given only to those entities who the public can trust will use them efficiently and effectively for their intended purpose.

Although PCSB has decided that it must revoke CAPCS's charter, it does not do so lightly or without thought for the students who attend, and the employees who work at, the charter schools that CAPCS currently runs. PCSB listened to the comments made by parents, students, alumni, and staff of CAPCS during the public hearing and recognizes and shares the community's concern over the future education of its students. PCSB is and always has been hopeful of finding a solution that insulates, to the extent possible, CAPCS' students from the consequences of its leaders' misdeeds. Indeed, PCSB had been working diligently with CAPCS's leaders and counsel to facilitate an asset transfer prior to revocation that would allow CAPCS schools to continue to operate under the control of a different charter school. As noted above, however, CAPCS has, to date, refused to agree to the conditions necessary for such an arrangement. Regardless, PCSB will continue its efforts to ensure a smooth transfer of assets after the revocation and will work with the students and families of the CAPCS community to minimize the impact of revocation.

Finally, as noted, the effective date of the charter revocation will be June 30, 2015, at the conclusion of the academic year. Until that time, PCSB has every expectation that the CAPCS Board and management will continue to operate the school responsibly and that it will constructively support efforts to ensure that alternative arrangements are made for all CAPCS students for next year. PCSB will monitor the school closely, however, and take any action necessary pursuant to its statutory authority to ensure that the best interests of the students and families are respected.