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SPECIAL COMPLIANCE REPORT
OF
DALEVILLE COMMUNITY SCHOOLS
DELAWARE COUNTY, INDIANA
July 1, 2011 to June 30, 2019



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TO: THE OFFICIALS OF THE DALEVILLE COMMUNITY SCHOOLS, DELAWARE COUNTY, INDIANA

This is a special compliance report for the Daleville Community Schools for the period July 1, 2011 to June 30, 2019, and is in addition to any other report for the School Corporation as required under Indiana Code 5-11-1. All reports pertaining to the School Corporation may be found at www.in.gov/sboa/.

We performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts and were limited to records associated with the oversight of Indiana Virtual School and Indiana Virtual Pathways Academy and the authorizer fees collected. The Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

March 11, 2020

BACKGROUND

On June 6, 2011, the Daleville Community Schools (Daleville) and the Business Consulting Inc. (BCI), a non-profit domestic corporation incorporated under the laws of the State of Indiana, entered into a Charter School Agreement (2011 Agreement) granting a charter to the Indiana Virtual School (IVS). The 2011 Agreement named Daleville as the Sponsor (Authorizer) and BCI as the Organizer of IVS.

On July 22, 2015, Daleville and BCI entered into a Charter School Agreement (2015 Agreement) granting a charter to IVS, effective July 22, 2015 through August 14, 2020. The 2015 Agreement named Daleville as the Authorizer and BCI as the Organizer of IVS. Both the 2011 and 2015 Agreement provided that BCI would operate and maintain IVS in compliance with relevant laws.

On December 31, 2015, Indiana Virtual Education Foundation, Inc. (IVEF) purchased the assets of BCI. IVEF is a non-profit domestic corporation incorporated under the laws of the State of Indiana. IVEF operated IVS and Indiana Virtual Pathways Academy (IVPA), established under Indiana Code 20-24.

On August 7, 2017, Daleville and IVEF entered into a Charter School Agreement (2017 Agreement), granting a separate charter to IVPA. The 2017 Agreement named Daleville as the Authorizer and IVEF as the Organizer of IVPA. This Agreement further provided that IVEF would operate and maintain IVPA in compliance with all relevant laws and rules.

As the Authorizer, Daleville is charged with certain oversight responsibilities, including the statutory duty to ensure the virtual schools comply with the respective charters and all applicable laws, pursuant to Indiana Code 20-24-9-3.

Daleville became aware of irregularities in the student enrollment. The Indiana State Board of Accounts (SBOA) was notified by Daleville in accordance with Indiana Code 5-11-1-27. On July 10, 2019, Daleville gave testimony to the State Board of Education on the concerns they had regarding the virtual schools. The State Board of Education rendered a decision on July 12, 2019, to reduce the virtual schools' Average Daily Membership (ADM) by 50 percent. On July 25, 2019, the State Board of Education adopted a Resolution ordering the virtual schools to cease operations. On August 26, 2019, Daleville adopted a Resolution to revoke the charters of IVS and IVPA.

The following describes noncompliance with statutes and the *Accounting and Uniform Compliance Guidelines Manual for Indiana Charter Schools*.

AUTHORIZER FEES OVERPAID TO DALEVILLE COMMUNITY SCHOOLS

Daleville's 2011 Charter Agreement with BCI did not make reference to authorizer fees to be paid to Daleville. However, documentation dated May 11, 2011, provided that BCI would pay "2% of state funding." The 2015 Charter Agreement with BCI and the 2017 Charter Agreement with IVEF each make reference to "a yearly 3% fee" representing a monitoring fee.

In a separate SBOA investigation of the virtual schools (see SBOA Special Investigation Report B54446), it was reported that BCI and IVEF received overpayments of basic tuition support from the State based on SBOA's determination that ineligible students were included on the ADM submitted to the Indiana Department of Education (IDOE). BCI and IVEF were requested to reimburse the State of Indiana for the overpayments received.

The authorizer fee was calculated by BCI and IVEF and paid to Daleville. Daleville did not verify the calculations, nor did they submit invoices for the authorizer fees to be paid. For the examination period, BCI and IVEF paid Daleville a total amount of \$3,291,067.04 in authorizer fees. Based on SBOA's methodology in Special Investigation Report B54446 pertaining to basic tuition support overpayments received by BCI and IVEF, we determined Daleville's authorizer fees were consequently overpaid \$2,239,693.45 due to misreported ADM counts during relevant time periods.

Indiana Code 5-11-6-3 states:

"If any examination or investigation made by the state examiner personally or through a deputy examiner, field examiner, or private examiner under this chapter or under any other statute discloses:

- (1) malfeasance, misfeasance, or nonfeasance in office or of any officer or employee;
- (2) that any public money has been:
 - (A) unlawfully expended, either by having been expended for a purpose not authorized by law in an amount exceeding that authorized by law, or by having been paid to a person not lawfully entitled to receive it; or
 - (B) obtained by fraud or in any unlawful manner; or
- (3) that any money has been wrongfully withheld from the public treasury;

a duly verified copy of the report shall be submitted by the state examiner to the attorney general, who shall institute and prosecute civil proceedings as provided in section 1 of this chapter, and to the inspector general."

We requested that Daleville reimburse the State of Indiana \$2,239,693.45, for the overpayment of authorizer fees. (See Summary of Charges, page 30)

INTERNAL CONTROL DEFICIENCIES

As the Authorizer, Daleville was charged with certain oversight responsibilities, including the statutory duty to ensure the virtual schools complied with the respective charters and all applicable laws, pursuant to Indiana Code 20-24-9-3.

Provisions of the 2011, 2015, and 2017 Charter School Agreements (Charter Agreements) provide:

The Sponsor (Authorizer) may enter the school premises during school hours, on a scheduled basis, to monitor whether the Organizer is operating the virtual school in compliance with applicable law and with the terms and conditions in the Charter. To the extent permitted by applicable law, the Organizer shall maintain the following information at the school and make it available to Sponsor on request, as soon as practicable with the exercise of due diligence on the Organizer's part. The years noted represent the year in which the item was included in the Charter Agreement:

- Organizer's Articles of Incorporation (2011, 2015, 2017)
- Organizer's by-laws (2011, 2015, 2017)
- Board policies (2011, 2015, 2017)
- Organizer's enrollment and admissions process (2011, 2015, 2017)
- A detailed list of all formerly and currently enrolled students (2011)
- A detailed list of teachers who work at the school (2011)
- Evidence of insurance (2011, 2015, 2017)

- Leases (2011)
- Documentation of loans and other debt of the Organizer related to the school (2011)
- Any and all student records (2017)
- Any and all financial records (2017)
- Any and all employee records (2017)
- Any and all other charter school records (2017)

Several deficiencies in internal controls were noted with Daleville's oversight and monitoring of IVS and IVPA:

- The provisions of the Charter Agreements allowed for on-site reviews and access to records by Daleville. Not all of these records were obtained by Daleville for performing regular monitoring reviews at the virtual schools. For the records they received, we saw no evidence of detailed analysis of those records for reasonableness.
- Daleville provided documentation of the enrollment policies and procedures of the virtual schools. We were not provided any documentation that Daleville had oversight of the enrollment process that may have prevented ineligible students from being enrolled and included on the ADM Reports.
- The 2017 Charter Agreement provided that financial records be maintained and made available to Daleville on request. We saw no evidence to show that Daleville had obtained complete and detailed financial records from the virtual schools. The Charter Agreements provided that for certain expenditures for items outside the ordinary course of business, the Organizer was required to provide notice to the Authorizer of the payee, amount, nature, and purpose of the expenditure. Without these records Daleville could not monitor compliance with this provision. Additionally, a review of the financial records may have alerted Daleville to IVEF's use of education service providers and the significant amount of undocumented disbursements made to businesses determined to be related-party vendors.
- The Charter Agreements required the Organizer to prepare and provide to the Authorizer, the following reports:
 - Reporting Calendar
 - ADM Report
 - Performance Report
 - Annual Report
 - Audited Financial Statements

Daleville received Annual Reports for the school years 2014-2015, 2015-2016, 2016-2017, and 2017-2018. Daleville also received the audited financial statements for the 2011-2013, 2013-2014, 2014-2015, and 2015-2016 audits. We saw no evidence that the Reporting Calendar, ADM Reports, or Performance Reports were obtained by Daleville. Daleville did not compel the virtual schools to comply with the Charter Agreements' reporting requirements every year.

- Audit reports issued on IVS for the years 2011-2013, 2013-2014, 2014-2015, and 2015-2016 reported compliance issues with vendor disbursements, related parties, and receipts. No documentation was provided by Daleville to show that there was any follow up between Daleville and the virtual schools to correct these issues.
- Each of the Charter Agreements provided that the Authorizer shall consult with the Organizer in developing a new and/or modifying an existing Accountability Plan to provide a basis for evaluating whether the Organizer is meeting the education goals established. Daleville provided Accountability Plan forms designed for the evaluation process. The only Accountability Plan provided that showed evaluation and follow up was in association with the 2017 performance review that was conducted by an outside firm.
- The 2011 Charter Agreement required that the Authorizer review the Organizer's performance no less frequently than every 3 years. The 2015 and 2017 Charter Agreements required that the Authorizer review the Organizer's performance annually for the duration of the charter. We noted only one performance review which was conducted by an outside firm and issued in October 2017.
- The Organizer was to provide evidence of insurance coverage per a provision in the Charter Agreements to the Authorizer. We did not receive any documentation from Daleville that they had obtained any evidence of insurance obtained from the Organizer.

Daleville's lack of meaningful oversight and monitoring may have contributed to ineligible students being included on the ADM Reports submitted to IDOE by the virtual schools, which resulted in the overpayment of basic tuition support to BCI and IVEF, the overpayment of authorizer fees to Daleville, as well as undocumented disbursements by IVEF to multiple vendors who were determined to be related parties.

The Indiana State Board of Accounts (SBOA) is required under Indiana Code 5-11-1-27(e) to define the acceptable minimum level of internal control standards. To provide clarifying guidance, the State Examiner compiled the standards contained in the manual, *Uniform Internal Control Standards* for Indiana Political Subdivisions. All political subdivisions subject to audit by SBOA are expected to adhere to these standards. The standards include adequate control activities. According to this manual:

"Control activities are the actions and tools established through policies and procedures that help to detect, prevent or reduce the identified risks that interfere with the achievement of objectives. Detection activities are designed to identify unfavorable events in a timely manner, whereas prevention activities are designed to deter the occurrence of an unfavorable event. Examples of these activities include reconciliations, authorizations, approval processes, performance reviews, and verification processes."

NON-COMPLIANCE WITH OVERSIGHT DUTIES REGARDING INDIANA CODE 20-24-3-2.5

When Daleville granted a charter to IVS under the 2015 Agreement, and when Daleville granted a charter to IVPA under the 2017 Agreement, no information was provided to Daleville regarding BCI or IVEF's intentions to contract with an education service provider.

Indiana Code 20-24-1-6.1 defines an "education service provider" as "a for profit education management organization, nonprofit charter management organization, school design provider, or any other partner entity with which a charter school intends to contract for educational design, implementation, or comprehensive management."

Indiana Code 20-24-3-2.5 provides the following requirements that proposed charter schools must include in the request for proposals when intending to contract with an education service provider:

- (1) Evidence of the education service provider's success in serving student populations similar to the targeted populations, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable.
- (2) A term sheet setting forth:
 - (A) the proposed duration of the service contract;
 - (B) the roles and responsibilities of the organizer, the school staff, and the education service provider;
 - (C) the performance evaluation measures and timelines;
 - (D) the compensation structure, including clear identification of all fees to be paid to the education service provider;
 - (E) the methods of contract oversight and enforcement;
 - (F) the investment disclosure;
 - (G) that the school and the authorizer are entitled to any data directly related to the operation or management of the school, such as financial data, enrollment data, demographic data, performance data, and student data, in the possession of the education service provider, but may not include any proprietary, intellectual property, or similarly protected data of the education service provider; and
 - (H) the conditions for renewal and termination of the contract.
- (3) A disclosure statement to explain any existing or potential conflicts of interest between the organizer and the proposed education service provider or any affiliated business entities.
- (4) Assurance that the organizer will be structurally independent of the education service provider and shall set and approve school policies. The assurance must also provide that the terms of the service contract must be reached by the organizer and the education service provider through arms-length negotiations in which the organizer must be represented by legal counsel. The legal counsel may not also represent the education service provider.

No information was presented to show Daleville inquired of IVEF's intention to contract with education service providers. Further, no information was presented to document Daleville received evidence of academic achievement, a term sheet, a disclosure statement regarding existing or potential conflicts of interest, or an assurance that IVEF was structurally independent of the education service providers contracted by IVEF. Upon inquiry, Daleville officials stated that they were not aware that education service providers were used by the virtual schools.

Existing conflicts of interest between IVEF and the education service providers and affiliated business entities were identified. Merle Bright was a signor on an IVEF bank account and was an officer at all of the education service providers. Further, Thomas H. Stoughton served on the board of IVEF and was a former officer at AlphaCom. Moreover, Thomas Burroughs served as legal counsel for both IVEF and AlphaCom. It is our position that IVEF was not structurally independent of the education service providers. Had Daleville implemented proper oversight procedures in accordance with Indiana Code 20-24-3-2.5, Daleville may have discovered that education service providers were used, conflicts of interest existed, and there was a lack of structural independence.

Indiana Code 20-24-9-3 states:

"The Authorizer shall oversee a charter school's compliance with:

- (1) The charter; and
- (2) All applicable laws"

CRIME INSURANCE COVERAGE

The following is information regarding crime insurance obtained by Daleville:

Term	Amount
07-01-10 to 07-01-13	\$ 50,000
07-01-13 to 07-01-16	50,000
07-01-16 to 07-01-17	50,000
07-01-17 to 07-01-18	50,000
07-01-18 to 07-01-19	50,000

| Daleville Community Schools:
EXIT CONFERENCE

The contents of this report were discussed on March 11, 2020, with Paul Garrison, Superintendent of Schools; David Stashevsky, Assistant Superintendent of Schools; and Diane Evans, President of the School Board.



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Sara R. Blevins
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March 25, 2020

OFFICIAL RESPONSE

Indiana State Board of Accounts
302 West Washington Street, Room E 418
Indianapolis, Indiana 46204-2765
ldavid@sboa.in.gov

Re: Daleville Community Schools' Official Response to Indiana State Board of Accounts Examination in Relation to Authorization of Indiana Virtual School and Indiana Virtual Pathways Academy

To Whom It May Concern:

As you know, Lewis & Kappes, P.C. represents Daleville Community Schools ("DCS" or the "Authorizer") with respect to its authorization of two charter schools, Indiana Virtual Schools ("IVS") and Indiana Virtual Pathways Academy ("IVPA") (collectively, the "Charter Schools"). This letter is submitted on behalf of DCS as an official response to the Indiana State Board of Accounts ("SBOA") Examination Report regarding DCS' conduct as Authorizer of the Charter Schools.

Relevant Background Information

DCS became the authorizer/sponsor of Indiana Virtual School ("IVS") on June 6, 2011, after seeking guidance and support from the Indiana Department of Education ("IDOE"). IVS was to deliver a 6th - 12th grade curriculum via a virtual/online platform. IVS was geared toward students who were unable or unwilling to attend a regular brick and mortar school due to life circumstances such as extended hospitalization, pregnancy, residence at a recovery home, or children in the Family and Social Services Administration (FSSA) system.

IVS opened for operations on September 7, 2011, and enrolled just nine students that first year. Under the 2011 IVS Charter School Agreement, IVS was managed by a Board of Directors who had ultimate responsibility for managing IVS in compliance with the Charter Agreement and all applicable law (Sections 3.2(a) and 3.5). IVS' organizer (BCI) is specified as the fiscal agent of IVS and "has exclusive control of, and is responsible for, the funds received by the Charter School and the financial matters of the Charter School," (Section 10.1). IVS's organizer (BCI)

indemnified DCS for any failure by IVS to comply with the Charter Agreement and applicable law, including wrongful acts by the organizer or IVS (Sections 3.5 and 11.2).

Between the 2011-2012 school year and the 2014-2015 school year, IVS grew from nine to 451 students.

In 2015, DCS renewed IVS's charter via a July 22, 2015 Charter School Agreement. Under the 2015 IVS Charter School Agreement, IVS continued to be managed by a Board of Directors who had ultimate responsibility for managing IVS in compliance with the Charter Agreement and all applicable law (Sections 3.2(a) and 3.5). IVS is specified as the fiscal agent for itself and has "exclusive control of, and is responsible for, the funds received by the Charter School and the financial matters of the Charter School," (Section 9.1). IVS indemnified DCS for any failure by IVS to comply with the Charter Agreement and applicable law, including wrongful acts by IVS (Sections 3.5 and 10.2).

IVS student enrollment continued to grow over the next several years to close to 3000 students in the 2016-2017 school year. IVS attributed this growth to its marketing efforts and to school principals counseling students wishing to drop-out of school to instead transfer to a virtual school. This explanation was consistent with nationwide charter school and virtual school trends DCS was noticing elsewhere. Of the 3000 IVS students in 2016-2017, approximately half were transferring in as high school seniors that were significantly credit deficient. This demographic explained low graduation rates as these new students were coming to IVS already on a track that would not permit on-time graduation.

Near the end of 2016-2017 school year, IVEF proposed creating an additional charter school, Indiana Virtual Pathways Academy ("IVPA"), to better meet the needs of the credit deficient student population. IVEF proposed an emphasis on internships and individual service plans for each student along with additional wrap-around services.

DCS became the authorizer of Indiana Virtual Pathways Academy ("IVPA"), IVS' sister school, on August 7, 2017. Like IVS, IVPA was managed by a Board of Directors who had ultimate responsibility for managing IVS in compliance with the Charter Agreement and all applicable law (Sections 3.2.1 and 3.5). IVPA's organizer, Indiana Virtual Education Foundation, Inc. ("IVEF"), is specified as the fiscal agent for IVPA and has "exclusive control of, and is responsible for, the funds received by the Charter School and the Charter School's financial matters, subject to Sponsor approval," (Section 9.1). IVEF indemnified DCS for any failure by IVEF or IVPA to comply with the Charter Agreement and applicable law, including wrongful acts by IVEF or IVPA (Sections 3.5 and 10.2).

During the 2017-18 school year, Charter School personnel were publicly stating that their students were earning more credits per year than they were when they were in the traditional schools. While the students would not be able to graduate on time because they came to the virtual school credit deficient, the Charter Schools claimed they were doing much better and making more progress than at their previous schools. DCS frequently asked the Charter Schools for the supporting data to corroborate these claims, but it was never provided.

Over the course of its sponsorship, one of the more challenging issues faced by all Indiana charter school authorizers was access to data. Until 2018, the Indiana Department of Education took the position that charter school authorizers did not have the right to access data that contained student Personal Identifying Information (“PII”) due to federal student privacy laws. On September 1, 2016 the Indiana Charter School Board formally requested a ruling from the United States Department of Education (“U.S. DOE”) on the data access issue. On March 26, 2018, just under two years after the formal request, the U.S. DOE responded to the Indiana Charter School Board that there would be no violation of federal student privacy laws if charter school authorizers were given direct access to the charter school data. Similarly, the Indiana legislature passed a law giving authorizers direct access to data as of July 1, 2017. DCS requested that IDOE provide access to the data in July 2017, but IDOE did not respond to the request. IDOE finally gave DCS access to data in August 2018, at which point DCS immediately began downloading the Charter School data reports for the first time. It took nearly five (5) months of review of over 250,000 cells of data which tracked 15,000 plus students over five (5) years of enrollment for DCS to complete its substantial review and analysis.

Almost immediately upon noting troublesome trends in the data in the Fall of 2018, DCS began, and has continuously since that time, been fully cooperating with numerous government agencies to discuss what it uncovered in the data. Chief among DCS’ concerns, was a large discrepancy between the numbers of students in the Charter Schools’ funding reports (ADM/ME Reports) and the significantly fewer number of students in the course completion reports. As acknowledged by SBOA State Examiner Paul Joyce during his statements to the State Board of Education on July 10, 2019, DCS notified SBOA of its concerns in August 2018. This was before the September 2018 ADM count occurred, which, based on SBOA’s February 12, 2020 Special Investigation Report of Indiana Virtual Education Foundation, Inc. d/b/a Indiana Virtual School and Indiana Virtual Pathways Academy (the “IVEF Report”), appears to have included the most questionable students in the ADM count (4530, in comparison to 3086 the year before). IVEF Report, pg. 15.

Because of what was uncovered by its data review and because of other compliance issues under the Charter Agreements and applicable law, DCS’ Board of School Trustees began the process to revoke the IVS and IVPA charters in February 2019. Had DCS voted to revoke the charters of IVS and IVPA in the Spring of 2019, both schools would have been able to remain in operation for another year under the terms of the Charter Agreements.

The Charter Schools disputed the move for revocation (although never provided specific explanation or evidence to refute the allegations) and threatened prolonged litigation. In May 2019, the Charter Schools proposed an amicable resolution that resulted in a negotiated Resolution Agreement dated June 19, 2019. Under the terms of the Resolution Agreement IVS agreed to voluntarily close by September 30, 2019 and IVPA agreed to voluntarily close by June 30, 2020.

On July 12, 2019, the Indiana State Board of Education (“SBOE”) issued a Final Order for *In Re the Matter of: Average Daily membership Adjustment for IVS and IVPA*. The SBOE concluded that the Charter Schools had reported at least twice as many students as should have been reported at least for some years. On that same day, IDOE gave the Charter Schools notice that it would

immediately begin withholding all state tuition support payments to the Charter Schools until all excess tuition support dollars were repaid.

In July 2019, DCS determined that the Charter Schools were in material violation of the Resolution Agreement, including its closure protocols. After giving the Charter Schools an opportunity to cure these breaches (as required by the terms of the Resolution Agreement), which were not timely cured, the DCS Board of School Trustees once again began the revocation process on July 25, 2019.

On August 19, 2019, DCS Board of School Trustees held a public meeting for the Charter Schools to present documents and testimony regarding the proposed charter revocations. The Charter Schools appeared by counsel, but did not contest revocation – merely requested money and time.

On August 26, 2019, the DCS Board of School Trustees revoked the IVS and IVPA charters. The next day, the members of the Boards for IVS and IVPA resigned and the Boards effectively dissolved. Although the Charter Schools had been functionally inoperative since mid-July, this action by the Board resulted in immediate closure of the Charter Schools. No one from IVS or IVPA cooperated in any material respect with any closure protocol after that date. DCS spent months securing Charter School student records, ensuring that Charter School students received whatever transcript could be created from the information available, and transferring over 15,000 Charter School student records to the students' last school of legal settlement. These are all tasks that the Charter Schools were required to perform under applicable law and contractual agreement, but that DCS undertook in an effort to help the students abandoned by the Charter Schools to the best of their ability.

DCS provided near constant oversight, monitoring, and feedback to the Charter Schools through almost daily communications and frequent on-site visits throughout its time as Authorizer. DCS did take a less formal approach to oversight as it found that the daily informal contacts were more conducive to the creation of a relationship of collaboration and innovation to drive the educational mission of the Charter Schools. From the very beginning of its Authorization of the Charter Schools in 2011, DCS' focus has always been on providing quality education to an under-served population of students. The individuals that approached DCS about becoming an Authorizer for IVS (and later IVPA), presented themselves as dedicated educators who convinced DCS that they were committed to providing a much-needed option for an underserved population of students. While DCS was considering becoming the Authorizer of IVS, it sought guidance from the Indiana Department of Education ("IDOE") and was encouraged by IDOE officials to become the sponsor of this unique educational opportunity for Indiana children. Very little official guidance has been available during the course of DCS' term as Authorizer regarding specific duties of the authorizers, what a charter agreement should look like, what specific oversight steps should be provided, or on how to enforce agreements short of revoking the charter or filing a lawsuit. DCS firmly contends that it properly and appropriately provided oversight of the Charter Schools in light of all of the surrounding circumstances.

Response to Report

On March 11, 2020, SBOA conducted an exit conference with DCS. Undersigned counsel participated along with Superintendent Paul Garrison, Assistant Superintendent David Stashevsky, and Board of Trustees President Diane Evans, on behalf of DCS. SBOA officials discussed the Examination results with us and permitted us to read and take notes on a draft Examination Report. We were not, however, permitted to retain a copy of the draft Report. Therefore, this response is based solely on the notes taken on behalf of DCS during that meeting and may not accurately reflect the actual Report. To the extent this Response does not accurately reflect the actual Report, DCS respectfully requests clarification and an opportunity to respond to those clarifications.

During the investigation process, DCS provided SBOA with thousands of pages of documents responsive to specific requests for information made by SBOA. At the exit conference, SBOA indicated that it had not reviewed all the documents submitted by DCS. DCS is, understandably, concerned about the accuracy of the Report if SBOA has not analyzed all the relevant documentation. During the March 11th exit conference, we requested an opportunity to identify for SBOA specific documents that DCS contends directly addresses many, if not all, of the concerns noted by SBOA in the Report. SBOA directed DCS to submit any such documents for consideration, which was done during the week of March 16, 2020. We are unaware whether these additional documents have been reviewed or considered by SBOA.

In addition, on Friday, March 6, 2020, after the exit conference was already scheduled to occur on March 11th, SBOA contacted DCS by phone to request a long list of additional information and documentation, the bulk of which had already been provided to SBOA by DCS. SBOA requested that all of this information be delivered by 6:00 a.m. on Monday, March 9, 2020, in less than one business day. DCS responded by close of business on March 9, 2020, providing as much of the requested information as was feasible on such a short turn-around. DCS indicated in its response that it would provide a more detailed response if permitted the time to do so. Nonetheless, the exit conference went forward on March 11th and, as far as we can tell, none of the information provided by DCS on March 9th was considered in the Report. Indeed, much of that information is repeated herein.

DCS is, therefore, concerned that SBOA has not fully considered the actual facts of this situation in formulating its Report as it is apparent that SBOA did not take adequate time to fully analyze all available information and documentation. It is against this backdrop, that DCS now responds to the substance of the concerns identified by SBOA in its Report.

In its Report, SBOA identifies what it refers to as “deficiencies in internal controls,” including the following:

1. SBOA contends that the Charter Agreements called for on-site reviews of the Charter Schools by DCS and required access to records. SBOA concludes that DCS did not obtain all records to which it was to have access in order to perform regular monitoring. SBOA contends that DCS did not complete any detailed analysis to determine the “reasonableness” of the records that it did obtain.

RESPONSE: It appears that SBOA is referring to Section 14.9 of the 2011 IVS Charter Agreement and Sections 13.9 of the 2015 IVS and 2017 IVPA Charter Agreement. None of these provisions require on-site reviews, but merely permit them. No particular method or level of formality is required. Further, there is no statutory obligation for an authorizer to perform on-site reviews of a charter school.

Section 14.9 of the 2011 IVS Charter Agreement specifies: “The Sponsor may enter the premises of the Charter School during school hours, on a scheduled basis, to monitor whether the Organizer is operating the Charter School in compliance with applicable law and with the terms and conditions of the Charter. ***To the extent permitted under applicable law***, the Organizer shall maintain the following information at the Charter School and make it available to the Sponsor upon request no later than the second (2nd) business day following such request; or, if the information has not yet been disclosed by a third party, as soon as practicable with the exercise of due diligence on the part of the Organizer: a. The Organizer's Articles of Incorporation; b. The Organizer's by-laws; c. Board policies; d. The Organizer's enrollment and admissions process for the Charter School; e. A list of all formerly and currently enrolled students and, for each student, the following information: full legal name, social security number (if available), student identification number (for purposes of state testing), birth date, address, school corporation in which the student resides, names and addresses of legal guardians; required documentation relevant to the student's special needs status (if applicable); results on assessments required by applicable law, the Application, the School Improvement Plan, and the Charter; and documentation of a student's suspension or expulsion (if applicable); f. A list of teachers who work at the Charter School and, for each one, the following information: name, social security number, birth date, address, compensation, evidence of certification to teach or progress toward certification to teach (if applicable), documentation of termination or resignation (if applicable); g. Evidence of insurance; h. Leases; i. Documentation of loans and other debt of the Organizer related to Charter School.” [emphasis added].

Section 13.9 of the 2015 IVS Charter Agreement specifies: “The Sponsor may enter the premises of the Charter School during school hours, on a scheduled basis, to monitor whether the Organizer is operating the Charter School in compliance with applicable law and with the terms and conditions of the Charter. To the extent permitted under applicable law, the Organizer shall maintain the following information at the Charter School and make it available to the Sponsor upon request, as soon as practicable with the exercise of due diligence on the part of the Organizer: a. The Organizer’s Articles of Incorporation; b. The Organizer’s by-laws; c. Board policies; d. The Organizer’s enrollment and admissions process for the Charter School; e. Evidence of insurance.”

Section 13.9 of the IVPA Charter Agreement specifies: “Sponsor may enter the Charter School premises during school hours, on a scheduled basis, to monitor whether Organizer is operating the Charter School in compliance with applicable law and with the terms and conditions hereof. ***To the extent permitted by applicable law***, Organizer shall maintain the following information at the Charter School and make it available to Sponsor on request,

as soon as practicable with the exercise of due diligence on the Organizer's part: Organizer's Articles of Incorporation, Organizer's by-laws; Board policies; Organizer's enrollment and admissions process for the Charter School; and Evidence of insurance; Any and all student records, Any and all financial records; Any and all employee records; Any and all other Charter School Records." [emphasis added].

During the entire time that DCS was an authorizer of IVS and/or IVPA, DCS was conducting frequent reviews of the operations of the Charter Schools and was in near constant communication with Charter School officials. This included frequent (at least quarterly) informal on-site visits, both announced and unannounced. Because these visits were informally conducted, review and comment was oral and not necessarily documented. Notes of these visits are likely included in the documentation provided by DCS to SBOA.

During on-site visits, and frequently discussed at other times, DCS communicated with the Charter Schools about topics including but not limited to: the enrollment process, lag time in onboarding, student/teacher communication, credits, transcript requirements, IDOE data reports, student records, student withdrawals, student engagement and inactivity, fiscal audits, state testing requirements, student test participation, graduation rate, graduation pathways, special education services, internships, staffing, teacher/student ratios, counselors, school improvement plan, annual performance review, governance of the school board, formative assessments, personalization, student data management system, learning management systems, budgets, content providers, student attendance, length of school year, EVOLVE assessment tool, access to data, quarterly services reports, professional development, parent meetings, legislative meetings, student mobility, board meetings, and the schools' websites.

As for document requests and review, DCS did request and have access to much of the information listed in the Charter Agreements. DCS did not have access to student records because of IDOE's position that the Charter Schools could not disclose student PII to DCS. IDOE did not allow authorizers to receive PII data from charter schools until August 2018. For example, in 2014, IVS was required to create a corrective action plan for ISTEP+ testing. The original plan was to include PII data on IVS students. IVS was to share the plan with DCS. IDOE rejected the PII language in the original corrective action plan and required IVS to create a plan without PII data because IDOE contended it would be a FERPA violation for DCS to see PII data from IVS students. In July of 2017, DCS questioned IDOE regarding access to the STN Application Center. IDOE did not respond. DCS was unable to access the information needed for appropriate oversight of student enrollment and engagement because of IDOE's position on authorizer access to this data. It was not until IDOE changed its position and DCS received direct access to the STN Application Center in August of 2018 that verifiable information regarding enrollment/ADM could be accessed. DCS promptly began a thorough review of this data and issues were identified and reported to SBOA.

DCS did receive revenue and expenditure reports monthly from the Charter Schools but had no means to verify the information provided. DCS did not request or do a

comprehensive review of a complete set of the Charter Schools' financial records because (1) there was never any indication of any financial irregularities that necessitated such a review, and (2) DCS knew that SBOA was conducting audits and any issues would be noted by SBOA (see below). In Fall 2018, DCS did begin to pursue an independent financial audit due to a delay in receiving audit information, but SBOA asked DCS to delay this independent audit until 2019, at which time DCS was actively engaged in revoking the charters.

The Charter Schools provided DCS with copies of its enrollment policies and procedures during numerous on-site reviews (see below).

2. SBOA contends that DCS did not complete oversight of or obtain an understanding of the Charter Schools' enrollment process, enrollment policies, or enrollment procedures.

RESPONSE: This is simply untrue. DCS was fully informed regarding the Charter Schools' enrollment process, enrollment policies, and enrollment procedures. The fact that it appears that the Charter Schools were secretly operating outside of these established processes, policies, and procedures has no relation to DCS' oversight or understanding of the legitimate portion of the enrollment process of the Charter Schools.

As stated above, the Charter Schools provided DCS with copies of its enrollment policies and procedures during numerous on-site reviews, which were revised from time to time. DCS provided SBOA with copies of at least four versions of these policies and procedures. The Charter School further provided DCS with copies of its enrollment support procedures and its withdrawal policies and procedures.

The Quarterly Service Reports provided to DCS (which DCS has provided to SBOA) included enrollment and exit figures.

During some of DCS' on-site reviews, DCS officials walked through the Charter Schools' call center area and observed the phone interactions between the IVS staff and students. DCS was shown the Charter Schools' enrollment process during these observations. According to the process sheet the Charter School staff was using and DCS was shown, a verification telephone call was made to the parent before processing the enrollment application. The script the Charter School staff was using called for them to go over the application with the parent and emphasize the state testing requirements. DCS officials saw application tracking sheets, enrollment checklists on student folders, and completed exit interview documentation with parent signatures during on-site reviews. Examples of each of these are available in the 50,000+ pages of student records that DCS currently has. The written enrollment procedures observed by DCS throughout the course of its authorization of the Charter Schools were appropriate and raised no "red-flags" regarding inappropriate enrollment practices.

DCS had no reason to suspect that students were enrolled inappropriately or that inactive students were kept on the rolls. In fact, the Quarterly Service Reports indicated student

exits each quarter which suggested the Charter Schools were withdrawing inactive students as would be expected. The student engagement policy, found in the IVS Student Handbook and on the Charter School website, was in effect from 2011 until it was revised in 2018. It stipulated withdrawal conversations to begin after two weeks of student course inactivity. The written engagement policy was appropriate. It was not until IDOE finally granted DCS direct access to the STN Application Center in August 2018 that enrollment/ADM issues were identified through DCS' extensive review, and DCS could independently and accurately assess the information.

It must also be noted that the IDOE conducted their own enrollment review of virtual charter schools in Indiana and presented that report to the SBOE on August 1, 2018. Despite looking into and compiling the datasets on virtual school enrollments, IDOE did not note the enrollment irregularities that DCS later uncovered when it had access to this same data. DCS, without the access to the state data, had no way of knowing about the Charter Schools' alleged fraudulent activities. No amount of review of enrollment process, enrollment policies, or enrollment procedures would have revealed what the IDOE data showed.

3. SBOA contends DCS did not obtain complete and detailed financial records from the Charter Schools and that without these detailed records DCS could not monitor the Charter Schools' compliance with their reporting requirements, including those associated with extraordinary expenditures or use of education service providers.

RESPONSE: DCS did receive revenue and expenditure reports from the Charter Schools, but had no means to verify the financial information provided to it. DCS had no reasonable way to know that extraordinary expenditures were occurring or that an education service provider was being relied upon if they were not self-reported. DCS repeatedly requested a great deal of information from the Charter Schools that was not supplied. The only means by which DCS could pursue that information was by either filing a breach of contract action in court or by revoking the charters, both of which are extreme measures. Eventually, of course, DCS did revoke the charters due, in part to significant non-compliance with the Charter Agreements.

Regarding extraordinary expenditures, the Charter Schools were contractually obligated under the terms of the Charter School Agreements to self-disclose those expenditures (See Section 10.6 of the 2011 IVS Charter School Agreement; Section 9.5 of the 2015 IVS Charter School Agreement; and Section 9.5 of the 2017 IVPA Charter School Agreement). DCS had no reasonable cause to question that these expenditures were occurring if they were not self-disclosed.

Regarding Education Service Providers, please see below.

4. SBOA contends DCS did not obtain any reporting calendars, ADM reports, or performance reports from the Charter Schools.

RESPONSE: This is incorrect. DCS received a reporting calendar as a part of the Quarterly Service Reports provided by the Charter Schools to DCS. DCS has provided SBOA with all of these Quarterly Service Reports.

Performance reports were obtained as a part of each third quarter on-site review. In 2013 and 2014, the 2013 version of the Accountability System was used. In 2015 and 2016, the 2015 Monitoring Guidelines were used. In 2017 and 2018, the EVOLVE progress monitoring was used.

The ADM Reports included PII that IDOE had stated the Charter Schools were not permitted to share, such that DCS was not able to obtain these reports under this IDOE directive. DCS obtained enrollment data in August 2018 when IDOE granted access.

5. SBOA contends DCS did not compel the Charter Schools to comply with the Charter Agreements regarding reporting requirements, document access, etc.

RESPONSE: Indiana Code § 20-24-9-4 sets forth an authorizer's available remedies in the event that the charter school fails to comply with the charter agreement. Only two options are available: "(1) order any corrective action that the authorizer considers necessary to correct the deficiency, or (2) revoke the school's charter." There is nothing in applicable law that gives any force or effect to an "order" issued under this provision. Compliance with such an order would require court action to be enforceable.

Therefore, aside from revoking the charter, the only means by which DCS could compel compliance was by filing an action in court, which is an extreme measure and creates an adversarial relationship that is not conducive to the kind of cooperative relationship necessary to for a successful authorizer-charter school endeavor. This is a significant issue in the charter school system that must be addressed at a policy level. Without some other less draconian means by which to "compel" compliance, authorizers are in a difficult situation wherein they have to choose between damaging a relationship to the detriment of the students being served or keep pushing for voluntary compliance with no real "carrot" or "stick" available to induce compliance.

DCS suggests one potential solution could be to change the finance system for charter schools so that state funding flows through the authorizer to the charter school. This would give the authorizer the means to compel compliance via withholding funding, the same way IDOE can compel compliance from non-charter public schools by withholding funding.

Eventually, of course, DCS did revoke the charters due, in part to significant non-compliance with the Charter Agreements, including information sharing.

6. SBOA contends DCS failed to follow-up with the Charter Schools regarding compliance issues identified in audit reports.

RESPONSE: The audits were reviewed by DCS and discussed with representatives of the Charter Schools. It should be noted that DCS as Authorizer was not invited to or included in the audit exit conferences with SBOA and the Charter Schools. Similarly, DCS was never contacted by SBOA regarding those audits and any compliance issues that SBOA felt DCS should investigate or pursue. DCS reasonably presumed under these circumstances that SBOA was satisfied with the Charter Schools' responses to the compliance issues identified in the reports. Had DCS been included in the SBOA audit processes of the Charter Schools, DCS would have been in a better position to understand what compliance issues needed further action.

When DCS contacted SBOA with its concerns in the Fall of 2018, one of its concerns was regarding its unsuccessful attempts to receive an audit report for IVS. DCS was surprised to find out that SBOA had been pursuing the same audit report from the Charter Schools but had not communicated with DCS regarding that deficiency. DCS also was surprised to learn that the Charter Schools had specifically requested that SBOA not notify DCS that there was an issue with obtaining the audit, and that SBOA had agreed to this request.

In late Summer 2018, DCS asked for, and received, permission from SBOA to independently audit the Charter Schools. DCS promptly retained a firm to conduct this independent audit. However, DCS was then informed by SBOA that the Charter Schools had been given an extension of time to furnish such an audit until January 1, 2019, and that DCS should not pursue an independent audit prior to that date. By that time, DCS was pursuing revocation of the charters.

7. SBOA states that it only noted one Accountability Plan for the Charter Schools (2017 EVOLVE plan).

RESPONSE: The Accountability Plans for multiple years were given to SBOA. The necessity for an Accountability Plan is derived from the Charter School Agreements:

- Section 4.4 of the 2011 IVS Charter School Agreement states: "The Organizer shall develop in consultation with the Sponsor a proposed accountability plan to provide a basis for evaluating whether the Organizer is meeting its educational goals under the Charter."
- Section 4.6 of the 2015 IVS Charter School Agreement states: "The Organizer shall consult with the Sponsor in developing a new and/or modifying an existing accountability plan to provide a basis for evaluating whether the Organizer is meeting its educational goals under the Charter for this term. The Organizer will meet all State requirements referenced in the Accountability Plan that may change from time to time."
- Section 4.6 of the 2017 IVPA Charter School Agreement states: "Sponsor shall consult with the Organizer in developing a new and/or modifying an existing Accountability Plan to provide a basis for evaluating whether the Organizer is meeting the educational goals established for this term. Sponsor retains the authority over the development and execution of the Accountability Plan including

the establishment of educational benchmarks for the Charter. Organizer will meet all State and Sponsor requirements referenced in the Accountability Plan that may change from time to time.”

DCS utilized three accountability systems over the course of the 8 years with IVS and IVPA:

- 2013 and 2014 – Accountability System: DCS met with IVS administration after IDOE released ISTEP & ECA test results to conduct the annual review. The annual review was conducted at the IVS location and coincided with DCS’ third quarter on-site review.
- 2015 and 2016 – Monitoring Guidelines: DCS met with IVS administration after IDOE released ISTEP & ECA test results to conduct the annual review. The annual review was conducted at the IVS location and coincided with DCS’ third quarter on-site review.
- 2017 and 2018 – EVOLVE: DCS met with IVS administration almost monthly beginning in December 2017 to discuss the school improvement plans.

The plans were devised by DCS in cooperation with the Charter Schools, pursuant to the Charter Agreements. The Charter Schools supplied data to DCS and the information was reviewed with the Charter School personnel. DCS made specific recommendations for improvement and engaged in continuous dialogue with the Charter Schools about progress towards those improvements. One example of this concerned the poor graduation rate. The Charter Schools contended that students were coming to them credit deficient which negatively impacted their ability to graduate on time. National studies also supported that contention. DCS then asked the Charter Schools to begin supplying data regarding credits earned prior to Charter School enrollment and credits earned post-enrollment. SBOA was provided with that data request during this examination process. Many times these reviews were conducted in face-to-face meetings and through telephone conversations.

8. SBOA states that it only noted one performance review of the Charter Schools conducted by DCS (October 2017).

RESPONSE: All required performance reviews were conducted. Applicable provisions of the Charter Agreement are as follows:

- 2011 IVS Charter School Agreement, Section 15.2: “The Sponsor shall review the Organizer's performance no less frequently than every 3 years, with the content and scope of each review to be determined by the Sponsor. As part of the overall review process, the Sponsor shall review the Organizer's performance in operating the Charter School, including methodology for gauging the progress of the Charter School in achieving the educational mission and goals incorporated in the Application and the Charter. Such performance review shall include methods for holding the Organizer accountable for improvement in student performance as measured by the following, if appropriate for grade level: a. Results on mandatory

annual assessments, as defined in 511 IAC § 6.2-6-1, including the number and percentage of students meeting state academic standards; b. Graduation rates; c. Number and percentage of students completing the Core 40 curriculum and results on Core 40 end of course assessments; and d. Number of academic honors diplomas.”

- 2015 IVS Charter School Agreement, Section 14.2: “The Sponsor shall review the Organizer’s performance on a yearly basis for the duration of the Charter.”
- 2017 IVPA Charter School Agreement, Section 14.2: “Sponsor shall review Organizer’s performance annually for the duration of the Charter.”

Indiana Code only requires authorizer review of charter performance one time during the five-year period the charter is in effect. Ind. Code § 20-24-4-1(6)(A).

DCS made data requests to IVS in the third year of operation in order to conduct the review required under Section 15.2 of the 2011 IVS Charter School Agreement. This first evaluation process led DCS to seek a more comprehensive review procedure and more formal evaluation rubric once the 2015 Charter was in place. No evaluation tool existed that was designed specifically for a virtual school and no guidelines were furnished by the State for such an evaluation. As such, DCS worked to create its own tool and system for evaluation.

After 2015, the accountability system consisted of a “working document” dated August 18, 2015, which initiated a collaborative project with the Charter Schools to develop an evaluation model more appropriate for virtual education. Throughout the development of the new model, the yearly performance reviews were conducted on-site during face-to-face conversations.

DCS contracted with The Summit in Ft. Wayne, Indiana to undertake a large research project to develop an evaluation instrument with the goal of providing a high quality, online learning experience for the Charter Schools’ growing student population. The result of that work was the EVOLVE Rubric (EVOLVE is an acronym for Evaluation of Online Learning and Virtual Efficacy). The name reflected DCS’ desire to see virtual education evolve in terms of both academic quality and the Charter Schools’ ability to deliver virtual education effectively.

The rubric allows for a diagnostic evaluation of a virtual school first through a self-study, followed by an expert review team utilizing the EVOLVE rubric. EVOLVE examines four critical areas: academics, systems, personalization, and governance. Each of the four areas requires the virtual school to respond to a series of guiding questions. Evidence provided by the virtual school, in response to these questions, is then rated on a four-point scale using descriptive, research-based criteria. EVOLVE is able to calculate a letter grade for each quadrant, as well as, an overall school grade.

The first EVOLVE-based review of the Charter Schools was conducted in October 2017 using a panel of national experts and a self-study by the staff of the Charter Schools. SBOA

has been provided with the results of that evaluation. This, however, was not the only performance review of the Charter Schools, as noted above, but was simply the first conducted with a tool specifically designed for effective evaluation of a virtual school.

9. SBOA states that it found no evidence that DCS obtained verification of insurance coverage.

RESPONSE: This verification was repeatedly sought by DCS from the Charter Schools. Again, as noted above, DCS had limited means by which to compel compliance. It is unclear how obtaining insurance verification would have impacted or prevented the alleged malfeasance by the Charter Schools that allegedly occurred. Therefore, this finding seems to be wholly irrelevant to the analysis.

10. SBOA concludes that DCS “may have discovered” [emphasis added] the Charter Schools’ malfeasance if it had done all of the things identified above, noting “lack of meaningful oversight and monitoring may have contributed to ineligible students being included on the ADM reports.” [emphasis added]. It is our understanding that SBOA speculates that if the Charter Schools ‘knew someone was looking’ they may not have been emboldened to commit malfeasance.

RESPONSE: DCS strongly disputes that it failed to provide meaningful oversight and monitoring of the Charter Schools. As noted above, DCS was constantly engaged in dialogue with the Charter Schools regarding their operations and educational services. DCS reasonably used the tools available to it to monitor and ensure compliance with the Charter Agreement. The explanations the Charter Schools gave to DCS for things such as the surge in enrollment numbers were plausible and consistent with known industry trends. DCS had no reason to suspect that these numbers were false until IDOE granted DCS access to the data necessary to independently verify student engagement and progress. Until then, DCS was entirely dependent upon whatever information the Charter Schools chose to give to DCS. Considering it now appears that that Charter Schools were engaged in a fraudulent scheme, it can come as no surprise that the Charter Schools made efforts to obscure this scheme from DCS. This was not due to lack of meaningful oversight and monitoring, but rather it was due to the alleged fraudulent motive of the Charter Schools and people associated with them.

Engaging in speculation as to what “may” have prevented this alleged fraudulent activity is done in the context of what we know now. It is easy to view this situation with the benefit of hindsight and come up with a list of what “may” have happened “if only.” As Paul Joyce, SBOA State Examiner, noted in his statement to the State Board of Education on July 10, 2019, it is “always easy to look behind.” Mr. Joyce acknowledged that it is typically not the failure of one part of the system that leads to these kinds of situations, but is usually because of failures from multiple agencies, even the legislation itself. (See <https://www.youtube.com/watch?v=b7DIRKGJEwg&feature=youtu.be> at minute marker 1:29:44).

There are a lot of “what ifs” that can be identified in this situation. DCS may not have chosen to authorize the Charter Schools in the first place, or decided not to renew the IVS charter in 2015. IDOE may have granted access to data sooner and may have engaged in its own analysis of enrollment and engagement data. SBOA may have questioned many of the Charter School financial matters during its audits, as it now says DCS should have questioned. SBOA gave guidance to IVS as a part of the 2015 audit to work with IDOE Department of School Finance regarding ADM related issues. DCS was shut-out of that process and can only assume that IDOE was satisfied at that time that ADM was accurate since no ADM adjustments were made by IDOE.

SBOA is well-aware of the significant time and effort expended by both DCS and SBOA (and presumably other governmental agencies) to uncover the depths of the purported malfeasance by the Charter Schools. It is our understanding the SBOA went so far as to contact as many Charter School students as possible to determine if the student was accurately enrolled. Considering the lengths to which SBOA had to go to determine what was occurring, is it really reasonable to conclude that better documentation or asking some particular question or another that only seems relevant in hindsight (and probably would not have elicited an accurate answer) “may” have stopped the purported malfeasance? SBOA’s own investigative report took far more analysis and far greater access than most existing charter agreements in Indiana allow for. DCS did far more in analyzing the data it obtained from IDOE than any other charter school authorizer in Indiana has done, to the best of our knowledge. Even had DCS done “more,” it is not realistic to conclude that none of this would have happened. People intent on gaming the system will find a way, as apparently happened in this case.

What started out as a way to improve education for some of Indiana’s most in-need students proved to be a tough lesson about trust and disappointment in many respects for DCS. Throughout DCS’ history as an authorizer, from its beginning in 2011 until now, state laws concerning the duties of an authorizer have changed and will necessarily continue to change. DCS stands firm in its position that it performed its duties as an authorizer well within the bounds of the law, the Charter Agreements, and in the face of obstacles placed both by the State and by the Charter Schools.

SBOA should not lose sight of the fact that the Charter Schools had many dedicated teachers and many students who were served well by the online education environment that they were provided. As a part of its authorization duties, DCS administrators attended many IVS and IVPA student graduations and during its on-site reviews met with many students and parents. It was not unusual for DCS administrators to be sincerely thanked by these students and their parents for authorizing IVS and IVPA and making their education possible. Many times DCS representatives heard the tear-filled words: “If it weren’t for the opportunities that this school provided, I would never have received a high school diploma” or “I was bullied in my previous schools and had nowhere else to go” or “I was miserable until I came here” or “I had no place to live and had to work. This is the only way I could attend school” or “I had a baby to take care of, but I was still able to get my diploma” or “I graduated a full year early” or “I was able to travel with my missionary father and continue

my schooling.” Despite the apparent malfeasance of the Charter Schools and those associated with it, virtual education did work for a significant number of real students. Serving these students was why DCS got involved in the first place and continued to push the Charter Schools to improve its educational services and performance. That it turned out that the Charter Schools and those affiliated with it also apparently had a different motive is wholly regrettable, but that must be laid at their feet, not at those of DCS.

The Report further notes SBOA concerns regarding the Charter Schools’ use of an Education Service Provider. The Report identifies the following concerns regarding this topic:

1. SBOA contends DCS did not inquire of the Charter Schools regarding whether they intended to contract with an Education Service Provider.

RESPONSE: It was the Charter Schools’ obligation to comply with all contractual and statutory obligations regarding use of an Education Service Provider (See Section 4.6 of the 2011 IVS Charter School Agreement and Exhibit A thereto; Ind. Code § 20-24-3-2.5).

DCS had no reasonable indication that it was necessary to ask about items that were not self-disclosed. This is an issue raised with the benefit of hindsight, not in consideration of what was known at the time.

2. SBOA contends that DCS did not receive evidence of academic achievement, term sheets, disclosure of conflicts, or any assurances of structural independence of Indiana Virtual Education Foundation from its Education Service Provider.

RESPONSE: DCS did receive evidence of academic achievement (see above regarding evaluations and reviews). Again, DCS had no reasonable indication that it was necessary to ask about items that were not being self-disclosed.

3. SBOA identifies conflicts of interest noted in the IVEF Report and contends, “Had Daleville implemented proper oversight procedures [under IC § 20-24-2-2.5] Daleville may have discovered that education service providers were used, conflicts of interest existed, and there was a lack of structural independence.” [emphasis added].

RESPONSE: See Response to #10 above.

SBOA also points to DCS’ generalized obligation as Authorizer under Ind. Code § 20-24-9-3 to “oversee a charter school’s compliance with: (1) the charter, and (2) all applicable laws.” This provision, however, cannot reasonably be construed to impute strict liability on an Authorizer for all bad acts of a charter school. This statute requires oversight; it does not require DCS to ensure or guarantee compliance. Particularly, as in this case, where the charter school appears to have engaged in tactics to conceal its activities, it is unreasonable to suggest that an authorizer be held responsible for any and all bad acts of a charter school.

Response to Notice of Result of Examination – Demand for Payment¹

On March 18, 2020, DCS received a Notice of Result of Examination dated March 16, 2020. This Notice asserts that DCS is “indebted to the public treasury in the total amount of \$2,239,693.45” and formally demands that DCS “pay back the public funds.”

The Examination Report states that this alleged overpayment amount of \$2,239,693.45 is derived from the IVEF Report. However, on page 32 of the IVEF Report SBOA states, “Recalculation of fees based on the verified ADM resulted in a calculated overpayment of \$2,006,226.92.” It is unclear why there is a discrepancy of \$233,466.53 when the Examination Report references the IVEF Report as the source of this calculation. It is our understanding based on the Examination Report and representations by SBOA, that SBOA is not attributing any investigation or examination costs to DCS. Accordingly, this discrepancy needs to be reconciled or otherwise explained.

Regardless, this demand for repayment of purported “overpayment” of authorizer fees is without basis and cannot properly be pursued as a matter of law.

First, none of the authorizer fees paid by IVS or IVPA to DCS were paid directly by the State of Indiana. The authorizer fees were not public funds and did not come from the public treasury. IVS and IVPA were contractually obligated under the Charter Agreements to pay DCS an authorizer fee and DCS was paid like any other vendor pursuant to a contractual obligation. The parties to the Charter Agreement privately agreed that this fee would be calculated based on a percentage basis. However, nothing in the Charter Agreements specifies what funds the Charter Schools were to use to pay the authorizer fee. This was a private contractual obligation, the same as any other and SBOA has no ability to interpret or enforce the terms of a private agreement. Any dispute between the parties to the Charter Agreement is strictly between those parties.

Both the Charter School Agreements and applicable law (Ind. Code § 20-24-7-1(a)) specify that the organizer, not the Authorizer, is the Charter Schools’ fiscal agent and has exclusive control of funds received by the Charter Schools, including all state funding. As such, once these funds were received by the Charter Schools, it was in their exclusive control. Payment of fees to DCS was not a requirement of law, but rather solely a function of the contractual obligation between the Charter Schools and DCS.

The June 6, 2011 Charter School Agreement between DCS and IVS’ original organizer, BCI, does not specify an authorizer fee. The Parties later privately agreed to a 2% authorizer fee, but DCS received no authorizer fee from IVS until the 2014-2015 school year. Furthermore, Section 10.1 of this Charter Agreement states that BCI “has exclusive control of, and is responsible for, the funds received by the Charter School and the financial matters of the Charter School.” BCI further

¹ In making this Response, DCS does not waive, and explicitly reserves, the right to assert additional objections and/or legal arguments or defenses in the event that any agency or party seeks to recover any funds, including authorizer fees, from DCS.

indemnified DCS in Section 11.2 for all claims and liabilities arising out of IVS's wrongdoing and of DCS' oversight responsibilities set forth in Ind. Code § 20-24-9-3.

The June 22, 2015 Charter School Agreement between DCS and IVS states in Section 2.3 that DCS "shall be entitled to a yearly 3% fee to carry out its responsibilities and duties as [Authorizer]. The fee shall be payable on a monthly basis directly to" DCS. The Charter Agreement does not state the basis for the 3% fee or otherwise require that the fees be paid from a particular source. IVS retained exclusive control and responsibility for funds it received and the financial matters of IVS (Section 9.1).

Likewise, the August 7, 2017 Charter School Agreement between DCS and Indiana Virtual Education Foundation, Inc. for IVPA states in Section 2.3 that DCS "shall be entitled to a yearly 3% fee to carry out its responsibilities and duties as [Authorizer]. The fee shall be payable on a monthly basis directly to" DCS. Like the 2015 IVS Charter Agreement, this Charter Agreement does not state the basis for the 3% fee or otherwise require that the fees be paid from a particular source. IVEF retained exclusive control and responsibility for funds it received and the financial matters of IVS, subject to approval by DCS (which was never sought) (Section 9.1).

It is important to note that Ind. Code § 20-24-7-4 (including historic versions back to 2011) caps the permissible² administrative fees for certain authorizers, but not for authorizers that are the governing bodies of a school corporation such as DCS. The statute states that the specified authorizers may receive an administrative fee of not more than 3% of basic tuition support from the charter school. Nothing in the statute or any other applicable law states that the specified authorizers are the only authorizers that may collect administrative fees. In other words, the effect of this statute is that DCS was not capped by statute as to the amount of administrative fees it could collect, and no statutory requirement dictated what the basis of those fees must be (e.g. basic tuition support). Administrative fees are referenced elsewhere in Ind. Code § 20-24 in a manner that does not restrict which authorizer may receive administrative fees and seemingly contemplates that any authorizer could receive an administrative fee (*see, e.g.,* Ind. Code § 20-24-9-2(9)). DCS chose not to exceed the percentage cap set on other types of authorizers in the terms of the Charter Agreements regarding administrative fees.

Furthermore, the Notice was issued to DCS without explanation of the manner that the amount was calculated, the basis for the calculation, and without adequate itemization to understand the demand (particularly in light of the discrepancy between the number stated in the IVEF Report and the number stated in the Notice). Under SBOA Accounting and Uniform Guidelines in relation to accounts payable and Ind. Code § 5-11-10-1.6(c)(1), DCS cannot adequately respond to the SBOA demand without a fully itemized invoice or bill for the claim. DCS requests a list of the students that SBOA deems were inappropriately included in each Charter School ADM report, including the student STN number and the basis upon which SBOA determined that the student should not have been reported as enrolled.

² This statute permits, but does not require, that a charter school pay an authorizer a fee. Authorizer fees are not, therefore, a creation of law, but rather a creation of contract.

One of the reasons such verification is necessary is the SBOA's conclusions in the IVEF Report regarding the September 2011 ADM/ME report. This is the easiest year to verify as only nine students were included in the September 2011 report. In the IVEF Report, SBOA concluded that four of the nine students reported for funding that particular year should not have been included and claimed those four students were not enrolled. However, according to information that DCS has in its possession, all IVS students included in the September 2011 ADM/ME Report met the legal definition for inclusion in the ADM count:

- All nine students applied to enroll for the 2011-12 school year
- All nine were enrolled and reported to IDOE as enrolled on September 7, 2011, the first day IVS was open for operations
- All nine were properly included in the ADM count on September 16, 2011
- None of the nine were in conflict with any other school corporation.
- IVS reasonably expected all nine to continue to receive educational services as of September 16, 2011. Pursuant to IVS' engagement policy (Student Contact and Drop Policy) in place at that time, withdrawal procedures would not be initiated until a student had failed to participate in coursework for fourteen (14) days. As the ADM/ME Report was due and was submitted less than fourteen (14) days from the time of initial enrollment for all nine of these students, none of these students were eligible for withdrawal at the time the September 2011 ADM/ME Report was submitted to IDOE. In fact, the four students identified by SBOA as improperly included were later properly withdrawn in October 2011 pursuant to the IVS engagement policy.

Accordingly, the fact that these four students are improperly included in the IVEF Report is concerning and calls into question the accuracy of the number of students SBOA has identified as improperly counted. As such, DCS respectfully requests sufficient information with which to verify and confirm that the amount SBOA is demanding DCS "pay back" is accurate, aside from the legal defects of the demand.

Additionally, since it appears that the State is pursuing recovery of funds from the Charter Schools and related parties, recovery of a portion of these same funds from DCS will result in duplicated recovery up to 103% of the total allegedly misappropriated funds. Thus, any effort to recover from DCS is not to make the State whole, but rather serves as punitive recovery against DCS. Such punitive measures are not warranted under the circumstances and are aimed at a party that is not only not culpable of wrong-doing (and has never been formally accused of any violation of law or other wrong-doing, other than the speculative allegations in the Report that its actions "may have" allowed the alleged malfeasance of the Charter Schools), but is the very party that brought the alleged wrong-doing to the attention of SBOA.

To that end, it should be noted that DCS received all authorizer fees in good faith and amounts received were based solely on calculations done by the Charter Schools. DCS played no role, whatsoever, in any erroneous ADM reports made by the Charter Schools to the State. DCS did not even have the means by which to confirm the Charter Schools' ADM counts until it received access to IDOE data in August 2018. Once that occurred, DCS promptly and appropriately reported its concerns.

Authorizer fees have always been maintained in accounts separate from DCS' other accounts and utilized solely for purposes directly related to its duties as Authorizer. DCS has expended significant amounts from its authorizer fee accounts related to the revocation of the Charter Agreements, cooperation with SBOA and other government agencies related to the investigations of the Charter Schools, closure of the Charter Schools, and wind-down responsibilities that the Charter School abandoned. This included reviewing student grades and progress on several online educational platforms and supplying students with transcripts needed to transfer to new schools, gaining access to student records so such transcripts could be created, and the transfer of over 15,000 student records to each student's school corporation of legal settlement. Though there is a current balance in the Authorizer fee accounts, it is far less than the amount demanded by SBOA. Those funds continue to be spent on legal fees and business costs that DCS has been and continues to be required to incur in direct relation to its role as Authorizer. As noted, a substantial amount of fees and costs have been incurred because of the Charter Schools' presumed malfeasance and because it wholly abandoned its responsibilities to its students and employees both before and after closure. DCS has always acted in good faith and fulfilled its responsibilities to the best of its capabilities.

Indeed, it was DCS who uncovered irregularities in the Charter Schools' enrollment and course completion data and promptly notified SBOA of its concerns. Without DCS, SBOA would not have discovered the presumed malfeasance of the Charter Schools. To effectively punish DCS, its students, and the taxpayers for doing the right thing and reporting its concerns to SBOA is misplaced effort by the State of Indiana and will only serve to discourage future "whistleblowers" from coming forward with concerns.

We thank you for the opportunity to provide this official response pursuant to Ind. Code § 5-11-5-1(b). We hope this response is fairly considered and any pertinent revisions to the Report are made.

Sincerely,

LEWIS & KAPPES, P.C.

/s/ Sara R. Blevins

Sara R. Blevins

Cc: Paul Garrison, Superintendent of Daleville Community Schools
Diane Evans, President of the Board of School Trustees of Daleville Community Schools

Daleville Community Schools:
SUMMARY OF CHARGES

(Due to Malfeasance, Misfeasance, or Nonfeasance)

	Charges	Credits	Balance
Authorizer Fees Overpaid to Daleville Community Schools, pages 3 and 4	<u>\$ 2,239,693.45</u>	<u>\$ -</u>	<u>\$ 2,239,693.45</u>

This report was forwarded to the Office of the Indiana Attorney General.

AFFIDAVIT

STATE OF INDIANA)
)
Delaware COUNTY)

We, William F. Vinson and Stephanie Heath, Field Examiners, being duly sworn on our oaths, state that the foregoing report based on the official records of Daleville Community Schools, Delaware County, Indiana, for the period from July 1, 2011 to June 30, 2019, is true and correct to the best of our knowledge and belief.

Wm. F. Vinson

Stephanie Heath
Field Examiners

Subscribed and sworn to before me this 24th day of March, 2020

Clares Burke
Notary Public

My Commission Expires: 11-16-2025

County of Residence: Henry

