

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, NJ 08057
856.234.4114 (p)
856.234.4262 (f)
Attorneys for Appellant,
STEM-to-Civics Charter School

IN THE MATTER OF THE REVOCATION
CHARTER OF STEM-to-CIVICS
CHARTER SCHOOL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-002041-24

ON APPEAL FROM:
COMMISSIONER OF EDUCATION, NEW
JERSEY DEPARTMENT OF EDUCATION

**AMENDED BRIEF ON BEHALF OF PLAINTIFF-
APPELLANT, STEM-to-CIVICS CHARTER SCHOOL**

BY: ANDREW W. LI, ESQUIRE,
of counsel & on the brief
NJ ATTORNEY ID NO. 036001997
ali@comegnolaw.com

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PROCEDURAL HISTORY

The Commissioner of Respondent New Jersey Department of Education ("NJDOE") issued a decision, dated January 31, 2025, which revoked the charter of Appellant Trenton STEM-to-Civics Charter School ("STEMCivics"), effective June 30, 2025. **Pa190-198** On February 10, 2025, Appellant filed a Motion for Reconsideration, in accordance with N.J.A.C. 6A:3-1.15(b), asking the Commissioner to reconsider and/or clarify his decision. **Pa199-205** On February 24, 2025, acknowledged that the Motion for Reconsideration was pending before the Commissioner. **Pa206**

On March 13, 2025, having received no decision on its Motion for Reconsideration, STEMCivics filed a Notice of Appeal with the Appellate Division. **Pa207-208** At the same time, STEMCivics filed a Motion for Stay to the Commissioner, seeking a stay of the revocation decision pending appeal. **Pa209-213**

On May 14, 2025, still having received no response from the Commissioner of Education as to either the Motion for Reconsideration or the Motion for Stay, STEMCivics filed a Motion for Stay Pending Appeal before the Appellate Division. On May 16, 2025, the Appellate Division directed NJDOE that "[i]n your response to the motion for stay pending appeal, please include information concerning the status of the two motions pending in the agency-motion for reconsideration and motion for stay."

It took the Commissioner less than one business day to issue

a four-page decision on May 19, 2025 denying the Motion for Reconsideration and reiterating that the revocation of STEM Civics' charter was effective on June 30, 2025. **Pa214-217**

No mention was made of STEM Civics' still pending Motion for Stay pending appeal. It was not until May 27, 2025 that NJDOE notified the Appellate Division that the STEM Civics' Motion for Stay still had not been decided by the Commissioner. On June 4, 2025, the Appellate Division had to intervene once again, directing NJDOE to advise whether the Motion for Stay pending before the Commissioner had yet been decided. On June 10, 2025, the Appellate Division denied the Motion for Stay without prejudice, noting that because STEM Civics' "separate motion for stay is still pending" before the Commissioner, "the matter is remanded to the Commissioner for the purpose of issuing an agency decision on the motion for a stay pending appeal pursuant to Rule 2:9-7 within ten days of this order."

The Commissioner withheld his decision on the Motion for Stay for another full week until June 17, 2025, when the Commissioner issued a four-paragraph decision denying the Motion for Stay. **Pa218-219**

Once again, NJDOE did not notify the Appellate Division that the Commissioner had denied the Motion for Stay. Indeed, on June 18, 2025, the Appellate Division directed NJDOE to advise if a decision on the Motion for Stay had been made. Despite this clear

directive, NJDOE still did not respond to the Appellate Division. Instead, STEMCivics filed an Application for Permission to File Emergent Relief, which attached the Commissioner's denial, on June 18, 2025. Mere hours later, the Appellate Division granted permission to STEMCivics to file a Motion for Stay pending appeal on an expedited basis. On June 26, 2025, a two-judge panel (the Honorable Jack M. Sabatine, P.J.A.D. and the Honorable Stanley L. Bergman, Jr., J.A.D.) granted a stay of the revocation decision pending appeal and accelerated the appeal, with briefs to be filed by July 15, July 31, and August 7, 2025, and oral argument to be heard in September 2025.

Five days later, NJDOE filed an emergent application to have the Supreme Court vacate the Appellate Division's decision to grant a stay on June 17, 2025. On July 11, 2025, the Supreme Court issued a two-line Order directing that the stay granted by this Court be vacated. No written decision accompanied the Order.

STATEMENT OF FACTS

STEMCivics was founded in 2014. Initially, STEMCivics served ninth- through twelfth-grade students who chose to leave the Trenton Public Schools ("Trenton"), but subsequently expanded to also serve sixth- through eighth-grade students. In 2019 (prior to the COVID-19 pandemic), STEMCivics' High School was rated as a Tier 1 (the highest level) school and its Middle School (which had just completed its first year of operation) was rated as a Tier 2

level school. **Pa1-28**

Then-Acting Commissioner of Education Angelica Allen-McMillan issued a letter, dated February 1, 2023, which placed STEM Civics on a probationary basis but also renewed the charter for STEM Civics for an additional five years until June 2028. **Pa31-35**

The Education Recovery Scorecard report found: "The eight states with the largest losses in math achievement (Virginia, Oklahoma, West Virginia, New Jersey, Connecticut, Mississippi, Oregon, and Pennsylvania) lost more than 70 percent of a grade level during the pandemic." Those losses in math affected students in school districts as varied and disparate as Edison, New Brunswick, Newark, Paterson, and West Windsor-Plainsboro, where the ERS found students had lost more than a year of progress in math. Indeed, the ERS study concluded that New Jersey students would need until the 2026-2027 school year to return to their 2019 levels of achievement in mathematics. **Pa36-63**

This conclusion is echoed in the March 7, 2024 report prepared for the Independent Review of New Jersey's Response to the COVID-19 pandemic, which noted that New Jersey "students' NAEP testing scores declined more between 2019 and 2022 than the national average in 4th -grade math, 8th -grade math, and 4th -grade reading.". The Independent Review also found that New Jersey "saw disproportionate impacts of the pandemic on particular groups of students, especially Black, low-income, and urban students." As

such, the Independent Review found that "New Jersey's educational outcomes, such as learning loss, days of virtual education, or equity outcomes, often measured below the national average and other benchmark states" and "New Jersey's journey to reopen schools after the closures was difficult and contentious, with its students experiencing significant learning loss." **Pa64-112**

NJDOE reported that, while the Spring 2024 New Jersey Student Learning Assessment showed some improvement in English and mathematics test scores saw modest improvement, performance remained below pre-pandemic levels and the broad achievement gaps between demographic groups largely remained unchanged. While the percentage of students who met or exceeded math expectations rose to 39.6%, even the improved math scores did not meet the percentage (44.7%) of students who met or exceeded expectations in the last full school year before the pandemic. Moreover, the math performance gap (55.8%) between different student populations continues to exceed pre-pandemic levels (54.8%), with multilingual and economically disadvantaged students, as well as those with developmental disabilities, performing significantly worse than other student cohorts. **Pa113-162**

In compliance with the Acting Commissioner's directive, STEM Civics submitted a Remediation Plan in February 2023 which included the following goals:

Goal 1: IMPROVE SCORES ON STATE TESTS

(1) Minimum percent of increase in math and English proficiencies of 20% per year throughout term.

(2) Maintain or improve proficiency level for all students in math and English.

(3) Proficiency rates equal or better than state average by June 2028.

Goal 2: DECREASE CHRONIC ABSENTEEISM

The percent of decrease in chronic absenteeism is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term.

Goal 3: DECREASE OUT OF SCHOOL SUSPENSIONS

The percent of decrease in out-of-school suspensions is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term.

Goal 4: MAINTAIN CURRENT LEVEL OF ATTRITION

Maintain the current level of attrition for reasons related to dissatisfaction with STEM Civics.

Goal 5: RECRUIT AND MAINTAIN CERTIFIED TEACHERS

Each class is led by a certificated teacher throughout the term.

Pa163-189

NJDOE approved the Remediation Plan submitted by STEM Civics, and at no time did NJDOE ever notify STEM Civics that the Remediation Plan or its goals were not acceptable. **Pa1-28**

NJDOE refused to provide STEM Civics with any guidance or feedback as to the school's performance and progress towards maintaining our charter, including after on-site evaluation visits. **Pa1-28** In the absence of any notice from NJDOE to the contrary, STEM Civics reasonably believed its progress and implementation of the Remediation Plan, which were updated in July

and December 2024, was satisfactory and sufficient to maintain our charter. **Pa1-28**

At no time did NJDOE provide STEMCivics with the actual data and/or scores which our school was assigned under the Performance Framework while the school was still on probationary status. Nor was STEMCivics provided with the actual scores, or even its performance rating (High/Middle/Low Performing) under the Performance Framework in the revocation decision. Instead, the Commissioner merely made the broad assertion that "STEMCivics has failed to effectively implement the Remediation Plan and address the deficiencies that led to probation." **Pa1-28**

Although the Commissioner asserted that STEMCivics' NJSLA math proficiency performance "remains inadequate and has not achieved sufficient growth in alignment with its STEM-focused mission", no actual scores for Metrics 1-4 under the Academic Performance Framework are cited or provided. **Pa190-198** However, the NJDOE Performance Report for the 2023-2024 school year shows that STEMCivics met its annual target for Hispanic students, Economically Disadvantaged Students, and Students with Disabilities **Pa439**, which are student groups specifically addressed as Metrics 2e and f; 2i and j; and 4a through j in Academic Performance Framework for Middle Grades 6-8 and High School Grades 9-12. **Pa410-438**

The Commissioner also stated that "[w]hile STEMCivics'

mathematics proficiency rates in the 2022-2023 and 2023-2024 school years outperformed the Trenton School District, the charter school's performance exceeded that of the district by only 0.5% in both years" as a reason for charter revocation **Pa191** [emphasis added]. However, this secret "requirement" that STEMCivics' NJSLA math proficiency scores must not only exceed those of the Trenton public school district, is not set as a goal in the Remediation Plan approved by NJDOE.

STEMCivics was also never notified that we were required to exceed the NJSLA Math and ELA Proficiency Scores of the other Trenton-area charter schools. **Pa1-28**

STEMCivics met the Remediation Plan goal for chronic absenteeism goal: "The percent of decrease in chronic absenteeism is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term." STEMCivics' chronic absenteeism was only 5.1% for the 2023-2024 school year, far better than both Trenton School District's rate of 34.0% **Pa440** and the State's rate of 15.7%.

Although in his May 19, 2025 denial of the Motion for Reconsideration, the Commissioner contends that STEMCivics' "chronic absenteeism rates and strategies for student engagement factored within the holistic evaluation leading to the charter revocation" **Pa192**, NJDOE did not provide any data as to how the decreased chronic absenteeism supposedly "factored within the

holistic evaluation."

Furthermore, in his denial the Commissioner stated that "[t]he January 31, 2025 decision also emphasizes that STEMCivics' high rate of student withdrawals does not meet the standard set forth in the Performance Framework. Instead, it suggests significant student and family dissatisfaction with the school's program and operations despite the recently administrated student climate and culture surveys, international mission trips, opportunities, and extracurricular activities." **Pa192**

Again, NJDOE did not provide any data as to how the rate of student "withdrawals" supposedly failed to meet the standard set forth in the Performance Framework. Notably, the Performance Framework does not use the term "withdrawal," but instead refers to "attrition" under Organizational Performance Framework Metric 4.1 "Access and Equity". This metric requires the charter school to demonstrate "a commitment to serving and meeting the needs of all students, especially the highest need students requiring special education services, students who are English language learners, students who qualify for free or reduced-price lunch and other underserved or at-risk populations." **Pa410-438** There is no mention of student "satisfaction" under this Metric.

In addition, ninety-two-point-one percent (92.1%) of the 2024 4-year graduation cohort graduated at STEMCivics, which is better than the New Jersey state average of 91.3%. **Pa441** However,

only 65.9% of the same 4-year graduation cohort in the Trenton School District graduated. This means more than 34% of students in Trenton public schools fail to graduate. **Pa443**

Likewise, STEM Civics' student dropout rate for the 2021-2022, 2022-2023, and 2023-2024 school years was 0.0%, compared to the statewide dropout rate of 1% to 1.2% for those same school years. **Pa442** In comparison, the dropout rate for students in the Trenton School District for those same school years was 4.0% (2023-24), 10.1% (2022-23), and 8.6% (2021-22). **Pa444**

STEM Civics also met the Remediation Plan goal for chronic absenteeism: "The percent of decrease in chronic absenteeism is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term." **Pa398** That goal was clearly achieved, as STEM Civics' chronic absenteeism was only 5.1% for the 2023-2024 school year **Pa445**, far better than both Trenton's rate of 34.0% (**Pa440**) and the State's rate of 15.7%. In addition, far fewer STEM Civics students (0.9% to 3.1%) **Pa446** miss ten percent or more of the school year than students in the Trenton School District (11.1% to 11.7%). **Pa447**

Moreover, the out-of-school suspension numbers for the 2022-2023 and 2023-24 school years cited by the Commissioner as a purported basis for revocation are incorrect. As set forth in the New Jersey School Performance Reports for those school years, only 72 of our students (12.2% of the student population) received out-

of-school suspensions in the 2022-2023 school year and only 65 of our students (10%) received out-of-school suspensions in the 2023-24 school year. **Pa448-449**

STEMCivics also met the Remediation Plan goal to "[m]aintain the current level of attrition related to dissatisfaction with STEMCivics." The attrition rate for the 2022-2023 school year was 3% and the attrition rate for the 2023-2024 school year was only 2%. **Pa401**

The Commissioner did not equally and consistently apply the same standards to other charter schools which were also on probation. Atlantic Community Charter School (ACCS) not only failed to meet the ESSA target for NJSLA math proficiency, but also failed to meet that target for African-American students, Economically Disadvantaged students, and Students with Disabilities. **Pa450** Less than 10% of Millville Public Charter School ("MPCS") students **Pa451** and less than 10% of LEAD Charter School ("LEAD") students **Pa453** met or exceeded expectations for NJSLA math proficiency. People's Achieve Community Charter School ("PACCS") had a chronic absenteeism rate of 25.2% **Pa454**; ACCS had a chronic absenteeism rate of 27.25% (PAX); MPCS had a chronic absenteeism rate of 31.1% **Pa455**; and LEAD had an astonishing chronic absenteeism rate of 71.4%. **Pa456** 10% of MPCS students **Pa457** and PACCS students **Pa458** received out-of-school suspensions. ACCS had a one-year retention rate for teachers and administrators of

54.1% and 60.0% **Pa459**, in comparison to STEMCivics' retention rate of 68.0% for teachers and 71.4% for administrators. **Pa460**

However, despite their demonstrably poor performance for the same metrics, the Commissioner allowed these other charter schools which were also on probation to remain in operation. Indeed, in a June 14, 2024 decision to remove LEAD Charter School from probation, the Commissioner stated that "the Department has determined that Lead has successfully implemented its Remediation Plan and shown notable progress", while ignoring the fact that nearly three-quarters of its students were chronically absent during the 2023-2024 school year. Yet somehow, "it is my pleasure to inform you I am immediately removing the probationary status of Lead." **Pa460-463**

LEGAL ARGUMENT

POINT I

THE COURT SHOULD REVERSE THE COMMISSIONER'S DECISION TO REVOKE STEMCIVICS' CHARTER AS ARBITRARY, CAPRICIOUS, AND UNREASONABLE

(Raised Below: Pa199-205 and 209-213)

It has long been established that this Court's "standard of review, although generous and deferential to an agency vested with particular and technical responsibilities, still requires that the decision by the Commissioner be grounded in the record and the law." Catholic Family & Cmty. Servs. v. State-Operated Sch. Dist. of City of Paterson, 412 N.J.Super. 426, 442 (App.Div.2010).

While the Commissioner of Education is empowered by the

Charter School Program Act of 1995, N.J.S.A. 18A:36A-1, *et seq.*, to assess and evaluate charter schools in New Jersey, each charter school, as member of the regulated community “also has a reasonable expectation that known and uniform rules, standards, interpretations, advice and statements of policy will be applied to them.” Catholic Family & Cmty. Servs., *supra*, at 442.

To that end, while state agency heads, such as the Commissioner of Education, enjoy a wide degree of discretion, that “discretion is not unbounded”, nor is the proper exercise of that discretion meant to be in “the personal predilection” of any individual Commissioner. Id. (*citing State v. Madan*, 366 N.J.Super. 98, 109 (App.Div.2004) (*citations omitted*)). Instead, as with judicial officers, so too for executive officers “the authority to exercise [...] discretion is not an arbitrary power of the individual judge, to be exercised when, and as, his caprice, or passion, or partiality may dictate, or forsooth as his vindictiveness or his idiosyncrasies may inspire.” Id.

A reviewing court need not defer to an agency’s decision when that decision is arbitrary, capricious, or unreasonable. For example, the Commissioner’s “[d]isregard of the Budget Guidelines promulgated and disseminated expressly for the 2003-04 school year and substitution of prior practice is the essence of arbitrary conduct and reasoning for resolution of a contested dispute.” Catholic Family & Cmty. Servs., at 442. Similarly, “an

unarticulated standard [from the Commissioner] of when [equipment] purchases will be allowed and when disallowed is emblematic of arbitrary action." Id., at 443.

Moreover, the Supreme Court has found that the "arbitrary, capricious, or unreasonable standard applicable in the review of administrative agency decisions subsumes the need to find sufficient support in the record to sustain the decision." In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 386 (2013). The arbitrary, capricious, or unreasonable standard "requires that the administrative decision be supported by the underlying record, regardless of the manner in which due process requires that the record be created." Id. at 387. "The obligation that there be substantial evidence in the record requires a sifting of the record, and the ability to find support for the conclusions reached by the Commissioner under the statutory framework within which [the Commissioner] must act." Ibid.

This is because "[o]ne of the core values of judicial review of administrative action is the furtherance of accountability." High Horizons Dev. Co. v. State, Dep't of Transp., 120 N.J. 40, 53-54 (1990). Thus, to preserve accountability and due process, "an agency is never free to act on undisclosed evidence that parties have had no opportunity to rebut." Id. (citing Brotherhood of R.R. Trainmen v. Palmer, 47 N.J. 482, 487 (1966) ("The determination cannot rest upon undisclosed evidence which the

parties have had no opportunity to test for trustworthiness or to explain or rebut.”)

As such, the Supreme Court noted that “the arbitrary, capricious, or unreasonable standard applicable in the review of administrative agency decisions subsumes the need to find sufficient support in the record to sustain the decision reached by the Commissioner.” Quest Academy, 216 N.J. at 386 (2013). Indeed, the need for a sufficient evidentiary record “is beyond argument, for a failure to consider all the evidence in a record would perforce lead to arbitrary decision making.” Id., at 386-87 (citing Close v. Kordulak Bros., 44 N.J. 589, 599 (1965) (noting that “the proofs as a whole” must be considered); Green v. State Health Benefits Comm’n, 373 N.J.Super. 408, 415 (App.Div.2004) (finding agency decision that failed to address issues raised in key documents in record arbitrary and capricious)).

Moreover, a decision based on a complete misperception of the facts submitted in a record “render[s] the agency's conclusion unreasonable.” Quest Academy, at 387 (citing Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 588-89 (1988) (stating that appellate court should intervene where agency's “finding is clearly a mistaken one”); Constantino v. N.J. Merit Sys. Bd., 313 N.J.Super. 212, 218 (App.Div.) (reversing board's decision where findings were unsupported by record, based on “total disregard” of facts, against “overwhelming weight” of testimony, and based on record “skew[ed]”

by administrative law judge), *cert. denied*, 157 N.J. 544 (1998)).

Put simply, the arbitrary, capricious, or unreasonable standard requires that "the administrative decision be supported by the underlying record, regardless of the manner in which due process requires that the record be created. The obligation that there be substantial evidence in the record requires a sifting of the record, and the ability to find support for the conclusions reached by the Commissioner under the statutory framework within which she must act." Quest Academy, *supra*, at 387.

When the Commissioner, as in the instant matter, bases a decision to revoke a school's charter on facts which do not appear in the record, then accountability, and STEM Civics' rights of due process, necessitate a careful sifting of the record. And "[w]hen the Commissioner relies on unarticulated standards or statements of policy, we are confronted with the essence of arbitrary action", the Court should reverse a decision which is arbitrary, capricious, or unreasonable. Catholic Family & Cmty. Servs., at 442. And

POINT II

THE REVOCATION DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE BECAUSE THERE WAS NO DATA PROVIDED BY NJDOE TO SUPPORT THE DECISION

(Raised Below: Pa199-205 and 209-213)

N.J.S.A. 18A:36A-16(a) requires the Commissioner to "annually assess whether each charter school is meeting the goals of its charter" and to "conduct a comprehensive review prior to granting

a renewal of the charter."

In turn, N.J.A.C. 6A:11-2.3(b) requires the Commissioner to either grant or deny the renewal of a school's charter based "upon the comprehensive review of the school including, but not limited to [...] [a] review of the charter school based on its charter agreement and the Performance Framework".

N.J.S.A. 18A:36A-17 authorizes the Commissioner to revoke a school's charter "if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter", but also requires the Commissioner to "develop procedures and guidelines for the revocation and renewal of a school's charter."

N.J.A.C. 6A:11-2.4(b) provides that the Commissioner may revoke a school's charter following review by NJDOE for one or more of the following reasons:

1. Any condition imposed by the Commissioner in connection with the granting of the charter that has not been fulfilled by the school;
2. Violation of any provision of its charter by the school;
3. Failure of the Remediation Plan to correct the conditions that caused the probationary status. The Commissioner may place a school on probation before charter revocation, but probationary status is not necessary for revocation; or
4. Failure of the charter school to meet any standards set forth in its charter agreement or the Performance Framework.

The NJDOE Office of Charter and Renaissance Schools Performance Framework (updated July 2017) (hereinafter referred to as the "Performance Framework") states:

The Performance Framework sets forth the criteria by which all New Jersey charter schools are evaluated, informing both the Department and individual charter school officials about charter school performance and sustainability. The Performance Framework is established in the charter agreement and in current regulations (N.J.A.C. 6A:11).

The Performance Framework is integral to the core functions of the Office of Charter and Renaissance Schools (OCRS) since it provides a consistent definition of school success from recruitment and application through renewal that is aligned with Department goals for all schools.

(Pa 412) [emphasis added]

The Performance Framework consists of three sections – Academic, Financial, and Organizational – in which a charter school receives points for meeting various "metrics".

The total number of points a charter school earns in the Academic Performance Framework determines its Tier Rank – thus, to be rated as a Tier Rank 1 ("High Performing"), a charter school must earn at least 65% of the total number of points possible; to be rated as a Tier Rank 2 ("Middle Performing"), a charter school must earn 35-64.9% of the total points possible; and to be rated a Tier Rank 3 ("Low Performing"), a charter school must earn fewer than 35% of the total points possible. A charter school's Tier Rank factors "into all decisions made by the Department regarding

charter schools.”¹ (Pa415)

A. A. STEM Civics Was Never Provided With Its Actual Rating, Nor Any Specific Data, From The NJDOE Performance Framework (Raised Below: Pa199-205 and 209-213)

In his May 19, 2025 denial of STEM Civics’ Motion for Reconsideration (issued more than 3 months after the motion was filed and even then only after intervention by this Court), the Commissioner stated:

As stated in the January 31, 2025 decision, the determination was made to revoke STEM Civics’ charter following a comprehensive review of the school based on the Department’s Performance Framework for New Jersey Charter Schools² which sets forth the academic, fiscal, and organizational standards by which the state’s charter schools are evaluated.

(Pa191) [*emphasis added*]

However, STEM Civics was not provided with the actual scores, or even its performance rating (High/Middle/Low Performing) under the Performance Framework in the revocation decision. Instead, the Commissioner merely made the broad assertion that “STEM Civics has failed to effectively implement the Remediation Plan and address the deficiencies that led to probation.”

¹ Including, pursuant to N.J.A.C. 6A:11-2.3(c), that charter schools “that have been deemed high performing, based upon the criteria outlined in the Academic Performance Framework, for three consecutive years during the most recent charter term, and have had no major fiscal or compliance issues, shall be eligible for an expedited renewal review process.”

² Notably, the actual revocation decision only mentions the Performance Framework twice – once while referring to the number of students who withdrew from STEM Civics (Pa193) and once while referring to the school’s finances (Pa196).

While the Commissioner asserted that STEMCivics' NJSLA math proficiency performance "remains inadequate and has not achieved sufficient growth in alignment with its STEM-focused mission" (Pa192), no actual scores for Metrics 1-4 under the Academic Performance Framework are cited or provided.

In the absence of "hard data", the broad assertions provided by the Commissioner that the charter school failed to meet the requirements of the Performance Framework fly in the face of due process and the right of STEMCivics, as part of its evaluation, to know whether the scores it received truly warrant a negative conclusion. That right - to know the actual scores received - is amply developed in the NJDOE regulatory scheme covering every other individual and entity subject to annual reviews in the educational field.

For example, teaching staff - whose effectiveness as educators must be evaluated every year as part of their continued employment - are entitled to annual training and descriptions of "each component of the evaluation rubric for all teaching staff members who are being evaluated" which "shall include detailed descriptions of all evaluation rubric components, including, when applicable, detailed descriptions of student achievement measures and all aspects of the educator practice instruments". N.J.A.C. 6A:10-2.2(b)(1).

Teachers are also entitled to an annual summary conference to

review "[t]he performance of the teaching staff member based upon the job description and the scores or evidence compiled using the teaching staff member's evaluation rubric" (N.J.A.C. 6A:10-2.4(c)(1)). At the annual summary conference, the teacher being evaluated is to be provided with their annual performance report, which must include the teacher's "summative rating based on the evaluation rubric, including, when applicable, a total score for each component", and "[i]f any scores for the teaching staff member's evaluation rubric are not available at the time of the annual summary conference due to pending assessment results, the annual summative evaluation rating shall be calculated once all component ratings are available." N.J.A.C. 6A:10-2.4(d) and (e) [*emphasis added*].

Similarly, principals and assistant principals (N.J.A.C. 6A:10-5.1), and school superintendents (N.J.A.C. 6A:10-8.1) - whose continued employment is subject to positive annual evaluations of their performance - are also entitled to know their actual scores as part of their annual evaluations. Even school districts (whose performance as a whole are also subject to review by the Commissioner) are entitled to know their actual quality performance indicator scores. N.J.A.C. 6A:30-4.1(b) ("In its request for reconsideration, the school district shall specifically delineate each quality performance indicator the school district claims was scored incorrectly by the Commissioner

and the basis for the claim”) and (b) (1) (“During the reconsideration review, the Commissioner shall provide the school district with the opportunity to present evidence supporting the school district’s claim that its score on one or more quality performance indicators in the District Performance Review was erroneous and should be changed.”) [*emphasis added*]

Yet in this matter, NJDOE failed to provide STEM Civics with the actual scores it supposedly received under the Performance Framework. In fact, neither the revocation decision nor the Commissioner’s denial of the Motion for Reconsideration even reference which Tier Rank (High/Middle/Low Performing) STEM Civics supposedly ranked. That is problematic when those scores and/or rankings were ostensibly at least part – if not perhaps the entirety -- of the basis upon which the Commissioner issued the revocation decision.

N.J.S.A. 18A:36A-16(a) requires the Commissioner to “annually assess whether each charter school is meeting the goals of its charter” and to “conduct a comprehensive review prior to granting a renewal of the charter.” N.J.A.C. 6A:11-2.3(b) (2) provides that the decision to grant or deny the renewal of a charter must be based “upon the comprehensive review of the school including, but not limited to [...] [a] review of the charter school based on its charter agreement and the Performance Framework”.

Basic due process would demand that STEM Civics, the same as

any teacher, administrator, superintendent, or other school district, be afforded the chance to review the actual data which supposedly resulted in an unsatisfactory evaluation of their performance. Without knowing the actual points and scores which NJDOE attributed to its performance, STEM Civics has no meaningful ability to test the credibility/accuracy of NJDOE's assertion that the charter school did not meet the requirements of the Performance Framework, or to explain or rebut the (unknown) scores and data which ostensibly form the basis of the revocation decision.

POINT III

A. THE REVOCATION DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE BECAUSE NJDOE DID NOT DISCLOSE THE STANDARDS BY WHICH STEMCIVICS WOULD BE MEASURED TO MAINTAIN ITS CHARTER

(Raised Below: Pa199-205 and 209-213)

The Commissioner's determination that STEM Civics' charter was being revoked because "[p]ursuant to N.J.S.A. 18A:36A-17 and N.J.A.C. 6A:11-2.4(b), I have determined that STEM Civics has failed to effectively implement the Remediation Plan and address the deficiencies that led to probation" is contradicted by the fact that STEM Civics did actually meet the goals set forth in the Remediation Plan:

Goal 1: IMPROVE SCORES ON STATE TESTS

- (1) Minimum percent of increase in math and English proficiencies of 20% per year throughout term.
- (2) Maintain or improve proficiency level for all students in math and English.

(3) Proficiency rates equal or better than state average by June 2028.

Goal 2: DECREASE CHRONIC ABSENTEEISM

The percent of decrease in chronic absenteeism is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term.

Goal 3: DECREASE OUT OF SCHOOL SUSPENSIONS

The percent of decrease in out-of-school suspensions is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term.

Goal 4: MAINTAIN CURRENT LEVEL OF ATTRITION

Maintain the current level of attrition for reasons related to dissatisfaction with STEMCivics.

Goal 5: RECRUIT AND MAINTAIN CERTIFIED TEACHERS

Each class is led by a certificated teacher throughout the term.

(Pa390-409)

As set forth in Dr. Byron's Certification, NJDOE was made aware during the entire probationary period that STEMCivics had implemented the Remediation Plan and met the goals set forth therein.

NJDOE was updated as to the school's progress in meeting the Remediation Plan goals in July 2024. **(Pa377-389)** Notably, NJDOE did not advise STEMCivics of any supposed failure to implement the Remediation Plan following the July 2024 update. STEMCivics also updated NJDOE of its continued progress through an update in December 2024, only one month before the revocation decision. **(Pa390-409)** Again, there was no timely response from NJDOE - just

the abrupt issuance of the revocation decision on January 31, 2025 after months of silence.

1. STEMCivics Met Goal 1, But Was Never Notified That It Was Required To Exceed The NJSLA Math Proficiency Scores Of The Trenton School District By Some Unknown Percentage (Not Raised Below)

STEMCivics met its goals to improve student achievement as set forth in the Remediation Plan: (1) minimum percent of increase in math and English proficiencies of 20% per year throughout term; (2) maintain or improve proficiency level for all students in math and English; and (3) proficiency rates equal or better than state average by June 2028.

In the revocation decision, the Commissioner did not state how STEMCivics supposedly failed to meet these goals, but instead only concluded that the charter school “fail[ed] to meet the ESSA accountability standards” for NJSLA math proficiency. However, as set forth in Dr. Byron’s Certification, the NJDOE Performance Report for the 2023-2024 school year shows that STEMCivics met its annual target³ for Hispanic students, Economically Disadvantaged Students, and Students with Disabilities **(Pa439)**, which are student groups specifically addressed as Metrics 2e and f; 2i and j; and 4a through j in Academic Performance Framework for Middle Grades 6-8 and High School Grades 9-12. **(Pa410-438)**

³ “Annual targets are specific to each student group, school, and district and represent the expected proficiency need to stay on track to meet long-term goals [for ESSA accountability]”.

The Commissioner also stated that “[w]hile STEM Civics’ mathematics proficiency rates in the 2022-2023 and 2023-2024 school years outperformed the Trenton School District, the charter school’s performance exceeded that of the district by only 0.5% in both years” as a reason for charter revocation PAX2[emphasis added]. (Pa191)

However, this secret “requirement” that STEM Civics’ NJSLA math proficiency scores had to not only exceed those of the Trenton public school district, but also had to exceed Trenton’s scores by some unknown percentage is not a condition referenced in Acting Commissioner Allen-McMillan’s letter of February 1, 2023 (hereinafter referred to as the “probation letter”). Rather, the probation letter stated that “the Department will continue to monitor the percent of students meeting or exceeding proficiency on statewide assessments toward demonstrable gains in the next charter term.” (Pa32)

Nor does the NJDOE-approved Remediation Plan require STEM Civics to have its NJSLA math proficiency scores exceed those of the Trenton public school district, or that STEM Civics must exceed Trenton’s scores by some (undisclosed) percentage.

STEM Civics was also never notified that it was required to exceed the NJSLA Math and ELA Proficiency Scores of the other Trenton-area charter schools, as was disclosed for the first time in the Commissioner’s May 19, 2025 denial of the Motion for

Reconsideration:

[T]he Department's review included a comparison of STEM Civics' NJSLA English language arts (ELA) and mathematics performance with every Trenton charter school educating the same grade levels. According to an analysis of these charter schools' 2022, 2023, and 2024 NJSLA ELA and mathematics results, STEM Civics' 2022, 2023, and 2024 NJSLA mathematics results were the lowest of all Trenton charter schools. In fact, aside from the 2023 Grade 9 ELA results, STEM Civics' NJSLA ELA and mathematics performance trailed that of its neighboring charter schools by several percentage points in all three years. This analysis was conducted and considered prior to the revocation which refutes STEM Civics' assertion and negates its request for additional comparative analysis of its NJSLA mathematics performance results.

(Pa215) [*emphasis added*]

If NJDOE subsequently imposed a requirement that the charter school's NJSLA math scores exceed (by some unknown percentage) those of the Trenton School District, then NJDOE failed to notify or disclose that requirement to STEM Civics at any time prior to the revocation decision.

As such, it appears that there was not only one secret requirement that STEM Civics must exceed the NJSLA math proficiency scores of the Trenton School District (and apparently also by some undisclosed percentage), but also a second secret requirement that STEM Civics meet or exceed the NJSLA math and ELA scores for the other Trenton-area charter schools.

NJDOE's failure to disclose that STEM Civics was on "double secret probation" deprived the school of any reasonable

expectation (or even knowledge) of the standards against which it would be measured. Changing the measures and goals which STEM Civics need to meet to maintain its charter, but not articulating those measures and goals to the school until after revocation, deprived STEM Civics of any reasonable expectation of what was needed to maintain its charter.

When, as in this instance, "the Commissioner relies on unarticulated standards or statements of policy, we are confronted with the essence of arbitrary action.", Catholic Family & Cmty. Servs. v. State-Operated Sch. Dist. of City of Paterson, 412 N.J. Super. 426, 442 (App.Div.2010).

2. The Commissioner Ignored The Fact That STEM Civics Met Goal 2, And Used "Student Withdrawal" As A Previously Undisclosed Standard

(Not Raised Below)

Acting Commissioner Allen-McMillan, in her probation letter, cited chronic absenteeism as an area of concern and directed that "I expect STEM Civics to ensure more students are receiving a high-quality education as demonstrated by increased daily attendance."

(Pa33) [*emphasis added*]

To that end, STEM Civics' Remediation Plan included the goal for chronic absenteeism of "The percent of decrease in chronic absenteeism is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term." That goal was clearly achieved, as STEM Civics' chronic absenteeism

rate was only 5.1% for the 2023-2024 school year, far better than both Trenton's chronic absenteeism rate of 34.0% (**Pa440**) and the State's chronic absenteeism rate of 15.7%.

In other words, the expectation of NJDOE, as expressed by Acting Commissioner Allen-McMillan and incorporated as a Remediation Plan goal, that STEMCivics' students would increase their daily attendance was fully met.

Yet in his May 19, 2025 denial of the Motion for Reconsideration, the Commissioner vaguely posits that STEMCivics' "chronic absenteeism rates and strategies for student engagement factored within the holistic evaluation leading to the charter revocation." (**Pa216**) But NJDOE did not provide any data⁴ as to how the decreased chronic absenteeism supposedly "factored within the holistic evaluation" - although Metric 3a in the Academic Performance Framework for Middle Grades 6-8 (**Pa422**) and High School Grades 9-12 (**Pa426**) both clearly state that STEMCivics should be rated against the number of points earned (up to 12 and 30 respectively) for those metrics. Without the actual data and scores, STEMCivics has no ability to explain or rebut the data which ostensibly formed the basis for revocation.

In his denial of the Motion for Reconsideration, the

⁴ Nor did the Commissioner even reference (let alone criticize) STEMCivics' rate of chronic absenteeism anywhere in the actual January 31, 2025 revocation decision. (**Pa190-98**)

Commissioner attempts to gloss over the dramatic decrease in the rate of chronic absenteeism among STEMCivics' students by pivoting to "[t]he January 31, 2025 decision also emphasizes that STEMCivics' high rate of student withdrawals does not meet the standard set forth in the Performance Framework. Instead, it suggests significant student and family dissatisfaction with the school's program and operations despite the recently administrated student climate and culture surveys, international mission trips, opportunities, and extracurricular activities." (Pa216)

Again, NJDOE did not provide any data as to how the rate of student "withdrawals" supposedly failed to meet the standard set forth in the Performance Framework (which does not use the term "withdrawal" but instead refers to "attrition"). (Pa436)

Metric 4.1 "Access and Equity" under the Organizational Performance Framework requires a charter school to demonstrate "a commitment to serving and meeting the needs of all students, especially the highest need students requiring special education services, students who are English language learners, students who

⁵ Notably, the Performance Framework does not use the term "withdrawal", but instead refers to "attrition" under Organizational Performance Framework Metric 4.1 "Access and Equity". In addition, this metric is not This metric requires the charter school to demonstrate "a commitment to serving and meeting the needs of all students, especially the highest need students requiring special education services, students who are English language learners, students who qualify for free or reduced-price lunch and other underserved or at-risk populations."

qualify for free or reduced-price lunch and other underserved or at-risk populations.” (Pa436) Notably, there is no mention of student “satisfaction” under this Metric.

As such, the Commissioner seems to have measured STEMCivics against a “standard” which is not actually in the Performance Framework, thereby calling into severe question the reasonableness of the revocation decision.

3. The Commissioner Ignored The Fact That STEMCivics Met Goal 3, And Instead Relied on Incorrect Data

(Not Raised Below)

Reduction of out-of-school suspensions was included in STEMCivics’ Remediation Plan, with the NJDOE-approved goal of: “The percent of decrease in out-of-school suspensions is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term.”

The Commissioner acknowledged that the 190 STEMCivics students who had received an out-of-school suspension in the 2022-2023 school year and 144 students who had received an out-of-school suspension in the 2023-2024 school year was a reduction from the 215 students (35% of the student population) who had received an out-of-school suspension in the 2021-2022 school year (which had been a basis for placing STEMCivics on probation). However, the Commissioner concluded that revocation was still warranted because “the Department is concerned about the persistent high percentage of students facing out-of-school

suspensions annually. The reduction from 35% in 2022 to over 24% in 2024 demonstrates some improvement but still reflects a significant portion of the student population affected by suspensions.” (Pa194)

The problem with that conclusion is that the out-of-school suspension numbers cited by the Commissioner as a purported basis for revocation are incorrect, as demonstrated by the NJDOE New Jersey School Performance Reports for those school years. According to NJDOE’s own data, only 72 students (12.2% of the student population) received out-of-school suspensions in the 2022-2023 school year and only 65 students (10%) received out-of-school suspensions in the 2023-24 school year. (Pa448-449)

Assuming that the New Jersey School Performance Reports are correct, then the out-of-school suspension numbers cited by the Commissioner are wildly inflated and therefore cannot be a reasonable basis for the revocation decision. A decision based on a misperception or misstatement of the facts “render[s] the agency’s conclusion unreasonable.” Quest Academy, at 387 (citing Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 588-89 (1988) (stating that appellate court should intervene where agency’s “finding is clearly a mistaken one”); Constantino v. N.J. Merit Sys. Bd., 313 N.J.Super. 212, 218 (App.Div.) (reversing board’s decision where findings were unsupported by record, based on “total disregard” of facts, against “overwhelming weight” of testimony, and based on

record "skew[ed]" by administrative law judge), *cert. denied*, 157 N.J. 544 (1998)).

4. The Commissioner Simply Ignored The Fact That STEMCivics Met Goal 4

(Not Raised Below)

In response to the concern raised in Acting Commissioner Allen-McMillan's probation letter, STEMCivics' Remediation Plan (which was approved by NJDOE) to address attrition included a goal to "[m]aintain the current level of attrition related to dissatisfaction with STEMCivics." That goal was also met, as the attrition rate for the 2022-2023 school year was 3% and the attrition rate for the 2023-2024 school year was only 2%. **(Pa401)** Thus, the then-current level of attrition from the 2022-2023 school year was not only maintained, but the level of attrition for the 2023-2024 school year was actually reduced.

Yet the Commissioner ignored this fact and still cited the attrition rate as a basis for revocation, although STEMCivics had clearly met the requirements of the Remediation Plan. Again, an agency decision based on a misperception or misstatement of the facts "render[s] the agency's conclusion unreasonable." Quest Academy, at 387 (*citations omitted*).

5. NJDOE Refused To Provide STEMCivics With Any Guidance or Feedback

(Raised Below: Pa199-205 and 209-213)

Although NJDOE approved the Remediation Plan, and conducted multiple visits to STEMCivics in the interim since the school was

placed on probation, NJDOE refused to provide the school with any guidance or feedback as to STEM Civics' performance and progress in maintaining its charter.

Shortly after being placed on probationary status, STEM Civics sent an email to NJDOE correcting a statement by Robert Gregory (then the Director of OCRS) that the school was a Tier 3 school. **(Pa220-221)** There was no response from Mr. Gregory or anyone else from NJDOE even acknowledging the mistake.

Similarly, repeated letters and emails from STEM Civics to the Commissioner and OCRS asking to be removed from probationary status and pointing out the lack of feedback from NJDOE went unacknowledged. NJDOE refused to provide direct feedback to STEM Civics, even when its personnel was at STEM Civics for on-site visits.

Indeed, when NJDOE finished its October 2024 evaluation visit (just three months before the revocation decision was issued), Dr. Byron directly asked Assistant Commissioner Ambrose Duckett (who was present on the visit) for feedback, Assistant Commissioner Duckett only mysteriously responded that "there is no feedback". Astonishingly, Assistant Commissioner Duckett advised Dr. Byron that the instruction to not provide any feedback "comes from above", while pointing upwards (presumably meaning from the highest levels of NJDOE).

As set forth in Dr. Byron's Certification, STEM Civics

repeatedly requested guidance and/or clarification from NJDOE as to the specific metrics and standards which the school needed to meet in order to maintain its charter. Time and time again, those requests went unanswered in any meaningful manner.

However, N.J.A.C. 6A:11-2.3(b)(2) provides that the Commissioner's decision to grant or deny the renewal of a charter must be based "upon the comprehensive review of the school including, but not limited to [...] [a] structured interview⁶ with the Commissioner or designee(s) with: i. A member of the charter school board of trustees; ii. The lead person of the charter school; iii. A teacher at the charter school; and iv. A parent or other representative of the charter school". This is consistent with the overall regulatory theme embodied elsewhere in the NJDOE rules governing the process for evaluations of staff members, administrators, and districts. That process is an interactive one, where the evaluated party is not only notified of deficiencies in their performance, but is also afforded the opportunity to correct or even rebut those deficiencies.

Just as NJDOE would have been required to meet with STEM Civics, and provide feedback and guidance, if he was granting a renewal of its charter, so too should NJDOE have met with

⁶ A "structured interview" is defined by N.J.A.C. 6A:11-1.2 as meaning "the performance assessment of the accomplishments of a charter school for renewal of the charter."

STEMCivics - or at least provided clear and specific guidance as whether the school's progress and performance were in line with maintaining the charter - before summarily revoking its charter.

"The provision of clear and specific guidance to the public is a core regulatory function" of the Department of Education. L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547, 571 (2019) (*citing Catholic Family & Cmty. Servs.*, *supra*). NJDOE's refusal to provide clear and specific guidance to a charter school on probation - with the maintenance of its charter on the line - was a clear dereliction of its core regulatory function.

In this matter, NJDOE summarily revoked the charter without even extending the courtesy of providing STEM Civics with feedback from its last on-site visit in October 2024. The obdurate silence by NJDOE deprived STEM Civics of the meaningful opportunity to correct any shortcomings in its progress and performance which, in the absence of any notice from NJDOE to the contrary, STEM Civics reasonably believed to be satisfactory and sufficient to maintain its charter.

POINT IV

THE REVOCATION DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE BECAUSE THE STANDARDS WHICH NJDOE DID DISCLOSE WERE NOT APPLIED TO STEMCIVICS EQUALLY

(Raised Below: Pa209-213)

Four other charter schools were also on probationary status: Atlantic Community Charter School ("ACCS"), LEAD Charter School

("LEAD"), Millville Public Charter School ("MPCS"), and People's Achieve Community Charter School ("PACCS") at the same time STEMCivics was on probation.

ACCS not only failed to meet the ESSA target for NJSLA math proficiency, but also failed to meet that target for African-American students, Economically Disadvantaged students, and Students with Disabilities. **(Pa450)** Less than 10% of MPCS students **(Pa451)** and less than 10% of LEAD students **(Pa453)** met or exceeded expectations for NJSLA math proficiency.

These other charter schools also had chronic absenteeism rates that far exceeded both STEMCivics' and the State's chronic absenteeism rates. PACCS had a chronic absenteeism rate of 25.2% **(Pa454)**; ACCS had a chronic absenteeism rate of 27.25% (PAX); MPCS had a chronic absenteeism rate of 31.1% **(Pa455)**; and LEAD Charter School had an astonishing chronic absenteeism rate of 71.4%. **(Pa456)**

10% of MPCS students **(Pa457)** and PACCS students **(Pa458)** received out-of-school suspensions, which was exactly the same percentage of STEMCivics students who received out-of-school suspensions that the Commissioner found so objectionable as to warrant revocation of the school's charter.

ACCS had a one-year retention rate for teachers and administrators of 54.1% and 60.0% **(Pa459)**, in comparison to STEMCivics' retention rate of 68.0% for teachers and 71.4% for

administrators. **(Pa460)**

If the same standards used by the Commissioner as the purported basis for revoking STEMCivics' charter were to be equally and consistently applied to the other charter schools which were also on probation (such as the Atlantic Community Charter School), then presumably those other charter schools would also have had their charters revoked, based on their failure to meet performance standards.

But that did not happen. Instead, the Commissioner inexplicably chose to allow those other charter schools to remain in operation. Indeed, on June 14, 2024, the Commissioner actually decided to remove LEAD Charter School from its probationary status, stating that "the Department has determined that Lead has successfully implemented its Remediation Plan and shown notable progress". **(Pa461-463)** It is baffling that the Commissioner found it necessary to revoke STEMCivics' charter ostensibly based on its 5.1% chronic absenteeism rate, but ignored the fact that LEAD, despite a 71.4% chronic absenteeism, and instead offered that "it is my pleasure to inform you I am immediately removing the probationary status of Lead." **(Pa461-463)**

This disparate treatment - where some charter schools on probation are allowed to continue operation despite demonstrably poor performance, but STEMCivics is closed despite meeting the requirements of its Remediation Plan -- clearly flies in the face

of “a reasonable expectation that known and uniform rules, standards, interpretations, advice and statements of policy will be applied” equally, consistently, and fairly to every charter school.

Such standards must be applied in equal and consistent manner. See, e.g., Lower Main St. Associates v. New Jersey Hous. & Mortgage Fin. Agency, 114 N.J. 226, 236 (1989) (“deference does not require abdication by the judiciary of its function to assure that agency rulemaking conforms with basic tenets of due process and provides standards to guide both the regulator and the regulated.”) When, as here, the Commissioner only revokes the charter of STEMCivics, but praises other charter schools seemingly on a whim, this Court should intervene.

POINT V

THE REVOCATION DECISION WAS ARBITRARY, CAPRICIOUS, AND UNREASONABLE BECAUSE NJDOE DID NOT CONSIDER FACTORS WHICH WERE OUTSIDE OF STEMCIVICS’ CONTROL

A. The Commissioner Ignored The Widely-Recognized Impact Of The COVID-19 Pandemic Upon Student Performance

(Raised Below: Pa199-205 and 209-213)

In its Motion for Reconsideration, STEMCivics asked the Commissioner to take into account that students in New Jersey, as they do across the country, continue to suffer the deleterious effects of the Covid-19 pandemic upon learning.

As the Education Recovery Scorecard report **(Pa36-63)**, a collaboration between the Center for Education Policy Research at

Harvard University and the Educational Opportunity Project at Stanford University which was released a little more than one year ago, found: "The eight states with the largest losses in math achievement (Virginia, Oklahoma, West Virginia, New Jersey, Connecticut, Mississippi, Oregon, and Pennsylvania) lost more than 70 percent of a grade level during the pandemic."

Those losses in math affected students in school districts as varied and disparate as Edison, New Brunswick, Newark, Paterson, and West Windsor-Plainsboro, where the ERS found students had lost more than a year of progress in math. Indeed, the ERS study concluded that New Jersey students would need until the 2026-2027 school year to return to their 2019 levels of achievement in mathematics.

This conclusion is echoed in the March 7, 2024 report from the Independent Review of New Jersey's Response to the COVID-19 pandemic, which conducted, at the directive of Governor Murphy, "an independent review of the State's handling of the COVID-19 pandemic," including the effects of the pandemic upon education.

(Pa64-112)

The Independent Review noted that New Jersey "students' NAEP testing scores declined more between 2019 and 2022 than the national average in 4th -grade math, 8th -grade math, and 4th -grade reading." The Independent Review also found that New Jersey "saw disproportionate impacts of the pandemic on particular groups

of students, especially Black, low-income, and urban students.” As such, the Independent Review found that “New Jersey’s educational outcomes, such as learning loss, days of virtual education, or equity outcomes, often measured below the national average and other benchmark states” and “New Jersey’s journey to reopen schools after the closures was difficult and contentious, with its students experiencing significant learning loss.”

NJDOE itself reported to the State Board of Education that, while the Spring 2024 New Jersey Student Learning Assessment **(Pa113-162)** showed some improvement in English and mathematics test scores saw modest improvement, performance remained below pre-pandemic levels and the broad achievement gaps between demographic groups largely remained unchanged.

The New Jersey Student Learning Assessment results showed that, while the percentage of students who met or exceeded expectations rose to 39.6%, even the improved math scores did not meet the percentage (44.7%) of students who met or exceeded expectations in the last full school year before the pandemic. Moreover, the math performance gap (55.8%) between different student populations continues to exceed pre-pandemic levels (54.8%), with multilingual and economically disadvantaged students, as well as those with developmental disabilities, performing significantly worse than other student cohorts. **(Pa113-162)**

This negative impact has fallen upon all New Jersey students but perhaps continues to be most keenly felt by African-American, multilingual and economically disadvantaged students - the very same populations who comprise the majority of students for whom STEMCivics is privileged to provide an education.

However, in his denial of the Motion for Reconsideration, the Commissioner gives these uncontroverted facts a single dismissive line: "STEMCivics' claim that the revocation decision was made without this contextual consideration is false."

That was the entirety of the Commissioner's reasoning - with no explanation as to just how precisely the Commissioner took the impact of the COVID-19 into consideration, just a single conclusory sentence waving aside the catastrophic impact a world-wide pandemic had upon students and learning.

B. The Commissioner Also Ignored The Statewide Crisis in Recruiting and Retaining Teachers and Support Staff

(Raised Below: Pa199-205 and 209-213)

In its Motion for Reconsideration, STEMCivics asked the Commissioner to take into account that the State of New Jersey itself has acknowledged that the recruitment and retention of certificated teaching staff and support staff is a problem across the state.

Not only did the State create a Task Force to address the challenges which all New Jersey school districts continue to face in attracting and retaining educators, but NJDOE also launched in

late-2024 the \$1 million "Teach.Inspire.New Jersey" initiative to recruit and retain educators in the state. To date, neither the Task Force nor the initiative have significantly increased the ability of school districts to find and keep teachers or support staff.

Furthermore, STEMCivics notified NJDOE in its July 2024 and December 2024 Remediation Plan updates that, despite the multiple action steps taken to recruit and maintain certificated staff (including increasing the starting salaries for ELA and math teachers to \$100,000.00) and high satisfaction rates reported in staff surveys, of the continuing challenges in recruiting and retaining qualified teachers. **(Pa199-205)**

Despite the acknowledged difficulties faced by all school districts across New Jersey, the Commissioner was again dismissive. In his denial of the Motion for Reconsideration, the Commissioner stated: "The January 31, 2025 decision expresses concern regarding the school's 2023-2024 teacher retention rate which decreased to 63% from 81% in the 2022-2023 school year. Significantly, the school's 2023-2024 teacher retention rate is lower than the 66% rate confirmed at the time of the school's charter renewal with probation. Within this context, the school's inclusion of its professional development agendas for the 2024-2025 school year does not satisfy the Department's concerns regarding the school's commitment to retain and grow its teachers

and support staff.” (Pa214-217)

Yet the Commissioner’s dismissiveness was unwarranted and unsupported by the actual facts. NJDOE’s Performance Report indicates that STEMCivics’ one-year retention rate was 68% for teachers and 71.4% for administrators in the 2023-2024 school year. Moreover, the Commissioner implies that professional development was the only step taken by STEMCivics, but ignored the multiple action steps taken to recruit and maintain certificated staff, which included the dramatic increase in starting salaries for ELA and math teachers to \$100,000.00, well above what most (if not all) other districts were paying.

Again, an agency decision based on a misperception or misstatement of the facts “render[s] the agency’s conclusion unreasonable.” Quest Academy, at 387 (citing Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 588-89 (1988) (stating that appellate court should intervene where agency’s “finding is clearly a mistaken one”); Constantino v. N.J. Merit Sys. Bd., 313 N.J. Super. 212, 218 (App.Div.) (reversing board’s decision where findings were unsupported by record, based on “total disregard” of facts, against “overwhelming weight” of testimony, and based on record “skew[ed]” by administrative law judge), *cert. denied*, 157 N.J. 544 (1998)).

Not only did the Commissioner cite an incorrect retention rate, but he also ignored the continuing statewide crisis in recruiting and retaining teachers; as such, teacher retention

cannot be a reasonable basis for the revocation decision.

CONCLUSION

The Commissioner of Education concluded his revocation decision with the statement that “[t]he decision to close a school is one of the hardest decisions the Department must make and is not taken lightly.” (Pa198) But it would seem that even if the decision was not taken “lightly”, that decision was still taken improperly. The revocation clearly was not a reluctant decision reached only after a careful, consistent, and measured determination by NJDOE that STEMCivics, after many opportunities and despite clear guidance, failed to meet the required standards to maintain its charter.

Rather, it appears that the determination that STEMCivics failed to meet some uncertain standards was a predetermined decision reflecting NJDOE’s apparent desire⁷ to close STEMCivics. STEMCivics was not given a meaningful opportunity to address any deficiencies or shortcomings in its remedial actions before the Commissioner signed its operational death warrant. Nor has STEMCivics been afforded the practical realistic ability to contest the revocation decision, because the Commissioner not only failed to provide the actual data upon which his decision was

⁷ As seemingly shown by NJDOE’s actions in the context of the instant Appeal.

ostensibly based but also cited to differing (and previously undisclosed) reasons -- between the initial decision issued on January 31, 2025 and the denial of the Motion for Reconsideration on May 19, 2025 - for the revocation of the school's charter.

In light of the foregoing, it is respectfully submitted that the decision, dated January 31, 2025, to revoke the charter of the Trenton STEM-to-Civics Charter School should be reversed because the Commissioner acted arbitrarily, capriciously, and unreasonably.

Respectfully submitted,

COMEGNO LAW GROUP, P.C.

/s/ Andrew W. Li

ANDREW W. LI, ESQ.

Date: July 15, 2025

IN THE MATTER OF THE
REVOCATION OF CHARTER
OF THE STEM-TO-CIVICS
CHARTER SCHOOL.

: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
:
: DOCKET NUMBER: A-2041-24
:
: CIVIL ACTION
:
: ON APPEAL FROM A FINAL
: DECISION OF THE COMMISSIONER
: OF EDUCATION
:

**RESPONDENT COMMISSIONER OF EDUCATION'S BRIEF IN
OPPOSITION TO APPEAL**
Date Submitted: August 12, 2025

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, New Jersey 08625-0112
Attorney for Respondent
Kevin.Milton@law.njoag.gov

Christopher Weber
Assistant Attorney General
Of Counsel

Kevin Milton (Attorney ID: 409502022)
Deputy Attorney General
On the Brief

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

Trenton STEM-to-Civics Charter School (STEMCivics) has been in operation since July 1, 2014. On February 1, 2023, Acting Commissioner Angelica Allen-McMillan placed STEMCivics on probationary status following a review conducted in response to its charter renewal application. (Pa32); see also N.J.A.C. 6A:11-2.3(b) (requiring “comprehensive review of [a] school” before granting or denying renewal); N.J.A.C. 6A:11-2.4(a) (allowing Commissioner to “place a charter school on probationary status . . . upon a finding that the charter school is not operating in compliance with its charter, statutes, or regulations”). The Commissioner found that the school failed to adhere to “key design elements described in its charter,” including its mission to “use STEM as a motivator and promote academic excellence, inspire civic engagement, and ensure students are ready for college and careers.” (Pa32).²

With respect to its ability to provide a high-quality education per its charter, the Commissioner found that STEMCivics significantly lagged behind the state averages in its English Language Arts (ELA) and math New Jersey Student Learning Assessment (NJSLA) results, which are statewide assessments

¹ Because they are closely related, the procedural history and counterstatement of facts are combined for efficiency and the court’s convenience.

² “Pa” refers to Appellant’s appendix; “Pb” refers to Appellant’s brief.

that measure student progress toward the New Jersey Student Learning Standards (NJSLS). See N.J.A.C. 6A:8-4.1 (requiring the Commissioner to “implement a system and related schedule of Statewide assessments to evaluate student achievement of the NJSLS”). The State Board of Education is responsible for establishing such learning standards, N.J.S.A. 18A:7F-4.2, which specify expectations in nine content areas, including English language arts and mathematics, and apply to all students enrolled in public education programs within the state. N.J.A.C. 6A:8-1.1 – 1.2. District boards of education are required to “align their curriculum[s] and instructional methodologies to assist all students in achieving the NJSLS.” N.J.A.C. 6A:8-1.2(c).

STEMCivics barely exceeded, and sometimes fell below, results of the Trenton Public School District (Trenton Public) with respect to its scores. (Pa32). Specifically, in 2019-2020, STEMCivics had a 20.5% proficiency in ELA compared to the statewide 57.9% and Trenton Public’s 20%. Ibid. In 2021-2022, its ELA proficiency was 17.5% compared to a state average of 48.9% and Trenton Public’s 10.5%. Ibid. With respect to math, STEMCivics’s proficiency was not reported in 2019-2020, contrary to accountability guidelines under the Every Student Succeeds Act (ESSA), 20 U.S.C. § 7111. Ibid. In 2021-2022, its math proficiency was 1.9%, compared to the state average of 35.4% and Trenton Public’s 6.4%. Ibid.

The Commissioner's review involved on-site visits — which revealed classrooms failing to include a STEM curriculum, low student engagement, a lack of rigorous material and pedagogical practices that foster mastery of the NJSLS, low-level instruction, and minimal participation in critical thought. Ibid. These failures indicated STEM Civics was not executing the school's mission to "ensure students are ready for college and careers" or adhering to the key design elements of its charter. Ibid.

There were also issues with STEM Civics's organizational structure, per the Performance Framework for charter schools, which is the accountability system used by the Department to evaluate the academic, financial, and organizational performance of each charter school. N.J.A.C. 6A:11-1.2. Among other things, the Performance Framework requires that charter schools: 1) "meet[] the needs of all students, especially the highest needs students requiring special education services"; 2) "complete[] all facilities, safety, security, and health requirements"; 3) "foster[] a culture of learning, scholarship, and high academic expectations"; 4) "create[] a safe environment and address[] the physical, social, emotional, and health needs of its students;" and 5) provide instruction characterized by student engagement, classroom environments conducive to learning, powerful lessons, and staff that understands and effectuates high-quality instruction. (Pa433-36). With respect to fiscal issues,

the Performance Framework also sets out requirements for enrollment variance, enrollment count, and cash flow. (Pa463-64).

The Commissioner found that STEMCivics had not established an organizational structure that leads to improvement, based on a 66% teacher retention rate and its failure to retain appropriately certified staff members. Ibid. On-site visits revealed STEMCivics's inability to provide instructional leadership to teachers, as evidenced by classrooms with lessons relying on low-level knowledge that did not comport with the NJSLS. Id. at 33. The Commissioner also noted climate, culture, and access and equity issues, including instances of disruptive, off-task behavior and limited staff intervention; a growing student attrition rate, with 27% attrition in school year 2021-2022; growing student withdrawals, with 154 in school year 2021-2022; a growing chronic absenteeism rate, with 49.9% in 2021-2022; and rising out-of-school suspensions, with 215 in 2021-2022. Ibid. There were also fiscal issues, such as enrollment variance and average instructional cost percentages. Ibid.

Pursuant to N.J.A.C. 6A:11-2.4, on February 13, 2023, STEMCivics submitted a remedial plan to correct the deficiencies. Ibid. The remedial plan included actions for improving instruction, academic proficiency, student culture, and professional development. (Pa392). Specifically, the plan called for 1) a 20% increase in English and math proficiency year-to-year; 2) a 20%

decrease in chronic absenteeism year-to-year; 3) a 20% decrease in out-of-school suspensions year-to-year; and 4) maintaining a 4% attrition rate related to student dissatisfaction. Ibid. Since the remedial plan was implemented, STEM Civics has been subject to periodic on-site, virtual, and document-related review by the New Jersey Department of Education (“Department”). (Pa190). This review included several monitoring visits, virtual visits, and in-person meetings. (Pa192). In addition, on December 10, 2024, STEM Civics submitted an updated remedial plan, at the Department’s request, which included an additional requirement that STEM Civics hire and retain appropriately certificated teachers. Ibid.

On January 31, 2025, after reviewing STEM Civics’s progress towards remediation during the probation period, Acting Commissioner Kevin Dehmer issued a decision revoking STEM Civics’s charter pursuant to N.J.A.C. 6A:11-2.4(b). (Pa190-98). The Commissioner found that based on on-site observations, document review, interviews with stakeholders, meetings with administrators and the board of trustees, and review of academic performance, STEM Civics had failed to create and implement a remedial plan commensurate with the causes for probation, failed to adhere to the Performance Framework, and failed to “provide an educational program consistent with its mission to ‘use

STEM as a motivator to promote academic excellence and inspire civic engagement to ensure students are ready for college and careers.’” (Pa190).

First, the Commissioner discussed issues with STEMCivics students’ proficiency in mathematics, which failed to consistently improve during the probation period. (Pa191). The Commissioner noted that STEMCivics’s grades six through twelve math proficiency rates of 1.5% in the 2021-2022 school year were lower than that of Trenton Public School District, and exceeded the Trenton Public School District’s rates in 2022-2023 and 2023-2024 school years by only 0.5%. Ibid. Math proficiency rates were inconsistent and STEMCivics failed to achieve the 20% increase year-to-year called for by the remediation plan; for example, proficiency rates increased from 1.5% to 4.1% between 2022 and 2023, but only increased from 4.1% to 4.4% between 2023 and 2024. Ibid. The Commissioner compared these scores to the statewide math proficiency rates of 32.3% in 2022, 33.8% in 2023, and 34.6% in 2024. Ibid. The Commissioner also noted STEMCivic’s median student growth percentile (mSGP), a measure of a student’s growth year-to-year as compared to their peers, which declined from 40 in the 2022-2023 school year to 38.5 in the 2023-2024 school year. Ibid. This limited growth failed to meet ESSA accountability standards, which suggests a long-term goal of an mSGP of 40. Ibid.

With respect to the issues of teacher retention, student suspension, and attrition, the Commissioner noted inconsistent and fluctuating rates in those areas during the probationary period. (Pa194-96). Student withdrawals fluctuated over the probation period, decreasing to 56 in 2022-2023, but rising to 101 in 2023-2024. (Pa194-95). This attrition rate was approximately 10-13% higher than peer charter schools in the area. (Pa195). In addressing the purportedly low attrition rate related to student dissatisfaction—a requirement of the remedial plan—based on parental satisfaction surveys, the Commissioner noted that only 30% of families participated in the survey and, of those, 89% reported satisfaction. (Pa195). The Commissioner recognized some improvement in student suspension rates, but indicated that suspensions remained high, with nearly 24% of students receiving suspensions as of 2024. Ibid. With respect to the requirement that it retain certificated teachers, the Commissioner noted fluctuating retention rates over the probation period, rising to 81% in 2023, but decreasing to 63% in 2024—below the retention rate identified in the initial probation letter. (Pa196).

The Commissioner also noted that throughout the Department’s various monitoring visits, including discussions with school officials and document review, STEM Civics’s leadership continued to fail to understand the school’s issues and develop and implement a plan to address them. Ibid. The

Commissioner pointed to observations during on-site status visits, including instruction that remained characterized by low-level tasks, a lack of classroom management, and minimal engagement in higher-order thinking. Ibid. The Department also continued to observe instructional staff members who did not engage with disinterested students and delivered lessons that lacked rigor or opportunities for intellectual dialogue between staff and students. (Pa194). Instructional activities also lacked the differentiation necessary to support the learning needs of students with disabilities. Ibid. And positive behavioral intervention and supports were not being deployed. Ibid. While support staff were present in some classrooms, they did not provide effective services or contribute to a high-quality learning environment. Ibid.

The Commissioner also noted several facility and access issues. For instance, the Commissioner found significant issues with school and classroom environments, such as unsanitary or disorganized spaces in need of repair, and a lack of necessary instructional materials and resources. (Pa193).

In addition to instructional and support staff issues, the Commissioner noted student culture and climate problems, including the school's failure to administer annual culture and climate surveys. Ibid. On-site status visits and discussions with students revealed feelings of frustration and disappointment with the school's programs, and a perception that teachers and administrators

dismissed their concerns and needs. (Pa196). Some of those conversations were initiated by students themselves. (Pa196). Students expressed that they did not feel adequately prepared for post-secondary education or their careers. (Pa196). The Commissioner also discussed the school's failure to include a required copy of the board's school leader evaluation tool in its annual report. (Pa197).

Finally, the Commissioner addressed certain fiscal viability issues as they relate to the Performance Framework. Ibid. The Commissioner found that the school did not meet enrollment variance standards for 2022 or the enrollment count necessary for fiscal year 2025. Ibid. Further, the FY2023 performance indicated the school did not meet the standard for three-year cumulative cash flow, and FY2024 three-year cumulative cash flows fell far below standards set out in the Performance Framework. Ibid. The Commissioner also referenced the Department's concerns over allocation of school funds, as only 50% of the school's funds had been allocated to instructional purposes as of 2024—significantly below the benchmark of 60% in other educational settings. Ibid.

Based on the foregoing, the Commissioner concluded that, “due to the persistent and pervasive challenges in organizational capacity, access and equity, instructional quality, culture and climate, as well as the continuous failure to effectively measure and address identified areas of deficiency,

STEMCivics is hereby directed to cease operations effective June 30, 2025.”
(Pa198).

On February 10, 2025, STEMCivics filed a motion for reconsideration of the Commissioner’s revocation decision in accordance with N.J.A.C. 6A:3-1.15(b). One month later, on March 13, 2025, STEMCivics filed a motion with the Commissioner to stay the revocation pursuant to N.J.A.C. 6A:3-1.15(a). The same day, STEMCivics filed a notice of appeal in the Appellate Division, and filed a corrected notice of appeal one week later.

On May 14, 2025, STEMCivics filed a motion for a stay of the Commissioner’s decision with this court. The motion was denied without prejudice on June 10, 2025, and the court ordered the Commissioner to issue a decision on the pending motion to stay within 10 days. The Commissioner denied the motion for a stay on June 17, 2025. On June 18, 2025, STEMCivics filed an emergent motion for a stay of the revocation pending appeal. This Court granted the motion on June 26, 2025.

On July 3, 2025, the Commissioner filed an emergent motion with the Supreme Court to vacate the stay. That motion was granted on July 11, 2025.

ARGUMENT

**THE COMMISSIONER’S DECISION REVOKING
STEMCIVICS’S CHARTER SHOULD BE
AFFIRMED BECAUSE IT WAS BASED ON
SUBSTANTIAL CREDIBLE EVIDENCE AND**

WAS NOT ARBITRARY, CAPRICIOUS, OR UNREASONABLE.

The Commissioner's decision to revoke STEM Civics' charter was based on substantial evidence including documents, interviews, analysis of student proficiency data, and information obtained from on-site staff visits. The Commissioner's reasoning was neither arbitrary, capricious, nor unreasonable. Therefore, the decision should be affirmed.

A reviewing court may only overturn an agency decision taken pursuant to authority delegated by the Legislature if the appellant can demonstrate that it was arbitrary, capricious, or unreasonable. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp. (Quest), 216 N.J. 370, 385 (2013). A court's review is generally restricted to the following inquiries:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Mazza v. Bd. of Trs., 143 N.J. 22, 25 (1995).]

The Supreme Court has held that, "in making predictive or judgmental determinations," such as the viability of a proposed charter school, "case law has recognized the value that administrative expertise can play in the rendering

of a sound administrative determination.” Quest, 216 N.J. at 385. Moreover, “judicial deference is at a high when reviewing such findings.” Ibid.

By way of background, a charter school is a “public school operated under a charter granted by the [C]ommissioner [of Education], which is operated independently of a local board of education and is managed by a board of trustees.” Educ. Law Ctr. ex rel. Burke v. N.J. State Bd. of Educ., 438 N.J. Super 108, 112 (App. Div. 2014). A charter school “shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools.” N.J.S.A. 18A:36A-11(a). Once a charter has been granted, the Commissioner must annually assess the school to ensure it is meeting the goals of its charter. N.J.S.A. 18A:36A-16. Upon a finding that a charter school is not operating in compliance with its charter, statutes, or regulations, the Commissioner may place it on probation to allow implementation of a remedial plan to correct those issues. N.J.A.C. 6A:11-2.4(a).

Upon being placed on probation, a charter school must submit a remedial plan within fifteen days “provid[ing] the specific steps . . . that it shall undertake to resolve the condition(s) not fulfilled and/or the violation(s) of its charter.” N.J.A.C. 6A:11-2.4(a)(3). The Commissioner may remove its probationary status if he determines that the school “provide[d] sufficient evidence . . . that

the terms of the probation have been met and the causes for the probationary status are corrected.” N.J.A.C. 6A:11-2.4(a)(4).

Under the regulations governing charter schools, the Commissioner is entitled to revoke a charter, after review by the Department, for any of the following reasons:

1. Any condition imposed by the Commissioner in connection with the granting of the charter that has not been fulfilled by the school;
2. Violation of any provision of its charter by the school;
3. Failure of the remedial plan to correct the conditions that caused the probationary status. The Commissioner may place a school on probation before charter revocation, but probationary status is not necessary for revocation; or
4. Failure of the charter school to meet any standards set forth in its charter agreement or the Performance Framework.

[N.J.A.C. 6A:11-2.4(b).]

Here, the Commissioner’s decision to revoke STEM Civics’s charter was based on several of these factors, including its failure to meet the standards of its own charter, failure to meet the standards established in the remedial plan, and failure to satisfy the Performance Framework. N.J.A.C. 6A:11-2.4(b)(3)-

(4). This decision was made only after thorough review of numerous documents, educational outcomes, STEMCivics's own annual reports, and on-site visits during the course of the probationary period. The Department conducted an extensive review of STEMCivics's progress to evaluate whether it was executing its remedial plan, meeting its mission of using STEM to make students college-ready, and following the Performance Framework.

As the Commissioner found, STEMCivics failed to achieve these goals in several respects. First, STEMCivics failed to meet several requirements of its remedial plan. N.J.A.C. 6A:11-2.4(b)(3). As described above, STEMCivics's plan called for 1) a 20% increase in English and math proficiency year-to-year; 2) a 20% decrease in chronic absenteeism year-to-year; 3) a 20% decrease in out-of-school suspensions year-to-year; 4) maintaining a 4% attrition rate related to student dissatisfaction; and 5) hiring and retaining certified teachers. (Pa392).

Regarding academic proficiency, STEMCivics achieved only minor improvement in math metrics, which did not meet the year-to-year 20% improvement requirement and fell below or only slightly above those of the Trenton Public School District. (Pa192). STEMCivics suffered from similar issues with its teacher retention, student suspension, and attrition rates. (Pa194-96). STEMCivics failed to achieve consistent and sustainable growth in these

categories as required under its remedial plan. (Pa194-96). The Commissioner provided a thorough analysis of these figures, including diagrams tracking STEM Civics's year-to-year proficiency rates, and relying on STEM Civics's own annual reports, in addition to NJSLA scores, for the underlying data. (Pa192).

STEM Civics also failed to meet the mission of its charter and several requirements of the Performance Framework for charter schools. N.J.A.C. 6A:11-2.4(b)(4). As noted above, among other things, the Performance Framework requires that charter schools: 1) "meet[] the needs of all students, especially the highest needs students requiring special education services"; 2) "complete[] all facilities, safety, security, and health requirements"; 3) "foster[] a culture of learning, scholarship, and high academic expectations"; 4) "create[] a safe environment and addresses the physical, social, emotional, and health needs of its students;" and 5) provide instruction characterized by student engagement, classroom environments conducive to learning, powerful lessons, and staff that understands and effectuates high-quality instruction. (Pa433-36). The Performance Framework also sets out requirements for enrollment variance, enrollment count, and cash flow. (Pa463-64).

With respect to providing instruction characterized by engaged students, learning-oriented classroom environments, powerful lessons, and staff

effectuating high-quality instruction, observations during on-site visits revealed several deficiencies. DOE found that students were disengaged, and that instruction was characterized by low-level tasks, a lack of classroom management, and minimal engagement in higher-order thinking. (Pa194-96). STEMCivics leadership evidenced a lack of understanding of the school's issues, and instructional staff members failed to engage disinterested students or deliver rigorous lessons with opportunity for intellectual dialogue. (Pa196).

As to meeting the needs of students with disabilities, the Commissioner also noted several issues, including a lack of differentiation necessary to support special needs and ineffective support staff. (Pa194). Climate and culture problems also abounded, including the school's failure to administer annual culture and climate surveys, student frustration with the school's programs, and a widespread perception that teachers and administrators dismissed student concerns and needs. (Pa196-97). The Commissioner also discussed the school's failure to include a required copy of the board's school leader evaluation tool in its annual report. (Pa197).

With respect to its fiscal issues, the Commissioner found that the school did not meet enrollment variance standards for 2022 or the enrollment count necessary for fiscal year 2025. Ibid. Further, the FY2023 performance indicated the school did not meet the standard for three-year cumulative cash flow, and

FY2024 three-year cumulative cash flows fell far below standards set out in the Performance Framework. Ibid.

STEMCivics sets forth a number of arguments in its challenge to the Commissioner's decision. None of them have merit. As a preliminary matter, at several points in its brief, STEMCivics argues it never had the opportunity to receive feedback from the Department on its progress, and also takes issue with the Department's alleged failure to answer some emails. (Pb34-46). First, nothing in the regulations require the Commissioner to step in the shoes of the charter school's leadership and directly manage a charter school's remediation. Rather, N.J.A.C. 6A: 11-2.4(a) places the onus on the charter school to correct deficiencies, requiring that it "submit a remedial plan to the Commissioner within 15 days from the receipt of the notice of probationary status." It also requires the school to "provide sufficient evidence . . . that the terms of the probation have been met and the causes for the probationary status [have been] corrected." Ibid. In other words, the responsibility for improving the quality of educational services and operations lies with the charter school, and likewise the burden is on the charter school to prove to the Commissioner that it is fit to educate New Jersey's students. The causes of probation were clearly communicated to STEMCivics in the Commissioner's probation letter, and the

remedial plan was drafted by STEMCivics itself. The Commissioner did not err by refusing to manage or oversee STEMCivics's myriad issues.

Notwithstanding that the onus is on STEMCivics to correct the identified deficiencies and implement the plain directives of its remedial plan, STEMCivics did have ample opportunity to communicate its progress throughout the probationary period and receive feedback from the Department. The Department conducted virtual meetings with STEMCivics on February 21, 2023; July 18, 2023; and April 30, 2024; in-person meetings on March 7, 2023, and September 22, 2023; and on-site monitoring on September 22, 2023; April 29, 2024; and October 4, 2024. (Pa192).

STEMCivics also erroneously argues that the Commissioner's decision was arbitrary because he did not include STEMCivics's Performance Framework scores in the revocation decision—specifically, those related to academics and NJSLA math proficiency. (Pb19). But nothing in the statute or regulations requires the Commissioner to include such scores in a revocation decision and, even if it did, the Commissioner's decision was based only in part on the Performance Framework.³ In particular, beyond its failure to satisfy the

³ The regulations do require the Department to publicly report on each charter school's academic performance based on the Performance Framework annually. See N.J.A.C 6A:11-2.2(d). These reports are available at rc.doe.state.nj.us/ (last visited August 12, 2025), and are included in plaintiff's own appendix at Pa439-63.

Performance Framework, STEM Civics also fell far short of meeting its remedial plan goals or correcting the deficiencies leading to probation. For example, the Commissioner found that math proficiency rates, based on STEM Civics's NJSLA scores, were inconsistent and STEM Civics failed to achieve the 20% year-to-year increase of the remedial plan. Proficiency rates increased from 1.5% to 4.1% between 2022 and 2023, but only increased from 4.1% to 4.4% between 2023 and 2024. (Pa191). In other words, STEM Civics failed to meet the requirements of its remedial plan, and its conformity with certain parts of the Performance Framework, at least in this regard, does not change the Commissioner's analysis.

STEM Civics also argues that the Commissioner is required to assess Performance Framework scores when deciding whether to renew a charter pursuant to N.J.A.C. 6A:11-2.3(b)(2). (Pb22). But the underlying decision is not governed by the regulations pertaining to renewal. Compare N.J.A.C. 6A:11-2.3 (providing procedures for renewal of a charter) with N.J.A.C. 6A:11-2.4 (governing probation and revocation of charters). The regulations pertaining to revocation apply, and under those regulations, the Commissioner may revoke a school's charter for failure to comply with the charter, failure to execute its remedial plan, or failure to comport with the Performance Framework. N.J.A.C. 6A:11-2.4(a).

STEMCivics’s argument that it met the goals of its remedial plan is incorrect. It argues that the Commissioner did not state how it failed to meet the first goal—increasing student proficiency levels—because the decision only notes that the school “fail[ed] to meet the ESSA accountability standards.” (Pb26). But, as discussed above, the Commissioner thoroughly explained his findings that STEMCivics’s academic progress was insufficient during the probationary period, citing its NJSLA scores and including graphical analysis of its progress from year to year, which showed it failed to meet the annual increases as required under its remedial plan. (Pa191).

Relatedly, STEMCivics argues the Commissioner’s use of Trenton Public’s scores, as well as other charter school’s scores, was arbitrary because STEMCivics was unaware it was required to exceed those metrics. (Pb26). This argument misses the mark. First, comparison to like charter schools is built into the Performance Framework. (Pa414 (“For measures in all categories except Closing Gaps, the number of points a charter school earns depends on how well the school performed relative to schools across the state; schools in the largest sending district(s); and schools serving similar populations of students.”)); see also N.J.S.A. 18A:36A-2 (finding that the purpose of charter schools is to “offer the potential to improve pupil learning” and “increase . . . the educational choices available when selecting a learning environment”). Moreover, the

Commissioner’s decision was not based solely on STEM Civics’s failure to surpass other schools; instead, the Commissioner, in line with the Performance Framework and the provisions of its charter, found that STEM Civics’s math performance “strongly suggest[ed] that it is not consistently offering its students a high-quality, STEM-based education.” (Pa190-91). The fact that STEM Civics was outperformed by other schools in math proficiency was but one of many factors evidencing its inability to provide such a tailored, high-quality education as set out in its charter.

With respect to student withdrawals, STEM Civics argues the Commissioner did not provide data on the rate of student withdrawal or attrition showing that it failed to meet the Performance Framework. (Pb30). Not so. For one thing, the data is publicly available and made available annually.⁴ For another, the Commissioner specifically found that attrition dramatically fluctuated year to year, decreasing substantially one year and increasing substantially the next. (Pa194-96). This inability to consistently minimize attrition ran against the requirements of the remedial plan and the causes for probation.

⁴ See State of New Jersey, NJ School Performance Reports, rc.doe.state.nj.us/ (last visited August 12, 2025).

STEMCivics also takes issue with the Commissioner's findings on suspensions, arguing that the data is incorrect. (Pb32). This argument is baseless. The Commissioner relied on STEMCivics's own submissions, in the form of its annual reports, to arrive at these conclusions. Pursuant to N.J.S.A. 18A:36A-16(b), every charter school is required to submit an annual report to the Commissioner to facilitate the Commissioner's review of whether the school is meeting the goals of its charter. STEMCivics did so, and based on a review of STEMCivics's own data, there were 190 out-of-school suspensions in 2023, and 140 out-of-school suspensions in 2024. (Ra19-20; Ra55). The Commissioner did not err in citing these figures.

With respect to the fourth goal of the remedial plan—maintaining a 4% attrition rate related to student dissatisfaction—STEMCivics argues the Commissioner ignored that it maintained a 3% attrition rate related to student dissatisfaction in 2022-2023 and a 2% attrition rate in 2023-2024. (Pb33). But the Commissioner squarely addressed STEMCivics's claim that the attrition rate related to student dissatisfaction remained low in accordance with its remedial plan. He reasonably concluded that STEMCivics's claim was unreliable given the fact that it was based on parental satisfaction surveys. (Pa194). Only 30% of STEMCivics families participated in these surveys and, of those 30%, only 89% reported satisfaction. Ibid. Given the lack of responsiveness, there was

insufficient evidence to show that the attrition rate related to dissatisfaction had been maintained or reduced. Ibid.

Finally, STEM Civics argues that the Commissioner's decision was arbitrary and capricious because he treated other charter schools differently, pointing to the fact that some other schools have higher chronic absenteeism rates, others have similar suspension rates, and others have worse teacher retention rates. (Pb37-39). But each charter school faces unique circumstances, and the Commissioner has discretion under the regulations to monitor each school and remove a charter when appropriate under the totality of those circumstances. See N.J.A.C. 6A:11-2.4(b) ("The Commissioner may revoke a school's charter following review by the Department for one or more of the following reasons") (emphasis added); J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 382 (App. Div. 2010) ("If not satisfied that a charter school has fulfilled any condition of its charter, or if it has violated any provision of its charter, the Commissioner may revoke the charter at any time."). STEM Civics failed to remedy a confluence of issues unique to its situation. The school's attempt to analogize itself to other schools fails, as each charter school must be analyzed on a case-by-case basis given the unique circumstances of each. For example, one charter school STEM Civics uses for comparison remedied the

causes for probation as laid out in the Commissioner's letter removing its probationary status. (Pa462-63).

As a last resort, STEM Civics rehashes the arguments made in its motion for reconsideration, arguing that the Commissioner ignored the impact of the COVID-19 pandemic on student performance. (Pb39-40). But the pandemic has no bearing on the accuracy or legality of the Commissioner's revocation decision. First, the pandemic, as STEM Civics admits, affected all districts and schools in New Jersey. (Pb40). Yet, as the Commissioner found, STEM Civics failed to provide a tailored, high-quality education when compared to almost every other charter school in the area and the public school in its district of residence. (Pa190-91; Pa215). And, STEM Civics was made fully aware of such problems when it entered probationary status and drafted a remedial plan. The failure to remediate falls squarely on itself.

To the extent STEM Civics argues that there is a statewide crisis in recruiting and retaining teachers which explains its failure to satisfy its remedial plan, the above maintains. STEM Civics was on notice of this issue and drafted its own remedial plan requiring that it maintain certified teachers. Its rates in this regard fluctuated dramatically; worse still, its 2023-2024 retention rate was even lower than the rate that in part gave rise to probation. (Pa196). And while STEM Civics argues the retention rate data referenced by the Commissioner is

wrong, this is incorrect. Again, relying on STEM Civics's own annual reports, STEM Civics reported its teacher retention between July 1, 2023 to July 1, 2024 as 53% for middle school teachers and 73% for high school teachers, with an average between the two of 63%. (Ra54). The Commissioner did not err in relying on STEM Civics's own data.

Because the Commissioner's decision was based on a thorough of review of STEM Civics after years of probationary monitoring, including on-site visits, analysis of proficiency data, interviews with stakeholders, documentary review, and its own annual reports, and because the basis for revocation is well-established under the regulations, the decision should be affirmed. STEM Civics was on notice of all issues facing it for several years, and drafted its own remedial plan to address them. It failed to remedy those problems, and its disagreement with the outcome has no bearing on the merits of the Commissioner's decision.

CONCLUSION

For these reasons, the Commissioner's decision revoking STEM Civics's charter should be affirmed.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Kevin F. Milton
Kevin F. Milton
Deputy Attorney General
Attorney ID: 409502022
Kevin.Milton@law.njoag.gov

Christopher Weber
Assistant Attorney General
Of Counsel

cc: All counsel of record (via eCourts)

COMEGNO LAW GROUP, P.C.
521 Pleasant Valley Avenue
Moorestown, NJ 08057
856.234.4114 (p)
856.234.4262 (f)
Attorneys for Appellant,
STEM-to-Civics Charter School

IN THE MATTER OF THE REVOCATION
CHARTER OF STEM-to-CIVICS
CHARTER SCHOOL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-002041-24

ON APPEAL FROM:
COMMISSIONER OF EDUCATION, NEW
JERSEY DEPARTMENT OF EDUCATION

**REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT,
STEM-to-CIVICS CHARTER SCHOOL**

BY: ANDREW W. LI, ESQUIRE,
of counsel & on the brief
NJ ATTORNEY ID NO. 036001997
ali@comegnolaw.com

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PROCEDURAL HISTORY AND STATEMENT OF FACTS FOR REPLY

Appellant relies upon its previously submitted Procedural History and Statement of Facts.

LEGAL ARGUMENT

POINT I

**NJDOE'S OPPOSITION FURTHER DEMONSTRATES THAT THE
REVOCATION DECISION WAS ARBITRARY, CAPRICIOUS, AND
UNREASONABLE**

Respondent, the New Jersey Department of Education ("NJDOE") argues in its Opposition that, when reviewing a decision by the Commissioner of Education, this Court is "generally restricted" to mere "inquiries" as to whether the agency acted in an arbitrary, capricious, or unreasonable manner. **Ra11** NJDOE implies that the Appellate Division should simply accede to the Commissioner's decision to revoke the charter of STEMCivics because "judicial deference is at a high when reviewing such findings." **Ra12**

In so arguing, NJDOE attempts to minimize the actual degree of review which this Court has regarding an agency's actions, and instead offers the disturbing suggestion that the Commissioner can simply issue whatever decision as to a charter school's fate that he sees fit, without fear of judicial review or actual accountability, because of charter schools fall within his "administrative expertise".

But as the Supreme Court actually held in In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., "[a]n appellate

court may reverse an agency decision if it is arbitrary, capricious, or unreasonable. In other words, a court may intervene when 'it is clear that the agency action is inconsistent with its mandate.'" In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385 (2013).

While the judicial test of an agency's actions may be deferential, the test still "does not lack content." Id. Thus, the judicial determination of whether an agency's action was arbitrary, capricious, or unreasonable is not an invitation for an enervated court to simply sit back, relax, and assume that the Commissioner acted properly (as is suggested by NJDOE). Instead, the Supreme Court mandated in Mazza v. Bd. of Trustees, Police & Firemen's Ret. Sys., that a reviewing court has the affirmative obligation to actively and carefully determine (1) whether a decision by the Commissioner violated express or implied legislative policies; (2) whether there is a substantial factual record to support the findings upon which the decision was supposedly based; and (3) whether, when those legislative policies are applied to those facts, the agency "clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors". Mazza v. Bd. of Trustees, Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995).

The Commissioner's decision to revoke STEM Civics' charter was a final determination appealable to this Court, and therefore

constituted an "administrative adjudication" by NJDOE, which is "best classified as a quasi-judicial procedure possessing some, but not all, of the elements of a traditional adjudicatory proceeding." In re Freshwater Wetlands Gen. Permits, 372 N.J.Super. 578, 594 (App.Div.2004) [*citations omitted*]. However, this energetic standard of review by the courts "is applicable to administrative agency actions regardless of whether they are quasi-legislative or quasi-judicial." Quest, 216 N.J. at 386.

As such, "it is incumbent on the agency to explain its decision in sufficient detail to assure us that the agency actually considered the evidence and addressed all of the issues before it. Failure to address critical issues, or to analyze the evidence in light of those issues, renders the agency's decision arbitrary and capricious and is grounds for reversal." Green v. State Health Benefits Commission, 373 N.J.Super. 408, 414-15 (App.Div.2004) [*citations omitted*].

Moreover:

[...] the arbitrary, capricious, or unreasonable standard applicable in the review of administrative agency decisions subsumes the need to find sufficient support in the record to sustain the decision reached by the Commissioner. The point is beyond argument, for a failure to consider all the evidence in a record would perforce lead to arbitrary decision making. See, e.g., Close v. Kordulak Bros., 44 N.J. 589, 599, 210 A.2d 753 (1965) (noting that "the proofs as a whole" must be considered); Green v. State Health Benefits Comm'n, 373 N.J.Super. 408, 415, 861 A.2d 867 (App.Div.2004) (finding agency decision that failed to address issues raised in key documents in record arbitrary and

capricious). Moreover, a decision based on a complete misperception of the facts submitted in a record would render the agency's conclusion unreasonable. See, e.g., Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 588-89, 538 A.2d 794 (1988) (stating that appellate court should intervene where agency's "finding is clearly a mistaken one"); Constantino v. N.J. Merit Sys. Bd., 313 N.J.Super. 212, 218, 712 A.2d 1158 (App.Div.) (reversing board's decision where findings were unsupported by record, based on "total disregard" of facts, against "overwhelming weight" of testimony, and based on record "skew[ed]" by administrative law judge), *certif. denied*, 157 N.J. 544, 724 A.2d 803 (1998). Plainly, the standard requires that the administrative decision be supported by the underlying record, regardless of the manner in which due process requires that the record be created. The obligation that there be substantial evidence in the record requires a sifting of the record, and the ability to find support for the conclusions reached by the Commissioner under the statutory framework within which she must act.

Quest, *supra*, at 386-87.

"It is axiomatic in this State by this time that an administrative agency acting *quasi-judicially* must set forth basic findings of fact, supported by the evidence and supporting the ultimate conclusions and final determination, for the salutary purpose of informing the interested parties and any reviewing tribunal of the basis on which the final decision was reached so that it may be readily determined whether the result is sufficiently and soundly grounded or derives from arbitrary, capricious or extra-legal considerations." Id. [*citations omitted*]. As such, the "agency must engage in fact-finding to the extent required by statute or regulation, and provide notice of those facts to all interested parties." Id.

This fact-finding requirement is 'far from a technicality and is a matter of substance.' New Jersey Bell Tel. Co. v. Communications Workers of Am., 5 N.J. 354, 375, 75 A.2d 721[, 731] (1950). In addition, fact-finding ensures that agencies act within the scope of their delegated authority, Mackler v. Board of Educ., City of Camden, 16 N.J. 362, 370, 108 A.2d 854[, 858] (1954) (citation omitted), and also facilitates appellate review". Id.

Indeed, "no matter how great a deference the court is obliged to accord the administrative determination which it is being called upon to review, it has no capacity to review at all unless there is some kind of reasonable factual record developed by the administrative agency and the agency has stated its reasons grounded in that record for its action." Id., at 595 [*citations omitted*].

Yet despite this clear-cut requirement, NJDOE has not provided the substantive factual record underlying its decision to revoke STEMCivics' charter. Instead, NJDOE only repeats, mantra-like, that "[t]he Commissioner's decision to revoke STEMCivics' charter was based on substantial evidence including documents, interviews, analysis of student proficiency data, and information obtained from on-site staff visits", without actually providing the court with any of the supposedly "substantial evidence".

As such, STEMCivics (and this Court) are still left in the dark as to exactly what "documents" were included as part of the

basis for revocation? Who specifically was "interviewed" and what was actually said in those interviews (and where are the notes from those interviews) that were part of the basis for revocation? What specific "information obtained from on-site staff visits" was part of the revocation decision? Notably, rather than provide specific documents in its Opposition, NJDOE only makes passing references to specific documents¹, interviews, and information, but nearly always prefaced with the broad caveat "including".

The near-complete absence of any "substantial evidence" is especially troubling because, as set forth in its original Appeal Brief, STEMCivics had repeatedly asked NJDOE for data and feedback as to its remedial efforts. Indeed, STEMCivics continued to point out that NJDOE not only ignored the actual data which the charter school had provided during its probationary period, but also that NJDOE actively refused to engage in a dialogue with STEMCivics to discuss the data or to even provide feedback as to the sufficiency of that data. **Pra1-3**

NJDOE speciously argues that "nothing in the regulations require the Commissioner to step in the shoes of the charter school's leadership and directly manage a charter school's

¹ Sometimes incorrectly, such as NJDOE's contention that data as to student withdrawal or attrition "is publicly available and made available annually" **Rb21** with a footnote citing to the New Jersey School Performance Reports. However, to STEMCivics' knowledge, neither student withdrawal nor attrition is referenced in the School Performance Reports as a stand-alone metric.

remediation.” **Rb17** But as set forth in greater detail in its original Brief, STEMCivics never sought for NJDOE to “directly manage” its remediation – only for NJDOE to provide the charter school with some level of feedback (even if that feedback was just the actual scores on the Performance Framework) so that STEMCivics could know whether it was making progress in compliance with the remedial plan, or if STEMCivics was headed in completely the wrong direction with its efforts.

However, the right to know how one (whether a teacher, administrator, or district) is performing, and to receive corrective feedback during the course of a remedial plan (not afterwards, when it is too late), is thoroughly developed in the NJDOE regulatory scheme covering every other individual and entity subject to annual reviews in the educational field.

The obligation on the part of the Commissioner to provide constructive feedback before termination is built into his obligation to “have supervision of all schools of the state” (N.J.S.A. 18A:4-23) and to “from time to time instruct the county superintendents and superintendents of schools as to the performance of their duties, the conduct of the schools and the construction and furnishing of schoolhouses, and he shall, with the approval of the state board, hold meetings of the county superintendents and superintendents of schools at least once in each year for the discussion of school affairs and of ways and

means for promoting a thorough and efficient system of education.”
N.J.S.A. 18A:4-29 [*emphasis added*].

It should also be noted that the legislative purpose of the Charter School Program Act of 1995, as memorialized at N.J.S.A. 18A:36A-2, states:

The Legislature finds and declares that the establishment of charter schools as part of this State’s program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.

The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to **encourage and facilitate** the development of charter schools.

Indeed, the NJDOE regulation regarding charter school probation reflects the legislative policy to encourage and facilitate the development of charter schools. N.J.A.C. 6A:11-2.4(a) provides that a charter school may be placed on probationary status “to allow the implementation of a remedial plan”, which must include specific steps the charter school shall “undertake to resolve the condition(s) not fulfilled and/or the violation(s) of

its charter.” Subsection (4) provides that the charter school may be removed from probationary status if the school provides “sufficient evidence, as determined by the Commissioner, that the terms of the probation have been met and the causes for the probationary status are corrected.”

Implicit in that provision is that the Commissioner should acknowledge to the charter school whether the evidence provided is sufficient – not just by way of a revocation decision, but at some point when the charter school can “course correct” if the evidence is not sufficient.

It is therefore clear that both the explicit and implicit legislative policy behind the Charter School Act is that STEM Civics (as would any charter school) was entitled to know whether its remedial actions were sufficient before the Commissioner issued his negative conclusion. NJDOE’s argument that STEM Civics had “ample opportunity to [...] receive feedback” **Rb18** deliberately side-steps that an “opportunity to receive feedback” is completely different from actually receiving feedback. Instead, the record shows that the Commissioner (and his delegates) met the repeated requests from STEM Civics for such feedback with either complete silence or the cryptic response from Assistant Commissioner Duckett that “there is no feedback” because the instruction to not provide any feedback “comes from above,” while pointing upwards (presumably meaning from the highest levels of NJDOE). **Pa11**

NJDOE also reinforces, in its Opposition, the fact that the Commissioner misstated the data which was ostensibly the basis for revocation, such as in his contention that STEM Civics failed to meet the Remedial Plan with respect to student proficiencies. **Rb14**

NJDOE seems to argue that "a 20% increase in English and math proficiency year-to-year" means that math proficiency scores would rise by 20 percentage points each year. But under that "misperception", during a five-year probationary period, 21.6% of all STEM Civics students would have had to meet or exceed the ESSA math standards in the 2022-2023 school year; 41.6% of students would have had to meet or exceed the ESSA math standards in the 2023-2024 school year; 61.6% of students would have had to meet or exceed the ESSA math standards in the 2024-2025 school year; 81.6% of students would have had to meet or exceed the ESSA math standards in the 2025-2026 school year; and a mathematically impossible 101.6% of students would have had to meet or exceed the ESSA math standards in the 2026-2027 school year to meet Goal 1.

NJDOE disingenuously ignores² that STEM Civics met (and exceeded) the actual goal that "[m]inimum percent of increase in math and English proficiencies of 20% per year throughout term" **Pa164** -- in other words, that student proficiency scores in math

² Just as NJDOE ignores that the 2023-2024 School Performance Report showed, despite the Commissioner's contention otherwise, that STEM Civics met all annual targets for Students with Disabilities. **Pa439**

and ELA would improve each year by a minimum of twenty percent of the prior year's proficiency score. The math proficiency score for STEMCivics students in the 2022-2023 school year increased to 3.0% **Pa384**, from the 1.6% math proficiency score for the 2021-2022 school year which the Acting Commissioner cited as a basis for placing STEMCivics on probation. **Pa32** However, to meet the Goal 1 objective of a 20% increase, the 2022-2023 math proficiency score only had to increase to 1.9%³ -- going from 1.6% of students meeting or exceeding the ESSA math standard to 3.0% was actually an 87.5% increase from the 2021-2022 math proficiency score. Likewise, the increased math proficiency score of 4.4% **Pa384** for the 2023-2024 school was a 46.6% increase from the 2022-2023 math proficiency score (on top of the previous 87.5% increase from the 2021-2022 math proficiency score).

Similarly, NJDOE misstates that STEMCivics "suffered from similar issues with its teacher retention, student suspension, and attrition rates." **Rb14**

With respect to "teacher retention", Goal 5 (which was actually that "Each class is led by a certificated teacher throughout the term") was met. Moreover, although the remedial plan did not require a "teacher retention rate", STEMCivics had a

³ A 20% increase from 1.6% is found by taking 20% of 1.6% (which is 0.32%), then adding 0.32% to 1.6%, which results in 1.92%.

one-year retention rate of 68.0% for teachers and 71.4% for administrators. **Pa460**

With respect to student suspensions, Goal 3 of the remedial plan was: "The percent of decrease in out-of-school suspensions is a minimum of 20% per year throughout the term reaches a point that is better than state average during the term." **Pa165** This goal too was met, as 72 of STEMCivics students (12.2% of the student population) received out-of-school suspensions in the 2022-2023 school year and only 65 students (10%) received out-of-school suspensions in the 2023-24 school year⁴.

NJDOE further contends in its Opposition that the Commissioner "reasonably concluded" that STEMCivics had not complied with Goal 4 of the Remedial Plan to maintain a 4% student attrition rate was not met because "STEMCivics's claim was unreliable given the fact that it was based on parental satisfaction surveys." **Rb22** NJDOE purports the reason that the parental satisfaction survey (in which 89% of the responding parents reported satisfaction with STEMCivics) was "unreliable" is because "[o]nly 30% of STEMCivics families participated in these

⁴Although NJDOE argues that the Commissioner relied upon the suspension data submitted by STEMCivics in its annual reports (which "double-counted" students who had multiple suspensions), if the Commissioner's position is that the other data submitted by STEMCivics (such as the results of the parental satisfaction survey) lack credence, then the data set forth in the New Jersey School Performance Reports **Pa448-449**, prepared by NJDOE for those school years should be credible.

surveys and, of those 30%, only 89% reported satisfaction"; thus, "[g]iven the lack of responsiveness, there was insufficient evidence to show that the attrition rate related to dissatisfaction had been maintained or reduced." **Rb22**

This contention of "unreliability" was first raised in the January 31, 2025 revocation letter, yet STEMCivics had advised the Commissioner in its Annual Report for 2023 that the response rate for the 2023 parental satisfaction survey was 33% **Ra0121**, without any comment from NJDOE that rendered the survey results.

Although the Commissioner states that a 30% response rate "represents only a small portion of all parents, raising concerns about the accuracy of the school's claims" **Pa194**, NJDOE provided no authoritative support for its contention that a response rate from nearly one-third of the parents is somehow "unreliable" or demonstrates a "lack of responsiveness".

Indeed, in its own "2021 New Jersey Student Health Survey", NJDOE stated that the data from a survey which had a response rate of just twenty-six percent (26%), "could be considered representative of the New Jersey student population". **Pra5-6** In fact, NJDOE considered the data gathered from a survey with just a 26% response rate to be so reliable, that when weighted, that data was "representative of all public school students in grades nine through twelve in New Jersey" and could be used "to produce

results that can be considered representative of the full population being studied". **Pra5-6**

This necessarily begs the question - why is the data from a NJDOE survey to which only a quarter of the individuals responded is reliable and representative of all 1.36 million students enrolled in New Jersey in 2021 **Pra33**, but the data from STEMCivics' survey to which nearly a third of those surveyed responded is "unreliable" and not representative of the less than 600 students enrolled in STEMCivics in 2024?

The answer would seem to be simple: the Commissioner based his revocation decision on selective misstatements and misperceptions of the actual facts; thereby rendering that decision arbitrary, capricious, and unreasonable. The illegitimacy of the Commissioner's decision is further reinforced by the conclusory statements, misstatements of data, and deceptive phrasing (such as "opportunity for feedback") which NJDOE submits in its Opposition. NJDOE proffers "proof" by mere assertion, in a poor attempt to distract this court from the lack of actual "substantial evidence" which the court would need to review if it is to determine whether the revocation decision was indeed in line with the stated legislative policy to encourage and facilitate the development of charter schools.

CONCLUSION

The Commissioner of Education's decision to revoke the

charter of STEMCivics was not reached by a careful, consistent, and measured determination by NJDOE that STEMCivics, after many opportunities and despite clear guidance, failed to meet the required standards to maintain its charter. The data in the record, as set forth in the appeal, demonstrates that STEMCivics met (and exceeded) the specific goals set forth in the remedial plan.

STEMCivics was not given a meaningful opportunity to address any deficiencies or shortcomings in its remedial actions before the Commissioner signed its operational death warrant. Nor was STEMCivics afforded the practical realistic ability to contest the revocation decision, because the Commissioner still has failed to provide the actual data upon which his decision was ostensibly based, and again only cites to vague justifications for the revocation of the school's charter.

In light of the foregoing, it is respectfully submitted that the decision, dated January 31, 2025, to revoke the charter of the Trenton STEM-to-Civics Charter School should be reversed because the Commissioner acted arbitrarily, capriciously, and unreasonably.

Respectfully submitted,

COMEGNO LAW GROUP, P.C.

/s/ Andrew W. Li

ANDREW W. LI, ESQ.

Date: August 19, 2025