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February 2, 2024

VIA ELECTRONIC MAIL

Mr. Bruce Friend, Chairman
North Carolina Charter School Review Board
bruce.friend@dpi.nc.gov

Ms. Ashley Baquero, Director
Office of Charter Schools,
North Carolina Department of Public Instruction
ashley.baquero@dpi.nc.gov

Re: Children's Village Academy

Dear Mr. Friend and Ms. Baquero:

Our firm has been retained by Peggy Carr to respond to allegations concerning her service as a member of the board of directors for Children's Village Academy ("CVA").

In particular, Dr. Carr has asked us to address statements made by DPI following an investigation into complaints submitted to the North Carolina State Auditor last fall. Although DPI staff *did not find any evidence to support the allegations made in the complaint*, its reports included several "findings" regarding *other matters* that involve the school and Dr. Carr. These findings were included in two reports from Shirley McFadden, NC DPI Monitoring and Compliance Manger, dated December 8, 2023. Unfortunately, many of Ms. McFadden's findings were based on incorrect or partial information. This has regrettably resulted in a number of unfounded accusations being lodged against Dr. Carr.

We understand that CVA has written separately to outline the measures it intends to take in response to the staff reports to strengthen its internal policies and procedures. We, however, felt it important to address the matters that involve Dr. Carr specifically.

A. *Dr. Carr's Service as a Member of CVA's Board of Directors*

Dr. Carr is a founding board member of CVA, which was established in 1997 by Dr. Carr's mother, Bishop Anne Bell Carr, and other members of the Carr family. Although Dr. Carr serves as an official with the U.S. Department of Education and resides in Maryland, she

has continued to volunteer as a member of CVA's board in an effort to serve her hometown community. In addition to volunteering as a board member, Dr. Carr has also loaned—and donated—substantial sums to the school. Many of the findings in the DPI staff report concern Dr. Carr's efforts to support the school financially.

B. ***Loan to CVA***

The staff reports include several findings regarding a $188,000 loan Dr. Carr provided to the school during the financial crisis in the Spring of 2008. During this time, the school faced significant budget shortfalls and was in danger of closing. The school sought, but was unable to obtain, a bank loan to continue operating. To keep the school's doors open, Dr. Carr personally loaned CVA $188,000 by taking out a second mortgage on her house, taking out personal loans, and borrowing against her retirement account.

The original loan to CVA was evidenced by a promissory note dated June 2, 2008. The then-chair of CVA's board of directors, Michael Parker, signed the note on behalf of the school. The note provided for nine percent interest and stated that the school intended to repay the loan within five years, if it was financially able.

Despite the loan, the school continued to struggle financially. Accordingly, Dr. Carr and the school agreed to several modifications. The school thus did not begin repaying the loan until August 2010. In 2011, the school was placed on financial monitoring status by NC DPI, which resulted in stipulations that required CVA to contribute $50k to its fund balance for three years. To facilitate these contributions, Dr. Carr and the school agreed to further modify the loan. The plan Dr. Carr and the school agreed to was developed in consultation with the school's outside accounting firm at the time, Pettway, Mills & Pearson, P.A. Under this plan, the parties would agree each year on the amount the school would pay (typically $2,000 per month, or $24,000 per year), without any obligation to make further payments in future years. The annual amount the school agreed to pay was reflected in a series of new promissory notes executed each year.

The report alleges that the board breached its fiduciary duties with respect to this loan because (i) the full amount of the loan was not reflected in CVA's annual audits and (ii) there supposedly is no evidence the board understood the impact extending the loan beyond the original repayment date. Neither assertion is correct.

First, the staff report ignores that CVA's outside auditors were aware of the loan and believed the loan was recorded correctly. Indeed, the initial modification of the loan was done in consultation with the school's original auditors at Pettway Mills. When the school switched to a new auditor, Rebekah Barr, CPA, PC, in 2023, the firm continued to record the loan in the same manner.

The staff report asserts that the board "did not meet its fiduciary duty of care on this issue as they have responsibility to review the financial statements." This, however, reflects a misunderstanding of both the facts and the law. There is no evidence that CVA's board failed to

review the school's annual audits. Instead, the reports seem to assert that the board should have overridden its outside auditors and insisted that the loan be recorded in a different manner. Board members, however, are entitled to rely on outside experts in carrying out their fiduciary duties. Indeed, the North Carolina Nonprofit Corporation Act specifically provides that, "in discharging his duties, a director is entitled to rely on information, opinions, and or statements, including financial statements . . . if prepared or presented by . . . legal counsel, public accountants, or other persons the director reasonably believes are within their professional or expert competence." N.C. Gen. Stat. § 55A-8-30. Thus, CVA's board was entitled to rely on its auditor's opinion that the loan was recorded correctly.

Second, while all parties acknowledge the loan documents could have been better drafted, the reports' assertions that the board somehow did not understand the implications of extending the loan, or that it failed to make an assessment whether the loan was in the best interest of the corporation, are without merit. The reports' conclusions in this regard seem to have been heavily influenced by an interview with the school's (part-time) finance officer, who stated that she did not know the amount of the loan that was left to be repaid. However, the principal amount of the loan and interest rate were reflected in the original promissory note, which was signed by the school and held in the school's records. Further, the board was clearly aware of the loan. As the report indicates, the board voted each year to approve the amount it would repay. These payments were not only reflected in the school's budgets and the annual promissory notes, but also in its annual audits.

Although the reports do not say so expressly, they implicitly allege that the board should not have taken out the loan, or that it paid too much interest. Those allegations, however, are unfounded and would require DPI or the CSRB to second-guess the board's business judgment. An interest rate of nine percent is certainly within a reasonable range given that the school could not obtain financing from banks or other traditional lenders. (In North Carolina, the "legal rate"—meaning the *default* rate of interest on judgments and contractual claims—is eight percent. *See* N.C. Gen. Stat. § 24-1.) In addition, because of her dedication to the school, Dr. Carr has proven to be a forgiving lender by agreeing to modifications that commercial lenders would not even consider. Furthermore, while the reports state that the school will have paid approximately $343,000 over the life of the loan, including approximately $155,000 in interest, these figures are in-line with the amounts a business would expect to pay over the life of a fifteen-year loan.[1]

Finally, the minutes of CVA's board meetings show that Dr. Carr routinely recused herself from votes involving her loan to the school, and, at minimum, all votes concerning the loan were approved by a majority of the disinterested directors.

For each of these reasons, the reports' suggestions that CVA's board breached its fiduciary duties, or that the loan was somehow the product of self-dealing, are simply unfounded.

[1] The reports also ignore that, during the time the loan has been in repayment, Dr. Carr has continued to make significant contributions to the school notwithstanding the amounts the school continues to owe. These donations have had the effect of offsetting a substantial portion of the interest the school has paid.

At the same time, both CVA and Dr. Carr recognize that the loan could, and should, be better documented. As a result, the school has engaged an outside firm, McCaffery Accounting Solutions, to analyze the amounts paid under the loan and develop historical amortization tables to confirm amounts remaining. The parties have used this analysis to enter a new, comprehensive loan agreement that fully reflects the school's obligations. The school has also consulted with its current outside auditor, Rebekah Barr, who has agreed to issue a restated audits for FY 2023 that reflect the full amount of the loan to the school.

C. ***Documentation of Payments for "Start-Up Costs"***

The reports include findings regarding amounts paid to Math & Esther Properties ("M&E"), which leases property to the school. (Dr. Carr holds a part interest in M&E properties, which holds property acquired by her family.) In particular, the reports express confusion whether amounts paid to M&E each year for "start-up costs" reflect fees paid as rent, or instead, a loan to the school.

The reports themselves, however, resolve this issue. As the reports explain, the payments for "start-up costs" were meant to reimburse M&E for $88k used to upfit the property before the school opened, as well as to make subsequent renovations. M&E obtained these funds through loans from the Small Business Administration. There were no loans to the school. Instead, the only loans were made by the SBA to M&E. In 2008, M&E began to collect fees from CVA to recoup these start-up costs. As the reports outline, these amounts were reflected in annual contracts that required CVA to pay M&E a monthly fee of $894 in addition to its other rent obligations. The agreements stated that the fee "will be used to reimburse costs associated with four Small Business Association loans obtained by Math & Esther Properties."

The fact that M&E, as the landlord, took out loans to finance the initial upfit of the school and subsequent renovations does not transform CVA's rental payments into a loan. It is common in commercial leases for landlords to charge a base rent, plus fees to cover the costs of renovations, upfit, maintenance, and utilities. It is therefore unclear why the reports express confusion on this point.

As the reports acknowledge, CVA's financial statements properly listed the fees paid to M&E for "start-up costs" as short-term, contractual liabilities, and thus part of the rent paid for the school's facilities. Nevertheless, the school has agreed to revise its agreements with M&E to better document the parties' obligation and to avoid any further confusion on this point.

D. ***Voting Procedures***

The report asserts that, in several instances, CVA's board failed to follow quorum procedures necessary to approve transactions in which Dr. Carr had an interest. This finding seems to rest on a misunderstanding of the North Carolina Nonprofit Corporation Act.

First, as CVA's board minutes reflect, Dr. Carr routinely recused herself from votes involving (i) the loans she made to the school and (ii) contracts with M&E. Admittedly, there are a handful of isolated votes reflected in the minutes that do not recite Dr. Carr's recusal. It is unclear whether Dr. Carr actually participated in these votes, or whether the minutes merely fail to reflect her recusal. In any event, as explained below, it is clear the board was aware of Dr. Carr's interest in these transactions and that they were approved by a majority of disinterested directors, as required by the North Carolina Nonprofit Corporation Act.

Despite this, the reports assert that the board could not have approved these transactions, unless *all* of the uninterested directors were in attendance. That assertion is wrong.

As the reports note, the North Carolina Nonprofit Corporation Act provides that even if a director has a conflict of interest in a particular transaction, the transaction is still valid if it is approved by a majority of disinterested directors. *See* N.C. Gen. Stat. § 55A-8-31(c) ("The presence of, or a vote cast, by a director with a direct interest in a transaction does not affect the validity of any action taken under this subdivision.")

Contrary to what the reports suggest, the act does not require that *all* disinterested directors be in attendance when there is an interested transaction, nor does it require that the board meet the same quorum requirements that would otherwise apply to a regular vote. Instead, the act expressly provides that the quorum necessary to approve an interested transaction will be *lowered*, so that only a majority of those directors who do not have an interest are needed to approve the transaction. *See id.* ("If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking the action under this section.")

Simply put, the reports' assertions that CVA failed to properly approve certain transactions involving Dr. Carr is unfounded. Not only did Dr. Carr routinely recuse herself from voting on transactions in which she had an interest, those transactions also were approved by a majority of the disinterested directors. Although there does not appear to have been any lapse, in an effort to strengthen its practices, CVA has adopted revised conflict of interest policies and is providing training to all of its board members to ensure that there is no question about its adherence to the validity of its transactions going forward.

E. ***Furnishings and Items Purchased through 21st CLCC Grant Program***

Finally, the reports allege in a number of places that furnishings and other items purchased using grants from the federal 21st Century Community Learning Centers ("21st CCLC") program were actually for Dr. Carr's "personal use." Yet even a cursory examination reveals those allegations are completely unfounded.

Although the basis for the reports' allegations is not clear, the reports appear to assume that furnishings and other items were for "personal use" because (i) they are not of a type "typically found in an academic setting" and (ii) were used to furnish a learning center and facilities across

from the school, located at 805 and 811 E. Washington Avenue in Kinston, NC, which the school leases from Dr. Carr.[2]

These facts, however, do not mean that the furniture and other items purchased were for personal use. First, the reports acknowledge that "DPI verified" that "the furnishings are located at the rental property that is rented by CVA for the 21st CCLC program." The only exceptions are: (i) a pair of wingback chairs, which the reports state are currently located in the school's administration offices; (ii) approximately $124 worth of items that were purchased from HomeGoods (later shown to be a chair) that DPI was unable to specifically locate; and (iii) a Vizio television, for which DPI was unable to identify the location during its site visit. (The school has since determined that the chair is located in the school's library and the television is being used as a monitor on the campus for virtual instruction.) In other words, the reports *acknowledge* that the furnishing and items in question were, in fact, used by the school and were not purchased for any so-called "personal use."

Second, the mere fact that the furnishings purchased for the learning center were not of the type "typically found in an academic setting" does not mean that they were for "personal use." As an initial matter, whether furnishings are typical for an academic setting is a highly subjective determination and a matter of opinion. Furthermore, the learning center at 805 E. Washington Avenue is a converted house where students receive one-on-one tutoring and instruction. Thus, it is reasonable that the school would purchase furnishings from consumer discount stores, rather than purchase higher-cost institutional furnishings.

The reports also assume—incorrectly—that the furnishings were for "personal use" because the author believed the school only rented the facility at 805 E. Washington Avenue for two months each year. That, however, is not correct. As the CVA's principal has confirmed, the school uses the facility year-round. However—in a concession by Dr. Carr to the school—CVA only pays two months' rent each year. Thus, the reports' assumption that Dr. Carr somehow benefited from the purchases is entirely incorrect.

As noted elsewhere, CVA has appealed DPI's determination that the expenses in question—which total approximately $5,000—constitute "unallowable costs" under the 21st CCLC program. However, the mere fact that DPI has not allowed the school to use grant funds to pay for these items does not mean they were not used for school purposes.

While both Dr. Carr and CVA welcome an appropriate review of expenditures from the 21st CCLC program, it is inappropriate—and, indeed, irresponsible—for the reports to assert that items were used for "personal benefit" when there is no dispute that the items were, in fact, used by the school at the school's facilities.

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[2] Dr. Carr acquired the 805 E. Washington Property from her mother and thus became the permanent owner of the property in 2020. As the report states, CVA first received an award under the 21st CCLC grant in 2014-15. Thus, most of the purchases at issue occurred *before* Dr. Carr acquired the property.

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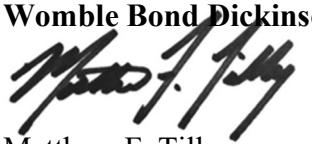
We hope that this letter helps to clarify the reports' allegations regarding transactions involving Dr. Carr and address any concerns that the CSRB may have regarding the efforts she has taken to support the school. Please do not hesitate to contact us should you have any further questions.

Best regards.

Very truly yours,

Womble Bond Dickinson (US) LLP



Matthew F. Tilley

MFT:ja
cc: Charter School Review Board
Children's Village Academy
Steven Walker, *Esq*., Walker Kriger, PLLC