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19
20 **ARIZONA SUPERIOR COURT**
21 **MARICOPA COUNTY**

22 Robert Chevaleau; American Civil Liberties Union
23 of Arizona, an Arizona nonprofit corporation,

24 Plaintiffs,

25 v.

26 GreatHearts America, an Arizona nonprofit
corporation; GreatHearts Arizona, an Arizona
nonprofit corporation; Anthem Preparatory
Academy, an Arizona nonprofit corporation dba
Anthem Preparatory Academy and Archway
Classical Academy Anthem; Archway Classical
Academy Arete, an Arizona nonprofit corporation
dba Archway Classical Academy Arete; Arete
Preparatory Academy, an Arizona nonprofit
corporation dba Arete Preparatory Academy;
Archway Classical Academy Chandler, an Arizona
nonprofit corporation dba Archway Classical

No.

**VERIFIED COMPLAINT FOR
STATUTORY SPECIAL ACTION,
MANDAMUS, DECLARATORY,
AND INJUNCTIVE RELIEF**

(Eligible for Commercial Court)

1 Academy Chandler; Chandler Preparatory
2 Academy, an Arizona nonprofit corporation dba
3 Chandler Preparatory Academy; Archway
4 Classical Academy – Cicero, an Arizona nonprofit
5 corporation dba Archway Classical Academy
6 Cicero; Cicero Preparatory Academy, an Arizona
7 nonprofit corporation dba Cicero Preparatory
8 Academy; Archway Classical Academy –
9 Glendale, an Arizona nonprofit corporation dba
10 Archway Classical Academy Glendale; Glendale
11 Preparatory Academy, an Arizona nonprofit
12 corporation dba Glendale Preparatory Academy;
13 Archway Classical Academy Lincoln, an Arizona
14 nonprofit corporation dba Archway Classical
15 Academy Lincoln; Lincoln Preparatory Academy,
16 an Arizona nonprofit corporation dba Lincoln
17 Preparatory Academy; Maryvale Preparatory
18 Academy, an Arizona nonprofit corporation dba
19 Maryvale Preparatory Academy; Archway
20 Classical Academy North Phoenix, an Arizona
21 nonprofit corporation dba Archway Classical
22 Academy North Phoenix; North Phoenix
23 Preparatory Academy, an Arizona nonprofit
24 corporation dba North Phoenix Preparatory
25 Academy; Archway Classical Academy
26 Scottsdale, an Arizona nonprofit corporation dba
Archway Classical Academy Scottsdale;
Scottsdale Preparatory Academy, an Arizona
nonprofit corporation dba Scottsdale Preparatory
Academy; Teleos Preparatory Academy, an
Arizona nonprofit corporation fdba Teleos
Preparatory Academy; Archway Classical
Academy Trivium East, an Arizona nonprofit
corporation dba Archway Classical Academy
Trivium East; Archway Classical Academy
Trivium West, an Arizona nonprofit corporation
dba Archway Classical Academy Trivium West;
Trivium Preparatory Academy, an Arizona
nonprofit corporation dba Trivium Preparatory
Academy; Archway Classical Academy Veritas,
an Arizona nonprofit corporation dba Archway
Classical Academy Veritas; Veritas Preparatory
Academy, an Arizona nonprofit corporation dba
Veritas Preparatory Academy; Daniel P. Scoggin;

James Heiler, aka Jay Heiler; Erik Twist; Lance Sherwood; Pitpal Sandhu; Anna Yano; Andrew Ellison; Brandon Crowe; Benjamin Black; Lois Yates; Karen Tibbitts; Marilyn Papke; Scott Grondin; David Denton; John Paul Poppleton; Bayo Atolagbe; Leanne Fawcett; Darrel Barger; Helen Hayes; Neil Gillingham; Geoff Stanisic; Matthew Vlahovich; Zach Weisse; Julie Sanders; Mark Discher; Toyin Atolagbe; Steve Levine; Kathleen Shea; Julie Tinlin; Kate McClendon; Tess Clark; Shannon Richards; Grant Goodrich; Sumi Thomas; Hal Morgan; Benjamin Mitchell; Corinne Jacobson; Robert Jackson; Kristen Jennifer Brook; Phil Matteis; Sarah Ragland; Christina Lucas- Sheffield; Lesley Bennett; Katie Stewart; Steve Erickson; Kristen Twist; Greta Mayans; Tiffany Quayle; Sarah Dworkin; Jessica Taylor; Steve Kaiser; Paul Weinhold; Christina Coley; Joy Hanks; Amanda Shearer; Kyle Bohannon; Mike Minnaugh; Kurt Petricek; Alison Chaney; Jack Kersting; Cindy Coughlon; Matthew Everroad; Lisa Armstrong; Stephen Philabaum; Jamee Twardeck; Allen Keys; Kristin Darby; Heidi Vasiloff; Tom Doebler; Heather Washburn; Stephanie Pangrazio; Ramin Schadlu; Daniel Openden; Ward Huseh; David Dean; Curtis Fee; Jessica Keenan; Shannon Clancy; Amy Hall; Samir Sawhney; Thomas Knoell; Mary Frances Jeffries; Jake Tawney; Dan Costello; Kurt Davis; Lisa Handley; Derrick Hall; Tucker Quayle; Steven Wheeler; Bill Montgomery; Philip Tirone; Robert Mulhern; Steve Zabilski; Christine Jones; Jessica Pacheco; Dave Ericksson; and Chirag Kapadia,

Defendants.

INTRODUCTION

This action is brought pursuant to Arizona's Public Records Laws and Open Meetings Laws against GreatHearts America, GreatHearts Arizona, the twenty-two Great Hearts

1 corporations that hold charters granted by the Arizona State Board for Charter Schools, the
2 twenty-three individual Great Hearts public charter schools in Arizona, and the board members
3 and officers of each of those entities (collectively, “Great Hearts”). Great Hearts failed – and
4 continues to fail – to conduct public open meetings when discussing, deliberating, and deciding
5 policies regarding the governance and operations of its schools. Great Hearts also refused –
6 and continues to refuse – to maintain and produce public records relating to its government-
7 funded activities. These violations relate generally to the way Great Hearts operates and to
8 numerous Great Hearts policies, but are specifically evidenced by two Great Hearts policies –
9 the Great Hearts Transgender Policy and the Great Hearts Hair Policy.

10 Great Hearts’ failure to comply with Arizona’s Open Meetings Laws came into particular
11 focus in or around June 2016 when (1) GreatHearts America and GreatHearts Arizona adopted
12 its Transgender Policy in a non-public meeting; (2) the Governing Body of each Great Hearts
13 public charter school in Arizona perfunctorily adopted the same policy later that year;¹ and (3)
14 Great Hearts subsequently implemented, revised, re-adopted, and ultimately retracted the policy
15 in non-public meetings in the following months and years. A similar pattern of secretive conduct
16 occurred with the Great Hearts Hair Policy in or around February 2018.

17 Great Hearts’ twenty-three schools in Arizona are public charter schools and they take
18 in millions of dollars of public monies each year. Yet Great Hearts has refused to comply with
19 Arizona’s laws demanding transparency and public oversight. Further, Great Hearts has
20 avoided all public accountability for the operation of its public schools. It has done so, in large
21 part, by weaving a corporate web of shell companies and figureheads to make it appear as
22 though each school is independently complying with the Open Meetings and Public Records

23
24 ¹ A.R.S. § 15-183(E)(8) provides that the charter for every charter school in Arizona must
25 “[e]nsure that it provides for a ***governing body*** for the charter school that is responsible for the
26 policy decisions of the charter school.” Thus, this complaint refers to the boards of directors
for the Great Hearts charter schools in Arizona as “Governing Bodies.” Great Hearts refers to
the Governing Bodies for the individual charter schools as “site boards.”

1 Laws. Indeed, Great Hearts’ multi-level corporate structure has for many years shielded the
2 main decision-making body, and its prominent officers and directors, from public scrutiny.
3 However, it is now clear that Great Hearts has refused to hold public meetings, has
4 purposefully obscured the dates, times, and locations of its board meetings to make it difficult
5 for members of the public to attend, and has refused to provide public records and improperly
6 redacted public information in records it has provided. Such secrecy should not be allowed for
7 public schools – public schools funded by public monies must operate in public.

8 On September 26, 2017, Plaintiff American Civil Liberties Union of Arizona (“ACLU
9 of Arizona”) submitted public records requests to Great Hearts concerning its adoption,
10 implementation, and revision of its Transgender Policy. Despite the ACLU of Arizona’s
11 numerous communications following up on its initial requests, Great Hearts has refused to
12 promptly and fully comply with those requests. Indeed, Great Hearts has either failed entirely
13 to provide responsive records or has provided records with unlawful and unjustified redactions.
14 The ACLU of Arizona submitted requests for public records to GreatHearts America and
15 GreatHearts Arizona (the “Great Hearts Corporations”). Those entities deny that they are
16 subject to the Arizona Public Records Laws at all, and have wholly refused to provide any
17 public records in response to the ACLU of Arizona’s requests. The refusal to provide the
18 requested records by Great Hearts, including the Great Hearts Corporations (which are acting
19 as public bodies but are trying to hide behind their corporate structures), violates Arizona’s
20 Public Records Laws and is directly contrary to the law’s primary purpose: to ensure
21 transparency so that the public “may monitor the performance of government officials and
22 their employees.” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001)
23 (citation omitted). Great Hearts may not refuse to promptly release public records; the public
24 has a right to monitor its deliberations and decisions.

25 Plaintiff Robert Chevaleau has repeatedly inquired with Great Hearts about the
26 Transgender Policy, has attended school meetings hoping to discuss the Transgender Policy,

1 has engaged in advocacy regarding the adoption and implementation of the Transgender
2 Policy, and has attempted to attend meetings of the boards of the Great Hearts Corporations,
3 but has been denied access at every turn. The ACLU of Arizona has, over two years, engaged
4 in advocacy concerning Great Hearts' unconstitutional Transgender Policy and has sought to
5 gain access to information and records regarding its adoption and implementation, without
6 success. Great Hearts has intentionally thwarted the attempts of the ACLU of Arizona and
7 Mr. Chevaleau (and others) seeking information about the day, time, and agenda for meetings
8 dealing with the Transgender Policy. Great Hearts has also thwarted attempts to obtain
9 information – after the fact – about the deliberations and decisions at those meetings. Great
10 Hearts' actions violate the Arizona Open Meetings Laws and are directly contrary to the public
11 policy behind the law: “that meetings of public bodies be conducted openly and that notices
12 and agendas be provided for such meetings which contain such information as is reasonably
13 necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-
14 431.09(A). Great Hearts may not hold closed-door meetings when discussing and deciding
15 public matters; the public has a right to monitor its actions.

16 The Transgender Policy that Great Hearts adopted and implemented in secret is just one
17 example of the continuous attempts by Great Hearts to keep from the public its decision-
18 making regarding government-funded activities, including the operation of public charter
19 schools in Arizona. Great Hearts has intentionally undermined the principles of transparency
20 and accountability that we expect from public agencies by, among other things, creating sham
21 Governing Bodies for its public charter schools and obscuring from the public the dates and
22 times of meetings that are supposed to be open to the public. The public has the right to know
23 how public monies are being spent and how public schools are being operated. This lawsuit
24 seeks to vindicate those rights.

1 **NATURE OF ACTION, PARTIES, JURISDICTION, AND VENUE**

2 1. This is a statutory special action to compel the production of public records
3 pursuant to the Arizona Public Records Laws and related declaratory and injunctive relief.
4 A.R.S. § 39-121, *et seq.*; *see also* A.R.S. §§ 12-1801, 12-1831, and 12-2021.

5 2. This action also seeks declaratory, injunctive, and mandamus relief regarding
6 Great Hearts' past conduct with respect to meetings during which legal decisions were made
7 and to compel Great Hearts to conduct open meetings going forward pursuant to the Arizona
8 Open Meetings Laws. A.R.S. §§ 38-431.04, 38-431.07; *see also* A.R.S. §§ 12-1801, 12-1831,
9 and 12-2021.

10 3. Plaintiff Robert Chevaleau is a resident of Arizona. One of his children formerly
11 attended one of the Great Hearts public charter schools in Arizona. Mr. Chevaleau has engaged
12 in extensive advocacy opposing the Great Hearts Transgender Policy, including publicly
13 expressing his disagreement with the policy, attending Great Hearts meetings to express
14 opposition to the policy, participating with others in organized efforts to oppose the policy, and
15 engaging in discussions and communications with Great Hearts board members, executives,
16 and personnel regarding his opposition to the policy, among other things.

17 4. Plaintiff ACLU of Arizona is a nonprofit, civil-rights organization that has
18 furthered the public interest and defended individual rights in Arizona through litigation,
19 legislation, public education, and other methods for decades. Protecting and ensuring the rights
20 of transgender people and advancing education equity are among the ACLU of Arizona's
21 strategic priorities areas. The ACLU of Arizona is also committed to ensuring government
22 transparency and accountability, particularly when government actions affect civil rights and
23 civil liberties.

24 5. Mr. Chevaleau and the ACLU of Arizona seek transparency, accountability, and
25 public oversight and disclosure regarding the decision-making, operations, and other
26

1 government-funded activities of Great Hearts, which currently operates twenty-two public
2 charter schools in Arizona.

3 6. Defendant GreatHearts America is an Arizona nonprofit corporation, the sole
4 member of GreatHearts Arizona, and the direct controlling entity of GreatHearts Arizona.

5 a. The officers of GreatHearts America are Defendants Daniel Scoggin, Kurt
6 Davis, and Jay Heiler.

7 b. The directors of GreatHearts America are Defendants Dan Costello,
8 Daniel Scoggin, Derrick Hall, Jay Heiler, Jessica Pacheco, Kurt Davis, and Steven
9 Wheeler.

10 7. Defendant GreatHearts Arizona is an Arizona nonprofit corporation. According
11 to its Amended and Restated Articles of Incorporation (dated October 26, 2016), its purpose is
12 to “create a network of academically rigorous, liberal arts K-12 public charter schools. This
13 network will prepare its graduates for college and to be leaders in creating a more
14 philosophical, humane, and just society. [GreatHearts Arizona] will be a catalyst for improving
15 public education opportunities by creating charter schools that surpass the very best private
16 schools in academic outcomes, student moral formation, and comprehensive extra-curricular
17 participation.”

18 a. The officers of GreatHearts Arizona are Defendants Bill Montgomery, Kurt
19 Davis, Lisa Handley, and Robert Mulhern.

20 b. The directors of GreatHearts Arizona are Defendants Christine Jones, Daniel
21 Scoggin, Derrick Hall, James Heiler, Philip Tirone, Steve Zabilski, and Tucker Quayle.

22 8. Each of the following Defendants is an Arizona nonprofit corporation that holds
23 a charter granted by the Arizona State Board for Charter Schools and does business as one or
24 more Great Hearts public charter schools in Arizona; each of the Great Hearts public charter
25 schools in Arizona has a designated Governing Body, as required by A.R.S. § 15-183(E)(8):
26

1 a. Anthem Preparatory Academy, an Arizona nonprofit corporation, does
2 business as the public charter schools Anthem Preparatory Academy and Archway
3 Classical Academy Anthem.

4 i. Defendants Daniel Scoggin and Jay Heiler are the officers for
5 Anthem Preparatory Academy, the Arizona nonprofit corporation.

6 ii. Defendants Daniel Scoggin and Jay Heiler are the directors for
7 Anthem Preparatory Academy, the Arizona nonprofit corporation.

8 iii. The Governing Body for the public charter school Anthem
9 Preparatory Academy consists of Defendants Andrew Ellison, Anna Yano,
10 Benjamin Black, Brandon Crowe, Lance Sherwood, and Pitpal Sandhu.

11 iv. Archway Classical Academy Anthem does not have a separate
12 Governing Body.

13 b. Archway Classical Academy Arete, an Arizona nonprofit corporation,
14 does business as the public charter school Archway Classical Academy Arete.

15 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
16 Archway Classical Academy Arete, the Arizona nonprofit corporation.

17 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
18 Archway Classical Academy Arete, the Arizona nonprofit corporation.

19 iii. The Governing Body for the public charter school Archway
20 Classical Academy Arete consists of Defendants Bayo Atolagbe, David Denton,
21 Leanne Fawcett, Lois Yates, and Marilyn Papke.

22 c. Arete Preparatory Academy, an Arizona nonprofit corporation, does
23 business as the public charter school Arete Preparatory Academy.

24 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
25 Arete Preparatory Academy, the Arizona nonprofit corporation.

1 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
2 Arete Preparatory Academy, the Arizona nonprofit corporation.

3 iii. The Governing Body for the public charter school Arete
4 Preparatory Academy consists of Defendants Bayo Atolagbe, David Denton,
5 John Paul Poppleton, Karen Tibbitts, Lois Yates, Marilyn Papke, and Scott
6 Grondin.

7 d. Archway Classical Academy Chandler, an Arizona nonprofit corporation,
8 does business as the public charter school Archway Classical Academy Chandler.

9 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
10 Archway Classical Academy Chandler, the Arizona nonprofit corporation.

11 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
12 Archway Classical Academy Chandler, the Arizona nonprofit corporation.

13 iii. The Governing Body for the public charter school Archway
14 Classical Academy Chandler consists of Defendants David Denton, Geoff
15 Stanisic, Helen Hayes, John Paul Poppleton, and Neil Gillingham.

16 e. Chandler Preparatory Academy, an Arizona nonprofit corporation, does
17 business as the public charter school Chandler Preparatory Academy.

18 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
19 Chandler Preparatory Academy, the Arizona nonprofit corporation.

20 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
21 Chandler Preparatory Academy, the Arizona nonprofit corporation.

22 iii. The Governing Body for the public charter school Chandler
23 Preparatory Academy consists of Defendants Daniel Barger, Daniel Scoggin,
24 David Denton, Helen Hayes, and Leanne Fawcett.

25 f. Archway Classical Academy - Cicero, an Arizona nonprofit corporation,
26 does business as the public charter school Archway Classical Academy Cicero.

1 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
2 Archway Classical Academy - Cicero, the Arizona nonprofit corporation.

3 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
4 Archway Classical Academy - Cicero, the Arizona nonprofit corporation.

5 iii. The Governing Body for the public charter school Archway
6 Classical Academy - Cicero consists of Defendants David Denton, Julie Sanders,
7 Mark Discher, Steve Levine, Toyin Atolagbe, and Zach Weisse.

8 g. Cicero Preparatory Academy, an Arizona nonprofit corporation, does
9 business as the public charter school Cicero Preparatory Academy.

10 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
11 Cicero Preparatory Academy, the Arizona nonprofit corporation.

12 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
13 Cicero Preparatory Academy, the Arizona nonprofit corporation.

14 iii. The Governing Body for the public charter school Cicero
15 Preparatory Academy consists of Defendants David Denton, Matthew Vlahovich,
16 and Zach Weisse.

17 h. Archway Classical Academy - Glendale, an Arizona nonprofit corporation,
18 does business as the public charter school Archway Classical Academy Glendale.

19 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
20 Archway Classical Academy - Glendale, the Arizona nonprofit corporation.

21 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
22 Archway Classical Academy - Glendale, the Arizona nonprofit corporation.

23 iii. The Governing Body for the public charter school Archway
24 Classical Academy - Glendale consists of Defendants Andrew Ellison, Brandon
25 Crowe, Julie Tinlin, Kate McClendon, Kathleen Shea, Shannon Richards, and
26 Tess Clark.

1 i. Glendale Preparatory Academy, an Arizona nonprofit corporation, does
2 business as the public charter school Glendale Preparatory Academy.

3 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
4 Glendale Preparatory Academy, the Arizona nonprofit corporation.

5 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
6 Glendale Preparatory Academy, the Arizona nonprofit corporation.

7 iii. The Governing Body for the public charter school Glendale
8 Preparatory Academy consists of Defendants Andrew Ellison, Grant Goodrich,
9 Jack Kersting, Julie Tinlin, Kate McClendon, Kathleen Shea, and Shannon
10 Richards.

11 j. Archway Classical Academy Lincoln, an Arizona nonprofit corporation,
12 does business as the public charter school Archway Classical Academy Lincoln.

13 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
14 Archway Classical Academy Lincoln, the Arizona nonprofit corporation.

15 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
16 Archway Classical Academy Lincoln, the Arizona nonprofit corporation.

17 iii. The Governing Body for the public charter school Archway
18 Classical Academy Lincoln consists of Defendants Benjamin Mitchell, Corinne
19 Jacobson, David Denton, Hal Morgan, and Sumi Thomas.

20 k. Lincoln Preparatory Academy, an Arizona nonprofit corporation, does
21 business as the public charter school Lincoln Preparatory Academy.

22 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
23 Lincoln Preparatory Academy, the Arizona nonprofit corporation.

24 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
25 Lincoln Preparatory Academy, the Arizona nonprofit corporation.
26

1 iii. The Governing Body for the public charter school Lincoln
2 Preparatory Academy consists of Defendants Corinne Jacobson, David Denton,
3 Hal Morgan, Sumi Thomas, and Toyn Atolagbe.

4 l. Maryvale Preparatory Academy, an Arizona nonprofit corporation, does
5 business as the public charter school Maryvale Preparatory Academy.

6 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
7 Maryvale Preparatory Academy, the Arizona nonprofit corporation.

8 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
9 Maryvale Preparatory Academy, the Arizona nonprofit corporation.

10 iii. The Governing Body for the public charter school Maryvale
11 Preparatory Academy consists of Defendants Christina Lucas-Sheffield, Greta
12 Mayans, Katie Stewart, Kristen Jennifer Brook, Kristen Twist, Lesley Bennett,
13 Philip Matteis, Robert Jackson, Sarah Dworkin, Sarah Ragland, Steve Erickson,
14 and Tiffany Quayle.

15 m. Archway Classical Academy North Phoenix, an Arizona nonprofit
16 corporation, does business as the public charter school Archway Classical Academy
17 North Phoenix.

18 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
19 Archway Classical Academy North Phoenix, the Arizona nonprofit corporation.

20 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
21 Archway Classical Academy North Phoenix, the Arizona nonprofit corporation.

22 iii. The Governing Body for the public charter school Archway
23 Classical Academy North Phoenix consists of Defendants Andrew Ellison,
24 Christina Coley, Dave Eriksson, Jessica Taylor, Paul Weinhold, and Steve
25 Kaiser.

1 n. North Phoenix Preparatory Academy, an Arizona nonprofit corporation,
2 does business as the public charter school North Phoenix Preparatory Academy.

3 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
4 North Phoenix Preparatory Academy, the Arizona nonprofit corporation.

5 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
6 North Phoenix Preparatory Academy, the Arizona nonprofit corporation.

7 iii. The Governing Body for the public charter school North Phoenix
8 Preparatory Academy consists of Defendants Andrew Ellison, Christina Coley,
9 Jessica Taylor, and Joy Hanks.

10 o. Archway Classical Academy Scottsdale, an Arizona nonprofit
11 corporation, does business as the public charter school Archway Classical Academy
12 Scottsdale.

13 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
14 Archway Classical Academy Scottsdale, the Arizona nonprofit corporation.

15 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
16 Archway Classical Academy Scottsdale, the Arizona nonprofit corporation.

17 iii. The Governing Body for the public charter school Archway
18 Classical Academy Scottsdale consists of Defendants Alison Chaney, Amanda
19 Shearer, Andrew Ellison, Cindy Coughlon, Jack Kersting, Kurt Petricek, Kyle
20 Bohannon, and Mike Minnaugh.

21 p. Scottsdale Preparatory Academy, an Arizona nonprofit corporation, does
22 business as the public charter school Scottsdale Preparatory Academy.

23 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
24 Scottsdale Preparatory Academy, the Arizona nonprofit corporation.

25 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
26 Scottsdale Preparatory Academy, the Arizona nonprofit corporation.

1 iii. The Governing Body for the public charter school Scottsdale
2 Preparatory Academy consists of Defendants Amanda Shearer, Andrew Ellison,
3 Cindy Coughlon, Lisa Armstrong, Matt Everroad, and Stephen Philabaum.

4 q. Teleos Preparatory Academy, an Arizona nonprofit corporation, formerly
5 conducted business as the public charter school Teleos Preparatory Academy.²

6 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
7 Teleos Preparatory Academy, the Arizona nonprofit corporation.

8 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
9 Teleos Preparatory Academy, the Arizona nonprofit corporation.

10 r. Archway Classical Academy Trivium East, an Arizona nonprofit
11 corporation, does business as the public charter school Archway Classical Academy
12 Trivium East.

13 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
14 Archway Classical Academy Trivium East, the Arizona nonprofit corporation.

15 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
16 Archway Classical Academy Trivium East, the Arizona nonprofit corporation.

17 iii. The Governing Body for the public charter school Archway
18 Classical Academy Trivium East consists of Defendants Allen Keys, Andrew
19 Ellison, Heidi Vasiloff, Jamee Twardeck, Kristin Darby, and Tom Doeblor.

20 s. Archway Classical Academy Trivium West, an Arizona nonprofit
21 corporation, does business as the public charter school Archway Classical Academy
22 Trivium West.

23
24
25 ² The public charter school Teleos Preparatory Academy closed before the 2018-2019
26 school year; however, the Arizona nonprofit corporation Teleos Preparatory Academy remains
in good standing with the Arizona Corporation Commission.

1 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
2 Archway Classical Academy Trivium West, the Arizona nonprofit corporation.

3 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
4 Archway Classical Academy Trivium West, the Arizona nonprofit corporation.

5 iii. The Governing Body for the public charter school Archway
6 Classical Academy Trivium West consists of Defendants Andrew Ellison,
7 Heather Washburn, Heidi Vasiloff, Kristin Darby, and Tom Doebler.

8 t. Trivium Preparatory Academy, an Arizona nonprofit corporation, does
9 business as the public charter school Trivium Preparatory Academy.

10 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
11 Trivium Preparatory Academy, the Arizona nonprofit corporation.

12 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
13 Trivium Preparatory Academy, the Arizona nonprofit corporation.

14 iii. The Governing Body for the public charter school Archway
15 Classical Academy Trivium West consists of Defendants Andrew Ellison,
16 Heather Washburn, Jamee Twardeck, Stephanie Pangrazio, and Tom Doebler.

17 u. Archway Classical Academy Veritas, an Arizona nonprofit corporation,
18 does business as the public charter school Archway Classical Academy Veritas.

19 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
20 Archway Classical Academy Veritas, the Arizona nonprofit corporation.

21 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
22 Archway Classical Academy Veritas, the Arizona nonprofit corporation.

23 iii. The Governing Body for the public charter school Archway
24 Classical Academy Veritas consists of Defendants Chirag Kapadia, Curtis Fee,
25 Daniel Openden, David Dean, David Denton, Jessica Keenan, Ramin Schadlu,
26 and Ward Huseth.

1 v. Veritas Preparatory Academy, an Arizona nonprofit corporation, does
2 business as the public charter school Veritas Preparatory Academy.

3 i. Defendants Daniel P. Scoggin and Jay Heiler are the officers for
4 Veritas Preparatory Academy, the Arizona nonprofit corporation.

5 ii. Defendants Daniel P. Scoggin and Jay Heiler are the directors for
6 Veritas Preparatory Academy, the Arizona nonprofit corporation.

7 iii. The Governing Body for the public charter school Veritas
8 Preparatory Academy consists of Defendants Amy Hall, Curtis Fee, David
9 Denton, Jake Tawney, Mary Frances Jeffries, Paul Weinhold, Samir Sawhney,
10 Shannon Clancy and Thomas Knoell.

11 9. All individual Defendants are sued in their official capacities only.

12 10. Jurisdiction over this action is proper pursuant to A.R.S. §§ 38-431.04, 38-
13 431.07, 39-121.02, and 12-123, and Rules 1 and 4 of the Arizona Rules of Procedure for
14 Special Actions.

15 11. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the Arizona Rules
16 of Procedure for Special Actions.

17 **FACTS**

18 **Background on Great Hearts**

19 12. Great Hearts was founded in 2003 with one charter school in Arizona.

20 13. Great Hearts Academies, an Arizona nonprofit corporation, was formed in 2004.
21 Its original officers were Daniel P. Scoggin and Jay Heiler.

22 14. In 2004 and 2005, Great Hearts created a strategic business plan for the growth
23 of its charter school network.

24 15. In 2007, Great Hearts created an expansion plan for its charter school network.

25 16. Great Hearts America was formed in 2012. Daniel P. Scoggin was the
26 incorporator and the sole director at the time of its formation.

1 17. In June 2016, Great Hearts America changed its name to GreatHearts America.

2 18. In October 2016, Great Hearts Academies changed its name to GreatHearts
3 Arizona.

4 19. Currently, there are twenty-two Great Hearts entities incorporated in Arizona as
5 nonprofit corporations that hold charters granted by the Arizona State Board for Charter
6 Schools. Jay Heiler and Daniel Scoggin are the officers and directors of each of these
7 corporations. According to IRS reporting documents, GreatHearts Arizona is the direct
8 controlling entity for each of these corporations.

9 20. Currently, there are twenty-two Great Hearts public charter schools operating in
10 Arizona serving more than 10,000 students.

11 21. According to their audited financial statements, every Great Hearts charter
12 school in Arizona is a subsidiary of GreatHearts Arizona.

13 22. The great majority of revenue for the Great Hearts charter schools in Arizona
14 comes from Arizona state sources.

15 23. In fiscal year 2017, the twenty-three Great Hearts charter schools in Arizona took
16 in over \$79 million from Arizona state sources, with the great majority of these funds coming
17 from State Equalization Assistance payments.

18 24. In fiscal year 2017, the twenty-three Great Hearts charter schools in Arizona took
19 in over \$100 million in total revenue.

20 25. All personnel, including administrators, teachers, and other staff members,
21 working in the Great Hearts public charter schools in Arizona are employees of GreatHearts
22 Arizona. GreatHearts Arizona contracts with each of the individual schools to provide the
23 personnel.

24 26. GreatHearts Arizona also contracts with each Great Hearts public charter school
25 in Arizona to provide best practices and governance oversight, curriculum development,
26 special education expertise, business strategy, fundraising and marketing support, facility

1 development, information technology, and various other administrative services. The annual
2 fees for these services are determined based on a percentage of the state revenues received by
3 the charter schools.

4 27. Fourteen of the public charter schools in the Great Hearts network lease their
5 school sites from GreatHearts Arizona. The annual lease payments are based, in part, on a
6 percentage of the amount of state payments the charter schools receive from the state of
7 Arizona.

8 28. The audited financial statements of the Great Hearts charter schools in Arizona
9 indicate that, in total for personnel, management, and lease fees, the charter schools paid over
10 \$74 million to GreatHearts Arizona in fiscal year 2017.

11 29. On information and belief, the majority of the revenue for GreatHearts America
12 is derived from GreatHearts Arizona.

13 30. According to IRS reporting documents, for every Great Hearts public charter
14 school in Arizona, GreatHearts Arizona appoints the members of the school's Governing
15 Body, fills vacancies on the Governing Body, and may remove members of the Governing
16 Body.

17 31. According to IRS reporting documents, for every Great Hearts public charter
18 school in Arizona, GreatHearts Arizona retains approval rights over key decisions such as
19 changes to the school's bylaws, articles of incorporation, educational philosophy, and
20 significant financial expenditures.

21 32. Thus, GreatHearts Arizona completely controls the key decisions of each Great
22 Hearts public charter school in Arizona, fully controls who serves on the Governing Body of
23 each school, and fully controls each school's significant expenditures.

24 33. GreatHearts Arizona also completely controls policy decisions of every Great
25 Hearts public charter school in Arizona.

1 34. GreatHearts Arizona’s control over the policy decisions of every Great Hearts
2 public charter school in Arizona is documented in the Great Hearts Academies Standard
3 School Policies Guide, revised May 2015 (“GHA Standard School Policies Guide”), which
4 applies to every Great Hearts public charter school in Arizona.

5 35. The GHA Standard School Policies Guide states on its first page that the
6 “standard Great Hearts Academy Policies [are] *to be reviewed and adopted by all local site*
7 *boards.*” (Emphasis added.)

8 36. The second page of the GHA Standard School Policies Guide provides
9 information about the “Great Hearts Academies Governance Structure”:

10 All network schools are wholly-owned subsidiaries of Great Hearts
11 Academies (GHA). As such:

12 1. *The GHA Lead Office Executive Team, under the governance*
13 *oversight of the GHA Executive Board, sets network-wide policies that*
14 *the local Site Governing Board is always subject to and must apply.* Local
15 Site Governing Boards may make policy recommendations to the Executive
16 Team for network-wide policy consideration.

17 2. Site Governing Board members are appointed by and serve at the
18 pleasure of the Great Hearts Executive Board.

19 (Emphasis added.) The relevant excerpt from the GHA Standard School Policies Guide is
20 attached as **Exhibit 1**.

21 37. Most of the individuals who serve on the Governing Bodies of the individual
22 Great Hearts charter schools in Arizona are closely affiliated with Great Hearts, primarily as
23 employees of GreatHearts Arizona.

24 38. As a result, the Governing Bodies of the individual Great Hearts public charter
25 schools have no discretion at all with respect to policy decisions for the schools; they are
26 required by the GHA Standard School Policies Guide to adopt whatever policies the Great

1 Hearts Corporations set for all Great Hearts schools, they are appointed and may be removed
2 from the Governing Body by GreatHearts Arizona, and many of them are employed by
3 GreatHearts Arizona.

4 **The Great Hearts Transgender Policy and Its Adoption by the Corporations**

5 39. On or about June 22, 2016, the board of directors of GreatHearts Arizona voted
6 to adopt the Great Hearts Transgender Policy. A copy of the Great Hearts Transgender Policy
7 is attached as **Exhibit 2**.

8 40. On information and belief, the directors for GreatHearts Arizona at the time it
9 adopted the Great Hearts Transgender Policy were Jessica Pacheco, Ann Pritzlaff Symington,
10 Bob Mulhern, Hugh Hewitt, Steve Zablinksi, John Lock, Derrick Hall, John X. Evans, Jay
11 Heiler, Philip Tirone, Dan Costello, Bill Montgomery, Mike Gordon, Christine Jones, Lisa
12 Hirsch Handley, Tucker Quayle, Kurt Davis, Daniel Scoggin, Andy Kunasek, and Don Ulrich.

13 41. On information and belief, the officers of GreatHearts Arizona at the time it
14 adopted the Great Hearts Transgender Policy were Erik Twist, Jay Heiler, Kurt Davis, and
15 Tucker Quayle.

16 42. On information and belief, the board of directors of GreatHearts America
17 approved or ratified GreatHearts Arizona's adoption of the Great Hearts Transgender Policy in
18 or around June 2016.

19 43. On information and belief, the directors of GreatHearts America at the time it
20 approved or ratified GreatHearts Arizona's adoption of the Great Hearts Transgender Policy
21 were Nelson Broms, Jay Heiler, Alex Hernandez, James Rahn, and Daniel P. Scoggin.

22 44. On information and belief, the officers of GreatHearts America at the time it
23 approved or ratified GreatHearts Arizona's adoption of the Great Hearts Transgender Policy
24 were Christine Jones, Ward Huseth, and Aaron Martin.

25
26

1 45. The Great Hearts Transgender Policy defined a student’s “sex” as “an
2 individual’s biological classification as male or female at the time of birth and as recorded on
3 their official state-issued birth certificate.”

4 46. The Great Hearts Transgender Policy required Great Hearts public charter
5 schools to classify students by sex according to the student’s enrollment documents, and in the
6 event of a discrepancy in the enrollment documents, the sex indicated on a student’s birth
7 certificate would control.

8 47. In Arizona, it is notoriously difficult to change a child’s sex on their birth
9 certificate because it requires the person to “undergo[] a sex change operation” or to obtain a
10 court order ordering the amendment. A.R.S. § 36-337(A).

11 48. The Great Hearts Transgender Policy allowed Great Hearts personnel to refer to
12 a child using personal pronouns that correspond with the sex on their birth certificate, required
13 students to be classified according to the sex on their birth certificates for purposes of learning
14 activities that call for the separation of students by sex, required students to adhere to the
15 uniform code and grooming standards according to the sex on their birth certificates, required
16 students to use single-sex restrooms and locker rooms that correspond to the sex on their birth
17 certificates or to use single-occupant restroom and changing facilities, and made students
18 eligible only for single-sex athletic activities that correspond to the sex on their birth
19 certificates.

20 49. On information and belief, the Great Hearts Transgender Policy was the most
21 anti-transgender school policy in the nation.

22 **Adoption of the Great Hearts Transgender Policy by the Individual Governing Bodies**

23 50. Each of the Great Hearts public charter schools in Arizona was required to adopt
24 the Great Hearts Transgender Policy; the Governing Body for each school did not have
25 discretion to reject the policy or change it in any way.

1 51. The members of the individual Governing Bodies for each Great Hearts charter
2 school understood that the boards of directors for the Great Hearts Corporations were
3 responsible for the Transgender Policy.

4 52. For instance, the minutes from the June 14, 2016 meeting of the Governing Body
5 for Veritas Preparatory Academy reflect that Governing Body president Bob Mulhern stated
6 regarding the “Transgender issue” that “the issue is impacting Great Hearts in Texas and
7 Arizona. The Texas board meeting is this week, and the AZ board meeting is next week, and
8 both boards are planning to discuss a policy that upholds school culture and minimizes
9 liabilities.”

10 53. On or about August 3, 2016, the headmasters for the Great Hearts schools were
11 instructed by GreatHearts Arizona that they must include “the Biological Sex and Gender (i.e.
12 transgender) Policy in our handbooks in their entirety, meaning the entire document” This
13 instruction was confirmed in an email from GreatHearts Arizona to all Great Hearts
14 headmasters on August 5, 2016. A copy of this August 5, 2016 email is attached as **Exhibit 3**.

15 54. On information and belief, the Governing Body for each of the Great Hearts
16 public charter schools in Arizona adopted the Great Hearts Transgender Policy as part of the
17 Governing Body’s consent agenda in or around September 2016.

18 55. The Great Hearts Transgender Policy was called the Biological Sex and Gender
19 Policy in the Great Hearts schools’ Family Handbooks.

20 56. On October 17, 2016, GreatHearts Arizona emailed headmasters at several
21 schools to notify them that the handbooks on their websites did not include the “required
22 Biological Sex and Gender policy.” The headmasters were instructed to “complete this project
23 by the end of the day, Wednesday 10/19, and email me with confirmation after you have
24 verified the updated version of the family handbook (i.e. the one that includes said policy) is
25 online.” A copy of this email is attached as **Exhibit 3**.

26 **Robert Chevaleau’s and the ACLU of Arizona’s Attempts to Gather Information
 and Oppose the Transgender Policy**

1 57. In August 2016, after discovering that Great Hearts had adopted the Transgender
2 Policy, Robert Chevaleau began inquiring about and opposing the policy.

3 58. He first met in August 2016 with Lisa Armstrong, headmaster of Archway
4 Classical Academy Scottsdale, to express his concerns about the policy. After Mr. Chevaleau's
5 meeting with Headmaster Armstrong, he was contacted by David Denton, Vice President,
6 Lower Schools, for Great Hearts.

7 59. Mr. Chevaleau met with Mr. Denton and Headmaster Armstrong on August 15,
8 2016, to further discuss Mr. Chevaleau's concerns with the Transgender Policy. During that
9 meeting, Mr. Chevaleau asked Mr. Denton and Headmaster Armstrong to provide him with the
10 time, date, and location for the next meeting of the GreatHearts Arizona board of directors, so
11 that he could attend and express his concerns to the board. Mr. Denton told Mr. Chevaleau that
12 he would obtain this information and provide it to him.

13 60. Mr. Chevaleau repeated his request for the information about the next meeting of
14 the GreatHearts Arizona board of directors in an email to Mr. Denton and Headmaster
15 Armstrong. In response to Mr. Chevaleau's email, Mr. Denton replied, "After looking into the
16 matter I have discovered that I was in error regarding the GH AZ board meetings. These
17 meetings are not public, but the academy site board meetings are."

18 61. Mr. Chevaleau was therefore denied the ability to attend the next meeting of the
19 GreatHearts Arizona board of directors.

20 62. Responding to Mr. Denton's email informing him that he could not attend the
21 GreatHearts Arizona board meeting, Mr. Chevaleau wrote:

22 To me it sounds as though there is no path for me to communicate with the Board
23 directly. As you are declining my invitation of providing you with an educational
24 session, there is no path for me to communicate directly with your peers. I have no
25 way to propose an alternative transgender student policy that ensures dignity and
26 respect to all Great Hearts students. As you might imagine, I find this disappointing
and frustrating.

1 I still have unanswered questions. How did this policy come about? Why was
2 guidance and recommendations from medical and psychological experts not taken
3 into consideration when drafting this policy? Who, if anyone, reviewed this policy
4 from a professional (educator) perspective? What were their recommendations and
5 why were they ignored?

6 You stated that Great Hearts is not taking a side on this matter. From my
7 perspective, it seems that Great Hearts is taking up a hard side in favor of whatever
8 political motives drive the 13 states currently suing the Obama administration, this
9 at the expense of Great Hearts' moral obligation of protecting the rights of all their
10 students.

11 Are you willing to grant me an audience to whom I can address these concerns?
12 Or, is the conversation from your perspective over?

13 A copy of the August 2016 email exchange between Mr. Chevaleau and Mr. Denton is
14 attached as **Exhibit 4**.

15 63. The minutes from the September 22, 2016 meeting of the Governing Body for
16 Archway Classical Academy Scottsdale indicate that during the call to the public,
17 Mr. Chevaleau addressed the Governing Body regarding the Transgender Policy. The minutes
18 indicate that, in response to Mr. Chevaleau's concerns about the policy, Archway Scottsdale
19 Headmaster Lisa Armstrong said "*that the policy is a Great Hearts policy enacted by the
20 Great Hearts board and is not something the Archway Scottsdale school board could deal
21 with.*" (Emphasis added.) The minutes of the September 22, 2016 board meeting are attached
22 as **Exhibit 5**.

23 64. In November 2016, Mr. Chevaleau spoke with Helen Hayes, a GreatHearts
24 Arizona employee and president of the Governing Body of Archway Classical Academy
25 Scottsdale. Ms. Hayes reported to Mr. Chevaleau about her inquiry regarding the Transgender
26 Policy since the September 22, 2016 meeting of the school's Governing Body. She reportedly
spoke with six people as part of her inquiry and stated that Great Hearts would not amend the
Transgender Policy until "forced to do so by the Supreme Court."

1 65. In or around February 2017, Mr. Chevaleau met with Wade Dyke to discuss the
2 Transgender Policy. At the time, Mr. Dyke had recently been named the new Chief Executive
3 Officer of Great Hearts.

4 66. In April 2017, the ACLU of Arizona and Mr. Chevaleau, along with other
5 advocates, opposed a proposed partnership between the City of Scottsdale and Great Hearts,
6 based on the Transgender Policy, under which Great Hearts would develop a public park in
7 Scottsdale and the Great Hearts schools would have priority access to use the athletic facilities
8 built at the park. The City of Scottsdale did not approve the proposal.

9 67. In September 2017, Mr. Chevaleau and other advocates participated in a peaceful
10 protest of the Transgender Policy outside the Great Hearts annual gala.

11 68. In October 2017, Mr. Chevaleau and other advocates participated in another
12 peaceful protest of the Transgender Policy at the Great Hearts Veritas campus where the Great
13 Hearts Corporations have their headquarters.

14 69. Also in October 2017, Mr. Chevaleau and other advocates began handing out
15 flyers regarding the Transgender Policy outside Great Hearts schools.

16 70. At the end of November 2017, Mr. Chevaleau made a presentation, "Trans 101,"
17 to parents of students attending Archway Classical Academy Veritas and Veritas Preparatory
18 Academy, which was organized by the president of the parent organization for Archway
19 Classical Academy Veritas. GreatHearts Arizona board member Philip Tirone was present at
20 the presentation.

21 71. Also in November 2017, Erik Twist, President of GreatHearts Arizona, held a
22 town hall meeting regarding the Transgender Policy. Mr. Twist requested that Mr. Chevaleau
23 not attend this town hall meeting.

24 72. In January 2018, Mr. Chevaleau attended a meeting with Mr. Twist regarding the
25 Transgender Policy. At this meeting, Mr. Twist told Mr. Chevaleau that the GreatHearts
26 Arizona board would meet in February 2018 to consider and vote on a policy to replace the

1 Transgender Policy. Mr. Chevaleau asked Mr. Twist if he could attend that meeting of the
2 GreatHearts Arizona board. Mr. Twist laughed and told Mr. Chevaleau that the meeting was
3 closed and he could not attend. Mr. Twist would not even reveal to Mr. Chevaleau the date of
4 the meeting.

5 73. On information and belief, the board of directors for GreatHearts Arizona adopted
6 a policy to replace the Great Hearts Transgender Policy in February 2018 during a nonpublic
7 meeting. A copy of that policy, the GreatHearts Privacy Practice and Accommodations
8 Guidance, is attached as **Exhibit 6**.

9 74. In March 2018, Mr. Chevaleau spoke on the phone with Mr. Twist regarding the
10 revised policy.

11 75. In April 2018, Mr. Chevaleau exchanged emails with Mr. Twist regarding the
12 revised policy and Great Hearts' plans for its implementation. In the email exchange, Mr.
13 Twist confirmed that the Great Hearts Corporations have the final authority on all policy
14 matters for the Great Hearts public charter schools in Arizona: "Like in any matter regarding
15 our schools, GH leadership has final review should it be necessary." A copy of the April 2018
16 email exchange between Mr. Chevaleau and Mr. Twist is attached as **Exhibit 7**.

17 **Other Examples of Great Hearts' Violations of Arizona's Open Meetings Laws**

18 76. Mr. Chevaleau's experience trying to attend Great Hearts board meetings, and
19 being prevented by Great Hearts' lack of transparency, is unfortunately not unique.

20 77. Great Hearts has a pattern of making important policy decisions behind closed
21 doors, especially controversial ones, when they are in fact subject to public notice and
22 discussion.

23 78. For instance, Great Hearts' "grooming policy" attracted media attention in
24 February 2018 after a 12-year-old African American student attending Teleos Preparatory
25 Academy was told that his neat braided hairstyle violated the school's "grooming policy."
26

1 79. After several media reports and communications between Great Hearts’ leaders
2 and the student’s mother, the Governing Body for Teleos Preparatory Academy met by
3 telephone on February 21, 2018, at 7:15 a.m. to adopt an amended “Hair Policy,” which would
4 require boys’ hair to be “well-off the top of the shirt collar . . . [and] not fall below the
5 eyebrows or past the mid-point of the ear.”

6 80. In addition to Governing Body members, Mr. Twist and Great Hearts’ counsel
7 attended the telephonic meeting on February 21, 2018. The minutes of that meeting reflect that
8 the Governing Body met for two minutes and the only business conducted was to vote to
9 update the “Hair Policy” at 7:16 a.m. The meeting was adjourned at 7:17 a.m. A copy of the
10 minutes of the February 21, 2018 Teleos Preparatory Academy Governing Body meeting is
11 attached as **Exhibit 8**.

12 81. On information and belief, the February 21, 2018 meeting was not properly
13 noticed as required under Arizona’s Open Meetings Laws.

14 82. On information and belief, the decision at the February 21, 2018 meeting was
15 made before the meeting, and the Governing Body did not engage in deliberations or
16 discussion. Rather, the Governing Body merely rubber-stamped amendments to the “Hair
17 Policy” that were transmitted to the Governing Body by the Great Hearts Corporations.

18 83. On information and belief, the “Hair Policy” for all the Great Hearts charter
19 schools was amended to conform to the change that the Teleos Preparatory Academy
20 Governing Body purportedly voted on, although there is no record that any of the other
21 schools’ Governing Bodies ever voted on this change.

22 84. Great Hearts also has a pattern of making it difficult for members of the public to
23 attend its meetings and has, for example:

- 24 a. Failed to post notice of meetings on its websites. *See* A.R.S. § 38-
25 431.02(A) (charter schools must “[p]ost all public meeting notices on their website”).
26

1 b. Changed the day, time, and location of Governing Body meetings less
2 than twenty-four hours before the meeting. *See* A.R.S. § 38-431.02(C) (“[M]eetings
3 shall not be held without at least twenty-four hours’ notice to the members of the public
4 body and to the general public.”).

5 c. Failed to adhere to the posted agenda. *See* A.R.S. § 38-431.02(G) (“Notice
6 required under this section shall include an agenda of the matters to be discussed or
7 decided at the meeting or information on how the public may obtain a copy of such an
8 agenda. The agenda must be available to the public at least twenty-four hours before the
9 meeting . . .”).

10 d. Made decisions and voted on legal actions in executive session. A.R.S.
11 § 38-431.03(D) (“Legal action involving a final vote or decision shall not be taken at an
12 executive session A public vote shall be taken before any legal action binds the
13 public body.”).

14 **The ACLU of Arizona’s Public Records Requests**

15 85. The ACLU of Arizona made a public records request to GreatHearts America
16 and GreatHearts Arizona on September 26, 2017, seeking records related to the boards’
17 adoption of the Transgender Policy in June 2016. A copy of the September 26, 2017 public
18 records request is attached as **Exhibit 9**.

19 86. Great Hearts did not respond for two months and when counsel for Great Hearts
20 finally responded by email on November 27, 2017, Great Hearts refused to provide the
21 requested records on the ground that “they are not public bodies and their records are not
22 subject to the public records law.” A copy of this email is attached as **Exhibit 10**.

23 87. By the same November 27, 2017 email, Great Hearts agreed to provide records
24 related to the adoption of the Transgender Policy by each of the individual Governing Bodies
25 for the Great Hearts charter schools in Arizona.

1 88. Responsive records promised in Great Hearts' November 27, 2017 email were
2 provided to the ACLU of Arizona on or about December 20, 2017, January 26, 2018, and
3 February 28, 2018.

4 89. On March 1, 2018, the ACLU of Arizona requested that Great Hearts reconsider
5 its refusal to provide records of the Great Hearts Corporations in response to the September 26,
6 2017 public records request. A copy of that letter is attached as **Exhibit 11**.

7 90. By the same March 1, 2018 letter, the ACLU of Arizona made an additional
8 public records request for emails regarding the Transgender Policy between representatives of
9 the Great Hearts charter schools in Arizona and their Governing Bodies and representatives of
10 the Great Hearts Corporations.

11 91. Records responsive to the ACLU of Arizona's March 1, 2018 public records
12 request were provided on or about May 16, 2018, May 31, 2018, and June 15, 2018. The
13 records provided by Great Hearts are significantly redacted.

14 92. On June 28, 2018, counsel for Great Hearts provided a letter purporting to explain
15 the redactions in the records provided. That June 28, 2018 letter is attached as **Exhibit 12**.

16 93. Great Hearts claimed in its June 28, 2018 letter that "the names and emails of all
17 Great Hearts Arizona and Great Hearts America executives and employees have been redacted
18 to protect their privacy" "[b]ecause Great Hearts Arizona and Great Hearts America are not
19 'public bodies' and are thus not subject to the public records laws."

20 94. The August 5, 2016 email to Great Hearts headmasters regarding the
21 Transgender Policy (**Exhibit 3**) is an example of Great Hearts' redactions in the records
22 provided.

23 95. The subject of the August 5, 2016 email is "Guidance re: Policy on Biological
24 Sex and Gender." The sender's name is redacted. Several names in the "Cc:" field are also
25 redacted. The email starts out, "As [redacted] discussed on Wednesday's call, we are to include
26 the Biological Sex and Gender (i.e. transgender) Policy in our handbooks in their entirety"

1 96. The August 5, 2016 email goes on to provide instructions for inserting the policy
2 into the handbook and talking points for fielding questions about the policy from parents.

3 97. Thus, Great Hearts is claiming that the names of the people who are instructing
4 Great Hearts' headmasters regarding a policy required to be included in their handbooks are
5 not part of the public record, or are somehow protected from disclosure based on an
6 unidentified right to privacy.

7 98. Because the Great Hearts public charter schools in Arizona are unquestionably
8 "public bodies" under the Arizona Public Records Laws, Great Hearts may not lawfully redact
9 the names of individuals managing the school and directing the school's officers in public
10 records provided to requestors. *See* Ariz. Op. Atty. Gen. No. I95-10 (1995).

11 99. Great Heart's June 28, 2018 letter also suggests that Great Hearts withheld from
12 the ACLU of Arizona records that relate to teachers and staff at the Great Hearts schools,
13 claiming that they are not "subject to" the Public Records Laws.

14 100. As "public bodies" under the Public Records Laws, the Great Hearts schools are
15 required to "maintain all records . . . reasonably necessary or appropriate to maintain an
16 accurate knowledge of their official activities and of any of their activities which are supported
17 by monies from this state." A.R.S. § 39-121.01(B).

18 101. As "public bodies" under the Public Records Laws, the Great Hearts schools are
19 also "responsible for the preservation, maintenance and care of that body's public records, and
20 each officer shall be responsible for the preservation, maintenance and care of that officer's
21 public records." A.R.S. § 39-121.01(C).

22 102. Because the Great Hearts public charter schools in Arizona are "public bodies"
23 under the Arizona Public Records Laws, Great Hearts may not lawfully withhold responsive
24 record in the schools' custody, possession, or control without regard for who generated it or
25 whose email inbox it may reside in.

103. On July 31, 2018, the ACLU of Arizona sent a letter to counsel for Great Hearts, and again requested that Great Hearts reconsider its refusal to provide records of the Great Hearts Corporations in response to the September 26, 2017 public records request. A copy of the July 31, 2018 letter is attached as **Exhibit 13**.

104. In the same July 31, 2018 letter, the ACLU of Arizona made an additional public records request to GreatHearts America, GreatHearts Arizona, and the Great Hearts charter schools in Arizona for records related to the Transgender Policy dated January 1, 2017, to the present.

105. Great Hearts has not responded to the ACLU of Arizona's renewed request and additional public records request in its July 31, 2018 letter.

106. On August 15, 2018, the ACLU of Arizona sent another letter to counsel for Great Hearts responding to Great Hearts' June 28, 2018 letter and objecting to its purported bases for withholding and redacting public records provided in response to the ACLU of Arizona's September 26, 2017, and March 1, 2018 public records requests. A copy of the August 15, 2018 letter is attached as **Exhibit 14**.

107. Great Hearts has not responded to the ACLU of Arizona's August 15, 2018 letter.

108. In short, Great Hearts has failed to promptly produce public records as required by Arizona law. Indeed, Great Hearts has failed to produce public records that were requested anywhere from one year ago to two months ago.

Count I

(Open Meetings Laws Violations by the Great Hearts Corporations)

109. The preceding paragraphs are incorporated herein by reference.

110. "It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or

1 decided. Toward this end, any person or entity charged with the interpretations of this article
2 shall construe this article in favor of open and public meetings.” A.R.S. § 38-431.09.

3 111. Under Arizona law, every public charter school must have a “governing body”
4 “that is responsible for the policy decisions of the charter school.” A.R.S. § 15-183(E)(8).

5 112. Public charter schools in Arizona are “public bodies” under the Arizona Open
6 Meetings Laws. Ariz. Op. Atty. Gen. No. I95-10 (1995).

7 113. Based on Great Hearts’ own IRS filings and other documents, the Governing
8 Bodies for each of the Great Hearts charter schools in Arizona have no discretion, authority, or
9 responsibility regarding “policy decisions of the charter school.”

10 114. Rather, Great Hearts’ own documents confirm that the Great Hearts Corporations
11 are responsible for all policy decisions of each Great Hearts charter school in Arizona.

12 115. The Great Hearts Corporations are responsible for the policies being adopted and
13 implemented in each of the Great Hearts charter schools in Arizona, including the Transgender
14 Policy and the “Hair Policy.”

15 116. The boards of directors for the Great Hearts Corporations are public bodies under
16 the Arizona Open Meetings Laws for the purpose of adoption and implementation of policies
17 for the Great Hearts charter schools.

18 117. The boards of directors for the Great Hearts Corporations stand in the shoes of
19 the Governing Bodies of each of the Great Hearts charter schools in Arizona for the purpose of
20 adoption and implementation of policies.

21 118. The boards of directors for the Great Hearts Corporations are the governing
22 bodies for each of the Great Hearts charter schools in Arizona for the purpose of adoption and
23 implementation of policies. *See* Ariz. Op. Atty. Gen. No. I00-009 (2000) (“[I]f a corporate
24 board meeting is, for the purposes of the Open Meeting Law, a meeting of the charter school
25 governing board, the Open Meeting Law applies.”).

1 119. The Arizona Open Meetings Laws require that “[a]ll meetings of any public body
2 shall be public meetings and all persons so desiring shall be permitted to attend and listen to
3 the deliberations and proceedings. All legal action of public bodies shall occur during a public
4 meeting.” A.R. S. § 38-431.01(A).

5 120. The Arizona Open Meetings Laws also require that “[a]ll public bodies shall
6 provide for the taking of written minutes or a recording of all their meetings, including
7 executive sessions. For meetings other than executive sessions, such minutes or recording shall
8 include, but not be limited to: 1. The date, time and place of the meeting. 2. The members of
9 the public body recorded as either present or absent. 3. A general description of the matters
10 considered. 4. An accurate description of all legal actions proposed, discussed or taken, and the
11 names of members who propose each motion. The minutes shall also include the names of the
12 persons, as given, making statements or presenting material to the public body and a reference
13 to the legal action about which they made statements or presented material.” A.R. S. § 38-
14 431.01(B).

15 121. The Arizona Open Meetings Laws also require that “public bodies of this state,
16 including governing bodies of charter schools, shall: (a) Conspicuously post a statement on
17 their website stating where all public notices of their meetings will be posted, including the
18 physical and electronic locations, and shall give additional public notice as is reasonable and
19 practicable as to all meetings. (b) Post all public meeting notices on their website and give
20 additional public notice as is reasonable and practicable as to all meetings. A technological
21 problem or failure that either prevents the posting of public notices on a website or that
22 temporarily or permanently prevents the use of all or part of the website does not preclude the
23 holding of the meeting for which the notice was posted if the public body complies with all
24 other public notice requirements required by this section.” A.R.S. § 38-431.02(A)(1).

1 122. Under the Arizona Open Meetings Laws, a public meeting generally may not be
2 held “without at least twenty-four hours’ notice to the members of the public body and to the
3 general public.” A.R.S. § 38-431.02(C).

4 123. Notice under the Arizona Open Meetings Laws must include “an agenda of the
5 matters to be discussed or decided at the meeting or information on how the public may obtain
6 a copy of such an agenda. The agenda must be available to the public at least twenty-four hours
7 before the meeting[.]” A.R.S. § 38-431.02(G). “Agendas required under [the Open Meetings
8 Laws] shall list the specific matters to be discussed, considered or decided at the meeting. The
9 public body may discuss, consider or make decisions only on matters listed on the agenda and
10 other matters related thereto.” A.R.S. § 38-431.02(H).

11 124. Under the Arizona Open Meetings Laws, “[a] public body may make an open
12 call to the public during a public meeting, subject to reasonable time, place and manner
13 restrictions, to allow individuals to address the public body on any issue within the jurisdiction
14 of the public body.” A.R.S. § 38-431.01(H).

15 125. The boards of directors for the Great Hearts Corporations did not comply with
16 any requirements of the Arizona Open Meetings Laws for the meetings in or around June 2016
17 when they adopted the Transgender Policy.

18 a. They did not hold public meetings and allow members of the public to
19 attend and listen to deliberations at the meetings.

20 b. They did not post notice of the meetings and make their agendas available
21 to the public as required.

22 c. They did not take minutes or make recordings of their meetings as
23 required.

24 126. Robert Chevaleau would have attended the meetings of the boards of directors
25 for the Great Hearts Corporations in or around June 2016 when they adopted the Transgender
26 Policy if he had had advance notice of those meetings.

1 127. The ACLU of Arizona would have attended the meetings of the boards of
2 directors for the Great Hearts Corporations in or around June 2016 when they adopted the
3 Transgender Policy if it had had advance notice of those meetings.

4 128. The boards of directors for the Great Hearts Corporations did not comply with
5 any requirements of the Arizona Open Meetings Laws for the meetings in or around February
6 2018 when they adopted a replacement policy for the Transgender Policy.

7 a. They did not hold public meetings and allow members of the public to
8 attend and listen to deliberations at the meetings.

9 b. They did not post notice of the meetings and make their agendas available
10 to the public as required.

11 c. They did not take minutes or make recordings of their meetings as
12 required.

13 129. Robert Chevaleau would have attended the meetings of the boards of directors
14 for the Great Hearts Corporations in or around February 2018 when they adopted the
15 replacement policy for the Transgender Policy if he had had advance notice of those meetings.

16 130. The ACLU of Arizona would have attended the meetings of the boards of
17 directors for the Great Hearts Corporations in or around February 2018 when they adopted the
18 replacement policy for the Transgender Policy if it had had advance notice of those meetings.

19 131. The boards of directors for the Great Hearts Corporations did not comply with
20 any requirements of the Arizona Open Meetings Laws for any meetings held since June 2016.

21 a. They did not hold public meetings and allow members of the public to
22 attend and listen to deliberations at the meetings.

23 b. They did not post notice of the meetings and make their agendas available
24 to the public as required.

25 c. They did not take minutes or make recordings of their meetings as
26 required.

132. Robert Chevaleau would have attended meetings of the boards of directors for the Great Hearts Corporations since June 2016 and would have made comments during the open call to the public if he had had advance notice of the meetings.

133. The ACLU of Arizona would have attended meetings of the boards of directors for the Great Hearts Corporations since June 2016 and would have made comments during the open call to the public if it had had advance notice of the meetings.

134. Robert Chevaleau and the ACLU of Arizona are persons affected by Great Hearts' violations of the Arizona Open Meetings Laws and may bring suit "for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body." A.R.S. § 38-431.07.

135. The Court has the authority to issue a writ of mandamus requiring Great Hearts to hold meetings in public. A.R.S. § 38-431.04.

136. The adoption of policies by the Great Hearts Corporations are null and void because the meetings at which they were adopted did not comply with the Arizona Open Meetings Laws. A.R.S. § 38-431.05(A).

137. The Court “may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff’s reasonable attorney fees[.]” A.R.S. § 38-431.07(A).

Count II

(Open Meetings Laws Violations by the Great Hearts Charter Schools' Governing Bodies)

138. The preceding paragraphs are incorporated herein by reference.

139. "It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or

1 decided. Toward this end, any person or entity charged with the interpretations of this article
2 shall construe this article in favor of open and public meetings.” A.R.S. § 38-431.09.

3 140. Under Arizona law, every public charter school must have a “governing body”
4 “that is responsible for the policy decisions of the charter school.” A.R.S. § 15-183(E)(8).

5 141. Public charter schools in Arizona are “public bodies” under the Arizona Open
6 Meetings Laws. Ariz. Op. Atty. Gen. No. I95-10 (1995).

7 142. The Governing Bodies of each of the Great Hearts charter schools in Arizona are
8 public bodies under the Arizona Open Meetings Laws for the purpose of adoption and
9 implementation of policies for the Great Hearts charter schools.

10 143. The Arizona Open Meetings Laws require that “[a]ll meetings of any public body
11 shall be public meetings and all persons so desiring shall be permitted to attend and listen to
12 the deliberations and proceedings. All legal action of public bodies shall occur during a public
13 meeting.” A.R.S. § 38-431.01(A).

14 144. The Arizona Open Meetings Laws also require that “[a]ll public bodies shall
15 provide for the taking of written minutes or a recording of all their meetings, including executive
16 sessions. For meetings other than executive sessions, such minutes or recording shall include,
17 but not be limited to: 1. The date, time and place of the meeting. 2. The members of the public
18 body recorded as either present or absent. 3. A general description of the matters considered. 4.
19 An accurate description of all legal actions proposed, discussed or taken, and the names of
20 members who propose each motion. The minutes shall also include the names of the persons, as
21 given, making statements or presenting material to the public body and a reference to the legal
22 action about which they made statements or presented material.” A.R.S. § 38-431.01(B).

23 145. The Arizona Open Meetings Laws also require that “public bodies of this state,
24 including governing bodies of charter schools, shall: (a) Conspicuously post a statement on
25 their website stating where all public notices of their meetings will be posted, including the
26 physical and electronic locations, and shall give additional public notice as is reasonable and

1 practicable as to all meetings. (b) Post all public meeting notices on their website and give
2 additional public notice as is reasonable and practicable as to all meetings. A technological
3 problem or failure that either prevents the posting of public notices on a website or that
4 temporarily or permanently prevents the use of all or part of the website does not preclude the
5 holding of the meeting for which the notice was posted if the public body complies with all
6 other public notice requirements required by this section.” A.R.S. § 38-431.02(A)(1).

7 146. Under the Arizona Open Meetings Laws, a public meeting generally may not be
8 held “without at least twenty-four hours’ notice to the members of the public body and to the
9 general public.” A.R.S. § 38-431.02(C).

10 147. Notice under the Arizona Open Meetings Laws must include “an agenda of the
11 matters to be discussed or decided at the meeting or information on how the public may obtain
12 a copy of such an agenda. The agenda must be available to the public at least twenty-four hours
13 before the meeting[.]” A.R.S. § 38-431.02(G). “Agendas required under [the Open Meetings
14 Laws] shall list the specific matters to be discussed, considered or decided at the meeting. The
15 public body may discuss, consider or make decisions only on matters listed on the agenda and
16 other matters related thereto.” A.R.S. § 38-431.02(H).

17 148. Under the Arizona Open Meetings Laws, “[a] public body may make an open
18 call to the public during a public meeting, subject to reasonable time, place and manner
19 restrictions, to allow individuals to address the public body on any issue within the jurisdiction
20 of the public body.” A.R.S. § 38-431.01(H).

21 149. According to IRS reporting documents, GreatHearts Arizona completely controls
22 the key decisions of each Great Hearts public charter school in Arizona, fully controls who
23 serves on the Governing Body of each school, and fully controls each school’s significant
24 expenditures.

25 150. GreatHearts Arizona also completely controls policy decisions of every Great
26 Hearts public charter school in Arizona.

1 151. GreatHearts Arizona’s control over the policy decisions of every Great Hearts
2 public charter school in Arizona is documented in the GHA Standard School Policies Guide,
3 which applies to every Great Hearts public charter school in Arizona.

4 152. Based on Great Hearts’ own IRS filings and other documents, the Governing
5 Bodies are *per se* violating Arizona Open Meetings Laws because they have no discretion,
6 authority, or responsibility regarding “policy decisions of the charter school” and simply
7 rubber-stamp policy decision handed down to them by the Great Hearts Corporations.

8 153. Indeed the Governing Bodies violated the Arizona Open Meetings Laws when
9 they simply adopted the Transgender Policy and the “Hair Policy” that was dictated by the
10 Great Hearts Corporations.

11 154. Upon information and belief, some Governing Bodies do not even hold public
12 meetings to adopt policies dictated by the Great Hearts Corporations. Such failure to hold
13 open meetings violate the plain language and intent of Arizona Open Meetings Laws.

14 155. To the extent that Governing Bodies hold governing body meetings to rubber-
15 stamp policies dictated by the Great Hearts Corporations, the meetings are shams where no real
16 discussion, deliberations, or decisions occur, they are often not properly noticed, and they fail
17 to comply with the plain language and intent of Arizona Open Meetings Laws.

18 156. Robert Chevaleau attended several meetings of the Governing Bodies that he
19 learned about, but was informed that the Governing Body was required to adopt the
20 Transgender Policy regardless of the public’s comments.

21 157. Robert Chevaleau and the ACLU of Arizona would have attended other meetings
22 of the Governing Bodies and would have made comments during the open call to the public if
23 they had had advance notice of the meetings.

24 158. Robert Chevaleau and the ACLU of Arizona are persons affected by Great
25 Hearts’ violations of the Arizona Open Meetings Laws and may bring suit “for the purpose of
26 requiring compliance with, or the prevention of violations of, this article, by members of the

1 public body, or to determine the applicability of this article to matters or legal actions of the
2 public body.” A.R.S. § 38-4331.07.

3 159. The Court has the authority to issue a writ of mandamus requiring Great Hearts
4 to hold meetings in public. A.R.S. § 38-431.04.

5 160. The adoption of policies by the Governing Bodies are null and void because the
6 meetings at which they were adopted did not comply with the Arizona Open Meetings Laws.
7 A.R.S. § 38-431.05(A).

8 161. The Court “may also order payment to a successful plaintiff in a suit brought
9 under this section of the plaintiff’s reasonable attorney fees[.]” A.R.S. § 38-431.07(A).

10 **Count III**

11 **(Public Records Laws Violations by the Great Hearts Corporations)**

12 162. The preceding paragraphs are incorporated herein by reference.

13 163. The purpose of the Arizona Public Records Laws is to provide for transparency
14 so that the public “may monitor the performance of government officials and their employees.”
15 *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001) (citation omitted).

16 164. Under Arizona law, every public charter school must have a “governing body”
17 “that is responsible for the policy decisions of the charter school.” A.R.S. § 15-183(E)(8).

18 165. Public charter schools in Arizona are “public bodies” under the Arizona Public
19 Records Laws. Ariz. Op. Atty. Gen. No. I95-10 (1995).

20 166. The Governing Bodies for each of the Great Hearts charter schools in Arizona
21 have no discretion, authority, or responsibility regarding “policy decisions of the charter school.”

22 167. The Great Hearts Corporations are responsible for all policy decisions of each
23 Great Hearts charter school in Arizona.

24 168. The Great Hearts Corporations are responsible for the policies adopted and
25 implemented in each of the Great Hearts charter schools in Arizona, including the Transgender
26 Policy and the “Hair Policy.”

1 169. The boards of directors for the Great Hearts Corporations are public bodies under
2 the Arizona Public Records Laws for the purpose of adoption and implementation of policies
3 for the Great Hearts charter schools.

4 170. The boards of directors for the Great Hearts Corporations stand in the shoes of
5 the Governing Bodies of each of the Great Hearts charter schools in Arizona for the purpose of
6 adoption and implementation of policies.

7 171. GreatHearts America is “supported in whole or in part by monies from this state
8 or any political subdivision of this state, or expending monies provided by this state or any
9 political subdivision of this state.” A.R.S. § 39-121.01(A)(2).

10 172. GreatHearts Arizona is “supported in whole or in part by monies from this state
11 or any political subdivision of this state, or expending monies provided by this state or any
12 political subdivision of this state.” A.R.S. § 39-121.01(A)(2).

13 173. Under Arizona law, public records are to be available for public inspection. *See*
14 A.R.S. § 39-121 (“Public records . . . shall be open to inspection by any person at all times
15 during office hours.”). The Public Records Laws presume that all records are “open to the
16 public for inspection as public records.” *Carlson v. Pima Cty.*, 141 Ariz. 487, 490 (1984).

17 174. Arizona’s Public Records Laws mandate prompt compliance with public records
18 requests. *See* A.R.S. § 39-121.01(D)(1) and (E) (requiring that public records be furnished
19 “promptly”).

20 175. “Prompt” disclosure means that the public body must be “quick to act” and
21 “produc[e] the requested records without delay.” *Phoenix New Times, L.L.C. v. Arpaio*, 217
22 Ariz. 533, 538 (App. 2008) (citation and internal quotation marks omitted).

23 176. Under the Public Records Laws, “when records are subject to disclosure the
24 required response is the prompt and actual production of the documents.” *Phoenix New Times*,
25 217 Ariz. at 538 (emphasis added).

1 177. The failure to promptly furnish records constitutes a wrongful denial as a matter
2 of law. *Phoenix New Times*, 217 Ariz. at 538.

3 178. The Great Hearts Corporations have not provided any records in response to the
4 ACLU of Arizona's public records request of September 26, 2017, its renewal of this request
5 on March 1, 2018, and its further requests on July 31, 2018, and August 15, 2018.

6 179. "The public's right to know any public document is weighty in itself," and that
7 interest is even greater where, as here, "the public documents are of broad and intense
8 interest." *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 (App. 2001). The Great
9 Hearts Transgender Policy was and continues to be the subject of media coverage and public
10 interest.

11 180. Because of this intense public interest, it is extremely important that the public
12 promptly receives direct access to the records in the possession of the Great Hearts
13 Corporations. The public must be able to monitor the actions of Arizona's public charter
14 schools, and the purpose of the Public Records Laws is undermined when public business is
15 conducted in secret for the purpose of avoiding scrutiny.

16 181. The refusal to provide records and the delay in providing records by the Great
17 Hearts Corporations in response to the ACLU of Arizona's requests violates the Public
18 Records Laws. A.R.S. § 39-121, *et seq.*

19 182. The delay and refusal of the Great Hearts Corporations to provide public records
20 in response to the ACLU of Arizona's requests as described above gives rise to a civil action
21 under A.R.S. § 39-121.02(A): "Any person who has requested to examine or copy public
22 records pursuant to this article, and who has been denied access to or the right to copy such
23 records, may appeal the denial through a special action in the superior court, pursuant to the
24 rules of procedure for special actions against the officer or public body."

1 183. Upon prevailing in a lawsuit arising out of its public records requests, the ACLU
2 of Arizona is entitled to an award of attorneys' fees and costs. *See* A.R.S. §§ 39-121.02, 12-
3 348, 12-341, and 12-2030.

4 **Count IV**

5 **(Public Records Laws Violations by the Great Hearts Charter Schools)**

6 184. The preceding paragraphs are incorporated herein by reference.

7 185. Public charter schools in Arizona are "public bodies" under the Arizona Public
8 Records Laws. Ariz. Op. Atty. Gen. No. I95-10 (1995).

9 186. It violates the Arizona Public Records Laws for the Great Hearts public charter
10 schools in Arizona to redact "names and emails of all Great Hearts Arizona and Great Hearts
11 America executives and employees" in records provided to the ACLU of Arizona in response
12 to its March 1, 2018, and July 31, 2018 public records requests.

13 187. It also violates the Arizona Public Records Laws for the Great Hearts public
14 charter schools in Arizona to withhold records in their custody, possession, or control simply
15 because they were generated by a teacher or staff member employed by GreatHearts Arizona,
16 or because they are in the email folders of a teacher or staff member employed by GreatHearts
17 Arizona, or they otherwise "relate" to a teacher or staff member employed by GreatHearts
18 Arizona.

19 188. Under the Arizona Public Records Laws, there is a "presumption requiring the
20 disclosure of public documents." *Griffis v. Pinal Cty.*, 215 Ariz. 1, 4 ¶ 8 (2007).

21 189. To overcome the presumption in favor of disclosure of public records, Great
22 Hearts must "specifically demonstrate how production of the documents would violate rights
23 of privacy or confidentiality, or would be detrimental to the best interests of the state." *Phoenix*
24 *Newspapers, Inc. v. Ellis*, 215 Ariz. 268, 273 ¶ 22 (App. 2007) (citation and internal quotation
25 marks omitted). Great Hearts must carry "[t]he burden of showing the probability that specific,
26

1 material harm will result from disclosure” of the documents redacted and withheld from the
2 ACLU of Arizona. *Id.*

3 190. The delay and refusal of Great Hearts to provide public records and unredacted
4 public records in response to the ACLU of Arizona’s requests as described above gives rise to
5 a civil action under A.R.S. § 39-121.02(A).

6 191. Upon prevailing in a lawsuit arising out of its public records requests, the ACLU
7 of Arizona is entitled to an award of attorneys’ fees and costs. *See* A.R.S. §§ 39-121.02, 12-
8 348, 12-341, and 12-2030.

9 **RELIEF REQUESTED**

10 Plaintiffs Robert Chevaleau and the ACLU of Arizona respectfully request that this
11 Court provide the following relief:

12 A. A declaratory judgment declaring that:

13 1. The boards of directors of the Great Hearts Corporations are public bodies
14 for purposes of the Arizona Open Meetings Laws when they make policy decisions for
15 the Great Hearts public charter schools in Arizona;

16 2. The boards of directors of the Great Hearts Corporations did not comply
17 with any requirements of the Arizona Open Meetings Laws for the meetings in or
18 around June 2016 when they adopted the Transgender Policy because they did not (1)
19 hold public meetings and allow members of the public to attend and listen to
20 deliberations at the meetings, (2) post notice of the meetings and make their agendas
21 available to the public as required, or (3) take minutes or make recordings of their
22 meetings as required;

23 3. The adoption of policies by the boards of directors of the Great Hearts
24 Corporations are null and void because the meetings at which they were adopted did not
25 comply with the Arizona Open Meetings Laws;
26

1 4. The Great Hearts Corporations are public bodies under Arizona’s Public
2 Records Laws when they make policy decisions for the Great Hearts public charter
3 schools in Arizona;

4 5. The Great Hearts Corporations violated Arizona’s Public Records Laws
5 by refusing to produce public records related to their policy decisions;

6 6. By outsourcing the development and adoption of policies to the Great
7 Hearts Corporations and by not providing documents in response to public records
8 requests related to those key public functions, the Great Hearts charter schools and their
9 officers have failed to “maintain all records . . . reasonably necessary or appropriate to
10 maintain an accurate knowledge of their official activities and of any of their activities
11 which are supported by monies from this state” as required by A.R.S. § 39-121.01(B);
12 and

13 7. The Great Hearts charter schools violated Arizona’s Public Records Laws
14 by withholding records in their custody, possession, or control simply because they
15 were generated by a teacher or staff member employed by GreatHearts Arizona, or
16 because they are in the email folders of a teacher or staff member employed by
17 GreatHearts Arizona, or they otherwise “relate” to a teacher or staff member employed
18 by GreatHearts Arizona.

19 B. Special action relief:

20 1. Requiring the Great Hearts Corporations to hold their meetings in public,
21 and in compliance with the Arizona Open Meetings Laws, when they make policy
22 decisions for the Great Hearts public charter schools in Arizona; and

23 2. Requiring the Great Hearts Corporations and the Great Hearts charter
24 schools to immediately produce all public records responsive to the public records
25 requests made by the ACLU of Arizona, including the removal of inappropriate
26 redactions on documents already produced in part.

1 C. Injunctive relief:

2 1. Requiring the Great Hearts Corporations to hold their meetings in public,
3 and in compliance with the Arizona Open Meetings Laws, when they make policy
4 decisions for the Great Hearts public charter schools in Arizona; and


5 2. Requiring the Great Hearts Corporations and the Great Hearts charter
6 schools to immediately produce all public records responsive to the public records
7 requests made by the ACLU of Arizona, including the removal of inappropriate
8 redactions on documents already produced in part.

9 D. Attorneys' fees and costs incurred by Plaintiffs pursuant to A.R.S. §§ 39-121.02,
10 12-348, 12-341, and 12-2030, the private attorney general doctrine, or any other statute or
11 common law doctrine under which fees and costs may be recoverable; and

12 E. Such other relief as the Court may deem necessary and appropriate under the
13 circumstances.

14
15 Respectfully submitted this 26th day of September, 2018.

16 **COPPERSMITH BROCKELMAN PLC**

17
18 By 
19 Roopali H. Desai
D. Andrew Gaona

20 **ACLU FOUNDATION OF ARIZONA**

21 Kathleen E. Brody
22 Darrell L. Hill

23 *Attorneys for Plaintiff*
24
25
26

Exhibit 1

Great Hearts Academies Standard School Policies Guide



What follows are standard Great Hearts Academy Policies to be reviewed and adopted by all local site boards.

Great Hearts Academies Governance Structure

All network schools are wholly-owned subsidiaries of Great Hearts Academies (GHA). As such:

1. The GHA Lead Office Executive Team, under the governance oversight of the GHA Executive Board, sets network-wide policies that the local Site Governing Board is always subject to and must apply. Local Site Governing Boards may make policy recommendations to the Executive Team for network-wide policy consideration.
2. Site Governing Board members are appointed by and serve at the pleasure of the Great Hearts Executive Board.

Each school site receives a set of professional management services in areas including curriculum development, human resources, finance, legal, facilities, development/fundraising, enrollment/admissions, and special education. Professional services fees ranging from 8-10% of the academy's state aid will be included each year in the academy's approved annual budget.

Academy Employees

See Board Approved *Faculty Handbook*

Signing of Faculty and Staff Agreements

Academy Faculty and Staff are employees of Great Hearts Academies. Agreements are not fully signed – by Headmaster and CEO of Great Hearts – until candidates successfully complete the Great Hearts Human Resources background clearance process, including AZ Dept. of Public Safety Class I Fingerprint Clearance Card, phone reference checks, etc.

GHA schools are not for profit, non-sectarian charter schools and do not discriminate in their hiring practices on the basis of gender, race, religion, national origin, or disability.

GHA schools do not require certification for our teachers, but faculty must be highly qualified in the subjects they teach. Typically this is accomplished with a degree and/or 24 credit hours in the specific subject area (history, or life science, for example).

GHA schools do not sponsor H1B visas for faculty. Proposals for exceptions to this policy must be submitted to Great Hearts Human Resources.

Exhibit 2



Great Hearts Transgender Policy

Approved by Arizona Board on June 22nd, 2016

ASSUMPTIONS

1. That the recognition of any distinction between “gender identity” and biological sex is not yet a matter of settled law in the United States;
2. That there exists no general consensus but rather disagreement between the State of and the United States and in the United States as a whole—legal, scientific, educational, philosophical—about the relationship between “gender identity” and biological sex;
3. That GH will comply with all settled law (plain language of statute, controlling case law and duly adopted administrative regulations) for the states in which it operates schools;
4. That GH will take into account each student’s right to privacy and safety in accessing facilities;
5. That EVERY CHILD entrusted to our schools, regardless of sex, class, race, religion, and national origin, is to be educated with exactly the same level of care and respect for his/her dignity and innate human potential.

POLICY

PURPOSE

GreatHearts is responsible for ensuring the safety of all students during the school day and during school activities. This includes providing for the physical privacy rights of students. GreatHearts is further responsible for maintaining order, decorum and discipline during school. GreatHearts is further responsible for ensuring the educational environment is free from disruption and disturbance, and provides equal educational opportunity to all students. The following policy is found by the Board of Directors to be in the best interest of students and necessary for maintaining privacy rights of students, maintaining safety, discipline and order, and in preserving the educational environment:

DEFINITION

“Sex” means an individual’s biological classification as male or female at the time of birth and as recorded on their official state-issued birth certificate.

POLICY

A. Student enrollment and instruction

1. Schools will record, report, and classify each enrolled student as male or female according to the sex as indicated in the submitted enrollment documents. In the event of a discrepancy, the sex as indicated on the birth certificate will be considered as accurate.
2. In the event of an update or change to a birth certificate, the school shall consider the information upon the most recent birth certificate as accurate, and shall modify all school records as pertinent.
3. Schools will record and report the legal name of the child as recorded in enrollment documents submitted by the family. School staff may either a) refer to a child by the name as indicated in school records, or b) refer to the child by a variant nickname sanctioned by the student and his/her family.
4. School personnel may use the personal pronouns consistent with the sex of students as recorded in school records described above.
5. When a learning activity calls for the separation of students by sex, students shall be classified according to sex as recorded in current school records described above.
6. Students must adhere to the uniform code and grooming standards of their sex as recorded in current school records described above.

B. Use of School Facilities

1. Schools shall maintain restroom and locker room facilities that are single-sex only, and shall also provide single-occupant restroom and changing facilities that are sex-neutral. Students are permitted to use the single-sex facilities that correspond to their sex as noted in current school records describes above, and single-occupant restrooms and locker/changing rooms that are open to use by individuals of either sex.
2. Restrooms, locker room facilities and changing facilities shall be clearly marked and designated for the assigned sex or sex-neutral.
3. This shall not apply to a person or persons who enter a single-sex facility for purposes of
 - a. Maintenance
 - b. Providing medical assistance
 - c. Protecting a student/students from a threat to good order or safety
 - d. Shelter in an emergency
4. No student shall be compelled to use a single-sex restroom or locker/changing room facility against their wishes; access to private, sex-neutral facilities will be provided.

C. Participation in school activities

1. Students are eligible to participate in the single-sex athletic activities that correspond to their sex as noted in current school records and based on requirements of the specific league or ruling body for the athletic activity .

Exhibit 3

Message

From: David Dean [/O=SSBCUSA/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DAVID DEANC97]
Sent: 10/18/2016 1:59:51 PM
To: [Redacted]
Subject: FW: Guidance re: Policy on Biological Sex and Gender
Attachments: Public and Media Relations Policy.docx; Biological Sex and Gender Policy 6 22 16.docx

Mr. [Redacted]

Have we done both the website and handbook?

David Dean | Headmaster

Veritas Preparatory Academy | 3102 N. 56th St., Suite 100 | Phoenix, AZ 85018

P: (602) 263-1128, ext. 412 | F: (602) 263-7997 | E: ddean@veritasprepacademy.org | W: www.veritasprep.org



NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the person named above by reply e-mail, and then delete the original e-mail. Thank you.

From: [Redacted]
Sent: Monday, October 17, 2016 4:26 PM
To: Headmasters - Prep
Subject: FW: Guidance re: Policy on Biological Sex and Gender
Importance: High

Dear Headmasters:

Please verify that you have indeed placed the attached "Biological Sex and Gender Policy" in your *Family Handbooks* and posted the revised handbook to your websites, as you were instructed to do in the August 5 e-mail below.

Reply individually to me to either a) confirm that this was already done, or b) to report that while it had not been done at the time of receipt of this email, it has now been done.

Thank you,

[Redacted]

From: [Redacted]
Sent: Friday, August 5, 2016 4:06 PM
To: Headmasters - Archway <Headmasters-Archway@GreatHeartsAZ.org>; Headmasters - Prep <Headmasters-Prep@GreatHeartsAZ.org>

[Redacted]

Subject: Guidance re: Policy on Biological Sex and Gender

Dear Headmasters,

As Redacted discussed on Wednesday's call, we are to include the Biological Sex and Gender (i.e. transgender) Policy in our handbooks in their entirety, meaning the entire document, not just the portion entitled "policy". The policy document is attached, as are templates for the archway and prep family handbooks which already have the policy inserted so that you can see what is intended.

Instructions for inserting the policy into the handbook are as follows:

1. Make sure your handbook uses the title "Biological Sex and Gender Policy" to refer to this policy, both in the table of contents and as the section heading in the body of the handbook.
2. Copy and paste the entire contents of the attached policy document into your family handbook as seen in the attached templates. The policy is to be inserted between
Preps: Over-the-Counter Medication and FERPA
Archways: Asthma/Anaphylaxis and FERPA
3. Verify the text format and pagination are as they should be
4. Go to the home tab, Highlight the section header "Biological Sex and Gender Policy" and then click "heading 2" in the toolbar (you may need to reformat the font at this point)
5. Go the Reference tab and click "update table" (perhaps under "table of contents") then select "update entire table" if prompted
6. Verify the table of contents and text are as they should be

If/When you find yourself fielding questions from your parent community, here are the talking points to which you must hold:

1. The Great Hearts board of directors took action this past summer to establish clear guidelines for schools around these emerging issues. These internal policies are provisional and subject to review.
2. It is not Great Hearts' place to take a position on matters of social policy/legislation; it is our duty to comply with settled laws and norms.
3. Transgender issues in k-12 education are in a state of legal uncertainty at present—laws and norms are NOT settled. Recent federal guidelines are in conflict with a number of state/local norms; Arizona and Texas, the two states in which Great Hearts operates schools, have both taken legal action challenging these recent federal guidelines. Great Hearts is taking a 'wait-and-see' approach.
4. We educate all children irrespective of race, sex, religion, or ethnicity, and we are 100% committed to maintaining a safe and inclusive learning environment for all students.

IN THE EVENT that a parent in your community wants to engage you in a theoretical-litigious conversation about particular points in the policy, you should not let yourself get pulled down into the weeds. Say something like this:

"Well, I don't want to get into theoreticals. We will apply this policy in particular cases, with attention to the particulars, as we need to."

Please also refer to the attached "Media Relations Policy" in all matters involving inquiries from outside your parent community. And, as always, reach out to us with questions.

Best,

Redacted

Exhibit 4

----- Forwarded message -----

From: **Robert Chevaleau** <chevaleau@gmail.com>

Date: Mon, Aug 22, 2016 at 1:37 PM

Subject: RE: Finding a time to meet

To: David Denton <DDenton@greatheartsaz.org>

Cc: "larmstrong@archwayscottsdale.org" <LArmstrong@archwayscottsdale.org>

Thanks Mr Denton.

ACS is Archway Scottsdale?

Who sits on this board? Who is the audience? That is, is this just internal to the school or a wider Great Hearts audience?

To me it sounds as though there is no path for me to communicate with the Board directly. As you are declining my invitation of providing you with an educational session, there is no path for me to communicate directly with your peers. I have no way to propose an alternative transgender student policy that ensures dignity and respect to all Great Hearts students. As you might imagine, I find this disappointing and frustrating.

I still have unanswered questions. How did this policy come about? Why was guidance and recommendations from medical and psychological experts not taken into consideration when drafting this policy? Who, if anyone, reviewed this policy from a professional (educator) perspective? What were their recommendations and why were they ignored?

You stated that Great Hearts is not taking a side on this matter. From my perspective, it seems that Great Hearts is taking up a hard side in favor of whatever political motives drive the 13 states currently suing the Obama administration, this at the expense of Great Hearts' moral obligation of protecting the rights of all their students.

Are you willing to grant me an audience to whom I can address these concerns? Or, is the conversation from your perspective over?

Respectfully,
Robert Chevaleau

On Aug 22, 2016 12:28 PM, "David Denton" <DDenton@greatheartsaz.org> wrote:

My apologies for the delay. This email landed in my outbox and didn't send.

Dear Mr. Chevaleau,

Thank you for your email and your time in conversation. After looking into the matter I have discovered that I was in error regarding the GH AZ board meetings. These meetings are not public, but the academy site board meetings are. The next ACS board meeting will be September 22nd at 4pm at ACS. During the call to the public at the beginning of the meeting, you would be able to share your thoughts with the board for their future consideration. Thank you also for offering to support a speaker, though we will respectfully decline at this time.

Regards,

David Denton, Vice President, Lower Schools

Great Hearts Academies | 3102 N. 56th St., Suite 300, Phoenix, AZ 85018

W: [\(602\) 438-7045 ext. 427](tel:(602)438-7045)

DDenton@GreatHeartsaz.org | www.GreatHeartsAmerica.org

From: Robert Chevaleau [mailto:chevaleau@gmail.com]
Sent: Monday, August 15, 2016 5:27 PM
To: David Denton <DDenton@greatheartsaz.org>
Cc: Lisa Armstrong <LArmstrong@archwayscottsdale.org>
Subject: Re: Finding a time to meet

Mr Denton, Mrs Armstrong,

Thank you again for taking time to meet.

As discussed, if you could provide me with the next time/date/place for the Great Hearts AZ Board Meeting, I would be appreciative. In looking again this afternoon, the link on the ACS site that is supposed to provide date/times leads to a "page not found": <http://www.greatheartsaz.org/board/aca-s>

I understand your reluctance to allowing me direct access to your staff/teacher email addresses. But I do feel strongly that this issue warrants thoughtful discussion rather than imposing a policy from on high.

Would either of you be open to me supporting an educational presentation to your staff? My thoughts would be that this is not policy focused, just a "Trans 101" class at a staff meeting, teacher in-service or the like? I see this as a wonderful way to directly address some of the ignorance that may be out there and confront questions head-on.

As you both have said, this is a politically charged topic, one that many are interested in, but may not have direct access to good information. Some people feel strongly one way; some feel strongly the other way. In either case, objective, data driven information is important. I'm simply looking for the best way to communicate good information to those who have direct interaction with our children. I know of two leading Drs, one pediatric specialist and one child psychologist, both from Phoenix Children's Hospital, who I am sure would be happy to support.

Please let me know your thoughts.

Sincerely,

Robert Chevaleau

On Thu, Aug 11, 2016 at 5:19 PM, Robert Chevaleau <chevaleau@gmail.com> wrote:

Hello Mr Denton,

I would like to speak further. How about 2pm on Monday, 8/15?

Thanks for reaching out.

Robert Chevaleau

On Aug 11, 2016 5:13 PM, "David Denton" <DDenton@greatheartsaz.org> wrote:

Dear Mr. Chevaleau,

Hello, I hope this email finds you well. Headmaster Armstrong shared with me that you met with her to share your concerns regarding our biological sex and gender policy and would appreciate further conversation. I am hoping that we can meet in person at Archway Scottsdale. Over the next two weeks I am available after noon on Monday, Thursday, and Friday, except tomorrow - I will be away at an all day off-sight meeting. Please let me know what time works for you.

Best Regards,

David Denton, Vice President, Lower Schools

Great Hearts Academies | 3102 N. 56th St., Suite 300, Phoenix, AZ 85018

W: [602\) 438-7045 ext. 427](tel:6024387045)

DDenton@GreatHeartsaz.org | www.GreatHeartsAmerica.org

Exhibit 5

Archway Classical Academy-Scottsdale
Board of Directors
Approved Minutes

Date: 22 September 2016

Time: 4 p.m.

Location: Archway Scottsdale Campus

A meeting of the Great Hearts Academies-Archway Classical Academy-Scottsdale Board of Directors was held at the Archway Scottsdale Campus, 7496 E. Tierra Buena Lane, Scottsdale, AZ 85260, pursuant to A.R.S. 38-431.02, notice having been duly given.

I. Call to Order

Ms. Papke called the meeting to order at 4:03 p.m. The following directors/administrators were present/absent:

Directors	Office	Present	Absent	Notes
Helen Hayes	President	x		Elected this meeting; attended by phone then in person
Marilyn Papke	Vice President	x		Elected this meeting
Amanda Shearer	Secretary	x		Elected this meeting
Mary Frances Jeffries	Director	x		
Administration/Guests				
Lisa Armstrong	Headmaster, Archway Scottsdale	x		
Elvia Barbosa	Staff Accountant, GH	x		
Diane Kar	Director of Academy Giving, ACS and SPA	x		

II. Call to the Public

Ms. Papke made a call to the public at 4:03 p.m. There was one member of the public present, and he addressed the board.	
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Mr. Robert Chevaleau is the parent of a third grade student at Archway Scottsdale. She loves the school, and he has been happy with the school's commitment to diversity, so he was disappointed and surprised when he learned about the transgender policy Great Hearts has adopted. He believes it is transphobic, unhealthy, unsafe and promotes conversion therapy, which he contends has been ineffective. So far, he has talked to Ms. Armstrong and Mr. Denton to make his argument. He was disappointed with the meeting with Mr. Denton, who was polite but unwilling or unable to move the conversation forward. However, Mr. Denton informed him of the board meeting today. Mr. Chevaleau is interested in making himself available to anyone at any time to discuss the issue further. He also wanted to present a challenge to the board: He asked the board to meet its own 12th grade standard -- where seniors write a thesis and defend it. He wants the board to have a conversation and discuss the policy. He also stated that there seems to be a lot of secrecy in the policy; it is not transparent. Why wasn't the policy created openly by the board? Mr. Chevaleau has seen the damage a poor unsupportive environment can create. He has also seen a supportive environment which created amazing things. One in every 200 people is transgender, so within the Great Hearts network, there are approximately 45 or 50 students. He also knows one friend whose student was 'kicked out' of Great Hearts because she was transgender. Because there are transgender students in the school and there are more on the way, the policy needs to be re-addressed.

Ms. Armstrong said that she told Mr. Chevaleau when they met that the policy is a Great Hearts policy enacted by the Great Hearts board and is not something the Archway Scottsdale school board could deal with. She said it was a good idea for the board to hear the issue and thanked Mr. Chevaleau for attending and speaking.

Ms. Hayes responded on behalf of the Archway Scottsdale board. She also appreciates Mr. Chevaleau's comments, noting he participated in the wonderful civil

discourse that Great Hearts hold dear. While there are avenues available to us, sometimes the next step is crystal clear and other times the next step requires prior planning. Whatever the next step is, Ms. Hayes will be sure that Mr. Chevaleau is informed so he can participate if possible.

Ms. Papke said as board members, we should look into the child that was kicked out of a GH school. She would appreciate the information if Mr. Chevaleau would be willing to share.

III. Approval of Consent Agenda

Ms. Hayes arrived and took over the meeting.
a. Approval of the Minutes from the June 6, 2016 Telephonic Meeting
b. Approval of minutes of the July 12, 2016 Telephonic meeting
d. Approval of the GH Standard School Policies Guide

Ms. Papke made a motion that the board approves the consent agenda as presented. Dr. Jeffries seconded, all in favor,, none opposed, the motion carried at 4:20 p.m.

IV. Election of Board Officers for 2016-17

After discussion a motion was made.

Ms. Shearer made a motion that the board approves Helen Hayes as president, Marilyn Papke as vice president and Amanda Shearer as secretary. Dr. Jeffries seconded, all in favor, none opposed, the motion carried at 4:23 p.m.

V. Headmaster's Report

Ms. Armstrong reported that the school is off to a great start and met first day enrollment goals. She reviewed some activities coming up for parents such as Spalding

Night, offered by Archway Scottsdale staff with Ms. Armstrong leading it. There is also a Singapore Math seminar coming up, timed to be held right after conferences when some parents realize they need some help understanding Singapore Math. It is set for the third week in October.

A board member asked how the new observation process is going at Archway Scottsdale. Ms. Armstrong said it was a little overwhelming at the start of the year but is becoming more manageable now that everyone knows the process and is in sync. She believes more notice about such a change would be a good idea in the future. She is doing half one week and half the next week. She believes if she is in each class 25 times per year it will be enough. Some of the excellent veteran teachers are a different matter; she has begun asking them what they want to try in their classrooms to improve them, and what she can do to help facilitate the change. The assistant headmaster is observing the Specials teachers right now. She expects to delegate some observations to the leadership team in the future.

All new lead teachers came from Archway Scottsdale and one from Maryvale Prep. Assistant teachers are trained very well and are able to step into a lead position easily, prepared and knowing the mission of GH. We had to hire more assistant teachers and are very pleased with them.

MAP testing: Ms. Papke asked how well the technology worked for the test. Archway Scottsdale piloted technology class that students attend each week. MAP testing allows the teacher to suspend a test and pick it up at a later date. Kindergarten students needed a little more time, so the technology teacher will start those classes earlier to get a bigger block of time. In technology class, students do keyboarding as well as chess. A lot of students say technology is their favorite special now. Archway Scottsdale is also piloting Chromebook with students and likes it a lot.

VII. Financial Report

<p>a. Review of Year to Date Financial Highlights: b. Review of Preliminary Audited Financial Statements for Year Ended June 30, 2016: Ms. Barbosa reported starting on page 11 of the board packet. The audit is complete and any necessary adjustments are reflected in the financials. She reviewed the FY16 actuals column and the very favorable variances therein. The FY17 column was reviewed, including variances. There was a CI variance because the Development department at GH increased the goals after the budget was complete. The general liability insurance was budgeted but a software error did not transfer the number to the final budget that was approved. Ms. Armstrong reported that she expects to be off by \$90,000 in lease expenses. The lease terms went up this year and was not caught before the budget was approved.</p>		
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VIII. Development Report

<p>Ms. Kar reported great CI when we met and exceeded the goal last year. We are not in the same place as last year. CI this year is off; last year at this time ACS had 116% of the CI goal and this year it is only at 90% of the goal, or \$32,000 behind where we were last year. Family participation is 7% below where it was last year. Non donor letters will be going out soon followed by phone calls. In the Headmaster Update going out Monday September 26th, we will let families know we are way behind last year but won't share that we are at 90% of goal; since we need to be over goal by 10% to achieve the goal (due to pledges that are not fulfilled for one reason or another), we will share the goal as 81%. Fourth grade is lowest in participation and second grade is second lowest. We will reach out to first grade parents asking them to consider giving now that Kindergarten tuition isn't a factor. She's had success with that in the past. Interestingly, Kindergarten is second highest in giving this year so far.</p>		
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IX. Possible Executive Session

<i>Minutes transcribed separately.</i>	Ms. Shearer made a motion that the board enters Executive Session and invites Ms. Armstrong to join. Ms. Papke seconded, all in favor, none opposed, the motion carried at 4:47 p.m.
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X. Leave Executive Session

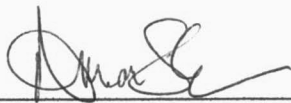
	Ms. Papke made a motion that the board leaves Executive Session. Dr. Jeffries seconded, all in favor, none opposed, the motion carried at 4:55 p.m.
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XI. Possible Motions from Executive Session

None.	
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XII. Adjournment

a. Next Board Meeting: 1 p.m. Wednesday, November 16, 2016 at Great Hearts Quayle Campus.	Ms. Hayes adjourned the meeting at 4:55 p.m.
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Amanda Sheerer, Secretary of the Board

-Allison Harmon, Scribe-

Exhibit 6



GreatHearts Privacy Practice and Accommodations Guidance

1. GreatHearts will comply with all settled law (statute, controlling case law and administrative regulations) for the jurisdictions in which it operates schools;
2. GreatHearts will take into account each student's privacy and safety;
3. EVERY STUDENT entrusted to our schools is to be educated with exactly the same level of care and respect for his/her dignity.
4. At the request of the parents or legal guardians, accommodations and/or modifications to standard policies and procedures will be considered through a formal process.

A. Student enrollment and instruction

1. Schools will record and identify each enrolled student as required by state law.
2. Schools will record and report the legal name of the student as recorded in enrollment documents submitted by the family. School staff will upon request refer to the student by a variant name or nickname sanctioned by the student and both his/her custodial parents or guardians.

B. Use of School Facilities

1. Schools shall maintain single-sex restroom and locker room facilities, and shall also provide single-occupant restroom and changing facilities. Students may use the single-sex facilities that correspond to their current school records described above, and single-occupant restrooms and locker/changing rooms that are open to use by all students.
2. This section shall not apply to a person or persons who enter a single-sex facility for purposes of
 - a. Maintenance
 - b. Providing medical assistance
 - c. Protecting a student/students from a threat to good order or safety
 - d. Shelter in an emergency
3. No student shall be compelled to use a single-sex restroom or locker/changing room facility against their wishes; access to private, single occupant facilities will be provided.

C. Participation in school activities

1. Students are eligible to participate in athletic activities based on requirements of the specific league or ruling body for the athletic activity.

Exhibit 7

----- Forwarded message -----

From: **Robert Chevaleau** <rob@aztypo.org>

Date: Wed, Apr 4, 2018 at 10:59 AM

Subject: Re: B3. GH Bathrooms/Locker rooms

To: Erik Twist <etwist@greatheartsaz.org>, Madelaine Adelman <mad@glphenix.org>

Thanks, Erik. My responses in pink.

Robert Chevaleau
President
Arizona Trans Youth and Parent Organization
aztypo.org

On Tue, Apr 3, 2018 at 1:38 PM, Erik Twist <ETwist@greatheartsaz.org> wrote:

Thanks, Rob.

Responses in blue.

I hope we can agree that our most common ground is the love for children and the want for them to achieve their highest potential.

We have always agreed on this. Love must be the guiding principle.

I hope we can also agree that school ought to provide at least three things to all students:

- 1) a place that is safe, free of mental and physical harassment; Absolutely
- 2) a place in which to develop and thrive intellectually and creatively; Without question
- 3) a place where a student can feel they are a part of something bigger than themselves, if for no other reason than to feel as though they are not alone. Yes

I've reviewed my records of our recent meetings. This goes beyond a misunderstanding. Rob, to be frank, from my end it looks to me like you are trying to shape the content of those discussions toward a position I have never articulated on behalf of GH.

That is not my intent.

I would like your help in memorializing Great Hearts' current position on policy change.

The current Biological Sex and Gender Policy will be completely removed and replaced from the GH Family Handbook in time for the 2018-2019 school year. Is this correct?

Yes. That is correct.

The replacement policy will be published in the GH Family Handbook and not vary significantly from the draft policy you sent to me in March that we discussed Mar 9. Is this correct? Attached for reference. Yes. That is correct.

Your statements below indicate that a transgender student will be compelled to use single occupancy facilities (Nurse's bathroom, et. al.). Is this correct?

B3 – “No student shall be compelled to use a single-sex restroom or locker/changing room facility against their wishes; access to private, single occupant facilities will be provided.” If any student feels uncomfortable using a public facility that corresponds to their biological sex, a private facility will be made available. This is the standard policy and procedure codified in the policy revision.

The “formal process” mentioned in #4 of the attached draft policy will be based on (or influenced by or modeled after or...?) the Gender Spectrum Gender Support Plan or something similar. Is this correct? The Gender Spectrum documents have been helpful for understanding what a formal process might need to take into consideration. And while I have read them, the HRC documents are not the basis for either the policy or the formal process mentioned in #4.

Honestly, every single school with whom I've worked throughout Arizona for 3 years has readily adopted Gender Spectrum's support plan. All of them - every one - has been thankful that all of the leg work has been completed and a tool is free and available to support the school and their families that is readily embraced by LGBTQ advocates. I fail to understand the reticence GH shows towards openly adopting Gender Spectrum's template. The work is done. We love it. It covers the school. It mitigates risk. It shows the school has done their due diligence.

Why wouldn't GH base their formal process on these documents? What is the semantic game? "Based upon" vs "take into consideration?"

The “formal process” will be an agreement between the school, the student, and parent(s)/guardian(s). It will be initiated upon request by the family and will treat the student with the same level of dignity and respect as all other students. Is this correct? The process will be initiated upon request of the family and will work towards agreement, of course. Should consensus not be reached, the school will make the final determination of what accommodations will be made. And, yes, we are utterly committed to treating all of our students with dignity and respect.

I assume that, should the above agreement support the transgender student with the use of facilities in line with the student's gender identity, GH leadership/execs/Board will not prohibit this agreed upon support. Is my assumption correct? Like in any matter regarding our schools, GH leadership has final review should it be necessary. That review is completely dependent on the particulars of the matter.

Should a cisgender student at GH feel “unsafe” in facilities, the cisgender student will be asked (have the option) to use a private, single occupancy facility. Is this correct?

Again, B3 – “No student shall be compelled to use a single-sex restroom or locker/changing room facility against their wishes; access to private, single occupant facilities will be provided.”

Great Hearts will provide training on how best to support transgender students in line with current mainstream best practices (as supported by AMA, APA, AAP, Dept of Education, ASBA, AIA, Gender Spectrum, HRC, I could go on) to all Great Hearts employees in July 2018. Is this correct? [GH is putting training together. That training is not yet codified.](#)

GH will be conducting the training themselves? Who do you consider to be qualified to develop and deliver the training?

My primary concerns are:

1) GH training will be influenced by the likes of Dr McHugh, Dr Breaux, or Alliance Defending Freedom. As I tried to make clear in the past, their positions are nothing less than abusive. I am happy to expand on this point as needed; [I would welcome your expanded take on their research and why you find it abusive.](#)

Links below. I tried to provide you with objective source material.

Yes, some links come from LGBT advocacy groups or sources that may be considered progressive. They are an important source from which to base our discussion.

I challenge anyone to find an advocate of LGBT rights who would agree w/ McHugh, Breaux's techniques, or who supports the message of ADF, ACPeds, or the like.

It would be totally inappropriate for GH to use any of the actors below as a resource for planned training.

On Dr McHugh

- [Current position of Johns Hopkins, McHugh's former employer](#)
- [Human Rights Campaign on McHugh](#)
- [Washington Post article on course correction at Hopkins](#)
- [Global response to McHugh's 2014 WSJ op ed](#)

On Dr Breaux and her methods of reparative/conversion therapies

- [Article and links from American Psychological Association on best practices to support LGBT youth; includes discussions on conversion therapy](#)
- [Study by SAMHSA of US Dept of Health and Human Services](#)
- [More from HRC](#)

On Alliance Defending Freedom

- [SPLC article discussing recent efforts by ADF](#)
- [Media Matters article highlighting recent efforts by ADF](#)
- [More from HRC](#)

I should add info on American College of Pediatrics (ACPeds) as well

- [Intro to ACPeds](#)
- [Response from Society for Adolescent Health and Medicine \(SAHM\) to Dr. Cretella \(ACPeds President\) on an article she wrote last summer](#)
- [Article from Southern Poverty Law Center](#)

2) The “formal process” will be stymied by individuals at Great Hearts who put personal beliefs ahead of the mental health and safety of Great Hearts students. I cannot think of a single colleague at GH whose personal beliefs aren’t anchored to their passionate commitment to the mental health and safety of children.

Personal beliefs that conflict with the idea that a person's gender identity is independent of their biological sex are problematic. This is the crux of our protest for the last 2 years. Bad actors at GH have delivered a message of intolerance towards their trans students, seemingly based in personal conviction.

1) As early as February 2016, GH praised headmasters who would choose to out a transgender student to their school, parents, and community, placing the trans student at risk of physical and mental harm. I turn you to GH lawyers at Snell & Wilmer for statements on record stating as such coming directly from GH.

2) One day after the GH Bio Sex policy was passed, GH Board member, Christine Jones, stated, "In this country nobody should be required to provide professional services, educational services...or any other kind of services that would violate their deeply held religious [personal] beliefs or their conscience." I see risk in her statement. What will GH do when a teacher, administrator, executive, or Board member refuses to educate one of your students or to support them in their gender identity?

3) I have seen statements from Jay Heiler that are alarming. I have spoken to GH Board members past and present that cause me to double down on my concerns. Given the top-down organizational structure of GH, I can only assume that GH's continued reluctance to follow mainstream, objective measure on how best to support your transgender students is being driven from the top.

My concern is less about the passionate commitment of GH leadership but rather their willingness to course correct once it is brought to their attention that the personal beliefs of some are in direct conflict with the mental health and safety of the transgender and gender nonconforming children under their care.

Frankly, I'm surprised you're asking me to spell out this point. I have ample cause for concern over the positions taken by some of your colleagues.

Rob

On Thu, Mar 29, 2018 at 12:26 PM, Erik Twist <ETwist@greatheartsaz.org> wrote:

Rob,

My responses below in blue.

From the transcript of our Mar 9 conversation:

R: ...a trans girl for example, wants to use the girls room, she will not be compelled to use the mens room.

E: That's right. This was not meant to convey that they would be allowed to use the girl's room. Simply that they would not be compelled to use the boy's room.

Then a discussion on how GH wants the student to follow the formal process layed out in point 4. Then a discussion on how GH will not compel a student to use a restroom that makes them feel "uncomfortable," including being compelled to use the nurse's office, etc. If the location of the nurse's office is onerous, the student will not be limited to that option. We will make other private facilities available.

Compelling a student to use the nurse's office because they are trans is in opposition to point 3, "Every student entrusted to our schools is to be educated with exactly the same level of care and respect for his/her dignity." Offering alternative, private facilities that do not stigmatize or are difficult to access is the commitment I clearly made to you. To do so is not in opposition to point 3.

In earlier meetings you indicated a trans student would be allowed full access to all facilities in line with a student's gender identity. "Everything?" I asked. "Everthing," you stated. This is simply not true, Rob. I would have never told you that we were offering full access. I cannot imagine how you got this impression, especially given the clear language of the policy.

This is also in line with the Welcoming Schools curriculum you stated GH will be using for their training.

>... I never told you that those documents were the basis of a new policy...

You said exactly this.

I, too, am baffled.

It's unfortunate you misunderstood me or I misunderstood your question. I would never want that. Let me be clear, the policy does not have its basis in the Welcoming Schools curriculum. And I never stated that we would be using the Gender Spectrum docs for our training. I simply told you I had them and they did provide insight into what a formal process might need to take into consideration.

Sincerely,

Erik

Robert Chevaleau

President

Arizona Trans Youth and Parent Organization

aztypo.org

On Thu, Mar 29, 2018 at 7:27 AM, Erik Twist <ETwist@greatheartsaz.org> wrote:

Dear Rob,

I read the New Times article. Needless to say, our understanding of what we discussed does not align.

For instance, "Chevaleau, who said he has reviewed a draft of the new policy, said that transgender and gender nonconforming students will now be able to access facilities." You know very well that the policy does not open up access to single sex facilities based on gender identity. I never once made such a commitment. Section B3 highlights our commitment to ensuring that students who feel uncomfortable with the single sex facilities for any reason will be given access to private facilities.

You also state, "...Twist told him that Great Hearts has based its new, more inclusive policy on the Welcoming Schools program from Human Rights Campaign." I never said any such thing. I said that I had received the Gender Spectrum documents and that we were using that to inform what a formal process might need to take into consideration. I never told you that those documents were the basis of a new policy.

While we don't agree on everything, we have tried to respect and listen to one another. That is why I am disappointed and baffled as to why you went to the press as you did.

Sincerely,

Erik

On Wed, Mar 28, 2018 at 4:05 PM -0700, "Robert Chevaleau" <rob@aztypo.org> wrote:

Erik,

A reporter from AZ Republic indicated to me today that she received a statement from GH that GH is no longer planning to support their transgender students with gender appropriate bathrooms or locker rooms.

This is obviously concerning and is at odds with all of our conversations over the last 3 months.

Is she mistaken? Please clarify.

How's the training planning coming?

Rob Chevaleau

Robert Chevaleau

President

Arizona Trans Youth and Parent Organization

aztypo.org

Exhibit 8

February 21, 2018

TELEOS PREPARATORY ACADEMY TELEPHONIC MEETING

Board of Directors

Unapproved Minutes

Date: February 21, 2017

Time: 7:15 a.m.

Location: Great Hearts Quayle Campus

A telephonic meeting of the Great Hearts Academies-Teleos Preparatory Academy Board of Directors was held at Great Hearts Quayle Campus, 3102 N. 56th Street, Suite 300, Phoenix AZ 85018, pursuant to A.R.S. 38-431.02, notice having been duly given.

I. Call to Order

Dr. Williams-Blackwell called the meeting to order at 7:15 a.m. The following directors/administrators were present/absent:

Directors	Office	Present	Absent	Notes
Dr. Lesley Williams-Blackwell	President	X		
John “Boots” Dunlap	Vice President	X		
Matthew Mason	Secretary	X		
Robin Dowdle	Director	X		
Mac Esau	Director	X		
Helen Hayes	Director	X		
Stephen Houghton	Director	X		
Dr. Robert Jackson	Director	X		
Whitney Chapa	Director	X		

Ann Seiden	Director		X	
Tiffany Starks	Director		X	
Karen Williams	Director		X	
Administration & guests				
Christina Lucas-Sheffield	Headmaster, Teleos Prep		X	
Robert Wagner	Superintendent for AZ schools		X	
Mehdi Lasker	Business Operations Manager, TPA and MVA		X	
Erik Twist	Chief Innovation Officer & Sr. Vice President of Advocacy, AZ	X		
Jennifer Bradshaw	Manager, School Accounting, GH		X	
Bruna E. Pedrini	Of Counsel	X		

II. Call to the Public

Dr. Lesley Williams-Blackwell made a call to the public at 7:15a.m. No public was present.		
--	--	--

III. Updated Hair Policy to the Teleos Preparatory Academy Family Handbook:

a. Girls: Hair should be neatly combed or styled. Neat small bows, barrettes,		Mr. Houghton moved that the Teleos Preparatory Academy update the hair policy in the
---	--	--

<p>headbands, and hair ties are permissible so long as they coordinate with the uniform. Hair must be natural looking and conservative in its color and cut (no bleaching or unnatural streaking/highlighting, no artificial jet-black coloring, and no unnatural colors). Accommodations for religious reasons are permitted.</p> <p>b. Boys: Hair should be neatly combed or styled. Hair must be well-off the top of the shirt collar. Hair should not fall below the eyebrows or past the mid-point of the ear. Hair must be natural looking and conservative in its color and cut (no bleaching or unnatural streaking/highlighting, no artificial jet-black coloring, and no unnatural colors). Accommodations for religious reasons are permitted.</p>	<p>Family handbook to: "Girls: Hair should be neatly combed or styled. Neat small bows, barrettes, headbands, and hair ties are permissible so long as they coordinate with the uniform. Hair must be natural looking and conservative in its color and cut (no bleaching or unnatural streaking/highlighting, no artificial jet-black coloring, and no unnatural colors). Accommodations for religious reasons are permitted.</p> <p>Boys: Hair should be neatly combed or styled. Hair must be well-off the top of the shirt collar. Hair should not fall below the eyebrows or past the mid-point of the ear. Hair must be natural looking and conservative in its color and cut (no bleaching or unnatural streaking/highlighting, no artificial jet-black coloring, and no unnatural colors). Accommodations for religious reasons are permitted."</p> <p>Seconded by Mr. Dunlap, all in favor, none opposed, motion carried at 7:16 a.m.</p>
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IV. Announcements/Adjournment

	<p>Dr Williams-Blackwell adjourned the meeting at 7:17 a.m.</p>
--	---

Great Hearts Academies-Teleos Prep
February 21, 2018

Submitted by Board Secretary, Matthew Mason

-Gena McFarland, Scribe-

Exhibit 9

ALESSANDRA SOLER
EXECUTIVE DIRECTOR

DALE BAICH
PRESIDENT



Via Email and Certified Mail

September 26, 2017

Bob Mulhern, Board President
Great Hearts
3102 North 56th Street, Suite 300
Phoenix, AZ 85018
bmullhern@greatheartsaz.org

Dr. Daniel Scoggin, Board Member
Great Hearts
3102 North 56th Street, Suite 300
Phoenix, AZ 85018
DScoggin@GreatHeartsAmerica.org
feedback@greatheartsaz.org

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
OF ARIZONA**
P.O. BOX 17148
PHOENIX, AZ 85011-0148
P/602.650.1967
F/ 602.650.1376
WWW.ACLUAZ.ORG

Re. Great Hearts Transgender Policy Records

Dear Mr. Mullhern and Dr. Scoggin:

Pursuant to Arizona's public records law, A.R.S. § 39-121 et seq., the ACLU of Arizona requests the right to examine and copy or to be furnished with copies of public records in the possession of Great Hearts Arizona and/or Great Hearts America. These records are not sought for any commercial purpose. Nevertheless, we agree to reimburse you for reasonable costs associated with producing the requested records. If the costs will exceed \$100, please let us know before you incur the costs. If the request is denied in whole or in part, please justify any redactions or withholdings by referencing the specific grounds on which the information is withheld under the Public Records Law. All divisible portions of otherwise exempt material must be produced. We reserve the right to appeal your decision to withhold any information.

We seek the following records in the possession of Great Hearts Arizona and/or Great Hearts America:

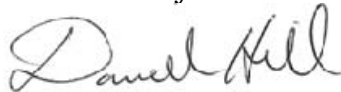
1. All meeting minutes, including voting records, from the Great Hearts Arizona board meeting held on or about June 22, 2016, where the "Great Hearts Transgender Policy" (which also may be referred to in Great Hearts' school handbooks as the "Biological Sex and Gender Policy") was approved;
2. The meeting minutes, including voting records, from any other Great Hearts Arizona board meetings where the "Great Hearts Transgender Policy" or its precursors or successors were discussed or voted upon;

3. All materials provided to the Great Hearts Arizona board related to the "Great Hearts Transgender Policy" and its precursors or successors;
4. All meetings minutes, including voting records, from Great Hearts America board meetings where the "Great Hearts Transgender Policy," or its precursors or successors, were discussed or voted upon;
5. All materials provided to the Great Hearts America board related to the "Great Hearts Transgender Policy" and its precursors or successors;
6. All notices sent to the Great Hearts Arizona and/or Great Hearts America boards, and all notices to the public or Great Hearts faculty/staff, regarding upcoming meetings of these boards.

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
OF ARIZONA**
P.O. BOX 17148
PHOENIX, AZ 85011-0148
P/602.650.1967
F/ 602.650.1376
WWW.ACLUAZ.ORG

Please produce the requested records as they become available. For your convenience, these documents may be emailed to dhill@acluaz.org or mailed to ACLU of Arizona, Attn. Darrell Hill, P.O. Box 17148, Phoenix, Arizona 85011. Should you have any questions, please feel free to contact me via email at dhill@acluaz.org or by phone at 602-773-6008. Thank you very much for your attention to this request.

Sincerely,



Darrell Hill
Staff Attorney, ACLU of Arizona

Exhibit 10

From: IRVINE, PAT <PIRVINE@FCLAW.com>
Sent: Monday, November 27, 2017 3:10 PM
To: Kathy Brody
Cc: Darrell. Hill; Gloria Torres; PEDRINI, BRUNA
Subject: RE: ACLU of Arizona public records request to Great Hearts [FC-Email.FID8225498]

Kathy,

I have been working with Bruna Pedrini on your public records request to Great Hearts. We apologize for the delays in getting back to you. After reviewing your request we find that additional clarification is necessary. The request seeks records from Great Heart Arizona and Great Heart America. Although the Great Heart group includes a number of charter schools that are public bodies for purposes of the public records law, neither Great Heart Arizona nor Great Heart America are themselves charter schools. Consequently, they are not public bodies and their records are not subject to the public records law. Merely providing services to a charter school, including management services, does not extend the public records law to the service provider. Therefore, Great Heart Arizona and Great Heart America are not required to produce records in response to your request. This was not completely clear when your request was first received

Nevertheless, we assume you are seeking records from the governing boards of the charter schools within the Great Heart group that are subject to the public records law. There are currently over twenty schools in Arizona, each with its own governing board. Rather than ask you to resubmit your request specifically identifying each school, we can treat the previous request as addressed to each and provide any records that are responsive. If this is acceptable, please let me know.

Pat Irvine

Patrick Irvine, Director
T: 602.916.5406 | F: 602.916.5606
pirvine@fclaw.com

From: Kathy Brody [mailto:kbrody@acluaz.org]
Sent: Wednesday, November 22, 2017 1:42 PM
To: PEDRINI, BRUNA
Cc: Darrell. Hill; Gloria Torres; IRVINE, PAT
Subject: RE: ACLU of Arizona public records request to Great Hearts [FC-Email.FID8225498]

Thank you very much. Have a nice holiday.

Kathy

Kathy Brody

602.773.6011 | kbrody@acluaz.org

From: PEDRINI, BRUNA [<mailto:BPEDRINI@FCLAW.com>]

Sent: Wednesday, November 22, 2017 12:26 PM

To: Kathy Brody

Cc: Darrell. Hill; Gloria Torres; IRVINE, PAT

Subject: RE: ACLU of Arizona public records request to Great Hearts [FC-Email.FID8225498]

Dear Kathy,

My apologies—the holiday week is challenging. You will receive the response on Monday.

I hope you have a wonderful Thanksgiving.

Bruna

Bruna E. Pedrini, Of Counsel

FENNEMORE CRAIG

2394 East Camelback Road, Suite 600, Phoenix, AZ 85016-3429

T: 602.916.5487 | F: 602.916.5687

bpedrini@fclaw.com | [View Bio](#)



CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

From: Kathy Brody [<mailto:kbrody@acluaz.org>]

Sent: Wednesday, November 22, 2017 10:14 AM

To: PEDRINI, BRUNA

Cc: Darrell. Hill; Gloria Torres

Subject: ACLU of Arizona public records request to Great Hearts

Importance: High

Dear Bruna,

I am writing regarding the ACLU of Arizona's September 26, 2017 public-records request to Great Hearts regarding its transgender policy (attached for your convenience). You left a voice message for us on November 3 indicating that you had been retained by Great Hearts to assist in responding to our request, and that we would have the requested records in two weeks.

As of today, fifty-seven days have passed since we submitted our request, and we have received no responsive records. And the two weeks in which you promised the records have come and gone. Please advise immediately when we will receive the requested records. I note that Great Hearts has a statutory obligation to produce the requested records "promptly," A.R.S. § 39-121.01(D)(1). Given the small number of records requested on a very narrow topic, Great Hearts is already out of compliance with its statutory obligation. *Compare Lake v. City of Phoenix*, 207 P.3d 725, 737-38 (Ariz. Ct. App. 2009) (promptness requirement satisfied where responsive documents for each request, totaling 2,672 pages, were produced between thirty and fifty-eight days after submission of the requests), *vacated in part on other grounds*

by Lake v. City of Phoenix, 218 P.3d 1004 (Ariz. 2009); *Phoenix New Times, L.L.C. v. Arpaio*, 177 P.3d 275, 287 (Ariz. Ct. App. 2008) (“We cannot find that a document furnished forty-nine days (thirty-four working days) after it was requested was furnished ‘promptly’ when the only reason for the delay was lack of diligence on the agency's part.”).

We look forward to your response. Thank you.

Kathy

Kathleen E. Brody

Legal Director

American Civil Liberties Union of Arizona

P.O. Box 17148, Phoenix, AZ 85011-0148

602.773.6011 | kbrody@acluaz.org

acluaz.org



This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

Exhibit 11



Via email

March 1, 2018

Bruna Pedrini
Patrick Irvine
Fennemore Craig
2394 E Camelback Rd, Suite 600
Phoenix, AZ 85016

KATHLEEN E. BRODY
LEGAL DIRECTOR
KBRODY@ACLUAZ.ORG

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF ARIZONA
P.O. BOX 17148
PHOENIX, AZ 85011-0148
P/602.650.1854
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WWW.ACLUAZ.ORG

*Re: Great Hearts Academies' Production of Documents in Response to
ACLU of Arizona's Public-Records Request Dated September 26,
2017
and
Follow-Up Records Requests*

Dear Bruna and Pat:

We have reviewed the documents produced by the Great Hearts Academies in December 2017, January 2018, and February 2018 in response to the ACLU of Arizona's public-records request dated September 26, 2017, regarding Great Hearts Transgender Policy Records. We are writing to renew our request that Great Hearts Arizona and Great Hearts America respond to our public-records request, and also to make new requests to the Great Hearts public charter schools in Arizona.

Background: Our September 26, 2017 request asked for board meeting notices, minutes, and materials for the Great Hearts Arizona and Great Hearts America board meetings when the Great Hearts Transgender Policy (approved by the Arizona board on June 22, 2016) was discussed and voted upon. In an email dated November 27, 2017, you notified us that Great Hearts Arizona and Great Hearts America would not respond to our request based on the legal position that those entities are not "public bodies" under the Arizona public-records law. You offered, however, to treat our request as a request to each of the individual Great Hearts charter schools for records related to their governing boards' consideration and adoption of the Transgender Policy. We accepted your offer, but reserved our right to challenge your legal position that Great Hearts Arizona and Great Hearts America are not "public bodies" for the purposes of the public-records law. We received

records for the governing boards of twenty-three Great Hearts schools in December 2017, January 2018, and February 2018.¹

Summary of the Records Received: The set of records provided for each individual Great Hearts charter school contains documents related to the school's governing board meeting in September 2016. Each set of records contains the Great Hearts Academies Standard School Policies Guide, revised May 2015 ("GHA Standard School Policies Guide"). With one exception, the meeting agenda and minutes for each governing board meeting indicate that the GHA Standard School Policies Guide was ***approved on the board's consent agenda*** during its September 2016 meeting.²

The first page of the GHA Standard School Policies Guide indicates: "What follows are standard Great Hearts Academy Policies ***to be reviewed and adopted by all local site boards.***" (Emphasis added.) The second page of the GHA Standard School Policies Guide provides information about the "Great Hearts Academies Governance Structure":

All network schools are wholly-owned subsidiaries of Great Hearts Academies (GHA). As such:

1. ***The GHA Lead Office Executive Team, under the governance oversight of the GHA Executive Board, sets network-wide policies that the local Site Governing Board is always subject to and must apply.*** Local Site Governing Boards may make

¹ We received records for the following schools: Archway Classical Academy Anthem, Anthem Preparatory Academy, Archway Classical Academy – Arete, Arete Preparatory Academy, Archway Classical Academy – Chandler, Chandler Preparatory Academy, Archway Classical Academy – Cicero, Cicero Preparatory Academy, Archway Classical Academy – Glendale, Glendale Preparatory Academy, Archway Classical Academy – Lincoln, Lincoln Preparatory Academy, Maryvale Preparatory Academy, Archway Classical Academy – North Phoenix, North Phoenix Preparatory Academy, Archway Classical Academy – Scottsdale, Scottsdale Preparatory Academy, Teleos Preparatory Academy, Archway Classical Academy – Trivium East, Archway Classical Academy – Trivium West, Trivium Preparatory Academy, Archway Classical Academy – Veritas, and Veritas Preparatory Academy.

² For Cicero Preparatory Academy, this item was included on the board's consent agenda for its September 30, 2016 meeting, but the board did not vote on any items because it did not have a quorum. We do not have minutes for Cicero Preparatory Academy's later board meetings, which presumably would indicate whether the GHA Standard School Policies Guide was approved on a later consent agenda.

policy recommendations to the Executive Team for network-wide policy consideration.

2. Site Governing Board members are appointed by and serve at the pleasure of the Great Hearts Executive Board.

(Emphasis added.) The ninth page of the GHA Standard School Policies Guide states that, for information about “Student Life,” the reader should “See Board Approved *Family Handbook*.”

With some exceptions, the set of records provided for each individual Great Hearts charter school contains the school’s Family Handbook revised some time between June 2016 and the time of the governing board meeting.³ With only two exceptions, each Family Handbook provided contains a Biological Sex and Gender Policy, which is ***almost identical*** to the Great Hearts Transgender Policy, which was “Approved by the Arizona Board on June 22nd, 2016.”⁴ We were able to discern only two differences between the Family Handbooks we reviewed and the Great Hearts Transgender Policy. One difference was that the sections in the policy were ordered slightly differently. Another more notable difference was that the policy approved by the Arizona board omits the word “Arizona” from the “ASSUMPTIONS” section:

ASSUMPTIONS

...

2. That there exists no general consensus but rather disagreement between the State of and the United States and in the United States as a whole—legal, scientific, educational, philosophical— about the relationship between “gender identity” and biological sex;

The corresponding provision of the policy in each school-specific Family Handbook provided states:

³ The Family Handbook provided for Archway Classical Academy Arete indicates that it was revised in August 2017. The materials provided for Archway Classical Academy Glendale did not include a Family Handbook. The Family Handbook provided for North Phoenix Preparatory Academy was not dated. The Family Handbook provided for Teleos Preparatory Academy indicates that it was revised in July 2015.

⁴ The Family Handbook for Arete Preparatory Academy, dated June 2016, does not contain a Biological Sex and Gender Policy. The Family Handbook for Teleos Preparatory Academy, dated July 2015, also does not contain a Biological Sex and Gender Policy.

ASSUMPTIONS

. . .

2. That there exists no general consensus but rather disagreement between the State of **Arizona** and the United States and in the United States as a whole—legal, scientific, educational, philosophical—about the relationship between “gender identity” and biological sex;

(Emphasis added.)

The records provided for Archway Classical Academy Scottsdale indicate that during the call to the public during the governing board meeting on September 22, 2016, parent Robert Chevaleau addressed the board regarding the Transgender Policy. The minutes indicate that, in response to Mr. Chevaleau’s concerns about the policy, Archway Scottsdale Headmaster Lisa Armstrong said “that ***the policy is a Great Hearts policy enacted by the Great Hearts board and is not something the Archway Scottsdale school board could deal with.***” (Emphasis added.)

The records provided for Veritas Preparatory Academy indicate that, during its board meeting on June 14, 2016, board president Bob Mulhern stated regarding the “Transgender issue” that “***the issue is impacting Great Hearts in Texas and Arizona.*** The Texas board meeting is this week, and the AZ board meeting is next week, and ***both boards are planning to discuss a policy that upholds school culture and minimizes liabilities.***”

Renewed Request: The documents provided indicate that the Biological Sex and Gender Policy of each individual Great Hearts charter school in Arizona was dictated by Great Hearts Arizona and Great Hearts America boards, that the governing boards of the individual Great Hearts charter schools in Arizona did not have discretion to reject or amend the Transgender Policy dictated by the Great Hearts Arizona and Great Hearts America boards, and that governing boards of the individual Great Hearts charter schools, in fact, did not deliberate or discuss the adoption of the Transgender Policy dictated by the Great Hearts Arizona and Great Hearts America boards. In light of this information, we renew our September 26, 2017 request for records of the Great Hearts Arizona and Great Hearts America boards related to the adoption of this policy. See A.R.S. § 15-183(E)(8) (charter of a charter school shall “[e]nsure that it provides for a governing body for the charter school that is responsible for the policy decisions of the charter school”).

Additional Request: The ACLU of Arizona also requests, pursuant to the Arizona public-records law, A.R.S. § 39-121 *et seq.*, the right to examine and copy or to be furnished with copies of additional records maintained by each individual Great Hearts charter school in Arizona.⁵ Please provide the following records for each individual Great Hearts charter school in Arizona:

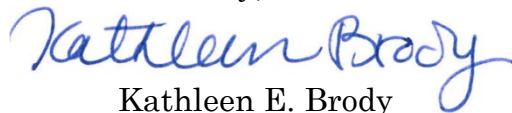
Any communications, including emails, dated June 1, 2016, through December 31, 2016, between or among any governing board member, administrator, or staff member of the charter school, on the one hand, and any member of the Great Hearts America Board of Directors, Great Hearts America Executive Leadership Team, Great Hearts Arizona Board of Directors, or Great Hearts America or Great Hearts Arizona administrator or staff member, on the other hand, regarding the Transgender Policy or Biological Sex and Gender Policy.

If you will require a separate request to each individual school, please let us know so that we may make those requests as soon as possible.

These records are not sought for any commercial purpose. Nevertheless, we agree to reimburse the schools for reasonable costs associated with producing the requested records. If the costs will exceed \$100, please let us know before the costs are incurred. If the request is denied in whole or in part, please justify any redactions or withholdings by referencing the specific grounds on which the information is withheld. All divisible portions of otherwise exempt material must be produced. We reserve the right to challenge the decision to withhold any information.

Please produce the additional requested records as they become available. These documents may be emailed to kbrody@acluaz.org. Should you have any questions, please feel free to contact me directly via email at kbrody@acluaz.org or by phone at 602-773-6011. Thank you very much for your attention to these matters.

Sincerely,



Kathleen E. Brody
Legal Director, ACLU of Arizona

⁵ Each school for which records are sought is named in footnote 1 above.

Exhibit 12

June 28, 2018

VIA EMAIL AND FIRST CLASS MAIL

Kathleen E. Brody
Legal Director
American Civil Liberties Union Foundation of Arizona
P.O. Box 17148
Phoenix, AZ 85011-0148
Kbrody@acluaz.org

Dear Ms. Brody:

This letter is sent in response to the second public records request submitted by the American Civil Liberties Union (“ACLU”) on March 1, 2018. Great Hearts has previously provided the ACLU with all documents requested in its September 26, 2017 request as it related to all 23 Great Hearts Academies. On March 1, 2018 the ACLU made a second request related to the same topic, this time requesting:

Any communications, including emails, dated June 1, 2016, through December 31, 2016, between or among any governing member, administrator, or staff member of the charter school, on the one hand, and any member of the Great Hearts America Board of Directors, Great Hearts America Executive Leadership Team, Great Hearts Arizona Board of Directors, or Great Hearts America or Great Hearts Arizona administrator or staff member, on the other hand, regarding the Transgender Policy or Biological Sex and Gender Policy.

In response to this second request (again covering all 23 academies), Great Hearts has provided three sets of documents totaling over 3,400 pages: the first set on May 16, the second set on May 31, and the final set on June 15. As requested, these productions contained all public record communications regarding the Biological Sex and Gender Policy dated June 1, 2016 through December 31, 2016. This letter is a supplement to the attached Privilege Log (Appendix A) and explains the redactions of names and emails in the produced documents.

First, Great Hearts has withheld several responsive documents from production based on their privileged status. The attached privilege log explains the basis for withholding each individual document, but as a general rule, these documents have been withheld either because (1) they are protected under the attorney-client privilege (*see* A.R.S. § 12-2234); or (2) they contain statutorily protected student information (*see* A.R.S. § 15-141).

FENNEMORE CRAIG

June 28, 2018

Page 2

Second, as noted above, Great Hearts has provided all communications related to the 23 public academies, totaling over 1,040 documents, and has redacted these communications where necessary to allow for maximum disclosure. *See Carlson v. Pima Cty.*, 141 Ariz. 487, 491 (1984) (noting that when confidential and public information are commingled in a single document, a copy of the document may be made available for public inspection with the confidential material excised).¹

Great Hearts America and Great Hearts Arizona are private, nonprofit entities not subject to the public records laws. Although the individual charter schools are considered “public schools” under Arizona law and are considered “public bodies” for purposes of the public records laws (*see* Ariz. Att’y Gen. Op. No. I95–10 (1995)), this does not transform the private entity holding the charter into a public entity. *See Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982) (“That a private entity performs a function which serves the public does not make its acts state action.”); *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 815 (9th Cir. 2010) (holding that a private, nonprofit corporation that held the charter to several Arizona charter schools was “a private entity that contracted with the state to provide students with education services that are funded by the state” and was thus not a “state actor”).

Private, nonprofit entities which merely contract with the state are not “public bodies” for purposes of the public records laws. *See* A.R.S. § 15–183(B) (“The sponsor of a charter school may contract with **a public body, private person or private organization** for the purpose of establishing a charter school for purposes of this article.”) (emphasis added). A “public body” is defined as:

[T]his state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any **public organization** or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

A.R.S. § 39–121.01(A)(2) (emphasis added). As noted above, a private organization does not become a public organization simply because it contracts with the government to perform a public service. *See Rendell-Baker*, 457 U.S. at 842; *Caviness*, 590 F.3d at 815. Although Great Hearts charter holders receive public funds to run charter schools (as do other charter holders, *see* A.R.S. § 15–181(B)), and contract with the private nonprofit Great Hearts Arizona for some services, this also does not transform Great Hearts Arizona into a public organization. *See Caviness*, 590 F.3d at 815.

¹ The names of parents and students have been redacted to protect their privacy. *See* A.R.S. § 15–141; *see also Scottsdale Unified Sch. Dist. v. KPNX Broad. Co.*, 191 Ariz. 297, 300 ¶ 9 (1998) (noting personal privacy is a long recognized exception to the general rule requiring access to government records).

FENNEMORE CRAIG

June 28, 2018

Page 3

Because Great Hearts Arizona and Great Hearts America are not “public bodies” and are thus not subject to the public records laws, their executives and other employees are similarly not subject to the public records laws.² The teachers and staff members working at the Great Hearts charter schools are also not subject to the public records laws because they are not employees of the 23 “public bodies” (*i.e.*, the charter schools), but are rather employees of the wholly separate, private Great Hearts Arizona nonprofit entity.

In contrast, charter schools are considered “public bodies” for purposes of the public records laws and **“the officers . . . of the charter school are subject to the Public Records Law.”** Ariz. Att’y Gen. Op. No. I95–10 (1995) (emphasis added). An “officer” is defined as “any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.” A.R.S. § 39–121.01.³ According to the Arizona Attorney General Agency Handbook, “the employees of public officers and public bodies are also bound by the Public Records Law.” Ariz. Att’y Gen. Agency Handbook, § 6.2.1.2. The teachers and staff members employed by a private entity and leased to the individual charter schools, however, are not employees of public officers or public bodies and are therefore not subject to the public records laws.

Charter schools are readily distinguishable from traditional public schools under Arizona law. *See, e.g.*, A.R.S. § 15–183(B) (declaring the purpose of charter schools as “provid[ing] additional academic choices for parents and pupils . . . [and] serv[ing] as alternatives to traditional public schools”); A.R.S. § 15–183(E)(5) (authorizing a charter of a charter school to “[e]nsure that, except as provided in this article and in its charter, it is exempt from all statutes and rules relating to schools, governing boards and school districts”); A.R.S. § 15–187(C) (authorizing, but not requiring, charter schools to participate in the Arizona state retirement system). One notable difference is that charter schools, unlike public schools, have repeatedly been found to be private, rather than public, employers. *See, e.g., Rendell-Baker*, 457 U.S. at 842; *Caviness*, 590 F.3d at 814.

In *Caviness*, a charter school teacher brought a civil rights complaint against the private, non-profit corporation that ran the charter school in which he taught. 590 F.3d at 810–11. The Ninth Circuit affirmed the dismissal of the complaint, holding that the private corporation was not a “state actor” and noting that even though Arizona characterizes charter schools as “public” schools, it was the conduct of a *private organization* that was at issue in the case. *See id.* at 815. The court further noted that an entity can be considered public for some purposes and private for others. *See id.* at 814. In short, performance of a public function does not transform a teacher who is a private employee of a private, nonprofit corporation into a public employee subject to

² Accordingly, the names and emails of all Great Hearts Arizona and Great Hearts America executives and employees have been redacted to protect their privacy.

³ Because the Board members, Headmasters, and Assistant Headmasters of each individual charter school may constitute “public officers” for purposes of public records laws (despite their classification as private employees), their information has not been redacted from the produced documents.

FENNEMORE CRAIG

June 28, 2018

Page 4

public records laws. *See id.*; *see also Rendell-Baker*, 457 U.S. at 842; *cf. Griffin Found. v. Ariz. State Ret. Sys.*, No. 1 CA-CV 17-0114, 2018 WL 2252536 (Ariz. Ct. App. May 18, 2018) (recognizing the concept of “leased employees” in the context of charter schools).

Charter school employees’ status as private employees has also been affirmed in cases applying the National Labor Relations Act (“NLRA”). These cases have held that unlike public school teachers and staff members, charter school teachers and staff members are generally considered to be private employees. *See, e.g., Excalibur Charter Sch., Inc.*, 366 NLRB No. 49 (Mar. 29, 2018) (holding Arizona charter school employees were private employees and thus fell under National Labor Relations Board (“NLRB”) jurisdiction); *Pa. Virtual Charter Sch.*, 364 NLRB No. 87 (Aug. 24, 2016) (holding charter school employees were private employees and thus fell under NLRB jurisdiction).

Here, there are 22 separate public, nonprofit entities operating 23 academies as part of a network of schools under the Great Hearts name, and **all** the Great Hearts teachers are employed by a private entity, Great Hearts Arizona. Thus, although the Great Hearts schools are considered public schools under Arizona law, the teachers and staff members are private, not public, employees. Accordingly, their private information is not subject to public disclosure and has been redacted from the provided documents.

Please feel free to contact me if you have any questions.

Sincerely,

FENNEMORE CRAIG, P.C.

A handwritten signature in black ink, appearing to read 'Bruna E. Pedrini', written in a cursive style.

Bruna E. Pedrini

BPED

APPENDIX

A

Date	Email From	Email To	Email Subject	Privilege
12/15/2016	Lisa Armstrong	[Private Employees]	RE: Gender policy communication - Final for distribution	Confidential Student Record Information
11/7/2016	Lisa Armstrong	[Parent]	RE: Withdrawal	Confidential Student Record Information
11/6/2016	Lisa Armstrong	ASPSO President	Re: Thanks	Confidential Student Record Information
9/27/2016	Lisa Armstrong	[Private Employee]	FW: Board Meeting Follow Up - Trans Policy	Confidential Student Record Information
8/5/2016	Lisa Armstrong	[Private Employee]	RE: Guidance re: Policy on Biological Sex and Gender	Confidential Student Record Information
11/7/2016	Lisa Armstrong	Eric Hull	FW: Withdrawal	Confidential Student Record Information
12/15/2016	[Private Employee]	Lisa Armstrong and [Private Employee]	RE: Gender policy communication - Final for distribution	Confidential Student Record Information
10/27/2016	[Private Employee]	Lisa Armstrong	RE: Board Meeting Follow Up - Trans Policy	Confidential Student Record Information
8/17/2016	[Private Employee]	Lisa Armstrong	RE: PLEASE KEEP THIS IN CONFIDENCE...	Confidential Student Record Information
8/5/2016	[Private Employee]	Lisa Armstrong	RE: Guidance re: Policy on Biological Sex and Gender	Confidential Student Record Information
12/14/2016	Joy Hanks	[Private Employee]	FW: Non- discrimination Policy	Confidential Student Record Information
12/13/2016	Joy Hanks	[Private Employee]	RE: Non- discrimination Policy	Confidential Student Record Information
12/13/2016	[Private Employee]	Joy Hanks	RE: Non- discrimination Policy	Confidential Student Record Information
12/12/2016	[Private Employee]	Joy Hanks	RE: Non- discrimination Policy	Confidential Student Record Information
12/13/2016	[Private Employee]	[Private Employee]	FW: The Easiest Item on Your List for Veritas Prep!	Confidential Student Record Information
12/7/2016	[Private Employee]	[Private Employee]	RE: Transgender Policy FW: The Easiest Item on Your List for Veritas Prep!	Confidential Student Record Information
12/6/2016	[Private Employee]	[Private Employees]	RE: Transgender Policy FW: The Easiest Item on Your List for Veritas Prep!	Confidential Student Record Information
12/2/2016	[Private Employee]	[Private Employee]	FW: The Easiest Item on Your List for Veritas Prep!	Confidential Student Record Information
12/2/2016	[Private Employee]	[Private Employee]	RE: The Easiest Item on Your List for Veritas Prep!	Confidential Student Record Information
9/16/2016	[Private Employee]	Julia Gillingham	RE: GH Trans Policy Email	Confidential Student Record Information
9/16/2016	[Private Employee]	Julia Gillingham	RE: GH Trans Policy Email	Confidential Student Record Information
9/16/2016	Julia Gillingham	[Private Employee]	Re: GH Trans Policy Email	Confidential Student Record Information
9/2/2016	Alison Chaney	Randy McDonald (Osborn Maledon attorney)	FW: Snell & Wilmer Education Newsletter	Attorney Client Communication
11/22/2016	Aaron T. Martin (Snell and Wilmer attorney)	Aaron T. Martin (Snell and Wilmer attorney)	November Education Update	Attorney Client Communication
12/16/2016	Aaron T. Martin (Snell and Wilmer attorney)	Aaron T. Martin (Snell and Wilmer attorney)	December Education Update	Attorney Client Communication

Exhibit 13

Exhibit 13

ALESSANDRSOLER
EXECUTIVE DIRECTOR

DALE BAICH
PRESIDENT



Via Email

July 31, 2018

Bruna Pedrini
Patrick Irvine
Fennemore Craig
2394 E Camelback Rd, Suite 600
Phoenix, AZ 85016

Re: Public Records Requests to Great Hearts

Dear Bruna and Pat:

I am writing to follow up on the ACLU of Arizona's previous records request to Great Hearts Arizona and Great Hearts America, and also to make an additional records request.

Previous Request: As you know, on September 26, 2017, the ACLU of Arizona made a public-records request to Great Hearts Arizona and Great Hearts America for records related to their boards' consideration and adoption of the Great Hearts Transgender Policy (or Biological Sex and Gender Policy), which was approved by the Arizona board on or about June 22, 2016. In an email dated November 27, 2017, you notified us that Great Hearts Arizona and Great Hearts America would not respond to our request based on the legal position that those entities are not "public bodies" under the Arizona public-records law. You offered to treat the request as a request to each of the individual Great Hearts charter schools in Arizona for records related to their governing boards' consideration and adoption of the Transgender Policy. We accepted your offer, but reserved our right to challenge your legal position that Great Hearts Arizona and Great Hearts America are not "public bodies" for the purposes of the public-records law.

On March 1, 2018, after reviewing records provided by the individual Great Hearts schools, I wrote to renew the ACLU of Arizona's request that Great Hearts Arizona and Great Hearts America provide the records requested on September 26, 2017 (and also to make an additional public records request of the individual Great Hearts schools).

You never responded to the ACLU of Arizona's March 1 renewed request, even after I emailed you on April 3, 2018, to ask whether Great Hearts Arizona and Great Hearts America would reconsider its position on this request. And you did not address this renewed request in your letter of June 28, 2018, regarding the ACLU of Arizona's March 1 letter.

I am writing once again to renew the ACLU of Arizona's original September 26, 2017 request to Great Hearts Arizona and Great Hearts America.

Additional Request: The ACLU of Arizona also requests pursuant to the Arizona public records law, A.R.S. § 39-121 *et seq.*, the right to examine and copy or to be furnished with copies of additional records maintained by Great Hearts Arizona, Great Hearts America, and each individual Great Hearts charter school in Arizona.¹ Please provide the following records for Great Hearts Arizona, Great Hearts America, and each individual Great Hearts charter school in Arizona:

All records, including but not limited to board materials, emails and other communications (including transmittal emails), policies and procedures, and training materials, dated January 1, 2017, through the present, regarding or relating to the Transgender Policy or Biological Sex and Gender Policy, or any revisions to or revocations/replacements of these policies.

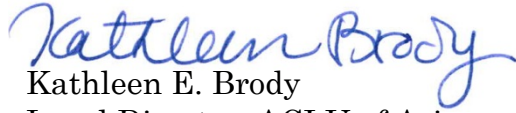
These records are not sought for any commercial purpose. Nevertheless, we agree to reimburse the schools for reasonable costs associated with producing the requested records. If the costs will exceed \$100, please let us know before the costs are incurred. If for any reason you refuse to provide copies of any requested records, please furnish an index of the records and items that have been withheld, as well as the reasons why these records or items have been withheld. *See* A.R.S. § 39-121.01(D)(2). All divisible portions of otherwise exempt material must be produced. We reserve the right to challenge the decision to withhold any information.

Consistent with the obligation to provide public records "promptly," we ask that you provide the requested records by August 31, 2018, *see*

¹ You have previously provided records from each of the individual schools without the ACLU of Arizona having to submit a separate request to each individual school. Please advise as soon as possible if, for this request, you will require a separate request to each individual school, so that we may make those requests as soon as possible if necessary.

A.R.S. § 39-121.01(D)(1), (E), and we would like to receive them as they become available. These documents may be emailed to kbrody@acluaz.org. Should you have any questions, please feel free to contact me directly via email at kbrody@acluaz.org or by phone at 602-773-6011. Thank you very much for your attention to these matters.

Sincerely,


Kathleen E. Brody
Legal Director, ACLU of Arizona

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
ARIZONA

Exhibit 14

ALESSANDRSOLER
EXECUTIVE DIRECTOR

DALE BAICH
PRESIDENT



Via E-Mail & U.S. Mail

KATHLEEN E. BRODY
LEGAL DIRECTOR

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION
OF ARIZONA
P.O. BOX 17148
PHOENIX, AZ 85011-0148
P/602.650.1854
F/602.650.1376
WWW.ACLUAZ.ORG

Bruna Pedrini
Fennemore Craig
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016-3429
bpedrini@fclaw.com

Re: Objection to Withholding of Information and Documents

Dear Ms. Pedrini:

We have received and reviewed your June 28, 2018 letter (the "Response Letter"), in which you explain the response of the Great Hearts public academies, Great Hearts America, and Great Hearts Arizona (collectively, "Great Hearts") to our second public records request (dated March 1, 2018). We write today to note our objections to three components of the Response Letter, the production that accompanied it, and Great Hearts' productions (or lack thereof) to date:

1. the redaction of the names and email addresses of teachers and staff members at the various Great Hearts public academies and the executives and employees of Great Hearts America and Great Hearts Arizona;
2. the apparent withholding of all responsive documents and communications related to teachers at the various Great Hearts public academies, including those that are not protected by law from disclosure; and
3. the continued withholding of all documents involving or held by Great Hearts Arizona and Great Hearts America, the request for which was renewed in our March 1, 2018 letter (and on which the Response Letter is silent).

At the heart of each objection is Great Hearts' belief that its decision to outsource all employment, policy, and operational tasks to Great Hearts America and Great Hearts Arizona immunizes its public academies from their obligation to "maintain all records . . . reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state." A.R.S. § 39-121.01(B). As detailed below, this position is erroneous, both as a matter of law and public policy.

Discussion

Indisputably, charter schools and their officers "are subject to the Public Records Law." Ariz. Att'y Gen. Op. No. I95-10, 1995 WL 870820, at *2; *see also* A.R.S. § 39-121.01(B) (requiring both "officers and public bodies" to maintain public records). And Arizona courts have long-applied a strong "legal presumption favoring disclosure" of public records. *Cox Ariz. Publ'ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993); *see also* Ariz. Att'y Gen. Op. I78-216, 1978 WL 18855, at *6 ("[d]oubts should be resolved in favor of disclosure"). For that reason, "[t]he burden of showing the probability that specific, material harm will result from disclosure, thus justifying an exception to the usual rule of full disclosure, is on the party that seeks non-disclosure rather than on the party that seeks access." *Mitchell v. Super. Ct.*, 142 Ariz. 332, 335 (1984). Thus, Great Hearts has the burden to justify every withholding and redaction.

These first principles inform each of our specific objections.

1. There is no legal justification for Great Hearts' redaction of the names and email addresses of teachers, staff, executives, and employees.

Great Hearts redacted from emails and other documents that it concedes are "public records" the names and email addresses of: (1) all teachers and staff of the 23 Great Hearts academies [Response Letter at 4], and (2) "the names and emails of all Great Hearts Arizona and Great Hearts American executives and employees" [*id.* at 3 n.2]. Great Hearts attempts to justify these redactions on "privacy" grounds, and further, claims that none of these individuals are "subject to" the Public Records Law. [*Id.*] Great Hearts' position on these redactions represents a fundamental misinterpretation of governing law.

The names and email addresses of the teachers, staff, executives, and employees at issue appear in documents that are public records held and maintained by the Great Hearts public academies, the charter schools that are indisputably "subject to" the Public Records Law. Ariz. Att'y Gen. Op. No. I95-10, 1995 WL 870820, at *2. Who actually employs those individuals is completely irrelevant to the public-records analysis, and Great Hearts does not identify any applicable exception to the "usual rule of full disclosure," as is its burden. *Mitchell*, 142 Ariz. at 335; *cf. Scottsdale Unified Sch. Dist. No. 48*

of *Maricopa Cnty. v. KPNX Broad. Co.* (“KPNX”), 191 Ariz. 297, 302 (1998) (discussing public school teachers’ privacy interest in their birthdates where party requesting that information was provided with their names).

Even if Great Hearts had attempted to carry that burden and demonstrate that “specific, material harm will result from disclosure,” *Mitchell*, 142 Ariz. at 335, that attempt would be outweighed by a significant public interest in the subject matter of the ACLU of Arizona’s public records request; specifically, public charter schools’ controversial policy with respect to transgender students and its implementation by those who run and work at the schools. See, e.g., Chris McCrory, *Parents, alumni protest Great Hearts Academies’ transgender policy*, Ariz. Rep. (Sep. 25, 2017), available at <https://www.azcentral.com/story/news/local/arizona/2017/09/23/parents-alumni-protest-great-hearts-charter-school-transgender-policy/697386001/>. Indeed, Great Hearts’ justification for redaction of this information under the Public Records Law would lead to absurd results. By way of example, it would permit a public body discussing the details of a procurement with a private vendor to mask the identity of that private vendor’s representative (i.e., an individual not “subject to” the Public Records Law). That is plainly not the law, and we have every confidence that a court will agree.

Given all of this, Great Hearts’ redaction of the identities of teachers and staff members at the various Great Hearts academies and executives and employees of Great Hearts America and Great Hearts Arizona is improper under the Public Records Law. We therefore request that Great Hearts immediately provide us with all responsive documents with those redactions removed.

2. There is no legal justification for Great Hearts’ withholding of responsive documents that relate to Great Hearts academies’ teachers and staff.

Although the Response Letter is not clear, it appears that Great Hearts refuses to produce documents that relate to the teachers and staff at the Great Hearts academies (e.g., emails from the email inboxes of those individuals, including internal emails). To the extent this is true, it seems that Great Hearts’ justification is also grounded on its erroneous position that none of these individuals are “subject to” the Public Records Law.

Here again, whether the teachers and staff of the Great Hearts academies are themselves “subject to” the Public Records Law is irrelevant. Regardless of the employment status of those who staff the Great Hearts academies, those public charter schools are “public bodies” that employ “officers,” both of which are commanded by statute to “maintain all records . . . reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state.” A.R.S. § 39-121.01(B). In addition, the Great Hearts

academies, as public bodies, are “responsible for the preservation, maintenance and care of that body’s public records, and each officer shall be responsible for the preservation, maintenance and care of that officer’s public records.” A.R.S. § 39-121.01(C). Therefore, any responsive record in the Great Hearts academies’ custody, possession, or control is a “public record” and must be provided, without regard for who generated it (or in whose email inbox it may reside). Refusing to do so would fly squarely in the face of the Great Hearts academies’ statutory responsibilities and the important underlying public policy: “to allow citizens to be informed about what their government [here, a public charter school] is up to.” *KPNX*, 191 Ariz. at 302-03 (internal citation & quotation marks omitted). Neither the statute nor that policy may be rendered meaningless by the Great Hearts academies’ decisions to outsource the actual employment of their educators and staff to their corporate parents.

As a consequence, Great Hearts’ withholding of documents related to or in the possession of the teachers and staff of the Great Hearts academies is improper under the Public Records Law. We therefore request that Great Hearts immediately provide us with all responsive documents.

3. Documents that relate to or are in the possession of Great Hearts Arizona and Great Hearts America must be produced.

Lastly, Great Hearts continues to refuse to produce documents responsive to prior public records requests made by the ACLU of Arizona that are in the possession of Great Hearts Arizona and Great Hearts America, apparently because of its claim that those entities are “private, nonprofit entities not subject to the public records laws.” [Response Letter at 2.] As Great Hearts further explains, “[a]lthough the individual charter schools are considered ‘public schools’ under Arizona law and are considered ‘public bodies’ for purposes of the public records laws [. . .], this does not transform the private entity holding the charter into a public entity.” From Great Hearts’ perspective, it is only required to produce documents held by the individual Great Hearts academies themselves, along with their individual board members, headmasters, and assistant headmasters. [Response Letter at 3 n.3.] In other words, Great Hearts contends that a “public body” can outsource nearly all of its functions to an outside vendor, and in so doing, absolve itself nearly completely of its responsibility to “maintain all records . . . reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state.” A.R.S. § 39-121.01(B). This is also not the law in Arizona.

The Great Hearts academies are “public schools,” A.R.S. §§ 15-101(4), 15-181(A), they receive tens of millions of dollars every year in public money, A.R.S. § 15-185, and they perform a quintessentially public function. Their charters are required to do many things, not the least of which is to “provide[]

for a governing body . . . that is responsible for the policy decisions of the charter school,” A.R.S. § 15-183(E)(8). And it is for this reason that the Attorney General had no difficulty concluding that public charter schools like the Great Hearts academies must comply with both the Public Records Law and the Open Meeting Law. Ariz. Att’y Gen. Op. No. I95-10, 1995 WL 870820. If anything, the diversion of public money to a private institution for this purpose heightens the need for transparency vis-à-vis the Public Records Law. Like traditional public schools, public charter schools must conduct their business (and expend public money) in a way that “open[s] [their actions] to the light of public scrutiny.” *KPNX*, 191 Ariz. at 302.

What we now know from the public records and meetings held by the various Great Heart academies’ governing boards is that those boards exist in name only and are engaged in largely symbolic acts. Policies are not developed by those boards with the input of parents and other stakeholders; on the contrary, they are discussed and formulated by Great Hearts America and Great Hearts Arizona, and then pushed down to the various Great Hearts academies to be rubber stamped by their captive governing boards. In the context of any other public school, this policy-making process would be open and subject to public scrutiny. Great Hearts has instead devised and orchestrated a complicated corporate structure specifically designed to make an end-run around its obligation to maintain and preserve in its custody those records “reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state.” A.R.S. § 39-121.01(B).

Great Hearts disagrees, pointing to a host of non-binding federal decisions that have nothing to do with the Public Records Law, and instead examine whether private or charter schools are “state actors” under 42 U.S.C. § 1983. In *Rendell-Baker v. Cohn*, 457 U.S. 830 (1982), for example, the Supreme Court held that a private school for troubled teens that derived at least 90% of its operating budget from public funds was not a “state actor” in a lawsuit by former employees. Similarly, in *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806 (9th Cir. 2010), the Ninth Circuit affirmed the dismissal of a civil rights complaint against an Arizona charter school operator arising out of an employee’s termination. As the court explained, “the allegations in Caviness’s complaint are insufficient to raise a reasonable inference that Horizon was a state actor [under 42 U.S.C. § 1983] and thus acted under color of state law in taking the alleged actions after Caviness was terminated.” *Id.* at 818.

While these cases perhaps stand for the proposition that a charter school operator may not be a “state actor” for purposes of federal law when making employment decisions in its proprietary capacity, they say nothing about the applicability of state laws, like the Arizona Public Records Law, to those entities. The mere fact that a private charter school operator (or its corporate parent) is not a “state actor” in making private employment

decisions has nothing to do with its treatment as a “public body” and quasi-governmental entity for other purposes. *Cf. Gorenc v. Salt River Project Agr. Imp. & Power Dist.*, 869 F.2d 503, 507 (9th Cir. 1989) (“[F]or some purposes, Salt River is treated like a governmental entity while for other purposes it has only the powers of a private company.”).

At bottom, when the corporate parent of a charter holder designs, discusses, and prescribes policies for a public charter school, it stands in the shoes of (or acts on behalf of) the charter holder and performs a public function. Under these circumstances, the records of that policy-making process must be subject to examination under the Public Records Law. As the New Mexico Court of Appeals explained in holding that the private operator of a city’s public access cable channel was subject to that state’s public records law:

[W]e reject the assertion by the City and NMML that IPRA does not apply when a public entity contracts out its services to an independent contractor and when nothing in the operating agreement specifically requires the independent contractor to hold records on behalf of the public entity. As the parties and amici point out, public bodies contract with private entities to provide a wide range of services. Today, traditional public functions such as fire protection, transportation, jails, after-school programs, and health care are routinely delegated to private entities—or privatized—for a variety of reasons. To allow such entities to circumvent a citizen’s right of access to records by contracting as the City and NMML suggest would thwart the very purpose of IPRA and mark a significant departure from New Mexico’s presumption of openness at the heart of our access law. [. . .] We therefore continue to utilize a flexible approach that favors access to records even when held by a private entity.

State ex rel. Toomey v. City of Truth or Consequences, 2012-NMCA-104, ¶ 26, 287 P.3d 364, 371 (N.M. App. 2012) (emphasis added). Other states have embraced a similar broad construction of their respective public records law. *See, e.g., Friedmann v. Corr. Corp. of Am.*, 310 S.W.3d 366, 380 (Tenn. Ct. App. 2009) (private prison operator under state contract subject to Tennessee’s Public Records Law); *Mem’l Hosp.-W. Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373, 380-81 (Fla. 1999) (holding that in the absence of a statutory exemption, a private entity that performed a governmental function pursuant to contract was subject to Florida’s public records law because “[w]hen [an] agreement transfers the actual public function, public access follows”).


Great Hearts’ continued withholding of responsive documents in the possession or custody of Great Hearts Arizona and Great Hearts America is improper under the Public Records Law. We therefore request that Great Hearts immediately provide us with all responsive documents.

Conclusion

As detailed above, we request that Great Hearts fully comply with our public records requests, and that it do so promptly as required by Arizona law. If Great Heart fails to do so by August 24, 2018, we will have no choice but to file a special action in superior court pursuant to A.R.S. § 39-121.02(A).

Please contact me with any questions or concerns regarding these objections. We look forward to Great Hearts' further production, and sincerely hope that litigation will not be necessary.

Sincerely,


Kathleen E. Brody
Legal Director, ACLU of Arizona

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
ARIZONA