

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

21-2129

_____)
 MYSTIC VALLEY REGIONAL)
 CHARTER SCHOOL, on behalf of)
 itself and its students and faculty,)
)
 Plaintiff,)
)
 v.)
)
 MASSACHUSETTS BOARD OF)
 ELEMENTARY AND SECONDARY)
 EDUCATION,)
)
 MASSACHUSETTS DEPARTMENT)
 OF ELEMENTARY AND)
 SECONDARY EDUCATION, and)
)
 COMMISSIONER OF ELEMENTARY)
 AND SECONDARY EDUCATION)
 JEFFREY C. RILEY (in his official)
 capacity only),)
)
 Defendants.)
 _____)

Business Litigation Session
 MICHAEL JOSEPH DONOVAN
 CLERK / MAGISTRATE
 5021 SEP 20 11 A 10: 26
 SUFFOLK SUPERIOR COURT
 CIVIL CLERK'S OFFICE

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

i. Introduction

1. This is a case about academic freedom. Plaintiff Mystic Valley Regional Charter School on behalf of itself and its students and faculty ("Mystic Valley" or the "School") brings this action for declaratory and injunctive relief against Defendants Massachusetts Board of Elementary and Secondary Education ("BESE"), Massachusetts Department of Elementary and Secondary Education ("DESE"), and Commissioner of Elementary and Secondary Education

Jeffrey C. Riley (“Commissioner Riley”) (collectively “Defendants”) in order to preserve and protect the autonomy of its curriculum and educational mission as granted to it pursuant to G.L. C. 71 § 89, the Massachusetts Charter Schools Statute, as approved in its Charter, and as secured to its students and faculty by the Massachusetts Declaration of Rights and the First Amendment of the United States Constitution. Without the relief requested herein, Mystic Valley and its students and faculty will be irreparably harmed by the Commonwealth of Massachusetts’ unlawful censoring of its educational Mission and repudiation of the School’s Charter. Specifically, the Defendants in this matter have ignored the School’s formal and informal pleas not to use new and unlawfully-vague evaluation criteria on the School and, instead, they issued a “draft” Core Criteria Site Visit Report making clear that they have imposed, and will continue to impose, the unlawful criteria that are antithetical to the School’s Charter.

2. Mystic Valley is a well-established and successful charter school that serves a diverse socioeconomic community. For more than two decades, Mystic Valley has focused its Charter, Mission and educational approach on the idea that students are best served, and prejudice and divisiveness are best defeated, by focusing on one shared American culture. This approach focuses on the idea that America is a “melting pot” and that all individuals are equal. To help facilitate this educational approach and to ensure equity across the socioeconomically diverse student population, Mystic Valley is a dress code school. The School emphasizes a standardized curriculum that has been time-tested and proven enormously successful for its students. It teaches “core” values that focus on the commonality of its students and fosters mutual respect among them. Mystic Valley’s approach, while innovative, is not novel. Rather, it is based upon the work of well-regarded educators and has its roots in Horace Mann’s concept of the Common School. Parents and students actively seek out the program offered by Mystic

Valley because of its approach and the success this approach has enjoyed. The School is regularly over-subscribed in terms of applications.

3. To be clear, Mystic Valley and its board, staff and faculty embrace the idea that we live in a multi-cultural world and that the students attending the School come from highly diverse backgrounds and circumstances. Indeed, Mystic Valley regularly holds programs for teachers and staff that include anti-discrimination training. It employs a Civil Rights Coordinator. It encourages students to form clubs based upon their unique interests. What Mystic Valley does not do, however, is make these matters part of its core teaching approach or curriculum, as the School is focused on commonality. In this regard, Mystic Valley is “apolitical.” It focuses on educating its students and not fighting in its classrooms the divisive culture wars that are gripping our nation.

4. The Commonwealth chartered Mystic Valley based upon this Mission in 1998. The Charter is a contract between the Commonwealth (through BESE) and the School, for the benefit of its students and faculty, and, in combination with state law, gives the School significant autonomy on how to fulfill its obligations under that contract. BESE has delegated to Commissioner Riley and DESE its authority to renew charters for Massachusetts charter schools, including Mystic Valley. In exercising that authority, DESE has endorsed Mystic Valley’s approach time and again over two decades in previous charter renewals, each time concluding that the School has satisfied its statutory requirements by acting “faithful[ly]” to its Charter, achieving “academic success,” and remaining a “viable organization.” In conjunction with its renewals, DESE has also repeatedly approved Mystic Valley’s Accountability Plan, Annual Reports, and other formal and required documents, all of which incorporate and advance the School’s Mission. As DESE is well-aware, Mystic Valley’s adherence to its Charter has resulted

in countless accolades, including recognition from *U.S. News & World Report* that ranked Mystic Valley in 2020 as the sixth-highest rated school in the Commonwealth, and in the top 1% in the country.

5. Despite Mystic Valley's multiple successes, and its full compliance with all laws, rules and regulations applicable to its continued operations, including anti-discrimination laws, over time, a small group of vocal critics have objected to Mystic Valley's "melting pot" approach to education. These critics believe the School should abandon its focus on a shared American culture and, instead, adopt a multi-cultural approach to teaching and education that emphasizes the differences in its students and society. Some of these critics suggest, incorrectly and without basis, that the School's faithfulness to its Charter is institutionally racist. They have brought their contentions to DESE, where for nearly two decades DESE properly took no action, recognizing that Mystic Valley has always acted faithfully to its Charter and its students were entitled to receive the educational opportunity set forth in the School's Charter and Mission Statement without censorship.

6. Unfortunately, DESE has now changed course. Under pressure from this small group of critics, DESE has undertaken an affirmative and unlawful effort to target Mystic Valley and force it to abandon its Charter, Mission Statement, and educational approach. Worse, recently-obtained DESE internal emails make clear the personal biases and agenda of certain DESE personnel who are intent upon forcing Mystic Valley to change its approach to education or face non-renewal of its Charter in 2023. DESE's efforts have been and continue to be an unlawful interference by the government, effectively, to dictate and censor Mystic Valley's approach based upon its *own view* of what the outcome should be in the educational culture wars

dividing our society more broadly. DESE's actions have placed the educational opportunity sought by students at Mystic Valley in jeopardy in violation of their secured rights.

7. As alleged below in detail, DESE's efforts in this regard have been highly calculated, misleading and pretextual. As an initial matter, DESE superficially recognizes that it cannot overtly direct Mystic Valley to change its Mission because of Mystic Valley's approved Charter and the autonomy granted to the School by state law. As a result, DESE has undertaken to accomplish the same unlawful objective *indirectly*. Specifically, during the summer of 2018, DESE announced that it intended to adopt new Performance Criteria to use in its periodic Core Criteria Site Visits during which it assesses the performance of charter schools. Such reviews take place in-between the 5-year charter school renewals. In effect, DESE's new Performance Criteria would evaluate and assess charter schools on such new and vague criteria as whether a charter school is sufficiently "culturally proficient" and "culturally responsive," for example. Although the new criteria were to be applied state-wide, DESE nevertheless knowingly defined these terms to mandate a focus on "differences," rather than "commonality," thereby targeting Mystic Valley's educational approach and Mission, knowing that their adoption would immediately place Mystic Valley in violation of the new Performance Criteria merely by staying faithful to its lawfully-approved Charter. Put simply, DESE's adoption of these new culture-related requirements were designed, pretextually, to put Mystic Valley's Charter in jeopardy. In response, Mystic Valley immediately and repeatedly identified to DESE that the proposed amended Performance Criteria were unlawful and must not be adopted. DESE ignored Mystic Valley's concern.

8. In May 2021, for the first time, DESE began the process of actually evaluating Mystic Valley under its new Performance Criteria. The first step in the process was a so-called

“Site Review” that occurred on May 12 and 13, 2021. However, even before the “Site Review,” DESE knew full well that a negative outcome was already predetermined for at least two reasons: (i) there exists an inherent and immutable conflict between DESE’s new Performance Criteria and Mystic Valley’s approved Charter and Mission; and (ii) DESE knowingly appointed an openly biased “Site Visit Review Team” to conduct the evaluation. Specifically, through a public records requests to DESE, Mystic Valley has obtained internal email communications among DESE staff, including from at least one individual who DESE later appointed as a Review Team member. In these communications -- *before* any “Review” even began -- DESE personnel openly labelled Mystic Valley as a racist school in need of reform. The subsequent appointment of one of these individuals to the Review Team directly violated DESE’s own Site Visit Code of Conduct, which mandates that evaluators “understand[]...the school’s particular *mission and educational philosophy*” and leave “personal bias” aside. These communications are discussed in more detail below.

9. With this and other evidence in hand, this past summer, Mystic Valley again brought its concern to DESE and requested that it be granted a waiver from the new unlawful Performance Criteria, and further put DESE on notice of the illegality of both the Performance Criteria and DESE’s actions. DESE refused to grant the waiver or even timely consider it. Instead, on August 25, 2021, DESE issued a “draft” Core Criteria Site Visit Report (“Draft Report”) in which it made wholly pretextual and false “findings” about Mystic Valley, and rated the School as only “Partially Meeting” several of the Performance Criteria. Further, DESE wrote its Report in bad faith by declining to apply any rating to the key criterion about which Mystic Valley had previously objected, claiming inaccurately that the Site Visit was “too limited” to evaluate that criterion. This is a tacit acknowledgment that any rating would either validate the

School's claim that the Review Team was biased, or would interfere with DESE's plans to, at minimum, place onerous conditions on the School's Charter for 2023. Yet on other criteria, DESE developed gratuitous negative findings that had never been made before against Mystic Valley in the past, and which are demonstrably false.

10. DESE's use of the newly-amended Performance Criteria together with its Draft Report "findings" place at risk and are an imminent threat to Mystic Valley's ongoing operation and accreditation, especially in light of the pattern of DESE's bad faith conduct to date. As a result, Mystic Valley seeks here a judgment declaring as follows: (i) that DESE's 2018 amendments to its Performance Criteria and its efforts to impose those Criteria on it, as evidenced by the Draft Report, are in violation of state law; (ii) that the proposed amended Performance Criteria violate the Massachusetts Declaration of Rights and the First Amendment of the United States Constitution both facially and as applied to Mystic Valley's students and faculty; and (iii) that DESE's 2021 Core Criteria Site Review findings as to Mystic Valley are arbitrary, capricious, pretextual and unlawful, and that the Draft Report and any subsequently-issued Final Report are, accordingly, null and void. Mystic Valley further seeks a permanent injunction barring DESE from utilizing or enforcing the amended Performance Criteria both generally and as to Mystic Valley and its students and faculty specifically, and that DESE may not act in any manner based upon its purported 2021 findings in the Draft Report. Absent action by this Court, Mystic Valley and its students and faculty, as well as the public, will be irreparably harmed.

ii. Parties

11. Plaintiff Mystic Valley is, and has been since 1998, a lawfully organized and operating Massachusetts charter school with a business address of 4 Laurel Street, Malden,

Massachusetts 02148. Mystic Valley brings this lawsuit on behalf of itself, its students and faculty.

12. Defendant BESE is a division of the Commonwealth of Massachusetts with a principal address of 75 Pleasant Street, Malden, Massachusetts

13. Defendant DESE is a division of the Commonwealth of Massachusetts with a principal address of 75 Pleasant Street, Malden, Massachusetts.

14. Defendant Commissioner of Elementary and Secondary Education for the Commonwealth of Massachusetts, Jeffrey C. Riley, has a principal place of business at 75 Pleasant Street, Malden, Massachusetts. Commissioner Riley is named in his official capacity only.

iii. Jurisdiction

15. Judicial review of a final agency decision is authorized by M.G.L. c. 30A § 14.

16. An action in the nature of certiorari is authorized by M.G.L. c. 249 § 4.

17. An action in the nature of mandamus is authorized by M.G.L. c. 249 § 5.

18. Declaratory relief is authorized under M.G.L. c. 231A §§ 1 et seq.

iv. Facts Common to all Counts

Mystic Valley Regional Charter School

19. Mystic Valley is a charter school located in Malden, Massachusetts. BESE first approved its charter in February 1998, and has renewed it every five years since (through DESE), including on January 23, 2018 for the period July 1, 2018 through June 30, 2023.

20. Mystic Valley currently serves approximately 1600 students in grades K-12. In February 2016, the Commissioner of the Board of Elementary and Secondary Education approved the School's request to expand enrollment over time to 1900 students.

21. A core component of Mystic Valley’s strength is the enormous socioeconomic diversity that exists among its student body. While the School’s students are primarily from its “sending districts”: Everett, Malden, Medford, Melrose, Stoneham and Wakefield, it also draws students from 27 other towns and cities around Massachusetts. In total, there are 55 unique home languages within its student population. Among its students, 46.4% do not speak English as a first language (Home Language not English), 33.3% are considered “high needs,” and 21.5% are economically disadvantaged. The students and their families apply to attend the School and do so because of the innovative and specific educational programs it offers as reflected in its Charter and Mission Statement. Additionally, Mystic Valley’s teachers choose employment at the School for these same reasons.

Mystic Valley’s Charter and Mission

22. Mystic Valley received its Charter pursuant to the Charter Schools Statute (“Statute”), Massachusetts General Law Chapter 71 Section 89. According to the Statute, the *express purposes* “for establishing charter schools are:

- (1) to stimulate the development of innovative programs within public education;
- (2) to provide opportunities for innovative learning and assessments;
- (3) to provide parents and students with greater options in choosing schools within and outside their school districts;
- (4) to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management;
- (5) to encourage performance-based educational programs;
- (6) to hold teachers and school administrators accountable for students' educational outcomes; and
- (7) to provide models for replication in other public schools.”

M.G.L. c. 71, § 89(d).

23. The Statute requires an application for the establishment of a charter school to include, among others, a description of “(1) the method for admission to a charter school; (2) the mission, purpose, innovation and specialized focus of the proposed charter school; ... (6) the educational program, instructional methodology and services to be offered to students; and (10) a statement of equal educational opportunity which shall state that charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language, and academic achievement.” Mass. G.L. c. 71, § 89(f).

24. DESE’s website acknowledges the “freedom” that the Statute confers upon charter schools: “Once the Board of Elementary and Secondary Education has awarded a charter, the new charter school has the *freedom to organize around a core mission, curriculum, theme, or teaching method*...In return for this *freedom*, a charter school must demonstrate good results within five years or risk losing its charter.” (Emphasis added).

25. Exercising that “freedom,” and complying with all applicable state laws and regulations, Mystic Valley created, developed, and implemented its educational program and philosophy, and articulated them through its Charter and Mission Statement. The School’s Mission Statement is as follows:

The mission of [Mystic Valley] is to provide the opportunity of a world class education characterized by well-mannered, disciplined and structured academic climate. Central to [Mystic Valley’s] academic environment is the incorporation of selected core virtues and the fundamental ideals of *our American culture*, which are embodied in the Declaration of Independence and United States Constitution. (Emphasis added).

26. More specifically, the School believes in the validity and importance of taking a “melting pot” view of American culture, a legitimate approach that has led to American success

for over 220 years. Deeply embedded in the School's Mission is a focus on a tangible, shared American culture. This Mission and philosophy have underpinnings in the educational treatises authored by Dr. E.D. Hirsch, Jr., an education and curriculum expert and the founder of the Core Knowledge Foundation, whose work Mystic Valley has identified as the foundation for its educational philosophy, curriculum and structure for over twenty (20) years.

27. Further, the School's "core virtues" and "fundamental ideals" focus on what students have in common, emphasize that they are all equal, and promote the philosophy that the community is all one (*e pluribus Unum*). One of Mystic Valley's primary educational programs is called the International Baccalaureate program ("the IB"). The School referenced the IB in its Charter Application, formally adopted it in 2005, and has identified it in every formal document reviewed and approved since by DESE. The IB aligns precisely with the School's commonality educational approach. The stated goal of the IB program "is to develop internationally-minded people who, recognizing their *common humanity* and shared guardianship of the planet, help to create a better and more peaceful world." (Emphasis added). The School considers its Mission and educational platforms to be deeply inclusive and welcoming of all students from all backgrounds.

28. The School's Mission has been prominently displayed on its website for years and featured in multiple documents submitted to, and approved by, DESE on a regular basis, including but not limited to Mystic Valley's Annual Reports, Strategic Plan, and Charter School Renewal Applications, as well as DESE's Renewal Inspection Reports, and its Summaries of Review on which the vote to renew the School's Charter are based. The School's Mission Statement has hung on the walls of every classroom for more than 15 years.

29. Mystic Valley also prepares and submits to DESE for approval a 5-Year Accountability Plan that includes its Mission Statement, among other bedrock educational principles upon which the School was founded. The most recent Accountability Plan submitted and approved by DESE states, in part:

Objective: The students at Mystic Valley will thoroughly understand the Declaration of Independence and the United States Constitution. *As per its Charter and Strategic Plan, the school will maintain a thoroughly American identity.* The school will celebrate American Exceptionalism and **will embrace the melting pot theory by highlighting our citizens' and students' commonality, not their differences,** within school programming. (Emphasis added).

30. The Board of Education and DESE had always reviewed, quoted, and approved the School's Mission, including the School's focus on "American culture" and "commonality" repeatedly and without qualification.

Mystic Valley's Charter and Mission Has Proven to be Enormously Successful

31. By following its Charter and Mission, Mystic Valley has been recognized as one of the state's - and the nation's - top schools. In 2020, *US News & World Report* ranked the school as the 6th best within Massachusetts, #54 in Charter High Schools across the country, and #231 overall nationally. The rankings included data on more than 25,000 public schools in all 50 states and the District of Columbia, placing Mystic Valley in the top 1% of schools across the nation.

32. On an individual basis, Mystic Valley's educational curriculum has resulted in many recent student successes. For example, forty-three members of Mystic Valley's Class of 2020 (52%) received the John and Abigail Adams Scholarship, and eight members (approximately 10%) of the Class of 2020 scored 1,500 points or greater on the SAT, a status achieved by only about 1% of students nationally. This past year, a senior won a National Merit Scholarship, and multiple students over the last few years have been named a United States

Presidential Scholarship state finalist. In 2018, a 2014 Mystic Valley graduate who is an immigrant from Cameroon and attended Harvard, was one of 32 students nationwide awarded a Rhodes Scholarship.

33. By nearly every academic standard, Mystic Valley has performed exceptionally. The School's lengthy waitlist and low attrition numbers (for example, its African-American student attrition rate is the lowest in the Commonwealth among schools that have any measured attrition).

34. Because the number of students who seek admission to Mystic Valley exceeds the number of available slots, the School holds a lottery after January 1st of each year. There are currently just under 1,500 student names on the School's waiting list, which is the sixth longest charter school waiting list in Massachusetts.

Charter Renewal Factors, and DESE's Performance Criteria

35. The Massachusetts Charter Schools Statute works in concert with a regulatory framework set forth in 603 C.M.R. § 1.00 et seq. The Statute and regulations mandate that Mystic Valley's Charter is subject to renewal every 5 years. Mass. G. L. c. 71, §89(dd); 603 C.M.R. §1.11.

36. Under authority delegated by the Massachusetts Board of Education, DESE reviews Mystic Valley's renewal applications pursuant to three (3) "Guiding Areas of Charter School Accountability": (i) Faithfulness to Charter; (ii) Academic Program Success; and (iii) Organizational Viability ("the Renewal Factors"). 603 C.M.R. §1.11(2). These are the regulatory-based cornerstone concepts for renewal. *See also* Mass. G. L. c. 71, §89(dd) ("When deciding on charter renewal, the board shall consider....whether the school has met its obligations and commitments under the charter....").

37. In 2005, DESE “staff” created and implemented what DESE called “Performance Criteria.” DESE revised the Performance Criteria in 2010, 2013 and 2018.

38. DESE’s Performance Criteria document states that “the Criteria were developed to ensure that key purposes of charter schools ‘to stimulate the development of innovative programs within public education; ... to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management’ (G.L. c. 71, § 89 (b)(i) and (iv)) are preserved, and that a variety of educational models...and programs/approaches...can demonstrate affirmative evidence of success for academic and non-academic outcomes.”

39. Although DESE has authority to develop guidelines to assist in its own review of charter school performance, it concedes that it “must ensure that the [Performance] Criteria protect the autonomies that allow charter schools to determine the means by which they achieve student outcomes. *Nothing in these Criteria shall be interpreted to require a charter school to adopt a particular model, mission or program.*” (Emphasis added). In other words, DESE acknowledges that its Performance Criteria cannot require a charter school to adopt a different “model, mission or program” than what has already been approved.

40. Unlike the Renewal Factors, the Performance Criteria are neither statutory nor regulatory in nature. Rather, they are DESE’s own, internally-created policy. They do not replace any of the Renewal Factors and cannot change a charter school’s existing and approved “mission.”

DESE's Site Visits

41. Typically, DESE conducts two renewal-related reviews during each charter term. One set of reviews occurs mid-way through a charter cycle, called a "Site Visit," and the other review occurs as part of the charter renewal process.

42. According to DESE's Charter School Site Visit Protocol for 2020-21 "the purpose of a site visit is to gather and document evidence about a charter school's performance in relation to the [Performance] Criteria for accountability purposes. Evidence gathered during the site visit process is ultimately used to make a renewal determination."

43. Specifically, the Site Visit requires an actual site visit, document review, various focus groups, and on-site classroom observations that include all grades and core subjects, and culminate in the review team's report, which includes findings. The resulting report "is ultimately used to make a [charter] renewal determination." The Site Visit Review Team uses the Performance Criteria as the standard for its review.

44. The Site Visit Review Team "documents" its "evidence" in a report known as a Core Criteria Site Visit Report. The Core Criteria Site Visit Report is "part of a body of evidence" used in determining whether to approve a school's charter application for renewal approximately two years later.

45. Each Site Visit Review Team must comply with DESE's "Site Visit Team Code of Conduct." The Code requires the Review Team to:

- a. "Approach the review of a school with a clear understanding of the school's particular *mission and educational philosophy*" (Emphasis added);
- b. "Understand your obligation to conduct the site visit without personal or professional bias and act accordingly, including disclosing any possible conflicts of interest, e.g., prior relationships with school staff, students, or families."

- c. Issue findings that ‘must be aligned with the Criteria and supported by evidence’;
- d. “Do not offer personal or professional opinions or recommendations, even if solicited by interviewees.”
- e. “Treat the draft site visit report, notes, and related evidence as confidential”; and
- f. “Refrain from communications with outside groups or individuals. Do not discuss the site visit or your opinions regarding individuals working at the school with outside groups or individuals, including the media.”

46. As a result of DESE’s internally-developed review system, a change in the Performance Criteria necessarily impacts the Site Visit, the Core Criteria Site Visit Report, and ultimately, renewal of the School’s Charter.

A 2017 Student Dress Code Issue at Mystic Valley Attracted Media and Critics’ Attention.

47. In 2017, an issue surfaced at Mystic Valley concerning the School’s prohibition of hair extensions, which was part of the student dress code. The original intent of the prohibition, which had not been re-examined in years, was to focus on the person, rather than their fashion, and prevent some students who could afford expensive hair extensions from having them, while others who could not afford them from not having them. Students of color complained that as applied to them the prohibition was unfair. The incident received widespread media attention. Mystic Valley responded openly, cooperatively and proactively, and vacated the prohibition against hair extensions and other hair and makeup rules. In an effort to turn the matter into a learning experience, the School also voluntarily initiated additional steps.

48. The School undertook a full internal review of its policies and practices related to issues of diversity and implemented a comprehensive series of steps in response. Specifically, the School added unconscious bias training for its leadership to its annual training with regard to

anti-harassment and anti-discrimination. The School designated and introduced to the community a new Civil Rights Coordinator. It redoubled its communication efforts with students and parents via established email, text and robocall communication systems, as well as utilizing social media via its web site, Facebook, Twitter and Instagram. Mystic Valley continues to host biannual parent/teacher conferences. It employs a Student Information System accessible to parents to address matters of academic results, attendance, behavior and community service. The overwhelming majority of the School community responded favorably to these and other actions. The School's efforts have been and remain ongoing.

49. Despite Mystic Valley's proactive response, there nevertheless remained, and continues to remain, a small group of vocal students and families who are critical of the School's efforts. Media outlets have covered their views and published stories that, in turn, have attracted critics with a particular agenda that oppose Mystic Valley's Charter and Mission. In this regard, in approximately June 2020, the School became aware that a small group of alumni and others allegedly had assembled a number of so-called anonymous "testimonials" about concerns at the School.

50. Since learning of the possible existence of these testimonials, the School has tried to obtain them so it could address any legitimate concerns directly. The School has made clear at every turn that it does not want a single student attending the School feeling unwelcome (or worse), and that if given the opportunity to investigate and address a known concern it will responsibly do so. However, apart from a handful of anonymous, mostly undated, non-specific paragraphs, uncovered only after months of pressing a public records request, the School has been unable to learn any details of any alleged testimonials sufficient for it to investigate and respond. Indeed, DESE has refused to disclose the vast majority of them to the School to the

extent it even has them, and has also refused to produce other related documents requested lawfully by the School pursuant to the Massachusetts Public Records Law. DESE's refusal forced the School to file a complaint in Suffolk Superior Court on July 16, 2021 requiring DESE to comply with state laws regarding transparency and the production of public records. To date, no one with knowledge of specific incidents of alleged ongoing discrimination has come forward to share any details which might allow the School to address them.

51. Even though these testimonials have not been disclosed to the School, their alleged existence has been made part of a campaign by the School's critics. Internal DESE emails confirm that members of DESE regularly communicate with the School's critics and have adopted their agenda as a result. It is Orwellian that DESE seeks, improperly, to evaluate Mystic Valley on its "cultural proficiency" while withholding information that might allow it to address any actual current issues brought to its attention by a student or parent.

DESE Begins Targeting Mystic Valley and Its Approved Charter and Mission.

52. In the months following DESE's renewal of Mystic Valley's Charter in January 2018, DESE began targeting the School and its educational approach.

53. DESE recognizes that it lacks authority to attack Mystic Valley's Mission directly because of the statutory and regulatory grant of autonomy to the School. In 2018 DESE nevertheless began to pursue a strategy to force the School to either abandon its Mission and approach, or to place its Charter in jeopardy. To accomplish this objective, DESE set the stage for the inclusion of new Performance Criteria in its interim Site Visit review of Mystic Valley.

54. More specifically, in the summer of 2018, DESE notified the Commonwealth's charter schools that it intended to revise its Performance Criteria, and circulated a draft of its proposed revisions. DESE knew these revisions directly targeted Mystic Valley in a manner

distinct and different from other Massachusetts Charter Schools, and that they could and would be used going forward to pressure Mystic Valley to abandon its decades-old and previously-approved Charter and Mission which focus on concepts of American culture, commonality, and “melting pot.” One key change was DESE’s inclusion of a new “Instruction” section in which DESE would evaluate a charter school’s “culturally responsive pedagogy.”

55. Mystic Valley responded in August 2018 and identified the fundamental problems with DESE’s proposed term and warned DESE that it was improperly attempting to dictate an educational program that contradicted the School’s Mission and philosophy. As Mystic Valley’s Director/Superintendent wrote:

For Mystic Valley, a school that would define a culturally responsive approach as one that focuses intensely on commonality and monoculturalism (as defined by E.D. Hirsch in “The Schools We Need and Why We Don't Have Them” below), adhering to what some might describe as "culturally responsive pedagogy" could lead to the school being required to perform in a manner that is at odds with its approved Charter, Mission Statement, and Strategic Plan.

Please note that the school adheres to concepts of the commonality of man, monoculturalism, the melting pot theory, etc. precisely because we are attempting to fulfill the deeply American ideal of equality of opportunity. We believe that this is the only responsible way to "...dismantle systematic bias negatively affecting historically underserved groups. "

I respectfully provide some quotes from Hirsch’s The Schools We Need to contextualize this approach and reinforce that this is one of Mystic Valley’s central goals. I hope these quotes, along with a thorough consideration of Mystic Valley’s track record of enabling students from all backgrounds to find academic success, highlights that this approach is viable and perhaps best practice in the area of ensuring equity.

"In the United States, some cultural groups have been unfairly deprived of equality of educational opportunity." (p. 210)

"...effective classroom schooling has to be monocultural for the same reason the marketplace has to be-so that all can participate." (p.209)

"The institution of the common school...had the goal of giving all children the shared intellectual and social capital that would enable them to participate as

autonomous citizens in the economy and policy of the nation." (p.233)

"In a large, diverse nation, the common school is the only institution available for creating a school-based culture that, like a common language, enables everyone to communicate in the public sphere." (p.233)

56. In an email dated September 11, 2018, Mystic Valley wrote again to DESE:

Mystic Valley's charter, mission, and strategic plan are built on the premise of focusing on the commonality of man. The school believes in the validity and importance of the melting pot model, a legitimate philosophy that led to American success for 220 years. Deeply embedded in our approach is a focus on a tangible, shared American culture. I am concerned that the proposed Performance Criteria, in their current iteration, are irreconcilably at odds with Mystic Valley's approach. Being held to the standards outlined in the proposed revisions is akin to DESE mandating that the school act in a manner that is unfaithful to its charter, mission, and strategic plan.

57. In October 2018, the School requested that the Commissioner of Education halt the new Performance Criteria because adopting those Criteria would present the School with an unlawful Hobson's choice: satisfy the Performance Criteria but violate its Charter, or adhere to its Charter but fail to meet DESE's new Performance Criteria and risk its Charter.

58. DESE ignored the valid concerns of Mystic Valley, and subsequently published the revised Performance Criteria later in 2018, replacing the phrase "culturally responsive pedagogy" included in its draft with a similarly-worded and equally vague requirement called "culturally proficient" and "culturally responsive."

59. In its new Performance Criteria, DESE defines these terms as follows:

Culturally proficient policies and practices enable staff members and students to interact effectively in a culturally diverse environment in which students' backgrounds, identities, strengths, and challenges are respected. Cultural responsiveness is an approach to viewing culture and identity as assets, including students' race, ethnicity, or linguistic assets, among other characteristics. Culturally responsive policies and practices acknowledge and actively draw upon diverse backgrounds, identities, strengths, and challenges of administrators, students, staff, and community as a way to deepen connections between the school and its community.

60. These terms and definitions are unlawfully vague, ambiguous and impermissibly subjective. More importantly, DESE's new "culturally proficient" requirement, as broadly defined in the newly-revised Performance Criteria, is a direct attack on Mystic Valley's approach that celebrates American culture and the "melting pot" philosophy, and that follows the teachings of Dr. E.D. Hirsch, Jr.

61. Mystic Valley has a statutory right to autonomy and to maintain and pursue its approved Charter and Mission without interference from DESE.

62. While DESE concedes on the one hand that it "must ensure that the [Performance] Criteria protect the autonomies that allow charter schools to determine the means by which they achieve student outcomes...[and shall not] require a charter school to adopt a particular model, mission or program," on the other hand, DESE is acting to undermine Mystic Valley's autonomy by requiring it to adopt a "particular mission [and] program" through its 2018 Performance Criteria changes.

63. As DESE well knew, changing the Performance Criteria would and will affect Mystic Valley's mid-cycle 2021 Site Visit, the corresponding Core Criteria Site Visit Report, and, ultimately, the 2023 charter renewal process.

64. Put simply, DESE's Performance Criteria requirements are intentionally incompatible with the School's state approved Charter, Mission and educational approach. They are in breach of the agreement between the Commonwealth and the School as reflected in its approved Charter. They threaten the secured rights of Mystic Valley's students and faculty by undermining the School's chosen viewpoint and forcing it to change the content of its chosen and approved educational approach.

DESE Knowingly Appoints a Biased Team to Conduct the May 2021 Site Visit

65. In December 2020, Mystic Valley made public records requests to DESE. Obtaining public records from DESE proved difficult. After receiving an initial production of documents, through counsel, Mystic Valley pressed for additional records in March 2021. In May and June 2021, Mystic Valley finally received a partial production of documents.. The few documents that DESE produced revealed an open, internally-known and outright bias within DESE against Mystic Valley and a preconceived agenda to undermine and destroy its Charter, including among the members of the hand-picked Review Team who conducted the May 2021 Site Visit.

66. By way of example only, in emails from July 2020, a DESE employee sent a copy of a media article concerning Mystic Valley to the Director of the Office of Charter Schools and School Redesign stating: “It’s pretty bad. I think [Mystic Valley’s] philosophy of what makes us the same is what is important[,] is ringing more hollow than ever.”

67. Then, on January 31, 2021, DESE employees shared an earlier email string circulated among 22 recipients, including known Mystic Valley critics, that discussed banning classic works of literature by Mark Twain from the Mystic Valley curriculum. The original email proposed that banning Twain “should be a plank in *our* platform.” (Emphasis added). States and educational institutions have struggled for decades in terms of how to teach Twain, an abolitionist who was writing intentionally at the time, given that his work includes offensive language. The email traffic confirms that in the months leading up to the May 2021 Site Visit, certain DESE personnel allowed themselves to be influenced by Mystic Valley’s critics and their proposed “platform” aimed at dictating Mystic Valley’s educational content, apparently unaware that (i) DESE’s own English Curriculum Framework for all students in Massachusetts includes

studying Mark Twain; and (ii) Mystic Valley's Charter School application in 1998 alerted DESE that the works of Twain were in the School's curriculum from its inception, and that great care is taken to teach the material in its important historical context.

68. Additional emails on this same chain between Olympia Stroud, Program Coordinator II at DESE, and a Mystic Valley critic, disclose a significant animus against Mystic Valley and a campaign to spread that animosity within DESE:

Stroud: This [reading Mark Twain] is horrible.... But talking about it will not accomplish CHANGE. If we do not have the right people on our side to filter out the racism in that school, the principle [sic] and teachers who are being protected will retaliate on our babies. IE. Read books with the N word being said multiple times. How long have these books been in the curriculum?

Critic: ... so who do we need to reach out to about this to make change?

Stroud: Everyone that they have been sending those emails to in DESE, especially the Commissioner along with (as I been saying) the BOE.

...

[The] Boston Globe might be next.

Critic: Mystic Valley has been targeting and hurting our black and brown babies for so long that it has been normalized....The mental abuse and psychological abuse is damaging our youth...This is racial trauma being imposed on our black and brown babies at the hands of teachers and school admin using our tax dollars!!!

69. Ms. Stroud then forwarded this same chain to Cliff Chuang (Senior Associate Commissioner of DESE of Education) and Benie Capitolin (Accountability Specialist) at DESE.

Stroud: Some context...regarding the mental damage that's hurting our Black and Brown students in Mystic Valley. My recommendation is to have [Ms. Capitolin] become the Mystic Valley liaison.

Capitolin: This is heartbreaking. What do we do when we know that Black and Brown students are actively being harmed in the schools that we oversee?...If our system can't protect Black and brown students from

unsafe environments, what can it do for them? How can it possibly educate them?

70. By late February 2021, having allowed itself to be overtaken in its decision-making by Mystic Valley critics, DESE selected the Mystic Valley Site Visit Review Team, and did in fact include on that Team Ms. Capitolin, who had already concluded that Mystic Valley was “actively harming ...Black and brown students.”

71. In selecting to Ms. Capitolin to participate in the Site Visit process, DESE violated its own Code of Conduct that required it to assemble a Review Team for Mystic Valley that would be fair and objective, and would not violate Mystic Valley’s rights. The Code of Conduct required the Review Team to act without bias, and to disclose any possible conflicts of interest. It mandated that the Review Team refrain from communications with outside groups or individuals. DESE failed at every level in this regard.

72. DESE’s appointed Site Visit Review Team inevitably brought with it their own preconceived and biased agenda that rendered the fairness of the process an impossibility, and that violated nearly every tenet of the Code of Conduct. The results of the Site Visit were predetermined, the visit itself was a sham, and the Draft Report should be null and void.

DESE’s 2021 Site Visit at Mystic Valley

73. On May 12th and 13th, 2021, DESE purported to conduct its Site Visit at Mystic Valley. The Site Visit was the first time DESE used its new Performance Criteria to evaluate the School.

74. The Review Team utterly failed to provide the School with adequate due process in conducting the review. For example, even though the School was open in-person and despite the requirement in the Site Visit Protocol, the Review Team did not visit the School at all.

Rather, the entire review was conducted virtually. In contrast, however, DESE has conducted *other* in-person visits to the School during the COVID-19 pandemic.

75. During the many Site Visit reviews conducted at the School in its 22 year history, the lines of questioning by the review team had always focused on the three Renewal Factors identified in 603 C.M.R. §1.11. However, in May 2021, this Review Team focused narrowly and materially on the new amendments to the Performance Criteria.

76. The Review Team made significant efforts to support its pre-determined agenda against the School. For example, the Review Team held a parent focus group. Afterwards, at least one parent reported to the School that the Review Team appeared to be actively accusing the participating parents of allowing their children to attend a racist school, and that the Review Team attempted to solicit examples of discrimination, rather than simply asking neutrally-framed questions and listening to the parents' answers.

77. The Review Team unfairly and unduly focused on searching for issues of alleged discrimination at the School without any good faith basis for doing so. Indeed, DESE's own records make clear that on February 11, 2021, DESE's Problem Resolution System ("PRS") Director, Barry Barnett, sent internally an email fully recognizing and confirming that "*No, we don't have any current complaints or recent 'rumblings' on any race/climate related issues [at Mystic Valley].*" (Emphasis added). Mr. Barnett confirmed again on March 18, 2021 that "None of the civil rights/discrimination related issues brought to our attention were ever opened as complaints with PRS..." And, on September 8, 2021, DESE's PRS department closed a matter relating to the School's teaching of works authored by Mark Twain, concluding that the School fully complied with its legal obligations.

78. Put simply, DESE's internal email communications and actions make clear that the Site Visit process was and is a sham, and Mr. Barnett's emails recognizing the lack of even any "rumblings" of any race/climate related issues, as well as the PRS conclusion that the School's teaching of Mark Twain was appropriate, reveal the bad faith of the entire exercise.

The Review Team Uses the Specific Changes Made to the Performance Criteria to Attack Mystic Valley

79. At the conclusion of the Site Visit in May 2021, Review Team member Patrick Buckwalter held a virtual meeting with the School's leadership team. In the virtual meeting, Mr. Buckwalter shared the Review Team's "preliminary findings." Mr. Buckwalter unambiguously communicated and highlighted a preliminary finding that the School's instruction "does not reflect cultural proficiency" and, as a result, that Mystic Valley was "only partially conducive to learning." Mystic Valley participants were surprised by the statement, and struggled to understand the basis of such a finding.

80. Notably, Mr. Buckwalter openly acknowledged that the School had in place a long-standing approach to matters related to cultural proficiency (American culture and commonality), but he made clear that, according to DESE, the School's approach was no longer consistent with DESE's new Performance Criteria. Simply put, Mr. Buckwalter laid bare DESE's true agenda to force Mystic Valley to abandon its Charter and Mission, or ultimately, to risk non-renewal in 2023.

81. The preliminary findings shared by Mr. Buckwalter were the culmination of a process begun by DESE in 2018 to target Mystic Valley. During the meeting with Mr. Buckwalter, DESE abandoned any pretense otherwise.

The School Again Raises Its Concerns Directly With DESE and Requests a “Waiver”

82. Following this preliminary findings conversation, Mystic Valley reached out to DESE and others to discuss this critical matter. In an effort to be transparent, Mystic Valley informed public officials about the DESE internal emails it had uncovered. Specifically, Mystic Valley brought its concerns directly to the Secretary of Education, as well as to senior DESE officials, but to no avail. Indeed, DESE continued its unwillingness to discuss openly and engage on the matter.

83. Faced with this scenario, on July 1, 2021, Mystic Valley submitted a formal request to DESE for a waiver from application of the offending Performance Criteria:

Holding the School to the standards outlined in the Performance Criteria is akin to DESE mandating that the School act in a manner that is unfaithful to its charter, mission, and strategic plan.

The express purpose of charter schools is to use innovative programs within public education. From the outset, the School has been clear about its mission, purpose, innovation and specialized focus. Under the regulations, the School has the freedom to organize around a core mission, curriculum, theme, or teaching method. Enforcement of the current Performance Criteria interferes with that freedom.

Most importantly, the Performance Criteria document states that **“[n]othing in these Criteria shall be interpreted to require a charter school to adopt a particular model, mission, or program.”**

If the Performance Criteria are applied as written in their entirety to the School, DESE will in effect force the School to abandon its model, mission, and programs and adopt a different model favored by DESE. In that circumstance, the School could not be faithful to its Charter...

The requested relief is appropriate and consistent with 603 CMR 1.11, which states: “All charter schools will be evaluated on the same performance criteria as provided in the guidelines, provided, however, that the criteria will take into account each school's charter and accountability plan.” (Emphasis added)

The regulations permit the School to apply for a waiver from regulatory requirements (603 CMR 1.03). To the extent that site visits are a regulatory

requirement (603 CMR 1.08(2)), and the Performance Criteria are being used to inform those site visits, the School seeks a waiver from the 2021 Core Criteria Site Visit, until such time as the School and DESE agree that the Performance Criteria that conflict with the School's charter will not be part of the evaluation or resulting report, or part of its Charter review in 2023. Further, any review must be conducted by a review team that is not motivated by bias against the School, as evidenced in recent internal email correspondence disclosed by DESE in response to a public records request.

On July 9, 2021, DESE informed Mystic Valley that it declined to delay issuance of its Core Criteria Site Visit Report. Moreover, to date, DESE has failed even to address the requested waiver. Mystic Valley's July 13th request to expedite the waiver decision has also gone unanswered.

The Draft Core Criteria Site Visit Report

84. DESE originally stated that it would issue its written Draft Report in July 2021. Instead, on August 25, 2021, DESE forwarded its Draft Report to the School. DESE's Draft Report is a model of obfuscation, avoidance and pretext. In its 23 year existence, Mystic Valley had never received a Draft Report like this one, including the last Core Criteria Site Visit Report in 2018 in which DESE found that Mystic Valley "me[et]t" all criteria.

85. Faced with Mystic Valley's written objections to DESE's adoption of the "culturally proficient" criteria, Mystic Valley's complaints to the Secretary of Education and senior DESE officials, and Mystic Valley's request for a waiver, DESE drafted the report so as to avoid rating the School at all regarding its "culturally proficient" criteria, despite evidence in the Draft Report from administrators, teachers and students that Mystic Valley is "culturally proficient." In fact, there was no evidence in the Draft Report to the contrary. Rather than accurately rating Mystic Valley as "meeting" DESE's "culturally proficient" criteria, DESE hid behind a footnote claiming that it did not rate the School "due to the limited scope of the visit."

That is patently untrue, as DESE had documented evidence of “cultural proficiency,” it just did not want to credit it so as to leave open that issue for the 2023 charter renewal process.

86. Tellingly, in other parts of the Draft Report in which one would expect DESE similarly to raise the alleged “limited scope of visit” excuse – namely, the “Environment” Criterion - it did not. Rather, DESE’s proposed findings are that the School only “partially meets” that Criterion.

87. Most significantly, however, DESE’s “findings” are overwhelmingly and transparently pretextual, arbitrary and capricious. Among other things, they are contradictory to known facts and twenty (20) plus years of prior reports, and they also hold the School to standards that DESE knows the School cannot meet due to existing charter school caps on enrollment from certain communities.

88. Indeed, once DESE realized it could not make adverse findings based upon its newly-amended criteria related to “culturally proficient” because neither the facts nor the law support them, DESE shifted to making adverse findings on other criteria which were fully without merit. DESE did so in an effort to pursue its documented unlawful ultimate objective – to shut down Mystic Valley.

89. By way of example only, while the Draft Report claims Mystic Valley only “partially meets” its “Governance” requirement, in its last 2018 Core Criteria Site Visit Report and 2017 Renewal Inspection Report, DESE concluded Mystic Valley “meets” the “Governance” requirement. However, nearly nothing has changed regarding Mystic Valley’s “Governance.” The only thing that has changed is DESE’s new agenda.

90. The same holds true relating to Criterion 6 in the Draft Report. DESE now claims that Mystic Valley only “partially meets” “Support for all Learners,” although it found that the

School met that Criterion in both the 2017 Renewal Inspection Report and the 2018 Core Criteria Site Visit Report. Again, the School has not done anything differently in this regard than it has in the past few years.

91. DESE's Draft Report puts Mystic Valley at risk of non-renewal of its Charter and, as a result, it presents an imminent risk of harm to the School, its faculty and its students.

92. Further, DESE's issuance of a final report will be public, as it well knows and intends, and the reputation of Mystic Valley will be immediate fodder for the media. As detailed above, DESE's own internal emails already discuss leaking the matter to *The Boston Globe*.

93. DESE's false and unlawful report will threaten the very existence and financial viability of the School because for every student who leaves the School, the School loses approximately \$13,000 per year in tuition payments from their sending district.

94. Loss of tuition will directly impact the educational opportunities offered by the School and will frustrate the public interest in providing students a free and appropriate education via Charter Schools. In short, DESE's actions put the School, its students and faculty in jeopardy. This dispute is now ripe given the stakes and the evidence cited herein. The intervention of this Court is necessary to avoid this injustice.

COUNT I

Action in the Nature of Certiorari (M.G.L. c. 249 § 4)

95. Mystic Valley incorporates all prior allegations as if set forth herein.

96. DESE is an administrative body exercising judicial or quasi-judicial functions.

97. DESE's Performance Criteria, Site Visit Protocol, Draft Report and resulting Report are not otherwise reviewable by motion or appeal, and Mystic Valley lacks any other reasonably adequate remedy.

98. DESE's review process, preliminary findings, and proposed Draft Report findings were arbitrary and capricious, not supported by substantial evidence, were lacking in due process given the Review Team's bias, and violated the secured rights of Mystic Valley's students and faculty.

99. Mystic Valley has suffered, and continues to suffer, substantial injury and injustice arising from DESE's decisions related to the adoption of the amended Performance Criteria, the review process and the issuance of the flawed Draft Report, that will be finalized shortly.

100. The Court should order that DESE's findings as set forth in the August 25, 2021 Draft Report be vacated as the Draft Report is the product of unlawful Performance Criteria and biased review process, should nullify any Final Report based upon the sham Site Visit and Draft Report, and should further order DESE to conduct any future performance review of Mystic Valley without reference to the unlawful Performance Criteria and in an unbiased manner.

COUNT II
Declaratory Judgment (M.G.L. c. 231A §§ 1-2)

101. Mystic Valley incorporates all prior allegations as if set forth herein.

102. An actual case and controversy exists between Mystic Valley and DESE concerning DESE's Performance Criteria, Site Visit Protocol, charter school review process, preliminary findings, Draft Report, and pending Final Report.

103. DESE has consistently violated the governing law, regulations, and policies of the Commonwealth in adopting and applying the impermissibly vague amended Performance Criteria and Site Visit Protocol in an unfair review process using a Review Team with demonstrated preconceived bias and in developing preliminary findings, the Draft Report, and the anticipated Final Report based on violations of law and errors of law and fact.

104. Mystic Valley is entitled to a judgment declaring as follows: (i) that DESE has violated the state Public Charter School law by adopting unlawful Performance Criteria, (ii) DESE has violated state law by conducting an unlawful review of Mystic Valley's performance; (iii) that DESE's findings concerning the School are null and void whether in the Draft Report or a subsequently-issued Final Report, and (iii) that DESE may not undertake any action which would prevent Mystic Valley from operating in conformity with its lawfully approved and renewed Charter.

COUNT III
Action in the Nature of Mandamus (M.G.L. c. 249 § 5)

105. Mystic Valley incorporates all prior allegations as if set forth herein.

106. An actual case and controversy exists between Mystic Valley and DESE concerning DESE's charter school review process.

107. DESE has consistently violated the governing law, regulations, and policies of the Commonwealth and DESE in amending and applying Performance Criteria and Site Visit Protocol in an unfair review process using a Review Team with demonstrated preconceived bias and in developing preliminary findings, Draft Report, and anticipated Final Report based on violations of law and errors of law and fact.

108. Mystic Valley is entitled to a judgment vacating DESE's Draft Report dated August 25, 2021, and any subsequent associated Final Report, and ordering DESE to carry out any and all future performance reviews of the School without reference to the unlawful Performance Criteria and with a review team that is not biased.

COUNT IV
Injunctive Relief

109. Mystic Valley incorporates all prior allegations as if set forth herein.

110. Mystic Valley and its students and teachers are entitled to an order permanently enjoining DESE from further using or applying its amended Performance Criteria to Mystic Valley and/ or from utilizing a biased review team in any future review or assessment of the School.

COUNT V

42 U.S.C. sec. 1983 (Violation of Federal and State Civil Rights)

111. Mystic Valley incorporates all prior allegations as if set forth herein.

112. The amended Performance Criteria adopted by DESE, on their face, violate the secured rights of Mystic Valley's students and faculty under the First Amendment of the United States Constitution and the Massachusetts Declaration of Rights.

113. Among other things, and without limitation, the Performance Criteria unlawfully require, restrict and discriminate against the content of the Mystic Valley curriculum and teaching approach which the students and faculty actively sought out believing it would advantage their futures. DESE's actions, as alleged above, amount to impermissible censorship, viewpoint and content discrimination all undertaken without due process and while directly targeting Mystic Valley's Charter in violation of the students' rights to equal protection of the laws. Further, DESE's amended Performance Criteria and its biased review of Mystic Valley targeted the school in a manner which violates the equal protection of the laws.

114. Mystic Valley, as a Charter School and in the unique circumstances of this case reserves fully its right to argue that it too has been deprived of its own secured rights but as to this count this matter is brought on behalf of, and to vindicate the rights of, its students and faculty.

COUNT VI
Breach of Contract

115. Mystic Valley incorporates all prior allegations as if set forth herein.

116. In chartering Mystic Valley, the Commonwealth of Massachusetts, through BESE, entered into a valid and enforceable agreement in 1998 the terms of which are set out in the approved Charter. Since then, BESE delegated to Commissioner Riley and DESE the authority to renew this contract, and the Defendants have in fact renewed the contract with Mystic Valley every five years, including most recently in January 2018.

117. For its part of the contract, Mystic Valley agreed to conduct itself in accordance with its Charter, as well as applicable statutes and regulations concerning its operations, and has done so at all times. In return, Defendants agreed to allow Mystic Valley to choose, establish and follow its own mission, educational approach and academic programs within the charter school statutory and regulatory framework.

118. Defendants have breached the parties' agreement.

119. As a result of Defendants' breach, Mystic Valley and its students and faculty have suffered harm.

JURY DEMAND

Mystic Valley respectfully requests a jury trial on all matters so triable.

PRAYER FOR RELIEF

WHEREFORE, Mystic Valley respectfully requests that the Court grant it the following relief:

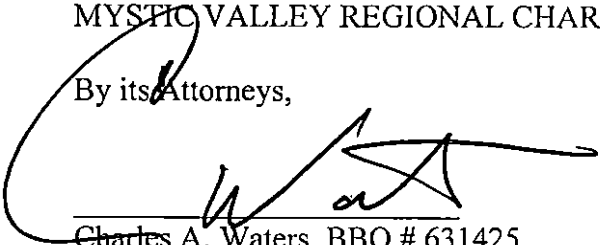
- A. Enter a judgment making the declarations as requested above in Counts I through III;
- B. Enter a judgment and appropriate relief pursuant to Count IV.

- C. Enter a permanent injunction preventing DESE from further using or relying upon its amended Performance Criteria to Mystic Valley and/or from evaluating or assessing the School's performance with a biased review team;
- D. Award damages based upon Defendants' breach of contract;
- E. Award Mystic Valley its costs and attorney's fees in bringing this action; and
- F. Grant such other relief as the Court deems equitable and just.

Respectfully submitted,

MYSTIC VALLEY REGIONAL CHARTER SCHOOL

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