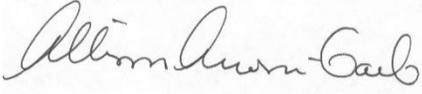




TO: P-12 Education Committee

FROM: Allison Armour-Garb 

SUBJECT: Proposed Charter Actions for Charters Authorized by the Trustees of the State University of New York

DATE: July 1, 2021

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents approve the Department's recommendation concerning the proposed charter actions for **Public Prep Charter School Academies** and **Brilla College Preparatory Charter Schools**, education corporations authorized by the Trustees of the State University of New York, to revise the charters of the following charter schools:

1. **Boys Preparatory Charter School of New York (NYC CSD 7 - The Bronx, currently authorized to serve Kindergarten through grade 8)**
2. **Girls Preparatory Charter School of New York (NYC CSD 1 – Manhattan, currently authorized to serve Kindergarten through grade 8)**
3. **Girls Preparatory Charter School of the Bronx (NYC CSD 8 - The Bronx, currently authorized to serve Kindergarten through grade 8)**
4. **Brilla College Preparatory Charter School (NYC CSD 7 - The Bronx, currently authorized to serve Kindergarten through grade 8)**

These proposed charter actions would add a joint high school program to each charter, to operate at one site, commencing with 9th grade in the 2022-2023 school year, with a corresponding increase in authorized enrollment across all schools of approximately 941 students in 9th through 12th grades by the 2026-2027 school year, and create what would be known as "Vertex Partnership Academies," to be managed by a newly formed not-for-profit charter management organization, Ventoux Partnership Network, Inc.

Reason(s) for Consideration

Required by State statute and review of policy.

Proposed Handling

This issue will come before the P-12 Education Committee at its July 2021 meeting, where it will be voted on and action taken. It will then come before the Full Board at its July 2021 meeting for final action.

Procedural History

On December 23, 2020, the Trustees of the State University of New York (“the Trustees” or “SUNY”) approved the proposed charter actions being presented to the Board of Regents for approval and issuance pursuant to Article 56 of the Education Law.

Over the past few years, the Board of Regents has voted several times to send proposed charters back with comments for SUNY’s reconsideration (see “Related Regents Items”), and each time, SUNY has voted to resubmit the items to the Board of Regents without modification.

Background Information

The Department is forwarding these proposed charter actions for the above charter schools, as proposed by SUNY as a charter school authorizer under Article 56 of the Education Law.

Pursuant to Education Law §2852, the Board of Regents has the authority to issue charters to all charter schools in New York State. The process for charter schools authorized by SUNY is as follows:

- SUNY recommends that the Board of Regents issue a charter implementing the proposed charter actions and sends the proposed charter to the Board of Regents through the Department. In this case, SUNY sent the proposed charter to the Department on **May 21, 2021**.¹
- Once a complete proposed charter is received by the Department from SUNY the Board of Regents has two options:

¹ In transmitting the required materials to the Board of Regents, SUNY was not able to include the final management or collaboration agreements between and among Public Prep Charter School Academies, Brilla College Preparatory Charter Schools, and Vertex, because the agreements had not yet been finalized. The agreements are not needed for the package to be considered complete. However, it is concerning that such agreements, which would ultimately govern the specific operation, management, and finances of the new High School entity, were not finalized at the time SUNY approved the proposed charter actions, and that their final provisions have not been shared with the Department. It is unclear if the agreements were ever reviewed or approved by SUNY, and the Department has sought clarification regarding this from SUNY.

1. If the Board of Regents takes no action on the proposed charter, the proposed charter will go into effect by operation of law 90 days after the initial complete submission to the Department; in this case, on **August 19, 2021**.
2. Consider the proposed charter and vote on it with one of the following outcomes:
 - a. If the vote is to approve the proposed charter actions, the actions are effective immediately, or as otherwise recommended by SUNY.
 - b. If the vote is to send the proposed charter back to SUNY with comments, SUNY must reconsider the recommendation and can choose to resubmit the proposed charter to the Board of Regents with modifications, provided that the applicant(s) consent in writing to such modifications; resubmit the proposed charter to the Board of Regents without modifications; or abandon the proposed charter. **This is the Department's recommendation for the current proposed charter actions.**

If the proposed charter actions are resubmitted to the Board of Regents, for SUNY-authorized charter schools only, the Board of Regents must approve and issue the proposed charter within 30 days of resubmission. If the Board of Regents does not do so, and absent further legal action, the proposed charter shall be deemed approved and issued at the expiration of such period.

The Department's recommendation to return the proposed charter to SUNY is based on inability to make the required findings that the proposed charter actions described in the application meet the requirements set out in Article 56 of the Education Law and all other applicable laws, rules and regulations and that the applicants can demonstrate the ability to operate the schools in an educationally and fiscally sound manner. The Department's recommendation to return the proposed charter is additionally based on Education Law §2852(9), which limits the number of charters that can be issued in New York City (NYC). Although there are currently no additional charters available to be issued in NYC, SUNY has approved these proposed charter actions, which they are representing as revisions, but which would, in effect, create a new high school, which is a potential violation of the law.

Although the Education Law empowers charter schools to use innovative practices to create additional high-quality educational opportunities for all New York students, these innovations are required to occur within the constraints of applicable laws, rules, and regulations. SUNY itself recognizes that "compliance with all Federal and State law, rules, and regulations" is an important aspect of charter school authorizing and operations.² Not holding charter schools accountable to these transparent, well-established legal guidelines, supported by more than 20 years of precedent, presents a risk to this entire system of schools that has produced

² <https://www.newyorkcharters.org/resource-center/school-leaders/compliance/>

educational innovation and opportunities for vulnerable populations of students across the state.

It is the Department's position that these proposed charter actions do not meet the required findings enumerated within Article 56 and, furthermore, are not mere revisions to allow the operation of a "program" as part of an existing charter school, but instead appear to be an attempt to create a new school in potential violation of the NYC charter limits under the Education Law. The Department's concerns about the possible circumvention of the cap include, but are not limited to:

1. The website of the entity proposed to run the High School, Ventoux Partnership Network, states that this "will allow more high-quality, high schools to open despite a cap on charters."³ This appears to be an admission that these proposed charter actions are an attempt to circumvent the charter cap in NYC. There are also numerous instances within the record—along with the "Summary of Findings" document presented to the SUNY Trustees—that further indicate this action may have been taken to avoid the cap;⁴ and
2. As is required for all new schools, SUNY is requiring a separate dissolution reserve fund for the High School.⁵

The Department's determination that it cannot make the required findings that the proposed charter actions described in the application meet the requirements set out in Article 56 of the Education Law and all other applicable laws, rules and regulations, and that the applicants demonstrate the ability to operate the schools in an educationally and fiscally sound manner is based upon many factors, including, but not limited to:

1. In the "Summary of Findings" document presented to the SUNY Trustees, SUNY states that the proposed High School will be held accountable for academic performance separately and apart from the existing K-8 charter school program, "as if it was a cohesive school";⁶
2. In the "Summary of Findings" document presented to the SUNY Trustees, SUNY states that the High School is subject to renewal separately, independently and on a different timeline than the schools operated by either education corporation involved.⁷ In Education Law §2851(4), renewal and non-renewal are discussed in the context of a charter, not grade levels or programs within a charter;
3. In the "Summary of Findings" document presented to the SUNY Trustees, SUNY states that the operators of the High School, not the education corporation, will be held responsible for all high school outcomes. The Board of Trustees of a

³ See <https://www.vertexacademies.org/about-us/the-need>, accessed on July 1, 2021.

⁴ See <https://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/IIIB2%20Brilla%20and%20Public%20Prep%20Vertex%20Summary%20of%20Performance.pdf>, accessed on July 1, 2021.

⁵ See page 11 at https://brillaschools.org/wp-content/uploads/2020/07/2019_2020_board_minutes_final.pdf, accessed on July 1, 2021.

⁶ See <https://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/IIIB2%20Brilla%20and%20Public%20Prep%20Vertex%20Summary%20of%20Performance.pdf>, accessed on July 1, 2021.

⁷ Ibid.

charter school is responsible for outcomes of all students enrolled in their charter, regardless of whether or not they hire a CMO to operate the school;⁸

4. SUNY put “provisions in the revisions to allow SUNY to close the program under the same circumstances that permit SUNY to revoke a charter.” Under the Education Law, grade levels operated under a charter can be modified via a charter revision. Using language such as “revocation” indicates the separation and independence of the high school from the governance of the pre-existing K-8 charter schools;
5. In the “Summary of Findings” document presented to the SUNY Trustees, both pre-existing education corporations will “turn over all funds received for those students attending the joint high school program (i.e., per pupil, students with disabilities funds, federal title funds, and any federal Charter Schools Program related funding) to Vertex.”⁹ In addition to supporting the inference that Vertex and the “program” it operates will constitute a separate, new school, such an arrangement may be a violation of the Department’s Charter School Program grant requirements with the United States Department of Education; and
6. The November 2019 Brilla board minutes state that the school “takes on no financial commitment other than the per pupil funding of enrolled high school students and can pull out of the partnership anytime with a two year notice”

The Education Law requires¹⁰ the charter entity make certain specific findings prior to the issuance of a charter. After considering the statutory requirements, the Department recommends that the Board of Regents return the proposed charters for the schools listed above to the SUNY Trustees for reconsideration, with the following comment and recommendation:

The Regents are unable to make the required findings in accordance with Education Law §2852(2), including, but not limited to, the findings that (a) the charter schools described in the application meet the requirements set out in this article and all other applicable laws, rules and regulations; and (b) the applicants can demonstrate the ability to operate the schools in an educationally and fiscally sound manner. In addition, in accordance with Education Law §2852(9) there are no charters available for issuance in New York City. Although the proposed charter actions are identified as revisions, the nature of the proposed charter actions and a review of supporting documentation evidence the creation of a new charter high school, in potential violation of the law. These proposed charter actions must be abandoned.

Related Regents Items

[June 2012 Initial Authorization of Brilla College Preparatory Charter School](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/June2012/612p12a2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/June2012/612p12a2.pdf>)

⁸ Ibid.

⁹ Ibid.

¹⁰ Education Law §2852(2).

[April 2017 Merger of Brilla College Preparatory Charter School with Brilla College Preparatory Charter School at Highbridge \(an Education Corporation authorized by the Board of Trustees of the State University of New York\)](https://www.regents.nysed.gov/common/regents/files/417p12a2revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/417p12a2revised.pdf>)

[April 2017 Return of Proposed Early Renewal Charters](https://www.regents.nysed.gov/common/regents/files/417p12a5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/417p12a5.pdf>)

[July 2017 Return of Proposed Early Renewal Charters](https://www.regents.nysed.gov/common/regents/files/717p12a1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/717p12a1.pdf>)

[June 2019 Return of Proposed Early Renewal Charters](https://www.regents.nysed.gov/common/regents/files/619p12a1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/619p12a1.pdf>)

[January 2020 Return of Proposed Early Renewal Charters](http://www.regents.nysed.gov/common/regents/files/120p12a2.pdf)
(<http://www.regents.nysed.gov/common/regents/files/120p12a2.pdf>)

[March 2020 Return of Proposed Early Renewal Charters](https://www.regents.nysed.gov/common/regents/files/320p12a2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/320p12a2.pdf>)

[April 2021 Return of Proposed Early Renewal Charters](https://www.regents.nysed.gov/common/regents/files/421p12a5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/421p12a5.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That the Board of Regents return the proposed charters for **Boys Preparatory Charter School of New York, Girls Preparatory Charter School of New York, and Girls Preparatory Charter School of the Bronx, schools operated by Public Prep Charter School Academies; and Brilla College Preparatory Charter School, a school operated by Brilla College Preparatory Charter Schools**, to the Trustees of the State University of New York for reconsideration, with the following comment and recommendation, “The Regents are unable to make the required findings in accordance with Education Law §2852(2), including, but not limited to, the findings that (a) the charter schools described in the application meet the requirements set out in this article and all other applicable laws, rules and regulations; and (b) the applicants can demonstrate the ability to operate the schools in an educationally and fiscally sound manner. In addition, in accordance with Education Law §2852(9) there are no charters available for issuance in New York City. Although the proposed charter actions are identified as revisions, the nature of the proposed charter actions and a review of supporting documentation evidence the creation of a new charter high school, in potential violation of the law. The proposed charter actions must be abandoned.”

Timetable for Implementation

The Board of Regents action for the above-named charter schools will become effective immediately.