



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

TO: The Honorable, the Members of the Board of Regents

FROM: Regents Review Panel--The Honorable Anthony S. Bottar,
Lester W. Young, Jr., Betty A. Rosa, and
Charles R. Bendit

SUBJECT: Proposed Revocation of Charter of Kingsbridge Innovative
Design Charter School

DATE: May 16, 2011

STRATEGIC GOAL: 1 and 2

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Kingsbridge Innovative Design Charter School be continued on probation for the period commencing on May 17, 2011 and ending on June 29, 2011 and should its charter be revoked, effective June 30, 2011?

Reason(s) for Consideration

Oversight responsibilities over charter schools under State statute, Education Law §2853(2)

Proposed Handling

The question will come before the full Board at its meeting on May 17, 2011.

Procedural History

Education Law §2855 provides that the Board of Regents may revoke the charter of a charter school for certain specified reasons, which include "serious violations of law", and "material and substantial violation of the charter, including fiscal mismanagement." Education Law §2855 and 8 NYCRR §3.17 provide that where the Board of Regents seek to revoke a charter, the charter school must be provided:

(a) a notice of intent to revoke the charter, including a statement of reasons for the proposed revocations;

(b) at least 30 days to correct the problems associated with the proposed revocation;

(c) an opportunity to submit a written response; and

(d) oral argument before a panel consisting of at least three members of the Board of Regents, which may recommend revocation, or placement of the charter school on probationary status, imposition of a remedial action plan or other action as the panel deems appropriate.

On March 24, 2011, the Commissioner issued an order placing the Kingsbridge Innovative Design Charter School (KIDCS) on probation until May 17, 2011 for serious violations of law and material and substantial violations of its charter, including fiscal mismanagement, and providing KIDCS notice of intent to revoke its charter. The notice also explained that KIDCS had 30 days to correct the problems.

KIDCS did not initially submit a single, coherent written response and instead responded in piecemeal fashion through multiple e-mail submissions between April 29 and May 2, 2011. On May 3, 2011, the Department notified the School via electronic mail ("e-mail") that, based on review of these submissions, NYSED would be moving forward with the recommendation for the summary revocation of the School's charter. In addition, via submissions dated May 4, 2011 and May 5, 2011, NYSED provided KIDCS with, among other things, the reasons for NYSED's continuing to seek revocation.

On May 9, 2011, KIDCS submitted a lengthy written response to NYSED's May 4 submission. KIDCS also requested oral argument. By letter dated May 13, 2011, NYSED responded to KIDCS's May 9 submission. Chancellor Tisch then appointed a four-member Regents Review Panel in accordance with Regents Rule §3.17, comprised of Regent Bottar, Chair, and Regents Young, Rosa and Bendit

On May 16, 2011, oral argument was held before the Regents Review Panel. By a unanimous vote [vote of ___ to ___], the review Panel recommended that KIDCS be continued on probation until June 29, 2011 and that its charter be revoked effective June 30, 2011.

8 NYCRR provides that the Board of Regents may accept or reject, in whole or in part, the recommendation of the Regents Review Panel, and the decision of the Board of Regents shall be final.

Background Information

Kingsbridge Innovative Design Charter School is a charter school located in Bronx, New York that was approved by the Board of Regents on January 12, 2010, and was issued a provisional charter on February 9, 2010. KIDCS is currently in its first year of operation and was scheduled to open on September 7, 2010 in New York City's

Community School District 10. However, KIDCS was not able to obtain the necessary certifications for its anticipated facility and instead opened for instruction in a different facility on September 17, 2010. KIDCS currently serves 143 students in Kindergarten and Grade 1.

Recommendation

The Regents Review Panel respectfully recommends that the Board of Regents adopt the attached recommended decision, extend the charter school's probation until June 28, 2011 and revoke the charter of the Kingsbridge Innovative Design Charter School effective June 30, 2011.

Timetable for Implementation

Immediate for the extension of probation and June 30, 2011 for revocation.

VOTED: that the attached recommended decision is adopted by the Board of Regents, that the Kingsbridge Innovative Design Charter School be placed on probation for the period commencing on May 17, 2011 and ending on June 29, 2011; that the charter and certificate of incorporation (also known as the provisional charter) are revoked and the education corporation is dissolved, effective June 30, 2011; and that notice to such effect be given to the trustees of the charter school, that any student records be transferred to the New York City Department of Education in accordance with the provisions of Education Law §2851(2)(t), and that the assets of the corporation be distributed through the procedures set forth in Education Law §220.

IN THE MATTER

of

DECISION

KINGSBRIDGE INNOVATIVE DESIGN
CHARTER SCHOOL,

On January 12, 2010, the Board of Regents approved an application to establish the Kingsbridge Innovative Design Charter School (“KIDCS” or “the School”) in the Bronx, New York. The charter application provided that the School would serve 150 students in Kindergarten and Grade 1 in its first year of operation and expand to serve 450 students in grades Kindergarten to 5 in its 5th year of operation.

The School was scheduled to open on September 7, 2010 at 3120 Corlear Avenue in New York City’s Community School District 10. During the summer and fall of 2010, staff from the New York State Education Department (“Department”), Office of Innovative School Models, had several meetings and conversations with the Executive Director and Chair of the Board of Trustees (“trustees” or “board”) of the School as the School prepared to open for instruction. Issues related to the acquisition of appropriate facilities for the school, completing renovations to facilities, obtaining the necessary certificates of occupancy for the facilities, and leasing or purchasing buses to transport students, among others were discussed during this time. In fact, the School was not able to open for instruction on September 7, 2010 as planned because the necessary certificates of occupancy for the facility had not yet been obtained. The School ultimately opened for instruction on September 17, 2010 at 295 West 231st Street, Bronx, New York.

During the fall of 2010, the Department began receiving complaints from a member of the board, members of the School’s staff, and parents of students at the School concerning a variety of issues that included, but were not limited to, alleged violations of board procedures, lapsed benefit contracts for School staff, inappropriate handling of contributions to staff 401(k) accounts and allegations that the School would not be able to make payroll.

In November 2010, a Department staff member visited the School to gather information pertaining to the ongoing fiscal and operational issues at KIDCS that had been the subject of complaints and to evaluate the educational soundness of the School. Department staff also met with the principal and several teachers. Ongoing financial problems were described during these meetings that included an inability to

purchase instructional materials necessary to implement the instructional program described in the KIDCS Charter. Department staff made several requests of the School during the fall of 2010 and early winter of 2010-11 for information concerning the status of employees' benefits contracts, the ability of the School to make payroll, and the status of hiring an instructional leader, among other issues.

On January 14, 2011, the Assistant Commissioner of the Department's Office of Innovative School Models sent a letter to the Chairman of the School's Board of Trustees ("Trustees"). The letter outlined several concerns about the School based on the communications between the School and the Department, visits to the School and information and complaints received by the Department from third parties. These included that the Board of Trustees had appointed several new trustees without obtaining approval of the Department, as required by its charter, that the school was currently without an instructional leader and that numerous complaints had been made to the board that were yet unresolved. The letter outlined responses and information that the Department required the School to provide to the Department by January 24, 2011. The Department indicates that the response received from the School was incomplete and raised additional concerns about the fiscal and educational soundness of the School.

In addition, the Department's January 14 letter pointed out that, on January 4, 2011, the School's second principal was fired. At that time, the School transitioned leadership and oversight of the academic program to an external consultant. The Department's letter indicates that this high turnover (three academic leaders in the School's first five months of operations) raised concerns about the Board of Trustees' ability to effectively lead the school.

On February 17, 2011, the Department sent another letter to KIDCS' trustees requesting additional information concerning the School's fiscal condition. That additional information was required to be provided to the Department by February 24, 2011. On February 25, 2011, an email was sent to the Trustees indicating that no information had been received by the Department, that Department staff was planning to visit the school on March 9, 2011, and that the requested information must be provided to the Department no later than 8:00 a.m. on February 28, 2011. Again, the Department indicates the response received from the trustees was incomplete and continued to raise additional concerns about the fiscal and educational soundness of the School.

On March 9, 2011, Department staff conducted a site visit to the School to assess the fiscal and educational soundness of the school, collect data pertaining to the formal information requests of January 14, 2011 and February 17, 2011, and meet with the Trustees, school staff, teachers, parents, and external consultants working with the School's leadership. The site visit included interviews with these stakeholders, document review, classroom observations, and attendance at a regularly scheduled meeting of the School's Board of Trustees.

On March 24, 2011, the Commissioner of Education, on behalf of the Department, issued a Probation Order and Notice of Intent to Seek Summary Revocation ("Order and Notice") placing KIDCS on probation until May 17, 2011 for

serious violations of law and material and substantial violations of its charter, including fiscal mismanagement and providing the School with notice of intent to revoke its charter. Among other things, the Order and Notice indicated that KIDCS lacked an appropriate system of bookkeeping and financial records management and was fiscally unstable. In addition, the Department raised concerns regarding the functioning (or the alleged lack thereof) of the school's board, and made note of various violations of the school's approved educational program, including that KIDCS had been operating without an instructional leader since January 4, 2011. The Order and Notice also explained that the School had 30 days to correct the problems pursuant to a remedial action plan.

The School did not submit a single, coherent written response to the Order and Notice, nor did it respond completely or demonstrate that it had corrected the cited deficiencies by the April 29, 2011 deadline. Instead, the School responded in piecemeal fashion through multiple e-mail submissions between April 29 and May 2, 2011. On May 3, 2011, the Department notified the School via e-mail that, based on review of these submissions, the Department would be moving forward with the recommendation for the summary revocation of the School's charter. In addition, via submissions dated May 4, 2011 and May 5, 2011, the Department provided the School with, among other things, the reasons for the Department's continuing to seek revocation.

On May 9, 2011, the School submitted a lengthy written response to the Department's May 4 and 5 submissions. By letter dated May 13, 2011, the Department responded to the School's May 9 submission. Chancellor Tisch then appointed a four-member Regents Review Panel ("Panel") in accordance with Regents Rule §3.17, comprised of Regent Anthony S. Bottar, Chair, and Regents Lester W. Young, Jr., Betty A. Rosa and Charles R. Bendit.

On May 16, 2011, oral argument was held before the Panel. The Panel recommended that the School be continued on probation until June 30, 2011, and that its charter be revoked effective July 1, 2011.

Education Law §2855 provides that the Board of Regents may revoke a charter school's charter for among other things, material and substantial violations of the charter, including fiscal mismanagement, and serious violations of law. For the reasons set forth below, the Board of Regents concludes that the School has materially and substantially violated its charter, including by not being educationally sound and by fiscal mismanagement. Moreover, the School has failed to fully correct the problems associated with these violations to the satisfaction of the Board of Regents. Accordingly, the School is continued on probation until June 30, 2011 to allow it to close down in an orderly fashion, and the School's charter is revoked effective July 1, 2011.

I. The School has violated Section 2.4 of its Charter and is not being operated in an educationally sound manner.

Section 2.4 of KIDCS's charter provides that the charter school shall implement the educational programs set forth in its charter. The School admits that it has operated an educational program inconsistent with the charter. Its consultant, Mr. Fiorentino described in detail his astonishment at the condition of the education program as of his first visit to the School on January 24, 2011, stating that he could "only attribute this to a lack of proper instructional leadership." The School terminated the services of its then-principal (and second instructional leader since the School was chartered) in January 2011, and has been operating without a permanent instructional leader since at least January 4, 2011.

The importance of a principal or other instructional leader in assuring the successful performance of any public school is well-recognized. An instructional leader oversees the implementation of the school's instructional program and supplies the vision necessary to carry out that program. Having a qualified instructional leader, therefore, is critical in ensuring that a charter school's educational program is properly implemented and is conducted in the best interests of the students. Although the School advised the Department that it had hired a consultant to identify gaps in the initial implementation of the academic program and provide a 3 year roadmap for meeting the board's objections, the School admits that it has not appointed an instructional leader since January 4, 2011. The School submitted an "instructional program organizational chart" in its May 9, 2011 submission; and at oral argument indicated that it is the process of interviewing candidates for the instructional leader position referred to in its charter. Nonetheless, while the school also argued at oral argument that its charter provides for a master teacher at the school, who the School asserts is acting as an interim instructional leader, the fact remains that, to date, the School has failed to hire a new permanent one.

Without an instructional leader, a school's ability to provide quality educational services is necessarily compromised. Even the organizational chart provided by the School recognized the primary role of the instructional leader, with the master teacher reporting to the leader. As such, the hiring of an instructional leader should have been a top priority for KIDCS' board of trustees, but it was not. Moreover, while the School claims that it is in the process of recruiting a school leader, this alone – given the nearly five month delay – is insufficient.

Focusing on this instructional leadership issue, Panel members asked the School pointed questions about the School's organizational structure and leadership as they affected quality of instruction. The Panel found a "void" in the School's organizational structure, leadership, and quality of instruction, and questioned whether the School's leadership assessed the educational impact of decisions it made, and whether those decisions were made in the best interests of the School's students. Although individual persons were named, the School did not describe how those persons worked together, how decisions were made, or how the students' interests were considered in making decisions that impacted on education.

The Panel was concerned that the main focus of the School's board has been on persistent unresolved fiscal issues, not educational issues. The School did not present anyone at the oral argument who actually makes the educational decisions, and the School has recently made decisions that raise questions as to whether anyone in a leadership capacity considered the educational impact of those decisions.

For example, in April KIDCS terminated the employment of five teachers out of the eleven at the school, including in two instances both teachers in a single classroom, reportedly due to financial constraints. This is a serious concern, since the terminations occurred during the school year, while instruction was being provided. First, the School's financial woes are now affecting the educational program. Second, the School has provided no evidence of any consideration by the board of the educational impact of these particular terminations on the students and the educational program prior to the terminations. This is symptomatic of the lack of an organizational and leadership structure that is able to make decisions that lead to quality instruction and educationally sound programs for the students.

To give another example of the school leadership's lack of focus on its instructional program, in response to the Order and Notice, the School initially submitted a plan to implement a teaching model (Collaborative Team Teaching or CTT) that differed from the instructional program contained in the charter and actually submitted proposed charter revisions. When the Department responded in its May 4 letter that the School had not demonstrated how this change would fit in the School's overall instructional model, the School abruptly withdrew its proposal, submitting yet another educational plan from its consultant and dropping CTT.

II. The School is not fiscally sound, and has been fiscally mismanaged.

The Department determined that the School had violated Section 5.1 of its charter, that the school would at all times maintain appropriate management and financial controls. The Department found that, at least as of February 2011, the School lacked the most basic financial systems and fiscal controls, and did not have an appropriate system of bookkeeping and financial records in place. This is corroborated by an April 25, 2011 memorandum from an accountancy firm retained by the School in late February, Rios & McGarrigle, LLC ("Rios"), which recites a long list of problems with the School's fiscal management systems and recommended a number of fiscal system changes, and additional internal controls.

At oral argument, the School's new board treasurer (who joined the board in April 2011 and is an accountant and attorney), stated that the board had instituted new fiscal systems and controls, and that he would be overseeing the fiscal operation of the School. The School also indicated in its May 9, 2011 submission that it had corrected the problems identified by Rios.

The Panel recognizes the efforts made by the School in establishing fiscal controls, but is still concerned about the overall financial management and fiscal stability of the School. The Department also found that the School is fiscally unstable and has expressed concern that the School may not have sufficient cash to fund its basic operations through the end of the current school year.

The record, and the School's oral argument, indicates that the School has been heavily reliant on loans and forgiveness of debt to maintain a positive fund balance. In fact, the School conceded that its fiscal viability through the end of the school year is reliant on a \$400,000 loan with Corlaton Realty. The School submitted as proof of the loan a "Term Sheet" with Corlaton Realty Inc. dated April 28, 2011 evidencing a loan in the amount of \$400,000 at 6% interest amortized over 15 years. However, the Term Sheet anticipates a closing that would occur "within six weeks" of executing the Term Sheet, and at oral argument the School conceded that this closing has not yet taken place. The School therefore does not actually have the loan proceeds, and admitted at oral argument that without this loan, the School will finish the school year in a deficit.

In response to the Order and Notice, the School submitted multiple versions of Profit and Loss statements and Balance Sheets which cover the same time period and differ in material ways. For example: (a) the most recent pro forma balance sheet statement indicates \$462,000 in Total equity, but a previous statement for the same period indicated \$165,000; (b) Total Long Term Liabilities were \$701,933 in the June 30, 2011 pro forma balance sheet which differs significantly from the lending schedule provided to support loan payments, which reflects \$1.2 million in liabilities for that period; and (c) the pro forma balance sheet for the period ending June 30, 2011 contains no current liabilities, yet the lending schedule provided indicates approximately \$275,000 will be due in the following year.

At the oral argument, the Department also asserted that the School has failed to timely access approximately \$60,000 in Federal Title I and Title II, Part A funds, because the School has failed to submit FS-25 forms with documentation of allowable expenditures. When asked about this at oral argument, the School stated that it had received one payment but nothing further. When the Department noted that the School was supposed to submit FS-25 forms with allowable expenditures listed in order to obtain additional funds, the School's Executive Director admitted that the School had not submitted any FS-25 forms.

While the Panel recognized the changes that the School had instituted, the Panel still concludes that the School has not shown that it is fiscally stable or that it in fact has sufficient funds to remain solvent until the end of the school year, much less the one year additional probation that the School requested.

Conclusion

Education Law §2855(1)(c) provides that the Board of Regents may revoke a charter based on a "[m]aterial and substantial violation of the charter, including fiscal mismanagement." The importance of the requirement that a charter school be managed in a fiscally sound manner is evidenced by numerous provisions of Article 56 of the Education Law related to finances. For example, Education Law § 2851(2)(e) requires charter school applicants to submit a proposed budget and fiscal plan with supporting evidence that the fiscal plan is sound and sufficient start-up funds will be available. Education Law §§ 2851(2)(f) and 2854(1)(c) require charter schools to conduct annual independent fiscal audits comparable in scope to those required of other public schools and consistent with generally accepted accounting and audit standards. Finally, Education Law § 2852(2)(b) provides that a charter school applicant must, as a condition of approval of its application by a charter entity, demonstrate the ability to operate the school in a fiscally sound manner. As recognized by these

provisions, a fiscally mismanaged charter school is not properly safeguarding public funds and cannot effectively serve its students.

Education Law §2852(2)(b) requires that a charter school demonstrate the ability to operate the school in an educationally sound manner, in order to have its application approved. A sound program requires educational leadership and consideration of potential educational impact in all decisions made by School personnel and its board. We find that the School has had a chronic lack of appropriate instructional leadership, and has not had a permanent instructional leader for nearly five months. Consequently, or because of lack of board oversight, we further find that the School has made decisions that affected the educational program without adequate consideration of the impact of those decisions on the students or whether those decisions were in the students' best interests.

Although the Panel recognizes that the School made many efforts to correct the fiscal and educational violations identified by the Department, and to stabilize its board membership, under the totality of the circumstances we are not reassured that the School can operate in a fiscally and educationally sound manner. It appears that everything the Board of Trustees has done to address the deficiencies in its financial systems and educational program has been reactive—there is no evidence of initiative on the part of the Board of Trustees in correcting its problems. The Board has always been acting to solve a problem after it happened, rather than taking proactive actions to prevent problems. Under such circumstances, there is no basis for concluding that the Board of trustees has demonstrated that it will in fact manage the School in a fiscally and educationally sound manner in the future.

The School is also heavily dependent on short-term loans to maintain a positive fund balance. Not only does it have no basis for assuming that such loans will be continually available in the future, it does not even have the loan yet that would enable it to finish the school year without being insolvent. Short-term loans are not a viable means of assuring long-term fiscal stability of an organization. As it expands its student enrollment in years two to four, it needs to have a budget that is structurally in balance based on revenues known to be available. Even if we were to accept the School's argument that it is maintaining a \$27,000 cash balance, that is on what is currently a \$2.1 million budget and leaves little margin for error or for unforeseen circumstances. As the Department contends, the School is not fiscally sound and is in danger of not having sufficient cash to meet its payroll and other expenses at any time.

There is also evidence that the Board of Trustees' fiscal mismanagement is impacting the educational program of the school. Five teachers have been laid off during the school year in response to the fiscal problems at the school, including both teachers in two separate classrooms. For a charter school whose charter provides for only 6 classes of 25 students each, that represents a substantial reduction in program. As previously noted, there is no evidence that the school considered the educational impact of this decision on its students, which is a serious problem. To be fiscally sound, a charter school must demonstrate the ability to support its educational program, particularly as it expands to additional grades in years two through four, and the School's ability to do so is very much in doubt.

Although we recognize that a significant number of parents and other members of the community wish to see the School continue to operate, that does not alter the conclusion that the School's charter should be revoked. The School is fiscally unstable and in danger of running out of the cash needed to remain in operation at any time. It would do a disservice to the students enrolled in the school and their parents to have the School continue to operate into the next school year only to have it close for fiscal reasons. The Board of Regents has a responsibility to assure that charter schools have fiscal management systems and safeguards in place to ensure that public funds are appropriately expended for the benefit of students. Allowing the School to retain its charter and continue to operate would not be consistent with that obligation. To avoid disruption of the education of its enrolled students in the current school year, and to permit the School to close in an orderly manner, the revocation should take effect at the close of business on June 30, 2011 and the School should be placed on probation for the period from May 17, 2011 to June 30, 2011.

For the reasons set forth herein the Kingsbridge Innovative Design Charter School shall be continued on probation until June 30, 2011; the charter of the Kingsbridge Innovative Design Charter School and its certificate of incorporation (also known as the provisional charter) are revoked and the education corporation is dissolved, effective July 1, 2011; and notice to such effect shall be given to the trustees of the charter school. The School must notify parents of existing students and students both admitted in the lottery or are on the School's waiting list of this decision, any student records maintained by the School must be transferred to the New York City Department of Education in accordance with the provisions of Education Law §2851(2)(t), and the assets of the corporation must be distributed through the procedures set forth in Education Law §220.

Dated:

Merryl H. Tisch, Chancellor