



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

TO: P-12 Education Committee

FROM: John B. King, Jr.

SUBJECT: Revocation of Certificate of Incorporation (Provisional Charter) of the East New York Preparatory Charter School

DATE: September 2, 2011

AUTHORIZATION(S):

SUMMARY

On October 11, 2005, the Chancellor of the New York City Department of Education (NYCDOE) executed a charter agreement authorizing the formation of East New York Preparatory Charter School, with the Chancellor as the charter entity, subject to approval by the Board of Regents. On December 9, 2005, the Board of Regents issued a certificate of incorporation (also referred to as a provisional charter) incorporating East New York Preparatory Charter School as an education corporation.

Education Law Section 2855 provides that a charter entity may revoke a charter school's charter for the following reasons:

- (a) when a charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years;
- (b) serious violations of law;
- (c) material and substantial violation of the charter, including fiscal mismanagement; or
- (d) when the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of section two hundred nine-a of the civil service law involving interference with or discrimination against employee rights under article fourteen of the civil service law.

On April 16, 2010, the Chancellor of the NYCDOE issued an order revoking the charter of East New York Preparatory Charter School, effective June 30, 2010. A copy of the order is attached (Attachment A). The reasons for the revocation are set forth in the attached Recommendation to Chancellor Joel I. Klein Concerning Termination of Charter Issued to East New York Preparatory School (Attachment B).

In summary, the Chancellor of the NYCDOE placed the school on probation in February 2009, after a series of concerns were identified by staff of the NYCDOE's Charter School Office (CSO), including financial irregularities and a lack of appropriate financial controls. In November 2009, the School's 3rd Year Monitoring Report by the State Education Department (SED) identified multiple violations of the charter agreement and state law including lack of oversight by the school's Board of Trustees, discharging students with academic difficulties, failure to maintain a consistent teaching staff and several financial irregularities. In January 2010, the Chancellor notified the school's Board of Trustees, staff and parents that he intended to revoke the school's charter based on Section 2855 of the Education Law (cited above). The school was provided the opportunity to correct the problems, as required by the statute, and was afforded the right to a hearing, which took place on March 19, 2010. Despite efforts by the Chair of the Board of Trustees and new members of the Board to address the various concerns raised by SED and CSO, the Chancellor determined that fundamental issues that constitute material and substantial violations of the charter remained and he revoked the school's charter.

The Chancellor's revocation order was issued on April 16, 2010 and the school closed as of June 30, 2010. On July 26, 2011, the NYCDOE sent a letter to Commissioner King, transmitting a copy of the Chancellor's charter revocation order and requesting that the Board of Regents revoke the certificate of incorporation of the school (Attachment C). Copies of all of the documents received from NYCDOE concerning the revocation are available for your review.

Section 3.17(c) of the Rules of the Board of Regents provides that upon receipt of an order of another charter entity revoking the charter of a charter school, the Board of Regents shall proceed to revoke the certificate of incorporation of such charter school pursuant to Education Law Sections 219 and 2853(1). Accordingly, the Board of Regents must now proceed to revoke East New York Preparatory Charter School's certificate of incorporation.

Recommendation

VOTED: That the certificate of incorporation (also known as the provisional charter) of the East New York Preparatory Charter School (the "Corporation"), located in the City New York, State of New York, which was issued by the Board of Regents on December 9, 2005, be revoked, and that the education corporation be dissolved, effective September 13, 2011, that notice to such effect be given to the board of trustees of the Corporation, that any student records be transferred to the City School District of the City of New York in accordance with the provisions of Education Law §2851(2)(t), that all other corporate books and records of the corporation be transferred to the New York State Education Department's Office of School Innovation, and that the assets of the Corporation be distributed in accordance with the procedures set forth in Education Law Section 220.

Attachments



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE CHANCELLOR
52 CHAMBERS STREET - NEW YORK, NY 10007

April 16, 2010

By E-Mail and Overnight Mail

Board of Trustees
East New York Preparatory Charter School
210 Chester Street
Brooklyn, NY 112120

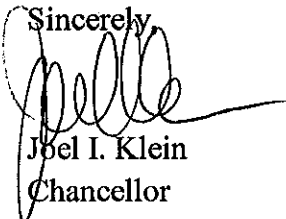
Re: East New York Preparatory Charter School

Dear Board of Trustees:

The question before me is whether to revoke the charter issued to East New York Preparatory School ("ENYP"). Pursuant to Education Law § 2855(2), "the charter entity, or the board of regents" may terminate a charter, for, among other reasons, "(b) Serious violations of law; [or] (c) Material and substantial violation of the charter, including fiscal mismanagement." At least thirty days before the effective date of a proposed revocation, notice of intent to revoke the charter must be provided to the board of trustees and the charter school afforded at least thirty days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, "a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process." Earlier this year, I designated John White, Deputy Chancellor for Strategy and Innovation, to review the materials presented by ENYP and the Charter School Office, to hear oral arguments on the matter and to make a recommendation to me as to whether I should revoke ENYP's charter. I have reviewed the attached recommendation prepared by Mr. White and concur in the recommendation.

Based on the reasons in the attached recommendation, the Charter of ENYP is terminated effective June 30, 2010. In light of this decision, ENYP is directed not to participate in the charter school lottery scheduled for April 17, 2010. The Charter School Office is directed to work with ENYP to facilitate a smooth transition of children enrolled in ENYP into other schools for the 2010-11 school year.

Sincerely,



Joel I. Klein
Chancellor

**Cc: Michael T. Duffy, Director, Charter School Office
John C. White, Deputy Chancellor
Board of Regents**



Joel I. Klein
Chancellor

John C. White
Deputy Chancellor

**Recommendation to Chancellor Joel I. Klein Concerning
Termination of Charter Issued to East New York Preparatory School**

In October 2005, the Chancellor, as the charter entity pursuant to Education Law § 2851(3)(a), approved the application for East New York Preparatory charter school ("ENYP") to establish and operate a charter school. ENYP and the Chancellor executed the charter agreement (the "Charter") in October 2005. The Board of Regents thereafter approved the Charter.

On January 25, 2010, the Charter School Office ("CSO") of the New York City Department of Education ("DOE") issued a notice to East New York Preparatory School ("ENYP") that it was in material and substantial violation of the Charter (the "January 25th letter"). The January 25th letter advised ENYP that it had thirty days to correct all the violations or the Charter would be terminated. ENYP responded in a letter dated February 24, 2010 in which it outlined its response (the "February 24th letter"). The CSO sent a final letter dated March 12, 2010 in which it stated its determination that the response was insufficient and recommended termination of ENYP's Charter (the "March 12th letter"). The letter also notified ENYP that an oral argument would take place on March 19, 2010. You designated me to review the submissions from ENYP and the CSO, hear arguments on your behalf and make a recommendation as to whether the Charter issued to ENYP should be terminated. On March 19, 2010, as your designee, I presided over oral argument, at which both ENYP and CSO made presentations and answered my questions. Following my review of all the materials submitted by CSO and ENYP as well as the March 19th argument, the following is my recommendation.

Background

In the January 25th letter, the CSO asserts that there are continuing material and substantial violations of ENYP's Charter. This letter followed over a year of interaction between the CSO, the New York State Education Department ("SED") and ENYP in which the CSO and SED raised numerous issues of concern to ENYP and ENYP attempted to respond. The January 25th letter incorporates prior warnings from both the CSO and SED of such violations, including a Probation Order dated February 4, 2009 and SED's Third Year Comprehensive Monitoring Report dated November 5, 2009 (the "SED Monitoring Report"). Among the violations delineated in the January 25th letter are: financial irregularities and a lack of appropriate financial controls. The January 25th letter also discusses in detail the manner in which the

composition of the Board violates the requirements of the school's bylaws, its Code of Ethics and the Charter. The letter also asserts that the Board demonstrates a lack of ability or interest to oversee the academic, operational or fiscal operations of the school, noting in particular no evaluation of the head of the school in connection with her compensation increase. ENYP was asked to respond to the SED Monitoring Report (discussed in further detail below) which delineated numerous problems with the school, including many specifically relating to the student population. There were findings in the SED Monitoring report that the school had discharged students with academic difficulties, as well as a high attrition rate among the school's teaching and administrative staff. ENYP was afforded 30 days in which to remedy the violations of its Charter.

ENYP responded to the CSO in a letter dated February 24, 2010. ENYP's letter describes the academic success of students at the school as well as the school's culture. The letter, with attached exhibits, also attempts to respond to the financial irregularities and governance issues identified by the DOE. For example, the letter explains the services that Mercer Givhan provided to ENYP, and claims that Mr. Givhan had disclosed his personal relationship with Sheila Joseph, the founder of the school and currently its Executive Director, in public disclosures. The letter analyzes a sample of credit card purchases to provide business justifications and follows up with a statement that employees may no longer use credit cards for ENYP authorized expenses. ENYP explains that the compensation of the Executive Director was reduced to her earlier salary of \$120,000, effective March 1, 2010. ENYP reported that it was retaining an independent consulting firm to, among other things, review the Executive Director's performance and conduct an independent review of the school. The letter states that the compensation of the Executive Director will henceforth be set by the Board, using comparable compensation information from other similar charter schools, without the input of the Executive Director. The letter contains details about the school's contract with ADP TotalSource, Inc., a human resources company providing payroll and other human resources services to the school. ENYP claims that the contract with TotalSource is a cost effective way of managing these services, rather than hiring an additional employee at the school. The letter reports that the school has implemented ATS. The letter asserts that the Board has hired a Chief Financial Officer, has adopted a fiscal policies and procedures manual and was working on a draft of a conflicts of interest and code of ethics. Finally, the letter discusses the proposed new facility for the school for the 2010-11 school year. The letter acknowledges ENYP's failure to follow required procedures to gain DOE approval before entering into a contract, and explains that the sale was re-authorized on February 21, 2010, subject to obtaining consent from the DOE. The letter also asserts that the DOE was aware of the proposed transaction, despite the admitted failure to seek DOE approval of the sale in the proper manner.

As of the date of the February 24th letter, the Board of Trustees was comprised of seven members, the minimum allowed under the Charter. The new Chair of the Board of Trustees, Mark Clarke, is a principal of a New York City public school. Ms. Joseph resigned as a voting member of the Board, as did two other members. The February 24th letter acknowledges that earlier efforts to amend the by-laws to reduce the minimum number of members of the Board were done without obtaining required DOE consent.¹ The February 24th letter identifies a series

¹ ENYP also included a copy of its letter to CSO seeking approval of an amendment to the Charter that would allow the Board to have a minimum of five trustees.

of resolutions adopted at a meeting of the Board on February 21, 2010, designed to bring the Board into compliance with the Charter, By-laws and other rules of the DOE, including the creation of committees, a resolution requiring all hiring decisions and terminations to be approved by the Board, and a resolution implementing a parental grievance process.

The CSO reviewed the ENYP submission and, by letter dated March 12, 2010, reiterated its recommendation that the Chancellor terminate the Charter. The March 12th letter finds that ENYP has still failed to address the assertion that ENYP is improperly denying admission to students with low academic performance. In support of this, CSO referred to the SED Monitoring Report as well as the notes prepared by Andrea Whitehurst, a former principal who conducted monitoring visits at the school during February and March 2010. The SED Monitoring Report highlights numerous instances where the school appears to be inexplicably excluding or discharging students. For example, the report finds that the school had discharged 48 students as of April 6, 2009, and also was well below its projected enrollment of 247 students. The CSO provided additional information about the school's alleged improper treatment of the enrollment of a particular student, S.C., with an additional statement submitted by a staff member from the school.

The March 12th letter further highlights the school's ongoing problem with maintaining a consistent teaching staff. The SED Monitoring Report finds that 17 staff were either terminated or resigned within the first half of the 2008-09 school. The CSO asserts that the problem retaining staff continues. Most significantly, attached to the letter is a communication from Teach for America that it was permitting its members to seek employment in different schools for the 2010-11 school year, despite its policy that members are required to commit to a school for a two year period. The letter states: "Regrettably, we feel that this is one of those extremely rare situations in which we are reasonably justified in allowing corps members to seek an alternative placement after the completion of their first year." The letter from Teach for America explains its reasoning: "Since we began our partnership in the summer of 2009, our corps members and staff members who support them have faced significant challenges to making the relationship productive." The materials annexed to the March 12th letter point to dissension among and a lack of effectiveness of the teaching staff. In particular, Ms. Whitehurst's report of her site visits in February and March 2010 highlight problems with the school staff, including improper discipline of students and poor classroom management.

The CSO also avers that ENYP's grievance procedures do not comport with the requirements of Education Law § 2855(4), which requires that parents have a means to refer unresolved grievances to the DOE or the Board of Regents. The CSO also refers to the school's failure to adequately assess the question of the compensation paid to Ms. Joseph, noting that she participated in the vote to increase her own compensation, in violation of sections 2.12(d) and 5.3 of the Charter. The CSO points to this particular problem as indicative of the problematic relationship between Ms. Joseph and the Board of Trustees, asserting that the Board is not exercising sufficient oversight over the operations of the school. The letter includes other examples where Board members claim an inability to do their jobs effectively because of Ms. Joseph's interference. While acknowledging that there have been changes in the composition of the Board, the CSO claims that ENYP has failed to demonstrate that the Board will be able to effectively oversee the school, as required by section 2.12 of the Charter.

The parties appeared before me on March 19, 2010. Mark Clarke, the new Chair of ENYP, spoke on behalf of the school. Chad Pimentel, an attorney with the DOE's Office of Legal Services, presented on behalf of the CSO. Mr. Clarke made a lengthy presentation, focusing primarily on the addition of new Board members and the ongoing efforts of the new Board to effectively oversee the school, as well as the academic success of the students at the school. He gave his personal assurances that no student would be improperly transferred or discharged from the school. Mr. Clarke reviewed the current actions being taken to improve oversight of the school. He noted that the Board had resolved to reduce Ms. Joseph's salary to her prior salary; however, the presentation acknowledges that no decision had yet been reached as to whether she would be required to repay the additional compensation that she received. As yet unresolved were a proposed Conflict of Interest Policy and Code of Ethics. The Board had re-voted on a proposal to purchase space for the school and submitted this to the CSO for approval. Mr. Clarke reviewed the plans for the school and argued that sufficient space would be available for September, although no work has yet begun. Mr. Clarke advised me that a Board meeting was taking place on the following Sunday (March 23rd) at which the question of Ms. Joseph's ongoing employment would be discussed. I was advised that following that Board meeting, Ms. Joseph's employment has been continued, at least for now, while the new Board engages in an evaluation of her performance.

Mr. Pimentel's presentation argued that the school has been under observation and review for over fourteen months and has still not been able to provide assurance that the Board was overseeing the school, that appropriate financial controls were in place, that students were not being improperly diverted and that the school would have a full teaching staff going forward. Mr. Pimentel reiterated the CSO's position that the Charter should therefore be terminated.

I posed questions about three areas of critical concern: student population, teaching staff and school location. First, I asked Mr. Clarke to address the question of whether students were being improperly diverted from the school. Although ENYP's presentation attempts to dispute the claim that one particular student was improperly diverted from the school, it also acknowledges that significant numbers of students have left the school during its four years of existence. Mr. Clarke was unable to affirmatively dispute the claim that at least some students had been discouraged from attending the school, although he affirmatively asserted that this would not happen in the future. With respect to the question of whether ENYP could be assured of having adequate teaching staff, Mr. Clarke could not provide assurance that the teachers from Teach for America would be required to remain at the school. The Teach for America staff comprise six of eight classroom teachers at the school. He asserted that the Board of Trustees was in communication with other potential sources of teaching staff for the 2010-11 school year, and expressed optimism that the school would have a full teaching staff for September. Finally, with respect to adequate space for the school, Mr. Clarke referred to his presentation about the proposed facility for the school for September.

Recommendation

Pursuant to Education Law § 2855(2), “the charter entity, or the board of regents” may terminate a charter, for, among other reasons, “(b) Serious violations of law; [or] (c) Material and substantial violation of the charter, including fiscal mismanagement.” At least thirty days before the effective date of a proposed revocation, notice of intent to revoke must be provided to the Board of Trustees of the charter, Education Law § 2855(2), and the charter school afforded at least thirty days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, “consistent with the requirements of due process.”

Based on my review of the record, as discussed above, I recommend that ENYP’s Charter should be terminated, effective at the end of the school year, due to “material and substantial violation of the charter.” I do not reach this recommendation lightly, particularly given the recent efforts of the new Board Chair and the new Board of Trustees to begin addressing some of the concerns raised over the past 14 months by the CSO and SED. ENYP repeatedly conceded the errors of the prior Board and asserted that it was undertaking steps to ameliorate these in the future. The new Board is attempting to improve its oversight and the financial management of the school. However, the school has not addressed certain fundamental issues that constitute material and substantial violations of the charter.

I find that ENYP has not cured its violation of section 2.3 of the Charter. That section provides that “Admission of students to the school shall not be limited on the basis of intellectual ability, measures of achievement or aptitude...” The SED Monitoring Report (at page 16) identifies that 114 students had been discharged from ENYP in its first year of instruction and that some students were being encouraged to transfer from the school due to low performance on tests. In its presentation on March 19, 2010, ENYP conceded that 21 students (over 10 percent of its student body) did not return for the 2009-10 school year, without an explanation for this attrition rate. The enrollment of the school is currently 167 students, down from 178, and far below its projected enrollment.

Although the academic performance indicators of the school show that students at the school are meeting and exceeding performance standards, the issues about discharges raise questions about the validity of ENYP’s claims regarding its overall academic performance. There is no question that the students in the school who have taken standardized tests are meeting with success. However, if low performing students are being improperly excluded from the school, this could artificially inflate the percentage by which the school has achieved academic success. ENYP has not presented any evidence responding to the findings that lower performing students were being involuntary transferred from the school or discouraged from attending the school. In addition, monitoring of the school in February continues to show a lack of a cohesive disciplinary policy, in violation of section 2.8 of the Charter.

Section 4.1 of the Charter requires the Board to “employ and contract with necessary teachers, administrators and other school personnel as set forth on the application.” I find that the Board is not in compliance with this provision. The staff at the school lacks stability and the Board does have in place a viable plan to retain teachers. Among other things, the SED’s

Monitoring report cites an unacceptably high attrition rate for the 2008-09 school year. This problem continues and would likely be exacerbated by the decision of Teach for America to permit its members to find alternate employment for the 2010-11 school year. At the time of the hearing before me, ENYP did not present any information that Teach for America had changed its position nor did it present adequate assurance that there would be sufficient teaching staff for the 2010-11 school year. ENYP did not effectively dispute the information provided by Ms. Whitehurst following her visits to the school in February and March of this year. A stable teaching staff is a critical element for the ongoing success of a school. Without a plan in place, there is no assurance that the school will have quality staff in place for the 2010-11 school year.

In addition, the Board has not presented a viable plan for space for the upcoming school year. Although, the Board appears to have cured its earlier failure to seek DOE approval for its proposed purchase of a building, their plan for development of the building does not ensure that the space will be available in September. The failure to timely seek DOE approval for the purchase of a building has delayed the development of the space. Absent a clear plan that ensures that a school can be fully operational for September 2010, ENYP is in violation of section 1.4 of the Charter.

ENYP also continues to be in violation of sections 2.12 and 2.14 of the Charter as well as Education Law § 2855(4).² Parental involvement is critical to the operation and success of a charter school. Parents must have a clear and effective means to be involved in the function of the school. Although ENYP adopted a resolution and procedure by which grievances can be communicated to the Board, it has not adopted any process by which unresolved grievances can be presented to the DOE, as the chartering entity, or the Board of Regents. See Education Law § 2855(4).

Finally, despite the current composition of the Board, and the advocacy of its new Chair, I find that the school continues to be in violation of the fundamental precept, set forth at section 2.12 of the Charter and the By-laws of the school, that the Board, and not the Executive Director, must exercise operational oversight of the school. Some steps have been taken, including the resignation of Ms. Josephs as a voting member of the Board, and the creation of committees. Yet, the materials provided to me show that as recently as February 2010, Ms. Joseph scheduled an activity for the teachers outside of the school on a day when Board members were scheduled to speak with teachers at the school. ENYP included in its papers the fact that it was retaining a firm to do a comprehensive evaluation of Ms. Joseph's performance and an independent review of the school. Mr. Clarke stated at the oral argument that the new Board intended to engage in a review of Ms. Joseph and did not want to make a hasty determination about her continued relationship with the school. However, the problems at the school, particularly the role of Ms. Joseph, have been under active consideration by the CSO and SED for over 14 months. The CSO presented a comprehensive packet of material regarding the relationship between Sheila Joseph and the Board. The school has been repeatedly advised that the Board must exercise oversight of the school, rather than the school founder, Ms. Joseph. The Board's recent decision simply demonstrates the problems presented where there is no stability in the make-up of the

² To the extent that ENYP is in violation of provisions of the Education Law applicable to charter schools, it is also in violation of Section 7.1 of its charter, which requires the school to "operate at all times in accordance with the Act."

Board. The Board has still not demonstrated that it, rather than Ms. Joseph, is able to exercise oversight for the direction of the school.

Conclusion

For these reasons, I recommend that the Charter of East New York Preparatory School be terminated, effective at the end of the 2009-10 school year.

Dated: April 16, 2010

Respectfully submitted,

John C. White
Deputy Chancellor for Strategy and Innovation



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Commissioner of Education, Dr. John B. King
New York State Board of Regents
The State Education Department
Albany, NY 12235

July 26, 2011

Dear Commissioner King,

I am writing on behalf of Chancellor Dennis Walcott, requesting that the Board of Regents take action on the final dissolution of East New York Preparatory Charter School's certificate of incorporation (also sometimes known as its "charter").

On April 16, 2010, former Chancellor Joel Klein issued and ordered revocation of the charter contract with East New York Preparatory Charter School. Enclosed with this letter is a copy of the revocation order along with other supporting documents.

We are requesting that the Board of Regents revoke the certificate of incorporation of the school in accordance with Education Law sections 219 and 2853(1) and Board of Regents Rule 3.17(c).

Thank you for understanding the urgency of this matter. Please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Recy Benjamin Dunn', with a long horizontal flourish extending to the right.

Recy Benjamin Dunn