



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 Chancellor
Merryl H. Tisch, Lester W. Young, Jr., and Kathleen M.
Cashin

SUBJECT: Proposed Revocation of Charter of Believe Southside
Charter High School

DATE: March 19, 2012

AUTHORIZATION(S):

Merryl Tisch *Kathleen Cashin*
Lester W. Young, Jr.
Summary

Issue for Decision

Should the Believe Southside Charter High School (“the School”) be continued on probation until June 30, 2012 and should its charter be revoked, effective July 1, 2012?

Reason 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 March 20, 2012.

Procedural History

Education Law §2855(1) 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. 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 revocation;

(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.

In addition, Education Law §2855(3) provides that a charter school's failure to comply with the terms and conditions of a remedial action plan may result in summary revocation of its charter.

On September 21, 2011, the Commissioner of Education, on behalf of the Department, issued a Probation Order ("Order") placing the School on probation until June 30, 2012 for serious violations of law and material and substantial violations of its charter, including fiscal mismanagement. The Order indicated that the School had 90 days to correct the identified problems pursuant to a remedial action plan.

The School initially responded to the Order by submitting multiple documents to the Department from October 5, 2011 through December 20, 2011. The School then requested permission to surrender the School's charter effective June 30, 2012. On January 12, 2012, the Commissioner of Education, on behalf of the Department, issued a Notice of Intent to Seek Revocation and Order ("Revocation Notice") to assist the School and effectuate the will of its board to surrender the School's charter. On February 6, 2012, however, the three then-current trustees of the School's board voted to rescind its previous vote to surrender the School's charter. Thereafter, on February 10, 2012, the School submitted a number of documents in response to the Revocation Notice and requested oral argument.

On February 21, 2012, and in response to the School's decision to not voluntarily surrender its charter, the Acting Commissioner of Education, on behalf of the Department, issued a "Supplement to Notice of Intent to Seek Revocation and Order" ("Supplemental Notice") to supplement the Revocation Notice by adding additional grounds for the revocation of the School's charter and provisional charter. In particular, the Supplemental Notice added the School's failure to comply with the terms and conditions of the remedial action plan contained in its Probation Order, and sought to summarily revoke the School's charter and provisional charter pursuant to Education Law §2855(3), effective July 1, 2012.

By letter dated February 27, 2012, the School responded to the Supplemental Notice by acknowledging that it had not fully met the conditions of the Probation Order's

remedial action plan, and indicating that it planned on providing information at oral argument regarding the progress and efforts taken by the School to rectify the Department's concerns. Thereafter, by letter dated March 7, 2012, the Department's Counsel and Deputy Commissioner for Legal Affairs ("the Counsel") notified the School that if it wanted a written response to be considered it had to be submitted by March 12, 2012.

On March 12, 2012, the School submitted a written response in which the School did not contest that the various serious violations of law relating to governance and fiscal deficiencies had occurred or that the School had not fully complied with the Probation Order, as alleged by the Department, but requested that the Board of Regents consider remedies other than revocation of the School's charter effective July 1, 2012. The School presented two proposals. One proposal, which was submitted on behalf of the School's board, seeks a phase out limited to "on track" juniors that would be a delayed one-year revocation and the second proposal, submitted on behalf of the School's faculty and staff, asks that the Board of Regents remove certain trustees and repopulate the School's board. In the alternative, the faculty and staff supported the board's proposal to seek a delayed one year revocation. In her March 12, 2012 letter to the Counsel, the School's attorney states "Both constituent groups accept the fact that the Board has not served the School and they are simply trying to present any and all positions that may best serve the students."

On March 15, 2012, oral argument was held before a Panel of three Regents in accordance with Regents Rule §3.17, comprised of Chancellor Merryl H. Tisch, Chair, Regent Lester W. Young, Jr., and Regent Kathleen M. Cashin ("the Panel") in Brooklyn, New York. The School did not contest the Department's assertions at the hearing and again, continued to seek alternatives to revocation.

On March 19, 2012, the Panel unanimously recommended that the School be continued on probation until June 30, 2012 pursuant to the Probation Order, and that its charter be revoked effective July 1, 2012.

8 NYCRR §3.17(5) 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

The School is a charter school located in New York City's Community School District 14, Brooklyn, New York and was approved by the Board of Regents on January 13, 2009. In February 2010, the Board of Regents approved a retroactive revision to the charter allowing the School to postpone its opening date from August 24, 2009 to September 1, 2009 and to contract with a charter management organization, Believe High Schools Network, Inc. The School is in its third year of operation and serves approximately 249 students in grades nine through eleven.

Recommendation

The Regents Review Panel respectfully recommends that the Board of Regents adopt the following resolution:

VOTED: that the attached recommended decision is adopted by the Board of Regents, that the Believe Southside Charter High School shall remain on probation until June 30, 2012 pursuant to the Probation Order; that the charter and certificate of incorporation (also known as the provisional charter) of the Believe Southside Charter High School are revoked and the education corporation is dissolved, effective July 1, 2012; that notice to such effect be given to the trustees of the charter school; that the School must notify parents of existing students of this decision; that 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 be distributed through the procedures set forth in Education Law §220.

Timetable for Implementation

Immediate for the continuation of probation and July 1, 2012 for revocation.

The
University of the
Education  State of New York
Department

IN THE MATTER

of

DECISION

BELIEVE SOUTHSIDE
CHARTER HIGH SCHOOL,

On January 13, 2009, the Board of Regents approved an application to establish the Believe Southside Charter High School ("the School") in Brooklyn, New York. The charter application provided that the School would serve 100 students in grade nine in its first year of operation and expand to serve 400 students in grades nine through twelve in its fifth year of operation.

In February 2010, the Board of Regents approved a retroactive revision to the charter allowing the School to postpone its opening date from August 24, 2009 to September 1, 2009 and to contract with a charter management organization ("CMO"), Believe High Schools Network, Inc. The School opened in September 2009 at 424 Leonard Street in New York City's Community School District 14 in Brooklyn.

On April 26, 2011, staff from the New York State Education Department's ("the Department") Charter School Office conducted a site visit at the School during which a number of concerns were identified including, but not limited to, serious deficiencies in board governance at the School. In addition, in August 2011, the Department was informed that the School's enrollment was well below that permitted under its charter, thereby raising even greater concern with respect to the long-term viability of the School. A conference call was scheduled

by the Department with the School to obtain clarifying information concerning the operational and fiscal viability of the School. The outcome of that call led the Department to conclude that the School's board and administration had limited knowledge of the School's financial condition, relying almost exclusively on its CMO without appropriate board oversight.

On September 21, 2011, the Commissioner of Education, on behalf of the Department, issued a Probation Order ("Order") placing the School on probation until June 30, 2012 for serious violations of law and material and substantial violations of its charter, including fiscal mismanagement. Among other things, the Order indicated serious governance and fiscal deficiencies including the board's failure to fulfill its responsibility to have final authority for policy and operational decisions of the School as required by Education Law §2853(1)(f) and section 2.12 of its charter; failure to have the required minimum of five trustees as required by its bylaws and Education Law §226; failure to require trustees to submit "Disclosure of Financial Interest by a Charter School Trustee Reports" as part of the School's annual report to the Board of Regents; and failure to have obtained §501(c)(3) tax-exempt status from the Internal Revenue Service as required by Education Law §2853(1)(a) and its charter. The Order further indicated that the School failed to provide evidence of sound fiscal planning or management and failed to maintain appropriate fiscal controls and management systems. The Order indicated that the School had 90 days to correct the problems pursuant to a remedial action plan.

The School responded to the Order by submitting multiple documents to the Department from October 5, 2011 through December 20, 2011. However, by letter dated December 20, 2011, the School's then-board chair sent a letter to the Department requesting permission to surrender the School's charter effective June 30, 2012. Thereafter, on January 9, 2012, the three then-current trustees of the School's board met and voted to surrender the School's charter.

The record reflects that in light of the fact that the School's board had fewer than five trustees at the time, the Commissioner, on January 12, 2012, issued a Notice of Intent to Seek Revocation and Order ("Revocation Notice") to "assist the School and effectuate the will of its board to surrender the School's charter." According to this Revocation Notice, the reasons for the proposed revocation included the challenges

faced by the School (including its inability to recruit qualified trustees), as well as the fact that the school, in substantial violation of the law and its charter, had only three duly-appointed trustees. The January Revocation Notice also expressly reserved the right of the Department and/or Regents to supplement the Revocation Notice and assert additional grounds for revocation.

On February 6, 2012, however, the three then-current trustees of the School's board voted to rescind its previous vote to surrender the School's charter. Thereafter, on February 10, 2012, the School submitted a number of documents in response to the Revocation Notice and requested oral argument.

On February 21, 2012, and in response to the School's decision to not voluntarily surrender its charter, the Acting Commissioner of Education, on behalf of the Department, issued a "Supplement to Notice of Intent to Seek Revocation and Order" ("Supplemental Notice") to supplement the Revocation Notice by adding additional grounds for the revocation of the School's charter and provisional charter. In particular, the Supplemental Notice added the School's failure to comply with the terms and conditions of the remedial action plan contained in its Probation Order, and sought to summarily revoke the School's charter and provisional charter pursuant to Education Law §2855(3), effective July 1, 2012.

By letter dated February 27, 2012, the School responded to the Supplemental Notice by acknowledging that it had not fully met the conditions of the Probation Order's remedial action plan, and indicating that it planned on providing information at oral argument regarding the progress and efforts taken by the School to rectify the Department's concerns. Thereafter, by letter dated March 7, 2012, the Department's Counsel and Deputy Commissioner for Legal Affairs ("the Counsel") notified the School that if it wanted a written response to be considered it had to be submitted by March 12, 2012.

On March 12, 2012, the School submitted a written response in which the School did not contest that the various serious violations of law relating to governance and fiscal deficiencies had occurred or that the School had not fully complied with the Probation Order, as alleged by the Department, but requested that the Board of Regents consider remedies other than revocation of the School's charter effective July 1, 2012. The

School presented two proposals. One proposal, which was submitted on behalf of the School's board, seeks a phase out limited to "on track" juniors that would be a delayed one-year revocation and the second proposal, submitted on behalf of the School's faculty and staff, asks that the Board of Regents remove certain trustees and to repopulate the School's board. In the alternative, the faculty and staff supported the board's proposal to seek a delayed one year revocation. In her March 12, 2012 letter to the Counsel, the School's attorney states "Both constituent groups accept the fact that the Board has not served the School and they are simply trying to present any and all positions that may best serve the students."

On March 15, 2012, oral argument was held before a Panel of three Regents in accordance with Regents Rule §3.17, comprised of Chancellor Merryl H. Tisch, Chair, and Regents Lester W. Young, Jr. and Kathleen M. Cashin ("the Panel") in Brooklyn, New York. The Panel recommended that the School be continued on probation until June 30, 2012 pursuant to the Probation Order, and that its charter be revoked effective July 1, 2012.

Education Law §2855(1) 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. In addition, Education Law §2855(3) provides that a charter school's failure to comply with the terms and conditions of a remedial action plan may result in summary revocation of its charter. For the reasons set forth below, the Board of Regents concludes that the School has materially and substantially violated its charter, has committed serious violations of law, and has failed to comply with the terms and conditions of the remedial action plan in its Probation Order. Accordingly, the School is continued on probation until June 30, 2012 pursuant to its Probation Order and the School's charter is revoked effective July 1, 2012.

1. The School does not have an appropriately constituted board of trustees.

Both Education Law §226 and the School's charter require that the School's board be comprised of a minimum of five trustees. However, the record reflects that at the time the school was placed on probation it had fewer than five trustees. In fact, this was one of the reasons the School was put on

probation. However, despite being placed on probation for not having a sufficient number of trustees, and despite the threat of its charter being revoked on this basis as well, it is clear from the record (including the School's submissions and statements at oral argument) that the School currently has only three trustees.¹ It is undisputed that the School has not had the requisite number of trustees for an extended period of time despite significant recruitment efforts. Moreover, the School's submissions acknowledge the lack of the board's governance and the resulting negative consequences.

A charter school's board of trustees is more than a policy-making body. It must provide both the vision and the leadership that is necessary to ensure that the charter school functions and performs in accordance with its charter. It is clear from the record that the School has committed a serious violation of law and a material and substantial violation of its charter in its failure to have a properly constituted board of trustees.

2. The School has failed to obtain federal tax exempt status.

Education Law §2853(1)(f) provides that "[i]t is the duty of the trustees of the charter school to obtain federal tax exempt status no later than one year following approval of a charter school by the board of regents." This same requirement is contained in §5.11 of the School's charter.

The Board of Regents issued the School its charter on January 13, 2009. Thus, the School's board of trustees had one year from that date to obtain federal tax exempt status. However, the record reflects (and it is not disputed) that the School, despite the passage of over three years, has yet to obtain federal tax exempt status. This constitutes a serious violation of law and a material and substantial violation of its charter.

¹ The record reflects that the School submitted four trustee applications to the Department for consideration pursuant to §2.12 of its charter. By letter dated March 9, 2012, the Department notified the School that it approved one applicant as a trustee but was rejecting the other three applicants because the material submitted on their behalf was in certain cases incomplete or inaccurate and because of concerns regarding the applicants' ability to independently and adequately govern the School. The School did not contest this decision at oral argument.

While the School attributes the delay in obtaining federal tax exempt status to its attorneys and staff at the Internal Revenue Service ("the IRS"), the record indicates that the School did not even file the necessary paperwork with the IRS until December 2009, nearly one year after the issuance of its charter. The record further indicates that the board failed to monitor and oversee the process to ensure that such status was obtained. We find that the School's board, therefore, is not entirely blameless in this matter, and that they failed to carry out their statutorily imposed duty.

3. The School has failed to comply with the terms and conditions of the remedial action plan contained in the Commissioner's Order dated September 21, 2011.

Education Law §2855(3) and §8.3(b) of the School's charter provide that a charter school's failure to comply with the terms and conditions of a remedial action plan may result in summary revocation of its charter. As noted above, the School was placed on probation on September 21, 2011 for serious violations of law and material and substantial violations of its charter, including fiscal mismanagement.

According to the Department, while the School addressed some of the requirements of the remedial action plan contained in its probation order, it failed to comply with several material requirements, including a number that demonstrated directly, or indirectly, the School's unsound governance. For example, the School failed to have the required number of trustees required by law and its charter; failed to submit a detailed 2011-2012 annual budget that included contingency scenarios reflecting possible fluctuations in enrollment; failed to submit a sufficiently detailed month-to-month cash flow projection with the required supporting documentation to substantiate material items contained with the projection; and failed to submit a revised fiscal policy and procedures manual that, among other things, reflected the School's organizational structure.

The School did not refute the Department's findings. Rather, in its March 12 submission, both the School's board and its faculty and staff acknowledged the unresolved issues raised by the Department and their implications. Accordingly, based on the record before us, we find that the School has failed to

comply with the terms and conditions of the remedial action plan contained in the Commissioner's Probation Order in several material respects.

4. The School's alternative proposals to revocation are insufficient.

In response to the Department's intent to seek the revocation of the School's charter, the School submitted a bifurcated response on March 12, 2012 on behalf of both its board on the one hand, and its faculty and staff on the other. As noted above, the School's board did not contest the Department's proposed revocation, and instead sought only a delayed revocation so that it could "phase out" 85 of its current juniors who were "on track" to graduate. In contrast, the School's faculty and staff indicated that they would take "full responsibility to address and remediate" the Department's concerns, and asked that the School be able to remain open for the remainder of its charter term, though they indicated that if this was not possible they would support the board's "phase out" option. Unfortunately, we are constrained to find that neither option is a viable alternative to revocation.

First, neither proposal included a list of proposed board trustees for consideration. We agree with the Department that having a strong board of trustees is critical to the operation of any charter school. This is a fatal defect of both proposals. In fact, the faculty and staff's proposal that the School remain open for the duration of its charter term was reliant on a new board being put in place. While they suggest that the Board of Regents remove and appoint new trustees pursuant to Education Law §226(4), we find it improper to do so in this case because removal would require a separate proceeding involving a hearing with specific charges of alleged individual misconduct. Given that the School has already had several months to recruit additional trustees, we are not willing to delay action in this matter to provide additional time for recruitment efforts.

In addition, with respect to the board's one year delayed revocation "phase out" proposal, for example, the School indicates that its junior class had 110 students, but that its proposal would only apply to 85 students who were on track to graduate. There was no plan set forth by the School for the

remaining 25 students. We find that this is a significant deficiency that needed to be addressed.


Moreover, the School's board failed to provide sufficient evidence that its "phase out" proposal was financially feasible. Of particular concern is that the board's proposal assumed that all 85 "on track" juniors would enroll at the School next year, and did not include a proposed budget that made any contingencies for a lower enrollment. To this extent, there was no evidence provided that demonstrated that all 85 "on track" juniors would, in fact, remain at the school.

This decision was a very difficult one given the evidence of the academic success of the School submitted by the faculty and staff that was not refuted by the Department and our concern for the placement of the School's students in other schools next year. We also recognize that a significant number of parents and students wish to see the School continue to operate. But given the deficiencies in governance and the failure of the School to have a plan with supporting evidence that would guarantee its ability to continue to operate for an additional year, we find that the School's charter should be revoked. It is clear that this outcome was not caused by the students or the parents, but rather the board's failure to govern. While the School has had sufficient time to address its governance and fiscal mismanagement problems, it has failed to demonstrate that it has a viable plan for operating beyond the current school year either through a phase out to allow juniors to graduate at the end of the 2013-14 school year or otherwise. It would not be in the best interests of students and parents to allow the School to continue operation based on unfulfilled promises of recruitment of a sufficient number of qualified trustees and a plan of operation that has not been demonstrated to be fiscally viable and educationally sound. At this point in the school year, parents need to make arrangements for their children to attend school in the coming school year and they should not be put in a position of committing to this School, when its ability to continue to operate in an educationally and fiscally sound manner through the end of the next school year has not been demonstrated. At this time, the interests of the parents and students are better served by transferring to other schools.

For the reasons set forth herein, the Believe Southside Charter High School shall remain on probation until June 30, 2012 pursuant to the Probation Order; the charter of the Believe

Southside Charter High School and its certificate of incorporation (also known as the provisional charter) are revoked and the education corporation is dissolved, effective July 1, 2012; and notice to such effect shall be given to the trustees of the charter school. The School must notify parents of existing students 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:


Merry H. Tisch, Chancellor