The University of the State of New York
Education Department

IN THE MATTER

of

KINGSBRIDGE INNOVATIVE DESIGN CHARTER SCHOOL

**PROBATION ORDER**
**AND**
**NOTICE OF INTENT TO SEEK**
**SUMMARY REVOCATION**

Education Law §2855 provides that the Board of Regents may place a charter school on probationary status to allow the implementation of a remedial action plan for, among other reasons, serious violations of law and/or material and substantial violations of the school's charter, including fiscal mismanagement. Section 3.16 of the Rules of the Board of Regents delegates this authority to the Commissioner of Education.

Pursuant to that authority, I find that the Kingsbridge Innovative Design Charter School ("School") should be placed on probation until at least May 17, 2011, in accordance with the terms and conditions set forth in this decision, for serious violations of law and material and substantial violations of the School's charter, including fiscal mismanagement.

In addition, this Probation Order and Notice of Intent to Seek Summary Revocation of the School's charter shall serve as the notice to the School's Board of Trustees required by §2855 of the Education Law and §3.17(a)(1) of the Rules of the Board of Regents.

## BACKGROUND

The Kingsbridge Innovative Design Charter School ("School") was authorized by the Board of Regents on January 12, 2010. The School was scheduled to open in September 2010 at 3120 Corlear Avenue in New York City's Community School District 10 in the Bronx. The School proposed a dual leadership model in which the co-applicants would be responsible for operations and instruction, respectively.

During the summer and fall of 2010, staff from the Office of Innovative School Models in the State Education Department ("Department"), had several meetings and conversations with the Executive Director and Chair of the Board of Trustees of the School as the School prepared to open for instruction on September 7, 2010. 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 certifications for the facility had not yet been obtained. The School ultimately opened for instruction on September 17, 2010 at 295 West 231st Street, Bronx. NY.

During the fall of 2010, the Department began receiving complaints from a member of the School's Board of Trustees, 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 of Trustees 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 described above as well as to evaluate the educational soundness of the School. Department staff 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 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 Office of Innovative School Models in the Department 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. The letter outlined responses and information that the Department required the School to provide to the Department by January 24, 2011. The response received from the School was incomplete and raised additional concerns about the fiscal and educational soundness of the School.

On February 17, 2011, the Department sent another letter to the 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. The requested information was not provided to the Department by the deadline of 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 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 to 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.

## VIOLATIONS

**1. Section 5.1 of the School's charter agreement with the Board of Regents provides that, "(t)he Charter School shall at all times maintain appropriate management and financial controls."**

The Department's review indicates that there are a lack of basic financial systems and controls at the School and serious deficiencies in the documentation of expenditures. This situation is fiscally unsound and a material and substantial violation of the School's charter. A school's financial soundness is fundamental to its ability to operate an educational program. To maintain this soundness, financial policies, practices and procedures must be implemented and followed to ensure success. Examples of fiscal unsoundness, fiscal mismanagement and that the School is in violation of this provision of the charter includes:

- The School does not have a fiscal system in place that includes an appropriate system of bookkeeping and financial records management.

  The School is fiscally unstable. The School incurred significant, unbudgeted expenses to secure and build-out the school's current temporary facility at 295 West 231st Street, Bronx, NY, without obtaining financing to ensure adequate cash flow for ongoing operations, which are heavily dependent upon short-term loan support from third parties borrowed against future per-pupil tuition revenue. The School has failed to make consistent and proper payments of payroll taxes, insurance, and benefits for staff. In January 2011, direct payroll deposits for several staff members were reversed by the School's payroll agent due to insufficient funds. The School has routinely incurred substantial fees for late payments and/or failure to maintain sufficient funds to cover payments.

  To date, after several specific requests by the Department, the School has been unable to provide the Department with a sound fiscal plan that includes projections on how build-out costs for the school's current facility will be covered under current fiscal projections.

  The School has not established an escrow account for dissolution as required by §8.5 of the charter agreement.

  The School has not obtained tax-exempt status from the IRS, as required by §2853(1)(a) of the Education Law and §5.11 of the charter agreement, because of its delay in submitting the application to the IRS.

2. **Section 2.12 of the charter and Section 2853(1)(f) of the Education Law state that the Board of Trustees of the charter school "shall have final authority for policy and operational decisions of the school."**

There have been several resignations from the Board of Trustees since the summer of 2010, causing concern to the Department about the instability on the Board and the impact that had on the effective management and operation of the School. In October 2010, the member of the Board of Trustees who had contacted the Department with complaints about alleged violations of the Board of Trustees procedures, resigned from the Board. In January 2011, a member of the School's Board of Trustees resigned from the Board, and in his resignation email to the Board Chair cited concerns that he, as a member of the Board, had been given misinformation and was excluded from decisions about budget matters. Appointments to fill some vacancies on the Board of Trustees have been made in violation of §2.12 of the charter agreement which requires the submission of information about a prospective Board member to the Department and approval by the Department prior to the Board member being seated. In March 2011 another member of the Board of Trustees informed the Chair of the Board that he would not be seeking an additional term on the Board.

3. **Section 2.4 of the charter agreement provides that, "(t)he Charter School shall implement the educational programs set forth in the Application....."**

Examples that the School is not operating in an educationally sound manner and in violation of this provision of the Charter include:

The School has been operating without an instructional leader since January 4, 2011 when the school's second principal was fired. At that time, the school transitioned leadership and oversight of the academic program to an external consultant. This high turnover (three academic leaders in the school's first five months of operations) raises concerns about the Board of Trustees' ability to effectively lead the school.

- The School does not employ instructional coaches and classrooms are not staffed using the teaching model described in the Application.

  Curriculum and instructional materials as described in the Application have not been purchased.

The School failed to provide evidence of instruction in a language other than English, as outlined in the Application.

The School is not providing an extended-day instructional program as described in the Application.

Revisions to the educational program described in the Application have been made in violation of §2852(7)(a) of the Education Law which requires the approval of the Board of Regents.

School stakeholders interviewed by Department staff did not appear to have any consistent understanding of the school's mission or instructional program design.

Based on these violations of the charter and Education Law, IT IS ORDERED that the School is immediately placed on probationary status to allow for the implementation of a remedial action plan, which must be documented by the provision in writing of the following information no later than 5:00 p.m., on Friday, April 29, 2011, to the Office of Innovative School Models, New York State Education Department, Education Building Annex, Room 471, Albany, NY 12234:

1. Documentary evidence that the School is current on ALL payroll-related expenses, including salary, benefits, insurance, taxes, and 401(K) contributions promised to employees;
2. A month-to-month cash-flow statement through the end of FY 2012 that indicates positive cash-flow, and specific details about ***all*** loans (short or long term), draw-down, and payoffs that occur during this time period;
3. A balanced five-year budget for remainder of the charter term, including a detailed table of assumptions and line-item budget narrative to clarify all revenues and expenses, with specific details on personnel, contracts, that are related to implementation of the key elements of the charter educational design, as well as build-out costs;
4. Documentary evidence of secured and executed loan agreements or other arrangement to payoff build out costs for Year 1 and Year 2 and through completion, the debt service payments of which are sustainable within the School's operating budget;
5. A schedule for relocation of the School to 3120 Corlear Avenue, inclusive of outstanding items for the build out and a narrative explaining potential challenges;
6. A copy of interim and final bookkeeping reports to the Board of Trustees as prepared by the firm of Rios and McGarrigle, LLC.;
7. Actual balance sheet and income statement as of March 31, 2011 and projected balance sheet and income statement at June 30, 2011 and June 30, 2012;
8. A management and staffing plan to ensure adherence to fiscal policies and procedures adopted by the Board of Trustees, including bookkeeping, fiscal records management, procurement, payroll management, financial reporting to the Board of Trustees, and the adequate separation of duties;
9. A signed full audit engagement letter for FY11;
10. Documentary evidence that plans are in place for all key elements of charter design to be in place for Sept 1, 2011, including curricular design, staffing design, schedule, instructional model;
11. Formal charter revision requests submitted to the Board of Regents seeking approval to modify the daily schedule and school calendar and any other material or non-material revisions to the School's charter;
12. The methodology used in conducting the search for a new instructional leader and chief fiscal officer, and criteria applied to selection, including the job description;
13. A list indicating whether or not current students intend to return to the School in Fall 2011, by grade and CSD of residence;
14. A list of students indicating full enrollment (225) for the 2011-12 school-year, including any waitlisted students, by grade and CSD of residence;
15. Documentary evidence that **all** parents of students at the School have been informed of this remedial action plan and the probation status of the School in two formats: written communication sent home

(on or before March 30, 2011) and at least one parent meeting held at the school on or before April 15, 2011 (with at least one week's notice provided). The School should make arrangements to provide translations to parents and/or guardians for whom a language other than English is the primary method of communication; and

16. A plan for establishing and funding an escrow account for dissolution.

## INTENT TO SEEK SUMMARY REVOCATION

The success or failure of the School rests ultimately with its Board of Trustees. It is the Board's policies, oversight of their implementation, and leadership that will set the course for the remainder of the School's charter term.

The period provided for implementing the remedial action plan shall also constitute the School's 30-day period under § 3.17(2) of the Rules of the Board of Regents to remedy the problems associated with the proposed revocation. If the School has failed to implement any of the above requirements to the Department's satisfaction by April 29, 2011, the Department will pursue summary revocation of the School's charter by the Board of Regents pursuant to §2855(3) of the Education Law at the May 16-17, 2011 meeting of the Board of Regents, effective June 30, 2011. After review of materials submitted by the School, the Department will notify the School of its decision regarding the intent to continue to pursue revocation of the School's Charter by May 3, 2011.

Pursuant to §3.17(a)(2) of the Rules of the Board of Regents, the School has the opportunity to submit a written response to this notice of intent to revoke, which presents the School's position. The response may include supporting affidavits, exhibits and other documentary evidence (including any evidence that the problems at issue have been corrected), and may present legal argument. Any written response that the School may choose to submit must be received by the Department no later than 5:00 p.m. on May 6, 2011, at the Office of Counsel, Education Building, Room 148EB, Albany, New York 12234. By the same time the School must also inform the Department, in writing, if it plans to request the opportunity for oral argument pursuant to §3.17(a)(3) of the Rules of the Board of Regents. A failure to submit a timely response will result in the Board of Regents deciding whether to revoke the School's charter without benefit of input from the School.

Any oral argument that the School may chose to request shall take place on May 16 or 17, 2011 at the State Education Department, Albany, New York. The dates of the oral argument and/or consideration of the revocation application by the Board of Regents are subject to change without further Order of the Commissioner, and the School will be provided with written notice by the Department of any changes.

The School has the option of voluntarily seeking an order form the Board of Regents revoking the School's charter and certificate of incorporation, and dissolving the corporation pursuant to Education Law §219(3).

SO ORDERED

IN WITNESS WHEREOF, I, David M. Steiner, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 24 day of March, 2011.

Commissioner of Education