



The Commonwealth of Massachusetts
Office of the Inspector General

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May 6, 2010

Mitchell D. Chester, Ed. D., Commissioner
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906

Dear Commissioner Chester,

Attached is a document sent to my office by Rhoda Schneider, General Counsel of DESE. The document indicates that DESE has changed the procedures for reviewing and approving charter applications, effective April 26, 2010. The document is entitled "Application Review Process for the Award of New Charters, Department of Elementary and Secondary Education, April 26, 2010."

Under these new procedures, the Commissioner can bring applications forward to the BESE if the Commissioner determines that "the application *substantially* meets the criteria as set forth in the statute, regulations, and application guidance." In my opinion, this change – including the introduction of the term "substantially meets the criteria" – makes the standard for approval less clear and less defined, and makes the process more vulnerable to abuse.

In previous years, the Commissioner has recommended disapproval of charters when the charter school application failed to meet "one or more" criteria. For example, during the 2008-2009 charter school approval round that included the Gloucester application, the Commissioner notified the BESE as follows with respect to two rejected finalists: "As a result of the review process, I determined that the two other proposals needed further development and revision *with respect to one or more of the criteria.*" Under the long-standing previously-used process, including the one used during the most recent 2009-2010 application cycle, the following check and balance had been included, as set forth in the DESE-promulgated "Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2009-2010, as follows: "The [DESE] commissioner will not recommend that the Board award charters to applicant groups whose applications do not meet the stated criteria for a charter in the application, as corroborated in the final interview of the applicant group by the Charter School Office." Under the new process, this safeguard has been eliminated and the independence of the charter school office has been diminished.

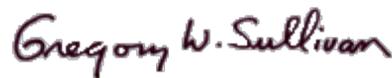
This change lowers the bar for approval of new charter schools by replacing the previous objective standard for approval or disapproval with a more subjective one. Applicants will no longer know which criteria must be met. Under the new process, the Commissioner at his sole discretion will be able to determine what combination of criteria are necessary to “substantially meet” the standard for approval.

In addition, the new procedures have eliminated a previous step in the review and approval process whereby DESE Charter School officials and outside reviewers had been required to complete lengthy, detailed, written, criteria-by-criteria assessments (called Review Sheets/Rubrics) of each final charter school application. Instead, the new process eliminates the previous documented criteria-by-criteria scoring process and requires only that reviewers verbally “comment generally on the application, to identify the strengths and weaknesses of the application, and to identify areas where clarification or further information from the applicant is needed.” The elimination of this previously-documented criteria-by-criteria assessment process will prevent outside parties, including oversight agencies such as the Inspector General’s Office, from being able to effectively audit and review the process for fairness, objectivity, and legality. It also eliminates an essential tool previously used by DESE officials to objectively measure and record whether charter school applicants do or do not meet each criterion. In my opinion, these changes represent a further diminution of the rigor and objectivity of the previous long-standing, nationally recognized, criteria-based review and approval process.

The procedural changes effectuated by DESE on April 26, 2010 are not reflected in the Proposed Amendments to 603 CMR 1.00, Charter School Regulations, which are currently open for public comment. I believe that these significant procedural changes to the charter school approval process should have been subject to input from public officials and the general public before adoption.

Please feel free to contact me if I may provide any further information.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a clear, legible font.

Gregory W. Sullivan
Inspector General

Attachment

Summary of Application Review Process for the Award of New Charters
Department of Elementary and Secondary Education
April 26, 2010

- The Commissioner of Elementary and Secondary Education (Commissioner) may recommend and the Board of Elementary and Secondary Education (Board) may approve new charters where (a) the application substantially meets the criteria as set forth in the statute, regulations, and application guidance; (b) the applicant is determined to be a proven provider, if required by statute; and (c) there are sufficient seats available in the district(s) to be served under the applicable net school spending cap.
- The application process is administered by the charter school office in the Department of Elementary and Secondary Education (Department).
- Applicant groups submit a prospectus that is evaluated by reviewers, including Department staff and external readers. The charter school office provides reviewers with a list of the criteria, and reviewers submit written comments on the strengths and weaknesses of each prospectus with respect to those criteria. The charter school office maintains the written comments as part of the application record. As provided in the charter school regulations, the reviewers' role is solely advisory.
- The charter school office prepares a compilation of the reviewers' comments on the prospectus and maintains it as part of the application record. The compilation is provided to and discussed with the Commissioner. The Commissioner makes the final determination on which applicant groups are invited to submit a final application.
- Final applications are read by a review panel, including Department staff and external readers. The charter school office provides each reviewer with a copy of the application and a list of the criteria in advance of the review panel meeting. At the review panel meeting, reviewers are asked to comment generally on the application, to identify the strengths and weaknesses of the application, and to identify areas where clarification or further information from the applicant is needed. While reviewers are encouraged to bring their own personal notes with them to aid in their discussion of the application in relation to the criteria, the notes are not collected. The charter school office prepares a written synopsis of the review panel discussion and maintains the synopsis as part of the application record. As provided in the charter school regulations, the reviewers' role is solely advisory.
- The Department invites public comment on each application from the superintendents of the districts from which the charter school intends to draw students. In addition, public hearings are held in the district in which a proposed

charter school is to be located, with at least one member of the Board in attendance. Each Board member in attendance at a public hearing makes an oral report on the comments received at such hearing at a subsequent meeting of the Board.

- The Department also accepts written public comment on each application on or before a deadline established annually by the charter school office. All written comments are made available to Board members in electronic format and are maintained by the charter school office as part of the application record.
- The charter school office conducts an interview with each final applicant. Questions to be asked at the final interview are based on (a) the synopsis of the review panel's discussion; (b) issues and concerns raised during public comment; and (c) any other aspects of the application requiring clarification as determined by the charter school office. A written synopsis of the interview is prepared by the charter school office and maintained as part of the application record.
- For each applicant that requests proven provider status, the charter school office reviews the applicant's credentials against the criteria set forth in the statute and regulations. The result of the review is provided to and discussed with the Commissioner. The Commissioner makes the final determination on proven provider status.
- The charter school office prepares a written summary of each application's primary strengths and weaknesses based on the criteria. The summary is provided to and discussed with the Commissioner. The Commissioner also receives a copy of the final application and the complete application record. The Commissioner makes a recommendation to the Board as to which applicants should be granted charters.
- The Commissioner provides the Board with a memorandum summarizing the process and his recommendations and including, for each application, an executive summary, a list of founders and proposed boards of trustees, a written summary of the primary strengths and weaknesses based on criteria, a detailed summary of each interview, and copies of the written comments from public officials. The Board package also includes a description of the final application process and criteria for review, a list of internal and external reviewers, the schedule of public hearings, and the staff's memorandum to the Commissioner transmitting their analysis and recommendations.
- The decision on the award of new charters is made by the Board. The Board's decision to grant or not grant a charter to any particular applicant is final and not subject to administrative appeal.