



The Commonwealth of Massachusetts
Office of the Inspector General

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His Excellency Deval Patrick
Office of the Governor
State House, Room 280
Boston, MA 02133

Dear Governor Patrick,

I am providing notice to you in this correspondence of the content of certain investigative information developed by the Office of the Inspector General (OIG) concerning the granting of a school charter to the Gloucester Community Arts Charter School (GCACS) by the Board of Elementary and Secondary Education (BESE) on February 24, 2009, the subject of which may be appropriate for further review and administrative action by your office.

In response to a legislative request by State Senator Bruce E. Tarr and State Representative Ann-Margaret Ferrante, the OIG has conducted a review of the process used by BESE and the Department of Elementary and Secondary Education (DESE) in the granting of a charter to GCACS. The purpose of the review was to ascertain whether that process complied with the requirements of law, regulation, and procedure governing the granting of school charters in Massachusetts. The review has been conducted with the cooperation of your office.

The OIG will be issuing a report of its findings to the legislators who requested the review. Before doing so, the OIG is providing the following information to you in accordance with 945 CMR 1.09(3)(c).

A synopsis of the findings of this review is as follows: 1) The OIG concludes that Massachusetts laws and regulations require that before a charter school applicant group may

be granted a charter by the BESE, the DESE must first determine that the application has met certain specified criteria; 2) the OIG concludes that the DESE Charter School Office (CSO) conducted the comprehensive application process established by the BESE and DESE in accordance with law and regulation and that at the end of that process the CSO concluded that the GCACS application had failed to meet the required criteria; 3) the OIG finds that the procedures established by BESE and DESE for the 2008/2009 Charter School application cycle prohibited the DESE commissioner from making a recommendation that the Board award a charter to an applicant group whose application did not meet the stated criteria for a charter in the application as corroborated by the CSO; 4) the OIG finds that Commissioner Mitchell D. Chester recommended that the Board award a charter to GCACS in contradiction of the process, constituting a procedural error; 5) the OIG finds that Commissioner Chester did not conduct any process by which he made an independent determination that the GCACS application had met the required criteria; 6) the OIG concludes that because DESE never made a determination that the GCACS application met the criteria, it was beyond the legal authority of BESE to grant a charter to GCACS; 7) the OIG concludes that the process used in approving the GCACS charter was procedural defective; and 8) the OIG concludes that BESE's granting of the charter was without authority of law. For these reasons, the OIG concludes that the charter should be deemed void.

Before its approval of the GCACS charter, the BESE had never awarded a charter to an applicant group that the CSO had not recommended for approval based upon a criteria-based determination. The administration of a rigorous criteria-based approval process serves as a safeguard to assure that the decision-making process is objective and fair. At the February 24, 2009 meeting of the BESE, Commissioner Chester did not make a criteria-based recommendation; instead he made a general recommendation to the BESE at its meeting, stating, "This is a school that in my mind is viable, has a great chance of success, has put together a sound plan, and therefore rises to the level of warranting approval on your part." Upon this recommendation and without any representation having been made to the BESE that the GCACS application had met the established criteria, BESE approved the grant of the charter.

OIG concludes that Commissioner Chester did not act with intentional disregard of law or regulation in making his recommendation for approval of the GCACS charter

application. Instead, it is clear from the record and from interviews that he acted under the mistaken belief that the CSO review process was an advisory one and that the commissioner was unilaterally responsible for making the decision about charter school recommendations. OIG also concludes that Commissioner Chester acted under the mistaken belief that charter school applicants do not have to meet all of the criteria or any particular subset of the criteria in order to be approved for a charter, but only enough to convince the commissioner that the charter school will be viable and have a chance of success. Later in this report, a summary of the commissioner's response to these issues is presented.

A seeming incongruity in this case concerns the fact that neither Commissioner Chester nor anyone else at DESE has had any real explanation for why the commissioner violated a procedure established for the 2008/2009 charter school cycle pursuant to M.G.L. c. 71, § 89 and 603 CMR 1.0. The procedure stated, "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."¹ During his interview with the OIG, Commissioner Chester appeared not to have known that such a requirement existed. When asked about it, he commented, "I make the recommendation, otherwise, you don't need a commissioner." Ironically, this same requirement exists as part of the 2009/2010 application cycle and appears today on DESE's website:² Given the fact that no instance had occurred previously whereby a commissioner made a recommendation for approval of a charter that was at odds with the CSO recommendation, it is not inconceivable that this requirement had never become an issue previously.

In contrast to the commissioner's opinions, the OIG concludes that Massachusetts has a charter school application and approval process that is criteria-based, according to law and regulation, and that the BESE and Commissioner Chester do not have the legal authority to grant charters to applicants that do not meet those criteria. Furthermore, the OIG concludes that Commissioner Chester's interpretation contradicts 603 CMR 1.05(1) that states in part:

¹ "Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2008-2009, Copyright 2008" (the 2008-2009 Application), p.3.

² "The Commissioner will not recommend that the Board award charters to applicant groups whose applications do not meet the stated criteria found in Appendix H of the application, as corroborated in the final interview of the applicant group by the Charter School Office. Application for a Massachusetts Public Charter School 2009-2010, p.3.
<http://www.doe.mass.edu/charter/new/?section=app>

“The Department of Education will review charter applications to ensure that the applicant has demonstrated ability to: [followed by criteria (a) through (i)].” Furthermore, the OIG concludes that the commissioner’s interpretation contradicts the procedures and requirements set forth in the “Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2008-2009.”

In short, the OIG concludes that Commissioner Chester and the BESE can either take action to change the regulations and procedures governing the authorization of charter schools, or they must follow existing regulations and procedures.

Massachusetts has been recognized as a national leader in the authorization, establishment, and oversight of charter schools. In 2003, the Commonwealth was ranked first out of twenty-four charter school states in quality of charter school authorization by the Thomas B. Fordham Foundation in Washington, D.C.³ Massachusetts is also a founding member of the National Association of Charter School Authorizers and a participant in the development of its *Principles and Standards for Quality Charter School Authorizing*.⁴ The *Principles and Standards for Quality Charter School Authorizing* states that “a quality authorizer implements a comprehensive application process that follows fair procedures and rigorous criteria and grants charters only to those developers who provide a clear and compelling mission, a quality educational program, a solid business plan, effective governance and management structures, and evidence of the applicant’s capacity to carry out its plan.” Massachusetts has established and implemented a criteria-based authorization system predicated on virtually the same rigorous criteria recommended in *Principles and Standards for Quality Charter School Authorizing*. The fact that Massachusetts has created and implemented such a system is a positive reflection on the leaders and organizations that helped to do so. A comparison of the criteria recommended in *Principles and Standards for Quality Charter School Authorizing* with Massachusetts’ criteria for approval demonstrates one of the major reasons why Massachusetts was considered to have had the best authorization system in the United States in 2003. It also provides context and gives significance to the fact that in the GCACS case, the CSO concluded that the GCACS application did not meet the criteria in the same three areas of charter school accountability

³ Charter School Authorizing: Are States Making the Grade? June 2003. The Thomas B. Fordham Institute. Washington, DC

⁴ Principles and Standards for Quality Charter School Authorizing. 2009. National Association of Charter School Authorizers Chicago, IL

that form the basis for criteria-based approval in *Principles and Standards for Quality Charter School Authorizing*; i.e., creating an academic program that will support student achievement, organizational viability, and faithfulness to the proposed mission described in the charter application.

The OIG review consisted of a review of records provided to OIG by BESE and DESE and interviews with DESE Commissioner Chester, DESE Associate Commissioner Jeffrey R. Wulfson, DESE Charter Schools Director Mary R. Street, and DESE New Schools Development Coordinator Ruth E. Hersh.

The main relevant legal authority for OIG’s conclusion that Massachusetts has established a criteria-based approval process is the following:

- 1) M.G.L. c. 71, § 89(f)⁵ that states in part: “the board of education shall establish the information needed in an application for the approval of a charter school”
- 2) 603 CMR 1.04(1)⁶ (Criteria for Assessment and Approval of Charter Applications, Awarding of Charters) that states in part: “There shall be a two-stage application process leading to the granting of a charter. Applicants shall submit to the Department prospectuses and final applications in accordance with the schedule, application form, and guidelines established by the Department.”
- 3) 603 CMR 1.05(1)⁷ (Criteria for Assessment and Approval of Charter Applications, Awarding of Charters) that states in part: “The Department of Education will review

⁵ M.G.L. c. 71, § 89 (f). “The board of education shall establish the information needed in an application for the approval of a charter school;”

⁶ 1.04: Charter Application and Procedures for Granting Charters

(1) Charter Application Process. There shall be a two-stage application process leading to the granting of a charter. Applicants shall submit to the Department prospectuses and final applications in accordance with the schedule, application form, and guidelines established by the Department. Following the submission of prospectuses, the Commissioner will invite selected applicants to submit final applications.

⁷ 1.05: Criteria for Assessment and Approval of Charter Applications, Awarding of Charters

(1) Criteria for Assessment and Approval of Charter Applications. The Department will review charter applications to ensure that the applicant has demonstrated ability:

- (a) to further the purposes for establishment of charter schools specified in M.G.L. c. 71, § 89.
- (b) to conform with M.G.L. c. 71, § 89, and all other applicable laws and regulations, including any guidelines the Board may issue, and including those related to English learners and students with disabilities;
- (c) to assure that the charter school will meet its enrollment projections through demonstration of need and support for the proposed charter school in the communities from which students would be likely to enroll;
- (d) to demonstrate that the applicant will be able to provide educational models, including programs, curriculum, and teaching methods that can be replicated by other public schools;
- (e) to develop a management structure and plan which enables the charter school to achieve the goals and mission set forth in its charter, including the selection, role, and responsibilities of the board of trustees;

charter applications to ensure that the applicant has demonstrated ability: [followed by a list of criteria (a) through (l)];

4) DESE's "Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2008-2009." This document is promulgated pursuant to M.G.L. c. 71, § 89(f) and 603 CMR 1.04(1) and sets forth procedures and criteria used in the criteria-based approval process.

In accordance with the above cited laws, regulations and procedures, the CSO conducted a criteria-based review of the GCACS application and determined that, "The [GCACS] founding group is not recommended to be chartered because overall they do not meet the criteria for the final charter application." The CSO reported its conclusion on February 4, 2009 in a document entitled "Charter School Recommendations – Application Cycle 2008-2009" stating:

"GLOUCESTER COMMUNITY ARTS CHARTER SCHOOL.
CSO RECOMMENDATION: DO NOT RECOMMEND.

The founding group is not recommended to be chartered because overall they did not meet the criteria for the final charter application. During the interview, they demonstrated that they might possess the capacity to open and oversee a charter school but it was not clear that it would be successful in the three areas of charter school accountability: creating an academic program that will support student achievement, organizational viability, and faithfulness to the proposed mission described in the charter application. We would encourage them to reapply in a subsequent year."

The rules established by BESE and DESE for the 2008-2009 charter school application cycle, as promulgated by DESE in accordance with M.G.L. c. 71, § 89(f) provide that, "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

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- (f) to assure that students will meet the same performance standards and assessment requirements set by the Board for students in other public schools;
 - (g) to develop an accountability plan, at the end of the first year of the school's charter, establishing specific five-year performance objectives to help measure the school's progress and success in raising student achievement, establishing a viable organization, and fulfilling the terms of its charter;
 - (h) to administer its educational programs, school operations, and finances effectively;
 - (i) to establish a process to provide to students, parents, the Board, other interested parties, and the public all information required by law and regulation, as well as to provide other information the Board may request;
 - (j) to develop an enrollment policy consistent with 603 CMR 1.06;
 - (k) to ensure the thoroughness and accuracy of the charter school application; and
 - (l) to demonstrate that the applicant has access to school facilities that are in compliance with municipal building codes and other applicable laws, affordable, and adequate to meet the school's program requirements.

Office.”⁸ The record in this matter demonstrates that DESE Commissioner Chester failed to follow this rule.

Based upon the written record and the testimony of all parties interviewed, including that of Commissioner Chester, the OIG concludes the following: 1) that Commissioner Chester recommended that the BESE award a charter to the GCACS applicant group after the CSO had concluded that the GCACS applicant group’s application did not meet the stated criteria for a charter in the application; 2) that CSO never changed its recommendation that the GCACS application did not meet the criteria required by the regulations; and 3) that neither Commissioner Chester nor the BESE ever reviewed the specific details of which criteria the CSO had found the GCACS not to have met or otherwise made a conclusion that GCACS had met those criteria. For these reasons, the OIG concludes that the BESE has not validly awarded a charter to GCACS in accordance with the provisions of law and regulation and that the charter should be deemed void.

The OIG review finds that Commissioner Chester notified the BESE on February 13, 2009 in a memorandum entitled, “Charter School applications –Recommendations for New Charters – Application Cycle 2008-2009” that he would not be recommending approval of two of the three applicant finalists, explaining, “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.*” (Emphasis added.) This language evidences that applicants that fail to meet “one or more of the criteria” are not supposed to be approved.

The OIG review finds that the DESE Associate Commissioner Wulfson, CSO Director Street, and CSO New Schools Development Coordinator Hersh informed Commissioner Chester in writing at a meeting on February 4, 2009 of CSO’s findings, including that the GCACS application did not meet the criteria of the final application. The CSO written report to Commissioner Chester concluded that, “it was not clear that [GCACS] would be successful in the three areas of charter school accountability: creating an academic program that will support student achievement, organizational viability, and faithfulness to the proposed mission described in the charter application.”

⁸ “Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2008-2009, Copyright 2008” (the 2008-2009 Application), p.3.

The OIG review of the process used by the CSO shows that nine DESE employees, including CSO Director Street, the CSO New Schools Development Coordinator Hersh, four other CSO employees, and three other DESE employees, as well as nine other outside reviewers, were each asked to complete a 29-page “Final Application Review/Rubric” (the Application Rubric) and provide a complete criteria-by-criteria assessment of whether and how completely the charter applicant group had addressed each criteria.

The Application Rubric divided the criteria into three areas corresponding to what DESE describes as “the three guiding areas of charter school accountability defined in the current regulations,” as follows:

- 1) Creating an academic program that will support student achievement (including 16 criteria defined in the application);
- 2) Organizational viability (including 42 criteria defined in the application); and
- 3) Faithfulness to the proposed mission (including 45 criteria defined in the application).

At the end of each of the three sections, CSO reviewers were required to indicate an overall section rating for the three sections.

According to testimony of CSO officials, after the DESE and external reviewers had individually completed their Application Rubrics, a meeting was held at which they met and reviewed the results item-by-item. Following that meeting, the external reviewers were no longer involved and the CSO continued the review process on its own as required by established procedures. The CSO subsequently interviewed each of the three charter applicant finalists. Following those interviews, the CSO made a determination that none of the three applicant groups had met the criteria for the final application, including GCACS. The CSO made a conclusion that “it was not clear that [the GCACS founding group] would be successful in the three areas of charter school accountability: creating an academic program that will support student achievement, organizational viability, and faithfulness to the proposed mission described in the charter application.” After having made that determination, the CSO promulgated a draft version of its report, entitled “Charter School Recommendations – Application Cycle 2008-2009” and then presented its findings to Associate Commissioner Wulfson on February 2, 2009. Following that meeting, the CSO and

Associate Commissioner Wulfson met with Commissioner Chester on February 4, 2009 and presented the final version of the CSO report.

Approximately two weeks after being informed of CSO's conclusions, Commissioner Chester recommended to the BSES that it award the GCACS charter. According to the written record and testimony of DESE officials, he did so without having reviewed CSO's criteria-by-criteria analysis or having undertaken any subsequent process by which he determined that the GCACS application had in fact met the established criteria. Instead, Commissioner Chester made a general recommendation to the BESE at its February 24, 2009 meeting, stating, "This is a school that in my mind is viable, has a great chance of success, has put together a sound plan, and therefore rises to the level of warranting approval on your part." In his recommendation, Commissioner Chester never indicated that the CSO or he had ever determined that the GCACS application had met the required criteria. The OIG concludes that the basis for Commissioner Chester's recommendation did not comply with the requirements of law and regulations previously described and that DESE therefore did not "ensure that the applicant has demonstrated ability" to meet the criteria required by 603 CMR 1.05(1) and by the "Application for a Massachusetts Public Charter School, Commonwealth and Horace Mann, 2008-2009."

In making his recommendation to the BESE, Commissioner Chester described in great detail the rigorous and elaborate process that had been employed by the CSO in reviewing the charter application, but he did not inform the BESE that CSO had concluded that the GCACS application had failed to meet the criteria required for approval. Instead, his remarks appear to have conveyed to the BESE the impression that he and the CSO had mutually recommended approval.⁹ As evidence of this, following Commissioner Chester's remarks, a BESE commission member stated, "Now, is the application viable and so on? I am very

⁹ Statement in part of Commissioner Mitchell D. Chester to BESE at BESE meeting of February 24, 2009: "It seems to me that the basis for approving or recommending of an application should be the viability of that application and in fact we shared with you the kind of review process that we put each application through. We look at their mission, their vision, their statement of need. We look at how that school is going to be organized for educational success, academic philosophy, the curriculum that has been proposed. There are requirements around performance assessment, promotion, graduation standards. The characteristics of the school, how they are going to treat special populations, the organizational viability, enrollment and recruitment, capacity of the leadership group, the school governance plan that's put forward, the management structure, how they are going to approach facilities and transportation and how they are going to treat fiscal management and the budget that's going to be required. We look at all of those things in depth and in my mind the school in front of you that I've recommended has passed mustard (sic) on all of those accounts. This is a school that in my mind is viable, has a great chance of success, has put together a sound plan, and therefore rises to the level of warranting approval on your part."

confident that our Charter School Office has done their homework on that. We have a charter school office that has a very good track record and has a national reputation for quality. This set of applications was pared down from seven to only this one. So I am confident that the staff and commissioner have done their job and that this is a solid, viable application.” After hearing Commissioner Chester’s recommendation, the BSES approved the GCACS charter on a vote of 6-4, with one member indicating by phone that she opposed granting the charter, resulting in 6-5 BESE support in favor of awarding the charter.

During an interview with the OIG, Commissioner Chester acknowledged that he had been informed by the CSO on February 4, 2009 of CSO’s conclusion that the GCACS application did not meet the criteria for final approval. He stated that in his opinion, the decision about whether to recommend approval or not was his alone to make. Commissioner Chester was asked under what authority he had recommended that the BESE approve the GCACS application when the procedures for 2008-2009 Application cycle stated, “The 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.” Commissioner Chester responded that he makes the recommendation and that “otherwise you don’t need a commissioner.”

Commissioner Chester was asked by the OIG to explain how his interpretation complied with the provisions of 603 CMR 1.05 (1) (Criteria for Assessment and Approval of Charter Applications, Awarding of Charters) that states: “The Department of Education will review charter applications to ensure that the applicant has demonstrated ability” to meet a specified list of criteria. He stated that there is no law saying that a charter school has to meet all criteria. During the interview, OIG told the Commissioner that, during previous interviews, DESE’s Associate Commissioner, CSO Director, and CSO New Schools Development Coordinator had all indicated that the CSO had not been involved in any process after the February 4, 2009 meeting in which the Commissioner had reviewed whether or not GCACS had met the criteria. To this, the Commissioner stated that he did not ask anyone to redo forms or recalculate judgments following the February 4, 2009 meeting. Commissioner Chester also confirmed that he had not received a checklist delineating which specific criteria the CSO had found GCACS had failed to meet. He stated that as

commissioner he had concluded that GCACS was worthy of approval and that he alone was responsible for making a recommendation to the BESE.

Based upon Commissioner Chester's statements during this interview, the OIG concludes that Commissioner Chester believes that he is justified in making a recommendation in favor or opposed to the granting of a charter irrespective of whether the applicant meets all of the established criteria and irrespective of CSO's conclusions. The OIG disagrees and concludes that while Commissioner Chester and the BESE have authority to propose and adopt changes to DESE rules, regulations and procedures, they are bound by existing rules, regulations, and procedures until they make such changes. The OIG concludes that the criteria-based review and approval process established by the BESE and DESE sets an effective minimum requirement for charter approval. While the BESE and DESE are not obligated to approve every charter application that meets these requirements, they are not authorized by current rules, regulations, and procedures to approve a charter that fails to meet these established criteria.

According to these regulations and procedures, DESE is responsible to ensure that the charter school applicant has demonstrated the ability to meet the specified criteria. Commissioner Chester could have conducted a subsequent process with the CSO in which they reviewed and reconsidered each determination that had been made by the CSO regarding the criteria that GCACS had failed to meet. Commissioner Chester also could have gone to the BESE and delineated the specific criteria that the GCACS application had failed to meet and recommended that the criteria be amended for future application cycles. In short, Commissioner Chester could have taken action to change the regulations and procedures governing the authorization of charter schools, but he did not do so. Therefore, in the estimation of the OIG, he was bound to follow them.


The OIG makes the following three additional recommendations: 1) that the CSO adopt policies to assure that it retains its detailed and copious assessment documents, created and used by DESE and CSO officials and by outside experts during the charter school criteria review process, as public records; 2) that DESE adopt policies to better document the factors that determined its decisions about each application; and 3) that BESE and DESE clearly document the lines of authority that govern the charter school authorizing process.

As stated above, the 2008/2009 charter school application and approval process administered by BESE and DESE ended in the granting of a charter to GCACS in violation of the provisions of law, regulation, and procedure. This occurred because the GCACS charter was granted without the authorizing entity having determined that the applicant met the rigorous criteria established by the comprehensive application process in accordance with established procedures. For this reason, the OIG concludes that the GCACS charter was never validly awarded and should be deemed void *ab initio*.

The OIG presents this information to you in accordance with 945 CMR 1.09(3)(c) in order that you may determine whether it may be appropriate for further review and administrative action by your office.

Thank you for your cooperation. If I may be of assistance to you with respect to this notice, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan
Inspector General