

May 12, 2010

VIA EMAIL AND U.S. MAIL

Ms. Shannon Hagerman, Principal
Montclair School of Academics and Enrichment
1151 Newport Street
Denver, CO 80220

Ms. Julie Murgel, Principal
Cole Arts and Science Academy
3240 Humboldt Street
Denver, CO 80205

Mr. Rob Stein, Principal
Manual High School
1700 East 28th Avenue
Denver, CO 80205-4502

Re: Implementation of Innovation School Plans of Manual High School ("Manual"),
Montclair School of Academics and Enrichment ("Montclair"), and Cole Arts and
Science Academy ("C.A.S.A.")

Dear Ms. Hagerman, Ms. Murgel, and Mr. Stein:

C.A.S.A., Montclair and Manual (collectively, the "Schools") have asked this firm to review their legal rights pursuant to the Innovation Schools Act of 2008¹ (the "Act") and each School's innovation plan ("Plans") submitted to and approved by School District No. 1 in the City and County of Denver (the "District") and the Colorado Department of Education ("CDE") pursuant to the Act.

It is our opinion, based upon our communications with you and our review of the Act and the Plans, that the District has breached the terms of the Plans and is in violation of the purpose and spirit of the Act, and that the Schools and their students are being irreparably damaged as a result of such breaches. Accordingly, we recommend that the Schools meet with Superintendent Boasberg to discuss the contents of this letter and to request the District to abide by the terms of each School's Plan and to cooperate with the Schools in the effective implementation of the Plans. If the District continues to violate the Plans and the Act following such request, we would be happy to meet with the Schools in order to discuss the Schools' legal options.

¹ Colorado Revised Statutes ("CRS") § 22-323.5-101, *et seq.*

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Violations

The District has breached the terms of the Plans and the Act by either blocking or failing to abide by various autonomies granted to the Schools in the Plans and the Act. The following is an illustrative but not exclusive list of such violations.

Budgetary Control

The Plans as accepted and approved by the District grant the Schools the autonomy to develop school-level budgets which reflect their individualized educational programs and which allow the Schools to opt out of certain services provided by the District. However, the District failed to provide the Schools with the budgetary autonomy granted to them in their Plans, including the autonomy to determine whether to hire the District or third parties to provide services to the Schools.

Paragraph 14 of all three Plans states that the Schools will receive an annual budget allocation based upon the number of students enrolled in each School on October 1, and that the District and each School's principal will agree on the terms for the budget allocation annually in the spring. Additionally, Paragraph 14 of the Plans states that the District and the Schools will be able to purchase administrative services such as transportation, food services, facility management, maintenance, student services and substitute teachers from the District based on a price list that will be provided by the District to each Principal. However, the District has failed to provide the Schools with the price list or any other method for calculating the value of District services as required by Section 14 of each Plan, thereby depriving the Schools of the information they need to determine which services they should purchase from the District.

Additionally, all of the Plans grant the Schools the authority to manage the funds allocated to each of them by the District. However, the District has failed to supply the Schools with their annual budget allocation within the required time frame, impeding the Schools' ability to develop their annual budgets and to access the funds necessary to hire staff and outside service providers. The Plans replace CRS § 22-32-109(1)(g) with action designed to "delegate authority to school to manage receipt of money"² and to allow each School to "manage its receipt of money according to district procedure...."³ Paragraph 4 of C.A.S.A.'s Plan and Montclair's Plan each state that C.A.S.A. and Montclair "will have control over its budget so that it can appropriately hire and utilize staff, available time and incentives (in the most efficient fashion)." Paragraph A of Manual's Plan states that as an Innovation School, Manual will be provided with the "appropriate freedom to control its educational program, budget, staff, time and incentives...." C.A.S.A.'s Plan also states that "C.A.S.A. requires the flexibility to select and

² See p. 35 of C.A.S.A.'s Plan and p. 1 of Manual's and Montclair's "Waivers from State Statute" as incorporated into both Plans.

³ Id.

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hire individuals..."⁴ and that it can "control the type and amount of student services providers that are allocated to our school."⁵

However, according to our discussions with you, the District has consistently failed to honor these provisions of the Plans by imposing excessive budgetary controls and procedures on the Schools, failing to release the funds allocated to the School for the 2009-2010 school year for the Schools' own management, and failing to delegate the authority to the Schools to manage and control their allocated funds.

Staffing and Hiring

Each Plan gives the Schools the authority to hire staff (including both employees and independent contractors) through a process developed by each School in partnership with their school leadership teams, including the ability to contract with part time support staff. However, it is our understanding that the District has either delayed or outright denied each School's request to hire part time or contract staff, retained control of certain positions at the District level, and forced direct staff placements on the Schools, all in violation of the terms of the Plans.

For example, each Plan states that all staff members are on annual contracts.⁶ However, the District is not abiding by these terms. Additionally, each Plan also states that new teachers hired by the Schools are not subject to the Teacher, Employment, Compensation and Dismissal Act.⁷ However, each School has experienced difficulties with the District regarding the District's understanding and implementation of this exclusion.

C.A.S.A.'s Plan states that C.A.S.A. will "develop and implement its own staff hiring policies and timeline."⁸ Manual's Plan provides that it can "use its budget allocation most effectively by hiring specialists, who have appropriate background and experience in a given academic area;"⁹ and "(i)n addition to employing faculty directly, Manual contracts with outside providers in areas where better service can be obtained."¹⁰ Montclair's Plan states that "Montclair requires the flexibility to select and hire individuals that can best meet the needs of our diverse population,"¹¹ and "(t)o create and maintain an outstanding school, Montclair will assemble a faculty and staff who will work together to improve achievement for every student."¹²

⁴ See Paragraph 1, p. 3 of C.A.S.A.'s Plan

⁵ See Paragraph 1, p. 4 of C.A.S.A.'s Plan

⁶ See Paragraph 4, p. 14 of C.A.S.A.'s Plan; Paragraph 11, p. 6 of Manual's Plan; and Paragraph 11, p. 5 of Montclair's Plan.

⁷ See Paragraph B (1), p.1 of Montclair's Plan, Section 1, p.4 of C.A.S.A.'s Plan, and Section B (1), p.2 of Montclair's Plan.

⁸ See p. 31 of C.A.S.A.'s Plan

⁹ See Paragraph B (1), p.1 of Manual's Plan

¹⁰ See Paragraph 4, p. 4 of Manual's Plan

¹¹ See Paragraph B (1), p.1 of Montclair's Plan

¹² See Paragraph 11, p. 5 of Montclair's Plan

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You have advised us that the District has consistently failed to honor these provisions of the Plans. For example, the District has undermined contracts the Schools have made with outside service providers by instructing Mental Health America of Colorado to cease providing services to Manual. Furthermore, the District has impeded each School's ability to hire new staff by delaying the hiring process for months at a time. The District has also breached the provisions of the Plans by mandating that C.A.S.A. hire one day of psychologist time, with the remaining time being allocated to social work time, in direct contravention of C.A.S.A.'s Plan which provides it with the autonomy to make such decisions without District input. For Montclair, the District continues to maintain control over hiring and assignment of student service specialists, including Speech Language Pathologists, Occupational Therapists, and Social Workers without any consultation or input from Montclair.

Currently, District personnel who handle employee and staffing issues do not appear to understand the autonomies afforded to Innovation Schools under their Plans nor recognize that Innovation Schools are excepted from many state and District policies regarding hiring staff pursuant to the Act and the Plans. Accordingly, the District has continuously breached the provisions of all three Plans which provide the Schools with explicit waivers from certain state laws and District policies.

Central Office Support

Each School's Plan contains different reporting requirements for each School's principal. In practice, however, each principal must contact the directors of various District departments and deal directly with each department rather than with the Superintendent, assigned Instructional Superintendent, or a designee as set forth in the applicable Plan. In most cases, the heads of the individual departments lack any clear understanding of Innovation Schools and the autonomies granted to them by the Act and the Plan, and they have no authority to resolve the issues brought to them by the principals.

The Plans clearly state that the Schools should report directly to the Superintendent, assigned Instructional Superintendent or a designee on Innovation School issues. At a minimum, the Schools should report to the same District-level individual with decision-making authority who understands Innovation Schools and how they are operationally different from other District schools.

Violation of Intent of Act

The Act was adopted to achieve, *inter alia*, the following purposes: to improve educational performance through individual school *autonomy* and *managerial flexibility*; to encourage innovations in education by providing local school communities and principals with *greater control* over levels of staffing, personnel selection and evaluation, scheduling and educational

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programming; and to encourage school districts and public schools to find *new ways to allocate resources*, including through the implementation of specialized school budgets.¹³ (italics added)

Additionally, the Act's legislative declarations include that the principals of Innovation Schools have the maximum degree of flexibility possible to determine the most effective and efficient manner to meet their students' needs, that each school district board of education should have the authority to grant to a public school the maximum degree of flexibility possible to meet the needs of individual students and is strongly encouraged to delegate to each public school a high degree of autonomy in determining the most effective use of the school's resources.¹⁴

Accordingly, by failing to abide by the explicit provisions of the Plan which grant the Schools the autonomy to hire third party service providers, oversee and manage their own budgets, and administer their own staff, the District not only breaches the terms of the Plans but also violates the intent of the Act.

Conclusions and Proposals

Based upon our review of the Act and the Plans, and as specifically described above, we believe the District has failed to honor its commitment to each School by failing to abide by and perform under the specific provisions of the Plans. The District specifically accepted the terms of each Plan pursuant to its Board resolutions, namely Resolution No. 3145 (Manual), Resolution No. 3145 (Montclair), and an unnumbered Resolution for C.A.S.A. (the "Resolutions"). As you advised us, each School and its students reasonably relied upon the District's commitments as set forth in its respective Plan and each School and its students have been and are being damaged by the District's violation of the Plans and the Act in that such breaches directly and negatively impact the quality of the Schools' educational programs and the students' educational experience. Many students specifically chose to attend the Schools because they were designated as Innovation Schools. The Schools marketed themselves to the communities and prospective students based upon the promises contained in the District-approved Plans, and students relied on such representations in choosing to attend an Innovation School. As you explained to us, the Schools and their respective students will be irreparably damaged if the District does not perform under the Plans as it promised to do.

Accordingly, the Schools should request a meeting with Superintendent Boasberg in order to discuss the implementation of the following proposals:

1. The District should provide a timeline and a deadline (but no later than May 17, 2010) by which funds will be allocated to the Schools.

¹³ CRS § 22-32.5-102(2)(c), (e) and (f).

¹⁴ CRS § 22-32.5-102(1)(c), (d) and (e).

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2. The funds allocated to the Schools should appear in the Schools' budgets during the regular budget cycle (this year the funds must appear immediately in the Schools' budgets because the budget cycle has passed) or there needs to be a separate budget for Innovation School funds.
3. The District and the Schools should work together to come up with standards and guidelines in order to ensure that the Schools administer the funds managed by them in an effective, responsible manner.
4. The Schools should have discretion over allocating the funds in each School's budget for purchasing services from the District or from outside providers, hiring staff through the District or through independent contracts, or any other purchase of goods or services.
5. The District should educate its personnel regarding how innovation schools operate, the difference between Innovation Schools and other public schools, and how Innovation Schools are granted autonomy and waivers from certain state laws and District policies.
6. The District should designate a single person, and eventually a department, who is educated on and understands the Act and how it is to be implemented with regard to the Schools, and who has the actual authority to implement the provisions of the Plans.
7. The District should abide by the provisions of each School's Plan.

If the District fails to cooperate with the Schools to ensure the resolution of these issues in a timely manner following your discussions with Superintendent Boasberg, the Schools should consider and exercise all appropriate legal recourses as the failure to implement these proposals will be extremely detrimental to the Schools and their students.

Sincerely,



Cara Lawrence

CBL:jkw