

**Minutes of the Special Meeting
of the Massachusetts Board of Elementary and Secondary Education**

**October 1, 2010
4:10 p.m. – 6:10 p.m.**

**Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA**

Members of the Board of Elementary and Secondary Education Present:

Maura Banta, Chair, Melrose
Vanessa Calderón-Rosado, Milton
Harneen Chernow, Vice Chair, Jamaica Plain
Michael D'Ortenzio Jr., Chair, Student Advisory Council, Wellesley
Ruth Kaplan, Brookline
James McDermott, Eastham
Paul Reville, Secretary of Education, Worcester

Mitchell D. Chester, Commissioner of Elementary and Secondary Education, Secretary to the Board

Members of the Board of Elementary and Secondary Education Absent:

Gerald Chertavian, Cambridge
Beverly Holmes, Springfield
Jeff Howard, Reading
Dana Mohler-Faria, Bridgewater

Chair Maura Banta called the meeting to order at 4:10 p.m.

Chair Banta stated the purpose of the special meeting is to discuss and vote on the commissioner's memo and recommendation regarding the Gloucester Community Arts Charter School. Chair Banta said over the past 19 months the Board has witnessed the intensity of emotion by both the opponents and proponents of the school. She said concerns remain about the viability of the school, which just completed its first week of operation. The chair said now that more than 60 students are enrolled and attending classes, the goal of the Board at this meeting is to make a decision based on what is in the best interests of the school's students and least disruptive to their education.

Chair Banta invited four public officials who were present to address the Board.

Statements of Public Officials

1. State Senator Bruce Tarr said the Board should consider the needs of all students in Gloucester. The senator said the problems associated with the charter school are about the integrity of process, including the process by which the charter was granted. The senator noted Commissioner Chester's statements in his September 17th and 22nd letters that he no longer believed the charter school was viable and suggested the commissioner should identify what has changed since then. The senator recommended that if the Board imposes probation and sets conditions, it should require periodic progress reports.
2. State Representative Ann Margaret Ferrante read a letter from Ed Shoucair, a Gloucester parent who questioned the propriety of allowing the charter school to remain open in light of serious problems that never seem to get resolved, and the message that would send.
3. Gloucester School Committee Chair Valerie Gilman said six members of the Gloucester School Committee were in attendance today and all agree with the commissioner that the charter school is not viable. Ms. Gilman read a letter to the Board about problems at the school. She said the citizen lawsuit is a real threat to the school and called for decisive action today.

Board member Ruth Kaplan arrived at 4:25 p.m.

4. Interim Gloucester Superintendent Joe Connolly described some of the strengths of the Gloucester Public Schools and said the district is implementing an 8-point action plan to address low scores at Veterans Memorial School. The interim superintendent said he hopes the district and the charter school can work together to design an innovation school or Horace Mann charter school.

Commissioner's Recommendation

Chair Banta asked the commissioner to present his memo and recommendation. Commissioner Chester first took the opportunity to inform the Board that this morning, the Department convened a meeting of over 400 school committee chairs, superintendents, and local union presidents from the participating Race to the Top districts, including Gloucester. The commissioner said it was a very positive gathering.

Commissioner Chester said the Gloucester Community Arts Charter School's application was strong and he had recommended it on its merits, not based on any negative assessment of the Gloucester Public Schools. The commissioner said he recommended approval of the charter to the Board in February 2009, the Board voted to grant the charter, and the Board reaffirmed that vote at two subsequent meetings. He said the school has been chartered for 19 months and opened on Thursday, September 23, 2010, over three weeks behind schedule and one day before the charter would have expired. Commissioner Chester said by mid-September he had become very concerned about the ability of the school's board of trustees to manage the school, the delayed opening, and findings that the school had violated state law. The commissioner said he wrote to Tony

Blackman on September 17th and to Amy Ballin on September 22nd to express his concerns. The Commissioner asked whether Amy Ballin, chair of the school's board of trustees, was present at this meeting and was told that she was not.

The commissioner said substantial concerns exist about the ability of the school's board of trustees to manage the school effectively. The commissioner said those concerns are based on a number of issues, including the board's failure to notify the Department of significant developments – (1) the school's failure to develop contingency plans for construction delays; (2) the school's repeated delays in opening; (3) the school's failure to notify the commissioner that the Attorney General's Office (AGO) was investigating the school for violation of state laws around procurement and construction; (4) the finding of the AGO that the school violated multiple laws around procurement and construction of facilities; and (5) the resignation of the head of school. The commissioner said all these issues raised concerns about the financial viability of the school, which had an initial projected enrollment of 120 students, a pre-enrollment of 95 students, and opened with 64 students. The commissioner said as these issues accumulated, he became increasingly concerned that opening the school was not in the best interest of the students, given the possibility that the school may have to close during the school year. Commissioner Chester said he wished to avoid that possibility and had urged the school not to open.

Commissioner Chester said he continues to have serious concerns and now that the school has opened, he has concluded the best course of action is to place the school on probation with a very short leash: specific conditions that the school is required to meet. The commissioner outlined 12 conditions that the school must fulfill, including: obtaining approval from the AGO on a compliance plan addressing the school's violations of law; addressing directly with the Inspector General the issues he has raised; receiving training on procurement, ethics, and purchasing; submitting a revised budget that demonstrates fiscal viability, an updated school leadership plan, and a revised school calendar and transportation plan; documenting meetings of the board of trustees and following the open meeting law; strengthening the school's board of trustees, for which the commissioner said his confidence was shaken; and requiring the board of trustees to communicate regularly with the Department on any and all significant matters and staff changes. The commissioner said based on the school's success or failure in regard to these conditions, he would recommend further action no later than December of this year.

Chair Banta thanked the commissioner for his summary. The motion recommended by the commissioner was made and seconded.

Presentation by GCACS Officials

Chair Banta welcomed representatives of the Gloucester Community Arts Charter School. Attorney Tad Heuer from Foley Hoag, which represents the school, thanked the Board for the opportunity to present. Attorney Heuer said that after reviewing the commissioner's September 29th memo, the GCACS board of trustees understands and does not oppose the commissioner's recommendations. He said the board recognizes it

must implement necessary changes and be held accountable. Attorney Heuer said the conditions are extensive and the timelines are challenging, but the school views them as neither unreasonable nor unfair. He said the board of trustees did not wait for today's Board of Elementary and Secondary Education meeting to take action; last night the board voted to ensure each of the conditions would be met by passing 12 motions based on the commissioner's proposed conditions. Attorney Heuer said the motions are straightforward and action-oriented and will be reflected in the minutes of the meeting.

Attorney Heuer said the board of trustees acknowledges its responsibility and students and their families will be watching the board. He asked the students and parents from GCACS who were in the audience to stand. Attorney Heuer said about 70 students attended the charter school today, its seventh day of classes.

GCACS Executive Director Anthony Blackmun said GCACS provides a choice for parents who are seeking an arts-infused education that deepens understanding and allows students to make meaning of the world. He said he believes the board of trustees must be strengthened and he argues with none of the commissioner's conditions. Mr. Blackmun said issues around process and funding belong in the Legislature or at the polls. Mr. Blackmun said the school opened with 64 students and families under the most vociferous opposition, and the students who chose to attend the school have rights and deserve to be supported.

GCACS parent Ruthie Exama, the parent of a 5th grade student, thanked the commissioner for his recommendation. She said the emotional rollercoaster the school has been through has only strengthened it as a family. Ms. Exama said the school now has a chance to prove itself and to show real, measurable achievement.

Board Discussion

Commissioner Chester introduced Associate Commissioner Jeff Wulfson and Deputy General Counsel Kristin McIntosh. Mr. D'Ortenzio Jr. asked about the Department's impression of the school on its first few days. Associate Commissioner Wulfson said he was at the school on Day 1, saw the school open, and took a head count of students. Mr. Wulfson said he saw teachers and students engaged in teaching and learning but further review would require additional visits. Mr. Wulfson said if the Board places the school on probation, there will be further monitoring of the school.

Secretary Reville said the Board has limited options – it could vote its intent to revoke or it could place the school on probation. The secretary asked Commissioner Chester to comment on the Board's options. Commissioner Chester said a revocation recommendation at this point would be a vote on an intent to revoke, played out as the Board saw in the past year with the Robert M. Hughes Charter School revocation. The commissioner said in light of the delays in opening, the AGO finding that the school violated bidding and procurement laws, a realization that the school had not been forthcoming, and a likely reduced enrollment with implications for the school's financial

viability, he turned from being an advocate for the school's opening to having very serious concerns about its viability.

Commissioner Chester said the school held a charter and did open within 19 months as required. Given those facts and the students and families involved, the commissioner said the option of probation allows the Board to hold the school accountable on the key issues within a short timeframe. Commissioner Chester said this was the best option in his judgment, and at the end of the probationary period, he could recommend action ranging from removing the school from probation to summary revocation. Secretary Reville asked the commissioner about summary revocation. The commissioner asked General Counsel Rhoda Schneider to respond. She said probation plus summary revocation is an expedited process and in any revocation, the charter school has the right to request a hearing.

Vice Chair Chernow asked how common it was for a school's executive director to serve on its board of trustees. Mr. Wulfson said this is not uncommon, and there may be decisions on which the executive director must recuse himself/herself. Vice Chair Chernow asked that the members of the GCACS board of trustees in attendance raise their hands. One person raised his hand. Vice Chair Chernow said she was very concerned that the chair of the board of trustees was not present and only one board member plus the executive director attended this meeting. She said she assumed the board of trustees knew this was a crisis. The vice chair said she was concerned that Mr. Blackmun had suggested that process was not important and that this is a fight about choice. Vice Chair Chernow said these are public dollars and process matters.

The vice chair asked how many teachers at the school are licensed. Mr. Wulfson said the school has not yet reported the data but would do so as part of the October data collection. Vice Chair Chernow said she was more concerned having heard the school's presentation and was not comfortable with the recommendation to allow this new school to remain open with so many problems. She said she could not rationalize why the school's trustees were not here.

Dr. McDermott said he was intrigued by the school's arts focus, concerned by the list of serious problems, and perplexed that the board of trustees was not present. He said the board of trustees let down the students. Mr. D'Ortenzio Jr. asked if it was common to have an executive director serve as a voting member of a board of trustees. Mr. Wulfson said it is not uncommon. Mr. D'Ortenzio Jr. said he has serious doubts about the board of trustees and asked about the number of trustees. Mr. Wulfson said the by-laws require at least 7 and no more than 15 members. Mr. Wulfson said one of the proposed conditions requires the school to beef up the number and quality of its trustees. Mr. D'Ortenzio asked about a July meeting between the commissioner, the district, and the charter school to explore possible alternatives. Commissioner Chester said the parties had a general discussion about a possible joint venture to secure innovative, alternative approaches to education within Gloucester; he said he was not present for the whole meeting. Mr. Wulfson said the mayor initiated the discussion in an attempt to bridge the gap and while

there was animosity between the two sides, there appeared to be interest in resuming the conversation in the future.

Secretary Reville said he believed every member of the Board sympathized with the commissioner's outrage over the situation. The secretary said the Board has two options, and either way it seems clear that the school will remain open for the next few months. Secretary Reville said he supported the motion for probation and that the Board would be in a stronger position to revoke the charter if the school fails to meet the conditions. Chair Banta agreed and said she strongly supported the commissioner's recommendation.

Ms. Kaplan asked about the process for summary revocation. General Counsel Schneider said in a typical revocation, as was the case with the Robert M. Hughes Charter School, the Board would vote its intent to revoke, the revocation cannot take place in less than 60 days, and the school can request a hearing. General Counsel Schneider said a vote today to put the school on probation would in essence put the school on notice now with specific conditions that the school must meet, and the commissioner and Board would have a whole array of options including summary revocation in December. General Counsel Schneider read from section 1.13(4) of the charter school regulations. Ms. Kaplan asked if summary revocation means a school would close that day. General Counsel Schneider said it depends and asked Deputy General Counsel McIntosh to clarify. Deputy General Counsel McIntosh said summary revocation means it takes effect and the school could request a hearing which would take place after revocation; if revocation had taken effect, the school should close.

Commissioner Chester said the range of options in December could include that the school has done so well, it should be removed from probation, or on the other extreme, he could recommend summary revocation. In between, the commissioner said he could extend probation with new and different conditions, or he could recommend revocation effective at the end of the school year. Ms. Kaplan asked if there had ever been a situation where a school was placed on probation one week after opening. General Counsel Schneider said the Board has placed several charter schools on probation but she was not aware of such a case so early in a school's existence. Mr. Wulfson added that some charter schools have voluntarily returned their charters.

Ms. Kaplan said she was troubled by the process and concerned about the school becoming more of a solidified community the longer the school is open. She questioned whether it is in the students' best interest for them to be enrolled in a school that is under such a cloud; they are caught in an unfortunate situation. Ms. Kaplan said it was shocking that the school's board members were not present and had offered no explanation. She said she would feel more confident with the commissioner's recommendation if there were closure, up or down, in December. Ms. Kaplan moved to amend the proposed motion to state that if the school does not succeed in fulfilling the conditions, the Board will summarily revoke the charter. The motion to amend was seconded.

Secretary Reville said the Board has made clear its intent to revoke if the school fails; the Board has no patience or tolerance for failure and will go to summary revocation if

necessary. He said following the commissioner's recommendation gives the Board a broader range of options and he would like to preserve the prerogatives of the Board.

Ms. Calderón-Rosado said the commissioner's recommendation is a kind of test and opportunity granted to the school that if it is not able to fulfill, the Board should vote up or down on the charter. Ms. Calderón-Rosado said she is also concerned about the school's enrollment.

Chair Banta said she did not agree with Ms. Kaplan's amendment. Commissioner Chester asked Ms. Kaplan to clarify the intent of the amendment. Vice Chair Chernow said there is a lot of room for variation in meeting the conditions and she is looking for some clear resolution. Ms. Kaplan said her intent is that there are strong grounds for the Board to move an intent to revoke today but in lieu of that, this offers an alternative. Ms. Kaplan said she would expect based on the commissioner's review, he would recommend in December either that the school remain open or that the charter be immediately/summarily revoked.

On a motion duly made and seconded, it was:

VOTED: that the main motion be amended by striking the last sentence and replacing it with: "The commissioner shall review and report to the Board on GCACS's success or lack of success in meeting the terms of probation and its charter. Based on his review, he shall recommend that the school retain its charter or that the school's charter be summarily revoked."

The vote was 5-2. Board members Calderón-Rosado, Chernow, D'Ortenzio Jr., Kaplan, and McDermott voted in support. Board members Banta and Reville voted in opposition.

General Counsel Schneider said she believes in maintaining as much discretion for the Board as the law permits. She said the amended motion is not very different from the main motion as presented.

Ms. Calderón-Rosado asked how many students were currently enrolled in the school. Mr. Wulfson said the official enrollment will be part of the October enrollment count. He said in the next week or so, the Department should receive names and addresses for enrolled students and it then takes the Department a few weeks to get an official count. Ms. Calderón-Rosado asked whether between now and December 21st new students could enroll. Mr. Wulfson said additional students could enroll up to a total enrollment of 95 students. Ms. Calderón-Rosado said this concerned her and asked whether the Board could prevent the school from enrolling more children until this matter is resolved. Mr. Wulfson said some parents may be waiting to see what will happen today before making a decision on enrolling their children. He said one of the proposed conditions is that the school demonstrate it is fiscally viable, and preventing additional students from enrolling might tie the school's hands. Mr. Wulfson said parents understand the potential risks.

On a motion duly made and seconded, it was:

- VOTED:** that the Board of Elementary and Secondary Education, in accordance with General Laws chapter 71, section 89, and 603 CMR 1.13(4), hereby place the Gloucester Community Arts Charter School (GCACS) on probation until December 21, 2010, and direct GCACS to meet the following terms of probation, as recommended by the Commissioner:
- 1. By November 24, 2010, GCACS must obtain approval by the Attorney General's Office (AGO) of a compliance plan addressing the school's violations of G.L. c. 149, §§ 44A-44M; G.L. c. 7, § 38A^{1/2}-38O; and G.L. c. 149, § 44(E)(4), as described in the AGO's letters of September 15, 2010 and September 22, 2010. As indicated by the AGO in its letter dated September 22, 2010, such plan must address at a minimum bids on remaining construction work, a promise of and actual compliance with the public construction bidding and prevailing wage laws, a commitment to file frequent reports with the AGO regarding such compliance, a training plan for the school's administrators and board of trustees regarding public construction bidding laws and procurement of goods and services, an amendment to the school's current lease to ensure that the school's landlords are bound by the school's obligations under its compliance plan, and any other remedial measures as required by the AGO.**
 - 2. On or before October 15, 2010, GCACS must address directly with the Office of the Inspector General (OIG) the procurement of a contract with FHO Partners LLC and the procurement of a lease with Cape Ann Medical Office Building, LLC. These issues were raised by the OIG in a September 17, 2010 letter to the Commissioner. GCACS must provide to the Charter School Office a copy of all such communications to and from the OIG within a reasonable period of time, and no later than 48 hours after such communications are sent or received.**
 - 3. GCACS must register for and participate in the Charter School Procurement program offered by the Office of the Inspector General in November 2010.**
 - 4. GCACS must register for and participate in the first available program offered by the Office of the Inspector General for the Massachusetts Certified Public Purchasing Official Program, specifically for Public Contracting Overview, Supplies and Services Contracting, and Design and Construction Contracting.**

- 5. On or before October 15, 2010, GCACS must submit to the Charter School Office an updated budget and cash flow statement for fiscal year 2011, reflecting the number of enrolled students as of October 1, 2010. GCACS must also submit its October 1 SIMS report no later than October 15, 2010. GCACS must submit additional updates as required by the Charter School Office.**
- 6. On or before October 8, 2010, GCACS must submit to the Charter School Office an updated school leadership plan, identifying how the duties previously assigned to the “director of education,” its head of school, will be managed during the current year.**
- 7. On or before October 8, 2010, GCACS must submit a revised school calendar and a transportation plan to the Charter School Office for approval, such calendar and transportation plan having been adopted by the school’s board of trustees. Such school calendar must include no less than 185 school days, allowing five days for possible closing due to snow days or other exigencies, and GCACS must provide at least 180 school days for its students.**
- 8. GCACS must establish and provide to the Charter School Office a schedule through at least December 2010 of regular meetings of its board of trustees to occur no less frequently than every other week. GCACS must provide the Charter School Office with notice, including an agenda, of all meetings of its board of trustees at the same time it gives such notice pursuant to the open meeting law. GCACS must provide minutes of all such meetings to the Charter School Office within a reasonable period of time and in any event no later than 48 hours after such minutes are prepared. In providing such minutes, GCACS should note whether the board of trustees has approved the minutes and, if not, should provide an approved copy within a reasonable period of time and in any event no later than 48 hours after such minutes are approved.**
- 9. By November 24, 2010, to strengthen its membership, the board of trustees of GCACS must recruit and submit to the Charter School Office for approval new members with expertise in public administration, finance, real estate, and law. GCACS must notify the Charter School Office within a reasonable period of time but in any event no later than 48 hours after a member of the board of trustees resigns or otherwise leaves the school’s board of trustees.**
- 10. The board of trustees and school leadership of GCACS must participate in trainings regarding the state ethics law, the public records law, and the open meeting law. By November 24, 2010, GCACS must provide to the Charter School Office an outline of that**

11. GCACS promptly and effectively must communicate with the Charter School Office regarding any and all significant matters within a reasonable period of time but in any event no later than 48 hours after the occurrence. GCACS must report to the Charter School Office any and all communications made or received by or on behalf of the school with any government audit, investigative, or law enforcement agency within a reasonable period of time of that communication but in any event no later than 48 hours after the communication. GCACS must copy the Charter School Office on such written communications sent by or on behalf of the school and send a copy of all such written communications received by or on behalf of the school within a reasonable period of time but in any event no later than 48 hours after the communication. GCACS must provide a report and copies to the Charter School Office of all such communications that occurred prior to its probation no later than October 8, 2010.

12. GCACS must report all changes in staff to the Charter School Office within a reasonable period of time of knowledge of the change but in any event no later than 48 hours after knowledge of the change.

In addition to meeting the terms of probation, GCACS, like all charter schools, must also comply with the terms of its charter. The Commissioner shall review and report to the Board on GCACS's success or lack of success in meeting the terms of probation and its charter. Based on his review, he shall recommend that the school retain its charter or that the school's charter be summarily revoked.

The vote was unanimous.

On a motion duly made and seconded, it was:

VOTED: that the Board of Elementary and Secondary Education adjourn the meeting at 6:10 p.m., subject to the call of the chair.

The vote was unanimous.

Respectfully submitted,

Mitchell D. Chester
Commissioner of Elementary and Secondary Education
and Secretary to the Board