

Attachment A

Abbreviated Summary of New Covenant Charter School Key Historical Factors Leading to the Committee's 2009 Renewal Decision

The Board of Trustees of the State University of New York (the "State University Trustees") approved the application for the New Covenant Charter School ("New Covenant") on June 15, 1999, and the charter issued by operation of law on September 17, 1999. The school opened in the fall of 1999 with an enrollment of 395 students in Kindergarten through fifth grade. Due to the short time span between approval of the school's application and the beginning of the school year, New Covenant was initially housed in temporary modular facilities in the Arbor Hill community of Albany. The school was founded by a group of community leaders, including as its sponsor the then President of the local Urban League Mr. Aaron Dare, and contracted with Advantage Schools, a for-profit company, for comprehensive school management services.

After its first year, the school terminated its management agreement with Advantage and amended its charter to allow for a new management contract with Edison Schools, also a for-profit educational service provider. At the same time, the State University Trustees placed New Covenant on probation and directed it to comply with a Remedial Action Plan requiring the school to improve its financial controls, reporting and its temporary facility. Enrollment was capped at 400 students until a new, permanent facility was completed.

In March of 2000, the Charter Schools Institute (the "Institute") received unsubstantiated reports concerning the possible unauthorized use of school funds by one or more members of New Covenant's board of trustees.

At the direction of one of the Charter Schools Committee's Co-Chairs, the Institute engaged Richard J. Bartlett to review the disposition of the January 2000 capitation payment from the Albany City School District. Judge Bartlett, a principal in the law firm of Bartlett, Pontiff, Stewart & Rhodes, P.C. in Glens Falls, New York, was a former Justice of the New York Supreme Court, a former Chief Administrative Judge for New York's courts, a past president of the New York Bar Foundation, and a former Dean and Professor of Law at Albany Law School.

In a report dated July 6, 2000, Judge Bartlett concluded that the school's board chair, Aaron Dare, had acted improperly with respect to the January 24, 2000 payment of \$443,846.17 from the school district. Based on information available to him, Judge Bartlett concluded that Mr. Dare's conduct did not rise to the level of criminal conduct but recommended that he leave the school's board. Mr. Dare resigned his post as chair and shortly thereafter his role as a school trustee.

New Covenant's facility was completed in September, 2001, meeting the facility-related aspect of its Remedial Action Plan and permitting the school to grow to its full enrollment under its charter. In April 2002, the State University Trustees found that the school had met the remaining terms of the Remedial Action Plan and removed it from probation. The school continued to add one grade each year through the term of its initial charter and, during the 2003-04 school year, enrolled 813 students in Kindergarten through eighth grades.

In the fall of 2003 New Covenant submitted an Application for Charter Renewal, and on August 2, 2004, pursuant to the recommendation of the Institute's staff, the State University Trustees granted the school a full-term, five-year renewal with the conditions that the school eliminate instruction in grades seven and eight, and restrict matriculating students in fifth and sixth grades to existing New Covenant students only. The school violated the fifth and sixth grade student matriculation condition in September 2004; and upon being notified of the violation, the school took appropriate corrective action. In March of 2006, New Covenant was placed on probation through the end (September 17, 2009) of its current charter term for violating the second condition, having filed its audit report 53 days late.

On September 26, 2006, the State University Trustees granted the school's request to modify its charter by again changing management to the for-profit Victory Schools, Inc. ("Victory"), following the termination of the school's management agreement with Edison Schools, Inc. In November of 2006, the school requested and was granted a reduction in its 2006-07 enrollment as well as decreases in future enrollment.

In March of 2007, New Covenant and Victory were sued by Edison Schools, Inc, seeking \$2.3 million in unpaid management fees and unreimbursed expenses made on behalf of the school. The case is still pending in New York County Supreme Court.

On May 21, 2007, the school's board of trustees, believing that it would not have sufficient enrollment to meet fixed expenses including facilities bond repayment in the coming school year, voted not to instruct students during the 2007-08 school year. This action was taken without consultation with the Institute or Victory. Victory acted quickly forgiving a portion of its management fees and negotiating with representatives for the bondholders who agreed to a restructuring of the debt, lowering payments for two years. Victory started a strong marketing effort to ensure adequate enrollment. As a result, less than two weeks after the May 21st vote, the school's board voted on June 2, 2007 to continue instruction with reduced enrollments of 600 and 625 students for the last two years of its charter.

New Covenant reported enrolling 596 students during the 2007-08 school year and 613 students in the current 2008-09 school year. The school saw substantial gains from the prior year in overall student performance on the 2006-07 State assessments in English language arts with 47.4% of students at proficiency, an increase from 34.8% in the prior year and larger gains on the assessments in mathematics with 70.9% of students at proficiency as compared with 54.5% at proficiency the prior year.

On August 15, 2008, New Covenant Charter School submitted its application for subsequent renewal.

As part of its review of the school's renewal application, Institute staff visited New Covenant for the period October 14-16, 2008. On December 2, 2008, the Institute issued to the school its draft renewal report and preliminary recommendation that the school not be granted a full five-year renewal. Key findings included the following:

- New Covenant Charter School has not met or come close to meeting its key academic Accountability Plan goals.
 - On the 2007-08 state assessment in English language arts, 47.4% of New Covenant students scored at proficiency, an increase from 34.8% proficiency in the prior year. The school did not outperform the Albany City School district, in which 55% of students scored at proficiency as compared to 48.8% the prior year. New Covenant did outperform schools in the Albany City School District with similar percentages of students qualifying for free lunch.
 - The school outperformed the Albany City School District on the state's 2007-08 mathematics assessment with 70.9% of all students tested scoring at proficiency as compared to the district average of 64.5% of students at proficiency. In science, while SUNY does not have access to the District scores, the school did well with 91% of students at proficiency. In social studies, 86% of students tested scored at proficiency; again, District numbers are not available.
- Institute staff found that many of the resources and structures that were in place in the third year of the charter period (and the eighth year of operation), leading up to the 2007-08 English language arts test, are no longer present.
 - In November 2007, shortly before the administration of the January 2008 English language arts exam when the school achieved its best English language arts results to date, the school's eleventh principal abruptly stepped down. At the end of the 2007-08 school year, the assistant principal also left the school.
 - While the English language arts results were based on an exam administered after the principal's departure, the exam's administration took place only a few weeks after she left, while the assistant principal was still at the school. Many teachers had identified the assistant principal as their instructional leader.
 - In addition to the departure of the two instructional leaders, funding for the Reading First Program, which had been instrumental in providing the resources to support the school's use of assessment data, came to an end.
- By the beginning of the third year of Victory's management and the fifth year of the renewal charter, the support systems that Victory had in place during the first two years at the school were not evident at the time of the renewal visit.
 - While teachers spoke positively about the professional development support provided by Victory's English language arts and math coaches who visited the school occasionally last year, they were not scheduled in the current year.
 - According to the current principal, their support proved to be inadequate—an inefficient approach, given the time lag between visits to the school. Instead of providing staff developers at the school, Victory planned to provide assistance in hiring and funding an additional literacy position to augment the work of the current literacy specialist who would offer in turn additional professional development. At the time of the renewal visit, the coordinator of special programs had been hired but his instructional duties had been

reduced. A mathematics specialist position had been created, but the position had not yet been filled. The literacy specialist, while working diligently, was new to the role with a daunting number of responsibilities in addition to coaching teachers in the school's area of greatest need.

- At the time of the renewal visit, the board did not appear to have a productive working relationship with its management company. Two weeks before the renewal visit, the board sent a letter to Victory to communicate its concern regarding the "breakdown in proper communications between Victory and the Board."
- Oversight by the school's board continues to be lacking. Currently, the principal prepares an Executive Meeting folder each month for the purpose of board development. While the school board's confidence in the principal may be a welcome change in the school's history of principals, it is not reflected in effective oversight of his job performance. By relying on the principal to train them, the board has created a circular system in which they cannot be expected to objectively evaluate him.
- The school did not comply with all of the conditions in its renewal charter.
- The Institute views the school as currently being in a weak fiscal condition. The overall fiscal situation does not give the Institute confidence that the school board will emerge from any future charter term in robust fiscal condition. At the time of the renewal visit, the school board or its representatives had participated in few conference calls with the bondholders' representatives regarding the forbearance agreement, and no agreement in principle to extend the forbearance beyond the end of the charter term was in effect or had been seriously discussed. The school board's lack of attention to a central part of the school's renewal budget prior to the submission of the renewal application reflects a serious fiscal/governance deficiency, regardless of any action(s) taken subsequently.

On December 22, 2008, consistent with the State University Renewal Practices, Institute staff heard a presentation from the school at an onsite meeting with the school board, its legal counsel, representatives from its management company, its principal and selected staff. The school's board chair felt strongly that two suggestions made by the board to the principal be included in the Institute's report: 1) that academic instruction be held over school breaks; and 2) that a summer orientation for incoming Kindergarten students be held. The board chair said both were implemented and met with large success. She felt these were strong indicators of the Board's concern about academic progress. The school's principal led a PowerPoint presentation in which the school stressed its academic gains over the prior year and the fact that with Victory's support, it was on track to meet its academic goals.

Neither the testimony provided during this meeting nor the factual corrections submitted by the school were sufficient to change the Institute's recommendation. The Institute issued a final renewal report and recommendation of non-renewal on January 8, 2009.

Per the Renewal Practices, in cases where the Institute's final recommendation is non-renewal, the school exercised its right to make a written and verbal presentation to the Committee.

The Institute presented its final recommendation of non-renewal to the State University Trustees' Committee on Charter Schools (the "Committee") at its meeting on January 16, 2009. The Committee carefully considered the report of the Institute as well as the Institute's analysis of the written presentation submitted by the school which the staff had prepared in advance of the meeting at the Committee's request.

The Committee then heard the school's verbal presentation which provided the Committee with information from the school's principal, a member of the school's board of trustees, and a representative from the school's management company speaking on behalf of the school. Committee members asked a number of questions about the qualifications of the school's leader, his commitment to the school in terms of the length of time he anticipates staying on, and the ability of the school's board to work with Victory. The representative from Victory, James Stovall, underscored his firm's commitment to the school. He said that the shortcomings noted by the Institute were the result of intentional changes with delayed implementation. Mr. Stovall also confirmed that the school's current principal was in the first year of a three-year contract with the school. The school leader, Jacrois Jean-Baptiste, spoke of his experience with the New York City Department of Education as principal of P.S. 40 Q in Queens. Mr. Jean-Baptiste said that the school was on the state's Schools Under Registration Review list when he arrived and as a result of his leadership was removed two years later. He said that he believed that New Covenant was on the right track and that with a little more time the school would meet its accountability plan goals. The representative of the school's board spoke and said that the school board understood that it was committed to working with Victory and the school's principal.

After careful consideration of all the evidence before it, the Committee adopted the staff's recommendation and denied the school's application for a five-year renewal charter and in accordance with the staff's suggestion did not consider a two- or three- year unconditioned renewal. The Committee did, however, grant the school a short-term renewal of one year with explicit conditions:

- any subsequent renewal outcome shall only be either a five-year renewal or non-renewal;
- instruction shall be in grades Kindergarten through sixth only;
- students entering the fifth and sixth grades must have been previously been enrolled in the school's fourth and fifth grades, respectively
- the projected enrollment of the school shall be 625 students and the school shall not be permitted to enroll less than 80% of the projected enrollment;
- at the time of the next renewal review, the school must meet or come close to meeting both English language arts and mathematics goals, as defined by a set of measures in each subject, currently required of State University-authorized charter schools in the Institute's Guidelines for Creating an Accountability Plan; the criteria for close to meeting the goal are either 1) meeting the required absolute measures of student proficiency on state assessments and coming close to meeting three out of four of the remaining measures, or 2) coming close to meeting each of the five required measures;
- the school must submit its completed annual audit report by November 1, 2009;

- the school must properly and timely provide all other financial reports (annual budget and cash flow statements, unaudited quarterly report of income and expense) within five days of the due dates for each report;
- the school must have in effect at all times the terms of a forbearance agreement with its bondholders that are substantially similar to the current forbearance agreement terms;
- the school must not be in default of its bond covenants or agreements except as otherwise permitted by the forbearance agreement;
- the school must submit an updated budget for the charter period accurately reflecting the school's debt service under the forbearance agreement, and such budget must be acceptable to the Institute;
- the school must increase its dissolution reserve fund to \$125,000, the full amount of which must be placed in either a third-party escrow account or an attorney trust account, and such funds shall not be disbursed except upon approval of the Institute, and shall not be used for payment of existing litigation or settlement thereof;
- the school must establish a litigation reserve fund in the amount of \$145,000, the full amount of which must be placed in a third-party escrow account, an attorney trust account or in a segregated bank account, and such funds shall only be used to satisfy judgments or to settle existing litigation; and
- If the school fails to abide by any of the above conditions it would constitute a material and significant violation of the charter and be grounds to place the school on probation or terminate the charter pursuant to section 2855 of the Education Law.

Subsequent to the Committee's meeting, as part of the January 27th meeting of the full State University Board of Trustees, Trustee Aminy Audi reported on the actions taken by the Committee at its January 16th meeting.

Consistent with the resolution delegating certain authority to the Committee, the full State University Board of Trustees opted to table the Committee's action with respect to the New Covenant charter with the intention of the full Board taking further action on the school's charter at its March meeting.

The Board Chairman asked that a report on the history of New Covenant and the material presented to the Committee be prepared for review by the full State University Board.