



Charter Schools Institute
The State University of New York

**Summary of Findings and Recommendations
Alleged Discrimination in Admissions
and Other Allegations at the
Albany Preparatory Charter School**

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Executive Summary

During the 2008-09 school year, the Charter Schools Institute (the "Institute") received allegations from three employees of Albany Preparatory Charter School (the "School") that the School's principal was discriminating against students on the bases of reading test results, disability status, and behavioral issues. The chief allegation was that students were put on waiting lists rather than admitted and/or counseled to apply to other schools in an effort to boost the School's State test scores in anticipation of its 2009-10 application for renewal.

Initially, the School board received directly and investigated allegations from only one complainant. The Institute ultimately investigated allegations from three complainants with overlapping allegations. The School's board of trustees was not aware of the allegations from the first complainant or of the existence of the third complainant when it conducted its investigation.

The School board made findings and suggested corrective action but did not attribute negative intent to the principal's actions. The principal generally denied all of the allegations and the state of the records in the School did not lend itself to entirely proving or disproving all of the allegations.

The findings of the School board on the single set of allegations were enough to warrant the Institute placing the School on probation. When those findings are considered along with the testimony of the three complainants, all of whose employment was allegedly threatened by the school's principal, Ms. Carol Lennon, the Institute finds enough credible evidence with respect to some of the allegations to again warrant placing the school on probation. The Institute also finds that the School's internal controls, oversight, governance and leadership were ineffective at preventing the opportunity for discrimination if not the discrimination itself.

The Institute made no findings regarding retaliation against the complainant employees. The Institute notes, however, that the Institute's second complainant ("Complainant 2") left the School's employment near the beginning of the investigation, the Institute's first complainant ("Complainant 1's") contract was not renewed during the pendency of the investigation according to the School because the employee's position changed such that the employee no longer qualified for the position, and the Institute's third complainant ("Complainant 3") was terminated according to the School for reasons unrelated to the investigation after the draft investigation report was shared with the School. Lastly, Ms. Lennon left the employ of the School after the release of the Institute's draft investigative report but prior to the release of the final report and just prior to the termination of employment of Complainant 3 by the School.

Underlying some of the allegations are areas of significant concern: allegations of discrimination against students with disabilities and those students not receiving the settings and services to which they were entitled under the federal Individuals with Disabilities Education Act; and the unknown impact of the School's actions on its state assessment results. The fact that the State Education Department independently placed the School on corrective action for not properly implementing Individualized Education Programs ("IEPs") for students with disabilities in July of 2009 is an aggravating factor that the Institute took into account in arriving at its decision to recommend probation for the School.

The Institute acknowledges that it has placed few schools on probation in its history and that most often it has done so on a compliance related matter (teacher certification, fingerprinting, enrollment,

late audits) after a school's failure to remedy the situation under the terms of a voluntary corrective plan with the Institute. However, in this case, the extent, specificity, and sources of the allegations are unprecedented. And the complainants all linked the alleged behavior to attaining higher scores on the state assessments in light of a pending renewal decision. Charter schools are founded on a bargain theory that increased autonomy will result in increased, measurable student achievement, and when schools do not achieve those results, they will be closed. Violations of law or charter that intrude on that "contract" will be investigated and if founded corrective action including probation or charter revocation will be recommended.

Based on the foregoing the Institute recommends that the Board of Trustees of the State University of New York place Albany Preparatory Charter School on probationary status for the remainder of the initial charter term (including any extension thereof) and for that portion of its renewal term (if applicable) until the associated Remedial Action Plan is implemented to the satisfaction of the Charter Schools Committee, and that the findings be noted as material deficiencies in its educational program that would prevent any possible full-term renewal of its current charter.

Allegations and Summary of Findings

Discrimination in Admissions

On March 17, 2009, the Institute received a complaint from "an administrator" at the School in Albany, New York, who wished to remain anonymous if possible (Complainant 1). Complainant 1 alleged that he/she had documentation that Ms. Lennon had been using discriminatory admissions practices since the beginning of the 2008-09 school year. Complainant 1 further alleged that when an application for admission is received, the prospective student is administered the Scholastic Reading Inventory¹ ("SRI"), which is used by the School as a reading placement test; however, the test was being used to determine whether or not a student would be admitted. Complainant 1 further alleged that after Ms. Lennon reviewed the SRI test scores she would either deny the application or meet with parents to "counsel" them that the school is not a "good fit" for their child. Complainant 1 also alleged that this practice of counseling parents extended to prospective special education students and students with significant behavioral issues in their current school setting.

Complainant 1 stated that he/she had brought these issues to the attention of Ms. Lennon, who said "all the charters do it," and that Mr. Brian Backstrom, the School's board chair, had told Ms. Lennon not to accept any more students with IEPs, i.e., special education students. Given the latter hearsay allegation (the "Board Chair Hearsay Complaint"), Complainant 1 stated he/she was uncomfortable about bringing this matter to the School's board. Complainant 1 further stated that if Ms. Lennon was aware the complaint was being made to the Institute, he/she would likely be out of a job. Lastly, Complainant 1 stated that other administrators at the School were aware of these issues and that they told Complainant 1 that if the Institute or the State Education Department (the two entities in New York State charged with oversight of the School) asked them directly about the situation they would "tell the truth." The School's board intended to investigate the allegations of Complainant 1, but, as discussed more fully below, the Institute persuaded Mr. Backstrom not to investigate Complainant

¹ The SRI is a "research-based, computer-adaptive reading assessment for [g]rades K-12 that measures students' level of reading comprehension," as described at <http://teacher.scholastic.com/products/sri/overview/faq.htm#1> (accessed April 7, 2009).

1's allegations. After the Institute commenced its investigation, Complainant 1 stated that he/she was told by Ms. Lennon that she would not renew Complainant 1's contract for the next school year because the School had redefined the qualifications for his/her position. The School confirmed that version of why Complainant 1's employment was terminated.

Another complainant ("Complainant 2") had made substantially similar allegations to the School board, with the exception of the special education discrimination allegation. Later, upon inquiry by the Institute, these allegations were repeated to the Institute. The School board investigated these allegations, and produced a report thereon. Subsequent to making the allegations, according to the School, this complainant left the School's employ for other employment.

During the investigation, a third complainant ("Complainant 3") provided additional information regarding allegations similar to Complainant 2's allegations and made new allegations (set forth below) concerning the underreporting of teacher attrition and disciplinary incident information in the School's Annual Report to the State Education Department and the Institute for the 2007-08 school year as required by the Charter Schools Act. After the release of the Institute's draft investigation report, according to the School, Complainant 3's employment was terminated for reasons unrelated to the investigation.

On or about March 26, 2009, the Institute received a telephone call from Mr. Backstrom regarding a complaint he had received from an administrator at the School (Complainant 2). The allegations of enrollment discrimination were similar to those of Complainant 1, but did not include any allegations against Mr. Backstrom. He was very concerned about the allegations and about to start an investigation. He also was not aware of Complainant 1's allegations to the Institute or of his being named in those allegations. He was urged by the Institute's Vice President and General Counsel not to commence his investigation, told that the School's board could rely upon the Institute's investigation, and told that a parallel investigation would make both investigations more difficult and could taint investigative findings. According to the School, Mr. Backstrom sought the advice of counsel and was told he could proceed, and therefore commenced his investigation without knowledge of the complaint against him. The Institute's determination was that the School was not improperly "front-running" the investigation to whitewash findings and taint witnesses, and thus did not take action to enjoin the School's investigation. Rather, as the School stated, it was motivated by a desire to get to the bottom of the allegations and stop any potential discrimination. The Institute's decision was borne out by the results of the School board's investigation. Nonetheless, this is not the normal case where the allegations came to the authorizer first, the authorizer investigated and then produced findings.

Board Chair Hearsay Allegation Unfounded

Soon after the hearsay allegation against Mr. Backstrom was made, Mr. Backstrom was asked if he had any involvement in the alleged admissions discrimination by Ms. Lennon, and he denied that he did. That statement was later corroborated by Ms. Lennon who was asked the same question by the Institute specifically tailored toward Mr. Backstrom not wanting additional IEP students. In addition, neither Complainant 2 nor Complainant 3 knew of any involvement of Mr. Backstrom in the alleged discrimination. Based on the foregoing, and as Complainant 1's allegation was based on statements allegedly made by Ms. Lennon not by Mr. Backstrom, the Institute finds there is no credible evidence that the statement was made by Mr. Backstrom or that he had any involvement in admissions discrimination. Therefore the allegation concerning Mr. Backstrom is unfounded.

With respect to Ms. Lennon, however, there is one witness's statement that she made the statement about Mr. Backstrom, which would tend to assign motive for any discrimination to another person even though she denied making the statement, and any discrimination.

Later Allegation of Denying Admission

On April 7, 2009, the Institute received another allegation that a parent of a former student (Student 1), who had withdrawn Student 1 due to the lengthy commute to the School, had asked to re-enroll in order to gain the returning student preference in the lottery for the next school year (based on an assumption that a lottery would be needed). Complainant 3 was told by Ms. Lennon that the student would not be admitted. When Complainant 3 asked for a reason, no answer was given. It was not clear what information was relayed to the parent. The School was under-enrolled and did not have a policy of not accepting students in certain grades or after a certain point in the school year.

Allegations of Discrimination Against Students with IEPs

Complainant 1 alleged that inquiries of districts were made at the direction of Ms. Lennon as to whether certain applicants had IEPs or behavioral problems. In some cases Complainant 1 believed the students were already admitted to the School and the School was in the process of determining how to serve them. However, these students never attended the School and in some cases no records concerning the students were on file in the School. There was credible evidence that a call was placed to the Troy City School District for this purpose and a recollection that the Albany and Watervliet districts had also been contacted. Parents of applicants were later told that the school was not a "good fit" for the applicant. Complainant 1, however, had no evidence that the behavioral issues became a factor in admissions.

In another case, a student that was in the School's special education referral process and who had Section 504 Rehabilitation Act issues was going to be expelled by Ms. Lennon for a property damage incident. Complainant 1 stated that he/she told Ms. Lennon that the student would have to go to the district Committee on Special Education ("CSE") for a manifestation determination. Ms. Lennon suspended the student until the CSE meeting without alternative instruction. She then instructed School representatives to take the expulsion letter to the CSE meeting and if the CSE was going to give the student an IEP, the School representatives were to inform the CSE that the child was to be expelled. This in turn properly gave rise to a manifestation determination and the student was found to have a disability. The student was to be placed in the School's in school suspension room at the direction of Ms. Lennon, which would have violated the student's new IEP, however the parents withdrew the student from the School.

In the case of another student with an IEP, Student 3, it was alleged that Ms. Lennon told the student's mother that he could not come back to the school after the child had broken School rules, a violation of the IDEA. A similar case was alleged where a student was told he could not come back and both the parent and Complainant 1 wanted the child referred to the CSE for evaluation. The Institute notes that except as set forth above none of the alleged violations were reported to the Institute, the appropriate CSE, the State Education Department, or the United States Department of Education's Office of Civil Rights, all of which could have taken action on behalf of students regarded as having a disability. Thus, the Institute makes a finding that the School's professional development was inadequate in regard to reporting violations of the IDEA, and must be strengthened.

Allegations of Underreporting Teacher Attrition and Violent Incidents on Annual Report

Complainants 1 and 3 stated that Ms. Lennon intentionally underreported teacher attrition and violent and disruptive incidents (know as “VADIR” reporting) on the 2007-08 annual report. According to Complainant 3, 156 incidents were reported as only 8 at the direction of Ms. Lennon who used her own SED code to input the data when the employee typically responsible refused. The number of teachers who left the School, which was 10-11 was reported as 3. The School board as part of its own investigation found the information to be underreported but stated that, “I do not believe that intentional misreporting with the intent to deceive occurred, nor that staff was directed ‘to not be truthful’ as the complainant claims.” The School board faulted Ms. Lennon for not seeking guidance, a finding with which the Institute concurs.

Based on statements made to the Institute by Complainants 1 and 3 including statements regarding an employee specifically not wanting to put his/her name on a report that he/she believed to not be truthful, and statements attributed to Ms. Lennon regarding how the School would look if the accurate numbers were reported, the Institute finds that there is credible evidence to suggest that Ms. Lennon intentionally underreported teacher attrition and VADIR information even if there were some legitimate concerns about the exact manner of reporting. In addition, and as the School board found, there was no effort to contact the State Education Department prior to such under reporting for clarification.

The recommendation of the Institute in this regard would have been to not let Ms. Lennon further report such information in the School’s Annual Reports, but this recommendation is moot. However, the Institute still recommends that an employee other than the principal, who is a member of the school’s leadership team, should prepare the reports for review by the principal. If the principal objects to information in the draft report and the employee disagrees, then the matter should be brought to the attention of the School board, which would decide what information is to be reported, and a record of same shall be kept. If it is determined that the principal attempts to or takes retaliatory action against such reporting employee, it would be considered a violation of the School’s Remedial Action Plan or Corrective Action Plan as the case may be.

Relevant Authority for Admissions Discrimination

The New York Charter Schools Act, specifically Education Law subdivisions 2854(2)(a) and (b) prohibits discrimination in admission as follows:

- (a) . . . A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; . . . and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities and limited English proficient students when compared to the enrollment figures for such students in the school district in which the charter school is located. . . .

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school.

Specifically prohibited are discrimination on the basis of disability (IEP), intellectual ability (SRI test scores or state assessment scores), and any other ground that would be unlawful if done by a public district school, which would include prospective students with disciplinary problems. The exception to the latter category is a prospective student who has been suspended or expelled from a public school, in which case the charter school may refuse to admit the student until the suspension or expulsion has expired pursuant to Education Law subdivision 2854(2)(d).

The Institute also notes that the State Education Department placed the School on corrective action in July of 2009 for not implementing student IEPs properly and for not having properly certified SPED instructors for the upper grades (even though it was the School's intention to have hired such a properly certified instructor). Complainant 1 stated that this was brought to Ms. Lennon's attention earlier and Ms. Lennon stated that she brought the issue to the attention of the School board but the board refused to hire another SPED instructor. The Institute found no evidence that such a request was made or that the School board made such a specific determination even though it may have approved a staffing plan that did not include such staff.

Analysis

When Ms. Lennon was interviewed by the Institute on March 27, 2009, Mr. Backstrom had already interviewed her on behalf of the School board and she was aware of most of the allegations. She painted Complainant 2 as "not a good fit" with the School and a person who was calculating and manipulative. She stated that Complainant 2 was seeking other employment and that there were indications that Complainant 2 would not be asked back by her for the next school year. The lack of trust between Ms. Lennon and Complainant 2, and between Complainants 1 and 3 and Ms. Lennon was apparent in every interview.

With respect to the SRI and its scoring, Ms. Lennon stated that it was important for the leveled reading groupings in the School and as an indicator of what grade a child should be in regardless of what grade the parent wished to enroll a student in. Ms. Lennon denied that the SRI was used as an admissions criterion but admitted that sometimes it was administered at that same time as the parent took the tour of the School. When asked if the test could have been administered prior to admission, Ms. Lennon stated that it was possible but that she was not aware of it although the former, part-time parent coordinator may have been, and was responsible for admissions. Ms. Lennon stated that now that there was a full-time parent coordinator the situation should be better.

The Institute finds that the School leadership and ultimately the School board, in its oversight capacity, is responsible for admissions to a charter school and ensuring that such processes are free

from discrimination. If the part-time status or low salary level of employees is truly to blame for problems in student admissions then there have been failures in supervision, governance and allocation of resources.

Ms. Lennon was asked by the Institute if the School had any policy limiting admission beyond a certain point in the school year or in certain grades such as 8th grade, the School's highest. She stated that the School did not. With respect to discipline, Ms. Lennon was asked if the School had a policy limiting admission based on current suspension or expulsion. She stated that the School did not. Ms. Lennon was asked if the School had criteria regarding placing students in different grades (up or down) based on SRI or other test scores. She stated that there was no such policy but that sometimes, on a case by case basis, a parent would be called in and told that a student would be better served in a different grade, and that it was likely that the student would be retained in the current grade if allowed to proceed in the current grade through the end of the school year, and that sometimes those parents voluntarily withdrew from the school. The language Ms. Lennon used in response was couched in terms of such action being in the best educational interest of the child, e.g., not wanting to set a child up for failure. When asked whether the School had a specific policy memorializing such withdrawals, Ms. Lennon admitted that it did not and that the School needed one. When asked directly whether Ms. Lennon was not letting children into the School based on test scores, she denied the allegation.

With respect to the testing allegations, the School board concluded that baseline scores entered inappropriately into the enrollment decisions for at least two students at the direction of Ms. Lennon. The School board also found that wait lists were not properly maintained and that related record keeping for all of the above was poor.

The Institute notes that the School's low enrollment of 165 students in March 2009 (171 in October 2008) compared to a revised projected enrollment of 250 students² was outside of the current 20 percent enrollment variance and constitutes a charter violation. To be in compliance, therefore, the School should have admitted all students until the enrollment reached at least 200 before creating a waitlist. The Institute understands that in some cases admitting more students in one grade than another can cause a disruption of the school's enrollment plan, but this was not the case with the School.

Similarly, the School was under enrolled with a student population of 192 students and a Projected Enrollment of 300 on September 24, 2009 (and November 2, 2009). Again, there was no need for the school to have a waitlist or otherwise deny admission. The Institute notes that the School sought a charter revision to reduce enrollment to the point where the School would be in compliance with a revised charter but the Institute denied the application. The denial was based on a lack of sound reasons for the request including the request not being driven by facilities issues and the fact that the School's enrollment had already been reduced from the projected enrollment in the School's original charter application.

Overall of the 18-19 students allegedly kept out of the school on the basis of SRI test scores, there were founded concerns for at least six. In the instances of four additional students they were either the subject of an error which prevented admission (one) or there were no records (three), intentional or not. The Institute agrees that the six should have been admitted and would find based on the

² The School's original enrollment for the 2008-09 school year was 400, but was reduced on more than one occasion.

testimony of the Complainant 2 that the other three in question were also kept out due to some aspect of test scores or behavior. One theme that emerged was that some students would not have “the ability to be successful at Albany Prep.” A quote attributed to Ms. Lennon by Complainant 1 was, “I cannot take a child who gets a 1 or a 2 this close to the state test.” The reference was to scores reviewed as a result of inquires to other districts regarding state assessments. The Institute notes that at the conclusion of the School board’s investigation, the School board took steps to contact the parents at issue and offer them admission to the school. The Institute further notes that the administrative error was corrected.

When Ms. Lennon was asked about allegations that students with IEPs had been counseled out of the School there were some specific protracted discussions about students whose behaviors could not be handled within the settings the School offered, but that in other cases IEPs were successfully modified through the district CSEs to match School settings. In at least some cases, however, parents were told that a student “would not be successful” in the School. Ms. Lennon stated that it was not a threat to expel the student but an acknowledgement that the student needed a school with different services. In some severe behavioral cases where students were not responding to behavioral intervention plans she stated that it was not her thought process to move toward discipline but to tell the parents that they needed to find a better setting for the child. When asked, Ms. Lennon stated that there were no standing orders to refuse admission to students with IEPs, and that the School just admitted two children with IEPs.

To the extent that any student with an IEP would not be successful in the School because of the settings and services offered by the School, the proper methods under the federal Individuals with Disabilities Education Act and the New York Charter Schools Act are to do one of the following rather than counsel the student out of the school.

- Request a meeting with the CSE of residence of the student to amend the students IEP to provide more appropriate settings and services. (This assumes that the school has documented problems with the current settings and services.) The CSE may then modify the IEP in a manner that effectively removes the student from the charter school to a more appropriate setting. The CSE may also modify the IEP such that the school will still implement the IEP, or the CSE may not modify the IEP at all in which case the student remains at the charter school.
- Request that the student’s school district of residence provide the settings and services to the student rather than the charter school. In some cases, this may result in the district providing personnel on site at the charter school or it may result in the student returning to the school district of residence to receive those settings and services. Under the IDEA regulations, school district are supposed to provide settings and services in charter schools to the same extent that they are provided to similarly situated district schools. Note that this approach can be used in conjunction with the foregoing IEP modification action.
- Hire additional personnel with proper experience and/or contract with outside vendors to provide the special education instruction and related services. This option has the distinct disadvantage that it costs the school more money to service the same student without a correspondent increase in funds paid to the charter school.

To the extent that any student who did not have an IEP was not being successful in the school due to behavioral (or academic) issues, a charter school should make use of its “child find” systems, which now include a response to intervention protocol (RTI) to refer the student to the CSE of his or her residence to determine if the student has a disability and if so what settings, services and behavioral intervention plans would be appropriate for the student.

The Institute finds that based on the interviews conducted, the School did not fully engage in any of the above strategies in connection with the special education students that are the subject of the allegations. The interviews with Complainant 1, while not definitive, were also quite damaging on the subject of discrimination against students with disabilities or those regarded as having disabilities. While the School claims it self-reported the violations found by the State Education Department regarding the improper delivery of special education, and that the School has either remedied or taken steps to remedy all of the Department’s concerns, the Institute still finds that the above evidence constitutes a further reason to place the school on probation. Specifically, the School knew it had issues related to its special education program but did not place sufficient internal controls in place, which include sufficient personnel to prevent internal control failures, to prevent the misconduct at issue.

In response to the Institute’s finding, the School cited its enrollment of approximately 20% of incoming 5th grade class had speech or hearing difficulties as evidence that discrimination against special education students did not take place. While we applaud the School’s efforts to attract and retain such students, we find that it does not indicate that there was no discrimination. To the contrary, the Complainants as a group expressed the sentiment that Ms. Lennon was somewhat distraught over the high number of students with disabilities and was actively seeking to not add more such students.

School Board Response to Its Investigation

The School board implemented an action plan with Ms. Lennon that made her report to the board on a monthly basis on issues raised in Complainant 1’s allegations. Any provable incidents involving Ms. Lennon could have resulted in her termination by the School board. In sum and substance proper policies and procedures have to be developed by the principal concerning student admission and (later) SRI testing with proper documentation kept on file at the School.

The Institute agrees with this recommendation of the School Board and adds the recommendation that the School needs clear policy and cut scores related to when students who apply in one grade are only offered seats in a different grade (higher or lower). The Institute notes that one of the unfounded allegations related to driving off students was for the School to only offer them seats in a lower grade so that the parent would want to place the children back in the upper grade in a district school.

The School board also implemented a plan for changes to the School’s special education program for which Ms. Lennon was responsible including the hiring of properly certified teachers, proper budgeting for special educational services; and receiving student records in a more timely manner so that IEPs may be implemented sooner in the school year (which was a finding of the State Education Department). The Institute notes that schools districts and parents may also be responsible for the lateness of IEP information flowing into charter schools. Ironically, Complainant 2 stated that she had made many of these same recommendations to Ms. Lennon and at the time they were ignored.

The Institute agrees with this recommendation of the School Board.

The School board also implemented a plan for changes to the School's teacher attrition and VADIR reporting with respect to the 2007-08 annual report for the School, which involved Ms. Lennon correcting the information submitted.

While the Institute agrees with this recommendation of the School board in terms of correcting the record it takes no position on the supplemental information the School board wants to include in the submissions. The absence of Ms. Lennon, moreover, does not vitiate the need for the School to correct the information.

Conclusion

Based on the foregoing, the School should be placed on probation and a remedial action plan to be developed by the Charter Schools Institute. The remedial action plan will include at a minimum the recommendations discussed above. Pending final action by the SUNY Trustees' Charter Schools Committee on the Institute's recommendation, the Institute intends to place the School on Corrective Action with substantially similar remedial terms.