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JUSTIN DEMERATH

July 30, 2014

Via facsimile (512-475-3662) & certified mail, return receipt requested

Eric Marin, Attorney
Texas Education Association
1701 North Congress Avenue
Austin, Texas 78701

Re: Response to Notice of Intent to Revoke Open-Enrollment Charter and Request for Informal Review and Hearing

Dear Mr. Marin:

Our firm, O'Hanlon, McCollom & Demerath, has been retained by Uplift Forth Worth, CDC ("Uplift") regarding the Notice of Findings and Notice of Intent to Revoke the Open-Enrollment Charter sent by Chief Deputy Commissioner Lizette Gonzalez Reynolds on July 15, 2014. By this letter, we hereby request an informal review of and hearing regarding the decision and findings in the revocation notice.

1. Guiding Principle: The Best Interest of Prime Prep Students

First and foremost it should be stated that the top priority of Uplift and its Board has always been to work in the best interests of Prime Prep Academy students, parents, and educators. As you are no doubt aware, the majority of the students at Prime Prep Academy come from challenging socio-economic backgrounds and, prior to their enrollment at Prime Prep Academy, these students have been underserved by traditional public education. Since its inception, Prime Prep Academy has been designed to provide an alternative education environment where students have an opportunity to reach their full potential and succeed both academically and in life. To meet their potential, these students need access to the best academic and athletic school in the country, and Prime Prep Academy strives to be that school. To achieve this mission, it has always been clear that vision, leadership, operational discipline, and a strong financial commitment from supporters are necessary, and the Uplift Board and Prime Prep supporters are committed to providing each of these elements for success.

Already in its short history, Prime Prep Academy is showing positive results. Prime Prep Academy graduates have been awarded 15 academic and athletic scholarships, and the school

boasts a 95% attendance rate at the high school campus, a 100% graduation rate, and a 0% dropout rate. Prime Prep students are not only attending summer school classes at local community colleges, but are passing college courses with A's and B's. At for a school considered by some to be focused on athletics, 85% of Prime Prep students are focused solely on academics and do not participate in sports. These statistics exemplify the positive impact that Prime Prep Academy is having everyday on the lives of its students.

At this juncture, Uplift's primary goal is only to ensure that these students continue to have access to the unique educational opportunities provided by Prime Prep Academy for years to come. With that as its mission, Uplift does not believe that revocation of the charter and closing the school is in the best interest of the students. The law governing the revocation decision expressly directs that the Commissioner's decision shall be based on the best interest of the charter school's students. TEX. EDUC. CODE § 12.115(b). Revocation of the charter would only serve to punish the students and the community served by Prime Prep Academy, rather than the prior administrators responsible for the problems that led to the revocation notice

To be clear, Uplift does not dispute that the actions of the school's prior administration ultimately led to the ineligibility action by the Texas Department of Agriculture and this revocation action by the TEA. These same administrators were responsible for additional management oversights identified by the TEA.¹ Furthermore, the Uplift Board accepts full responsibility for oversight of these past administrators. To that end, over the last several months the Board has made numerous changes to the administration and management of Prime Prep Academy, including removing the responsible parties.² Furthermore, there has been a complete overhaul of the child nutrition program and staff, including the completion of a thorough and detailed corrective action plan submitted to the TDA.³ The Uplift Board is dedicated to providing 100% of the student population with nutritious meals, regardless of whether the school is participating in federally-funded school lunch programs.

The Uplift Board has also instituted significant reforms to improve financial transparency and oversight to ensure the long-term viability of Prime Prep Academy. First, the Board brought in an outside auditing firm to conduct a thorough audit of the schools' finances. Second, overhead costs have been significantly reduced by reducing support positions and associated payroll

¹ For example, former Superintendent Rachel King-Sanders signed compliance forms in April and November 2013 certifying that all Prime Prep background checks had been conducted.

² D.L. Wallace and his wife, Chazma Jones, are no longer connected to Uplift or Prime Prep Academy in any way. Mr. Wallace was removed as Executive Director in November 2013. In December 2013, both Superintendent Rachel Sanders and Director of Administration Chazma Jones were terminated. In January 2014, the Board hired Ron Price (former Dallas ISD Board Trustee) as the Interim Superintendent, and Mr. Price brought in a new management team.

³ Yolanda Banks was hired as the Director of Food and Nutritional Services in March 2014. Ms. Banks oversees the nutritional programs for the school. In addition, Jennifer Young was hired as the Food Service Manager to monitor the food production records, menus, and student participation. Prime Prep Academy has also implemented a point-of-sale record keeping system to better track daily participation in the school lunch program. Prime Prep Academy also is in the process of soliciting RFPs for its food service vendor and making additional changes to its child nutrition program to better meet the nutritional needs of its students.

expenses, and the Uplift Board is willing to explore additional structural changes to further reduce operating costs and increase effectiveness. Third, back-office financial and business support functions have been outsourced to JR3 Education Associates, which has resulted in significant cost savings and improved operations. Finally, the Uplift Board has received financial commitments from Uplift supporters to cover the cost of students' meals and other operating expenses for the coming school year to ensure that the needs of Prime Prep students are met.

In light of these reforms, Uplift believes that both the action of the TDA in excluding Uplift from future participation in the national child nutrition programs and the resulting revocation decision by the TEA are unjustified. In fact the TDA made its decision without even considering the corrective action plan submitted by Uplift, which was over 1,000 pages long and submitted only two business days before the TDA's eligibility decision. TDA staff had not even completed its review of that documentation before its decision was made.⁴ Furthermore, the TDA based its decision on false information regarding a purported default judgment that in fact never existed.⁵

Given these factors, Uplift could, if it so chose, potentially engage in a protracted legal battle regarding the TDA's decision and the resulting revocation notice from the TEA. However, we do not believe that such litigation against the State would be in the best interests of the students.⁶ Therefore Uplift would like to respectfully request that the informal review and hearing process be used to explore options other than charter revocation to ensure the continued operation of Prime Prep Academy. We are confident that following the recent changes made by the Uplift Board, Prime Prep Academy is now in a strong position to continue its mission, and the

⁴ On Thursday, April 17, 2014, Uplift submitted its Corrective Action Document (CAD) to TDA, and the CAD constituting over 1,000 pages of documents requested by TDA. On Monday, April 21, 2014, the TDA made its decision to terminate Uplift's Permanent Agreement and to render Uplift ineligible to participate in the child nutrition programs administered by the TDA. (Exhibit 1, 04/21/14 TDA Letter.) This decision was made only two business days after Uplift submitted its response to the TDA, and the TDA did not even inform its own staff of the decision. On April 22, 2014, Ms. Strodbeck informed Uplift that the TDA had "started" the review of the CAD. (Exhibit 2, 04/22/14 Email.) As is clear from this email, the decision by TDA administration was not based on any review of Uplift's CAD response regarding the alleged violations, since that response and supporting documentation had not even yet been reviewed by TDA staff.

⁵ An entry of default is very different than a default judgment. The entry of default is a docket entry by the clerk of the court that merely permits the plaintiff to move for entry of a default judgment under FRCP 55(b), whereas a default judgment is a final adjudication of liability by the court. See *U.S. v. \$23,0800 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *New York Life Ins. V. Brown*, 84 F.3d 137, 141 (5th Cir. 1996); *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 855 n.3 (8th Cir. 1996). In the lawsuit relied on by the TDA and cited in the Notice, the court clerk (not Judge Lynn) entered a "Clerk's Entry of Default" on March 13, 2014, at the request of the plaintiff after Uplift failed to respond to the complaint. (Exhibit 3.) Judge Lynn never entered a default judgment against Uplift, and Uplift was never adjudicated to have violated the False Claims Act. Rather, the clerk simply entered an entry of default, which has no adjudicatory effect and is merely a procedural step in the process of obtaining a default judgment. The TDA's statements to the contrary are simply wrong.

⁶ Uplift reserves all legal rights regarding the decisions of the TDA and TEA, including the rights to proceed with future litigation, should it become necessary or prudent. Nothing in this letter should be considered as a waiver of any such rights.

revocation of the charter and shutting down the school would only harm the students and prevent them from receiving the quality of education they deserve.

2. Reconstitution Rather Than Revocation

The TEA's revocation notice cites to TEXAS EDUCATION CODE § 12.115(a)(2) as the legal basis for revocation of the charter. Section 12.115(a)(2) states that "the commissioner shall revoke the charter of an open-enrollment charter school *or reconstitute the governing body of the charter holder* if the commission determines that the charter holder ... failed to satisfy general accepted accounting standards of fiscal management." (emphasis added) Thus, reconstitution of the governing body of the charter holder and continued operation of the school is expressly contemplated by the statute. However, the TEA's revocation notice only discusses revocation and does not even contemplate reconstitution as a possible option.

Uplift hereby requests that the informal review and hearing process be used to explore reconstitution of the governing body of the charter holder. Such a reconstitution would allow Prime Prep Academy to remain open and to continue educating its students with the least amount of disruption to those students, their parents, and the Prime Prep educators and staff. Indeed, the Uplift Board would like to work with the Commissioner to facilitate local input from community and parents in the reconstitution process, as required by the statute. TEX. EDUC. CODE §12.115(d). The Uplift Board can offer additional assistance in helping the TEA identify qualified community members for service on the reconstituted governing body and current Board members should be consider for service on that governing body, as provided for by law. *Id.* Finally, Uplift would be willing to work with the TEA in the creation of a new 501(c)(3) organization to hold the charter, as contemplated by Section 12.115(e). In light of the recent changes in the Prime Prep nutrition program and staff described below, this new organization should qualify for participation in the national child nutrition programs, which would address the purported basis for revocation.

3. Transfer Operations To Another Charter As a Last Resort

Should the Commissioner reject reconstitution and proceed with revocation, Uplift requests that the Commissioner utilize the procedures outlined in TEXAS EDUCATION CODE § 12.116(d) regarding management and assignment of operations of Prime Prep Academy to a different charter holder. Although Uplift believes that reconstitution process is preferable, the transfer process provided in Section 12.116(d) would allow for the continued operation of the schools and the continued education of the Prime Prep students as a last resort. In light of the recent changes at Prime Prep Academy, Uplift believes that the management and operation of Prime Prep Academy can be successfully transferred, so long as an appropriate charter holder can be identified. Any subsequent charter holder should be able to not only manage the operations of the school, but that can also continue to provide the unique educational environment offered by Prime Prep Academy and maintain continuity of key staff, educators, and support services to students.

Again, simply revoking the charter and shutting down Prime Prep Academy would only harm the students and the community served by the school. We look forward to working with the

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TEA to find the most effective way to continue the operations of Prime Prep Academy and the education of its students.

Sincerely,

Darren G. Gibson

Enclosures

cc: T. Chris Lewis, Board President, Uplift Fort Worth, CDC (by email)
David Anderson, General Counsel, TEA (by email and fax, 512-475-3662)
Von Byer, Deputy General Counsel, TEA (by email and fax, 512-475-3662)