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Multicultural Education, Training & Advocacy

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February 24, 2011

Honorable Members of the Board of Elementary and Secondary Education
Massachusetts Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148

Dear Board Members:

The Commissioner has requested that you vote to approve 17 new charter schools. Most of the new charter school students (4,421) would attend schools in Boston. According to the Commissioner's February 16 memorandum he anticipates that applications will not be accepted for Boston in the 2011-2012 cycle and states that he encourages future applicants to focus on cities "other than Boston". Therefore the vote you are being asked to take will essentially lock away Boston for some years to come.

Our office has, for more than 30 years, represented the interests of ELL students throughout the Commonwealth. A year ago we presented a policy brief on ELLs and Massachusetts charter schools to the Legislature and had a hand in drafting the ELL student protections in the Education Reform Act. On December 9 we wrote to the Commissioner and offered our analysis of the Final Applications found on the MDESE website. We did not ask that the Commissioner approve or disapprove any particular application but rather that he require all of the applicants to submit additional information relative to ELLs in the areas of proven providers, recruitment, retention and programming. We made that request because our own review found the applications, with few exceptions, were woefully lacking in meeting minimal statutory criteria. The Board has a copy of that letter.

The Commissioner never replied and now, nearly three months later, we address the issue again. This time we have the benefit of the Commissioner's February 16 memorandum to the Board and the companion Final Application Interviews and Final Application Review with the Department's discussion of the Primary Strengths and Primary Weaknesses of each application. We hoped to find that the concerns we raised had been addressed. This is not the case. As the Commissioner himself noted about the applications' treatment of English Language Learners and students with Special Needs: "many of the responses in this area were not as clear or concise as I would have wished." (February 16 memorandum). The Commissioner does not overstate the problem. The applications continue to fall far short of equity and protecting the statutory and civil rights of ELL students.

We will not repeat each overlooked concern from our December 9 letter but will summarize with examples the problem.

1. Proven Provider. The statute, Chapter 89, section (i) (3)(iv) requires that this Board may vote to approve a charter school application in districts such as Boston: “**only...if**” an applicant has a record of academic success and has served at least 1 school “from the following categories of students...(iv) limited English-proficient of similar language proficiency level as measured by the Massachusetts English Proficiency Assessment examination” as the population intended to be served. To give an example, in Boston 30% of students are LEP/ELL and 10% are Beginners or Early Intermediates on the MEPA examination. The question is, have any of the Boston applicants demonstrated that they have served similar (even with a generously loose interpretation of the word ‘similar’) LEP student populations? They have not made that demonstration and the Commissioner has chosen to ignore the statutory admonition that the Board shall approve “**only...if**” it finds such history to have been shown. The same requirement pertains to applications for schools in other districts that meet the lowest 10 per cent/9 per cent of spending standard.
 - By way of example, the Commissioner has recommended approval of the Brooke 2 and 3 applications even though the Department’s Final Application Review (Tab 3, p. 2) finds that Brooke reported: “that less than 1% of enrolled Brooke students are currently identified as Limited English Proficient (LEP) down from 3.3% in 2006.” This in Boston which is 30% LEP. The Commissioner’s finding of Proven Provider status for the Brooke group is not evidence based and is, in fact, inexplicable and the same applies to other applications (see, for example, Dorchester Prep, Dudley Square, Grove Hall with a 1.9% LEP enrollment, and no mention of language proficiency level).
 - Beyond the failure to demonstrate success with LEP students of representative language proficiency, the Department’s Final Application Reviews shows that in some cases not only is there no demonstrated history of success, there is dubious current capacity. For example, the Final Application Review for Bridge Charter finds as a Primary Weakness: “It is unclear if the applicant group understands the distinction between SEI and English language development (ELD) instruction”. Tab C, p. 4. If it is unclear to the MDESE that the Bridge Charter applicants understand the basic fundamentals of ELL education in Massachusetts, how can the Commissioner bestow “Proven Provider” status upon their group, particularly in the absence of a scintilla of data on the academic success of LEP students?

2. Recruitment and Retention of ELL/LEP Students: All of the applicants said something about wanting to recruit ELLs and mentioned, e.g. advertising in home language newspapers. Where most fell short is that they did not show any knowledge of the nature of the LEP student population, i.e. language proficiency levels. We have seen a letter from the Massachusetts Charter Public Schools Association which takes us to task on this point, stating that META “comes dangerously close to imposing a “quota” on the demographic makeup of the new charters.” If the stakes involved were not so serious, this would be funny, harkening back to the “quota queen” attack on one of President Clinton’s nominations. We should clarify. We fully realize that there is a lottery. META does not impose anything more than the Legislature has imposed. That is, that the charter school applicants in 10%/9% districts “shall ...include...(i) a detailed description of deliberate, specific strategies the charter school shall use to attract, enroll and retain a student population that, when compared

to students in similar grades in schools from which the charter school shall enroll students, **contains a comparable or greater percentage of special education or students who are limited English-proficient of similar language proficiency as measured by the (MEPA) examination...**" (emphasis added). Chapter 71, Section 89, (i)(3). The problem is not quotas; it is one of statutory compliance. The results of an eventual lottery cannot be predicted. But as a starting point applicants should at least be required to show that they actually know the demographic makeup and language proficiency of the students they would purport to serve. Most applicants recommended by the Commissioner fail to meet even that minimal standard.

In the main, the applicants also failed to demonstrate "detailed..." "deliberate, specific" strategies to retain any LEP students who might enroll. While a few applicants mentioned regular outreach to families in their home language, most were satisfied to argue that what was planned for all students would be sufficient for LEPs. The MDESE Final Review did not address LEP student retention at all.

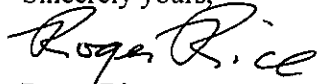
3. ELL Programming: Here, too, META's standard was minimal. We expected the applicants to demonstrate clearly that they would comply with MDESE's own guidelines regarding the amount of English Language Development instruction and the qualifications of ELL and SEI teachers. From our review of the Final Applications, only 9 applicants met that minimal standard. For example, we had raised a basic concern with the Excel Academy application because it stated that Intermediate level LEP/ELL students would only receive ESL once a week, a clear conflict with MDESE's guidelines of 45 minutes daily. To their credit, MDESE's reviewers seem to have picked up on this and found as a Primary Weakness: "The description of services for English language learners was confusing and incomplete. There was no information about instructional methods... With the limited information provided, it was difficult to evaluate whether English Language Development instruction would meet the state requirements." (Tab F, page 4). Yet, somehow, the Commissioner decided to overlook this basic flaw in Excel's application. The same is true with the Dorchester, Dudley, Grove Hall group of applicants. META had pointed out to the Commissioner that the application conflicted with state guidelines in terms of the amount of ESL instruction for LEP students. The MDESE Final Review apparently agreed with META: "The description of service delivery does not meet the recommended hours of English Language Development instruction." (Tab J, page 6). Here, too, the Commissioner inexplicably found that these flaws are no reason to withhold approval.

The question then is what the Board should do. We believe that it has three choices. The first choice, and we don't say this lightly, would be to ignore the statutory protections for ELL students that the Legislature enacted last January and approve all of the Commissioner's recommendations. Of course, this would in our view be a massive and shameful violation of the rights of ELL students and their families. It would be to continue 'business as usual' when it comes to charter schools and ELL students. The second choice would be for the Board to not approve any of the applications before it that evidence glaring weaknesses of the kind we pointed out in our December 9 letter and/or were found as Primary Weaknesses by the MDESE's own review process. The third choice would be for the Board to exercise its authority and grant only provisional approvals for one year conditioned on continuous and rigorous progress reports to the Board by the MDESE. Such reports, at least for the first year, should be made monthly and should address each of the concerns raised by META and by the MDESE's own Final Review process as Primary Weaknesses in the area of English Language Learners. For those schools where Proven Provider status is required, the MDESE should provide to the conditionally approved

applicants a list of recognized experts in ELL education. The applicants should be expected to demonstrate that they have entered into a viable working agreement with at least one such expert to help guide the startup year for the new school. We note that one applicant, MATCH, has done just that. The others should be expected to do the same.

Thank you for considering these comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Roger Rice".

Roger Rice
Miguel Perez Vargas

Cc:

Secretary Paul Reville
Commissioner Mitchell Chester