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State Services Section

April 22, 2022

Colorado Springs Charter Academy
2577 N. Chelton Road
Colorado Springs, CO 80909
c/o Zoe Ann Holmes, Head of School &
Breckenridge Merkle, Board President
via zholmes@cscharter.org; bmerkle@cscharter.org

RE: Notice of Breach

Dear Ms. Holmes and Dr. Merkle:

I'm writing to notify you that Colorado Springs Charter Academy ("CSCA") is in breach of its charter contract with the Colorado Charter School Institute ("CSI"). Enclosed with this letter, please find a copy of CSI's School Compliance Policy and a copy of the breach and dispute pages from the charter contract.

Given the extraordinary nature of today's board meeting, I am taking the extraordinary step of issuing this notice myself, rather than allowing CSI to follow its normal practice of doing so through its legal and policy staff. In addition to a notice of breach, this letter contains a **cease-and-desist demand**. CSI demands that the CSCA board cease and desist from appointing new board members until further notice, to avoid further breach of the charter contract.

Grounds for Breach

CSI asserts three distinct grounds for breach and demands the following remedies.

I. Ground One: Financial Improprieties

CSCA is in violation of its duty to meet generally accepted standards of fiscal management, as required by § 22-30.5-511(3)(d), C.R.S., and sections 3.2(C) and 8.1(H) of the school's charter contract.

The CSCA board has breached these duties by:

- Allowing board member Summer Groubert to become an authorized signer on the school's operating account, have edit access to the

school's accounting system, and have a purchase card with a \$50,000 limit—all at the same time.

- Allowing board members Summer Groubert and Najah Lamborn to direct staff to pay invoices without the prior approval of the head of school (or without any separate/second approval, such as the board chair, during the period in which the school was without executive leadership). Board member Summer Groubert later purported to delegate unilateral purchase authority to the facilities manager.
- Allowing board members Summer Groubert and Najah Lamborn to unilaterally direct payment for off-budget facilities expenses. These payments are particularly alarming because (1) they appear to have placed the school over budget in violation of § 22-44-115, C.R.S., exposing the school to significant legal jeopardy, and (2) CSI has been told (but has not been able to confirm) that the facilities staff were fired last year, hired back at the insistence of these board members, and are personal friends of one or more of these board members. Further, CSI has been told (but has not been able to confirm) that some of the unauthorized expenditures are for the renovation of rental houses on the CSCA campus at which personal friends or family of these board members may be temporarily residing.

These are serious violations. In the aggregate, they imply that specific board members have: (1) removed the internal controls and transparency that guard against fraud; (2) assumed control over payments; and (3) steered payments toward personal friends and family. Although we are not yet in a position to draw any final conclusions—and we sincerely hope that an exculpatory explanation is available—CSI will be conducting an investigation to determine whether these actions violate § 24-18-108.5, C.R.S. (Colorado Code of Ethics). We will also determine whether the evidence requires us under § 18-8-115, C.R.S., to refer this matter to the District Attorney for the 4th Judicial District to investigate potential crimes under § 18-8-407, C.R.S. (embezzlement), and § 18-8-404, C.R.S. (official misconduct).

CSI demands the following remedies to cure the breach:

- Pause payment on all facilities-related expenses other than those strictly necessary for the health and safety of those using school buildings, until notified of the conclusion of CSI's investigation.
- Disseminate a copy of the school's formal financial policies to all non-instructional staff, requiring such staff members to sign and return the policy. The copies delivered to, and signed by, the school's financial staff shall include a cover letter explaining that individual board members have no authority to unilaterally direct payment of any bills

or invoices. CSCA shall certify in writing that it has completed these steps within 14 days of the date of this letter.

- My understanding is that board member Summer Groubert's inappropriate access to bank accounts, accounting, and purchasing authority have been removed. Please confirm this understanding in writing within 14 days of the date of this letter.

II. Ground Two: Governance Improprieties

CSCA is in violation of its duty to maintain governance and operation practices consistent with the standards adopted by rule of the State Board of Education, as required by §§ 22-30.5-509(1)(h) & -511(3)(e), C.R.S., and sections 3.2(C), 4.1, and 4.4 of the school's charter contract.

The CSCA board has breached these duties by:

- Failing to follow board by-laws requiring (1) four board members to be elected by school parents, (2) three board members to be appointed by the elected members, and (3) vacancies to be filled subject to a special election or regular election by school parents depending on the length of term remaining in the vacant post.
- Failing to follow board policy on secure voting practices in the appointment of new board members.
- Failing to follow board policy prohibiting individual board members from directing staff in the performance of their duties.

CSI demands the following remedies to cure the breach:

- Provide evidence of the method of appointment and reappointment of each current board member, with an explanation of whether the appointment or reappointment conformed to the CSCA board by-laws. This evidence shall include evidence of the formal board actions or of the parental election results, as applicable, and shall be provided within 14 days of the date of this letter.
- Call a special election to fill any posts currently improperly filled, within 30 days of the date of this letter.

III. Ground Three: Failure to Cure Feb. 15th Notice of Concern

CSCA is in violation of its obligation to cure the notice of concern issued on February 15, 2022, as required by sections 3.2(C) and 3.4(vii) of the school's charter contract. The school is in progress toward compliance, as described in John

Brendza's March 18, 2022, email, but has yet to complete an amended budget for the current school year.

Effective as of the date of this letter, CSI must expand the concerns to include the school's building corporation as well. It appears that the building corporation has been delinquent with the Secretary of State's office for nearly a decade, does not have a properly constituted or regularly meeting board of directors, and has not been filing required bond disclosures. These oversights put the school in substantial financial jeopardy. As remedy, CSI demands that the school provide a comprehensive written report on the status of its building corporation's legal compliance (specifically including compliance with the terms of its bonds) within 30 days of the date of this letter.

Cease-and-Desist Demand

The CSCA Board has scheduled a special board meeting for Friday, April 22, 2022, at noon. My understanding is that the meeting has been deliberately set at a time at which the board chair will be unavailable to attend—thus breaking a tie vote and allowing Jeremy Goodall to be appointed to the board. Mr. Goodall, as I understand it, is a family member of one of the board members implicated in the school's financial breaches and potentially unlawful conduct. Given the concerns detailed in this letter, CSI would view the appointment of any friend or family member of the implicated board members as a further breach of contract.

CSI demands that the CSCA board abstain from appointing new members, beginning immediately and lasting until (1) CSI has concluded its investigation into the financial matters detailed above and (2) CSCA has otherwise cured the breaches in this letter.

Should CSCA disregard this demand, CSI will pursue its right to assume control of the school's finances under § 22-30.5-703, C.R.S., and section 3.5 of the school's charter contract. If need be, CSI will also request removal and replacement of members of the school's board under § 22-30.5-703(8)(b)(I)-(II), C.R.S.

Conclusion

Please reach out with any questions.

Sincerely,

FOR THE ATTORNEY GENERAL

/s/ Joseph A. Peters

JOE PETERS

Senior Assistant Attorney General

K-12 Education Unit, State Services Section
(720) 508-6179; joe.peters@coag.gov

cc: Dr. Terry Croy Lewis, Executive Director, Colorado Charter School Institute
Jill Anschutz, Board Chair, Colorado Charter School Institute
CSCA Board of Directors



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|--------------|---|
| Book | Board Policies |
| Section | School Compliance Policy |
| Title | School Compliance Policy |
| Code | |
| Status | Active |
| Legal | C.R.S. § 22-30.5-503(1)(b)(III) & (IV). CSI duty and authority to monitor operations and revoke or non-renew a charter school contract.; C.R.S. § 22-30.5-507(2)(b). CSI schools are accountable to CSI for purposes of ensuring compliance.; C.R.S. § 22-30.5-503(2). CSI as a model authorizer.; C.R.S. § 22-30.5-511. Grounds for nonrenewal or revocation.; 1 C.C.R. 302-1, Rule 10.00. Revocation of the charter school contract.; C.R.S. § 22-30.5-105(2)(c) (IV); C.R.S. § 22-30.5-701 et seq. Emergency powers. |
| Adopted | September 20, 2011 |
| Last Revised | May 25, 2018 |

CSI SCHOOL COMPLIANCE POLICY

PREAMBLE

The Charter School Institute (“CSI”) has the legal duty and authority to “[m]onitor the operations of CSI charter schools” and “revoke, renew, or refuse to renew CSI charter school contracts.” C.R.S. § 22-30.5-503(1)(b)(III) & (IV). Each CSI charter school is accountable to CSI for purposes of ensuring compliance with applicable laws and charter contract provisions. C.R.S. § 22-30.5-507(2)(b). In addition, CSI is to “model best practices in authorizing charter schools.” C.R.S. § 22-30.5-503(2). Accordingly, CSI is committed to the dual goals of (1) providing appropriate notifications and processes for situations of noncompliance and (2) implementing appropriate interventions and closing schools when necessary.

COMPLIANCE GUIDELINES

These guidelines are intended to assist CSI when communicating with its schools about situations of noncompliance with local, state, or federal requirements. These guidelines, however, merely serve as guidance, and do not legally bind CSI to any particular set of procedures.

The guidelines outlined in this policy should be implemented in alignment with the CSI’s compliance procedures which, among other things, attempt to ensure consistency and provide deference to professional judgment in the application and implementation of compliance measures. CSI is committed to the use of less severe compliance measures and the provision of additional support where appropriate, in accordance with the guidelines below.

When CSI has reason to believe that a CSI school is out of compliance with any applicable law, rule, policy, or contract provision, CSI, in its sole discretion, will issue a Notice to the school in addition to implementing any remedial action deemed necessary in accordance with the remedies described below.

Notice

The Notice will identify the area(s) of noncompliance, as well as the requirements and timeline to remedy the situation(s). If the situation of noncompliance is not remedied according to the timeline, CSI may escalate the Notice to

a more severe measure or apply any remedies permitted by law, including but not limited to those set forth below. These remedies may be applied individually, in succession, or simultaneously.

The type of Notice will depend on the nature and severity of the situation of noncompliance, to be determined at the sole discretion of CSI. The Notices listed below are general guidelines. CSI reserves discretion in determining which Notice is most appropriate for a given situation.

1. Formal Reminder

Where appropriate, a Formal Reminder will first be issued as a “reminder” to the school in less severe situations of noncompliance (e.g., generally those that do not arise to the level of a Notice of Concern). Formal Reminders are generally not material to renewal or other high-stakes decisions (e.g., expansion, replication, etc.), but may contribute to a larger body of evidence regarding a school’s performance. Formal Reminders may escalate to a Notice of Concern or Notice of Breach if not timely or appropriately resolved, and may be applied in connection with any other remedy deemed appropriate by CSI.

2. Notice of Concern

Whenever CSI has reason to believe that a school is in material violation of an applicable law, rule, policy, or contract provision, CSI may issue a Notice of Concern. Notices of Concern may be considered in renewal and other high-stakes decisions (e.g., expansion, replication, etc.) and may impact a school’s accreditation in accordance with the CSI Annual Review of Schools framework. CSI reserves the right to issue a Notice of Concern in any situation of noncompliance; but, generally, a Notice of Concern is appropriate where:

- a. The issue of noncompliance hinders, disrupts, or infringes on a student’s ability to access his/her education;
- b. The issue of noncompliance impacts the ability of CSI to fulfill its obligations to various stakeholders (including other schools in the portfolio and CDE);
- c. The issue of noncompliance represents a pattern of noncompliance or indicates larger systemic issues within the school;
- d. The issue of noncompliance seriously jeopardizes the continued operation of the school;
- e. The school fails to remedy identified issues of noncompliance from a previous Formal Reminder; and/or
- f. The issue jeopardizes student and/or staff safety or represents a serious threat to the school or community.

3. Notice of Breach

Whenever CSI has reason to believe that a school is in material violation of an applicable law, rule, policy, or contract provision, CSI may issue a Notice of Breach. Notices of Breach may be considered in renewal and other high-stakes decisions (e.g., expansion, replication, etc.) and may impact a school’s accreditation in accordance with the CSI Annual Review of Schools framework, or its replacement. CSI reserves the right to issue a Notice of Breach in any situation of material noncompliance; but, generally, a Notice of Breach is appropriate where:

- a. The school failed to timely and appropriately satisfy a Notice of Concern;
- b. The school has received more than three Notices of Concern in a year;
- c. For any material violation of law, rule, policy, or the charter contract that CSI, in its sole discretion, deems serious enough to warrant immediate escalation to a Notice of Breach; and/or
- d. For any of the situations identified under C.R.S. § 22-30.05-511 and 1 C.C.R. 3021 (Rule 10).

A Notice of Breach shall state the deficiency and the basis for it and provide an opportunity for the School to contest the deficiency.

Remedies

The CSI may revoke or deny renewal of the Contract for any of the grounds set forth in C.R.S. § 22-30.5-511 and 1 C.C.R. 302-1, Rule 10.00. In accordance with CSI policy, the CSI may, at its sole discretion, take other remedial actions prior to initiating revocation procedures for any areas of noncompliance with state and federal laws and regulations, the charter contract, and/or CSI policies or procedures.

Remedies may be implemented in accordance with a Notice and include, but are not limited to, those listed below. These remedies may be applied individually, in succession, or simultaneously:

- a. **Withholding of some of the funds due to the School.** This action may be taken in situations as allowed by C.R.S. § 22-30.5-105(2)(c)(IV) and as authorized in the charter contract, which include failure to submit reports and budgets listed on the CSI online compliance calendar (or its replacement) or as otherwise required by law, regulation, or CSI policy by the established deadlines.
- b. **Seeking or requiring technical assistance** from the Colorado Department of Education or another organization if the School is required to prepare and implement a priority improvement plan or turnaround plan.
- c. **Requesting that the Commissioner** issue a temporary or preliminary order in accordance with C.R.S. § 22-30.5-701 et seq.,
- d. **Taking immediate control of the School or some portion thereof.** Notwithstanding any other provision of this Contract, in the case of any breach which the CSI determines in good faith poses a serious threat to the School or CSI students, the community, or the property rights of the CSI or School, the CSI may, but is not required to, take immediate control of the School pursuant to C.R.S. § 22-30.5-703, and may exercise any portion or all power and authority over the School for such period of time as may be necessary to deal with such threat. These additional rights of the CSI will continue during the pendency of any dispute resolution process with respect to any alleged breach.
- e. **Submission of Remedial plan.** At its discretion and accordance with a Notice, CSI, at its sole discretion, may require the school to develop a plan to remedy an area of noncompliance. Upon the written request by CSI, the school shall develop a plan to remedy the failure or deficiency and submit to CSI for review and comment. The plan may be revised at the discretion of the School, with the agreement of CSI. If CSI reasonably determines that the plan is not effective in remedying the deficiency, CSI may require the school to review and revise the plan or may proceed with revocation or any other remedial action CSI deems necessary.
- f. **Intensive Monitoring.** At its discretion, CSI may place a school on intensive monitoring to monitor areas of noncompliance. Intensive monitoring may include regularly-scheduled status calls or meetings, site visits, the provision of technical assistance, or any other processes or procedures CSI deems necessary to monitor compliance until such time CSI determines that noncompliance is no longer an issue. If the area of noncompliance is not timely or appropriately remedied, CSI may proceed with any other remedial actions it deems necessary.
- g. **Charter Review.** In the event that the School fails to meet the requirements set forth in a Notice of Breach, CSI may elect to conduct a thorough review of the School's academic, financial and legal performance and make a recommendation for action to the CSI Board. The Board may take any action it deems necessary, including directing the School to develop a revised plan to be approved by CSI, or instructing CSI staff to begin revocation proceedings.
- h. **Revocation.** CSI may revoke the School's contract in accordance with C.R.S. § 22-30.5-511 and CSI's Rule 10. See 1 C.C.R. 302-1 (Rule 10).
- i. **Any other remedies permitted by law.**

Timely Notice

The School will timely notify the Institute (and other appropriate authorities) in the following situations:

1. The discipline of employees at the School arising from misconduct or behavior that may have resulted in harm to students or others, or that constituted violations of law; and
2. Any complaints filed against the School or its employees, administration, or Board members by any governmental agency.

Immediate Notice

The School shall immediately notify CSI of any of the following situations:

1. Conditions that may cause it to vary from the terms of this Contract, applicable CSI requirements, or federal or state laws or regulations;
2. Any circumstance requiring the closure of the School, including, but not limited to, a natural disaster, such as an earthquake, storm, flood or other weather related event, other extraordinary emergency, or destruction of or damage to the school facility;
3. Any circumstances requiring lockdown, emergency response or any other action that may affect school health or safety;

4. The arrest of any members of the School Board or School employees for a crime punishable as a felony or any crime related to the misappropriation of funds or theft;
5. Misappropriation of funds;
6. A default on any obligation, which will include debts for which payments are past due by sixty (60) days or more; or
7. Any change in the School Board's corporate status with the Colorado Secretary of State's Office or status as a 501(c)(3) nonprofit organization, if applicable.

Legal References:

C.R.S. § 22-30.5-503(1)(b)(III) & (IV). CSI duty and authority to monitor operations and revoke or non-renew a charter school contract.

C.R.S. § 22-30.5-507(2)(b). CSI schools are accountable to CSI for purposes of ensuring compliance.

C.R.S. § 22-30.5-503(2). CSI as a model authorizer.

C.R.S. § 22-30.5-511. Grounds for nonrenewal or revocation.

1 C.C.R. 302-1, Rule 10.00. Revocation of the charter school contract.

C.R.S. § 22-30.5-105(2)(c)(IV)

C.R.S. §22-30.5-701 et seq. Emergency powers.

[School Compliance Policy Revisions 6-20-17.pdf \(138 KB\)](#)

3.4 Voluntary Dispute Resolution. The parties may choose to attempt to resolve disputes arising out of the implementation of this Contract, and not subject to immediate appeal to the State Board, by means of the dispute resolution process set forth in this Section. Should both parties agree to pursue dispute resolution, they further agree that they shall continue without delay to their performance under this Contract, except for any performance which may be directly affected by such dispute.

- i.* **Informal negotiation.** If both parties agree to dispute resolution, authorized representatives of the Institute and the School will meet to discuss a possible resolution to the dispute.
- ii.* **Formal notification of dispute.** If the dispute is not resolved through informal negotiation, either party may submit to the other a written notice

identifying the specific action with which it disagrees, any Contract provision which it alleges has been breached, and the specific corrective action it wishes the other party to take. Such notice must be given within twenty (20) days of the time the party knew or should have known of the action at issue and that informal resolution under **Section 3.4(i)** was unsuccessful.

- iii.* **Mediation.** If the parties are unable to negotiate a resolution to the dispute within ten (10) business days of receipt of such formal notice, either party may request mediation. The party making the request will notify the other party of the request in writing. Within one calendar week of receipt of notice by the other party, the authorized representatives of the parties will attempt to agree on a mediator. If the parties through their representatives fail to reach an agreement within one calendar week after the first attempt to agree, they will request appointment of a mediator by the American Arbitration Association or such other organization as may be mutually agreed upon.
- iv.* **Procedure.** Within thirty (30) days of appointment, the mediator will conduct a hearing limited to the issues raised in the notice required by **Sections 3.4(ii)**. The mediator will have authority to make procedural rules and will issue a report to the parties within thirty (30) days after the close of the hearing. Such report will contain findings and a recommendation regarding the issue(s) in dispute. The mediator's recommendation will be forwarded to the Institute and to the School. This shall not be deemed the "release" of the mediator's recommendation.
- v.* **Institute Board action.** If the parties are unable to negotiate a resolution, the Institute Board will make a decision on the matter and release the mediator's recommendation. The Institute Board's action on the recommendation will be final and binding, subject only to such appeal as may be authorized by law.
- vi.* **Institute's authority.** The dispute resolution process set forth in this Contract will not be required prior to the exercise of any contractual right or statutory authority by the Institute Board, including remedial authority for any material breach of this Contract, such as proceedings to revoke or not renew the Contract.
- vii.* **Failure to advance the process.** Failure to advance the process within the time specified in **Section 3.4** will be deemed a waiver of any right to contest an action covered by this procedure with respect to the specific action at issue and will forever bar any claim or proceeding related to such action. In other words, if a party fails to advance the process within the time specified, that party has no right to complain that the process has not moved ahead. However, notwithstanding this provision, the parties may agree in writing to extend any of the time limits for a specified period.
- viii.* **Costs shared.** The parties will share equally the costs of mediation, including any per diem expenses, plus any actual and necessary travel and subsistence expenses. A party who unilaterally cancels or withdraws from a scheduled mediation will pay the full cost of any fees assessed by the mediator.

3.5 Other Remedial Courses of Action. The Institute may revoke or deny renewal of the Contract for any of the grounds set forth in **C.R.S.22-30.5-511** and **1 C.C.R. 302-1, Rule**

10.00. In accordance with Institute policy, the Institute may, at its sole discretion, take other remedial actions prior to initiating revocation procedures in accordance with **Section 11**. Remedies include, but are not limited to, those listed below. These remedies may be applied individually, in succession, or simultaneously.

- i.* **Withholding of some or all of the funds due to the School.** This action may be taken in situations as allowed by **C.R.S. 22-30.5-105(2)(c)(IV)**, which include failure to submit reports and budgets listed on the CSI online compliance calendar (or its replacement) or as otherwise required by law, regulation, or Institute policy by the established deadlines.
- ii.* **Seeking or requiring technical assistance** from the Colorado Department of Education or another organization if the School is required to prepare and implement a priority improvement plan or turnaround plan.
- iii.* **Requesting that the Commissioner** issue a temporary or preliminary order in accordance with **C.R.S. 22-30.5-701 et seq.**,
- iv.* **Taking immediate control of the School or some portion thereof.** Notwithstanding any other provision of this Contract, in the case of any breach which the Institute determines in good faith poses a serious threat to the School or Institute students, the community, or the property rights of the Institute or School, the Institute may, but is not required to, take immediate control of the School pursuant to **C.R.S. 22-30.5-703**, and may exercise any portion or all power and authority over the School for such period of time as may be necessary to deal with such threat. These additional rights of the Institute will continue during the pendency of any dispute resolution process with respect to any alleged breach.
- v.* **Notice of breach.** This action will be initiated as deemed necessary by the Institute and in accordance with the procedures described in the Institute's school compliance policy and CSI rules. A Notice of Breach shall state the deficiency and the basis for it and provide an opportunity for the School to contest the deficiency, may place the School on Intensive Monitoring, and/or may provide the School with an opportunity to cure the deficiency within a reasonable timeframe prescribed by the Institute. The Institute reserves the right to require the submission of a plan to remedy the deficiency. Upon the written request of the Institute, the School shall develop a plan to remedy the failure or deficiency and submit it to the Institute for review and comment. The plan may be revised at the discretion of the School, with the agreement of the Institute. If the Institute reasonably determines that the plan is not effective in remedying the deficiency, the Institute may require the School to review and revise the plan or may proceed with revocation or any other remedial action the Institute deems necessary.