

<p style="text-align: center;">COLORADO DEPARTMENT OF EDUCATION 201 E. Colfax Avenue Denver, CO 80203</p>	<p>▲ CDE USE ONLY ▲</p>
<p>In re:</p> <p>Colorado Springs Charter Academy, Charter Respondent.</p>	
<p>PRELIMINARY ORDER</p>	

This matter is before the Commissioner of the Colorado Department of Education under § 22-30.5-703(1), C.R.S., upon the Request for Relief Under Charter School Emergency Powers Act, dated May 25, 2022, submitted by the Colorado Charter School Institute (CSI or Authorizer). A Notice of Hearing was duly served on the parties on May 27, 2022. On June 1, 2022, CSI and the Colorado Springs Charter Academy (School or Charter Respondent) each submitted a written brief.

In accordance with the Notice, the Commissioner conducted the meeting authorized under § 22-30.5-703(3)(c), C.R.S., on June 2, 2022. Present for CSI were: Terry Croy Lewis, CSI Executive Director; Andi Denton, CSI Chief of Finance and Operations; and Anastasia Hawkins, CSI Director of Governance; and Joe Peters, Senior Assistant Attorney General, appeared as counsel. Present for the Colorado Springs Charter Academy (School or Charter Respondent) were: Zoe Ann Holmes, Head of School; McCrea Andersen, Board Member; Najah Lamborn, Board Member;

Summer Groubert, Board Member and Treasurer; Anna Mitchell, Board Member; and Dustin Sparks, Law Office of Dustin R. Sparks, LLC, as counsel.

Having carefully considered the parties' presentation of evidence and argument as a whole, the Commissioner issues this Preliminary Order in accordance with § 22-30.5-703(6) and (8), appointing a fiduciary and ordering the fiduciary to independently determine whether to continue to request the order of reorganization, as follows.

Legal Standard

The Commissioner is responsible for exercising specific emergency authority under the Charter School Emergency Powers Act, § 22-30.5-701, C.R.S., *et seq.* (Act). The term "emergency" includes a situation that presents a significant risk, as determined by the Commissioner, to a charter respondent's solvency. § 22-30.5-702(6)(b).

Procedural prerequisites include written notice of the authorizer's request for external control, and all parties' opportunity to meet with the Commissioner to present evidence and argument. See § 22-30.5-703(3)(a), (c). Both prerequisites have been satisfied here.

Where the Commissioner determines that an emergency exists and that the risk of irreparable injury resulting from the emergency justifies an intrusion on the internal operations of the charter respondent, the Commissioner is authorized to enter a preliminary order requiring an external fiduciary to control certain

functions of the charter respondent. § 22-30.5-703(3)(a)-(d), (5); *see* § 22-30.5-702(8) (defining “fiduciary”).

Where the authorizer requests an order of reorganization, the Commissioner-appointed fiduciary must independently determine, while the preliminary order is pending, whether to continue to request the order of reorganization. § 22-30.5-703(8)(a). The Act provides for additional procedural prerequisites, including the charter respondent’s opportunity to be heard, before a reorganization order can be issued. *See* § 22-30.5-703(8)(c)-(d).

Discussion

CSI asserts that Charter Respondent’s current operation as a school has been impacted by board and school leadership transition, resulting in lapses in the school’s financial management and board governance processes, the severity of which presents a significant threat to Charter Respondent’s solvency. CSI attached Exhibits 1 through 30 to its written submissions. Charter Respondent asserts that it has a plan to address its current challenges, that the situation does not rise to the level of an emergency, and that an intrusion into its autonomous operations is not justified. Charter Respondent did not submit documentary exhibits. Upon the Commissioner’s review of the evidence and argument presented,¹ the Commissioner finds that exercising emergency powers is necessary under the circumstances here.

¹ The Commissioner does not consider the two-page letter dated May 31, 2022, and one-page cover email received on June 1, 2022, from a school employee. As a preliminary matter on June 2, 2022, the Commissioner disclosed the letter to the parties. The parties agreed that the letter should not be made part of the record.

For the following reasons, the Commissioner finds the existence of a significant risk to the Charter Respondent's solvency and that an emergency exists within the meaning of § 22-30.5-702(6)(b). First, Charter Respondent's current financial situation is extremely uncertain because of a number of significant, ongoing variables. Relatedly, because of various delays impacting the board's decision-making, Charter Respondent has only recently finalized its Fiscal Year 2022 budget for the now-concluded school year and approved teacher merit pay for distribution this month.

Second, the Commissioner finds that Charter Respondent is unlikely to resolve its Fiscal Year 2023 budget for the upcoming school year, due next month, in the near term without intervention. The budget depends largely on two unresolved factors: projected pupil counts² and staff salaries, some of which have yet to be approved. According to the board treasurer, student enrollment decreased by 40 students before the now-completed school year and typically decreases by 25 students per year. Though the treasurer stated that current enrollment is 383 and anticipates 391 to 395 enrollment, she believes that the proper enrollment number for the upcoming school year is 375 based on the historical 25-student decrease. The Commissioner observes that the precise enrollment number is unclear and that the overall student enrollment trend appears to be downward.

Additionally, the Commissioner finds that Charter Respondent's staffing issues are unlikely to resolve without intervention. Teacher engagement contracts

² See §§ 22-30.5-513(2)-(10), 22-54-114, C.R.S.

for the upcoming school year are incomplete, had been delayed, and will be further delayed because of a hiring freeze imposed by the board within the last week. The Commissioner finds that numerous staff having expressed lack of confidence in the current board, *see* Exhibit 14, a neutral leader would address staff uncertainty, bolster staff confidence in Charter Respondent's governance and direction, and facilitate completion of the teacher engagement contracts.

Since August 2021, Charter Respondent has utilized various processes to determine the staff positions to be filled, salary, and approval of candidates. *See, e.g.,* Exhibits 15, 26. Since January 2022, however, Charter Respondent has appointed only one senior-level administrator; additional positions, including business manager and assistant head of school, remain pending. Further, a financial-management contractor position will terminate by July 20, 2022, leaving Charter Respondent without bookkeeping, payroll, accounting, and audit-preparation services. *See* Exhibit 7. Because staffing is essential to the provision of education and a major component of budget expenses, the Commissioner finds that Charter Respondent's disjointed staffing approach and lack of a clear hiring process are insufficient to start the new school year, pose significant risk to Charter Respondent's solvency, and create an emergency under §§ 22-30.5-702(6)(b) and 703(3)(d).

Third, the Commissioner finds that turnover on the Charter Respondent's board further poses significant risk to the Charter Respondent's solvency. The board currently has four members and three vacant positions, following a series of

resignations between December 2021 and May 2022. The most recent board president, elected on December 3, 2021, resigned on May 23, 2022. The board has only one active officer, the treasurer, who has served since 2020. All other officer positions remain open.

Fourth, the Commissioner finds that Charter Respondent lacks an adequate plan to address current challenges. Charter Respondent's plan includes several steps to occur within 30, 90, and 100 days. Within 30 days, the board plans to solicit proposals and hire a school consulting firm to provide board and staff training, assess and document staff concerns, assess and document board needs, evaluate and rewrite policies as needed. Within 90 days, the consulting firm is to complete an assessment, issue a report and recommendations, and a chief financial officer is to be hired. Within 100 days, Charter Respondent will meet with CSI. Charter Respondent presented no information to show substantial progress towards these goals. Noting that the upcoming school year begins in fewer than 90 days, the Commissioner finds that, even assuming all steps will be completed on schedule, the plan does not timely address the risks to Charter Respondent's solvency.

Based on the foregoing, the Commissioner finds that an emergency and a significant risk of irreparable injury exist. The Commissioner also finds that the risk to the Charter Respondent's solvency bears directly on its ability to open and maintain operations in the upcoming school year, pay staff, and educate its enrolled students. Charter Respondent's inability to open—or its closure during the school year—would result in grave disruption to the students, their education, and the

staff; would displace enrolled students, who would require transfer to other schools; and would present hardship to other individuals who rely on and serve Charter Respondent. The Commissioner thus determines that the risk of irreparable injury resulting from the emergency justifies an intrusion on the internal operations of Charter Respondent.

The Commissioner further finds Charter Respondent's proposed plan is insufficient to mitigate the risk of irreparable injury. As discussed above, the timeline is inadequate. Given Charter Respondent's expansive and intensive utilization of CSI support and a charter school consultant between November 2021 and April 2022, which did not result in significant improvements, the Commissioner finds that external intervention is needed. *See Exhibit 26.*

While Charter Respondents' board members may have good intentions and have compensated for staff vacancies by personally carrying out tasks to support the school, the Commissioner observes that the board's decisions to delegate such tasks to volunteer board members were ill-suited to support Charter Respondent's operational needs. For example, potential financial management gaps may exist or arise from lack of oversight by a qualified firm or individual regarding compliance requirements under state and federal regulations, bond requirements, or the charter contract. Such gaps include or are likely to include: noncompliance with quarterly financial reports; inadequate oversight and remediation of current year accounting; failure to adopt a timely, balanced Fiscal Year 2023 budget; lack of an annual financial audit; failure to submit the annual financial data pipeline. *See*

Exhibit 16, p.2. Additionally, an overtaxed volunteer board appears to have detracted from the board's obligations to provide guidance and oversight. The Commissioner finds that the decision to encumber the volunteer board with staff responsibilities did not help Charter Respondent to relieve staffing deficits and transitions in a timely manner. The Commissioner finds that the present emergency cannot be remedied without resolving Charter Respondent's crucial staffing shortfalls and significant board turnover. *See* Exhibits 14, 30.

Accordingly, the Commissioner determines that CSI, as Authorizer, has demonstrated a significant threat to Charter Respondent's solvency, which constitutes an emergency under § 22-30.5-702(6)(b). The risk of irreparable injury resulting from the emergency justifies an intrusion on Charter Respondent's operations under § 22-30.5-703(3)(d).

Order

For the reasons stated above, in accordance with § 22-30.5-703(3), the Commissioner orders and appoints Daniel M. McMinimee, a nonparty, to act as fiduciary to the fullest extent of § 22-30.5-703(6)(a), and subject to the limitations set forth in § 22-30.5-703(6)(b), as follows:

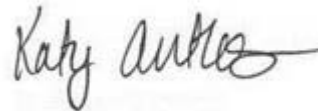
- The fiduciary shall exercise the powers over and for Charter Respondent that are ordinarily exercised by the Charter Respondent's board of directors and may take action respecting excess benefits as authorized pursuant to § 22-30.5-704;
- The fiduciary shall not:
 - (I) Conclude, dissolve, relinquish, or surrender the charter contract;
 - (II) Effect nonrenewal or revocation of the charter contract;
 - (III) Negotiate, renegotiate, or amend the charter contract;

- (IV) Exercise the legal standing of Charter Respondent in any administrative or court proceeding other than one brought pursuant to this section; except that the fiduciary may seek recovery of unpaid moneys due to Charter Respondent from an authorizer;
- (V) Transfer into a trust the assets of Charter Respondent;
- (VI) Repeal, alter, amend, restate, or in any fashion modify Charter Respondent's organic documents;
- (VII) Remove, recall, or appoint any member of Charter Respondent's governing board or officers;
- (VIII) Take any action that is reserved for the membership of a charter respondent that is organized as a membership organization; or
- (IX) Take any action that is not within the power of Charter Respondent's governing board.

The Preliminary Order shall be valid for 120 days, and may be extended for up to an additional 120 days upon good cause shown. § 22-30.5-703(5).

Pursuant to § 22-30.5-703(8)(a), by August 31, 2022, the fiduciary shall independently determine whether to continue the request for an order of reorganization. The Commissioner orders the fiduciary, based on such independent determination, to file with the Commissioner a request for an order of reorganization while this Preliminary Order is pending, with at least 10 days' notice to Charter Respondent, CSI as Authorizer, and the Commissioner, and to take actions in accordance with the procedures set forth in § 22-30.5-703.

Dated this 8th day of June, 2022.



Dr. Katy Anthes, Commissioner
Colorado Department of Education

CERTIFICATE OF SERVICE

I hereby certify that I have emailed an electronic copy of the **PRELIMINARY ORDER** to the parties listed below on this 8th day of June, 2022:

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