

To: Superintendent Gdowski and the Adams 12 Board of Education  
From: Stargate Governance Board  
Re: Stargate School Charter Renewal  
Date: January 25, 2019

On January 8, 2019, the Adams 12 Five Start School District Staff (hereinafter, the “Staff”) provided Stargate its recommendations for Stargate’s Charter Renewal Application. The Staff recommended a 3 year renewal with an option for Superintendent Gdowski to recommend Stargate’s renewal for a remaining 2 years be approved if Stargate met 21 conditions. Tracy Dorland and Amelia Munier presented the Staff’s recommendations to the Adams 12 Board of Education (“BOE”) at the BOE’s January 9, 2019 meeting. The presentation concluded at approximately 11:30 pm. The BOE then provided Stargate the opportunity to respond to the Staff’s recommendations at the BOE’s January 16, 2019 meeting. At the conclusion of Stargate’s presentation at the January 16, 2019 meeting, the BOE had an opportunity to comment and ask further questions. Superintendent Gdowski then asked Stargate to provide a written response to the Staff and BOE on each of the Staff’s recommendations by January 25, 2019.

BOE Member Norm Jennings met with Stargate on January 17, 2019 and provided further guidance to Stargate indicating that to avoid further delay in the approval of Stargate’s Charter Renewal Application, Stargate should work with the Staff to reach a negotiated resolution on each of the 21 conditions, rather than simply providing counter proposals. On January 18, 2019 Stargate reached out to Tracy Dorland and additional Staff members offering to meet at the Staff’s convenience on January 24, 2019. Stargate indicated that in light of the fact that all conditions would automatically become part of the Charter Contract if included in a “conditional renewal”, it would be necessary for Stargate’s legal counsel, Barry Arrington, to participate in the negotiations. Unfortunately, the Staff indicated that it was not available to meet prior to the January 25, 2019 deadline for Stargate’s written response to be submitted to the BOE. Instead, Ms. Dorland requested that Stargate provide a written response to the Staff recommendations so that the Staff could determine which terms would need to be negotiated prior to the BOE’s February 6, 2019 meeting at which it is expected the BOE will vote on Stargate’s Charter Renewal Application. Accordingly, Stargate is submitting this written response to the Staff and to the BOE.

As an initial matter, Stargate seriously questions whether the BOE has the legal authority to grant a conditional renewal. We have attached hereto a formal legal opinion from Stargate’s legal counsel as supported by two recent State of Colorado Board of Education decisions. These decisions make it clear that under the applicable Colorado statutes and regulations, a Charter School Authorizer such as Adams 12, does not have the authority to grant conditional charters. To the extent that the BOE is considering granting Stargate’s charter renewal with any express conditions, we consider this to be improper and beyond the scope of BOE’s authority. That being said, we recognize and appreciate the feedback provided by the DAC and the Staff. We have carefully considered each area of concern and look forward to addressing each concern as part of the charter contract negotiations following the approval of our renewal. To that end, we have attempted to respond below to each of the Staff’s 21

recommendations. We are hopeful that our responses will facilitate the upcoming contract negotiations, however, once again, we respectfully object to any of these recommendations being the basis of a conditional renewal. Please be advised that these responses do not waive Stargate’s rights to object to any conditional renewal.

| <b>Staff Concern and Proposed Condition for Renewal</b>  | <b>Stargate’s Response to the Staff Recommended Condition for Renewal</b>   |
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| <p><b>1. Accountability and Disproportionate Expenditure of Time and Resources by Adams 12 Staff</b></p> <p>A. Stargate’s contract renewal will be for a 3 year period with the possibility of a 2-year extension, pending Superintendent’s recommendation to the Board of Education at the end of 3.</p>  | <p>As discussed above and in the attached legal opinion, we do not believe that the BOE has the authority to grant a conditional charter. Stargate has been a successful member of the Adams 12 Five School District for 24 years and has continually demonstrated high academic achievement and financial stability. We believe we are deserving of a five year charter renewal especially when we compare our performance to other charter schools in the district which have recently received 5 year non-conditional renewals.</p>                      |
| <p><b>1. Accountability and Disproportionate Expenditure of Time and Resources by Adams 12 Staff</b></p> <p>B. Stargate will report on the conditions outlined below to the Adams 12 Board of Education twice in the 2019-20 school year, once in the January 2020 and again in June 2020; and then continue with once annual report in subsequent year.</p>   | <p>Stargate is willing to provide additional written reports to the Adams 12 Staff. In order to ensure proper reporting, we look forward to working with the District to better understand the specific content to be reported.</p>   |
| <p><b>1. Accountability and Disproportionate Expenditure of Time and Resources by Adams 12 Staff</b></p> <p>C. Notwithstanding any other provision of the authorizing agreement, Stargate shall indemnify Adams 12 for all costs incurred by the District, including legal fees and expenses incurred by the District to retain outside legal counsel to respond to all complaints and address any subsequent monitoring obligations. Complaints subject to this provision include those filed in state or federal court, as well as administrative complaints filed with the Colorado Department of</p> | <p>Stargate believes that this request is in response to an approximately 18 month troubling period out of our 24 years of existence. Stargate is willing to discuss further, as part of the charter contract negotiations, additional indemnification by Stargate for third party costs incurred by the District as a result of Stargate’s noncompliance with state and federal educational requirements. We would expect any such indemnification obligations to be reasonable (e.g. approval of counsel, control of settlement discussions, etc...).</p> |

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| <p>Education, the Colorado Civil Rights Division, the U.S. Equal Employment Opportunity Commission, or the Office for Civil Rights.</p>   |   |
| <p><b>2. Climate and Culture Substantiated Concerns and Allegations</b><br/> A. Title IX / Civil Rights - Stargate will continue for the remainder of the 2018-2019 school year and the following 2019-20 school year to retain the services of the current independent expert Title IX/Civil Rights coordinator (or mutually acceptable and qualified replacement), through a consulting arrangement. The district will support the services at 25% through December 2019. The spring semester of the 2019-20 school year will be at school’s sole expense. This will allow Stargate to onboard an Executive Director and develop a plan for Title IX/Civil Rights oversight and compliance to be submitted to the charter liaison and the Board of Education in January of 2020 for approval by the district, as part of its twice annual review during the 2019-20 school year. Stargate will be expected to continue to support and cooperate with the independent expert in fulfilling his/her role. As part of the final Title IX/Civil Rights plan for Stargate, the District, and the independent expert, must mutually agree, in writing, that the long-term individual in the Title IX Coordinator role has the expertise, institutional authority, independence, and credentials to serve this critical function, prior to him/her assuming this position.</p> | <p>The District does not have the authority to dictate Stargate’s hiring decisions. According to Colo. Rev. Stat. Ann. § 22-30.5-104(7)(a), “[a] charter school shall be responsible for its own operation including, but not limited to, preparation of a budget, contracting for services, facilities, and personnel matters.” Furthermore, pursuant to 1 Colo. Code Regs. § 301-88:3.00, “3.01(B) The Charter School Authorizer upholds school autonomy by doing the following:<br/> 3.01(B)(1) Honoring and preserving innovations and core autonomies crucial to school success, including governing board independence from the authorizer, personnel, school vision and culture, instructional programming, design, and use of time, and budgeting.”</p> <p>The above notwithstanding, Stargate recognizes the importance for a qualified Title IX/Civil Rights coordinator and appreciates the District’s commitment to financially support this position through December 2019.</p> <p>Stargate is currently evaluating candidates for this position and will ensure that any person put into this role is duly qualified and subject to approval by the Office of Civil Rights (“OCR”).</p> |
| <p><b>2. Climate and Culture Substantiated Concerns and Allegations</b><br/> B. Executive Director - Stargate will follow through on its recent commitment to hire an Academic Executive Director to oversee non-business operational functions for the Stargate Campus. The school shall publicize and conduct a nationwide search for a suitable candidate for this position, and fill the position with a qualified candidate by no later than July 1, 2019. The District shall be involved in and provide input on candidates throughout the application pre-screening and interview process.</p>   | <p>Agreed.</p>  |
| <p><b>2. Climate and Culture Substantiated Concerns and Allegations</b></p>   | <p>Stargate questions whether the UIP is the appropriate tool to address this</p>   |

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| <p>C. Unified Improvement Plan (UIP) Climate/Culture Goals - For each year of the renewed contract, Stargate will include in its Unified Improvement Plan specific goal(s) to improve school climate and culture, including action steps, relevant data gathering and adjustments as needed.</p>   | <p>issue, especially since Stargate’s SPF may not necessitate the creation and submission of a UIP. However, Stargate agrees that improving school climate and culture is paramount and is committed to develop action steps, through relevant data gathering and adjustments, as part of its normal surveying programs and Strategic Plan.</p> <p>It is important to note that (a) currently 97% of 5th graders and 94% of 8th graders have indicated that they will be returning to Stargate’s middle school and high school, respectively, and (b) based upon recent survey data, overall parent satisfaction, including satisfaction with Stargate’s administration and Governance Board, is increasing.</p> |
| <p><b>2. Climate and Culture Substantiated Concerns and Allegations</b><br/> D. Stargate will work with a facilitator, mutually acceptable to the district, to support effective onboarding of the new Executive Director and community mediation for climate/culture improvement, in alignment with the school’s UIP climate/culture goals. Selection of a facilitator and plan for community engagement and reconciliation will be mutually agreed upon by both Stargate and district staff by September 2019.</p> | <p>Stargate is happy to work with the District to develop a plan for onboarding the new Executive Director and to improve communication within our community. Stargate is open to having a facilitator, possibly the Charter School Liaison, be part of this process.</p>  |
| <p><b>3. Special Populations – Gifted and Talented</b><br/> A. All students currently, formally identified as GT, will have a comprehensive, statutorily compliant ALP by the start of the 2019-20 school year.</p>  | <p>Agreed.</p>   |
| <p><b>3. Special Populations – Gifted and Talented</b><br/> B. Moving forward, within the first 30 days of GT identification, all students will have a formal ALP.</p>   | <p>Stargate agrees that pursuant to guidance provided by the Colorado Department of Education on the creation of ALPs, Stargate will have a formal ALP for students within 45 days of GT identification.</p>   |
| <p><b>3. Special Populations – Gifted and Talented</b><br/> C. Stargate will provide annual training for all school administrations on compliance and best practice for gifted learners.</p>   | <p>Agreed.</p>   |
| <p><b>3. Special Populations – Gifted and Talented</b></p>   | <p>As stated above in Stargate’s response to 2.A., the District does not have</p>  |

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| <p>D. Because of the school’s mission to serve gifted and talented students, two administrators, one at the elementary level and one at the secondary level, will either possess or work toward, within the next 2 years, successful and timely attainment of an endorsement in gifted and talented education.</p>  | <p>the authority to dictate Stargate’s hiring decisions and qualification requirements. However, Stargate agrees that having administrators at both elementary and secondary levels having attained an endorsement in gifted and talented education is preferred. Currently Stargate has at least one administrator at each level who complies with the Staff recommendation.</p>                                       |
| <p><b>4. Special Populations – Special Education</b><br/> A. Stargate will arrange and complete by June 1, 2019, at its sole cost, a special education program audit to be conducted by a mutually agreed upon, independent third party, to include findings and implement recommendations for improvement of procedures, safeguards and services for students with special needs prior to the start of the 2019-20 school year. Copies of the audit shall be provided to the Adams 12 Board of Education and administration. Stargate will promptly implement recommendations from the audit and will provide monthly updates about progress to the charter liaison.</p> | <p>Stargate agrees to retain an outside party to complete an audit of Stargate’s special education program prior to the start of the 2019-20 academic year and will provide a copy of the audit to the BOE. Stargate is committed to implementing audit recommendations to remediate any identified deficiencies and to engage in regular reporting to the District.</p>  |
| <p><b>4. Special Populations – Special Education</b><br/> B. Stargate will hire a full time Director of Special Education, with professional credentials, whose primary function will be to implement recommended changes and to address development, including staff training, of a multi-tiered continuum of support for students who have or are suspected to have an educational disability. The district’s charter liaison will participate in the hiring process for this position. This position will be a full time administrator to oversee special education and 504 processes for the school, to be hired by the beginning of the 2019-20 school year.</p>     | <p>As stated above in Stargate’s response to 2.A., the District does not have the authority to dictate Stargate’s hiring decisions and qualification requirements.</p> <p>That being said, Stargate is committed to providing the best services, compliant with all applicable laws and regulations, and will determine what additional hires are necessary based upon the special education audit to be conducted.</p> |
| <p><b>4. Special Populations – Special Education</b><br/> C. Stargate will provide annual training for all school administrators on compliance and best practice in special education and 504.</p>  | <p>Agreed.</p>  |
| <p><b>4. Special Populations – Special Education</b><br/> D. The Authorizing Agreement shall provide that in the event that the District reasonably determines that material noncompliance with</p>   | <p>Stargate believes that with the corrective measures Stargate has already implemented and with such additional measures as Stargate will implement based upon the special education services audit, the insurance</p>   |

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| <p>IDEA/Section 504/ECEA has occurred in connection with any students/applicants, as evidenced by formal, substantiated complaints and/or patterns of non-compliance, the District in its sole discretion may impose an “insurance model” special education/504 service delivery structure (see Colorado Department of Education document, “Colorado Charter Schools Special Education Compliance Plan Guidelines: For Negotiating New and Renewal Charter Contracts for Colorado Charter Schools”) for the duration of the authorizing agreement, and the parties shall negotiate a contract modification to implement the insurance model provisions, including provisions to reflect financial and staffing ramifications, within a reasonable timeframe.</p>   | <p>model will be unnecessary. In addition, Stargate is concerned about a unilateral revision of the Charter contract for which Stargate will not have an opportunity to participate and which will have significant financial ramifications. That being said, Stargate agrees that if material noncompliance with SPED requirements are found during the first 3 years of Stargate’s Charter contract, then it would be appropriate for the parties to implement a mutually agreed upon revision of this contractual term.</p> |
| <p><b>5. Admissions and Enrollment Policy and Practice</b><br/>A. Stargate shall submit a legal opinion regarding its admissions/enrollment practices and policies.</p>  | <p>Agreed. Stargate provided the requested legal opinion to the BOE on January 8, 2019.</p>  |
| <p><b>5. Admissions and Enrollment Policy and Practice</b><br/>B. Stargate shall submit a revised admissions and enrollment policy and process for review prior to the February 6th Board meeting. This revised policy and process shall: 1) include an action and recruitment plan for ensuring a more diverse student population can be served at Stargate; 2) recognize multiple categories of giftedness, aligned to CDE guidance and applicable ECEA regulations; and 3) fully align to all applicable Colorado State Board of Education standards referenced in 1 CCR 301-88, and the CDE "Fact Sheet" on the gifted education eligibility determinations:<br/><a href="https://www.cde.state.co.us/cdechart/tbwgiftededucationfactsheet">https://www.cde.state.co.us/cdechart/tbwgiftededucationfactsheet</a></p> | <p>Stargate provided a draft of its updated admissions policy to the BOE, along with a supporting legal opinion, on January 8, 2019.</p> <p>Stargate is committed to taking measures in an attempt to attract a more diverse student population and welcomes support from the District in this endeavor, especially with the limitations Stargate faces with the lack of school-provided transportation for its students.</p>  |
| <p><b>5. Admissions and Enrollment Policy and Practice</b><br/>C. Parents will not incur fees/costs in connection with the application/enrollment process beyond those fees/costs authorized by Adams 12 Board of Education and District policies.</p>   | <p>Agreed. Stargate’s updated admissions policy will include scholarships for families to support the submission of a student’s body of evidence to establish intellectual giftedness. Please note that such scholarships are currently available at Stargate.</p>   |
| <p><b>6. Governance</b></p>  | <p>Agreed.</p>   |

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| <p>A. Stargate board will engage in annual training with a mutually agreed upon charter consultant, such as the Colorado League of Charter Schools, to address board best practice and compliance in regard to governance and accountability. Topics for these trainings should include: board ethics, effective governance practices and structures, child abuse/neglect, mandatory reporting obligations, sexual harassment and disability/civil rights issues, workplace bullying, student anti-bullying, and preventing concerns and being responsive, in writing, when concerns or complaints do emerge, regardless of whether those complaints are written or “formal.”</p> |   |
| <p><b>6. Governance</b><br/> B. Annual plan for board training will be shared with the charter liaison by Sept. 1, 2019.</p>  | <p>Agreed.</p>  |
| <p><b>6. Governance</b><br/> C. Stargate board will communicate regularly with the district to report on all complaints and concerns that are brought to the Stargate board which potentially implicate compliance with applicable law (e.g., Section 504 or sexual harassment complaints), Board of Education or District policy (e.g., anti-bullying or treatment of staff violation of Board Policy 2.2), or any provision of the Authorizing Agreement, and the board’s written response to those complaints.</p>   | <p>Agreed. Stargate looks forward to working with the District to better understand the specific content and timing to ensure proper reporting.</p> |

We are happy to answer any questions that the BOE has regarding our Charter Renewal Application and/or the issues covered above. Please ensure that all correspondence regarding this matter be directed to Stargate’s attorney, Barry Arrington, or at a minimum, copies Mr. Arrington on such correspondence. All rights are reserved.

Attachment – Legal Opinion of Barry Arrington, Esq.

## Memorandum

January 24, 2019

To: Stargate Charter School

From: Barry K. Arrington

**Re: Legality of Conditional Charter Approvals**

### **Issue Presented**

You have informed me that the Adams 12 Board of Education has indicated that they plan to pass a resolution providing for the “conditional approval” of the renewal of Stargate Charter School’s charter. You have inquired whether this practice is authorized by statute.

### **Discussion**

The Charter Schools Act, C.R.S. § 22-30.5-101, *et seq.* application procedure contemplates that local boards of education shall “rule by resolution” on the charter application, and, if the charter is granted, enter into contract negotiations with the school. C.R.S. § 22-30.5-107(2). The statute does not provide for “conditional approval” of a charter application. With respect to the renewal process, the statute similarly states that the “chartering local board of education shall rule by resolution on the renewal application no later than February 1 of the year in which the charter expires.” C.R.S. § 22-30.5-110(1.5). The renewal statute does not provide for “conditional approval” of the renewal application. In summary, nothing in the Act contemplates, supports, or approves of the practice of conditional approval of charter applications for new or existing schools.

The State Board of Education has recently provided guidance with respect to this issue in the cases of *Compass Community Collaborative School v. Poudre School District No. 1*, Case No. 17-CS-06 and *Colorado Skies Academy v. Cherry Creek School District No. 5*, Case No. 18-CS-04. The State Board’s order dated January 10, 2018 in the Compass Community case is attached as Exhibit A. The State Board’s January 9, 2019 order in the Colorado Skies Academy case is attached as Exhibit B.

In both cases the State Board unambiguously disapproved of the “conditional approval” process.<sup>1</sup> For example, earlier this month the State Board issued its order in the Colorado Skies Academy appeal, and in that order it stated:

CSA’s appeal labels the local board’s action as a ‘unilateral imposition of a condition’ under § 22-30.5-108, C.R.S. While that statutory lens may also apply, the Resolution reserves to the local board the ability to retroactively reject the

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<sup>1</sup> In both cases the State Board also disapproved of the practice of retroactively deeming an application denied if the conditions are not met.



application for failure to meet certain conditions. **These kinds of conditional approvals are not specifically authorized in statute and this Board views them with considerable skepticism.** See, e.g., *CCCS v. Poudre School District*, Case No. 17- S-06 []. **Pre-opening mandates, and the consequences for failing to satisfy them, are more appropriately addressed in contract negotiations.**

January 9, 2010 Order, pg. 1, n. 1 (emphasis added).

The State Board has sent a clear message regarding the practice by local boards of education passing resolutions granting “conditional approval” of charter applications. That message is this: (1) the practice is not authorized by statute; (2) the State Board does not approve of the practice; and (3) charter conditions are best reserved for contract negotiations.

Poudre School District seems to have gotten the message. Earlier this week the Poudre Board of Education passed the resolution attached as Exhibit C granting Liberty Common School’s renewal application. The substance of the resolution is only one sentence which provides that the renewal application is granted and the contract negotiation phase is initiated.

In conclusion, the Adams 12 Board of Education’s plan to pass a resolution “conditionally approving” Stargate’s renewal application is authorized by neither the statute nor the Department of Education’s regulations. The State Board of Education views such resolutions with considerable skepticism and would likely not approve of the local board’s action.

EXHIBIT A

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| <p><b>STATE OF COLORADO<br/>BOARD OF EDUCATION<br/>201 E. Colfax Avenue<br/>Denver, CO 80203</b></p>                                      | <p><b>▲ BOARD USE ONLY<br/>▲</b></p>    |
| <p><b>IN RE:</b></p> <p><b>COMPASS COMMUNITY<br/>COLLABORATIVE SCHOOL</b></p> <p><b>v.</b></p> <p><b>POUDRE SCHOOL DISTRICT NO. 1</b></p> | <p><b>CASE NUMBER:<br/>17-CS-06</b></p> |
| <p><b>ORDER REVERSING IN PART THE DECISION OF POUDRE SCHOOL<br/>DISTRICT NO. 1</b></p>  |   |

The State Board of Education, having reviewed the briefing in this matter and heard the arguments of the parties, and being duly advised in the premises, FINDS and ORDERS as follows:

1. Compass Community Collaborative School (CCCS) filed this action under COLO. REV. STAT. § 22-30.5-107(5). CCCS alleged that certain provisions contained in the November 14, 2017 Board Resolution (“the Resolution”) conditionally approving its charter application constituted a “unilateral imposition of conditions” reviewable by the State Board of Education.

2. This is not a garden-variety charter appeal. Although CCCS challenges some aspects of the Resolution as being contrary to the best interests of the pupils, school district, or community,” the larger dispute relates to Poudre’s use of “conditional approval.”

3. The State Board’s Standards for Charter Schools and Charter School Authorizers permit “reasonable pre-opening requirements or conditions for new schools to ensure that they meet all health, safety, and other legal requirements prior to opening and are prepared to open smoothly.” 1 CCR 301-88, Rule

3.04(B)(1)(e).<sup>1</sup> Beyond this language, statutes and rules are silent as to the notion of “conditional approval.”

4. The Resolution proposes a number of implementation milestones. CCCS is to take certain actions before a date specified. As to each, the Resolution provides that “[i]f the Board determines that the requirements are not satisfied,” the school’s application will be “deemed denied.” Each of the deadlines at issue was set beyond the 90-day statutory period for negotiating a charter contract, despite the clear statutory command that the deadline may be extended only “jointly.” COLO. REV. STAT. § 22-30.5-107(2) & (2.5).

5. CCCS does not oppose many of the implementation duties and deadlines set forth in the Resolution. Rather, the school objects to the Resolution provisions requiring that the Poudre Board of Education approve its efforts and that if such approval is withheld, the application is “deemed denied.” Conditions with this language include:

- Resolution Condition Number 4 requiring CCCS to submit its facility lease or purchase agreement for review at Poudre’s March 20, 2018 Board meeting;
- Resolution Condition Number 5 requiring CCCS to submit an employee handbook for review at Poudre’s May 22, 2018 Board meeting;
- Resolution Condition Number 6 requiring CCCS to submit signed internship placement agreements with at least 10 local businesses for review at Poudre’s May 22, 2018 Board meeting;
- Resolution Condition Number 7 requiring CCCS to submit enrollment forms for no fewer than 140 students for review at Poudre’s May 22, 2018 Board meeting;
- Resolution Condition Number 8 requiring CCCS to have prepared its facility in accordance with the lease or purchase agreement referenced in Condition Number 4 for review August 14, 2018; and
- Resolution Condition Number 9 requires CCCS to submit an

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<sup>1</sup> This language appears in the rules for “Performance Contracting,” not the rules for “Application Process and Decision Making,”

“economically viable revised budget” under certain conditions, for review at the Poudre Board’s next regularly scheduled meeting.

6. As to each of the above conditions, the Resolution proposes that even though the application would be retroactively “deemed denied,” that such action should in no event be “construed as a revocation of or a refusal to renew” the charter or charter school contract.

7. There is no statutory authority for the notion that by Resolution, a local board may reserve to itself a right to unilaterally review implementation milestones and thus trigger an after-the-fact determination that a charter application is “deemed denied.” Rather, such terms and conditions belong in the parties’ negotiated contract. Thereafter, any disputes regarding the school’s compliance would be subject to the dispute resolution conditions in the contract and in accordance with COLO. REV. STAT. § 22-30.5-107.5.

8. Moreover, the Standards for Charter Schools and Charter School Authorizers anticipate that in non-emergency circumstances, a charter school will be provided a notice of any performance deficiencies and an opportunity for remediation. 1 CCR 301-88, Rule 3.05(D)(2) and (3).

9. Based on the briefing of the parties, and the arguments at hearing, the Board finds that the following conditions are not in dispute and thus should be incorporated into the charter contract, with or without negotiated pre-opening deadlines:

- CCCS shall secure an appropriate facility through lease or purchase agreement;
- CCCS shall prepare a legally compliant employee handbook;
- CCCS shall secure no fewer than 10 business internship placement agreements;
- CCCS shall enroll no fewer than 140 FTE students;
- CCCS’s facility shall meet all appropriate building and fire code requirements and the school shall have a certificate of occupancy;
- and
- CCCS shall have prepared and adopted an economically viable budget.

However, the Board finds that the any dispute regarding the fulfillment of these conditions must be addressed in accordance with the negotiated terms of the contract, standard dispute resolution procedures, including notice of breach and an

opportunity for remediation as appropriate or an agreement that the school delay opening.

10. The briefing reflects a dispute regarding the timeline by which CCCS must have evidence that it is in “sole, irrevocable, and unconditional possession of funds in the amount of \$1,000,000” as promised in its application (Condition Number 2). Poudre wants such evidence before finalizing the charter contract, and CCCS reports that the donor requires that the school first have a signed charter contract. CCCS appropriately labels this posture a “chicken or egg” scenario. Both parties agree that actual receipt of the \$1M is a necessary condition of the school opening.

11. To the extent that Condition Number 2 imposes an obligation that renders impossible the finalization of the charter agreement between the parties, it is contrary to the best interests of the pupils, school district, or community. The parties shall negotiate an appropriate deadline in the charter contract that accommodates this timing problem while ensuring that the school does not open without CCCS taking possession of the pledged funds.

12. One final condition remains in dispute: Poudre’s requirement that “a majority of CCCS’s board of directors be elected by parent/guardians of students enrolled at the school.” *Resolution Condition Number 3(a)*. The Board finds that this condition, if effective after two years of school operation, is not contrary to the best interests of pupils, school district, or community and may be incorporated in the charter contract.

## ORDER

Based on the motion by Board Vice-Chair Rankin, seconded by Board member Durham, and the unanimous vote of the State Board of Education, it is therefore ORDERED that the appeal is granted in part and denied in part. The parties shall negotiate of a charter contract that consistent with this order.

Dated this 10<sup>th</sup> day of January, 2018.



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Angelika Schroeder, Chair  
Colorado State Board of Education

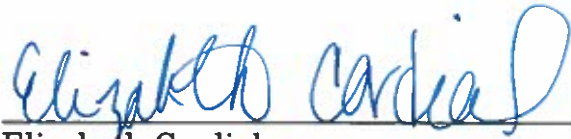
## CERTIFICATE OF MAILING

I hereby certify that on this 11<sup>th</sup> day of January, 2018, I served the foregoing **ORDER** on the parties by electronic mail, as follows:

Tom Crabb, Legal Counsel for Poudre School District  
[tcrabb@psdschools.org](mailto:tcrabb@psdschools.org)

Tim Farmer, Counsel for Compass Community Collaborative School  
[Tim@bradmillerlaw.com](mailto:Tim@bradmillerlaw.com)

Julie Tolleson, Legal Counsel for the Colorado State Board of Education  
[Julie.Tolleson@coag.gov](mailto:Julie.Tolleson@coag.gov)



Elizabeth Cordial  
Director of State Board Relations

EXHIBIT B

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| <b>STATE OF COLORADO<br/>BOARD OF EDUCATION<br/>201 E. Colfax Avenue<br/>Denver, CO 80203</b>                  |                              |
| <b>IN RE:<br/>COLORADO SKIES ACADEMY</b>   | <b>▲ COURT USE ONLY ▲</b>    |
| <b>v.<br/><br/>CHERRY CREEK SCHOOL DISTRICT NO. 5</b>  | <b>Case No.<br/>18-CS-04</b> |
| <b>ORDER REVERSING THE DECISION OF CHERRY CREEK SCHOOL DISTRICT NO.5 AND REMANDING FOR FURTHER PROCEEDINGS</b> |                              |

The Colorado State Board of Education (“State Board”), having reviewed the Notice of Appeal, the Final Record on Appeal, and the briefs of the parties, and being duly advised in the premises, **FINDS** and **ORDERS** as follows:

**INTRODUCTION**

1. On October 26, 2018, the Cherry Creek School District No. 5 Board of Education (“Local Board”) conditionally approved<sup>1</sup> a charter for Colorado Skies Academy (“CSA”). The resolution included a condition requiring CSA to submit an unspecified number of intent to enroll forms/letters from prospective students by November 15, 2018. The resolution provided that if CSA failed to satisfy any condition, "such failure shall excuse CCSD from authorizing CSA as a CCSD charter school."

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<sup>1</sup> CSA's appeal labels the local board's action as a "unilateral imposition of a condition" under § 22-30.5-108, C.R.S. While that statutory lens may also apply, the Resolution reserves to the local board the ability to retroactively reject the application for failure to meet certain conditions. These kinds of conditional approvals are not specifically authorized in statute and this Board views them with considerable skepticism. See, e.g., *CCCS v. Poudre School District*, Case No. 17-CS-06, <https://tinyurl.com/yb4nkaef>. Pre-opening mandates, and the consequences for failing to satisfy them, are more appropriately addressed in contract negotiations.

2. CSA submitted 24 enrollment forms by the November 15, 2018, deadline. District staff and ultimately the Local Board determined that CSA failed to satisfy the condition and decided not to authorize CSA. CSA requested an extension of the deadline, citing other indicators of parent and community interest, but the District denied the request.

3. On November 21, 2018, CSA filed this action under § 22-30.5-108, C.R.S., alleging that the condition was vague and the imposed deadline unreasonable. CSA contends that the condition was improper because it gave the district complete discretion as to whether the submitted enrollment evidence was sufficient.

4. Cherry Creek School District No. 5 (“School District”) argues it is “excused from proceeding with authorizing CSA as a charter” because CSA failed to demonstrate financial viability based on its own budget. That is, 24 students would not generate sufficient per pupil revenue to support the school, and the School District feared that it would be forced to expend its own resources to make up any shortfall, but conceded at hearing that such an expenditure was not mandatory.

5. Following the hearing on January 9, 2019, the State Board voted 5 to 1 in favor of remanding this case to the Local Board on the ground that the Local Board’s decision was contrary to the best interests of the pupils, school district, or community.

## LEGAL AUTHORITY

6. A charter application must include, among other things, evidence that “an adequate number of parents and pupils support the formation of a charter school.” §22-30.5-106(1)(d), C.R.S.

7. Statute allows school districts to unilaterally impose conditions on a charter applicant through adoption of a local board resolution. § 22-30.5-107(5), C.R.S. The resolution “shall, at a minimum, state the school district’s reasons” for the imposition. *Id.* The State Board’s Standards for Charter Schools and Charter School Authorizers permit “reasonable pre-opening requirements or conditions for new schools to ensure that they meet all health, safety, and other legal requirements prior to opening and are prepared to open smoothly.” 1 CCR 301-88, Rule 3.04(B)(1)(e). This rule provides for pre-opening conditions in charter contracts, not resolutions. Beyond this language, statutes and rules are silent as to the notion of “conditional approval.”



8. Statute requires a local board to rule by resolution on a charter application within 90 days of receiving the application. § 22-30.5-107(2), C.R.S. A local board and charter applicant must agree upon all contract terms no later than 90 days after the local board rules on an application. *Id.* The charter applicant and local board may jointly waive these deadlines. § 22-30.5-107(2.5), C.R.S.

9. Conditional approval creates a dilemma for local boards because the statutory framework does not provide recourse for a charter applicant's failure to meet a condition in a resolution. In most situations, retroactive or constructive denial of an application for failure to meet a condition conflicts with the statutory deadlines in section 22-30.5-107(2), C.R.S.<sup>2</sup>

10. In addition to the legal problems posed by extending deadlines in this manner, such extension causes practical problems in terms of time for dispute resolution and/or appeal before a charter school's scheduled opening. For these reasons, pre-opening conditions and obligations belong in the parties' negotiated contract. Thereafter, any disputes about the school's compliance would be subject to the contract's dispute resolution terms and section 22-30.5-107.5, C.R.S.

11. Moreover, the Standards for Charter Schools and Charter School Authorizers anticipate that in non-emergency circumstances, a charter school will be provided notice of any performance deficiencies and opportunity for remediation. 1 CCR 301-88, Rule 3.05(D)(2) and (3).

## FINDINGS AND ORDER

12. As evidence of parent and pupil support, CSA's application included letters of support, statements indicating the number of "letters of interest" or "digital interest forms" CSA received, and charts showing the number and residence of interested students. CSA indicated it received 363 letters of interest.

13. By way of a condition imposed in a resolution, the Local Board required CSA to submit intent to enroll forms/letters from prospective students within 20 calendar days. The condition did not specify a minimum number of forms/letters that must be submitted.

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<sup>2</sup> An exception may exist where the parties jointly waive the 90-day deadlines.

14. The State Board finds that this condition was vague and the deadline for performance manifestly unreasonable. The State Board believes that CSA should have a reasonable opportunity to satisfy the conditions imposed by the Local Board's resolution, including a reasonable opportunity to convert the support for CSA evidenced by "letters of interest" to enrollment applications.

15. The State Board finds that the condition and the Local Board's decision not to authorize CSA was contrary to the best interests of the pupils, school district, or community. Accordingly, the State Board hereby REMANDS the Local Board's decision with written instructions for reconsideration thereof.

16. The parties agreed on the record that CSA would not seek, and the School District need not provide, financial assistance in the event of insufficient enrollment.

17. As required by § 22-30.5-108(3)(a), C.R.S., the State Board's instructions and specific recommendations are as follows:

- The State Board recommends that the Local Board and CSA commence charter contract negotiations.
- The conditions in the Local Board's October 26, 2018, resolution should be incorporated into the charter contract. The parties should negotiate reasonable deadlines for performance of obligations and define material contract terms.
- In lieu of the disputed condition, the State Board recommends that the parties negotiate a charter contract term which requires CSA to submit enrollment applications to the School District by August 1, 2019. If at that time CSA has not met its 225-student enrollment goal, CSA may proceed to open with an adjusted budget or terminate its charter contract with the School District. CSA shall not request funding from the School District to subsidize its revenue if fewer than 225 students enroll at CSA. The School District shall have sole discretion as to whether it supplements CSA's funding in the event of an enrollment shortfall.

- Any dispute regarding fulfillment of the contract terms must be addressed in accordance with the negotiated terms of the charter contract and pursuant to statutory dispute resolution procedures.

Dated this 9<sup>th</sup> day of January, 2019.

COLORADO STATE BOARD OF EDUCATION



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Angelika Schroeder, Chair  
Colorado State Board of Education

## CERTIFICATE OF SERVICE

I hereby certify that I have provided a true and correct copy of the within ORDER REVERSING THE DECISION OF CHERRY CREEK SCHOOL DISTRICT NO.5 AND REMANDING FOR FURTHER PROCEEDINGS this 18<sup>th</sup> day of January, 2019, via email address to the following parties:

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Elizabeth Cordial  
Director of State Board Relations

EXHIBIT C

**RESOLUTION**

WHEREAS, Liberty Common School (“Liberty Common”) was originally approved as a charter school under the Charter Schools Act, C.R.S. §§ 22-30.5-101 *et seq.*, pursuant to a resolution adopted by the Board of Education of Poudre School District R-1 on February 24, 1997; and

WHEREAS, after Liberty Common’s initial approval it has operated as a charter school within the District, most recently under a Charter School Contract dated June 23, 2009; and

WHEREAS, the term of Liberty Common’s charter and the term of Liberty Common’s June 23, 2009 Charter School Contract both expire on June 30, 2019; and

WHEREAS, Liberty Common submitted a charter renewal application to the District on November 1, 2018 pursuant to C.R.S. § 22-30.5-110 and District Policy LBD; and

WHEREAS, Liberty Common’s charter renewal application requests a renewal term of 25 years; and

WHEREAS, Poudre School District’s four other charter schools each have an initial or renewal charter terms of five years; and

WHEREAS, C.R.S. § 22-30.5-501(2) provides that the intent of the general assembly in establishing the State Charter School Institute includes providing an alternative mode of authorizing charter schools as a means to assist school districts in utilizing best practices for chartering schools, and under C.R.S. § 22-30.5-511(1)(a) such best practices include renewing charter contracts for periods not to exceed five academic years; and

WHEREAS, the Board of Education has considered Liberty Common’s charter renewal application, documents and information submitted by Liberty Common in connection with its charter renewal application, a December 12, 2018 memorandum from the Assistant Superintendent of Elementary Schools, information provided by District staff, and the Superintendent’s January 2, 2019 recommendation regarding renewal of Liberty Common’s charter.

NOW THEREFORE, BE IT RESOLVED by the Board of Education as follows:

1. The Board reaffirms and determines that: (a) it is committed to dealing with the charter schools it authorizes in a uniform, consistent and even-handed manner, and this includes approving initial and renewal charters and charter school contracts for terms of five years; and (b) all Poudre School District charter schools should be subject to the accountability inherent in the charter renewal process for their performance and operation at least every five years.

2. Liberty Common’s charter is renewed for a five-year term commencing July 1, 2019, subject to and pending satisfaction of the requirement that a charter school contract mutually acceptable to the Board and Liberty Common is negotiated and signed on or before April 23, 2019. If the requirement in the immediately preceding sentence is not satisfied, Liberty

Common shall be prohibited from operating its charter school after June 30, 2019 until a mutually acceptable charter school contract is negotiated and signed.

Adopted this 22nd day of January, 2019.

POUDRE SCHOOL DISTRICT R-1

ATTEST:

By: \_\_\_\_\_  
President, Board of Education

\_\_\_\_\_  
Secretary, Board of Education