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PETER C. PHILLIPS
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August 13, 2014

VIA EMAIL (dlefevre@tarbellpa.com) and U.S. MAIL

David E. LeFevre, Esq.
Tarbell & Brodich
45 Centre Street
Concord, NH 03301

Re: Charter Application

Dear Attorney LeFevre:

Thank you for your letter of August 8, 2014 outlining some of the topics that need to be discussed at the workshop meeting between the School Board and the Educational Choices Foundation scheduled for August 19, 2014 regarding the application for a Windham Charter School. In preparation for that meeting, the Board met last evening to develop input on the application and contract that has been submitted to it in an effort to provide that input to you in advance of the meeting. Please note, this is an outline of what I understand was the "consensus" of the Board's input and questions. In the interest of time, the Board has not reviewed this letter. My understanding and attempted summary of discussions should not be considered to be binding on the Board. The Board will continue to review the contract and application and may develop other issues or specific suggestions regarding these documents. With that said, what follows is the good faith effort of the Board to provide its "initial" input on the documents.

Starting with the application...

B & C – Governance Plan.

There needs to be clarification of what entity will be the contracting party. Is it Educational Choices Foundation doing business as Windham Academy Charter School or is it

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your intention to have Windham Academy Charter School incorporated as a separate organization? Whichever organization is the contracting party, you will need to provide copies of the Articles of Incorporation, a Certificate of Good standing and the Bylaws as part of the application.

RSA 194-b:5, II limits membership of school board members on the Board of Trustees to no greater than 25% of the membership of the School Board or one member of the School Board, whichever is greater. In other words, only one school board member from Windham's five person Board may be a Trustee. The Board would, however, like the application and the contract to commit the charter school board of trustees to retain one member of the School Board as a member of the Board of Trustees. Also, it would like that member to be selected by the School Board for one year terms. The Board would also like the ability to appoint an alternate to that position who can participate in charter school discussions when the appointed member is unavailable.

There are questions regarding the transition provisions from the founding board to the Board of Trustees and concern that the policies necessary to operate the school will be difficult to develop between the time State approval is granted and the charter school opens.

The Board would like the obligation of the Windham Charter School to comply with the provisions of RSA 91-A to be included in both the application and the contract in a simple separate paragraph stating that "the Educational Choices Foundation and the Windham Academy Charter School are subject to and will abide by the right to know law, RSA 91-A."

Section D – Proposed Location

Space for 350 students is inconsistent with the maximum on the next page in paragraph E of 360 students.

In the application and in Article 24 of the contract, the Board would like to add a provision that makes the written designation of a location for the charter school, a condition precedent to both the final approval of the charter school and the inclusion of the article seeking voter approval for the charter school in the School District warrant. Second, the Board would like the application and the contract to acknowledge that the charter school will be responsible for any increased costs borne by the District as a result of relocation of the school from that location.

Section E – Enrollments

The Board's expressed concern that no maximum enrollment per grade is listed, there is no minimum to open the school, and no provision about when the District will be notified of projected and final enrollment of Windham students.

Section F - Curriculum

Questions centered on specifically what subjects in each grades will be taught, what are the standards that will be followed, and what is the delivery model for the middle school grades. Is it your intention that one teacher will teach all subjects?

Will there be an effort to align the curriculum in any way with Windham to ease transition in and out of the charter school?

If a student does not obtain the minimum grade for course accomplishment what happens?

Also, the Board seeks clarification of the goal for teaching diverse learning spaces. Where, when and how will this will happen and how does it apply to elementary students?

Section G - Academic Goals and Objectives

The Board needs to understand what standards will be used as part of the goals. Based on those standards what are the performance goals and objectives. Finally, what is the assessment mechanism for determining that the performance objectives which are based on the standards have been met? In short, what are the objective measurements that will used to measure performance?

Section H – Achievement Tests

The emphasis on age based assessment appears inconsistent with what seems to be the delivery method for education in the charter school.

Also, there are no goals with regard to performance on achievement testing and achievement testing is not tied into measuring learning goals and objectives.

Section J – Staffing Overview

This section and the contract need to contain a commitment on the part of the charter school to comply with the criminal record checks requirements of RSA 189:13-a. Also, on page 17 under staffing, there is a statement that the charter school will recruit “highly qualified” staff. Being a highly qualified teacher (“HQT”) is a designation used by federal and state law regarding the certification of teachers. The application’s language could be confused with the legal definition and it should be changed. The Board would also like you to, at a minimum, require all teachers take and pass the praxis’s exams for their subject matter in compliance with New Hampshire law, regardless of whether they are certified.

Also, under the special education liaison in the first bullet, the obligation to insure that special education students reach their “maximum” potential could create difficulties for both the District and the charter school. The legal obligation of special education is to assure students are provided with a free appropriate public education (“FAPE”).

Section K – Personnel Compensation

The Board would like a commitment that the charter school will be responsible for compliance with the Affordable Care Act and that in the unlikely event that employees of the charter school are aggregated with the School District employee, the charter school will be responsible for providing health insurance availability to its employees in accordance with the Affordable Care Act at its expense and also for any penalty incurred by the Windham School District as a result of the existence or actions of the charter school. This same provision will need to be included in the contract.

Section L – Pupil Transportation

The application should just state clearly that parents of out-of-district students are responsible for their own transportation.

In addition, the transportation delivery model will need to be discussed, developed between the Boards, and then be included in the application and contract.

Section M – Statement of Assurance Related to Non-Discrimination

Add the fact that the school intends to be a secular organization. Also fix paragraph 8 in the contract regarding the need to remain secular.

Section N – Coordinating Special Education Services

The charter school's responsibility for Child Find under the IDEA and the necessity for identifying and referring students to the School District for evaluation under the IDEA needs to be a part of the application and contract. In addition, obligation of charter staff to participate in and develop IEPs and to carry out these plans needs to be included.

Section O – Admission and Enrollment Policies

The lottery provisions need to be clarified. When will the lottery happen? When will enrollment numbers be provided to the School District? Isn't there a necessity for two lotteries – one for Windham students and a second for out-of-district students? Will there be waiting lists? How will they be handled? The provision should also be amended to delete reference to the fact that since the charter is a district sponsored charter school, pupils and residents will have admission preference. Regardless of whether the charter school is District sponsored or state sponsored, Windham students will be given absolute admission preference as long as the school remains in Windham.

Section P – Student Discipline

This section should incorporate the obligations under Ed 317, or, at a minimum, the development of policies that are consistent with Ed 317 to assure due process protection for students. There should also be a commitment to complying with RSA 193:13, RSA 193-D, and RSA 193-F.

Section Q - R – Fiscal Accounting and Budgeting

The Board will review your budget with you. Questions about transportation, the surplus, and the delivery model for the middle school were raised. The Board would like to consider a cap on surplus and an obligation to return any surplus in excess of that cap. The Board has also prepared an analysis of the impact on the District's budget (see Memo enclosed).

Section S – School Calendar

The school calendar needs to be coordinated with the District. If it is not, it will impact transportation costs and the budget. This should also be noted in the contract in paragraph 11.

Section T – Provision for Evidence of Adequate Insurance Coverage

The Windham School District should be named as an additional insured on the charter school's policies. The policies will need to be reviewed by the District's insurance carrier prior to acceptance by the District. Insurance will not be cancelable without notice to the District and insurance will also need to be written on an occurrence basis. The obligations concerning insurance will need to be added to the contract as well.

Section U – Identity of Consultants

Even if the identity of consultants is not known, the type of consultants and the qualification of those consultants that will need to be involved should be identified as part of the application.

Section X – Global Hold Harmless

This clause should match precisely the clause contained in the statute. The same is true for the global hold harmless clause that is contained in the contract as part of paragraph 6. Currently the language in contract paragraph 6 does not track the language in the statute precisely.

Section Z – Provision for Dissolution of the Charter School

There is no provision for how students will be reincorporated into the School District or plan for doing so in Z or (bb). Furthermore, since the charter is supported with District tax dollars the Board feels any assets remaining after dissolution should be donated to the School District.

Section (dd) – Accountability Plan

The Board would like to discuss the accountability plan and would like the specific format and content of that plan developed as part of the application.

Contract Comments.

Article 4 – Reporting and Financial Records

There needs to be a commitment for the charter school to follow RSA 91-A. In addition, the Board would like to adopt the content of the quarterly and annual report that will be required

of the charter school as an appendix to the application and contract. Finally, the charter school should commit that all of its financial officers and those with check writing authority will be covered at all times by fidelity bonds in accordance with Revenue Section 1900 as amended.

Section 6 – Indemnification Provision

The indemnification provision needs to be revised to match the language of the statute.

Article 11 – Attendance

The discussion about the charter school's obligation to match the District's calendar needs to occur.

Article 12 – Services

The contractual requirement for district staff to consult when the school fills out state reports needs to be discussed.

Article 19 – Insurance

As mentioned earlier, the insurance provisions will need to be checked by the School District's insurance carrier and the insurance and fidelity bonds will need to be provided to the District. The District will need to be named as additional insured, the insurance will need to be written on an occurrence basis.

Article 20 – Revocation

The distribution of non-committed assets needs to be discussed. The Board believes it should be to the School District.

Article 22 – Renewal

Notice of an intent to renew the charter needs to be provided. Also, the charter school needs to request that its charter be reviewed. The School Board should not be obligated to renew it without review.

The Board would like another provision to be added to the contract to the effect that no amendments to the contract can occur that increase the financial obligation of the Windham School District without the approval of Windham School District voters.

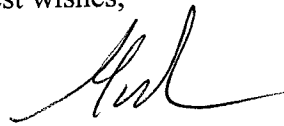
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As I mentioned above, the Business Administrator for the School District has prepared a financial impact of the school on the School District. A copy of that financial impact is enclosed.

The Board looks forward to discussing these matters with the applicants and other issues as they develop. The Board will continue its review and analysis of the application and the proposed contract. I am certain it will have other issues to discuss, but I believe I have captured what was discussed last evening.

Thank you for your attention.

Best wishes,

A handwritten signature in black ink, appearing to read "Graham", written in a cursive style.

Gordon B. Graham

GBG/tl

Enclosure

Cc: Winifred Feneberg, Supt.
Adam Steel, Business Administrator

Windham School District

School Administrative Unit #95

Winfried Feneberg
Superintendent

Adam Steel
Director of Business, Finance, and Operations

Kori Alice Becht
Director of Curriculum, Instruction, and Assessment

Rosalyn Moriarty
Director of Student Services

Carol St. Pierre
Director of Human Resources

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To: Winfried Feneberg, Superintendent

From: Adam Steel, Business Administrator

RE: Proposed Charter School Impact Projections

Friday, August 08, 2014

Dear Mr. Feneberg,

Per the proposal received by the Board from the Educational Choices Foundation (“ECF”) dated June 27, 2014, I have compiled financial impact projections for FY16 for consideration by the Board and the community. My projections are based on many assumptions which I have identified. Whenever possible, I have relied on data provided by the ECF and have assumed their projections to be accurate in terms of enrollment and the breakdown between students who reside in Windham and those who do not.

Table 1 provides an overview of the estimated effect (net increase to District budget) for the first three years of the proposed charter school. Years four and five are similar in estimated effect given the stable enrollment projections provided by the ECF. A detailed copy of all of my calculations are available here:

<https://docs.google.com/spreadsheets/d/1mEmzS9yPNNJikvFX46Gj2cMFFOjJF7EXDC93r8jV-QQ/pubhtml>

The way the charter school law is written (RSA 94-B), the District will be required to submit a tuition payment to the ECF based on a minimum of 80% of the cost per pupil as calculated by the Department of Education using the most recent data. Cost per pupil is a rough calculation of all expenses by the District minus transportation, tuition, construction, and a few other items (see <http://education.nh.gov> for a detailed explanation of the cost per pupil calculation) divided by the average daily membership in attendance. The projections included in this document do not take into account the potential effect of the charter school and its effect on future cost per pupil calculations.

The District will be required to budget for the tuition payment to the ECF based on projections completed by the school board with those costs included in the warrant article that would be placed on the ballot for voter consideration in March, 2015.

Assumptions included in the calculations are as follows:

Assumptions
1. Cost per pupil increases 2% per year (does not incorporate compound effect of removing students from District calculation)
2. 10% of charter school students are not from Windham.
3. Even distribution of students from District going to charter school (e.g. 18 per grade in first year)
4. Average teacher salaries are eliminated
5. One teacher per grade level eliminated in first year, 1.5 for the second year, and 2 for years 3-5.
6. Each elementary bus will add 1 hour of driving time to each route per day (1/2 hour AM, 1/2 hour PM)
7. The District will save \$400 per student in consumables and other miscellaneous costs for each student no longer attending
8. Three special educators will travel an average of 20 miles per day to service students at the charter school.
9. The enrollment projections provided by the ECF are accurate.

Table 1 - Estimated Net Effect of Years 1 - 3

Item	FY16	FY17	FY18
Projected Charter School Enrollment	160	260	320
% of Windham Students	90%	90%	90%
Total Windham Students enrolled in the Charter	144	234	288
Windham Cost per Pupil Projection	\$12,632	\$12,884	\$13,142
Windham Tuition Fee to Charter School	\$10,105	\$10,307	\$10,514
Windham Tuition Payment to Charter School	\$1,455,164	\$2,411,934	\$3,027,905
Average Students per Grade from Windham	18	29	36
Average Fully Loaded Teacher	\$88,642	\$90,415	\$92,223
Teacher Reduction Factor	20	20	20
Number of teaching positions RIF'd (aggregate)	7	12	14
Teacher Savings	(\$620,494)	(\$1,084,978)	(\$1,291,124)
Supply/Consumable Savings Amount	\$400	\$400	\$400
Supply/Consumable Savings to the District	(\$57,600)	(\$93,600)	(\$115,200)
Special Education Travel Costs	\$5,940	\$5,940	\$5,940
Estimated Net Cost to the District	\$783,010	\$1,239,296	\$1,627,521
Transportation Cost Estimate (borne by Charter School)	\$146,025	\$150,390	\$154,890

The net cost to the District will experience volatility based on actual enrollment and the breakdown between Windham residents and non-Windham residents. For example, if 100% of the students enrolled in the ECF school are from Windham, the net effect the first year increases

to \$849,653 (an 8.5% increase). Conversely, if only 50% of the students are Windham residents, the net effect decreases to \$427,796 (a 45% decrease). Total enrollment of the school provides proportional effect to the District.

The only two costs identified in these projections that represent a potential savings to the District to offset the tuition payment to the ECF include a reduction of teachers and a potential savings in consumable supplies. I do not project the District saving money on transportation, utilities, administrative overhead, equipment, or ancillary services.

The projected teacher reductions assume the elimination of one teaching position for every 20 students who leave the Windham School District to attend the ECF school. These projections do not account for Windham residents who do not currently attend a Windham School District school who begin to attend the ECF. For example, if a current Windham resident is either home schooled, attends another charter school, or a private school enrolls in the ECF school, the District would still be responsible for making an 80% tuition payment to the ECF, but would not realize a reduction in enrollment in the District.

The net effect of the elimination of teaching positions in the District to reduce the effect of the ECF tuition payment will have a positive effect on the number of classrooms needed throughout the District, but will increase class size for the classes that remain unless the District chooses not to eliminate as many teaching positions, thereby increasing the financial impact of the ECF.

For example, in year three (FY18), it is assumed the ECF will meet their targeted enrollment of 320 students with 90% (288) students being Windham residents. Assuming 275 of those students are students who were in the Windham School District prior to enrolling in the ECF, that results in a reduction of approximately 34 students per grade level in the District. In my projection, I assumed that 2.5 teaching positions per grade level are eliminated with 3 teachers being eliminated in some grades while only 2 being eliminated in others, based on size of cohort. In this scenario, the number of 4th grade teachers would be reduced from 10 to either 7 or 8 which would have a net effect increase in class size from 23 students to class to either 24.5 or 28. (Calculation is based off of NESDEC enrollment projections dated 11/5/2013 of 230 students in grade 4 during the 2017-2018 school year).

Requested Board Actions

1. None.

Attachment(s)