MEMORANDUM

June 28, 2012

To: Members of the Charter Schools Committee

From: Joseph W. Belluck, Chair, Charter Schools Committee

Subject: Revision to Merge KIPP S.T.A.R. College Preparatory Charter School (Bronx/Manhattan) into KIPP NYC Washington Heights Academy Charter School (Manhattan)

Action Requested

The proposed resolution authorizes a revision to the charter of an education corporation authorized by the Board of Trustees to enable it to merge into an education corporation authorized by the Board of Regents with the Regents’ education corporation being the sole surviving corporation. The resolution also permits certain amendments to the charter agreement and terms of operation of KIPP S.T.A.R. College Preparatory Charter School as will be determined by the Institute to meet the merger requirements of the Board of Regents and/or its designee. As a result of the merger, the SUNY education corporation will lose its separate corporate existence and SUNY will end its authorizing relationship with the school.

Resolution

I recommend that the Charter Schools Committee adopt the following resolution:

Whereas the following charter school education corporations:

- KIPP S.T.A.R. College Preparatory Charter School (“KIPP STAR”) (authorized by the Board of Trustees and located in Manhattan and the Bronx); and

- KIPP NYC Washington Heights Academy Charter School (“KIPP WHA”) (authorized by the Board of Regents and located in Manhattan);

(collectively, the “Constituent Corporations”) desire to merge whereby KIPP WHA would be the sole successor corporation (the “Merger”); and
Whereas the Constituent Corporations further desire to change the successor education corporation’s name to “KIPP NYC Charter Schools,” and to amend their charter agreements and terms of operation such that the schools currently operated by the Constituent Corporations would have terms of operation consistent with the requirements set forth by the Board of Regents in the KIPP WHA charter (collectively, with the Merger, the “Proposed Changes in Program”); now, therefore, be it

Resolved that pursuant to New York Education Law subdivision 2851(1)(b-1)(i), the proposed revisions to: the charter of KIPP STAR to permit the education corporation to merge into KIPP WHA and implement the Proposed Changes in Program, be, and hereby are, approved; and, be it further

Resolved that if the Board of Regents declines to approve or otherwise effectuate the Proposed Changes in Program, KIPP STAR shall not be permitted to seek renewal of its charter by the SUNY Trustees; and, be it further

Resolved that the Charter Schools Committee finds: 1) the Proposed Changes in Program including each of the revisions set forth above and described below needed to implement same, meet the requirements of Article 56 of the Education Law (and all other applicable laws, rules and regulations); 2) approval of the Proposed Changes in Program (together with the proposed the merged KIPP NYC Charter Schools’ charter) would permit the merged KIPP NYC Charter Schools to operate in an educationally and fiscally sound manner; and 3) approval of the Proposed Changes in Program are likely to improve student learning and achievement and materially further the objectives of the New York Charter Schools Act of 1998 (as amended); and, be it further

Resolved that the SUNY Charter Schools Institute (the “Institute”), be, and hereby is, directed to: 1) enter into proposed revisions to KIPP STAR’s charter, such proposed revisions to incorporate the terms and conditions of the Proposed Changes in Program and such assurances and terms as the Institute shall deem necessary and appropriate; 2) thereafter to submit such revisions to the Board of Regents for its review, comment and potential approval; and 3) to make such other and further revisions as are deemed necessary by the Board of Regents or its designee to effectuate the merger and the purposes of this resolution.
Background

Pursuant to a resolution dated June 12, 2012, the Board of Trustees delegated authority to approve charter revisions for the merger charter school education corporations to the Charter Schools Committee (the “Committee”).

The SUNY Charter Schools Institute (the “Institute”) determined that the changes set forth in this resolution require revision of the charter of KIPP S.T.A.R. College Preparatory Charter School (“KIPP STAR”) pursuant to Education Law subdivision 2852(7), which must be approved by the Board of Trustees in its capacity as a “charter entity” under the New York Charter Schools Act of 1998 (as amended, the “Act”).

Pursuant to Education Law subdivision 2857(1), the Institute notified the school district of location of the charter school education corporation regarding the receipt of an application for charter revision (copy on file in the Albany Office of the Institute). As of June 15, 2012, the Board of Trustees did not receive any comments in response.

The Institute reviewed the Petition for Merger, Acknowledgements, Certificate of Merger, Plan of Merger, and Certificate of Approval of Plan of Merger and the operating terms of the merger corporation from a legal perspective and finds them suitable under the Act and applicable law. Therefore, the Institute recommends that the Committee approve the requested revision.

If the merger is approved by the Committee, the revisions effectuating the merger must be submitted to the Board of Regents together with a proposed revision by KIPP NYC Washington Heights Academy Charter School (“KIPP WHA”) (authorized by the Board of Regents) for action by the Board of Regents. If the Board of Regents does not approve the revision of the charter of KIPP STAR to merge with KIPP WHA, KIPP STAR has agreed that it will not subsequently seek renewal from the SUNY Trustees in accordance with the Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools. If the revision is not approved by the Board of Regents, the result of KIPP STAR not seeking renewal in accordance with SUNY Trustee renewal policies means the school will close at the conclusion of the 2012-2103 school year. The merger would not be effective until approved by the Board of Regents.
A Policy Framework for Charter School Replication

Background, Considerations, Legal Context, Research, Implications and Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools

I. Background: Meeting a Demonstrated Need

The State University of New York (SUNY) is the largest charter school authorizer in New York and the largest university-based authorizer in the country. SUNY authorized charter schools lead the state’s charter sector in student achievement on state assessments in mathematics and English language arts. Despite steady growth in the number of authorized schools, demand from New York State families for more seats in SUNY authorized charter schools has far outpaced the rate at which new schools are opening. In fact, the number of students on waiting lists for admissions to SUNY authorized charter schools has increased six fold in the last five years.

SUNY sought a way to be responsive to this demand without sacrificing the rigor and quality of its existing new school application review process. SUNY focused on the replication of existing successful schools as a possible area where efficiencies in its review process could be identified. While SUNY has already approved nearly 40 replications of existing, successful schools, it has largely done so one at a time and generally using the same application, contract, monitoring and renewal policies and practices as it uses for new schools.

There were also other factors that supported SUNY’s focus on replication. The 2010 amendments to the New York Charter Schools Act of 1998 (Act) provided new pathways to charter replication. Charter networks and single successful independent schools across the state seek to replicate on a larger scale and at a faster pace than envisioned by SUNY’s existing authorizing practices.

In order to continue SUNY’s record of granting charters to only the most worthy applicants, SUNY needed to differentiate its authorizing practices to allow for authorizing replicating organizations while maintaining the rigor and accountability for which SUNY is nationally-known.
- **Add a new school to an existing charter.** SUNY can allow the addition of a new school or schools to an existing education corporation whether or not that additional school is an exact replication of the existing school. The Act therefore permits a key legal structure of common governance of multiple schools that heretofore was impermissible, and which SUNY’s authorizing practices mimicked by allowing the same individuals to act as school trustees for multiple education corporations. (SUNY will continue the authorizing practice of allowing individuals to serve on multiple boards and for networks and schools to replicate through multiple education corporations.)

- **Merge or consolidate existing charter schools.** As the Act permits an existing charter to operate another charter school, it follows that the additional charter school could be an existing charter school. Whether the resultant education corporation is one of the two existing corporations (merger) or a new education corporation (consolidation) the combination will have all of the same legal structures as adding a new school to an existing charter. SUNY, additionally, must make certain that corporate requirements and logistics are handled appropriately and within applicable statutes, and that schools are not permitted to merge solely to evade the consequences of student performance accountability (which provides further support for a policy of handling student performance accountability at the school level as opposed to the corporate level).

- **Initially charter multi-school networks.** Combining by design the ability to add a new school to a charter, in this case a newly issued charter, and merger (with another newly issued charter), SUNY will be able to replicate high performing networks that do not currently operate in New York, or create sub-networks of schools intended to be replications that are legally separate from the schools upon which they are modeled. Significantly, this may be accomplished at the application stage.

- **Permit multiple sites for existing or new schools.** Under the amended Act, an individual school can have the same grade or all of its grades (essentially another school) at another site so long as SUNY is willing to reduce the number of charters available to accommodate such a request. While clearly a way to increase the number of high performing seats, SUNY would have to weigh the costs and benefits of facility arrangements that would allow similar structures without the use of a charter. A school engaging in such an arrangement would also have one aggregated accountability plan. When seeking input from the charter sector, SUNY has not seen interest in multi-site arrangement as compared to the above multi-school options under the amended Act.
VI. Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools

The Board of Trustees of the State University of New York (SUNY Trustees) is a “charter entity” or authorizer of charter schools with statewide authority pursuant to the New York Charter Schools Act of 1998\(^\text{14}\) (Act) to approve, oversee and renew education corporations that operate charter schools. The SUNY Trustees created the SUNY Charter Schools Institute (Institute) in 1999 to assist them in carrying out their responsibilities under the Act.

A. Policy Scope

The SUNY Trustees have developed the Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools (SUNY Replication Policies) to guide their charge to the Institute regarding replication and their decisions regarding charter school replication, merger and consolidation including the approval of new applications, the ongoing oversight and evaluation of approved schools, and renewal processes and criteria.

B. Purpose and Policy Statement

The SUNY Trustees support the replication of high quality charter schools for the purposes of creating more quality charter school seats in New York and better allocating educational resources to serve New York students. SUNY recognizes that replication of proven successful charter schools is a critical tool for increasing the number and accelerating the growth of high-quality public schools. SUNY will maintain its commitment to student academic achievement and to holding charter schools accountable for high student performance outcomes as it makes decisions regarding charter school replication.

C. Definitions and Policy Application

Charter school replication is defined broadly in this policy and applies to each of the following arrangements. All of the terms below are generally referred to as

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\(^{14}\) Article 56 of the New York Education Law, as amended.
“replication” in this policy even though that term has a more specific meaning in practice and in context herein.

- **Replication.** The practice of: 1) a single charter school education corporation; or, 2) the same individuals acting as the board of trustees for several education corporations, operating several schools that are each based on the same or a similar model. The term “replication” includes each of the following arrangements.

  - **Multi-school.** The practice of one education corporation with an existing school operating additional schools.

  - **Merger.** The legal combination of two existing education corporations each of which operates one or more schools into a single successor corporation that is one of the original corporations, which will operate more than one school.

  - **Consolidation.** The legal combination of two existing education corporations each of which operates one or more schools into a third successor education corporation, which will operate more than one school.

  - **New Networks.** The initial chartering of new charter school networks through a combination of multiple new applications of the same design and merger of the newly -approved education corporations shortly thereafter.

  - **Multisite.** The practice of operating the same grade or grades at multiple sites under one education corporation with common governance and leadership.

SUNY will consider replication or merger of high quality charter schools whether they are independent schools, schools that have not yet replicated, schools that have already replicated, schools that are part of a network, schools affiliated with a particular management organization or schools that have distinct corporate existence.
D. Policy Statements

*Application and Application Review Processes*

**Policy 1:** SUNY will consider replication applications as described above but will maintain application quality standards for all replication applications, which shall be at least as rigorous as those for traditional new school applications. Replication applications must have a high likelihood of improving student learning and academic achievement.

**Policy 2:** SUNY shall offer an “expedited” or streamlined application process specifically for replication applicants who can demonstrate that they have met specific academic performance criteria, but meeting such criteria shall not alone qualify an application for approval.

**Policy 3:** Applicants may be deemed eligible to enter an expedited application process if they have compiled a *strong and compelling* record of *meeting or nearly meeting* the original school’s accountability plan goals (or similar standards for one or more existing schools not authorized by SUNY) to be determined by the SUNY Charter Schools Institute.

**Policy 4:** Prior to approval of any replication application a due diligence review of the education corporation, its management partners and partner organizations shall be conducted.

**Policy 5:** The decision to approve another individual school for an existing education corporation pursuant to a replication application, or the decision to approve the merger or consolidation of existing education corporations may be left to the sound discretion of the SUNY Trustees’ Education, College Readiness and Success Committee (Committee) or a similar committee. The action of the Committee shall be final; applicants may not appeal to the SUNY Trustees.
Policy 6: The SUNY Trustees or their delegates will maintain close oversight of the replication process through specific approval of each new education corporation or school which is part of a replication, i.e., the SUNY Trustees will not delegate such approval to an education corporation, charter management organization or network.

Oversight, Evaluation Revocation and Renewal

Policy 7: The performance of each school within an education corporation will continue to be assessed based on its own student achievement data in accordance with the SUNY Renewal Practices, and not based on an aggregation of data across the corporation or network. Each individual school will continue to face a high stakes closure decision in alignment with the SUNY Renewal Practices.\(^{15}\)

Policy 8: The closure of an individual school or site operated by an education corporation that operates multiple schools or sites (as opposed to closure of an entire education corporation as described in the SUNY Renewal Practices\(^{16}\)), may be handled by the Committee in conformity with the SUNY Renewal Practices. The full SUNY Board would retain authority to not renew an education corporation or to close the last (or only) school in a network or single school education corporation.

Policy 9: Charter school education corporations shall not be permitted to avoid the consequences of school closure by attempting to merge or consolidate with a higher performing education corporation. This prohibition would extend to schools authorized by other charter entities in New York State seeking to merge or consolidate with a SUNY authorized charter school.

\(^{15}\) Practices, Policies and Procedures for the Renewal of Charter Schools Authorized by the Board of Trustees of the State University of New York dated September 15, 2009 (as may be revised from time to time) available at http://www.newyorkcharters.org/schoolsRenewOverview.htm.

\(^{16}\) The Committee will review and revise the SUNY Renewal Practices as needed to accommodate the renewal of education corporations operating more than one school.
E. **Supplemental Practices, Policies and Procedures**

The SUNY Replication Policies provide an overview of the policies governing approval, monitoring and renewal of replication and describe its central elements; they do not delineate every detail of the process employed by the SUNY Trustees, the Trustees’ Education, College Readiness and Success Committee or the Institute. Supplemental, interstitial practices and procedures may be required and employed to ensure the integrity, comprehensiveness and excellence of its charter school program and replications in particular. Such amendments and supplements, if material, may be made either through action of the SUNY Trustees or, where appropriate, the Education, College Readiness and Success Committee or the Institute.

F. **Amendment, Effective Date, and Scope**

The SUNY Replication Policies may be amended by the Trustees’ Education, College Readiness and Success Committee or by the SUNY Trustees, as the case may be. Amendments shall be effective upon passage of a duly approved resolution by either body or upon such date as may be set forth therein.

If one section or clause of the SUNY Replication Policies is found to be unlawful by a court of competent jurisdiction it shall not affect the other parts of the SUNY Replication Policies or references thereto in charter agreements.

The SUNY Replication Policies do not limit the discretion or authority of the SUNY Trustees as a charter entity as set forth in the Act.