



**STATE BOARD OF EDUCATION
TRUSTEES OF BOISE STATE UNIVERSITY
TRUSTEES OF IDAHO STATE UNIVERSITY
TRUSTEES OF LEWIS-CLARK STATE COLLEGE
BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO
STATE BOARD FOR PROFESSIONAL-TECHNICAL EDUCATION
TRUSTEES FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND**

**APPROVED MINUTES
STATE BOARD OF EDUCATION
August 17, 2010, 2:00 PM
650 West State Street
Clearwaters Conference Room
Boise, Idaho**

A special meeting of the State Board of Education was held August 17, 2010 in Boise, Idaho at 650 West State Street in the Clearwaters Conference Room.

Present:

Richard Westerberg, President	Ken Edmunds, Vice President
Don Soltman, Secretary	Emma Atchley
Milford Terrell	Rod Lewis
Tom Luna, State Superintendent of Public Instruction	

Absent:

Paul Agidius

Tuesday, August 17, 2010

Call the meeting to order

We will now reconvene the August 11-12, 2010 meeting of the State Board of Education to continue deliberations on the matter of the Nampa Classical Academy's (NCA) appeal of their Charter Revocation. Board President Westerberg called the meeting to order at 2:04 p.m.

Approve the agenda as posted

An additional agenda item was presented by Milford Terrell.

Mr. Terrell indicated that yesterday Board staff received a request for Board approval of a negotiated agreement between BSU and ACHD. This request was received after the agenda was posted.

Mr. Terrell asked for unanimous consent to amend the agenda to add an item to approve an agreement between BSU and the Ada County Highway District (ACHD). The item was not included in the original posted agenda because Board staff learned of the necessity for Board approval yesterday afternoon, and the agreement must be approved before August 24, 2010. The board provided unanimous consent.

M/S (Terrell/Atchley): A motion to approve the request by BSU to execute the agreement with ACHD for the vacation of the right of way as revised to meet certain conditions. Based on the form, Exhibit A, to the contract, it is the intent of the parties, and that of the Board, that in the event there is a conflict between the Board and the agreement, the agreement supersedes that of the Board. Motion passed unanimously.

NCA Hearing Continuation

Each side has had an opportunity to give testimony at the August 11th hearing. The Board has had an opportunity to review the testimony and the submitted documents. The Board has also received additional documentation submitted by NCA and the response to that documentation submitted by the Public Charter School Commission.

The floor is open for additional Board member discussion or a motion.

Rod Lewis asked representatives of both parties to come forward. Representatives of the parties are:

- Michael Gilmore, Deputy Attorney General
- Terrance La Masters, Chairman of the Board for NCA
- Mike Moffett, Vice Chairman of the Board for NCA

The hearing officer based his opinion on the following two tests:

- Fiscal stability on a short-term basis to serve current debt.
- Fiscal stability as a going concern and the ability to meet obligations for the next fiscal year.

The hearing officer found that NCA was not sound based on the first test, as based on school year 2010. The hearing officer was unable to conclude that the charter school had not met the long-term test. The new evidence presented to the Board indicated that NCA was worse off than the hearing officer had been aware. Based on the current fiscal year, there is a deficit carryover of between \$600,000 and \$700,000. Does this fiscal deficit carryover affect the long-term fiscal stability of NCA and how does NCA intent to service this debt in the 2011 fiscal year?

Mr. La Masters reviewed the documents previously provided to the Board of Education on Monday, August 16, 2010. Salary runoff refers to salary to teachers, payable in July and August, for fiscal year 2009-2010. The \$150,000 loan in 2009-2010, with original terms of 5 points, 15% interest to be paid in 2010-2011. This loan was renegotiated to zero points, 12% interest. Interest payments begin September 1, 2010 and continue

monthly. Principal payments begin September 2, 2011 and the loan will be paid off in 2012.

Mr. Lewis indicated that other obligations total approximately \$200,000. How does NCA plan on paying these creditors on a timely basis?

Mr. La Masters indicated that NCA has not yet renegotiated with all creditors. A cash flow summary was provided and Mr. La Masters reviewed this document. This document was based on NCA being open in July.

Ken Edmonds expressed concern that NCA is using 2011 monies until a time when the budget catches up. In essence, 2011 funds are being used to pay 2010 expenses.

Mr. La Masters said this applies only for 2011, with the exception of salary carryover which goes into 2012.

Superintendent Tom Luna stated that schools have received funds to open this fall. If the revocation is reversed, and money for 2011 is used for past debt, how does NCA open for school?

Mr. La Masters said that a cash flow projection was done through the end of next year that would have enough money based on this cash flow projection, and does include the 2011 budget.

Mr. Luna said that the Legislature started "forward funding" schools where a majority of the money is being paid upfront, with smaller payments later. NCA will receive 70% of their 2011 funding upfront. Mr. Luna's concern is that too much of that upfront money will be used to pay off 2010 debts, resulting in a cash flow crunch in four months. What is the anticipated distribution from the state?

Mr. La Masters said that the first payment is \$774,962.

Mr. Luna asked, out of that payment, how much will be spent on previous debt?

Mr. La Masters stated approximately \$370,000, which includes July, August and September budgets.

Mr. Luna said previous discussions included \$100,000 to retire old debt, now that figure is up to \$370,000. Mr. Luna asked how NCA is going to operate until they get the next check on approximately one-half of the monies allocated for 2011.

Mr. La Masters stated the cash flow on his cash flow projections are based on budgeted numbers through September.

Mr. Luna asked if NCA is using October monies for September expenses.

Mr. La Masters said that with the first distribution, October is the only negative month at (\$54,504). At year end, there is a deficit of (\$100,000), which may be taken care of with an anticipated jobs bill. A board member will be added to NCA's Board that has financial experience.

Mr. Lewis asked about the revenue side of the equation and a budget based on over 500 students. The charter limits students at 500.

Mr. La Masters does not have a copy of an amended charter, but indicated that NCA's charter was amended to 560 students, second year 630, and the third year 690. This year NCA will have an anticipated student return of 480. The lottery contains 280 students and a waiting list of 108 students. There were 572 students enrolled this past year. NCA has supporting documents, but no approved final amended charter.

Mr. Luna said the question remains that there is an issue of trust. There have been documents and plans put before the commission only to see those plans and commitments not carried out. Please address this issue of trust and how the Board can have confidence that the plan you put forth will be carried out.

Mr. La Masters indicated that in the past NCA has not put forth documents timely and has not performed. These faults have been recognized over the past year and NCA is trying to change. NCA, as a board, is listening. At the close of the year, NCA took the PCSC's advice and started to see them as a resource versus an adversary. NCA has a potential board member present today who can provide sound financial advice to the NCA board. NCA will move to the policy governance model and allow the administration of the NCA Academy to do their job.

Mr. Lewis asked in that regard, how were the financials handled previously and in what structure. How has that changed to present day?

Mr. La Masters said that the financials were handled by a management company. It was determined that no one was onsite to provide oversight. There were no financial documents maintained to give to the Commission in a timely manner. A financial review committee was formed. It was determined that those accountable to the budget did not know what was budgeted and were not held accountable to that budget. Mr. Greenwood, certified CPA, was hired for financial accounting. NCA has changed in that those who create the budget are those that report on the budget and are held accountable to it.

Mr. Lewis asked the extent to which teachers are available to begin school this fall.

Mr. La Masters said that 14 remaining teachers are available immediately to begin. NCA lost 10 teachers from last year. In June, NCA interviewed 9 teachers that are still available and 7 more applied for positions.

Mr. Terrell would like to hear from the potential board member and his credentials.

William Perrin has a background as CEO and President of National Purchasing Organization (NPO) in California and prior to that with Baxter Healthcare. NPO worked with healthcare on cost containment and worked with nursing homes on Medicaid funding. As a member of the board he will not be passive. This is a difficult situation and is not unsolvable. The first responsibility is to the taxpayers of Idaho, students, and teachers. The demand exists in Nampa if the Board allows this school to continue.

Mr. Terrell asked if Mr. Perrin has credentials as a CPA.

Mr. Perrin has a degree in economics and reviewed all financials as a business owner.

Board President Westerberg asked Michael Gilmore to provide comments.

Mr. Gilmore addressed the enrollment capacity of NCA. Ms. Baysinger checked the Commission's records for amendments to the charter and checked with State Department of Education, and found there are no amendments to the NCA charter. Mr. Gilmore reviewed Idaho statute covering enrollment changes of 10%. All changes of over 10% must be approved by the Commission. Commission meetings for 2009 and 2010 do not include a charter amendment for NCA. NCA has violated this statute by adding more than 10% of their enrollment without oversight by the Commission.

Mr. Terrell asked, when there is a new charter school set up, they do have a period of time they go through adjustments and do not live up to the letter of the law. The fact being that, even though the law is there as stated, the Commission allows some give and take while these charters have time so they do know the statutes.

Mr. Gilmore indicated that there are different infractions and this is a statutory procedure that was not followed.

Mr. Terrell indicated that the law is the law. The Commission has let people outside of the document before and the Commission has allowed technical violations.

Jennifer Swartz was not present at the hearing last week. However, in her experience as counsel to the Commission and staff, there are very few violations that are let go. Notices of defect are written and the defects are cured. Ms. Swartz is not aware of any instances where the Commission was informed of a violation of statute or charter and that violation was let go. A corrective action plan is initiated and infractions are expected to be resolved. It is not the Commission's practice to let things go.

Mr. Terrell asked if a school is found to have an infraction, are they given ample time to resolve it. The increase of students has not been written up as a deficiency at this time. When a deficiency is written up, is the charter school given time to cure the defect and whether or not NCA was given an ample amount of time in this case.

Mr. Luna said the number of students attending NCA is a matter of record and he was surprised that the number attending NCA is news to the Commission. Mr. Luna asked Mr. Gilmore to respond to Mr. Lewis' reading of their original charter that indicates additional grades were expected to be added to NCA.

Mr. Gilmore indicated the following is listed in NCA's charter; 500 students in year two and 550 students in year three. What NCA is proposing is 580 in year two.

M/S (Lewis/Terrell): A motion to invoke the Board's authority under Idaho Code §33-5207(5)(b)(ii) and under the Idaho Administrative Procedure Act (Idaho Code title 67, chapter 52), as follows: (i) to stay the revocation decision issued by the Idaho Public Charter School Commission (Commission), thereby permitting the Nampa Classical Academy (NCA) to continue operating as a public charter school and to continue receiving funding to which it would be entitled, and (ii) to remand this matter back to the Commission, which shall have authority to further review and act as follows. The Commission is directed to continue monitoring and reviewing the operations of NCA on the issue of whether NCA is fiscally sound, as provided in Idaho Code §33-5209(2)(d)(i) and (ii). Specifically, in light of new evidence presented to and considered by the Board on the financial condition of NCA, the Board concludes that NCA should be permitted reasonable opportunity to demonstrate to the Commission its ability to service all its upcoming financial obligations and to service its debts during the next fiscal year. Accordingly, the stay of the Commission's revocation decision shall remain in effect for the remainder of this state fiscal year, at which time the Commission shall determine if the charter shall be reinstated. *Motion failed with a vote of 3-4 (Soltman, Westerberg, Atchley, and Edmunds voted nay).*

Emma Atchley is unable to support this motion. How can a school which has a 17% increase in enrollment, and a 48% increase in debt, succeed?

Richard Westerberg agreed with Ms. Atchley and felt that NCA's documentation of revenue is overstated and that expenses are understated. NCA has not been able to meet short-term or long-term debt.

M/S (Soltman/Atchley): A motion to deny the appeal and to uphold the decision of the Idaho Public Charter School Commission (Commission) on the grounds that the Nampa Classical Academy (NCA) failed to establish that the Commission did not appropriately consider the revocation, and/or acted in an arbitrary manner in determining to revoke the charter. *Motion passed with a vote of 4-3 (Lewis, Luna, and Terrell voted nay).*

M/S (Terrell/Atchley): A motion to adjourn. *Motion passed unanimously.*

Meeting was adjourned at 4:02 p.m. Mr. Luna added comments regarding the gravity of closing a school.