



COLUMBUS | CLEVELAND
CINCINNATI-DAYTON

BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215-4291
MAIN: 614.227.2300
FAX: 614.227.2390

www.bricker.com
info@bricker.com

Nicholas A. Pittner
614.227.8815
npittner@bricker.com

Susan B. Greenberger
614.227.8848
sgreenberger@bricker.com

December 15, 2009

VIA ELECTRONIC AND REGULAR U.S. MAIL

Matthew J. DeTemple, Chief Legal Counsel
Ohio Department of Education
25 South Front Street
Columbus, OH 43215

Dear Matt:

As you know, this office represents a number of conversion community schools. A significant number of our clients have recently received similar letters from the Ohio Department of Education (“ODE”) asserting that the community schools “...do not meet the criteria for operating as an independent, autonomous conversion community school.” A copy of one of those letters is attached. The ODE letters establish requirements for entirely separate governance, administration, instructional staff, and fiscal officers, as well as separate facilities entrances and signage as a condition of continued operation of the community schools. In sum, the ODE is demanding a degree of separation between public school districts and the community schools they sponsor that represents a substantively different model than that which has, with longstanding ODE approval, been, and continues to be, utilized by our clients. In addition, ODE is now requiring that the conversion community schools design and submit to ODE within 90 days entirely new operating models that comply with ODE’s new demands.

If the conversion community schools comply with these demands, the result will be schools that are less efficient, less capable of innovation, less successful in terms of student achievement, and, ultimately, economically unsustainable. The economies of scale that have been realized in the past by both the community schools and their school district sponsors as the result of the sharing of resources will be lost, and the innovative options that have been created through the collaboration of school districts and community schools will likewise be lost, absent a needless and highly improbable infusion of new public funds for the purpose of duplicating resources that are already available. As a practical matter, ODE’s enforced separation of conversion community schools and their school district sponsors will force the closure of these community schools (with further harm likely in terms of federal funds that require the state to *support* rather than to impede the existence of these schools).

Moreover, ODE’s letters threaten further consequences by noting that the schools could be required to repay federal grant funds. In the case of

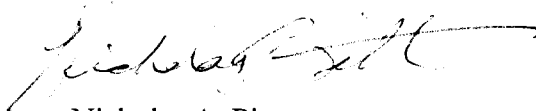
Matthew J. DeTemple
December 15, 2009
Page 2

many of these schools, the grant funds have long since been spent – pursuant to budgets approved by ODE – and to even suggest that repayment might be demanded is a threat of significant fiscal proportions.

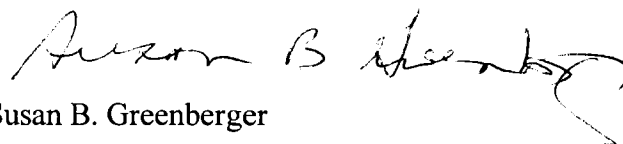
Because of the significant ramifications of ODE’s position, we request that you identify for us the specific authorities relied upon to support the conclusions expressed in ODE's recent letters. First, upon what specific authorities does ODE rely for its conclusion that the degree of “separateness” demanded in the letter is in fact required by Ohio law? Second, exactly what is the legal origin of the USDoE criteria alluded to in the letter? If ODE has received communication from USDoE that would in any way support the conclusions set forth in your letter, we would appreciate receiving copies of those communications as well as any other federal or state authorities that are being relied on. Please consider the communications information requested above a public records request.

In addition to the foregoing, we would like to have the opportunity to meet with you and the appropriate decision-making authorities within ODE to discuss the ramifications of ODE’s position regarding conversion community schools and to consider whether or not there may be other ways to attain ODE’s goals. We are certain that you can appreciate the very serious consequences of the position taken by ODE and the concern that position has raised with our clients. We believe that there is an urgent need to clarify these questions at the earliest possible time, and we hope to hear from you no later than the end of the day on December 18. Thank you for your attention to this very important matter. Please feel free to call either of us if you have any questions.

Very truly yours,



Nicholas A. Pittner



Susan B. Greenberger

Enclosure

cc: Mark Michael
Deborah Delisle
Deborah Cain
John Stanford