



BUFFALO BOARD OF EDUCATION
INTEROFFICE MEMORANDUM
FINANCE DEPARTMENT – ROOM 708 CITY HALL

DATE: March 27, 2019

TO: Buffalo Board of Education

CC: Dr. Kriner Cash, Superintendent

FROM: Geoffrey Pritchard, Chief Financial Officer *GFP*

SUBJECT: **Charter School Closures and Concerns about Disposition of Remaining Funds**

The Buffalo News published an article on February 25, 2019, which accurately represented concerns that the Buffalo City School District has about closed public charter schools. We believe these concerns resonate with anyone interested in the protection of taxpayer funds and ensuring the strict utilization of our school aid for its intended public purpose – the education of children in the City of Buffalo. Similar concerns were also reiterated by the Buffalo News in an editorial on March 3, 2019.

The Buffalo News published the February 25th article based largely on an impact memo written by me over a year ago, in January 2018, which outlined several concerns related to public charter schools (**see Attachment 1 for an excerpt discussing closed charter schools**). Below are the important points conveyed in both the memo and article:

- 1) Public charter schools, which are funded by taxpayers through tuition paid by public school districts are able to continue to operate and spend millions of dollars in public funds, for years after the schools have closed and the students are gone. The public purpose of those closed charter schools has ended once the last students left, but the public charter schools management teams are able to continue to run those schools for many years after the last students left. The District has raised the alarm for years, leading to a 2013 State law that required assets be returned to the District of record upon closure of public charter schools. Additional legislation or regulation, however, is required to ensure there is an enforcement mechanism to ensure this happens. An independent receiver must be appointed to safeguard the public funds of closed and closing public charter schools. We proposed state legislation to that end.
- 2) When Pinnacle charter school closed in 2013, there was approximately \$3.0 million in available cash at June 30, 2013, per their audited financial statements. After accounting for liabilities and receivables and other known changes (primarily cash receipts subsequent to June 30, 2013, further outlined below and in the attachments), **a net cash**

balance of approximately \$2.0 million could have been available for return to the District, reduced only by necessary closing costs. In November 2018, the District received a check for \$262,000, \$1.7 million short of the \$2.0 million.

The attorney for Pinnacle Charter School subsequently made several statements to the News that were published in a follow-up article in the Buffalo News on March 4, 2019 strongly challenging accuracy of the accounting in the original article. The attorney for Pinnacle claimed that the cash outflow was in payment of \$1.2 million in liabilities in expenses to vendors, the teacher retirement system, and for other professional services to close out the school, \$538,000 in severance, and \$1.1 million in payments to the District in September 2013 and \$262,000 in November 2018, along with \$12,000 to other Districts. **To quote the Buffalo News: “The sum of those payments, Polowitz said, would account for the total \$3.1 million.”**

I have re-checked our numbers, and have documented support for them in Attachment 2.1 to 2.5. The attorney for Pinnacle did not provide a complete accounting of the funds available. Pinnacle received at least \$1.3 million in additional cash shortly after June 30, 2013. Pinnacle’s attorney failed to account for the fact that the District made a \$1.1 million payment to Pinnacle (cashed by Pinnacle on July 15, 2013, in the following fiscal year), which would have increased their June 30, 2013 cash balance to \$4.1 million in July 2013. Further, Pinnacle had \$360,000 in accounts receivable that would have likely been converted to cash in July or August 2013 (typically 60 days is the timeframe), **bringing available cash funds of Pinnacle to approximately \$4.4 million by July or August 2013, not the \$3.1 million quoted by the Pinnacle attorney above. We don’t know what costs Pinnacle paid for using the \$1.3 million in additional funds that were not explained or acknowledged by their attorney in the March 4, 2019 News article. When you add the \$262,000 Check to the District and the \$538,000 non-contractual severance payments to this \$1.3 million, you come right back to the \$2.0 million net available funds discussed in the original February 25th article.** It still appears \$1.7 to \$1.8 million was spent by Pinnacle to close as was outlined in the original February 25th article. This is further outlined in the attached spreadsheet.

The statements and omissions from the attorney for Pinnacle, in light of facts above, have made a far better argument than the District could have made alone for the need to appoint an independent receiver in closing charter schools, and an audit of all recent charter school closures. We will again request that our local delegation continue to press for legislation or regulatory change to protect the public dollars at closing and closed public charter schools. Further, we will request that the Office of the State Comptroller, using its audit powers, investigate the disposition of funds of closing and closed charter schools.

****Note:** There are three other closed or closing charter schools in Buffalo (Community Charter School – closed in June 2014, Oracle Charter School – closed in June 2018, and Aloma D Johnson Charter School – anticipated to close in June 2019), where the District has not received any information with respect to their dissolution. Presumably the two that have already closed are still operating in some capacity pending the submission and approval of a dissolution petition.

Attachment 1

Charter School Closures (excerpt from the January 19, 2018 Memo)

Prior to July 1, 2013, charter schools that were closed were able to liquidate assets as they saw fit, with some issuing RFPs to other charter schools to allow them to request assets, completely independent of where the attending pupils came from and ultimately went to in the following year. Since July 1, 2013, State Law requires that public assets remaining after the closure of charter schools be returned to their student's home district. However, the current law appears not to have the strength necessary to protect assets during the dissolution period to maximize the funds returned to the home districts of the students. The following paragraphs describe what happened when Pinnacle Charter School was closed. In addition to the fiscal items below, there were audits identifying that some furniture and equipment went missing upon the school's closure as no independent receiver was there to prevent it.

In August 2013, the New York Court of Appeals ended Pinnacle Charter School's injunction against its closure, and immediately thereafter the New York State Education Department ordered the school to close. If this was analogous to a bank closure, at that time, an independent financial receiver would have been put in control of the operations of the now closed school in order to maximize the return of the assets.

As of June 30, 2013, Pinnacle had \$3.0 million in cash, \$0.4 million in receivables, and \$1.5 million in property and equipment. Offsetting this was \$1.2 million in liabilities and \$3.8 million in unrestricted net assets. Giving no value to the property and equipment and \$0.2 million to the receivables (50%) and deducting \$1.2 million in liabilities, there should have been as much as \$2.0 million in net cash upon conclusion of their final year of operations. As was outlined in the charts on page 3 and 4, most charter schools have significant net asset and cash reserves, which were generated primarily through public dollars.

On July 5, 2013, the District remitted \$1.1 million to Pinnacle for the first payment of the 2013/14 fiscal year, which would have increased Pinnacle's cash balance to \$4.1 million. This was subsequently returned to the District in September 2013.

On the September 30, 2016 Statement of Net Assets in Liquidation, Cash balances had declined by another \$2.1 million from \$3.0 million to \$0.9 million, while liabilities of \$0.7 million remained, leaving net assets of \$0.2 million. Included in that \$0.7 million liability balance at September 30, 2016 was approximately \$0.6 million of severance payments not contractually required at the time the school was closed. (Months after the school was closed, on December 9, 2013, the Pinnacle Board of Trustees executed an agreement with the New York State United Teachers to pay severance to teachers not hired/retained by the District. There was no contractual requirement to do so at the time of closure, but the Pinnacle Board of Trustees was able to do so, nonetheless. This amounted to approximately \$0.6 million for all affected employees.)

The remaining net assets in liquidation were \$0.2 million as of September 30, 2016. At least \$2.0 million in payments were made or liabilities were accrued subsequent to the school's closure, including the \$0.6 million in severance costs, approximately \$0.7 million in liabilities

that appeared on their books between July 1, 2013 and August 31, 2013 and \$0.7 million in costs from September 1, 2013 to September 30, 2016.

In September 2015, the District was given an opportunity to comment on Pinnacle's draft dissolution plan (with financial statements dated July 31, 2015) by the New York State Education Department Charter School Office and recommended that the severance payments be denied based on the fact they were not contractually required at the time the school was closed, not necessary in order to dissolve the school, and do not help the students. Additionally, it was not clear what other liabilities were accrued subsequent to June 30, 2013 to deplete the cash balance of \$3.0 million at June 30, 2013 down to \$1.0 million at July 31, 2015, and ultimately to \$0.9 million by September 30, 2016, since the school had ceased operations years earlier. Pinnacle was ultimately given consent for judicial dissolution; however, the District has not received any remaining net assets in liquidation as of January 2018.

Community Charter School closed after the 2013/14 fiscal year and the District has received no information related to their dissolution as of January 2018, but continues to follow up.

As of January 2018, Oracle Charter School has been given notice by SUNY's Charter School Institute that it is not recommending renewal of their charter.

The District requests the State Legislature review the legislation related to closures of charter schools (Section 2851 of Education Law), and potentially call for an independent receiver or some other mechanism to ensure that public funds at the time of a charter school's closure are protected and returned to the district of residence where those funds originated from, as is required by the existing legislation.

Attachment 2.1 through 2.5 – Pinnacle cash flows and related documents

Attachment 2.1 - Cash Flows

Pinnacle Charter School Analysis - Following the Cash Transactions		
	(millions)	
Cash on hand at 6/30/2013 (audited by Lumsden & McCormick)	2.96	established fact; see audited financial statement in attachment 2.2
Accounts receivable at 6/30/2013 (audited by Lumsden & McCormick) [becomes cash]	0.36	established fact; see audited financial statement in attachment 2.2; Mr. Polowitz ignored that this would become cash
Tuition payment 1 for 13/14 - dated 7/5/2013 and cleared the bank on 7/15/2013 (after 6/30/2013; before closure confirmed)	1.11	established fact; see check copy in attachment 2.3; this is a fact that Mr. Polowitz seemed to ignore. Pinnacle could not have included this as cash at 6/30/13 under generally accepted accounting rules - to do otherwise could be fraud
Total cash available in July/August 2013	4.43	
Liabilities at 6/30/2013 (audited by Lumsden & McCormick) - paid at some point after 6/30/13	(1.24)	established fact; see audited financial statement in attachment 2.2
Return of cash to tuition payment to Buffalo - 9/3/2013	(1.11)	established fact; see check copy in attachment 2.4
Return of post-dissolution funds to Buffalo - 10/12/2018	(0.26)	established fact; see check copy in attachment 2.5
Return of post-dissolution funds to other districts - 10/12/2018	(0.01)	Mr. Polowitz statement to News; appears reasonable
Remainder - this is presumably the costs incurred to close and dissolve Pinnacle	1.81	
Severance package	(0.54)	Amount from Mr. Polowitz statement to the News. The District challenged this as a gift of public funds; it was not legally or contractually required, and not a necessary cost to close the school
Remainder - cash disbursements that Mr. Polowitz failed to disclose to the News	1.27	What was this money used for?
Disbursements related to the closure of the school:		
Unidentified	1.27	from above
Severance	0.54	from above
Payments to BOE and other districts	0.27	from above
The net cash available at closure to be returned to District or spent on dissolution	2.08	This is the amount (rounded) in the February 25th article

**Attachment 2.2 - Audited Balance Sheet from Pinnacle showing cash at 6/30/2013
(Obtained from Pinnacle)**

PINNACLE CHARTER SCHOOL		
Balance Sheets		
June 30,	2013	2012
Assets		
Current assets:		
Cash	\$ 2,958,676	\$ 2,504,095
Grants and other receivables (Note 2)	355,865	312,058
Prepaid expenses	113,795	124,290
Bank deposit for loan collateral (Note 4)	-	743,618
	<u>3,428,336</u>	<u>3,684,061</u>
Deposits	139,618	139,618
Property and equipment, net (Note 3)	1,490,984	1,562,995
Other:	<u>12,284</u>	<u>18,428</u>
	<u>\$ 5,071,222</u>	<u>\$ 5,405,102</u>
Liabilities and Net Assets		
Current liabilities:		
Current portion of long-term debt (Note 4)	\$ 7,221	\$ 706,293
Accounts payable	201,206	236,242
Accrued expenses	1,030,161	955,582
	<u>1,238,588</u>	<u>1,898,117</u>
Long-term debt (Note 4)	18,805	26,491
Net assets:		
Unrestricted	<u>3,813,829</u>	<u>3,480,494</u>
	<u>\$ 5,071,222</u>	<u>\$ 5,405,102</u>

See accompanying notes.

Attachment 2.4 Refund of overpayment in September 2013. When not understood in context of the corresponding cash receipt in attachment 2.3, a reader of the March 4, 2019 News article could have been led to believe that Pinnacle's actual costs to close the school were reduced by this payment to the District. However, it is clear this was a refund of the \$1.1 million payment from the District to Pinnacle made POST-June 30, 2013 and NOT a payment made from the \$3.0 million in cash available in the June 30, 2013 Audited Balance Sheet of Pinnacle.

ORIGINAL DOCUMENT PRINTED ON CHEMICAL RESISTIVE PAPER WITH MICROPOROUS BORDER

PINNACLE CHARTER SCHOOL
115 ASH STREET
BUFFALO, NY 14204



10-4/220 NUMBER

7767

PAY TO THE ORDER OF: One Million One Hundred Eleven Thousand Eight Hundred Three and 27/100*****

DATE: 9/3/2013

AMOUNT: ***1,111,803.27

Buffalo Board of Education
818 City Hall
Buffalo, NY 14202

Jude Mangal

VOID WHEN COPIED

THIS DOCUMENT CONTAINS VOID SENSITIVE INK. TOUCH OR WETNESS. HEAT. THE IMAGE DISAPPEARS WITH HEAT.

PINNACLE CHARTER SCHOOL		Buffalo Board of Education		NUMBER	
Invoice No.	Invoice Date	Gross Amount	Discount		
BUF090313	9/3/2013	1,111,803.27	0.00	9/3/2013	7767
		1,111,803.27	0.00		1,111,803.27

Attachment 2.5 Final Payment of unspent funds to the District in November 2018. This was the amount returned to the District after dissolution.

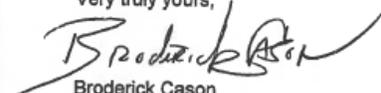


October 19, 2018

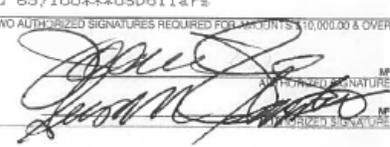
Dear district:

As a result of the Pinnacle Charter School Certificate of Dissolution pursuant to section 1103 of the New York Not-for-Profit Corporation law, section 219 of the New York Education Law and article 56 of the New York Education Law, enclosed is a check which represents your districts proportionate share of the remaining net assets of Pinnacle Charter School. Your districts proportionate share is based on a snapshot of the final enrollment full time equivalents of students who attended Pinnacle Charter School for the 2013-2014 school year.

Very truly yours,


Broderick Cason
Board Chair

1231 Delaware Avenue, Suite 6
Buffalo, NY 14209

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK		OFFICIAL CHECK		HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK	
M&T Bank Buffalo, NY 14240				102028327-2	
PINNACLE CHARTER SCHOOL REMITTER		DATE 10/12/2018		10-4/220	
PAY TO THE ORDER OF		BUFFALO PUBLIC SCHOOLS		\$ 262,418.65	
***TWO HUNDRED SIXTY TWO THOUSAND FOUR, HUNDRED EIGHTEEN and 65/100**USDollars					
#30 - One M&T					
TWO AUTHORIZED SIGNATURES REQUIRED FOR ACCOUNTS \$10,000.00 & OVER					
					

E-mail: gpritchard@buffaloschools.org