



CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

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January 9, 2012

Joel Rose  
Chief Executive Officer  
New Classrooms Innovation Partners  
1250 Broadway  
New York, NY 10001

Re: Conflicts of Interest Board Case No. 2011-873

Dear Mr. Rose:

This is in response to your letter, dated December 8, 2011, to the Conflicts of Interest Board (the "Board"), and subsequent communication with Board staff, requesting an opinion concerning the impact of the post-employment restrictions of Chapter 68 of the City Charter on your proposed activities, in light of your departure from the New York City Department of Education (the "DOE").

You have advised the Board that you resigned from the DOE on March 31, 2011; that at the time of your departure, you were the Chief Executive Officer for the School of One program (the "Program") within the DOE's Division of Strategy and Innovation; that the Program is an initiative that uses technology to provide DOE students with highly individualized and innovative classroom instruction; that in this capacity you were responsible for all matters relating to the Program; and that your duties included oversight of curriculum, staffing, assessment, technology, school selection, space redesign, communications, and fundraising. You advise that during your tenure as CEO of the Program, you led the DOE's efforts to launch the Program in three DOE middle schools and were actively involved in the DOE's submission of an application for federal funding under a federal grant known as the Investing in Innovation Fund ("i3"), focusing on the expansion of the Program into four DOE schools.

You further advise the Board, by way of background, that following your resignation from the DOE, you launched New Classrooms, a national not-for-profit organization focused on the development and implementation of new instructional delivery models; that on September 2, 2011, the DOE released a Request for Proposal (the "RFP") seeking vendors to provide

management services associated with the implementation of the Program pursuant to the i3 grant funds; that New Classrooms has submitted a response to the RFP; and that you have not participated in New Classrooms' response to the RFP.

You advise, in more particular, that at the DOE you drafted portions of the i3 grant application, secured the necessary matching funds from private sources (a requirement of the grant), and reviewed the application in its entirety; that the RFP was released after your departure from the DOE; and that because of your presumed personal and substantial involvement with the i3 grant application, since it is the source of funds for the RFP, you have recused yourself entirely from all involvement with the RFP at New Classrooms. You advise that at New Classrooms, you have not read the RFP, did not draft any portion of New Classrooms' response to the RFP, and did not read New Classrooms' response to the RFP; that you recused yourself from and did not participate in the discussion and decision by the New Classrooms board of directors regarding whether to respond to the RFP; and that you ensured that New Classrooms set up a separate, New York City-focused executive team that would report directly to the New Classrooms board of directors and not to you for the management of the RFP.

You further advise that in the event New Classrooms is awarded the contract for the i3 schools, you plan to take the following precautions: you will play no role in the negotiation or administration of any contracts between the DOE and New Classrooms; you will play no role in the performance of the school-specific services related to such contracts; you will play no role in securing, administering, or supporting any grants pertaining to such contracts; you will ensure that the New Classrooms executives responsible for the management of the school-specific services outlined in the contract will report to a member of the board of directors of New Classrooms and will not report to you; that in the event the New Classrooms board of directors wishes to discuss any matters or make any decisions regarding such contracts, you will recuse yourself from the board meeting and play no role in the deliberation or decision-making process; and you will ensure that any employees or consultants hired by New Classrooms who would play any role in negotiating, administering, or fulfilling the services outlined in such contracts receive a copy of a recusal policy stating the scope of your recusal at New Classrooms from the RFP and the i3 grant.

You therefore now seek the Board's advice as to what impact Chapter 68's post-employment restrictions would have on your proposed recusal from the RFP, as described above.

Charter Section 2604(d), which is contained in Chapter 68 of the City Charter, sets forth the restrictions on the activities of public servants who leave City employment.

Charter Section 2604(d)(2) provides that no former public servant shall, within a period of one year after the termination of the public servant's service with the City, appear before the

agency served by the public servant. "Appear" means to make any communication, including personal appearances, telephone calls, and letters, for compensation, other than those involving ministerial matters. See Charter Section 2601(4). A "ministerial matter" means an administrative act, including the issuance of a license, permit, or other permission by the City, that is carried out in a prescribed manner and does not involve substantial personal discretion. See Charter Section 2601(15).

Charter Section 2604(d)(4) provides that no former public servant shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, "in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities." "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action that involves a specific party or parties, *including actions leading up to the particular matter*. See Charter Section 2601(17).

Charter Section 2604(d)(5) provides that no public servant shall, after leaving City service, disclose or use for private advantage any confidential information gained from public service that is not otherwise made available to the public.

Here, while the RFP is a particular matter within the meaning of Charter Section 2601(17), the Board need not determine whether you were "personally and substantially" involved with the RFP while at the DOE since you propose to recuse yourself completely from all matters involving the RFP and any resulting contracts in your role at New Classrooms.

You are accordingly advised that, based on your representations, your proposed activity, as described above, would not violate Chapter 68, **provided that** you may not communicate with the DOE, other than on ministerial matters, before the expiration of your first post-employment year; you may not work on any particular matter with which you were personally and substantially involved while in City service; and you may not use for private advantage or disclose any confidential information gained from public service that is not available to the public. See Charter Sections 2604(d)(2), (d)(4), and (d)(5). *The requirement that you do not communicate with the DOE for compensation during your first post-employment year means not only that you may not speak with or write to any DOE employees in their official capacities but also that you may not attend meetings at which DOE staff are present.*

While not a formal opinion of the Board, this letter expresses the views of counsel to the Board and is intended to provide information and guidance to you. These views are conditioned

on the correctness and completeness of the facts supplied to us. If such facts are in any way incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, or if you would like a formal opinion of the Board, please contact us. The Board meets regularly each month.

Sincerely yours,



Jessie M. Beller  
Assistant Counsel

cc: Samantha M. Biletsky, Esq.