



NEW HAMPSHIRE

Department of Justice

Office of the Attorney General

Report of the Attorney General

Hopkinton Independent School

Michael A. Delaney
Attorney General

Anne M. Edwards
Interim Director of Charitable Trusts

July 1, 2010

I. EXECUTIVE SUMMARY

This report summarizes the findings and conclusions of the investigation of the Hopkinton Independent School, Inc. (“HIS”), Charitable Trusts Unit registration number 10045. Assisting in this investigation were Valerie Hall, Financial Research Analyst for the Charitable Trusts Unit, and Todd M. Flanagan, Investigator, Terry Knowles, Assistant Director of Charitable Trusts, and Christine Gauntt, Investigative Paralegal with the Attorney General’s Office.

HIS, incorporated in 1988, is a charitable organization governed by a board of directors and exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code. HIS operated in Hopkinton, New Hampshire offering a day school program for children from kindergarten through eighth grade. It also provided preschool, childcare, summer camps, and after school programs. HIS was primarily supported through tuition and supplemented with fundraising activities and grants.

HIS abruptly closed on January 4, 2010, and its governing board voted to file for Chapter 7 bankruptcy in March, 2010. The sudden closing of HIS forced parents to find new placements for their children. Many families had pre-paid their tuition for the entire 2009-2010 school year and have not received refunds. School employees are due wages, and other creditors remain unpaid.

As a result of HIS’ closing and the public’s need for a comprehensive review of the failure of this charitable organization, the Attorney General authorized the Director of the Charitable Trusts Unit to conduct an investigation.

The charge for the investigation included the following:

1. Review of HIS’ independent audit reports from 2005 – 2009;
2. Review of HIS’ internal financial reports, including financial statements, bank statements, payroll records, and accounts payable disbursements;
3. Review of the minutes from the Board of Directors meetings from December, 2006 through December 31, 2009; and
4. Interviews of current and past Board members, heads of school, certain key employees, HIS’ independent auditors, and regional and national associations of independent schools.

The Charitable Trusts Unit found no evidence of fraud, theft or embezzlement. However, the Board of Directors of HIS clearly failed to address the school’s financial difficulties, failed to foresee the discontinuance of operations during the 2009-2010 academic year, and failed to act decisively and effectively to either prevent the school from closing, or at the very least, implement a responsible plan to suspend operations that would have avoided the unexpected harm suffered by the students, parents and HIS employees. The CTU solicited two expert opinions to assess potential liability of the Board, and the experts rendered different opinions about whether these failures constitute gross negligence in the Board’s performance of its duties. Given these conflicting opinions regarding liability, and recognizing that HIS has filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code, the Attorney General will not to take further action in connection with this matter. The Attorney General will

establish a working group to create guidelines for non-profits that accept pre-payment for services and to improve board training related to governance and financial management.

II. PROCESS

Records and reports were reviewed and analyzed and interviews were taken during this investigation. Information was verified using multiple sources when available. Interviews were conducted with the following current and former Board members and employees:

Robin Wells	Auditor
Karen Carew	Auditor
Paul Dann	Board Member (former)
Don Emerson	Board Member
Leslie Grant	Board Member
Jayne Huxtable	Board Member
Deb Marcou	Board Member
Chuck Mills	Board Member (former)
Laurie Owens	Board Member
Carol Schapira	Board Member
Miriam Shumway	Board Member (former)
Kate Vattes	Board Member (non-voting)
JoD Burnham	Employee
Susan Damour	Employee
Cathy Chesley	Founder/former Head of School
Caro Dellenbaug	Head of School (former)
Heather Harwood	Head of School
Michelle McKenna	Assistant Head of School (former)

Interviews covered a range of topics including:

1. Organizational structure and board governance;
2. Tuition scholarship program;
3. Employee compensation and supervision;
4. Board's role in replacing HIS' founder; and
5. Compensation agreements made with HIS' founder.

The Attorney General worked with three experts as part of this investigation. The Independent School Association of Northern New England (ISANNE), through its Executive Director, Doug Cummings, provided background information regarding the independent school industry. ISANNE is a member organization consisting of approximately sixty independent schools ranging from kindergarten to twelfth grade.

The Attorney General retained two additional experts, William Bennett and Richard Allen, to assist with the investigation of HIS. Mr. Bennett is the Director of the Commission on Independent Schools for the New England Association of Schools and Colleges and has held this position for the past eleven years. The Commission accredits 600 non-public elementary and secondary schools in New England. Mr. Bennett was previously the Executive Director of the Pacific Northwest Association of Independent Schools. He is also a member of the New

Hampshire Non-Public School Advisory Council and the National Association of Independent Schools Commission on Accreditation, a group that works to assure the quality of independent school accreditation throughout the United States and overseas. Mr. Bennett was also the headmaster of the Wynfleete School in Maine for 19 years.

Richard Allen is a partner with the law firm of Casner & Edwards, LLP. In his practice, Attorney Allen specializes in the representation of non-profit organizations, foundations and charitable trusts, and businesses and individuals in matters involving philanthropy. Prior to joining Casner & Edwards, Attorney Allen was counsel at Choate, Hall & Stewart. Prior to entering private practice, Attorney Allen served for twelve years as the Chief of the Division of Public Charities in the Massachusetts Office of the Attorney General. In that position, Attorney Allen oversaw all of the charitable funds, organizations, and trusts in Massachusetts. He also was awarded the National Association of Attorneys General award for national leadership, expertise and achievement.

III. PERIOD OF TRANSITION AT HIS

Beginning in August, 2005 through its closing in December, 2009, HIS went through a series of significant changes. Cathy Chesley, the founder and head of the school for nearly twenty years, resigned as head of the school effective June, 2005. Ms. Chesley continued as the director of HIS' summer camp program. Ms. Chesley's first replacement head of the school was hired in July, 2005, and the Board of Directors terminated her employment in December, 2005, after only six months of employment.

Ms. Chesley was then re-hired as the interim head of school. An assistant head of school, Michelle McKenna, was hired and all parties hoped that Ms. McKenna would soon replace Ms. Chesley. Ms. McKenna resigned one year later upon learning that the Board had decided that Ms. Chesley would continue as the interim head of the school for another year. Ms. Chesley continued as the interim head of the school until July, 2008, when Heather Harwood was hired.

In July, 2009, the Board President, who had served on the Board for more than twelve years, nine as President, resigned. The confluence of these and other internal events and external economic conditions led HIS to the point of bankruptcy. *See* Timeline in Attachment A.

IV. SUMMARY OF FINDINGS

1. Financial Position

From 2005 through 2009, HIS incurred operating losses totaling over \$100,000. Over half of the losses occurred in fiscal year (FY) 2009, and this trend continued into FY10. HIS' budget for FY09, approved by the Board of Directors at the January 16, 2008 Board meeting, projected a \$41,000 surplus.

While actual revenue came in on budget, personnel and benefit costs were \$50,000 over budget and \$70,000 over the prior year. Health insurance costs grew by \$11,000 due to increased premiums, greater employee participation, and an increased mix in family plan coverage. Payments under the employment agreement with Ms. Chesley (*see* Item 3 below) began in February, 2009, increasing personnel costs by \$1,200 per month. The

remaining loss was a result of salary increases, additional staff, and associated payroll taxes. *See* Financial Statements in Attachments B and C.

2. Head of School

As noted above, HIS essentially hired three heads of school over the course of four years in response to the founder's decision to retire. Under the best of conditions, this would have been a difficult transition. The founder of HIS, Ms. Chesley, defined its mission and vision and grew the institution into a well-respected community asset. Her expertise and knowledge were relied upon by the Board of Directors, many of whom had been with the organization from its start.

In each of the attempted transitions, the Board sought to have the founder's knowledge and expertise made available to the new head of the school. In each instance, the attempt failed. Advice, expertise, and mentoring were not successfully provided and the transition period was extended by years.

- a. First Replacement - Caro Dellenbaug – Ms. Dellenbaug was hired in July, 2005, and her services were terminated in February, 2006. During this transition, the Board allowed HIS' founder to continue teaching at HIS and to run the summer program. HIS was unable to provide documentation as to the reasons why Ms. Dellenbaug was removed from her position after six months. All accounts agree that there was a great deal of tension between Ms. Dellenbaug and HIS' founder.
- b. Second Replacement - Michelle McKenna – In 2006, the Board hired HIS' founder as the interim head of school with the hope that the assistant head of the school, Ms. McKenna would be groomed over the course of a year to be the next head of the school. During this period, Ms. Chesley elected to continue for a second year as interim head, which the Board approved. This decision resulted in Ms. McKenna's resignation.
- c. Third Replacement – Heather Harwood – Ms. Harwood was hired on July 1, 2008. The relationship between Ms. Chesley and Ms. Harwood has been described as “strained” and “difficult”. At some point the Board President was asked by the Board to speak with Ms. Chesley and ask her to refrain from criticizing Ms. Harwood and to let Ms. Harwood carry out her duties.

3. Retirement Benefit For School Founder

- a. History of Agreements
 - i. Rabbi Trust Agreement¹ – On April 14, 2008, the Board voted to enter into a Supplemental Retirement Plan and Rabbi Trust for the benefit of Cathy Chesley, with a vested benefit of \$60,000. The Board resolution states that “the exact terms and conditions of which shall be determined by the Board.” On July 18, 2008, the Board President, Paul Dann, signed a

¹ A Rabbi Trust Agreement is a type of non-qualified deferred compensation plan which defers the payment of a portion of the employee's compensation to a future date. The employee is not required to pay income tax on the deferred amounts until they are actually paid to the employee. The employee receives no present benefit and is an unsecured creditor.

promissory note in the amount of \$60,000 to secure the Rabbi Trust agreement. The note, plus interest (4% per annum) was to be paid in monthly installments over a five year period. The agreement was “In consideration for over twenty years of service, and in a desire to provide a retirement fund for Cathy Chesley...”

- ii. Employment Agreement – During the period between July, 2008 and February, 2009, Mr. Dann and Ms. Chesley determined that for various reasons the Rabbi Trust agreement was not a suitable vehicle for providing the desired retirement benefit to Ms. Chesley. Attorneys were hired to draft an agreement which created a consultant position for Ms. Chesley for a period of five years. As an “employee” of HIS, she was to be available to the Board for no more than five hours per month for consultation on matters relating to HIS. The original \$60,000 agreement was increased to \$70,300 to cover Ms. Chesley’s payroll taxes. On February 6, 2009, the Board President, Paul Dann and Ms. Chesley signed the Employment Agreement. Ms. Chesley received a total of eleven payments from the period of February through December, 2009 for a total of \$12,888.
- b. Board Authorization – The Board President signed the above-referenced promissory note and Employment Agreement with references to the April 18, 2008 Board resolution for a Rabbi Trust as his authorization. However, neither the promissory note nor the Employment Agreement was ever presented to the Board for its review and approval.

4. Board Governance

- a. Attendance – In FY10, HIS had six voting Board members and held four meetings between July and December, with an average attendance of 68%. In FY09, HIS had eight voting Board members and held eight meetings with 65% of the Board members in attendance.
- b. Board Terms and Officers – HIS had no policy in place for term limits for its Board members or officers. The Board members can be divided into two groups. The first group consisted of three people who served as Board members continuously for an average of over fifteen years, and consistently served as the officers of HIS. The second group varied in size over the years and experienced frequent turnover, with each Board member serving on average, less than two years.
- c. Head of School – Supervision and Compensation
 - i. The founder and head of school, Ms. Chesley, was never given a formal review by the Board of Directors. Board members were not able to define the process by which her annual rate of compensation was determined. Payroll records show that as interim head of school, Ms. Chesley earned \$48,700 in calendar year 2006; \$54,900 in 2007; and \$36,900 for a partial year of employment (7 ½ months) in 2008.

During the period between November, 2006 and November, 2007, Ms. Chesley received a series of eight payments each in the amount of \$500 in addition to her regular pay. There is no documentation in the employee file or Board minutes authorizing these payments. Board members were unable to recall the purpose of these payments. Ms. Chesley stated that the payments were to adjust her salary from part-time teacher to interim head of school after Ms. Dellenbaug's departure and were spread over a twelve month period because of cash flow.

- ii. Ms. Dellenbaug was hired on July 1, 2005, at an annual rate of \$55,000. This salary was authorized by a Memorandum of Understanding signed by the Board President. The Board initiated a formal review process for Ms. Dellenbaug after six months of employment. This process resulted in the termination of her employment.
 - iii. Ms. Harwood was hired on July 1, 2008, at an annual rate of \$58,000. This salary was authorized through a Memorandum of Understanding signed by the Board President. The Board minutes show Ms. Harwood received an annual review on July 16, 2009.
- d. Board Training – The Board attended several training sessions including the following:
- i. The Attorney General's Charitable Trusts Unit presented a workshop at HIS in November, 2006 on the duties and responsibilities of board members.
 - ii. A second board development workshop was presented in June, 2008, entitled "Leadership Transition." This training was conducted by a consultant from the Independent School Association of Northern New England (ISANNE) and its purpose was to train the Board on how to hire a new head of school and go through a difficult transition successfully.
 - iii. The Board held a strategic planning session in 2008 where it identified five strategies for achieving financial success and eight strategies for achieving governance and leadership goals. The Board's goals included increasing the size of the Board, establishing term limits for Board members, Board participation in training, annual Board self-assessments, and conducting annual reviews of the head of school.
 - iv. Additional expertise was available to the Board from various sources, both regionally and nationally, including their independent auditors, ISANNE, and the National Association of Independent Schools (NAIS). The founder of HIS, who ran it successfully for twenty years was paid \$1,200 per month by HIS to serve as an advisor to the Board but was never utilized.

5. Independent Auditor's Report

The 2009 audit report prepared by HIS' independent auditors excludes the agreement between HIS and its founder, Ms. Chesley. At the time of the 2009 audit, the

Employment Agreement was in effect and monthly payments were being made to Ms. Chesley. The auditors determined that it was an employment agreement, HIS was in compliance with its terms, and thus there was no requirement to report the Employment Agreement as a liability.

The terms of the Employment Agreement are such that full payment of \$70,300 to Ms. Chesley is essentially guaranteed in all instances, including payment in the event of her death. In the event of delinquency or default on payments, any remaining balance becomes immediately due, to include interest and legal fees. It was also confirmed by HIS and Ms. Chesley that no consulting work had been performed under the Employment Agreement.

6. Theft/Embezzlement

In the course of our investigation, we found no evidence of fraud, embezzlement, or theft. The financial investigation included a thorough review of HIS' documents, payroll and personnel files, related party transactions, and cash disbursements. In addition, interviews were conducted with key employees, including bookkeepers. Explanations were sought and tested for reasonableness for variations in revenue and expenses. We have no basis to believe that theft played any role in HIS' financial failure.

V. REPORTS FROM EXPERTS RETAINED BY THE ATTORNEY GENERAL'S OFFICE

The Attorney General used three experts to assist in this investigation. ISANNE's Executive Director, Doug Cummings, stated that Hopkinton Independent School was considered to be a "small" (less than 100 students) school under ISANNE's standards. Unlike HIS' day program, most small schools are boarding schools that serve students with unique needs, making HIS a distinct minority. Mr. Cummings stated that independent schools are facing difficult economic times, with enrollments remaining level or declining, while requests for tuition discounts (financial aid) are at record highs. Schools are forced to find cost-saving measures through layoffs and by withholding pay raises. Smaller schools face the greatest challenges because they lack cash reserves and endowments.

Mr. Cummings also explained "Founder's Syndrome." Founder's Syndrome occurs when a founder of an organization leaves and the organization must go through the difficult steps of progressing into its next phase as an independent organization. This change in the organization causes problems on two levels. First, the organization loses an enormous amount of institutional knowledge and expertise when the founder leaves; and second, the founder, if still involved with the organization, resists the changes that the organization makes during this progression. Founder's Syndrome is a significant enough issue for private schools that ISANNE developed programs and services for member organizations to assist them through such transitions.

William Bennett, Director of the Commission on Independent Schools for the New England Association of Schools and Colleges, found, after his detailed review and analysis of HIS' documents, that the Board acted with gross negligence. He found that, "they [the Board members] do not appear to have understood the weight of responsibility entailed in being a trustee of an independent school. They were the final authority in the governance of the school,

but they did not recognize or accept the responsibility this placed upon them. From the information provided to me, there seems little reason to believe that the closing of Hopkinton Independent School was inevitable or that effective, energetic Board leadership could not have kept the school as a going operation with prospects for continued growth and improvement." *See* Attachment D, Mr. Bennett's report.

Richard Allen, a partner at Casner & Edwards, LLP., and former Chief of the Division of Public Charities in the Massachusetts Office of the Attorney General, found, after his review and analysis of HIS' documents and Mr. Bennett's report, that, "[c]ertainly it is extremely troubling that the Hopkinton Independent School (the "School") ceased operations, that it did so in the midst of a school year, that families were forced to find alternative schools for their children, and that families lost prepaid tuition paid to the School. Further, the School's Board of Directors certainly can be faulted for its failure, as reported in your office's investigative reports and as summarized in Mr. Bennett's draft report, to successfully address the School's financial difficulties, to foresee that the School would not be able to continue operating for the full 2009-2010 school year, and to act decisively and effectively to redress the shortfall or else suspend operations in time to prevent the harm resulting from the mid-year closing." However, Attorney Allen also found that, "[w]hile unsuccessful in addressing the School's deepening financial crisis, the Board was not indifferent to School matters or acting in bad faith." Attorney Allen also found that the Board had not acted with gross negligence. *See* Attachment E, Attorney Allen's report.

VI. CONCLUSIONS

Based on the findings described above, the following was determined with respect to the causes of the closing of the Hopkinton Independent School. While many external factors were involved, this investigation concludes that the Board of Directors:

1. Failed to provide proper financial oversight;
2. Failed to operate in a fiscally sound manner;
3. Failed to supervise the founder and head of school;
4. Failed to create a diverse and competent Board;
5. Failed to plan for executive succession (both for the Board and head of school); and
6. Failed to review and authorize significant contractual agreements.

Specifically with respect to the Employment Agreement, this investigation considered the duty of the Board President, Paul Dann, to present the Employment Agreement between HIS and Ms. Chesley to the full Board for its review and approval. Although the Board had previously voted in support of the concept of providing Ms. Chesley with a retirement compensation benefit in 2008 (the Rabbi Trust vote), the final Employment Agreement, signed a year later, was considerably different from the original concept approved by the Board. In addition, there were new Board members who had not been present for the original discussions; and by 2009, HIS' financial position had declined significantly.

This investigation finds that the Employment Agreement between HIS and Ms. Chesley is not a valid and enforceable contract. The April 14, 2008 resolution that was relied on as justification to enter into the Employment Agreement states that, "the exact terms and conditions [of the benefit]...shall be determined by the Board." The resolution does not state that the terms and

conditions of the benefit shall be determined by the Board President. Thus, while the Board President could have negotiated the terms and conditions, he was required to return to the Board for a vote to approve the negotiated terms.

The Board, on March 8, 2010, after HIS filed bankruptcy, voted that the promissory note was not valid and should be shredded. As part of the discussion of this motion, the Board noted that, “[t]he promissory note was originally executed as a means to fund the “Rabbi Trust” being setup as Cathy retired from service. As the Rabbi Trust was determined to not be vehicle (sic) to accomplish this and was replaced with an “Employment Contract”, the promissory note was no longer valid.” This decision entered into by the Board after the bankruptcy filing does not change our conclusion that the Employment Agreement is not a valid and binding contract.

Also, specifically with respect to the independent auditor’s report, our investigation concludes that if the Employment Agreement between Ms. Chesley and HIS had been included as a liability in the independent auditor’s report, a “going-concern opinion” may have been issued. A “going-concern opinion” is an opinion issued by an auditor that refers to an organization’s fiscal ability to continue functioning as a business into the foreseeable future. At a minimum, the Board members and other readers of the audit report would have had a more realistic picture of HIS’ level of debt and its financial position.

VII. ACTIONS BY THE ATTORNEY GENERAL

HIS filed for bankruptcy protection under Chapter 7 of the United States Bankruptcy Code in March, 2010. Based on the bankruptcy, any decision to pursue an action against the Board of Directors for the financial losses to HIS and its creditors rests with the bankruptcy trustee. Due to the bankruptcy, the typical remedies available to the Attorney General, such as petitioning to remove the Board of Directors, pursuing the Board for the financial loss to the charitable assets of HIS, and requiring specific changes to the governance and fiscal structure of HIS, are not available.

The Attorney General’s Office recognizes and is concerned about the financial loss to parents of HIS students, the emotional impact to students of HIS based on its abrupt closure during the school year, and the loss of a charitable organization and its assets to the charitable mission it was serving. To address this concern, the Attorney General and the Interim Director of Charitable Trusts will convene a working group of similarly situated non-profit entities, a HIS parent representative, and other non-public school representatives to review the finding of this investigation and use it as a case study to analyze the issues of pre-payment for services and board training for non-profit organizations. This group will be charged with issuing recommendations for proposed modifications to New Hampshire law and policies relating to these issues. The Attorney General’s Office anticipates naming the members of the working group within 30 days, and the group will begin its work immediately thereafter.

**Hopkinton Independent School
Timeline**

Date	Event
	2004
Sep-04	Executive session minutes note that Chesley intends to "step aside" as Head of School. Board agrees to begin planning for a replacement in Nov. (resignation appears to be intended for June 2005)
	2005
Jan-05	Search committee reports progress. Application deadline to continue until Feb 2005
Apr-05	Exec session minutes state Chesley presents board w/ outline and recommendations relative to her leaving. Requests a retirement contribution to be paid to her over time, and a waiver of her daughter's tuition for grades 6-8.
Jul-05	Dellenbaug hired as new head of school. Chesley stays on running summer camp and teaching in middle school
Dec-05	Board conducts evaluation of Dellenbaug/parent survey
	2006
Feb-06	Board removes Dellenbaug /appoints Chesley as Interim Head of School.
Jul-06	McKenna hired as Assistant Head of School
	2007
Apr-07	Chesley elects to stay an additional year as Interim Head of School
Jun-07	McKenna resigns
	2008
Apr-08	Board Vote - Rabbi Trust Agreement for Chesley
Jul-08	Harwood hired as Interim Head of School
Jul-08	Promissory Note with Chesley Signed
	2009
Jan-09	Board votes to discontinue middle school program
Feb-09	Employment Agreement with Chesley signed
Feb-09	Payments on Chesley employment agreement begin
Mar-09	Board minutes show "Concern over budget"
May-09	"Cash flow is critical" Enrollment in summer camp is down per Board meeting minutes
May-09	Board minutes show school at \$44K loss. Expect to be short of cash by June.
Jul-09	Effective date of Paul Dann's resignation (announced 3/4/09)
Jul-09	Board minutes - "agency is looking for loans"
Aug-09	Harwood appointed as Permanent Head of School
Aug-09	Board minutes - "cash flow is precarious"
Dec-09	Board votes to close school
	2010
Jan-10	Board sends email to parents announcing close of school
Jan-10	Board meets with parents at school
Jan-10	Cathy Chesley files attachment
Feb-10	Board votes to file for bankruptcy 02/15/10

**Hopkinton Independent School
Statement of Financial Position
For Year Ending June 30,**

	2005	2006	2007	2008	2009
<i>Current Assets</i>					
Cash and cash equivalents	\$83,015	\$44,696	\$54,422	\$16,002	\$5,969
Cash, temporarily restricted	\$34,808	\$40,656	\$46,548	\$52,689	\$56,665
Accounts receivable	\$13,393	\$18,149	\$21,299	\$7,343	\$15,276
Prepaid expenses	\$19,948	\$14,918	\$14,021	\$14,130	\$7,714
Inventory	<u>\$1,949</u>	<u>\$2,751</u>	<u>\$2,313</u>	<u>\$2,160</u>	<u>\$2,460</u>
<i>Total Current Assets</i>	\$153,113	\$121,170	\$138,603	\$92,324	\$88,084
<i>Fixed Assets</i>					
Land	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000
Building	\$696,125	\$696,125	\$693,276	\$693,276	\$694,334
Equipment	\$94,925	\$50,152	\$54,840	\$60,208	\$65,060
Furniture and fixtures	\$16,596	\$13,869	\$23,731	\$23,731	\$25,365
Leasehold improvements	\$214,072	\$215,872	\$220,345	\$221,845	\$221,845
Swimming pool	\$51,023	\$51,023	\$51,023	\$51,023	\$51,023
Vehicles	<u>\$0</u>	<u>\$47,500</u>	<u>\$47,500</u>	<u>\$47,500</u>	<u>\$48,478</u>
<i>Total fixed assets</i>	\$1,272,741	\$1,274,541	\$1,290,715	\$1,297,583	\$1,306,105
Less accumulated depreciation	<u>(\$256,950)</u>	<u>(\$300,213)</u>	<u>(\$340,607)</u>	<u>(\$382,674)</u>	<u>(\$419,986)</u>
<i>Net fixed assets</i>	\$1,015,791	\$974,328	\$950,108	\$914,909	\$886,119
TOTAL ASSETS	<u>\$1,168,904</u>	<u>\$1,095,498</u>	<u>\$1,088,711</u>	<u>\$1,007,233</u>	<u>\$974,203</u>
<i>Current Liabilities</i>					
Current portion of lease payable	\$0	\$0	\$0	\$623	\$830
Current portion long term debt	\$40,754	\$54,528	\$71,583	\$30,833	\$25,094
Line of credit					\$40,000
Accounts payable	\$3,874	\$7,014	\$7,333	\$6,853	\$38,283
Retirement contribution payable					\$3,926
Accrued payroll	\$4,866	\$5,818	\$6,456	\$4,635	\$4,786
Employment Agreement Due					
Unearned revenue	<u>\$203,202</u>	<u>\$177,956</u>	<u>\$201,360</u>	<u>\$201,671</u>	<u>\$183,510</u>
<i>Total Current Liabilities</i>	\$252,696	\$245,316	\$286,732	\$244,615	\$296,429
Lease payable	\$0	\$0	\$0	\$1,806	\$1,002
Notes payable less current portion	\$840,099	\$794,969	\$746,934	\$715,982	\$690,778
<i>Total Long Term Liabilities</i>	<u>\$840,099</u>	<u>\$794,969</u>	<u>\$746,934</u>	<u>\$717,788</u>	<u>\$691,780</u>
TOTAL LIABILITIES	\$1,092,795	\$1,040,285	\$1,033,666	\$962,403	\$988,209
<i>Net Assets</i>					
Unrestricted net assets	\$37,813	\$13,470	\$7,192	(\$9,164)	(\$71,976)
Temporarily restricted net assets	\$38,296	\$41,743	\$47,853	\$53,994	\$57,970
Permanently restricted net assets	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
TOTAL NET ASSETS	\$76,109	\$55,213	\$55,045	\$44,830	(\$14,006)
TOTAL LIABILITIES & NET ASSETS	<u>\$1,168,904</u>	<u>\$1,095,498</u>	<u>\$1,088,711</u>	<u>\$1,007,233</u>	<u>\$974,203</u>

Hopkinton Independent School
Statement of Activities & Change in Net Assets
For Year Ending June 30

						% Change over prior year			
	2005	2006	2007	2008	2009	2006	2007	2008	2009
Unrestricted Revenues									
Tuition revenue, net of discounts	\$597,519	\$597,305	\$603,858	\$694,777	\$723,665	0.0%	1.1%	15.1%	4.2%
Contributions and fundraising	\$3,857	\$43,383	\$70,535	\$48,870	\$22,293	1024.8%	62.6%	-30.7%	-54.4%
In-kind revenues	\$45,408	\$3,403	\$9,961	\$2,435	\$1,632	-92.5%	192.7%	-75.6%	-33.0%
Interest income	\$488	\$424	\$417	\$542	\$479	-13.1%	-1.7%	30.0%	-11.6%
Rental income	\$1,400	\$1,425	\$2,125	\$1,925	\$1,775	1.8%	49.1%	-9.4%	-7.8%
Miscellaneous	\$600	\$0	\$2,320	\$323	\$740	-100.0%	-	-86.1%	129.1%
Total Unrestricted Revenue	\$649,272	\$645,940	\$689,216	\$748,872	\$750,584	-0.5%	6.7%	8.7%	0.2%
Net assets released from restrictions	<u>(\$12,927)</u>	<u>(\$3,447)</u>	<u>(\$6,380)</u>	<u>\$8,859</u>	<u>\$7,385</u>	<u>73.3%</u>	<u>-85.1%</u>	<u>238.9%</u>	<u>-16.6%</u>
Total Unrestricted Revenue & Support	\$636,345	\$642,493	\$682,836	\$757,731	\$757,969	1.0%	6.3%	11.0%	0.0%
Expenses									
Program services	\$570,204	\$608,908	\$581,430	\$637,829	\$702,503	6.8%	-4.5%	9.7%	10.1%
Management and general	\$52,642	\$49,383	\$89,235	\$105,517	\$104,544	-6.2%	80.7%	18.2%	-0.9%
Fundraising	\$10,784	\$8,545	\$18,719	\$30,741	\$13,734	-20.8%	119.1%	64.2%	-55.3%
Total Expenses	\$633,630	\$666,836	\$689,384	\$774,087	\$820,781	5.2%	3.4%	12.3%	6.0%
Incr (Decr) in Unrestricted Net Assets	\$2,715	(\$24,343)	(\$6,548)	(\$16,356)	(\$62,812)	-996.6%	73.1%	-149.8%	-284.0%
Increase in USRDA reserve	\$10,693	\$5,848	\$6,380	\$6,141	\$3,976				
Grants	\$0	\$0	\$0	\$15,000	\$10,000				
Donations	\$10,105	\$2,000	\$0	\$0	\$1,361				
Assets released from restrictions	<u>(\$7,871)</u>	<u>(\$4,401)</u>	<u>\$0</u>	<u>(\$15,000)</u>	<u>(\$11,361)</u>				
Incr (Decr) in Temporarily Restricted Assets	\$12,927	\$3,447	\$6,380	\$6,141	\$3,976				
Total Change in Net Assets	\$15,642	(\$20,896)	(\$168)	(\$10,215)	(\$58,836)				

**To: Anne Edwards, Director
Charitable Trust Unit
New Hampshire Attorney General's Office**

From: William Bennett

**Report on Hopkinton Independent School
June 18, 2010**

Introduction

In January 2010, Hopkinton Independent School of Hopkinton, New Hampshire (HIS), closed with little advance notice and three months later filed for bankruptcy. Students and their families were forced to find new schools to which to transfer for the balance of the year; faculty were left without jobs. The circumstances of the closing drew the attention of the Charitable Trust Unit of the New Hampshire Attorney General's Office and it opened an investigation. I was asked, based on my professional experience with independent school operations (see Attachment A), to review events leading up to the closing and reach a conclusion regarding the role and responsibility of the school's Board of Trustees. I was provided with an extensive collection of documents for my inquiry (see Attachment B).

General Role and Responsibility of Independent School Trustees

A traditional independent school is governed by a board of trustees that has final authority and responsibility for all aspects of the school. Boards hire and supervise a head of school to whom they delegate daily operational matters while focusing their own attention on maintaining the school's mission, developing long-range plans, and assuring that the school has the necessary financial resources to operate.

Special Circumstances for an Independent School Board

The board of a young school led by a visionary founding head often relies upon the head for direction and does not challenge or question the head's decisions. Often board members are chosen by the founding head and have personal relationships with the head that influence board functioning. In these circumstances, a board may become dependent on the founding head for the institutional leadership, planning, direction, financial oversight, and fund raising that are properly the board's responsibility. In such a case, the departure of the founding head and the transition to a new head of school confronts the board with the necessity of assuming a new (unaccustomed) and much more proactive role.

The Hopkinton Independent School Board of Trustees

It seems clear from the record that for many years the HIS Board of Trustees looked to Cathy Chesley, the founding head, for leadership and direction. As one Board member reportedly said, "It was her school." The school was successful and well thought of in the community; the founding head articulated the mission, administered the finances, designed the program, and kept the Board informed. It should be no surprise that the Board took little independent initiative as long as the dynamic founding head was in charge.

Cathy Chesley's announcement in September 2004 of her plan to resign in June changed the situation for the HIS Board of Trustees, confronting them with the need to take an active leadership role in bringing the school to a new place in its development. With the founding head

stepping aside, the future of the school depended on the Board of Trustees meeting its responsibilities. The record shows that over the next four years Board members were fully informed and repeatedly reminded of what was required of them:

- In 2006, HIS Board members were required to attend a workshop on Non-Profit Trusteeship presented by the Charitable Trust Unit of the New Hampshire Attorney General's office. This workshop emphasized the board member's responsibilities as the "duty of loyalty, duty of care, and duty to manage." This workshop could not have come at a better time to assist the HIS Board in assuming its appropriate role of institutional leadership.
- In 2007, the Board took a promising step in developing a first draft of a Strategic Plan. The final version, published for the school community in 2008, included a strongly worded statement on Governance and Leadership: "As our school has matured and grown over the years, we have experienced ever-changing administrative, academic, and human resource challenges. For this reason, it is incumbent upon us to become familiar with and to use standard practices for independent school governance and leadership." The second benchmark for this section of the Strategic Plan states: "Adopt governance and leadership policies that mirror those recommended by NEASC, NAIS, and the New Hampshire Office of Charitable Trusts ..." The NAIS and NEASC guidelines for governance are consistent with those of the Charitable Trust Unit, adding dimensions specific to independent schools (see Attachments C, D, and E). The HIS Board appeared to be on course and ready to exert leadership with a focused and appropriate "Strategic Plan 2008-2013."
- In 2008, at Cathy Chesley's initiative, the Independent School Association of Northern England (ISANNE) presented a workshop for the Board on the leadership transition from a founding head. This workshop again stressed the Board's responsibility to focus on the long-term interests of the school and to "work your plan." Four years out from Cathy Chesley's announcement that she wished to resign, the Board had not successfully accomplished its first responsibility, to secure a new head of school, but now it had once again been confronted with a clear statement of its responsibilities.
- Throughout this period, articles and information on governance, finance, and transitions in leadership were distributed at Board meetings.

In the five years from Cathy Chesley's initial announcement in September 2004 of her plan to resign to the closing of the school in January 2010, the HIS Board of Trustees had ample time, information, and encouragement to assume active control of the governance of the school. The record confirms their awareness of their responsibilities, but it also chronicles their failure to accept and act on them.

The Record of the Hopkinton Independent School Board

The record is replete with evidence of failures of the Board to come to terms with its acknowledged responsibilities. The cumulative result of these failures was the school's abrupt (and probably avoidable) closing. Three examples illustrate the Board's negligence with regard to its primary obligations:

1. Leadership Transition (*NAIS Principles of Good Practice: The board selects, supports, nurtures, evaluates, and sets appropriate compensation for the head of school.*)

When the founding head of HIS announced her intention to resign at the end of June 2005, the Board had a clear responsibility to lead in “selecting, supporting, and nurturing” a new head of school. From the information contained in the summary of interviews of participants, it is clear that this process did not go well at HIS.

The Board did hire a new head of school for 2005-06, but the founding head was retained as a teacher, a position from which she observed and publicly criticized the new head. By all accounts the founding head actively sought to influence the Board in its evaluation of her successor. The Board summarily fired the new head in February after conducting a survey of parents and faculty, telling her that “it just wasn’t working.”

The Board’s second attempt to transition to a new head of school was also unsuccessful. The Board asked the founding head to return as interim head of school with the expectation that she would mentor her successor for a year (a person chosen from within the faculty), but the Board then agreed to let the founding head extend her position for a second year. The prospective replacement departed.

The third effort to transition to a new head resulted in Heather Harwood being offered the Interim Head position in July 2008 and named permanent head a year later. By this time the Board had heard the ISANNE presentation on transitions and had experienced the difficulties of the previous three years; however, according to the summary of interviews, Ms. Harwood said that the founding head continued to interfere through her first year and that the Board was ineffective in correcting the situation.

The absence of consistent and effective school leadership from 2005 to 2009 is in large part a consequence of the Board of Trustee’s inability to orchestrate a successful transition and unquestionably contributed to the eventual failure of the school.

2. Finances (*NAIS Principles of Good Practice: The board accepts accountability for both the financial stability and the financial future of the institution, engaging in strategic financial planning, assuming primary responsibility for the preservation of capital assets and endowments, overseeing operating budgets, and participating actively in fund raising.*)

An independent school’s board of trustees has no greater responsibility than assuring the school has the necessary financial resources to operate. The HIS Board of Trustees had several obligations in this regard:

- (a) To be knowledgeable about the financial condition of the school. Financial information was presented at Board meetings, but the summary of interviews suggests that there was little focus by the Board on analyzing the school’s position or financial problems. It is reported that some Board members indicated that they were concerned or uncertain about school finances, but did not raise questions and did not take action to secure the school’s financial health; others said they were unaware of the school’s precarious financial position. It is reported that one Board member observed “that the Board was frequently provided with financial information, but it was in spreadsheet form and he doubted that many of the Board members knew what they were looking at.”

The depth of the Board's deficiency in financial oversight is apparent in the minutes of October 28, 2009, the last Board meeting prior to the decision to close at the end of December. Although the school was on the brink of financial failure, there is no apparent recognition of the severity of the situation at the meeting, no urgency in seeking funding, no commitment to fund raising, no plan to communicate with the larger school community. The Board was seemingly on auto-pilot with no one on the Board charged with closely examining finances, sounding the alert, and bringing recommendations to the full Board.

The summary of interviews states that the business manager of the school from 2004 to 2009 "expressed frustration over warning the Board over and over of the financial situation. She said that there was a lot of opportunity to have turned the situation around if the Board had been attentive and reactive." The summary further states that the business manager who replaced her in September 2009 reported "that she brought her concerns to Heather and the Board and was told that over the years the school had its ups and downs and that she was being too much the alarmist."

- (b) To set a realistic budget and monitor compliance with it. The final departure of the founding head, who had steered the financial course of the school during her tenure, challenged the Board to focus its attention in this area. The Board set a budget for 2008-09 that projected a healthy surplus; however, the Board did not respond as additional expenses were approved by the new head (who admittedly had no experience with school finances) and contractual payments to the founder (as a consultant) were added, although they were not in the original budget. The initial positive budget plan turned around in practice and the year ended with a significant deficit that set up a dire situation looking to 2009-2010.

Indicative of the Board's dysfunction, is the apparent absence of a finance committee (there is a note in the August 2009 minutes that the finance committee would hold its first meeting in September, but there is no further report). The HIS Board, knowing that finances were difficult, failed to give sufficient priority to this area. The Board's assumption appears to have been that everything would work out because it always had in the past. The consequences of this attitude were catastrophic.

- (c) To provide necessary resources to support the operation of the school. As the 2009-10 school year approached, the Board knew that there were serious financial problems, but failed to take action to alleviate them. The fact that the 2009 year opened with a new Board President, a new business manager, and an inexperienced head of school did not make things easier. There is no evidence of a significant fund raising effort (the minutes do not show any Board urgency in this area). The Board chose (accepted a decision of the head) not to go back to families who had received larger financial aid grants than the financial aid analysis warranted (reportedly families in this category said when they heard that the school was closing that they would not have taken financial aid if they had known the school was in financial distress). The school community was not informed and invited to contribute to keeping the school solvent (a standard annual appeal was planned for Fall; a fund-raiser was declared successful for returning \$1,000).

The Board left the initiative to solve daunting financial problems in the hands of the inexperienced head of school who pursued limited options and put her hopes on securing an extension of credit from the bank (as noted above, there was no finance committee charged with assessing needs and generating actions to address the financial difficulties; according to the summary of interviews, the Board Treasurer said that she had tried to make some suggestions, but none were accepted). An unrealistic budget and an absence of engagement and effort by the Board predictably led to the mid-year closing.

3. Academic Year. A special responsibility of a board of trustees of an independent school is to be aware of the commitment to an academic year that students, families, and faculty make to the school. (The HIS enrollment contract includes an “unconditional obligation” for families to pay the full year’s tuition.) This must be reciprocated by a commitment of the board not to close the school during the year, leaving students and faculty vulnerable to being unable to make a positive transition in their studies or their careers.

At the least, the Board had an obligation to communicate with the entire school community, invite suggestions, and solicit support. Countless schools have found constituents ready to rally and provide necessary funds when presented with the facts. The HIS Board did not afford the community the chance to weigh in. Beyond that, the Board apparently did not mobilize to secure choices and smooth transitions for the families and faculty who would be confronted by the disruption of the mid-year closing. The failure to anticipate and plan led to a further failure of the Board to meet its obligation to provide for (and even inform) those who had made a year-long commitment to the school.

Summary and Conclusion

The Hopkinton Independent School closed its doors in January 2010 as a result of a series of events following the announcement by the founding head in September 2004 that she would resign at the end of that academic year. Prior to her announcement, it is understandable that members of the Board of Trustees had depended on her leadership and direction and had taken a somewhat passive role as trustees. After the founder’s resignation in 2005, the Board was repeatedly informed of its obligation actively to assume the governance role in managing the transition to new leadership, overseeing finances, and assuring the health and continuation of the school. Guides and models for independent school governance were known and readily available to the Board.

The evidence is overwhelming that during this period members of the Board of Trustees were derelict in the performance of their duties as independent school trustees:

- a. They did not assert their authority after the founder announced her resignation to assure a successful and timely transition to a new head.
- b. They did not support the new heads that they appointed in a manner to maximize their chance of success.
- c. They did not focus on the specifics of the financial situation of the school and did not develop realistic long-range financial plans.
- d. They did not empanel a finance committee and charge it with assuring the financial health (and survival) of the school.
- e. They did not engage themselves in significant fund raising or take other steps to develop alternative sources of income to supplement tuitions.

ATTACHMENT D

- f. They did not monitor financial aid policies and practices to assure equity and they did not act to recover funds when information about overly generous grants became available.
- g. They did not monitor the annual operating budget for 2008-09 sufficiently to make adjustments to assure that unplanned expenditures could be absorbed and a major deficit avoided.
- h. They adopted a final budget entering the 2009-10 year that depended on unrealistic and untested assumptions about revenue, including securing additional bank credit.
- i. They did not commit to an academic year length term to protect students and faculty from disruption of their education and careers caused by a mid-year closing.

The members of the Board of Trustees appear to be people of good will who volunteered their time unselfishly. Unfortunately, however, they do not appear to have understood the weight of responsibility entailed in being a trustee of an independent school. They were the final authority in the governance of the school, but they did not recognize or accept the responsibility this placed upon them. From the information provided to me, there seems little reason to believe that the closing of Hopkinton Independent School was inevitable or that effective, energetic Board leadership could not have kept the school as a going operation with prospects for continued growth and improvement.

Based on all the evidence I have seen, it is clear to me that from the perspective of independent school practice, the Board of Trustees of the Hopkinton Independent School was grossly negligent in failing to fulfill its clear duty and obligation over an extended period of time.

Attachments:

- A. William Bennett's experience regarding independent school operations
- B. List of materials reviewed in preparing this report
- C. NAIS Principles of Good Practice for Boards of Trustees
- D. NAIS Principles of Good Practice for Trustees
- E. NEASC Standard (2) Governance and Suggested Indicators

William McGrew Bennett
Director, Commission on Independent Schools
New England Association of Schools and Colleges
209 Burlington Road, Suite 201
Bedford, Massachusetts 01730

Teaching and Administrative Experience

1999 –	New England Association of Schools and Colleges, Commission on Independent Schools (Responsible for the accreditation of 600 non-public elementary and secondary schools in the six states.)	Director
1994-99	Pacific Northwest Association of Independent Schools Seattle, Washington (Responsible for accreditation, professional development, and board training for 61 non-public elementary and secondary schools in seven states. The majority of the schools were less than twenty years old.)	Executive Director
1974-93	Waynflete School Portland, Maine	Headmaster
1965-74	Riverdale Country School Bronx, New York	Faculty and Administration

Other Relevant Professional Activities

2000 -	The NAIS Commission on Accreditation (Founding member and NAIS consultant to this association of 19 state, regional, and international associations that accredit over 2000 independent schools. The Commission works to improve independent school accreditation throughout the United States and abroad.)
1999 –	New Hampshire Non-Public School Advisory Council
1990-95	Advisory Committee, Maine Coast Semester of Chewonki Foundation
1985-87	President, Maine Association of Independent Schools
1984-86	President, PRIME Media Center, Inc (a consortium of public and private schools)

Education

University of Maine	course work completed for Ed.D.
Teachers College, Columbia University	M.A.
Harvard University	B.A.

Report on Hopkinton Independent School

List of Materials Reviewed

Minutes of the Hopkinton Independent School Board of Trustees, with attachments for
2006
2007
2008
2009
2010

Strategic Plan 2008 - 2013

Board of Trustees Attendance Grid, 2006 – 2010

Report of Investigation, Summary of Interviews, Todd M. Flanagan

Hopkinton Independent School Training, Terry M. Knowles, Charitable Trusts Unit

Report of the Investigation, Valerie A. Hall

Charitable Trust Division Financial Review

Hopkinton Independent School Recommendation, May 13, 2010

Tuition Payment Agreement for Hopkinton Independent School

ISANNE (Independent School Association of Northern New England) Leadership Training
Material, "Leadership Transition" June 2, 2008



Board of Trustees

03/01/2003

Revised and approved by the NAIS board in 2003.

The board is the guardian of the school's mission. It is the board's responsibility to ensure that the mission is relevant and vital to the community it serves and to monitor the success of the school in fulfilling its mission.

The following Principles of Good Practice are set forth to provide a common perspective on the responsibilities of independent school boards. The board and the head work in partnership in fulfilling these principles.

1. The board adopts a clear statement of the school's mission, vision, and strategic goals and establishes policies and plans consistent with this statement.
2. The board reviews and maintains appropriate bylaws that conform to legal requirements, including duties of loyalty, obedience, and care.
3. The board assures that the school and the board operate in compliance with applicable laws and regulations, minimizing exposure to legal action. The board creates a conflict of interest policy that is reviewed with, and signed by, individual trustees annually.
4. The board accepts accountability for both the financial stability and the financial future of the institution, engaging in strategic financial planning, assuming primary responsibility for the preservation of capital assets and endowments, overseeing operating budgets, and participating actively in fund raising.
5. The board selects, supports, nurtures, evaluates, and sets appropriate compensation for the head of school.
6. The board recognizes that its primary work and focus are long-range and strategic.
7. The board undertakes formal strategic planning on a periodic basis, sets annual goals related to the plan, and conducts annual written evaluations for the school, the head of school, and the board itself.
8. The board keeps full and accurate records of its meetings, committees, and policies and communicates its decisions widely, while keeping its deliberations confidential.
9. Board composition reflects the strategic expertise, resources, and perspectives (past, present, future) needed to achieve the mission and strategic objectives of the school.
10. The board works to ensure all its members are actively involved in the work of the board and its committees.
11. As leader of the school community, the board engages proactively with the head of school in cultivating and maintaining good relations with school constituents as well as the broader community and exhibits best practices relevant to equity and justice.
12. The board is committed to a program of professional development that includes annual new trustee orientation, ongoing trustee education and evaluation, and board leadership succession planning.

The NAIS Principles of Good Practice for member schools define high standards and ethical behavior in key areas of school operations to guide schools in becoming the best education communities they can be. Accordingly, membership in NAIS is contingent upon agreement to abide by "the spirit" of the PGPs. Principles are precepts grounded in an ethic and ethos of "doing the right thing." Practices are common activities.



Independent School Trustees

Revised and approved by the NAIS board in 2003.

The following Principles of Good Practice are set forth to provide a common perspective on the responsibilities of individual members of independent school boards.

1. A trustee actively supports and promotes the school's mission, vision, strategic goals, and policy positions.
2. A trustee is knowledgeable about the school's mission and goals, including its commitment to equity and justice, and represents them appropriately and accurately within the community.
3. A trustee stays fully informed about current operations and issues by attending meetings regularly, coming to meetings well prepared, and participating fully in all matters.
4. The board sets policy and focuses on long-range and strategic issues. An individual trustee does not become involved directly in specific management, personnel, or curricular issues.
5. The trustee takes care to separate the interests of the school from the specific needs of a particular child or constituency.
6. A trustee accepts and supports board decisions. Once a decision has been made, the board speaks as one voice.
7. A trustee keeps all board deliberations confidential.
8. A trustee guards against conflict of interest, whether personal or business related.
9. A trustee has the responsibility to support the school and its head and to demonstrate that support within the community.
10. Authority is vested in the board as a whole. A trustee who learns of an issue of importance to the school has the obligation to bring it to the head of school, or to the board chair, and must refrain from responding to the situation individually.
11. A trustee contributes to the development program of the school, including strategic planning for development, financial support, and active involvement in annual and capital giving.
12. Each trustee, not just the treasurer and finance committee, has fiduciary responsibility to the school for sound financial management.

The NAIS Principles of Good Practice for member schools define high standards and ethical behavior in key areas of school operations to guide schools in becoming the best education communities they can be. Accordingly, membership in NAIS is contingent upon agreement to abide by "the spirit" of the PGPs. Principles are precepts grounded in an ethic and ethos of "doing the right thing." Practices are common activities.



**NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES, INC.
Commission on Independent Schools**

Standard 2 (Governance)

The school has an appropriate system of governance that assures that the school remains true to its mission and that it has the necessary resources to support its present and prospective operations.

Suggested Indicators:

2.a. The governance of the school is clearly defined, understood by all constituents, and provides for:

- continuity of mission
- stability and ethical process in transitions of leadership
- a comprehensive, multi-year planning process
- assurance of adequate financial resources
- institutional advancement/development
- evaluation of and support of the professional growth of the head of school
- a model of inclusive behavior and integrity for the school community
- establishing and monitoring needed school policies
- self-evaluation of individuals and groups with governance responsibilities
- defined orientation and evaluation procedures

2.b. Provision is made for participation of all constituencies in the policy-making process, as appropriate.

2.c. The school has a current Multi-Year Plan that integrates all school plans and addresses finances, as well as timelines for implementation.

2.d. Operational and educational functions of the school are delegated to the head of school.

June 30, 2010

Anne Edwards, Esq.
Director, Charitable Trust Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301

Re: Hopkington Independent School

Dear Ms. Edwards:

Set forth below is my report of my analysis with respect to the Hopkington Independent School matter.

My perspective includes:

- Twelve years as Chief of the Division of Public Charities of the Massachusetts Attorney General's Office, in charge of the Attorney General's oversight of charitable organizations and charitable funds.
- My practice at Casner & Edwards, LLP, specializing in the law of tax-exempt and other nonprofit organizations, including fiduciary and governance responsibilities, corporate and charities law issues, Attorney General regulatory matters, and tax exemption issues.

My understanding of the facts comes from the investigative reports and underlying materials provided to me by your office. I have also reviewed the draft report of William Bennett, Director, Commission on Independent Schools, New England Association of Schools and Colleges that your office provided. I have not investigated or ascertained facts independently.

Board Member Personal Financial Liability

Certainly it is extremely troubling that the Hopkington Independent School (the "School") ceased operations, that it did so in the midst of a school year, that families were forced to find alternative schools for their children, and that families lost prepaid tuition paid to the School. Further, the School's Board of Directors certainly can be faulted for its failure, as reported in your office's investigative reports and as summarized

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in Mr. Bennett's draft report, to successfully address the School's financial difficulties, to foresee that the School would not be able to continue operating for the full 2009-2010 school year, and to act decisively and effectively to redress the shortfall or else suspend operations in time to prevent the harm resulting from the mid-year closing.

This Board's performance is sufficiently deficient as to be viewed as a failure to satisfy the fiduciary duty of care. However, the next question is this -- what remedy is appropriate? Not all violations of the duty of care warrant personal financial liability of individual volunteer directors. Remedies short of personal financial liability include: (i) removal of directors; (ii) prohibitions, limitations or requirements for directors with respect to future board service; and (iii) specific governance requirements for the organization and its Board for the future.

If the School were proposing to continue or resume operations, it would be appropriate, in my view, for the Charitable Trust Bureau to require a comprehensive governance agreement establishing specific requirements regarding governance and financial matters, including: (a) addition of new Board members; (b) Governance and Finance standing committees; (c) hiring or engagement of a strong Chief Financial Officer or accounting and financial advisor; and (d) required periodic reporting (including three months before a new school year) to the Charitable Trust Bureau.

Since the School will not be continuing, the Charitable Trust Bureau could consider requiring the School's Board members to agree to adhere to specific governance and financial oversight practices in connection with any future charity board service.

On the other hand, in my view and experience as a regulator and as a practitioner, the facts of this matter do not warrant personal financial liability by the Board members. The investigation reports indicate that no evidence was found of fraud, embezzlement, or theft. The reported facts do not suggest that there was self-dealing by Board members. Employee compensation amounts do not appear to be exorbitant. The Board met frequently, as many as seven times in 2008 and eight times in 2009. New Heads of School were hired. While unsuccessful in addressing the School's deepening financial crisis, the Board was not indifferent to School matters or acting in bad faith.

I note that RSA 508:17 ("Volunteers; Nonprofit Organizations; Liability Limited") provides immunity from civil liability for volunteers of nonprofit organizations unless there was "willful, wanton, or grossly negligent misconduct by the volunteer." In my view, the reported facts do not suggest "willful" or "wanton" behavior by the School's Board of Directors. And under New Hampshire law, "grossly negligent misconduct" is "substantially and appreciably higher in magnitude than ordinary negligence." Corrigan v. Clark, 93 N.H. 137, 139, 36 A.2d 631 (1944), quoting Altman v. Aronson, 231 Mass. 588, 591, 121 N.E. 505 (1919). See also, Certain Underwriters at Lloyd's London v. The Home Insurance Company, 146 N.H. 740, 783 A.2d 238 (2001) (gross negligence is more than

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“simply an inadvertent failure”). In my view, the Board’s shortcomings did not reach the level of gross negligence.¹

Future Regulation of Prepaid Tuition

If the Office of the Attorney General concludes that the law of New Hampshire does not adequately protect the public with respect to prepayments such as the tuition prepayments paid to the Hopkinton Independent School, consideration could be given to convening a Task Force or Working Group to formulate a carefully considered regulatory or statutory proposal that would impose limits on the expenditure of prepaid funds other than for the earmarked uses. Possible examples of potential regulatory limits include cash-on-hand or bond requirements as a condition of operation. In order to identify the right balance between protection of the public and avoidance of undue burden on the affected sector, the Task Force or Working Group should include leaders and accounting experts from the sector that would be the subject of the regulatory or statutory requirements.

Sincerely,



Richard C. Allen

56587.0/488504.1

¹ The RSA 508:17 immunity statute contains the following exception in Part III: “Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization against any volunteer of such organization.” A claim by a bankruptcy trustee against the School’s directors could be interpreted as a “civil action brought by [the School]” within the meaning of this provision and, thus, exempted from RSA 508:17 immunity. To be determined would be the applicable liability standard and whether that standard is met by the present facts.