



**class size matters**

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**Comments on the proposed authorization of “Flex” charter school  
June 6, 2011**

The original proposal for the “Flex” charter school was developed by K12 Inc., the nation’s largest chain of for-profit online charter schools. Though the applicants now claim only to be “collaborating” with K12, but not “contracting” with them, this appears to contradict the annual “technology services fee” at \$1,073 per-pupil per year. This claim appears made to allow the applicants to evade the ban in the new state law against for-profit managers of charter schools. At the same time, the board members, who appear to have been handpicked by K12, claim that they do not have to report on any financial or personal relationships with K12 executives, though they were personally recruited by them to sit on the board. All these issues raise many serious questions, as does K12’s poor record of achievement elsewhere in the country.

Just last week, **Business Week** ran an in depth article about K12’s online operations:

Eleven years after its founding, K12 has 81,000 students in 27 states and the District of Columbia. If it were a school district, it would be one of the largest in America. K12 expects to generate \$500 million in revenue this year—it earned a \$21.5 million profit last year—and its stock has doubled in value since the company went public in December 2007. The financial success of K12 has shown that [Michael] Milken—the 1980s junk-bond king, convicted felon (securities fraud), and health-care philanthropist—has figured out how to profit from public schools. But while online education may have paid off for Milken and other investors, it’s less clear that K12 is benefiting its students.<sup>1</sup>

The article goes on to reveal how a growing group of critics, including school administrators and academic researchers are “concerned that online schools fail children and overcharge taxpayers”—and that the model may have been “embraced more broadly as a way to overhaul public schools at the expense of actual education.”

I share these concerns and believe that virtual instruction is being pursued more for its profit potential than for its potential to benefit our children. Essentially, this is a large scale experiment being carried on our students.

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<sup>1</sup> John Hechinger, “Education According to Mike Milken,” **Business Week**, June 2, 2011.

According to a recent study done by the US Department of Education, online instruction for students in grades K-12 has little or no research backing. Policymakers “lack scientific evidence of the effectiveness” of online classes” according to the authors of the study.<sup>2</sup>

An annual report of for-profit education management organizations concluded that only 30% of virtual schools met Adequate Yearly Progress (AYP) as compared to 54.9% of regular “bricks and mortar schools.” Among the large EMOs, the company with the lowest proportion of schools meeting AYP is K12 Inc. (25%).<sup>3</sup> One online school run by K12 that did make AYP – the Texas Virtual Academy -- was rated as “academically unacceptable” by the state. Gary Miron, an author of the study and a professor at Western Michigan University, is quoted in Business Week as saying that K12's results are “just shocking.”

The Pentagon currently refuses to accept graduates from online high schools into the military that have graduated from online schools, since the academic standards are so low.<sup>4</sup>

Moreover, there are very troubling potential conflict of interests involved in this particular application. As Greg Richmond, head of the National Association of Charter School Authorizers wrote in Education Week: “Members of a charter school governing board should not be employees of the management organization running their school, nor should they be compensated for their service **or selected by the management organization.** (emphasis added.)”<sup>5</sup>

And yet most of the Flex board members admit in their disclosure forms that they were indeed recruited by K12 executives. Victor J. Geraci, prospective board member, writes that he “became aware of the New York Flex Charter School concept through the CEO of K12, Ron Packard.” Roger Griffith writes that he “became aware of this new school board opportunity through my sister Anita Fiel.” Anita Fiel is Director of Instructional Programs at K12 Inc.<sup>6</sup> Roger Gutierrez writes that “Joe Chisholm is a friend and colleague who made me aware of the proposed creation of the new charter school near the Tribeca/SoHo area of Manhattan.” Joseph Chisholm is Vice President of K12, Inc.<sup>7</sup> Herbert H. Toler Jr. writes that he became aware of the school proposal through his “former teaching colleague, Peter Stewart.” Peter Stewart is Senior Vice President of School Development at K12 Inc.<sup>8</sup>

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<sup>2</sup> Barbara Means, et.al. , “Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies,” revised September 2010; <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>

<sup>3</sup>Alex Molnar, Gary Miron, & Jessica L. Urschel, “Profiles of For-Profit Education Management Organizations; 12<sup>th</sup> Annual Report - 2009-2010,” December 2010, National Education Policy Center. <http://nepc.colorado.edu/files/EMO-FP-09-10.pdf>

<sup>4</sup> Susanne Schafer, “Cyber-school students: Pentagon snubs our service,” AP, May 9, 2011. [http://www.forbes.com/feeds/ap/2011/05/09/general-us-military-virtual-schools\\_8456464.html](http://www.forbes.com/feeds/ap/2011/05/09/general-us-military-virtual-schools_8456464.html)

<sup>5</sup> Greg Richmond, “Who's in Charge at Charter Schools? Six Criteria for Ensuring the Quality of Governing Boards, Education Week, July 14, 2010; [http://www.edweek.org/ew/articles/2010/07/14/36richmond\\_ep.h29.html](http://www.edweek.org/ew/articles/2010/07/14/36richmond_ep.h29.html)

<sup>6</sup> <http://www.linkedin.com/pub/anita-fiel/5/5a8/b8b>

<sup>7</sup> <http://www.linkedin.com/in/josephchisholm>

<sup>8</sup> <http://investors.k12.com/phoenix.zhtml?c=214389&p=irol-govBio&ID=170677>

The original Flex application admitted that the school would contract out with K12 Inc. for numerous services, and would be “partnering with K12 Classroom LLC as an institutional partner.” Now the same cast of characters seem to be trying to get around NY State’s ban on for-profit charter EMOs by claiming that they will only be “collaborating” with K12 for curriculum, instruction, professional development, assessments and more, while paying the company for “technology services fee at \$1,073 per-pupil per year.”

*“New York Flex Charter School plans to collaborate with K12 Classroom LLC (“K12”). The Board members have chosen K12 based on discussion and research into public schools using digital teaching resources, concluding that K12 is the premier provider of curriculum, systems, and services. K12 is a technology-based education company that provides curriculum and educational services for digital delivery to teachers and their students in grades K–12. .... The K12 curriculum includes digital lessons, videos, assessments, learning games, labs, physical experiences, and published textbooks and workbooks.”*

And yet over and over in the disclosure forms, when asked if they, their spouse, or other family member knows any person who is a prospective or current charter school employee, the board members repeat the same mantra: **“School does not/will not contract with a management company or charter management organization”** and thus they claim they do not have to report any personal relationships, financial or otherwise, with K12 Inc. or K12 employees.

They repeat the same line when asked if they, their spouse or another family member has a direct or indirect ownership, employment, contractual or management interest in the provider. They respond that they don’t have to answer this question **“because the School does not/will not contract with a management company or charter management organization.”**

When asked if they, their spouse, or other family member anticipates conducting, or is conducting, any business with the provider, they answer the same way: **“Not applicable because the School does not/will not contract with a management company or charter management organization.”**

These responses are an obvious dodge and very troubling. They seem to be claiming that even if they had stock in K12 Inc. or were being paid directly by them, they would not have to report that relationship. How they can claim that Flex is not contracting with K12 Inc. is beyond me.

Nearly the whole original board remains the same as it was under the original application; and handpicked by K12.,<sup>9</sup> Only one board member changed: The lead applicant is now Ms. Yung Moon, Associate Publisher of SELF Magazine who reports that she is college friends with Salvatore Vasi, former lead applicant for K12 and investor, who is now no longer on board. Ms. Moon has no K12 educational experience of any kind, which is true of most all the other board members as well..

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<sup>9</sup> Executive Summaries of the Applications for Charter Schools to the NYCDOE to Open in Fall 2011; <http://schools.nyc.gov/NR/rdonlyres/0EA9959F-7921-41B3-93AE-4A874063725E/0/ExecutiveSummariesoftheApplicationsforCharterSchoolstotheNYCDOEtoOpeninFall2011.pdf>

Another problem is that the application reveals no apparent community ties to District 2, except for Ms. Moon, who says she is a District 2 parent. There is no evidence of outreach to the Community Education Council or community leaders, although this is required in the new charter law. I also believe that there is a real problem with the State Education website, which gives no instructions or timeline for parents and other members of the public who might like to comment.

In addition, there is a very troubling issue with the digital divide. Many students in NYC may not have a computer at home and thus will be unable to do their homework from home; but Flex does not anticipate providing these children with any computer to do so. Instead the applicants write:

*“Recognizing that there may be a “digital divide” in some homes, students will not need access to a computer or the Internet at home. We expect students to be able to complete all of their work at school. If they need to do homework, test prep, etc. after the normal school day, the school will suggest to students that there are several ways for students to accomplish that:*

- Students may download and/or print assignments, materials, etc. while at school and take these home with them to study;*
- There are two hours of after school study time scheduled four days/week to give students the opportunity to use their school computer and Internet for homework and other assignments;*
- Students may use free computer and Internet connection in community-based facilities (e.g., libraries) to access the Online School;*
- If none of these solutions work, NY Flex will work with individual students to serve their individual needs.*

This is not a sufficient response and will put students without computers and internet access at a severe disadvantage.

Yet another issue is how the Flex application claims that K12 Inc. has a “*direct historical connection to the work of the Core Knowledge Foundation*” and thus they can easily align instruction and assessments to the Common Core standards. According to Robert Pondiscio of Core Knowledge, the Foundation has developed curricular materials and standards only for K-8 grades and not for high schools, which this school is.

I excerpt below the responses of prospective Flex board members from the application, including Michael Cohen, real estate executive, who admits that he has a potential commercial interest in this school, as well as relevant passages from the application about the clearly contractual relationships between Flex and K12.

For the legal, ethical and educational reasons expressed above, I strongly urge the NY State Education Department and the Regents to reject this very problematic application. Thank you.

Questionnaire of Ms. Yung Moon:

“Please indicate how you became aware of the charter school and the opportunity to serve as a member of its board.

***Through Salvatore Vasi, a friend from college and fellow long-time NYC resident who was instrumental in conceptualizing the school vision”***

If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider. If your answer is in the affirmative, please describe any such relationship.

***Not applicable because the School does not/will not contract with a management company or charter management organization.***

—  
Victor J. Geraci, attorney

Please indicate how you became aware of the charter school and the opportunity to serve as a member of its board.

***I became aware of the New York Flex Charter School concept through the CEO of K12, Ron Packard.***

Please indicate whether you, your spouse, or other family member knows any person who is a prospective or current charter school employee.

***X I / we do not know any such persons***

10. Please indicate if you, your spouse, or other family member or any corporation, business or other entity in which you, your spouse or other family member serve as an employee, officer, or director or own a controlling interest in, contracts or does business with, or plans to contract or do business with, the charter school, including but not limited to, the lease of real or personal property to the charter school.

***X No.***

11. If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider. If your answer is in the affirmative, please describe any such relationship.

***X Not applicable because the School does not/will not contract with a management company or charter management organization.***

12. If the charter school is partnered with an educational service provider, please indicate whether you, your spouse or other family member has a direct or indirect ownership, employment, contractual or management interest in the provider. For any interest indicated, please provide a detailed description.

***X Not applicable because the School does not/will not contract with a management company or charter management organization.***

13. If the charter school is partnered with an educational services provider, please indicate if you, your spouse or other family member anticipates conducting, or is conducting, any business with the provider. If so, please indicate the precise nature of the business that is being or will be conducted.

***X Not applicable because the School does not/will not contract with a management company or charter management organization.***

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Michael Cohen, real estate executive:

***I became aware of the New York Flex Charter School concept through my real estate colleagues in California who have collaborated with charter school initiatives there....***

Please indicate if you, your spouse, or other family member or any corporation, business or other entity in which you, your spouse or other family member serve as an employee, officer, or director or own a controlling interest in, contracts or does business with, or plans to contract or do business with, the charter school, including but not limited to, the lease of real or personal property to the charter school.

**Yes.**

If yes, please describe the nature of the contract or business and, if applicable, the relationship of the person to the corporation, business or entity involved:

***As a President of Colliers, International- Tri- States Region, a large New York real estate services firm that serves a variety of clients in the area, the potential exists that the school may choose to conduct business with a party that my firm represents. In such a potential case, I will disclose such matters and recuse myself from board matters in accordance with all applicable policies. Further, the school's legal counsel will review all real estate transactions to ensure conflict of interest compliance.***

11. If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider. If your answer is in the affirmative, please describe any such relationship.

***Not applicable because the School does not/will not contract with a management company or charter management organization.***

13. If the charter school is partnered with an educational services provider, please indicate if you, your spouse or other family member anticipates conducting, or is conducting, any business with the provider. If so, please indicate the precise nature of the business that is being or will be conducted.

***Not applicable because the School does not/will not contract with a management company or charter management organization.***

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Roger Griffith:

***I became aware of this new school board opportunity through my sister Anita Fiel.***

[Anita Fiel Is Director of Instructional Programs at K12 Inc.]

5. Please explain why you wish to serve on the board.

***Having lived in Manhattan for over 22 years, I see this as an opportunity to invest back in***

***my community by helping to offer student and families an additional excellent school choice.***

Please indicate whether you, your spouse, or other family member knows any person who is a prospective or current charter school employee.

***I / we do not know any such persons.***

10. Please indicate if you, your spouse, or other family member or any corporation, business or other entity in which you, your spouse or other family member serve as an employee, officer, or director or own a controlling interest in, contracts or does business with, or plans to contract or do business with, the charter school, including but not limited to, the lease of real or personal property to the charter school.

***No.***

11. If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider.

***I / we do not know any such persons.***

12. If the charter school is partnered with an educational service provider, please indicate whether you, your spouse or other family member has a direct or indirect ownership, employment, contractual or management interest in the provider. For any interest indicated, please provide a detailed description.

***Not applicable because the School does not/will not contract with a management company or charter management organization.***

13. If the charter school is partnered with an educational services provider, please indicate if you, your spouse or other family member anticipates conducting, or is conducting, any business with the provider. If so, please indicate the precise nature of the business that is being or will be conducted.

***Not applicable because the School does not/will not contract with a management company or charter management organization.***

14. Please indicate whether you, your spouse or other family member is a director, officer, employee, partner or member of, or is otherwise associated with, any organization which filed an application in conjunction with the charter school, i.e., is partnered with the charter school. To the extent you have provided this information in response to items 9-12, you may so indicate. ***This does not apply to me, my spouse or other family members.***

15. Please indicate the potential ethical or legal conflicts of interests (if any) that would, or are likely to, exist should you be approved for service on the charter school's board.

***None.***

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Roger Gutierrez:

I am the former Senior VP for Public Affairs and Communication of the education management company, EdisonLearning, Inc. It is important to maintain close ties with

former colleagues still working in education reform. **Joe Chisholm is a friend and colleague who made me aware of the proposed creation of the new charter school near the Tribeca/SoHo area of Manhattan.** Though I live in Brooklyn, I volunteered to assist in this endeavor, and was invited to serve on the founding board.

[Joseph Chisholm is Vice President at K12, Inc.]

Please indicate whether you, your spouse, or other family member knows any of the other prospective or current board members.

**I / we do not know any such persons.**

9. Please indicate whether you, your spouse, or other family member knows any person who is a prospective or current charter school employee.

**I / we do not know any such persons.**

10. Please indicate if you, your spouse, or other family member or any corporation, business or other entity in which you, your spouse or other family member serve as an employee, officer, or director or own a controlling interest in, contracts or does business with, or plans to contract or do business with, the charter school, including but not limited to, the lease of real or personal property to the charter school.

**No.**

11. If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider.

**Not applicable because the School does not/will not contract with a management company or charter management organization.**

—  
Herbert H. Toler, Jr.

Please indicate how you became aware of the charter school and the opportunity to serve as a member of its board.

**My former teaching colleague, Peter Stewart has been a leader in the development of digital curriculum and learning techniques. Through my professional collaboration with him, I have studied these learning technologies and become aware of their power to improve student achievement and success. As such, when I learned from him that there was an initiative to provide this opportunity to NYC students, I expressed an interest in engaging with fellow board members to propose, implement and govern New York Flex.**

[Peter Stewart is K12 Senior Vice President of School Development

9. Please indicate whether you, your spouse, or other family member knows any person who is a prospective or current charter school employee.

**I / we do not know any such persons.**

10. Please indicate if you, your spouse, or other family member or any corporation, business or other entity in which you, your spouse or other family member serve as an employee, officer, or director or own a controlling interest in, contracts or does business with, or plans to contract or do business with, the charter school, including but not limited to, the

lease of real or personal property to the charter school.

**No**

11. If the charter school is partnered with an educational service provider (a management company, whether for-profit or not-for-profit), please indicate whether you, your spouse, or any family member knows any employees, officers, owners, directors or agents of that provider. ***Not applicable because the School does not/will not contract with a management company or charter management organization.***

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Flex' financial arrangements with K12:

"The school will attempt to secure financing for capital expenditures from the providers of capital items as well as from additional sources. Although we have every expectation that the providers of capital items or other parties will provide necessary funding, our curriculum provider, K12 Inc., will agree to cover any remaining capital shortfalls occurring during school opening in Years 1 and 2, with advances to be repaid by Year 3 or as available.

Total advances, vendor financing, and short-term borrowing facilities during the five-year budget period will amount to \$341,000. All of this amount will be borrowed to finance the start-up period and capital outlays in Year 1. Capital expenditures in the amount of \$138,000 for the pre-op period, \$129,000 for Year 1, \$97,000 for Year 2, \$275,000 for Year 3, and \$101,000 for Year 4 have been budgeted. All loans during the pre-op period and Year 1 are to be paid off by the end of Year 2. An interest rate of Prime plus 2% has been projected for the purposes of this initial budget. The projections show surpluses in Years 3 through 5. All K12 credits issued in years where there is an operating deficit will be remitted to K12 as operating surplus allows. The projections assume K12 credits totaling \$355,000 issued in Year 1, and \$150,000 in Year 2 will be paid in Year 4. Payment of this credit is shown as part of the operating budget for those years in which they are paid."

Flex will pay K12 for "technology services fee at \$1,073 per-pupil per year."