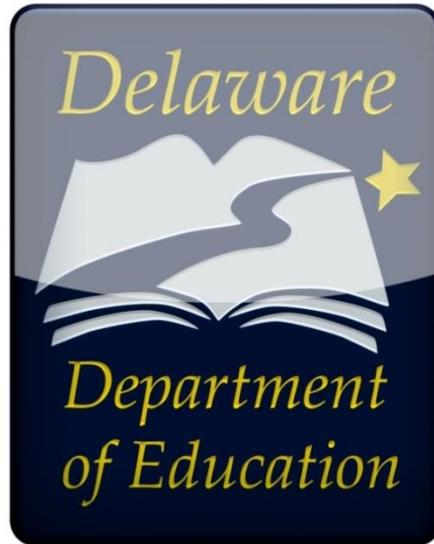


# CHARTER SCHOOL ACCOUNTABILITY COMMITTEE

DELAWARE DEPARTMENT OF EDUCATION



## Odyssey Charter School

**FORMAL REVIEW  
INITIAL REPORT**

CSAC Initial Meeting: May 28, 2019  
CSAC Initial Report Published: May 31, 2019

On May 15, 2019, the Department of Education (DDOE) placed the charter of Odyssey Charter School (OCS) on Formal Review, pursuant to Title 14, Delaware Code, Section 515(b), to determine whether the school is violating the terms of its charter and, if so, whether to order remedial measures.

The following were in attendance at the Initial Meeting of the Charter School Accountability Committee (CSAC) on May 28, 2019:

**Voting Committee Members of the Charter School Accountability Committee**

- Chuck Longfellow, Chairperson of the Charter School Accountability Committee, and Associate Secretary, Operations Support, DDOE
- Brian Moore, Education Associate, School Support Services, DDOE
- Kimberly Klein, Director, Finance Office, DDOE
- Catherine Oravez, Education Associate, Federal Funds and Cost Recovery
- James Pennewell, Education Specialist, Capital Project Management
- Charles Taylor, Community Member, Retired Head of School

**Non-voting Committee Members of the Charter School Accountability Committee**

- Audrey Noble, Vice President, Delaware State Board of Education
- Kendall Massett, Executive Director, Delaware Charter Schools Network

**Staff to the Committee**

- Jennifer Singh, Deputy Attorney General, Counsel to the Committee
- Leroy Travers, Lead Education Associate, Charter School Office, DDOE
- John Carwell, Education Associate, Charter School Office, DDOE
- Brook Hughes, Education Associate, Finance Office, DDOE

**Representatives of the School**

- Josiah Wolcott, Board Chair
- Denise Parks, Co-Head of School
- Riccardo Stoeckicht, Co-Head of School
- Karen Thorpe, Financial Consultant
- Vanessa McCall, Business Manager

**Discussion**

Mr. Longfellow explained that the purpose of the meeting was to review the relevant statutory criteria as to whether the charter holder is violating the terms of its charter and, if so, whether remedial measures are warranted.

Mr. Longfellow noted that the grounds for formal review were outlined in a letter to the President of the Board of Directors of OCS dated May 15, 2019, which outlined the following potential violations of the school's charter:

- Misappropriation of funds

- Violation of the school’s conflict of interest policy
- Failing to have a satisfactory plan to ensure the effectiveness of its board of trustees
- Violation of the Delaware Constitution (Equal Rights Amendment)
- Violation of the Delaware Code of Conduct (29 Del. C. §5805 (a)(1))
- Violation of the Delaware Code of Conduct (29 Del. C. §5806 (a))

Mr. Longfellow stated that the CSAC would identify any areas of ongoing concern and any further information requested from the school that it deems necessary for formulating its final recommendation.

Mr. Longfellow noted that the Public Integrity Commission (PIC) advisory opinion issued on April 2, 2019 is not to be released by the Delaware Department of Education (DDOE). Therefore, if anyone wanted to discuss text from the PIC opinion, they would need to propose a motion to enter executive session.

Mr. Longfellow put forth the first potential violation and asked for questions. This potential violation was stated as follows:

***“Misappropriation of state funds” and therefore violating the school’s charter.***

- Ithaka Early Learning Center (Ithaka) was formed under the American Hellenic Educational Progressive Association (AHEPA) umbrella. To date, \$108,000 of OCS money has gone into the Ithaka project. OCS referred to this as a loan in PIC meetings. There is no loan documentation.
- A gala took place on February 2, 2019 to support Ithaka and Odyssey Charter School. Invoices for the event were billed directly to OCS. The invitations came from AHEPA, OCS and Ithaka with AHEPA displayed first and most prominently.

Mr. Pennewell asked the school to break down the \$108,000 loan to Ithaka Early Learning Center (Ithaka). He asked how much of the appropriated funds was attributed to insurance claim proceeds and how much was appropriated out of OCS funds. Mr. Pennewell also asked the school to describe the insurance claim, including what damage or loss resulted in the insurance claim proceeds. Mr. Stoeckicht stated that the insurance proceeds came from an insurance claim for damage to building 27 (Ithaka’s future location) that resulted from vandalism and water damage. The insurance payment to the school was approximately \$165,000 (stated in other parts of the CSAC meeting as \$166,000 and \$167,000. A confirmation of the amount will be provided by the school). He stated that the insurance company placed a time limit on when the insurance proceeds had to be spent. He added that the school received an extension to spend the proceeds by December of 2017. The insurer stipulated, in writing, that the funds could only be used to repair building 27. The decision was made to invest the insurance resources in building 27 for educational purposes. Mr. Stoeckicht stated that the school’s bonds dictate that those buildings must be leased. The school spent \$155,000 of the insurance proceeds to refurbish parts of building 27. Approximately \$8,000 of the insurance proceeds were to be used for design work for Ithaka. To date, those funds have not been spent.

Mr. Longfellow asked if all of the damage done to the building had been repaired. Mr. Stoeckicht responded that the building was restored in preparation for a potential tenant, Ithaka.

Mr. Stoeckicht then addressed the \$100,000 in funds earmarked for Ithaka. He stated that there was a discussion that took place at the board level with input from external legal counsel and their external financial consultant. The OCS Board (the Board) initially envisioned leasing the building to a charter school. However, that did not materialize. Ultimately, the discussion resulted in the decision to explore and cultivate an early learning center. Mr. Stoeckicht added that OCS has a dual role as a school and as a landlord. Due to this, OCS wishes to generate earned income from its properties. Mr. Stoeckicht acknowledged that some of the concerns brought forth were due to the lack of clarity as to the source of the rental proceeds and the manner in which those rental proceeds could be spent. Mr. Stoeckicht went on to state that he consulted with EastSide Charter School because they had an early learning center on their campus and he attempted to seek as much information as possible. In addition, the school discussed possible tenancy with Gateway Lab School, Kuumba Academy, and Children and Families First.

Mr. Stoeckicht stated that, from the beginning, the funding earmarked for Ithaka was to be repaid and the business department kept track of all expenditures and has all supporting documentation. At this time, he added, accounting for what has been spent, the school has approved expenditures of \$91,500 of the \$100,000 earmarked for Ithaka. Mr. Stoeckicht stated that there have been “verbal commitments, publically made, stated, and documented, as such” to repay the school.

Mr. Longfellow followed up by asking what the relationship was between Ithaka and OCS. Mr. Stoeckicht described it as a brother / sister relationship in that they were both founded by AHEPA. He further stated that Ithaka has a similar contract with Odyssey as Academia Antonio Alonso (AAA), another charter school tenant. Mr. Wolcott added that AHEPA’s intention was to be involved only to pay for the initial formation of Ithaka. He stated that the initial Ithaka board of directors, which never met, was made up of three members, all of whom were AHEPAn. Mr. Longfellow asked if any Odyssey funds were used to directly support Ithaka. Mr. Stoeckicht stated that any funds to support Ithaka was part of the \$91,500 in funding and included \$58,000 in consulting services.

Mr. Taylor asked for clarification around the \$167,000 insurance payment. Mr. Stoeckicht explained that the \$108,000 was separate from the insurance claim payment. He stated that the source of funding that was earmarked for Ithaka came from earned income, including the funds generated by their AAA rental. The school reiterated that the Ithaka appropriated money is not “state money” nor is it “local money.” Mr. Longfellow stated that, regardless, this is money from the tenants and reminded the school that they are only authorized to serve students in grades K-12. He also stated that the rental property proceeds should go only to benefit those K-12 students.

Mr. Wolcott responded that the idea is to use rental income for academic supports once their property is fully “built out.” He stated that the \$600,000 in rental income from AAA is intended to be used for academics as well as build out of their property. Mr. Wolcott stated that it is the school’s view that the applicable code provision states that the rental income is not considered public money because the source of the income is not public. He cited 14 Del. Code § 509 (b)(1) and (b) (2) and stated that those sections define public funds relative to charter schools. Dr. Noble stated that the money that the rent AAA pays to OCS consists of public funds (state and local school appropriations). Mr. Wolcott replied that, to the school, this money becomes earned income.

Mr. Longfellow asked the school to define their interpretations of the code. He stated that the rental income should be used first to pay down their bonds. Anything left over is considered public funds to be used for OCS students only. Mr. Wolcott cited § 509 (g), *“Any payment received by a charter school pursuant to this section may be used for current operations, minor capital improvements, debt service payments or tuition payments.”* He stated that this part of code stipulates that public funds can only be used for certain items. It is the school’s position, he added, that the determination of whether funding is state or local funding is determined by the source. He further explained that the school has found nothing in Delaware code that states that funds received by donations, fundraising, or rental property are bound by the same restrictions as public funds. Dr. Noble expressed confusion as to how funding from a state entity (AAA) can convert to non-public funds once in the possession of OCS.

Mr. Moore stated that the school’s interpretation of Delaware code would lead to the assumption that state funds can be utilized by a school to create an income opportunity for the purposes of making a profit. That profit could then be used by the school without limitations or regulation, even though state funds were used to create the source of the profit. Mr. Longfellow added that state funds were also a guarantee for the bondholder allowing the school to purchase their property in the first place. Mr. Wolcott asked for the CSAC to provide a code provision that differs from the school’s interpretation of the selected code. He stated that the school explored starting a separate 501 (c)(3), but decided against it. Doing so, he added, would be a significant undertaking and the business of that entity would not be subject to FOIA. Mr. Wolcott stated that OCS wants to promote transparency. He further stated that the school was looking to increase income and a pipeline for enrollment with the appropriations to Ithaka (with the understanding that enrollment at OCS would not be automatic.) Mr. Longfellow pointed out that the school has a substantial waiting list.

Mr. Longfellow reminded the school that it is common for school districts to also act as landlords and that charters must operate within the same financial systems and procedures that govern traditional public school districts. Ms. Massett pointed out that non-profit donations would not be considered state funds, but funds received by entities that utilize state sources should be considered state funds and that this is understanding that the Delaware charter community has followed in the past. Mr. Wolcott asked again to see the state code that supports this. Mr. Taylor supported Ms. Massett’s statement. Dr. Noble stated that what the school did was considered a misappropriation. Mr. Wolcott stated that the board consulted

with legal counsel and financial advisors before appropriating the funds to Ithaka. He stated that there was no intent to do anything secretive and that everything was done in the open. Dr. Noble questioned that statement commenting that there was no vote of the board in regards to the funds earmarked for Ithaka until after the fact. Mr. Wolcott acknowledged that the school could have handled this appropriation better. He also stated that the Board had previously discussed establishing an early learning center and the Board voted to renew the consulting contract of Mr. Stoeckicht, indicating that they were in favor of earmarking funds to Ithaka (Mr. Stoeckicht was a consultant for the school before becoming a Co-Head of School.)

Mr. Travers asked when that “after the fact” vote took place. Mr. Wolcott replied that it took place in August of 2017. Mr. Travers then stated that the president of the OCS board at the time was also president of the Ithaka board. Mr. Wolcott responded that, to his knowledge, the Ithaka board was not in operation in August of 2017. Mr. Travers stated that in August of 2017, letterhead was created for Ithaka and billed to OCS with the OCS board president’s name within the letterhead, suggesting that the board president was serving in a dual role as president of both Ithaka and OCS. Mr. Wolcott replied that the vote was supported by a 5-0 majority. Dr. Noble clarified that the vote came after the money was expended. Ms. Thorpe explained that some money was expended before the vote, but most was spent after.

Mr. Longfellow put forth the second potential violation and asked for questions. This potential violation was stated as follows:

***Violation of the school’s conflict of interest policy, therefore violating the school’s charter.***

- The OCS Board discussed “finding a job” for a former board president. The board president was involved in creating the job description and qualifications for which he was an applicant and ultimately put forward by the hiring committee as the successful candidate (though not hired). The hiring committee was chosen by the AHEPAN-controlled board (5/9ths majority) and contained two AHEPAN members.
- The OCS Board President is chosen by AHEPA in a meeting that is not only closed to the public, but also closed to females, according to the OCS Board President.
- A majority of the OCS Board is made up of AHEPAN members. This presents a conflict of interest when a majority of the board belongs to the same fraternal organization. Bylaws and policies have been ignored, ineffective or both.

Dr. Noble asked why having a majority of AHEPAN’s (or any fraternal organization) on the Board was necessary to support the school’s mission. Mr. Wolcott clarified that the school’s by-laws state that a majority of the board must be appointed by AHEPA. They are not required to be part of the organization, though this has always been the case in the past. Mr. Wolcott explained that AHEPAN members were best suited to carry out the mission of the school as they have experience with the Greek language, the Hellenic culture and traditions, as well as contacts with the universities in Greece. This, he added, allows them to maintain the school’s strategic partnerships. He stated that it is the Board’s position that having a majority of AHEPANs on the Board is not a conflict. However, it is what that majority does that may become a conflict. Mr. Wolcott referenced the May 1<sup>st</sup> plan submitted to the

DDOE by OCS (see Attachment 1). He stated that the plan explains why the AHEPAN majority is important. Dr. Noble stated that she believed that fidelity to the mission and vision can be accomplished without governance control in the Board. She suggested practices such as establishing curriculum requirements and instructional support. She stated that the Board's role extends beyond mission and vision and into governance and financial decisions, which has made the school vulnerable to conflicts of interest.

Dr. Noble expressed concern about the school's plan to address the PIC findings. She stated that the Board cannot have a vote without a quorum. Mr. Wolcott explained that OCS is a private corporation subject to Delaware's general corporate law. Dr. Noble responded that OCS is also a public school. Mr. Wolcott acknowledged that having a minority of the board vote to address important issues is not ideal, but the Board would consider other plans to address the issue, such as a supermajority.

Mr. Wolcott submitted a supplement to the May 1<sup>st</sup> plan (see attachment 2). With this, the Board proposes a significant revision to the school's by-laws. The Board would increase its membership from nine to eleven members to better reflect the growth in the school's enrollment. Six of these members would be appointed jointly by the AHEPAN family (AHEPA and the Daughters of Penelope). Three members of the AHEPAN majority of the Board would be female. The six-member majority is not required to be part of the AHEPAN family. The five non-AHEPAN members would be community members nominated by a committee. Mr. Wolcott expressed concern that an elimination of the Greek majority in the Board would set the stage for a gradual elimination of the Greek culture and teachings within the school. Mr. Pennewell clarified that the AHEPAN family would continue to have a majority on the Board, even with eleven members.

Ms. Massett explained that the school's mission is legally a part of the school's charter and that losing the AHEPAN majority would not affect the mission. The school, she added, is required by law to be a Greek school. The school has a niche that is working for their students. Mr. Wolcott explained that he understands that an AHEPAN majority is not the only way to share the Greek culture, but according to the Board, this is the best way. Ms. Massett explained that AHEPA should still look to support the school, even if they do not maintain a majority of the Board seats.

Mr. Longfellow put forth the third potential violation and asked for questions. This potential violation was stated as follows:

***Failing to have a satisfactory plan to ensure the effectiveness of its board of trustees....", therefore violating the school's charter.***

- A super-majority voting policy was passed at an OCS board meeting on November 14, 2018. At an OCS board meeting on December 18, 2018 OCS Board President upheld a Point of Order that was made by a board member. This overturned the vote stating that the board did not have proper time to consider the policy.
- The newly formed Odyssey Education Association voted "No-confidence" in a majority of the OCS Board.

- All Non - AHEPAN board members are chosen by a nominating committee comprised of three people. One AHEPAN, one member of the Daughters of Penelope, and one non-AHEPAN. This give the AHEPAN umbrella a majority vote on non-AHEPAN members. The most recent nominating committee was made up of one member of the AHEPAN family and two non-AHEPANs.

Mr. Moore asked if there were any changes to the composition of the Board after the supermajority vote was overturned. Mr. Wolcott explained that two people resigned from the Board and one person joined. Mr. Wolcott stated that the May 1<sup>st</sup> plan proposed to have the nominating committee be made up of non-AHEPAN's.

Dr. Noble asked what the Board is doing to address the no-confidence vote of the Odyssey Charter School Education Association (OCSEA). Mr. Wolcott explained that the OCSEA vote put forth a way to open a dialogue between the staff and the Board. He stated the he and the president of OCSEA have planned monthly meetings. In addition, Mr. Wolcott has held staff meetings and town hall meetings to answer questions and open dialogue with the OCSEA. He added that the board has taken great strides to be more transparent, but it is too early to determine if their efforts are working.

Mr. Longfellow put forth the fourth potential violation and asked for questions. This potential violation was stated as follows:

***Violation of Art I, §21 of the Delaware Constitution: "Equality of rights under the law shall not be denied or abridged on account of sex" therefore violating the school's charter.***

- The OCS Board President is chosen by AHEPA in a meeting that is not only closed to the public, but also closed to females.

Ms. Oravez asked for additional information as to how AHEPA chooses who is selected for the Board. Mr. Wolcott explained that there is an application process that includes an interview, a nomination process and a vote that occurs at an AHEPA meeting. The AHEPA meeting is closed to the public and there is no public input into who is chosen for board membership. The board president is also chosen by AHEPA, but the candidate is not required to be AHEPAN.

Mr. Longfellow put forth the fifth potential violation and asked for questions. This potential violation was stated as follows:

***Violation of 29 Del. C. § 5805(a)(1), "In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them" therefore violating the school's charter.***

- OCS Board members who also belong to AHEPA have an inherent conflict of interest when voting on matters in which AHEPA is involved given the current majority AHEPAN rule.

Mr. Moore asked if there was any connection of funds between OCS and AHEPA. Mr. Wolcott explained that the only flow of funds have gone from AHEPA to Odyssey and no Odyssey money has gone to AHEPA.

Mr. Longfellow asked about the potential that AHEPAn board members could show preferential treatment to members or the family of members for employment. He asked what could be done to improve the conflict of interest policy to ensure that this does not take place. Mr. Wolcott explained that the last two headmasters have been AHEPAn and that this was never an issue. He further stated that it is difficult to determine which candidates belong to specific organizations without being discriminatory.

Ms. Massett stated that she advises charter schools to be above reproach and ensure that the hiring process is open in nature and ensures that an AHEPAn background does not give a particular candidate an advantage or the appearance of an advantage. Mr. Wolcott explained that the Director of Development position was first discussed in July of 2018 on the advice of Mr. Carwell that the school establish a succession committee. The board wished to maintain the momentum that was previously established with AHEPA national. He explained that the process was very open, objective, and transparent and that they identified several qualified candidates. Some of those candidates withdrew from consideration.

Mr. Wolcott explained that the claim that the job description and qualifications were partially developed by the former board president, and subsequent candidate for the position, is inaccurate. Mr. Travers explained that particular invoices show that the former board president did play a role in the development of the job description (see attachment 3). Mr. Wolcott stated that he can produce the emails cited in the invoice showing otherwise.

Dr. Noble asked about the gala and the percentage of proceeds that went to OCS versus the percentage that went to Ithaka. Mr. Wolcott responded that any funds that OCS used to sponsor the gala have been repaid "fourfold" due to the funds raised by the joint gala. He stated that a breakdown could be provided.

Mr. Longfellow put forth the sixth potential violation and asked for questions. This potential violation was stated as follows:

***Violation of 29 Del. C. § 5806(a): "Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust" therefore violating the school's charter.***

- All violations listed above contribute to this violation.

There were no questions related to this potential violation.

The school provided their closing statements. The school is in the process of drafting a promissory note for the repayment of funds from Ithaka to Odyssey. Mr. Wolcott stated that repayment was always the plan. The school wishes to engage the DDOE in dialogue to address any outstanding issues. Mr. Wolcott feels that the letter presented to supplement Odyssey's plan goes a long way in alleviating concerns. Mr. Wolcott again asked for code provisions regarding what is and is not considered public money. He reiterated that the intent was never to hide anything or misappropriate funds. He stated that the board is willing to correct mistakes that were made.

Follow-up questions or documentation required by the school.

- A complete breakdown of the expenditures and encumbrances related to the allocations of funds to Ithaka to include expenditures prior to board action and following board action. This will also include a narrative on the types of expenses that are expended for other tenants (e.g., AAA). Provide a breakdown of where this money originated. Include invoice copies.
- A complete breakdown of expenditures made from insurance proceeds related to the damage to building 27. Include invoice copies.
- A confirmation as well as documentation of who developed the scope of work for the fit out of building 27 and oversaw the project.
- Additional detail on the board action related to the expenditure of funds to Ithaka. In addition, any specifics related to board action on the use of those funds, including the vote to renew the contract of the consultant (Mr. Stoeckicht).
- Clarification on whether the school was looking to establish an OCS early learning center or to establish a tenant.
- Documentation of meetings with the OCSEA including dates and the number of attendees.
- Provide a narrative on the current relationship between Odyssey and Ithaka including board members and staff members.
- A plan to repay funds from Ithaka to OCS.
- A plan to repair the relationship between the board and the OCS staff.
- A narrative on the current relationship between OCS and the former board president including any relationship with Ithaka.
- Documentation of the current student wait-list size.
- An explanation on the vetting and analysis that was done before considering a loan to Ithaka. Who is the guarantor of the loan?
- A description of the use of funds that are brought into the school via rental properties.
- A breakdown of the proceeds from the gala.

**Next Steps:**

- The CSAC Initial Report will be issued no later than May 31, 2019.

- The first of two public hearings will be held on June 11, 2019 at 5:00 p.m., Delaware Department of Education, 401 Federal Street, 2<sup>nd</sup> Floor Cabinet Room, Dover, DE
- The school will have an opportunity to respond to the CSAC's Initial Report. The school's response is due on or before June 17, 2019.
- A second and Final Meeting of the CSAC will be held on June 24, 2019 at 1:00 p.m., Department of Education, 401 Federal Street, 2<sup>nd</sup> Floor Cabinet Room, Dover, DE.
- On or before, June 28, 2019, the CSAC will issue a Final Report, which will include its recommendation on the Formal Review.
- A second and Final Public Hearing will be held on July 8, 2019 at 5:00 p.m., 2<sup>nd</sup> Floor Auditorium, Carvel Building, 820 N. French Street, Wilmington, DE, 19801.
- The public comment period ends on July 12, 2019.
- The Secretary of Education will announce her decision and seek the assent of the State Board of Education at the July 18, 2019, State Board of Education meeting.