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August 1, 2007

New York State Board of Regents
Room 110
State Education Building
Albany, New York 12234
Email: djohnson@mail.nysed.gov

Dr. Richard P. Mills
New York State Education Commissioner
Room 111
State Education Building
Albany, New York 12234
Email: rmills@mail.nysed.gov

Chancellor Joel Klein
Office of the Chancellor
52 Chambers Street
Room # 320B4
New York, New York 10007
Email: JKlein@schools.nyc.gov

Mr. Garth Harries
Chief Executive Office, Office of New Schools
52 Chambers Street
Room 405
New York, New York 10007
Email: Gharries@schools.nyc.gov

Records Access Officer
New York State Education Department
89 Washington Ave, Room 128
Albany, NY 12234
Fax: (518) 486-5776
Email: FOIL@mail.nysed.gov

Central Records Access Officer
Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
Email: FOIL@schools.nyc.gov

Re: Appeal re: non-compliance w/FOIL Section 3(a) in the matter of the FOIL request 5281 relating to Khalil Gibran International Academy (“KGIA”)

Dear Ladies and Gentlemen:

As indicated in our July 23, 2007, correspondence and FOIL request (New York City Department of Education [“NYCDOE”] FOIL request number 5281), the undersigned represent a broad coalition of concerned parents and residents of New York City, the State of New York, and others.

Our clients are concerned that the relevant New York City and State authorities have not involved the public in the planning or review of the proposed opening of KGIA this Fall semester. Because the City of New York has not provided the public with any substantive information about the specifics of the school -- curricula, lesson plans, texts, teaching qualifications, backgrounds of key personnel, and monitoring -- our clients are understandably anxious about this experimental

school dealing with a culture fraught with religious and political minefields and its opening in a matter of weeks.

Given the NYCDOE's refusal to publicly discuss KGIA and the people behind the school, our clients' FOIL requests take on greater urgency. To say the least, time is of the essence.

FACTS. On July 23, 2007, we emailed our clients' FOIL Request to the respective offices of the NYCDOE and New York State Education Department ("NYSED") authorized and appointed to receive such requests. (Paper copies were mailed that same date by US Post.)

On July 25, 2007, Natacha Beaufile, the FOIL Coordinator for the NYCDOE acknowledged receipt of the FOIL request by telecopier transmission and indicated a response date of September 4, 2007.

On July 31, 2007, Nellie Perez, the Records Access Officer for the NYSED acknowledged receipt of the FOIL request by email and indicated, not a response date, but a date of August 27, 2007, to inform us "whether [the] request will be granted or denied in whole or in part." In other words, there was no indication in this acknowledgment that production of all, or that portion of the FOIL request which might be granted, will be forthcoming on August 27 or some later undisclosed date. Further, there was absolutely no explanation given for the delay.

We hereby formally appeal from the non-compliance with Section 3(a) of the Freedom of Information Act to our FOIL Request (NYCDOE FOIL Request number 5281) by the City of New York Department of Education and by the New York State Education Department.

THE LAW.

Section 3(a) of the New York State Freedom of Information Law provides in pertinent part:

Each entity subject to the provisions of this article, **within five business days** of the receipt of a written request for a record reasonably described, **shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied**, including, where appropriate, a statement that access to the record will be determined in accordance with subdivision five of this section. If an agency determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records **within twenty business days** from the date of the acknowledgement of the receipt of the request, **the agency shall state, in writing, both the reason for the inability to grant the request within twenty business days** and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. (Emphasis added.)

Public Officers Law, Article 6, Section 88 (3)(a).

Appeal from NYCDOE failure to comply with the Freedom of Information Law.

The July 25, 2007, acknowledgment to the FOIL Request by the NYCDOE provides for a response date well beyond the 20-business day period, which should properly have been August 15, 2007. The NYCDOE acknowledgment provides no explanation "for the inability to grant the request within the twenty business days" and therefore is not in compliance with section 3(a) of the law.

Pursuant to Section 4(a) of the Freedom of Information Law, non-compliance with Section 3(a) of the law constitutes "denial" of the FOIL request. Therefore, we hereby appeal on behalf of our clients to Chancellor Klein, as head of the NYCDOE, to order his subordinates to conform immediately and forthrightly to the law and to respond appropriately to the FOIL Request we submitted on behalf of our clients.

Appeal from NYSED failure to comply with the Freedom of Information Law.

The July 31, 2007, acknowledgment to the FOIL Request by the NYSED provides for a response date of August 27, 2007 (26 business days from the date of receipt of the FOIL Request by the NYSED).

Moreover, the "response date" of August 27, 2007, is not a date for the actual production but rather to inform us whether and to what extent the NYSED will respond. But the law requires not simply a 20-business day period to inform us of some future production, but the actual production unless the responding agency articulates in writing the reason for the delay and provides a reasonable date certain for such production.

Pursuant to Section 4(a) of the Freedom of Information Law, non-compliance with Section 3(a) of the law constitutes "denial" of the FOIL request. Therefore, we hereby appeal on behalf of our clients to the Commissioner of Education and to the Board of Regents, as the head of the NYSED and its governing body, respectively, to order their subordinates to conform immediately and forthrightly to the law and to respond appropriately to the FOIL Request we submitted on behalf of our clients.

We thank you in advance for your immediate attention to the matters raised herein.

Sincerely,



David Yerushalmi



Gregory Bitterman