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August 23, 2007

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Re: Renewed 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 General:

As indicated in our August 1, 2007, letter setting out grounds for appeal of your constructive denial of our July 23, 2007, 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.

We hereby renew our previously submitted appeal given the fact that more than 20 business days has transpired since the NYCDOE acknowledgment dated July 25, 2007.

Attached please find the original FOIL request submitted on behalf of our clients, the NYCDOE acknowledgement letter dated July 25, 2007, and our initial appeal letter dated August 1, 2007. We incorporate herein by reference all statements of fact, law, and arguments set forth therein with the additional fact that now more than 20 business days have elapsed since the NYCDOE acknowledgment and there has been no written explanation whatsoever as to why the materials requested have not been made available.

FACTS. On July 23, 2007, we emailed our clients' FOIL Request to the respective offices of the NYCDOE 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 August 1, 2007, we submitted an appeal on behalf of our clients to the FOIL office of the NYCDOE appealing constructive denial of our clients' FOIL request. No answer or response to that appeal has been received.

We hereby formally hereby reassert the 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.

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. 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.

Twenty business days have elapsed since the date of the NYCDOE acknowledgment letter and we have received no explanation for the delay in providing the information requested as per the FOIL.

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.

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

Sincerely,



David Yerushalmi

Gregory Bitterman

encl.

[1] FOIL request (your number 5281) dated July 23, 2007

[2] NYCDOE FOIL acknowledgment re FOIL request 5281 dated July 25, 2007

[3] Appeal dated August 1, 2007 of constructive denial of FOIL request 5281