

September 20, 2018

VIA ELECTRONIC MAIL

Victor Diaz
REALM Charter School
1222 University Avenue
Berkeley, CA 94702

Dear Mr. Diaz,

This document constitutes a Notice of Violation (“NOV”) issued by the Berkeley Unified School District (the “District”) to REALM Charter School under Education Code § 47607(d). Staff is presenting the NOV to the Board at the September 26, 2018 board meeting, with the recommendation that the Board approve the NOV. This NOV arises out of REALM’s lease of the facilities at Tehiyah Day School, located at 2603 Tassajara Avenue, El Cerrito, California, for its middle school classes, for the period between August 15 2018 through September 30, 2018. (Exhibit A.)

I. LEGAL BASIS FOR ACTION

A. Purpose of Notice of Violation

As is noted in more detail below, the purpose of the NOV is to commence a process under which the District sets forth findings in support of the NOV, as well as a remedy period. At the end of the remedy period, Charter School shall respond in writing to the findings in the NOV, and identify measures taken to remedy the violations set forth therein. At that time, the District will assess the Charter School’s response and remedies and will determine whether to pursue revocation of the Charter School’s charter through issuance of a Notice of Intent to Revoke.

B. Education Code Provisions

The revocation of a charter is governed by Education Code § 47607. Education Code § 47607(c) sets forth the grounds for revocation:

A charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following:

- (1) Committed a material violation of any of the-conditions, standards, or procedures set forth in the charter;
- (2) Failed to meet or pursue any of the pupil outcomes identified in the charter;

- (3) Failed to meet generally-accepted accounting principles, or engaged in fiscal mismanagement; or
- (4) Violated any provision of law.

The charter-authorizing agency precedes revocation with a Notice of Violation and a reasonable opportunity to remedy the violation under Education Code § 47607(d):

Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to remedy the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

Prior to revocation, the charter-authorizing agency provides the charter school with a Notice of Intent to Revoke, and conducts a public hearing on the potential revocation (Education Code § 47607(e)):

Prior to revoking a charter for failure to remedy a violation pursuant to subdivision (d), and after expiration of the school's reasonable opportunity to remedy, without successfully remedying the violation, the chartering authority shall provide a written notice of intent to revoke and notice of facts in support of revocation to the charter school. No later than 30 days after providing the notice of intent to revoke a charter, the chartering authority shall hold a public hearing, in the normal course of business, on the issue of whether evidence exists to revoke the charter. No later than 30 days after the public hearing, the chartering authority shall issue a final decision to revoke or decline to revoke the charter, unless the chartering authority and the charter school agree to extend the issuance of the decision by an additional 30 days. The chartering authority shall not revoke a charter, unless it makes written factual findings supported by substantial evidence, specific to the charter school, that support its findings.

The charter school may appeal the revocation to the County Board. (Education Code § 47607(f)(1).)

C. California Code of Regulations

Cal. Admin. Code tit. 5, § 11968.5.2, sets forth additional procedures for a school district's revocation of a charter. Subsection (a) of the regulation provides the charter school 72 hours' notice before the board considers issuing a Notice of Violation:

At least 72 hours prior to any board meeting in which a chartering authority will consider issuing a Notice of Violation, the chartering authority shall provide the charter school with notice and all relevant documents related to the proposed action.

Subsection (c) describes the charter school's obligations once a Notice of Violation is served:

Upon receipt of a Notice of Violation, the charter school's governing body as described in the school's charter, if it chooses to respond, shall take the following actions:

- (1) Submit to the chartering authority a detailed, written response addressing each identified violation which shall include the refutation, remedial action taken, or proposed remedial action by the charter school specific to each alleged violation. The written response shall be due by the end of the Remedy Period identified in the Notice of Violation.
- (2) Attach to its written response supporting evidence of the refutation, remedial action, or proposed remedial action, if any, including written reports, statements, and other appropriate documentation.

Once the charter school responds to the Notice of Violation, the District will determine whether to proceed with the revocation process. As set forth in Cal. Admin. Code tit. 5, § 11968.5.2, sections (d) and (e):

- (d) After conclusion of the reasonable opportunity to remedy, the chartering authority shall evaluate the response of the charter school's governing body as described in the school's charter response to the Notice of Violation and any supporting evidence, if submitted, and shall take one of the following actions:
 - (1) If the chartering authority has substantial evidence that the charter school has failed to refute, to the chartering authority's satisfaction, or remedy a violation identified in the Notice of Violation, the district shall continue revocation of the school's charter by issuing a Notice of Intent to Revoke to the charter school's governing body as described in the school's charter; or
 - (2) Discontinue revocation of the school's charter and provide timely written notice of such action to the charter school's governing body as described in the school's charter.
- (e) If the chartering authority does not act, as specified in subdivision (d), within 60 calendar days of the conclusion of the Remedy Period specified in the Notice of Violation, the revocation process is terminated and the Notice of Violation is void.

If the District proceeds to issue a Notice of Intent to Revoke, the Board will hold a public hearing no later than 30 days thereafter, and take action on a Final Decision in open session within 30 days of the public hearing:

On the date and time specified in the Notice of Intent to Revoke, the chartering authority shall hold a public hearing concerning revocation. No more than 30 calendar days after the public hearing (or 60 calendar days by written mutual agreement with the charter school), the chartering authority shall issue a Final Decision.

The charter school must file any appeal to the County Board within 30 days of Board action. (Cal. Admin. Code tit. 5, § 11968.5.4(a).)

III. VIOLATIONS ON WHICH THIS NOTICE IS BASED

A. Violation of Law (Education Code § 47607(c)(4))

REALM has not complied with the Education Code provisions governing the location or establishment of school sites, including Education Code 47605.1(d)'s notice and location requirements, which only allow a charter school to locate outside of the District to a location within the county:

Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, *but within the county within which that school district is located*, if the school district in which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

- (1) The school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the school chooses to locate.
- (2) The site is needed for temporary use during a construction or expansion project.
(Emphasis Provided.)

REALM's site is in Contra Costa County, not Alameda County. In addition, the District has no evidence that REALM complied with any of the notice requirements in Education Code 47605.1(d).

Ed. Code 47605(a)(4) also requires REALM to seek a material revision of its charter before establishing its new site, which REALM failed to do. There is no exemption from these requirements for a temporary or interim site, as Education Code 47605.1(d) expressly references temporary sites.

IV. REMEDIES TO BE TAKEN BY REALM

The District provides the Charter School with a **remedy period ending Friday, October 5, 2018** in which to provide a written response to this Notice of Violation. In its written response, the Charter School must address the violations addressed herein and identify remedial steps in all of the areas raised in the Notice of Violation.

Please take notice that the District reserves the right to pursue revocation if the Charter School fails to remedy any or all of the violations listed above. Therefore, the District intends to issue a Notice of Intent to Revoke in the event that the Charter School fails to remedy any or all of the violations set forth in this notice.

Victor Diaz, REALM Charter School

September 27, 2018

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Under Cal. Admin. Code tit. 5, §11968.5.2(c) and (d), the District will evaluate the Charter School's written response to this Notice of Violation, and, in light of Charter School's identified remedial measures, will consider whether to proceed with the revocation of the Charter School's charter.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Follansbee", with a long horizontal flourish extending to the right.

Pauline Follansbee

Assistant Superintendent of Business Services