

# Berkeley PUBLIC SCHOOLS

Berkeley Unified School District

April 26, 2019

**VIA ELECTRONIC MAIL**

Governing Board, REALM Charter School  
c/o Victor Diaz, Executive Director  
REALM Charter School  
1222 University Avenue  
Berkeley, CA 94702

**VIA ELECTRONIC MAIL**

J.J. Lewis, M.Ed., CBO, CFRE  
Superintendent & CEO  
Compass Charter Schools  
850 Hampshire Road, Suite P  
Thousand Oaks, CA 91361

Dear Messrs. Diaz and Lewis,

We are writing to address the procedure by which the Berkeley Unified School District (“District”) will process the Notice of Intent to Revoke and Request for Material Revision with respect to REALM Charter School.

As stated at the April 10, 2019 meeting, the Board will hold a public hearing on the Notice of Intent to Revoke on May 8, 2019, and will take action at its May 29, 2019 meeting.

The District asks REALM to provide information in a timely manner before the Board makes its ultimate decision. In addition, the District wishes to ensure that there is no confusion about the sequence of events at the upcoming Board meeting. Accordingly, the District sets forth the following schedule and process for REALM’s submission of information:

- 1) **May 8, 2019 Public Hearing:** The Public Hearing will adhere to the following procedure:
  - (a) Public Comment (limited to 10 minutes)
  - (b) District status update on the Notice of Intent to Revoke and Request for Material Revision. A PowerPoint will be posted in conjunction with the Board agenda materials.
  - (c) REALM will be provided ten (10) minutes in which to present prepared remarks to the Board, if it so chooses.
  - (d) The Board will be provided an opportunity to ask questions of staff and REALM.
  - (e) Additional Public Comment (limited to 10 minutes)

No action will be taken at the May 8, 2019 Public Hearing. Members of the public who wish to make a public comment may also submit cards to speak during the general public comment periods at the beginning and end of the Board’s open session. Public commenters should plan to speak for no more than 2 minutes each.

- 2) **May 20, 2019:** Please submit any final documentation not already submitted that REALM would like considered by the Board no later than this date.
- 3) **May 29, 2019:** The Board will take action on the Request for Material Revision, and, if necessary, the Notice of Intent to Revoke. The District’s evaluation of the Notice of Intent to Revoke and Request for Material Revision will be posted in conjunction with the agenda for the meeting. REALM will have

the opportunity to address the Board during the regular public comment period only. The District will provide a more detailed chronology of the procedure before the May 29, 2019 meeting.

The District is establishing the above-described procedure due to concerns about the process by which REALM has submitted information to the District in conjunction with its response to the Notice of Intent to Revoke and its Request for Material Revision, and to provide REALM notice of the information and responses that Board will consider in the course of taking action during these proceedings.

A. REALM's Untimely Requests for Action of the District

The District, in its February 5, 2019 letter, provided REALM advance notice of the type of information that the District expected to receive in determining whether or not to revoke the charter:

As you know, REALM has maintained significant negative ending fund balances for several fiscal years, and currently is delinquent in over \$1 million in payments to vendors and other creditors. Whether or not the request for material revision meets the requirements for approval will depend on whether it contains a detailed financial plan for satisfying all of REALM's current financial delinquencies, and achieving financial solvency in future fiscal years.

REALM has previously submitted information and requests to the District in a manner that does not provide the District with a realistic opportunity to respond. For example, by e-mail sent to the Board and District on April 10, 2019, sent at 5:11 p.m., Mr. Diaz submitted numerous documents along with an e-mail stating that:

My hope is that we have addressed the concerns raised in the Draft Notice of Revocation. I am also requesting that the Board not take action on pursuing the Notice of Revocation at this time and allow for a full review of the materials that we are submitting now--we were only given two days to respond. If the Board or staff still have questions we are happy to provide additional information.

However, since REALM's request was submitted approximately 2 hours before the Board meeting, the District did not have an opportunity to review meaningfully the documentation submitted by REALM and consider its request that "the Board not take action on pursuing the Notice of Revocation at this time." I also note that the District did not submit questions to REALM until April 4 because it did not receive the material revision request from REALM until March 12, 2019. Given the extensive revision requested, and the many demands on staff time, it was not reasonable to expect a response to the material revision any sooner than when one was provided by the District.

The second example involves the Friday, April 19, 2019 letter sent by Charter School attorney Janelle Ruley at approximately 1:51 p.m., asking that the Board move its meeting to take action on the material revision up over a month, from May 29, 2019 to April 24, 2019 (the following Wednesday). The Charter School attorney states that "[w]e note that BUSD has been in possession of the petition for approval of the material revision authorizing the merger between REALM and Compass for well over a month already," which disregards that REALM only consists of a small fraction of the total business conducted by the District and its Board at any time. Moreover, REALM made this request just hours before the District posted its agenda for the meeting in question, as noted in the Saturday, April 20, 2019 e-mail response from Board Vice-President Beatriz Leyva-Cutler to Mr. Diaz:

Thank you Victor for your letter that we received the afternoon of Friday, April 19. As you are well aware, the District posts its agenda for upcoming meetings on Friday and finalizes the agenda several days prior to that. Thus, this request to add a significant item to the agenda for the April 24 meeting comes far too late for us to consider and indeed, the agenda for the [April] 24 meeting was posted just a few hours after we received your request.

Therefore, the District intends in this letter to set forth an orderly procedure through which REALM is asked to submit further information in connection with the Notice of Intent to Revoke and Request for Material Revision, and to outline the significant and ongoing issues that REALM will need to successfully address.

B. The District's Ongoing Concerns with the Request for Material Revision

REALM's March 12, 2019 submission of its proposed material revision to be acquired by Compass was of concern to the District for the reasons stated below, in light of the District's warning that REALM's fate as a continuing charter school rested on the level of detail in the information submitted in the Request for Material Revision.

1) REALM's Budget Summary Contained Significant Errors and Omissions.

REALM submitted a Budget Summary in conjunction with its Request for Material Revision that contained unexplained assumptions, and a significant error in which its teacher salaries fall from \$1,824,258 to \$16,000 between 2022-2023 and 2023-2024. In an April 10, 2019 communication submitted to the District, REALM submitted a corrected table of certificated salaries in its document titled "Draft Response to Draft NOV Intent to Revoke 041019." However, the District's Notice of Intent to Revoke noted that the mistake in REALM's certificated salaries for 2023-2024 also affected its total expenses and ending fund balance. REALM's April 10, 2019 response failed to contain a complete Budget Summary that reflected the impact of the correct expenditures for teacher salaries in 2023-2024 on total expenditures, as well as ending fund balance, for that fiscal year.

2) REALM Has Not Demonstrated that it Fully Understands the Charter School's Collective Bargaining Obligations.

REALM does not explain the statement in its Executive Summary preceding the Request for Material Revision that "Compass is not bound by the Collective Bargaining Agreement between Berkeley Federation of Teachers and REALM." More recently, REALM has stated that "Compass and BFT have met several times over the last few months," but does not explain the initial position taken in the Executive Summary (which remains part of the requested material revision submitted to the District.) Nor does REALM's April 10, 2019 response confirm that Compass will recognize BFT as the exclusive employer of the charter school's employees, just that the parties "will be able to work together to continue to support REALM's teachers." The District seeks more clarification of REALM and Compass' understanding of their collective bargaining obligations in light of these past statements.

3) REALM's Failed to Seek a Material Revision to Operate is Online Program.

REALM's April 10, 2019 response states that "[i]ndependent Study enrollment has already begun. Per Ed. Code, REALM has added Independent Study students to the current school year. This year there are 15 students taking classes online." This statement raises a number of concerns:

- No reference was found in REALM's current charter petition to a non-classroom based program, meaning that REALM started this program (which constitutes a material change to its program) without seeking or obtaining a material revision of its charter.
- The Request for Material Revision fails to provide a reasonably comprehensive description of REALM's non-classroom based program, including but not limited to curriculum, instructional strategies, teaching staff, learning environment, and method of teacher interaction with students.
- The Request for Material Revision fails to provide a reasonably comprehensive description of the breakdown of instructional minutes for the online program as opposed to the seat-based program, which is required to determine whether the Charter School is complying with Education Code section 47612.5.
- The Request for Material Revision fails to contain a reasonably comprehensive description of the process for identifying and enrolling pupils in the online program, assessment measures and frequency, measurable pupil outcomes, and methods for assessing pupil progress.
- Since REALM serves high school students, please provide the graduation rate for all high school programs operated by Compass Charter Schools.

The District's concerns are rooted in some of REALM's past responses to District concerns. For example, REALM received a prior Notice of Violation for moving into a site in another county without requesting a material revision. The District also issued a written warning to REALM that its school bus failed to comply with State requirements, and the District has no evidence that this violation has been remedied. Therefore, the District is evaluating REALM's credibility with respect to its proposed material revision in the context of REALM's response to past infractions.

4) REALM Has Not Provided a Satisfactory Plan to Pay Off its Current Debts.

REALM has kept the District informed of its progress in paying its Accounts Payable. REALM reports in its April 10, 2019 "Draft Response to Draft NOV Intent to Revoke 041019" that it has been working with vendors to compromise current debts, and "[a]s such the organizations have already reduced REALM expenses by more than \$196,000. The accounts payables submitted to the District on December 14, 2018, was \$1,447,755. The current accounts payable balance as of April 9, 2019, is \$1,251,742. Further, the Schools have negotiated with vendors REALM's aging accounts payable debt down by almost 10%."

The District still has significant questions about how REALM will pay down its \$1.2 million of debt. REALM's April 10, 2019 draft response states that "Compass will take on REALM's debts upon merging." Moreover, the April 19, 2019 letter from REALM's attorney states that "Compass stands ready to assume debt incurred by REALM in an amount of approximately \$1.5 million and will further guarantee the long term financial stability of the Charter School." (April 19, 2019 letter, p. 2.) Although REALM has stated that Compass will pay off its debts on a number of occasions, the commitments and documentation made by Compass are less than definitive. REALM's April 9, 2019 letter submitted to the District states that, to date, Compass has provided to REALM three (3) loans, in sums of \$100,000, \$250,000, and \$250,000, and plans to provide a fourth loan of \$250,000 should the material revision be approved. The District notes that these loans would still leave \$400,000 in unpaid debts by REALM. According to the figures provided in REALM's April 10, 2019 letter, REALM's debts could consume up to half of Compass' total assets. We note that "taking on REALM's debts" is not the same thing as paying off those debts in full. The District requests clarification and documentation (aside from the promissory notes already received) specifying the extent and enforceability of Compass' obligations with respect to REALM's debts.

Moreover, REALM's April 10, 2019 Draft Response states that "[w]ithout the Material Revision, the merger agreement will not take effect, and the Compass Board of Directors may back out of the agreement by April 30 if no action is taken, and REALM will continue to be saddled with its debts and will likely close." Clearly, Compass' governing board will be required to extend this deadline given the Board's timeline to consider the Request for Material Revision. Please provide a status update as to this deadline.

5) REALM's Enrollment Projections are Not Supported by Historical Trends.

The District's Notice of Intent to Revoke noted that REALM's projected budget for the next five fiscal years relies upon a significant increase in enrollment, starting during the 2019-2020 school year. As noted in the District's Notice, this precipitous turnaround would be contrary to a multi-year pattern of significant decline in the Charter School's enrollment.

Though REALM points to factors that it believes will result in a turnaround in its enrollment, due to its precarious financial condition, the District will require greater levels of assurances that REALM can financially survive all foreseeable contingencies. Therefore the District asks REALM to address how it would financially survive should its enrollment projections not materialize, including but not limited to alternative budget scenarios and enrollment projections, programmatic changes, and/or reduction in expenses.

The District asks for a written response to the above questions by end of business on May 20, 2019, along with any other documentation you would like the District to consider.

Please contact us if you have any questions.

Sincerely,   
Pauline Follansbee  
Assistant Superintendent of Business Services