

APRIL 29, 2019

SENT VIA EMAIL AND U.S. MAIL
Paulinefollansbee@berkeley.net

Pauline Follansbee, Assistant Superintendent of Business Services
BERKELEY UNIFIED SCHOOL DISTRICT
2020 Bonar Street
Berkeley, CA 94702

**Re: Response to Notice of Intent to Revoke REALM Charter School Charter
Petition**

Dear Ms. Follansbee:

I am writing on behalf of REALM Charter School (“REALM” or the “Charter School”) in response to the Notice of Intent to Revoke (“NIR”) issued by the Berkeley Unified School District’s (“BUSD” or the “District”) to REALM on April 10, 2019. REALM respectfully implores the District Board, on behalf of the 120 middle school and 286 high school students, 137 of whom are juniors and seniors who have applied or are set to apply to college, along with 35 REALM teachers and staff, to discontinue its revocation action against REALM.

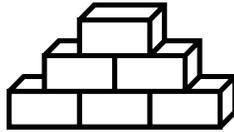
I. Overview of Response

There is no need for the District to continue charter revocation proceedings once the District complies with its obligation to fully evaluate and address the proposed material revision to the REALM charter petition, which seeks District authorization for a merger between REALM and Compass Charter Schools (“Compass”), a California nonprofit public benefit corporation operating multiple charter schools. As stated in the proposed material revision and as discussed at length with District staff, Compass stands ready to assume REALM’s debts and to assist REALM in addressing and remedying all budgetary shortfalls recently experienced by REALM. These budgetary shortfalls and debts form the substantive basis for this NIR.

As legal counsel for the District, John Yeh, himself noted at the April 10, 2019 BUSD meeting, approval of the material revision authorizing the merger between REALM and Compass moots the pending NIR, and obviates the need for further related revocation proceedings. Therefore, it is imperative for the District to fully consider and resolve the pending request for a material revision to the REALM charter, before it proceeds to consider the NIR.

As noted by BUSD staff and by counsel, the proposed merger between REALM and Compass, along with other remedial measures already implemented by REALM, address and remedy the alleged violations in the NIR. District staff enumerated only a few remaining concerns regarding the effect of the REALM and Compass merger in the NIR. REALM responds to those questions below and stands ready to fully address all issues in a hearing to evaluate the proposed merger.

At the outset, REALM notes that the preliminary budget for the Charter School’s operations following the merger includes reasonable projections, and fully complies with generally acceptable



accounting principles. The budget continues to be revised and may be subject to further revision pending final approval of the merger by the District.

The following responds to District staff's questions and concerns regarding the proposed merger.

1. Introduction of an independent study option into the REALM curriculum

As noted by BUSD staff, in implementing an independent study component to its existing curriculum, REALM complies with applicable independent study legal requirements, including Education Code Section 51745 *et seq.*, 47612.5, 47634.2 and Title 5, California Code of Regulations, Sections 11700 through 11705. The budget and supporting documentation account for a projected increase in enrollment by students pursuing independent study (listed in the budget as "other enrollment"). This number is conservatively set at 100 students across all grade levels during the first year of independent study implementation, with limited projected growth in enrollment the following years.

Independent study is intended to supplement REALM's project-based existing curriculum, not to replace it. As such, the number of students enrolling in the independent study program will be capped, as mandated by law.

2. Teacher salaries for the year 2023-2024

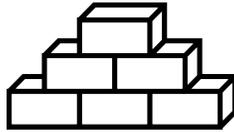
The preliminary budget summary submitted with the material revision identified expected salaries for teachers through the years 2023-24, plus teacher stipends and bonuses. The teacher stipends and bonuses are expected to remain constant at \$16,000 from 2018 through 2024. The total teacher projected salaries for the Charter School start at approximately \$1.3 million in 2018 and are projected to increase yearly to reflect raises and cost of living adjustments. For 2024, the projected teacher salaries are listed as \$16,000. This is obviously an error, listing the \$16,000 bonus, instead of the actual projected teacher salaries for that year.

For the year 2023-24, the total projected teacher salaries are expected to approximate \$2,000,000. The budget accounts for this expected increase.

3. Enrollment projections

District staff point out that the enrollment projections reflect a 200 student increase from 2018-19 to 2020-21. Staff questions whether such an increase is feasible.

District staff do not appear to take into account the projected increase in enrollment attributable to the introduction of the independent study component to the curriculum, which has already been successfully implemented by Compass as it provides high-quality independent study services for a broad range of students. Compass has an experienced marketing staff standing by to implement targeted efforts on behalf of REALM in this area.



Additionally, the enrollment projections also account for the fact that enrollment in 2018-19 was severely affected by the necessary campus relocation for the middle school, which directly led to many families choosing to disenroll their children, rather than to commute to the new campus. With the middle school now in a permanent, stable site, and impactful student recruiting activities based around the new site, the previous enrollment decline (from 521 students in 2017-18 to 398 students in 2018-19, a net loss of 123 students) should naturally revert to at least 2017 levels, likely resulting in an increase in total enrollment numbers well-above those projected, when coupled with the introduction of the independent study component to the curriculum.

4. **Budget deficit**

BUSD staff questioned how REALM can recover from a budget deficit of \$889,517 in FY 2018-2019 to a surplus, following the merger with Compass. The REALM/Compass merger will not only result in a single fiscally sound entity assuming the debt, but it will be accompanied by the implementation of budget cuts, renegotiation of existing debt, savings arising from economies of scale, organizational integration and elimination of duplicative expenses – all while ensuring fiscally responsible policies are implemented and followed in all aspects of operation. The debt will not be eliminated overnight. But with solid fiscal policies, renegotiated debt and the backing of a financially solvent experienced entity, REALM projects that the budget deficit can be eliminated and turned into a surplus. None of this can happen, however, until the merger is approved by the District.

5. **Collective bargaining**

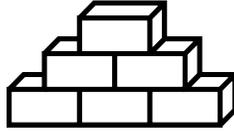
District staff correctly note that the Charter School shall be deemed the exclusive public school employer of all REALM teachers. Nothing about the merger is intended to alter this, or interfere in any subsequent negotiations between REALM and its teachers. However, like every other issue in the NIR, negotiations with the teachers' union cannot be completed unless and until the District fully evaluates the material revision and approves the merger.

II. **Legal Standard for Revocation**

- **Legal Basis for Revocation is Required Through a Showing of Substantial Evidence:**

Education Code Section 47607(c) states:

- (1) 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:
 - (A) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
 - (B) Failed to meet or pursue any of the pupil outcomes identified in the charter.
 - (C) Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement.



(D) Violated any provision of law.

(2) The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter.

(Emphasis added.)

Before revocation, Education Code Sections 47607(d) and (e) require the District provide REALM with a written notice of “facts in support of revocation” and “a reasonable opportunity to remedy the violation.” BUSD must then find that “substantial evidence” exists to support a determination that the Charter School ran afoul of specified revocation triggers. (Ed. Code, § 47607(c)(1).) “Substantial evidence” means evidence “of ponderable legal significance” of “reasonable, credible, and of solid value.” (*JKH Enterprises, Inc v. Dep’t of Industrial Relations* (2006) 142 Cal. App. 4th 1046, 1057; *Beck Development Co. v. Southern Pacific Transportation Co.*, (1996) 44 Cal. App. 4th 1160, 1204.) The phrase “substantial evidence” “cannot be deemed synonymous with ‘any’ evidence.” (*Id.*)

The “facts” and “evidence” in the NIR do not support revocation of REALM’s charter because (1) the District cannot rely on evidence of past alleged violations in support of the instant revocation proceedings; (2) the District failed to identify a lawful reason for revocation in the first place that would not be cured with approval of the proposed material revision; (3) the allegations forming the basis of the NIR have been fully remedied or are in the process of being remedied; (4) and, the NIR does not contain any evaluation regarding REALM’s academic achievement growth as it pertains to its subgroups, and as such cannot support revocation under Education Code Section 47607 as a matter of law.

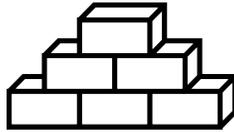
1) The District Cannot Rely on Evidence of Past Alleged Violations in Support of Revocation

The District includes a list of Notices of Violation (“NOV”) issued to REALM which have already been refuted or remedied in the past, as part of its “History of Enforcement Measures/Notices of Violation.” As a matter of law, the District cannot revoke the charter based on items that may have been an issue in the past but have since been fully resolved. The purpose of the revocation statute and regulations is to ensure that a charter school receives due process before its charter can be revoked, and this includes giving the charter school an opportunity to remedy any issues. (See 5 CCR 11968.5.2.) The process is designed to be iterative, allowing many points for an authorizer to stop the process after a remedy is in place.

As REALM has remedied the issues raised at the NOV and past NOV’s, the District cannot simply pile on new and different issues at the NIR phase. Therefore, any references to past violations are simply irrelevant and may not form the basis for revocation under the NIR.

2) Information Beyond the NIR May Not Serve as the Basis of Revocation under Education Code Section 47607

The California Supreme Court has expressly ruled that both the California and Federal Constitutions compel the government to afford persons due process before depriving them of any property interest. The Supreme Court has also held that charter school operators have an



undisputed right to liberty and property interest in their charter schools. *Today's Fresh Start, Inc., supra*, 57 Cal.4th at 211-213. "The essence of due process is the requirement that 'a person in jeopardy of serious loss **[be given] notice of the case against him and opportunity to meet it.**'" *Id.* at 212. The opportunity to be heard must be afforded "at a meaningful time and in a meaningful manner." (*Ibid.*, citing *Armstrong v. Manzo*, 380 U.S. 545 at 552.) Failure to provide notice of each allegation, and an opportunity to meet such allegations, violates due process.

REALM received notice of the allegations through the posted NIR and is directly responding herein. As a result, the District may not consider information outside of the NIR as a basis for revocation without violating the rights of REALM under both the California and federal Constitutions.

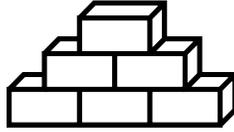
3) REALM's Proposed Material Revision to Merge with Compass Moots the NIR and Remedies all Fiscal Mismanagement Allegations

The NIR fails to present "substantial evidence" of a current, uncured, reason for revocation which would not be cured by granting the proposed REALM/Compass merger. As stated by BUSD legal counsel on the record during the April 10, 2019 District Board meeting, the approval of the material revision authorizing the merger between REALM and Compass moots the NIR. Therefore, it is a far more efficient use of resources for the District to consider and resolve the issue of the material revision first, as soon as possible, rather than to have the two issues proceed slowly and simultaneously.

The proposed material revision and merger with Compass directly resolves the issue of REALM's long-term financial stability, and remedies the alleged violations forming the basis for the NIR. Given the hugely significant impact the continued operation of REALM has for the parents, teachers, students and the surrounding Berkeley community, it is imperative that the District take action on the proposed material revision as expeditiously as possible. The District has an obligation in good faith to promptly assess and take action on the proposed material revision to give parents, teachers, students and the Berkeley community the peace of mind that comes from knowing that their school is in solid financial standing and will not be closing at a moment's notice.

The District has been in possession of the material revision authorizing the merger between REALM and Compass for several weeks already. The proposed revisions to the REALM charter petition are clearly "redlined" and the financial impact of the merger well documented. District staff and legal counsel have already read and evaluated the proposed material revision. All remaining staff questions about the proposed material revision, and its effects, are fully addressed above, and can be further addressed as desired. Should District staff require additional information prior to the next the District Board meeting to make a recommendation regarding the proposed material revision, REALM would be glad to provide it. In sum, the issue is ready for discussion and prompt resolution by the District.

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. Local vendors are standing by to receive immediate payment for past services. Teachers are already in discussions with Compass and REALM to evaluate and address the impact of the merger, if any, on existing collective bargaining agreements. Students, teachers and staff stand ready to move on from the threat of closure looming over the Charter School, toward collectively continuing to create



in Berkeley a unique educational program providing high quality education. Yet, none of this can take happen until the merger between REALM and Compass is assessed by the District and, if the District so determines, approved.

Conversely, the consequences of the District's failure to take prompt action on the proposed material revision will result in further adversity for all concerned. Without the District acting on the proposed material revision, the proposed merger agreement between REALM and Compass cannot take effect. Without prompt action by the District, vendors cannot be fully paid. Without prompt action by the District, agreements with staff cannot be finalized. Without prompt action by the District, payment plans cannot be negotiated, and the academic and financial viability of REALM continue to be threatened. The Charter School also stands to suffer from loss of morale, potential loss of accreditation and the potential exodus of students fearing their school is in danger of closing. Indeed, unfounded rumors are already circulating that the Charter School will have to close by June 2019. Such rumors are harmful and untrue and can be dispelled through District Board action. the District itself and the Berkeley community also stand to lose through unnecessary expense and delay. All this can be avoided by the prompt evaluation of the proposed material revision.

Since a positive outcome of the proposed material revision would moot the NIR and obviate the need for further revocation proceedings, it would also save the District precious financial and time resources it can then redirect towards continuing to fulfill its own mission.

III. REALM's Item by Item Response to the Allegations in the NIR

Education Code Section 47607(e) states: "[t]he 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." We have reviewed each and every page of evidence identified by the NIR. Much of the information in the NIR, like the NOV, is either outdated or incorporates issues already addressed and remedied, or are in the process of being remedied. For each alleged violation listed in the NIR, either (1) the violation has already been remedied or (2) the violation will be remedied with approval of the material revision currently pending before the District. Accordingly, the District cannot meet the evidentiary burden required to revoke REALM's charter.

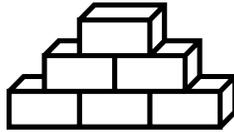
1. REALM submitted its final audit report for fiscal year 2017-2018

REALM submitted the final audit response on March 4, 2019. The audit response was submitted late, but it has been submitted and accepted. The NIR fails to present "substantial evidence" of a current and uncured violation arising from the allegation.

2. REALM has paid its contributions to STRS for November and December 2019

The NIR fails to present "substantial evidence" of a current and uncured violation arising from this allegation. The issue has been remedied. REALM made the November and December payments to the State Teachers' Retirement System ("STRS"). The NIR fails to present "substantial evidence" of a current and uncured violation arising from the allegation.

3. Issues concerning REALM's deficit and debts to creditors will be cured through a strategic budget deficit reduction plan and proposed merger with Compass



Please see full discussion regarding the proposed merger above. Compass has already made an infusion of over \$400,000 into REALM and is committed to provide additional funding to cancel all debts. REALM is working on reaching payment plans with various vendors to reduce the amount payable. In addition, REALM intends to reduce expenses by consolidating services with Compass, and by applying rigorous, fiscally conservative practices.

4. Current and future budgets reflect the negative balance of the middle school in the budget of the consolidated REALM charter schools.

The NIR fails to present “substantial evidence” of a current and uncured violation arising from this allegation. The issue has been remedied. The negative balance was transferred and is reflected in the current 2018-19 income statement under the term “Other Uses.” Charter Schools Management Corporation (REALM’s back-office provider) will make the necessary adjustments to all prospective budgets once all necessary audits are completed.

5. Delays by the City of Berkeley in issuing an occupation permit for REALM’s new middle school facilities will not affect instructional minutes for REALM middle school students

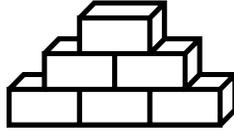
The NIR fails to present “substantial evidence” of a current and uncured violation arising from this allegation. The assertion that REALM made any misrepresentation to the District is factually inaccurate. REALM never represented it had a “final permit” for its long-term facility in Berkeley before it did. REALM represented it had secured a short-term facility pending the issuance of an occupation permit for its long-term facility in Berkeley, which it had. Indeed, REALM secured and occupied the short-term facility – Zaytuna College – from December 17, 2018 to January 25, 2019. The permit to occupy the new facility was delayed by four days by the City of Berkeley’s Building Department. For the first day, January 28, 2019, there were no classes scheduled. On the second day, January 29, 2019, the students went on a field trip. Only two instructional days were canceled: January 30 and January 31, 2019. Even with the two canceled days, affected students will meet the minimum minutes of instruction required by law.

6. Allegations raised in the Notice of Violation which have already been remedied may not serve as the basis of revocation under the NIR

All allegations raised in the NOV issued on February 7, 2019, which were not raised in the NIR, have been remedied and may not as the basis of revocation under Education Code Section 47607(c).

IV. The District may not proceed with revocation without considering increases in student academic achievement

Education Code Section 47607(c)(2) identifies “increases in academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter.” The District does not mention student academic achievement at all in its NIR. In the absence of a thorough review of REALM’s academic achievement, the District may not issue a Notice of Revocation against REALM, as academic achievement must be the most important factor in considering charter revocation. *See American Indian Model Schools v. Oakland Unified School*



District (2014) 227 Cal.App.4th 258, 285 (finding failure by the district to provide substantial evidence of lack of academic achievement supported injunction to block the charter revocation).

* * *

As demonstrated above, the District has not provided substantial evidence to support a basis for revocation pursuant to Education Code Section 47607(c). REALM takes its obligations to its students seriously and will continue to work towards improving both its educational program, and its financial standing. There is no legal or factual basis to support the revocation of REALM. We now ask that BUSD not harm the students and staff of REALM by closing their school based upon allegations that have been clearly remedied or are subject to being remedied upon the review and approval of the pending material revision authorizing the merger between REALM and Compass.

REALM remains eager to work with District staff to alleviate their concerns about our school and to continue to collaborate in the best interest of Berkeley students. However, as there are no current violations to support a charter revocation, REALM asks that the Board *not* issue a final decision to revoke our charter pursuant to Title 5, California Code of Regulations Section 11968.5.2(f).

Sincerely,

Victor Diaz
Executive Director

Cc
J.J. Lewis, Superintendent & CEO, Compass Charter School
Judy Appel, BUSD President
Beatriz Leyva-Cutler, BUSD Vice President
Ty Alper, BUSD Director
Ka'Dijah Brown, BUSD Director
Julie Sinai, BUSD Director
Janelle Ruley, Esq., Young, Minney & Corr LLP