

**BERKELEY UNIFIED SCHOOL DISTRICT
RESOLUTION 19-041
RESOLUTION OF THE GOVERNING BOARD OF THE
BERKELEY UNIFIED SCHOOL DISTRICT
REVOKING THE CHARTER OF REALM CHARTER SCHOOL**

WHEREAS, by enacting the Charter Schools Act (Ed. Code §§ 47600, *et seq.*), the Legislature has declared its intent to provide opportunities to teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure for the purposes specified therein; and

WHEREAS, in accordance with the intent, purposes, and requirements of the Charter Schools Act, the Governing Board of the Berkeley Unified School District (“Board”) granted two petitions to establish REALM Charter Middle School (serving grades 6-8) and REALM Charter High School (serving grades 9-12) for five-year terms, beginning on July 1, 2011 and ending June 30, 2016; and

WHEREAS, on or about October 20, 2015, the District received separate petitions to renew the charters for the middle and high school for 5-year terms, starting on July 1, 2016. On December 9, 2015, the Board voted to approve the two renewal petitions for separate five-year terms, from July 1, 2016 through June 30, 2021; and

WHEREAS, on February 23, 2018, REALM, in light of a February 2, 2018 Notice of Violation centered on REALM’s financial condition, submitted a request for material revision to merge REALM Middle School and REALM High School under a single charter, on the grounds that operation under a single charter would improve the financial condition of both schools. On April 17, 2018, the Board approved the material revision to merge the middle school and high school under a single charter; and

WHEREAS, the Charter Schools Act places charter schools under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools; and

WHEREAS, the Charter Schools Act authorizes the charter-granting authority to revoke a charter where the authority finds that the charter school has done any of the following: committed a material violation of any of the conditions, standards, or procedures set forth in the charter; failed to meet or pursue any of the pupil outcomes identified in the charter; failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement; and/or violated any provision of law; and

WHEREAS, the Governing Board of a public entity that authorizes a charter school has a duty under the law to safeguard public funds by ensuring, among other things, that the charter school meets generally accepted accounting principles and engages in sound fiscal practices.

Prior Administrative Actions

WHEREAS, at its December 9, 2015 meeting, the Board approved the renewal of the REALM Middle School and REALM High School charters, upon the following conditions:

- Resubmission of multi-year projections for both charter schools.
- Reductions in expenditures to reduce REALM Middle School's deficit spending and negative fund balance.
- Submission of monthly budgets to the District, including updates and cash flow, until resolution of the negative fund balance and a 3% reserved was achieved.
- Response to District concerns and request for information expressed in prior fiscal oversight letters.
- No further advances on the payment of REALM's in lieu property taxes under Education Code section 47635.

WHEREAS, the Board approved the issuance of a Notice of Violation, dated January 26, 2017, based upon the following conduct by the Charter School:

- Negative ending fund balances
- Deficit spending
- Cash flow problems
- Excessive obligations under promissory note and line of credit
- Insufficient reserves

WHEREAS, the Board approved the issuance of a second Notice of Violation, dated February 2, 2018, based upon the following conduct by the Charter School:

- Negative ending fund balances
- Deficit spending
- Cash flow problems
- Excessive obligations under promissory note and line of credit
- Insufficient reserves

WHEREAS, the Board approved the issuance of a third Notice of Violation on September 26, 2018, based upon the Charter School's illegal establishment of a site in Contra Costa County, without requesting a material revision of its charter, in violation of Education Code 47605.1(d) and 47605(a)(4).

WHEREAS, the Board approved the issuance of a fourth Notice of Violation, dated February 2, 2019, based upon the following conduct by the Charter School:

- Failure to submit its final audit report by December 15, 2018 for fiscal year 2017-2018.

- Failure to pay its employer contributions to the State Teachers' Retirement System (STRS) for the months of November (\$43,855.23) and December, 2018 (\$44,267.37).
- Failure to pay \$1.5 million dollars in financial obligations to vendors and other creditors.
- Failure to reflect the negative fund balance of REALM Middle School in the budget of the consolidated REALM Charter Schools after the Board granted a material revision to consolidate the REALM Middle School and REALM High School.
- Representing to the District that it had cured a previous Notice of Violation by moving from its Middle school facilities from outside Alameda County (in El Cerrito, Contra Costa County), to a new facility in Berkeley. However, the Charter School had not secured a final permit for its new site, and was therefore forced to cancel no less than 2 days of school last month.

Also included in the Notice of Violation were the following allegations contained in the January 29, 2019 letter:

1. "REALM has failed to pay its STRS obligations for its employees in a timely manner.
2. REALM does not have a maintenance or janitorial staff. This has led to unsafe working conditions for teachers and staff, and unsafe learning conditions for students.
3. REALM has not provided the necessary safety equipment to ensure student and teacher safety in the lab science classrooms.
4. REALM has not reimbursed teachers for approved expenditures and has no plan to do so.
5. REALM has not kept the Berkeley Unified School Board, the Chartering Authority, updated with regards to a possible merger and/or acquisition by Compass Charter Schools.
6. REALM has not conducted safety drills required by the Collective Bargaining Agreement. This creates unsafe conditions for students and staff.
7. It is our understanding that REALM did not follow required procedures with regard to the REALM school bus and/or cannot afford needed repairs, and now there are students who are not attending school due to a lack of transportation. This is a travesty for these students and families.
8. REALM has not held a meeting with teachers to discuss how the new REALM Online program will impact current teachers and students. This change was made without consultation with teachers." **(February 2019 Notice of Violation, Exhibit A)**

WHEREAS, the Board approved a Notice of Intent to Revoke the REALM Charter on May 8, 2019, due to REALM's failure to remedy the violations set forth in the Notice of Violation. **(May 2019 Notice of Intent to Revoke, Exhibit B)**

Substantial Evidence Supporting Revocation

WHEREAS, the revocation of the REALM charter is based on the findings below, which are supported by substantial evidence; and

WHEREAS, Education Code section 47605(m) provides that:

A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the department by December 15 of each year ...

WHEREAS, Page 100 of the REALM Charter contains the following provision:

The Charter School shall provide reports to the District and County Superintendent of Schools as follows in accordance with Education Code Section 47604.33, and shall provide additional fiscal reports as requested by the District:

Additionally, on December 15, a copy of the Charter School's annual, independent financial audit report for the preceding fiscal year shall be delivered to the District, State Controller, California Department of Education and County Superintendent of Schools.

WHEREAS, REALM failed to submit its final audit report by December 15, 2018 for fiscal year 2017-2018; and

WHEREAS, REALM failed to pay its employer contributions to the State Teachers' Retirement System (STRS) for the months of November (\$43,855.23) and December, 2018 (\$44,267.37); and

WHEREAS, REALM failed to pay \$1.5 million dollars in financial obligations to vendors and other creditors; and

WHEREAS, REALM failed to reflect the negative fund balance of REALM Middle School in the budget of the consolidated REALM Charter Schools after the Board granted a material revision to consolidate the REALM Middle School and REALM High School; and

WHEREAS, REALM represented to the District that it had cured a previous Notice of Violation by moving from its Middle school facilities from outside Alameda County (in El Cerrito, Contra Costa County), to a new facility in Berkeley. However, the Charter School had not secured a final permit for its new site, and was therefore forced to cancel

no less than 2 days of school; and

WHEREAS, REALM’s response to the Notice of Violation, and its Request for Material Revision, fail to contain the required detail and assurances that the Charter School would be able to remedy its dire financial condition; and

WHEREAS, REALM’s budget summary is based upon unrealistic increases in enrollment. For example, the Budget Summary is premised upon an increase of 200 students by the beginning of the 2019-2020 school year, while REALM has seen significant declines in enrollment over the past 4-5 years; and

WHEREAS, REALM’s initial budget summary submitted with its Request for Material Revision contained significant errors and discrepancies, as noted in the May 2019 Notice of Intent to Revoke approved by the Board (**Exhibit B**); and

WHEREAS, instead of committing itself to reducing expenses and reconfiguring the scope of its program to improve its financial viability, REALM continues its pattern of attempting to sustain a financial model based upon unsustainable enrollment increases, excessive expenditures, and nonconforming budget practices.

Increases in Pupil Performance by Subgroup

WHEREAS, under Education Code section 47607(a)(2), the District is required to “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;” and

WHEREAS, the District has evaluated REALM’s academic performance on the CAASPP by “all groups of pupils served by the charter school,” as defined by Education Code section 52052(a)(3), for all school years and grade levels for which reportable test scores are available; and

WHEREAS, the percentage of students scoring either meeting or exceeding standards in English/Language Arts and Mathematics does not exceed 17% for any grade level or subject matter, meaning that, in almost all cases, all other subgroups contain at least 83% of the students scoring Standard Nearly Met or Standard Not Met (**Exhibit C** [CAASPP scores and Dashboard]); and

WHEREAS, only in very limited instances, mostly with Socioeconomically Disadvantaged students and Latino students in English/Language Arts, did REALM achieve incremental increases in pupil performance; otherwise, the other subgroups did not see increases in pupil performance; and

WHEREAS, even taking “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” under Education Code section 47607(a)(2), REALM has not achieved

sufficient increases in pupil performance among all subgroups to outweigh the significant fiscal deficiencies and failure to follow generally accepted accounting principles set forth above; and

WHEREAS, REALM’s chronic operation with a negative fund balance, \$1.5 million in unpaid debts, and failure to follow Generally Accepted Accounting Principles, jeopardize the continuity of its program and pose the risk of potential interruption to its students’ education due to an unplanned closure.

The District Provided REALM with the Required Due Process

WHEREAS, on May 29, 2019, in compliance with Education Code Section 47607(e), the Board held a Public Hearing on whether substantial evidence exists to revoke the REALM charter; and

WHEREAS, the Board has considered the Notice of Violation, REALM’s responses thereto, the Notice of Intent to Revoke, and the documents in support thereof, as well as the public testimony at the May 29, 2019 Board meeting; and

WHEREAS, the Board has provided REALM with due process through the opportunity to submit a Request for Material Revision, to provide written responses to the Notices of Violation and Notice of Intent to Revoke, as well as the opportunity to address the Board in duly-noticed, open-session meetings on April 10, 2019, May 22, 2019, May 29, 2019 and June 12, 2019; and

WHEREAS, Education Code Section 47604(c) provides that “[a]n authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law...”; and

WHEREAS, Education Code § 47607(c) provides that the Board may revoke a charter upon a showing of substantial evidence that the charter school committed one of the conditions for revocation set forth in that statute; and

WHEREAS, evidence is “substantial” if any reasonable trier of fact could have considered it reasonable, credible, and of solid value. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Kearl v. Board of Medical Quality Assurance*, 189 Cal.App.3d 1040 (1986); *Estate of Teed*, 112 Cal.App.2d 638, 644(1952); *California Correctional Supervisors Organization, Inc. v. Department of Corrections (2002)* 96 Cal.App.4th 824, 832; and

WHEREAS, the Board revokes the REALM charter for the reasons set forth in the Notices of Violation and Notice of Intent to Revoke, attached hereto, which provide substantial evidence to support the conclusion that REALM committed the following: 1) A material breach of a condition, standard, or procedure set forth in the charter (Ed. Code

§ 47607(c)(1)(A)); 2. Failure to meet generally accepted accounting principles, and fiscal mismanagement (Ed. Code § 47607(c)(1)(C)); and 3) violation of a provision of law (Ed. Code § 47607(c)(1)(D).)

NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED by the Governing Board of the Berkeley Unified School District that substantial evidence exists that REALM is hereby found to have:

1. Committed a material breach of a condition, standard, or procedure set forth in the charter. (Ed. Code § 47607(c)(1)(A));
2. Failed to meet generally accepted accounting principles, and engaged in fiscal mismanagement. (Ed. Code § 47607(c)(1)(C)); and
3. Violated a provision of law. (Ed. Code § 47607(c)(1)(D).)

BE IT FURTHER RESOLVED AND ORDERED by the Governing Board of the Berkeley Unified School District that the findings of fact and conclusions of law in the Notice of Violation and Notice of Intent to Revoke are hereby reaffirmed and incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED AND ORDERED by the Governing Board of the Berkeley Unified School District that the following documentation is hereby incorporated by reference into the record as the substantial evidence supporting revocation of the REALM charter.

April 10, 2019-Action Item 16: Notice of Intent to Revoke REALM Charter School
<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=71596&AgencyTypeID=1&IsArchived=False>

February 6, 2019- Action Item 18: Notice of Violation for REALM Charter School
<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=70407&AgencyTypeID=1&IsArchived=False>

September 26, 2018 – Action Item 16: Notice of Violation for REALM Charter Schools
<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=66135&AgencyTypeID=1&IsArchived=False>

February 2, 2018 – Action Item 16: Notice of Violation for REALM Charter Schools
<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=57241&AgencyTypeID=1&IsArchived=False>

January 25, 2017-Action Item 12.1: Notice of Violation for REALM Charter Schools
<https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=40632&AgencyTypeID=1&IsArchived=False>

BE IT FURTHER RESOLVED AND ORDERED by the Governing Board of the Berkeley Unified School District that the following documentation is hereby incorporated by reference into the record as the substantial evidence supporting revocation of the REALM charter:

- Exhibit A:** BUSD February 2019 Notice of Violation to REALM
- Exhibit B:** BUSD May 2019 Notice of Intent to Revoke to REALM
- Exhibit C:** Analysis of REALM Academic Performance Data (CAASPP and Dashboard)
- Exhibit D:** REALM February 21, 2019 Response to Notice of Violation
- Exhibit E:** REALM April 9, 2019 response to questions regarding material revision.
- Exhibit F:** REALM April 10, 2019 Draft Response to Draft Notice of Intent to Revoke
- Exhibit G:** REALM Aged Payables April 9, 2019
- Exhibit H:** BUSD April 26, 2019 Letter to REALM
- Exhibit I:** REALM April 29, 2019 Response to Notice of Intent to Revoke

BE IT FURTHER RESOLVED AND ORDERED by the Governing Board of the Berkeley Unified School District that the charter granted for the establishment of REALM (California Department of Education Charter No. 01611430138552) is hereby revoked effective June 30, 2019, and that the Superintendent or his designee is authorized to take such as actions as are appropriate and/or required by law to implement this resolution.

PASSED AND ADOPTED on June 12, 2019, by the Governing Board of the Berkeley Unified School District by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENCES:

I declare under penalty of perjury that the foregoing resolution was duly passed and adopted on the date and by the vote stated.

Secretary of the Governing Board for
BERKELEY UNIFIED SCHOOL DISTRICT