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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12
13 NORTH OAKLAND COMMUNITY)
CHARTER SCHOOL,)
14)
Petitioner/Plaintiff,)
15)
v.)
16)
OAKLAND UNIFIED SCHOOL DISTRICT;)
17 and DOES 1 through 10,)
18)
Respondents/Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: **24CV078742**
**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Petitioner/Plaintiff NORTH OAKLAND COMMUNITY CHARTER SCHOOL (“NOCCS” or
2 “School”) brings this action on behalf of itself, its current students, their families, and their
3 communities, to prevent OAKLAND UNIFIED SCHOOL DISTRICT (“District” or “OUSD”) from
4 illegally forcing the closure of NOCCS’s public charter school. NOCCS petitions this Court to issue a
5 writ of mandate, declaratory relief, injunctive relief, and other relief as requested herein, alleging as
6 follows:

7 I. INTRODUCTION

8 1. The circumstances surrounding this action, and thus giving rise to an immediate need for
9 judicial relief, involve a large school district’s repugnant actions to deceive, take advantage of, and
10 ultimately shut down a local tuition-free public charter school that has served as a pillar of its
11 community for over two decades.

12 2. At the time of NOCCS’s last charter renewal in 2019, the District agreed to approve
13 NOCCS’s charter for another five years, but as a condition, imposed a contractual agreement
14 (“Agreement”) to enable closure of the school prior to the renewed charter’s expiration and without
15 the revocation procedures required by the Education Code. Simply put, the District strong-armed
16 NOCCS into a callously one-sided agreement over the highest possible stakes: Whether the school will
17 remain open to continue educating its students and supporting its community. The District’s actions
18 show it has taken full advantage of the opportunity to pressure a small charter school into
19 relinquishing any meaningful chance of survival and all rights to due process along the way.

20 3. The District has now taken unilateral action to revoke the school under the pretext of the
21 Agreement. However, the Agreement directly contradicts the requirements of Education Code section
22 46707 by allowing OUSD to summarily revoke Petitioner’s charter without the statutory due process
23 rights afforded to charter schools. Under Education Code section 47607, a charter can only be
24 revoked for specific reasons and only after a series of public hearings and the charter school has been
25 given notice and a reasonable opportunity to cure any deficiencies. The statute explicitly outlines the
26 procedures and standards for revocation, ensuring that charter schools are afforded significant due
27 process rights, including the right to a public hearing and an appeal process. By circumventing these
28 statutory requirements, the Agreement nullifies the protections afforded to charter schools under state

1 law that are mandatory preconditions to revoking the charter and closing the school. Moreover,
2 Education Code section 47607 establishes that the decision to revoke a charter must be based on
3 substantial evidence of material violations of the charter, failure to meet pupil outcomes, fiscal
4 mismanagement, or violation of any law. The Agreement, however, allows OUSD to bypass these
5 stringent standards and procedures, enabling arbitrary and unilateral revocation actions without the
6 necessary legal safeguards. The District's tactics undermine both the express requirements and the
7 legislative intent behind Education Code section 47607, which aims to provide stability and fairness to
8 the charter school and its parents and students.

9 4. Accordingly, the Agreement is preempted by state law (the Charter Schools Act)
10 because it directly conflicts with and violates the mandatory revocation procedures outlined in
11 Education Code section 47607. The Agreement allows OUSD to revoke NOCCS's charter for any
12 perceived breach and requires NOCCS to waive rights such as a written notice of violation supported
13 by substantial evidence, an opportunity to remedy, a public hearing, and an appeal - all of which
14 contradict section 47607's non-waivable requirements. Education Code section 35160 and the case
15 law is clear that the District is prohibited from taking any action that is in conflict with state law. As
16 section 47607 comprehensively regulates the charter revocation process, the conflicting Agreement is
17 preempted and rendered null and void.

18 5. Additionally, OUSD's actions are not in good faith and are instead indicative of a
19 longstanding pattern of denial of support and collaborative efforts. The District's actions to summarily
20 close the school represents the culmination of a fundamentally flawed process fraught with duress,
21 unconscionability, potential conflicts of interest, and a lack of genuine engagement with the School's
22 leadership.

23 6. Through this Complaint, NOCCS asserts its right to have this ill-gotten Agreement
24 rescinded and to stop OUSD from any further execution of its charter revocation. NOCCS calls upon
25 the Court to recognize the inequity at play and to vitiate the Agreement, thereby preserving the
26 School's legacy and its future potential to serve its community free from the heavy-handed tactics
27 deployed by OUSD.

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1 **II. PARTIES**

2 7. Petitioner/Plaintiff NOCCS is a non-profit public benefit corporation organized under
3 the laws of the State of California, which operates a TK-5th grade tuition-free public charter school of
4 the same name. NOCCS first opened on September 5, 2000, and has pioneered and grown the
5 personalized education movement in California, an innovative approach to schooling in which every
6 student, of every background and level of ability, can receive a high quality, free, public education
7 designed to meet each student’s individual needs, interests, learning objectives.

8 8. In the 2022-2023 school year, NOCCS enrolled 147 students, of which 59.7% were
9 socioeconomically disadvantaged. NOCCS was also selected as a winner of the Oakland Raise the
10 Bar Awards by Families in Action for Quality Education based on test scores reflecting double-digit
11 improvement in English Language Arts (“ELA”) 10% + and overall proficiency of 30%+ for Black
12 students. NOCCS has been serving its students well and aims to continue its mission of helping
13 children become thoughtful, informed, and inquisitive citizens as it has for nearly 24 years.

14 9. Respondent/Defendant OUSD is a school district within the County of Alameda. The
15 District is, and at all times mentioned herein was, a public entity duly existing under the laws of the
16 State of California and operating as a public school district providing educational services in the
17 County of Alameda.

18 10. Petitioner is ignorant of the true names and capacities of defendants sued herein as Does
19 1-10, inclusive, and therefore sues these defendants by these fictitious names. Petitioner will amend
20 this Complaint to allege their true names and capacities when ascertained. Petitioner is informed and
21 believes, and thereon alleges, that each of the fictitiously named defendants is responsible in some
22 manner for the occurrences herein alleged, and that its injuries, as herein alleged were proximately
23 caused by the wrongful conduct of these fictitiously named defendants.

24 **III. JURISDICTION AND VENUE**

25 11. This case raises questions under the statutory law of the State of California. Thus, this
26 Court has jurisdiction over all of Petitioner’s claims. This Court is authorized to issue a writ pursuant
27 to section 1085, et seq., of the California Code of Civil Procedure, and to grant injunctive relief

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1 pursuant to sections 525 and 526 of the California Code of Civil Procedure, declaratory relief pursuant
2 to sections 1060, et seq., Civil Code section 1689, and all such other relief prayed for by the Petitioner.

3 12. Venue is proper in this Court pursuant to section 395(a) of the California Code of Civil
4 Procedure as the Petitioner/Plaintiff and Respondent/Defendant are located in Alameda County,
5 California, and the acts and conduct at issue occurred in Alameda County, California.

6 IV. STATEMENT OF FACTS

7 A. California Creates the Charter School System to Fulfill Its Constitutional Duty to Provide 8 Students with a Public Education and Provide Students with Educational Choice.

9 13. The California Supreme Court has long recognized that a child’s right to an education is
10 a fundamental interest guaranteed by the California Constitution. (*Serrano v. Priest* (1971) 5 Cal.3d
11 584, 609.) Education is “a major determinant of an individual’s chances for economic and social
12 success in our competitive society,” and “a unique influence on a child’s development as a citizen and
13 his participation in political and community life.” (*Id.* at 605.) “[E]ducation is the lifeline of both the
14 individual and society” (*Ibid.*) and serves the “distinctive and priceless function” as “the bright hope
15 for entry of the poor and oppressed into the mainstream of American society.” (*Id.* at 608-09.)

16 14. Although the California Constitution vests the State with the responsibility to provide a
17 free and equitable education to all of its citizens, it does not define the manner in which the public
18 school system is to be organized. Until the 1990s, education was generally organized and
19 implemented by the State through school districts and county offices of education. However, in 1992,
20 the Charter Schools Act was signed into law which authorized the creation of new public schools, like
21 NOCCS, to deliver on the State’s constitutional obligation to provide a free education to its young
22 citizens.

23 15. For the first time in California’s history, the State authorized the creation of new public
24 schools under the CSA by operators seeking to innovate in providing a new option in public education
25 for students across the State.

26 16. On information and belief, the Charter Schools Act was a response to clear evidence that
27 public schools, especially inner-city schools, were failing (See, e.g., Lewis D, Solomon, Edison
28 Schools mid the Privatization of K-12 Public Education: A Legal mid Policy Analysis, 30 Fordham

1 Urb. L.J. 1281, 1328 (2003); Nation at Risk: The Imperative, for Educational Reform (Apr. 1983)
2 (13% of the nation’s 17-year olds were functionally illiterate, reaching 40 % among minorities); inner-
3 city schools are characterized by “low academic performance, increased violence, high dropout rates,
4 and demoralized students and teachers.” (*Solomon, supra*, at p. 1282).)

5 17. Through the CSA, it was “the intent of the Legislature . . . to provide opportunities for
6 teachers, parents, pupils, and community members to establish and maintain schools that operate
7 independently from the existing school district structure,” including to “[i]mprove pupil learning,”
8 “[i]ncrease learning opportunities for all pupils, with special emphasis on expanded learning
9 experiences for pupils who are identified as academically low achieving,” “[p]rovide parents and
10 pupils with expanded choices in the types of educational opportunities that are available within the
11 public school system,” and to “[p]rovide vigorous competition within the public school system to
12 stimulate continual improvements in all public schools.” (Ed. Code § 47601.)

13 18. Indeed, the law is designed with the understanding that school districts may not have the
14 same impetus to innovate or may act to protect fiscal interests, potentially at the expense of
15 competition from charter schools. The legislative intent is clear: charter schools are to be shielded
16 from competing fiscal interests of school districts, thereby ensuring that the competition they bring is
17 maintained and that their potential to improve the public education system is not undermined by those
18 who might view them as a financial threat.

19 19. At all times since the CSA was enacted, it has been the intent of the Legislature that
20 “charter schools are and should become an integral part of the California educational system and that
21 the establishment of charter schools should be encouraged.” (Ed. Code § 47605(c).)

22 20. Charter schools are initiated by submitting a petition to the chartering authority,
23 generally the governing board of a public school district. (*American Indian Model Schools v. Oakland*
24 *Unified School Dist.* (2014) 227 Cal.App.4th 258, 266.) Once approved, charter schools operate
25 independently, but are subject to public oversight.

26 21. Even though charter schools are independent and operate separately from the school
27 district structure, “charter schools are strictly creatures of statute. From how charter schools come into
28 being, to who attends and who can teach, to how they are governed and structured, to funding,

1 accountability and evaluation—the Legislature has plotted all aspects of their existence.” (*Wilson v.*
2 *State Bd. Of Education* (1999) 75 Cal.App.4th 1125, 1135.)

3 22. Consistent with the educational reforms envisioned by the California Legislature,
4 Education Code section 47605 delineates the procedures by which new charter schools may be
5 approved, grounding the process in the core principles of increased choice, flexibility, and
6 accountability in public education. Following from this, Education Code section 47607 provides a
7 rigorous due process framework for the renewal and revocation of a school’s charter.

8 23. Education Code section 47607 establishes the legal thresholds for charter renewal and
9 revocation. For renewal, the statute requires an objective review of the charter school’s overall
10 performance. The section further delineates the precise grounds upon which a charter may be revoked,
11 mandating that such action be reserved for material violations of the conditions, standards, or
12 procedures outlined in the charter, the failure to meet or pursue the educational outcomes for pupils, or
13 fiscal mismanagement—grounds which are enumerated with protective intent. The law implicitly and
14 explicitly acknowledges the gravity of revocation by imposing substantial due process rights before a
15 charter school can be revoked—a sanction that can dramatically impact the educational landscape of a
16 community by displacing students and undermining the educational choices preferred by families and
17 educators alike.

18 24. Chartering authorities are thus constrained by statute to revoke a charter only upon these
19 enumerated deficiencies and are compelled to adhere to a set of legal principles that underscore
20 procedural fairness and substantive review. This bedrock premise shields against arbitrary and
21 capricious actions of the charter school’s competitor that would disrupt the statutory scheme and
22 objectivity that Education Code section 47607 is designed to preserve. The charter renewal process,
23 therefore, is not merely evaluative but is also anchored in the state’s commitment to foster innovation
24 and excellence through charter schools, ensuring that revocation is a measure of last resort, employed
25 only when a school egregiously falls short of the high standards that justify its continued operation in
26 the California educational framework.

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1 **NOCCS Is a Thriving Charter School That Is Successfully Delivering a Quality Education**
2 **to its Students, as Intended by the CSA.**

3 25. Over the course of twenty-four years since its initial charter approval by OUSD on May
4 1, 2000, the NOCCS has prospered, becoming an esteemed and vital place of learning that unites a
5 tightly-knit community of students, alongside their families. Its successful and reputable profile has
6 been consistently recognized by the OUSD, leading to routine renewals of its charter at five-year
7 intervals, with renewals granted on March 30, 2005; February 24, 2010; March 25, 2015; and then
8 again on January 8, 2020. NOCCS’s current charter expires on June 30, 2028.

9 **The Unconscionable Agreement**

10 26. Despite the historical pattern of OUSD’s renewal of NOCCS, a marked shift occurred
11 surrounding the latest charter renewal process. Subsequent to NOCCS’s charter renewal petition
12 submission on October 25, 2019, on or around January 8, 2020, the District leveraged the potential of
13 non-renewal to coerce NOCCS into an unconscionable and absurdly one-sided agreement
14 (“Agreement”), that ran entirely contrary to the renewal and revocation procedures prescribed by
15 Education Code section 47607. (Agreement, attached hereto as **Exhibit 1.**)

16 27. The Agreement provided that the District would approve renewal of NOCCS’s charter
17 but only under certain “conditions” that ultimately amounted to the District contracting its way out of
18 any and all statutory obligations and procedural safeguards, thus freeing itself to force NOCCS
19 “voluntarily” to close its doors forever or illegally revoke the school’s charter with impunity:

20 **Approval with Conditions.** The Parties agree that OUSD has sufficient
21 legal basis to deny the Renewal Petition but has, at its sole discretion, opted
22 not to deny the Renewal Petition or adopt findings in support of denial.
23 Instead, OUSD will approve the Renewal Petition, with conditions, as set
24 forth in this Agreement. The Parties agree that OUSD’s authorization of
25 NOCCS, and NOCCS’ continued operation of the Charter School is
26 contingent upon its compliance with all conditions and terms set forth in
27 this Agreement.

28 (Exh. 1, Agreement, p. 2; emphasis added.)

29 28. Through the Agreement, the District granted itself absolute, unquestionable authority to
30 decide whether NOCCS would satisfy the District’s one-sided terms and conditions that determine any
31 future existence of the school:

1 If OUSD determines that NOCCS has not complied with the terms of this
2 section, OUSD shall notify NOCCS of its objections in writing, and
3 NOCCS shall have ten (10) business days to provide a written explanation
4 to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS
5 has complied with the terms of this section upon review of any written
6 explanation provided by NOCCS. Failure to comply with this section shall
7 constitute a failure by NOCCS to meet or pursue the pupil outcomes
8 identified in its charter. Failure to comply with this section, in whole or in
9 part, shall constitute a material breach of this Agreement. Any material
10 breach of this Agreement shall also constitute a material breach of the
11 Renewal Petition.

12 (Id. at p. 3; emphasis added.)

13 **D. The District's Actions Are Direct Violations of Section 47607.**

14 29. In order to lawfully revoke NOCCS's charter, Education Code section 47607 requires
15 the District first to find in a public hearing, through a showing of substantial evidence, that NOCCS
16 committed any of four specifically enumerated violations – none of which are present here:

- 17 a. Committed a material violation of any of the conditions, standards, or procedures
18 set forth in the charter.
- 19 b. Failed to meet or pursue any of the pupil outcomes identified in the charter.
- 20 c. Failed to meet generally accepted accounting principles, or engaged in fiscal
21 mismanagement.
- 22 d. Violated any law.

23 (Ed. Code, § 47607, subd. (f).)

24 30. Additionally, section 47607 imposes, and demands compliance with, specific procedures
25 designed to safeguard and uphold a charter school's right to due process: the District Board must hold
26 a public hearing and determine if substantial evidence exists to support a claim that NOCCS engaged
27 in one of the acts above; the District must provide NOCCS adequate notice of any such violation and a
28 reasonable opportunity to remedy the violation; if NOCCS fails to remedy the violation then the
District must issue a Notice of Intent to Revoke with the supporting evidence and then hold a public
hearing on whether evidence exists to revoke the charter; thereafter there is a right to appeal any abuse
by the District to the County Board of Education and then to the State Board of Education. (See Ed.
Code, § 47607, subs. (g)-(i).)

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1 31. Most importantly, no provision, procedure, or right within the revocation process may
2 be waived by the District, NOCCS, or any other authority at any level. (Ed. Code., § 47607, subd. (o).)

3 32. The action by the OUSD Board to seek the closure of NOCCS has resulted in an
4 immeasurable negative impact on the School’s current and future enrollment and has hindered the
5 School’s ability to otherwise focus on student interests.

6 33. The District’s wrongful actions have also caused hardship to the school administration.
7 Winding down a corporation is a time-consuming process. If the school closes June 30, 2024, then
8 there will be no funding for closure efforts over the summer in an orderly manner. Instead, the school
9 must take attention away from students in order to accelerate the process during the school year.

10 34. And yet, despite these vast Education Code protections, through the Agreement, the
11 District granted itself absolute, unquestionable authority to close the School and/or revoke its charter
12 completely at will – thereby wholly repudiating any semblance of essential procedure under Education
13 Code section 47607, discharging itself of its mandatory duties, and stripping NOCCS of all rights to
14 due process:

15 **Voluntary Closure, Revocation, and Waiver of Rights.** If OUSD
16 determines, in its sole discretion, that NOCCS has materially breached this
17 Agreement for any reason, including but not limited to as set forth in
18 sections VI and VII, OUSD will notify NOCCS in writing of the material
19 breach. Upon receiving said notification, NOCCS shall voluntarily close the
Charter School by the first June 30 immediately following the material
20 breach or, if the first June 30 immediately following the material breach is
21 June 30, 2025, NOCCS agrees that it shall not submit (or will withdraw if
already submitted) any succeeding renewal petition.

22 ...

23 If NOCCS fails to voluntarily close the Charter School as required by this
section, OUSD shall initiate revocation proceedings against NOCCS
pursuant to OUSD’s authority under Education Code section 47607. For
24 violations of section VI (Middle School Grade Span Reduction) or section
25 VII (Academic Outcomes), NOCCS hereby waives all rights otherwise
afforded to it under Education Code section 47607, and agrees the District
shall not be required to provide NOCCS with a notice of violation or
opportunity to remedy, pursuant to Education Code section 47607,
subdivision (d), prior to revoking NOCCS charter except as otherwise
provided for in this Agreement. NOCCS further waives all rights to appeal
OUSD’s revocation of its charter pursuant to this section for any violations
of this Agreement related to reduction of middle school grade spans and
26 academic outcomes.

27
28 (*Id.* at p. 4; emphasis added.)

1 35. Adding further insult to injury, the District ensured that, under the Agreement, any and
2 all costs associated with the District’s exercise of its newly obtained, unfettered power to shut down
3 the small charter school would be paid, exclusively, by the terminated school:

4 If NOCCS fails to voluntarily close the Charter School as required by this
5 section, and OUSD initiates revocation proceedings, NOCCS shall pay to
6 OUSD all direct and indirect costs arising from said revocation, including
7 but not limited to staffing costs.

8 (*Id.* at p. 4; emphasis added.)

9 36. The District provided NOCCS with the simple choice of either entering into the
10 Agreement or being forced to close.

11 37. In light of the circumstances and considerable, unprecedented difficulties surrounding
12 the COVID-19 pandemic, the Agreement was later amended in December 2020 to update the terms of
13 the applicable measurement criteria for determining NOCCS’s performance in accommodation of the
14 unexpected unavailability of the California Assessment of Student Performance and Progress
15 (“CAASPP”).

16 38. Specifically, the Agreement was amended to require that NOCCS:

- 17 i. Meet the thresholds set forth in Exhibit A to the Agreement for two (2) of the
18 three (3) domains (i.e. ELA, Math, Key Student Groups) in Year 1 and Year 2
19 and in the Key Student Group domain in at least Year 1 or Year 2; or
- 20 ii. Meet the thresholds set forth in Exhibit A to the Agreement for all three (3)
21 domains (i.e. ELA, Math, Key Student Groups) in Year 1 or Year 2; and
- 22 iii. “‘Year 1’ shall be defined as the first year in which the [CAASPP] is
23 administered annually during the 2020-21, 2021-22, and 2022-23 school years, if
24 CAASPP is administered annually at least once during the 2020-21, 2021-22,
25 and 2022-23 school years: ‘Year 2’ shall be defined as the second year in which
26 CAASPP is administered annually during the 2020-21, 2021-22, and 2022-23
27 school years, if CAASPP is administered annually in at least two of three years
28 during the 2020-21, 2021-22, and 2022-23 school years.”

(Amended Agreement, attached hereto as **Exhibit 2**, p. 1.)

1 39. Despite the amendment, the Agreement failed to truly consider the effect of the COVID-
2 19, which resulted in a lack of resources and equity, distance learning obstacles, extended need for
3 quarantine of classrooms, and, importantly, lack of testing and data available during most of applicable
4 years.

5 **E. The District’s Violation Notice and NOCCS’s Response**

6 40. On March 4, 2024, the District sent a “Notification: Violation of Agreement,” (“March 4
7 Notice”) alleging that the District had determined that NOCCS did not meet the required academic
8 outcomes as outlined in the Agreement for the 2021-22 and 2022-23 school years.

9 41. On March 18, 2024, NOCCS timely responded and demonstrated that it was clear from
10 the March 4 Notice that the District was blatantly attempting to modify or selectively interpret the
11 Agreement to force the illegitimate closure of NOCCS.

12 42. The Agreement, as amended, requires that NOCCS must meet identified thresholds two
13 of the three areas (“domains”) in Year 1 and Year 2 and in the Key Student Group domain in at least
14 Year 1 (2021-22) or Year 2 (2022-23). In the March 4 Notice, OUSD unilaterally discarded one-third
15 of the metrics in two of three domains to improperly conclude that NOCCS met one metric in one
16 domain in Year 1, only, and thus improperly conclude the School failed to meet the Agreement’s
17 terms.

18 43. Evaluating the relevant data shows NOCCS, in fact, met one domain in Year 1; two
19 domains in Year 2; and the Key Student Group domain in both Year 1 and Year 2.

20 **i. Domain 1 and Domain 2: English Language Arts and Math CORE Growth:**
21 **Year 1 (2021-22): MET**

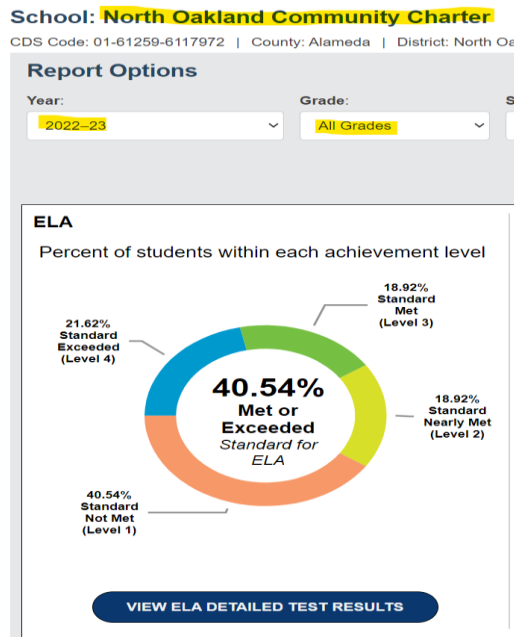
22 a. The District has taken the position that NOCCS did not meet the CORE
23 Growth metric in either Year 1 for either ELA or math because CORE
24 Growth data is not available for 2021-22. Of course, CORE Growth data
25 is not available for 2021-22 because the CAASPP assessments in ELA
26 and math were not required in 2020-21, the year prior to Year 1, due to
the pandemic. With no scores in 2020-21, there can be no Growth score
for 2021-22; 2021-22 instead becomes a baseline, from which future
growth can be measured.

27 b. However, the District did not consult the NOCCS before attempting to
28 unilaterally amend the Agreement by disposing of one-third of the
metrics for two of three domains. To be clear, NOCCS never agreed to
any such modification to the Agreement.

1 ii. **Domain 1: English Language Arts Smarter Balanced Assessment**
2 **Consortium (“SBAC”) Proficiency Rates: Year 2**

3 **(2022-23): MET**

- 4 a. The District improperly excluded CAASPP ELA data generated by
5 NOCCS in Year 2 (2022-23) to perpetuate its narrative and drive to close
6 the School. However, the data is valid, not contrary to the Agreement,
7 and beneficial for NOCCS. Accordingly, it must be included and
8 considered. Indeed, the data shows that NOCCS **MET** the ELA domain
9 for Year 2 in ELA.
- 10 b. The School’s third grade students did take the ELA SBAC test in spring
11 2023. However, a which even the CDE cannot explain, occurred, causing
12 the third grade scores not to be reported. And yet, NOCCS still generated
13 a status and change color for ELA on the 2023 Dashboard, and still
14 generated a schoolwide average SBAC proficiency rate for 2022-23. The
15 SBAC proficiency rate for the whole School is the metric that is
16 measured for this portion of the ELA domain.
- 17 c. NOCCS’s SBAC proficiency rate for Year 2 (2022-23) was 40.54%, as
18 documented by the CDE’s CAASPP website.



- 19 iii. With an ELA SBAC proficiency rate of 40.54% in Year 2, and a proficiency rate
20 of 32.36% in Year 1, NOCCS posted a laudable 8.18% proficiency rate increase
21 from Year 1 to Year 2. During that same time, the District’s proficiency rate
22 decreased by 1.59%. That means that NOCCS’s net increase was 9.77% over
23

1 OUSD, nearly doubling the target rate of 5%. Accordingly, this domain has been
 2 **MET**.

3 **iv. Domain 3: Key Student Groups (Year 1)**

4 a. The District acknowledged that NOCCS **MET** this domain in Year 1.

5 From OUSD’s Notice:

6 *Figure 9: Key Student Groups Domain, Year 1*

Student Group	NOCCS			OUSD			NOCCS Met?
	ELA	Math	Avg	ELA	Math	Avg	
Black / African American	7.14%	6.67%	6.91%	20.64%	14.19%	17.41%	No
Hispanic / Latino	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Socioeconomically Disadvantaged	25.92%	18.51%	22.22%	23.57%	18.70%	21.13%	Yes
English Learners	7.14%	23.07%	15.11%	12.51%	11.66%	12.09%	Yes
Students with Disabilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Domain / Target Met?	NOCCS met 2 of 3 available student groups, therefore Domain / Target Met						

11 *Source: CAASPP Research Files*

12 **v. Domain 3L Key Student Groups (Year 2)**

13 a. Again here, the District improperly excluded SBAC ELA data generated
 14 by NOCCS in Year 2 (2022-23). By excluding the relevant data for
 15 numerically significant student subgroups, the District could perpetuate
 16 its narrative and drive to close the School. However, the data is valid, not
 17 contrary to the MOU, and beneficial for NOCCS. Accordingly, it must be
 18 included and considered. Indeed, including the data shows that NOCCS
 19 **MET** the Key Student Groups domain for Year 2.

20 b. In Year 2 (2022-23), NOCCS Black/African-American students earned a
 21 proficiency rate of 38.46%. Socioeconomically disadvantaged students
 22 earned a proficiency rate of 45%. Averaged with the math scores for that
 23 year, NOCCS Black/African-American students scored a 25.9%
 24 proficiency rate, 8.11% higher than the District. For Socioeconomically
 25 disadvantaged students, the average proficiency rate was 27.34%, 6.74%
 26 higher than OUSD’s rate.

27 c. Accordingly, both of NOCCS’s numerically significant student subgroups
 28 in Year 2 **MET** domain 3.

1 **F. March 27, 2024 Resolution and April 4, 2024 Notice of School Closure**

2 44. In blatant disregard of the facts, on March 27, 2024, the District Board of Education
3 approved a resolution to adopt and issue an official Notice to NOCCS in accordance with the
4 Agreement demanding the school voluntarily close or face revocation without due process of law
5 (“Voluntary Closure Resolution”).

6 45. According to the Resolution, the District, in its sole discretion, determined that NOCCS
7 had materially breached Section VII (“Academic Outcomes”) of the Agreement, and noted that
8 “NOCCS had an opportunity to provide a written explanation to OUSD regarding this review” -
9 without affording NOCCS’s response any consequence or acknowledgment of its consideration by the
10 District.

11 46. On April 4, 2024, the District issued another notice, demanding that “NOCCS shall
12 voluntarily close the Charter School by the first June 30 immediately following the material breach,”
13 or else (i) the District would initiate “revocation proceedings against NOCCS pursuant to OUSD’s
14 authority under Education Code section 47607”; (ii) without any requirement that the District “provide
15 NOCCS with a notice of violation or opportunity to remedy, pursuant to Education Code section
16 47607, subdivision (d)”; (iii) without NOCCS having “any rights to appeal OUSD’s revocation of its
17 charter”; and (iv) that NOCCS must then “pay to OUSD all direct and indirect costs arising from said
18 revocation.”

19 **G. June 5, 2024 Revocation of NOCCS’s Charter Effective June 30, 2024**

20 47. On June 5, 2024, OUSD Board (“Board”) adopted another resolution to “revoke[] the
21 NOCCS charter, effective June 30, 2024” and further directing OUSD’s staff “to provide notification
22 to the California Department of Education of the revocation of the NOCCS charter under Education
23 Code section 47604.32.” (OUSD Board Resolution No. 2324-0074, attached hereto as **Exhibit 4**, at p.
24 1, “Revocation Resolution.”)

25 48. During the June 5, 2024 meeting, the OUSD Board did not permit NOCCS to present its
26 case, and additionally, restricted public comment to one minute per speaker. Moreover, despite
27 hearing from dozens of students and parents who spoke in support of NOCCS, and hearing nothing in
28 opposition, the Board did not engage in *any* deliberation regarding the Revocation Resolution.

1 Instead, immediately following the public comment period, the made a motion motion was made, and
2 the Board voted 5-1-1 to approve the resolution to revoke NOCCS pursuant to the Agreement, rather
3 than adhering to the requirements of Education Code section 47607.

4 49. Moreover, OUSD providing this notification to the California Department of Education
5 (“CDE”) under section 47604.32 can trigger the CDE to immediately withhold and no longer
6 apportion funds from the state to NOCCS. The loss of state funding would be catastrophic for
7 NOCCS's operations and ability to remain open. As a public charter school, NOCCS relies heavily on
8 state funding apportionments to pay for essential expenses like:

- 9 • Teacher and staff salaries/benefits
- 10 • Facilities costs (rent, utilities, maintenance)
- 11 • Instructional materials and supplies

12 50. Without this critical stream of state funding, NOCCS would lack the financial resources
13 to continue providing educational services and meeting its operational needs.

14 51. The Revocation Resolution states that under the terms of the Agreement, NOCCS
15 waived all due process rights afforded to NOCCS under the Education Code section 46707, thereby
16 allowing it to unilaterally revoke the charter without the opportunity to remedy, without a public
17 hearing or right to appeal, with less than 30 days notice from the effective date of revocation. (*Ibid.*)
18 Specifically, the Resolution provides as follows:

19 WHEREAS, the January 8, 2020 Agreement provides that “[i]f NOCCS
20 fails to voluntarily close the Charter School as required by this section,
21 OUSD shall initiate revocation proceedings against NOCCS pursuant to
22 OUSD's authority under Education Code section 47607,” and that,
23 for violations of the Agreement, “NOCCS hereby waives all rights
24 otherwise afforded to it under Education Code section 47607, and agrees
25 the District shall not be required to provide NOCCS with a notice of
26 violation or opportunity to remedy, pursuant to Education Code section
27 47607, subdivision (d), prior to revoking NOCCS charter except as
28 otherwise provided for in this Agreement; and

(*Ibid.*)

WHEREAS, the January 8, 2020 Agreement further provides that “NOCCS
further waives all rights to appeal OUSD's revocation of its charter pursuant
to this section for any violations of this Agreement related to reduction of
middle school grade spans and academic outcomes.

(*Ibid.*)

1 **H. Conflict of Interest Concerns**

2 52. Moreover, central to the Grand Jury’s revelation is a conception of a self-serving
3 administrative syndrome uncontrolled within OUSD, as seen in “Finding 19-12: The Oakland Unified
4 School District’s culture is broken. It has been described as a district of exceptions with an attitude of
5 ‘what’s in it for me?’” (Exh. 3, p. 47.) In light of NOCCS’s commitment to its students and its
6 struggle against OUSD’s actions, these findings underscore a disconnect between the principles that
7 NOCCS and the broader state educational system espouse and the District’s internal operations and
8 motivations.

9 53. In fact, the District’s actions largely conformed to its greater pattern and practice of
10 denying NOCCS the right to a fair review of charter growth, or from receiving any support from its
11 authorizing district. On information and belief, NOCCS’s leaders had been advised on multiple
12 occasions by the District’s Office of Charter Schools that it does not provide support or resources, and
13 that NOCCS should, instead, simply reach out to its attorneys. According to the District’s Office of
14 Charter Schools, its role is not to support, but to authorize and oversee – and NOCCS will hear from
15 the District only when violations or concerns arise.

16 54. Moreover, on information and belief, the terms and purpose of the Agreement were
17 conceived and instituted pursuant to an oral side agreement between the District and the prior head of
18 the charter school, DM Kloker.

19 55. On information and belief, Kloker had stated in a number of meetings in 2019 that the
20 only chance for NOCCS to stay open was to sign the Agreement. Specifically, Kloker stated that,
21 although schools had been discouraged from signing such similar agreements in the past, he had
22 spoken with the personnel at the District and its Office of Charter Schools, and felt confident that
23 NOCCS would get the support it needed to be successful under the terms of the Agreement. This was
24 not so.

25 56. Shortly after advocating for the school’s closure, DM Kloker changed positions from the
26 Head of School at NOCCS to his current position – a Principal for OUSD.

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1 **I. The Agreement Destined NOCCS for Failure.**

2 57. Faced with the threat of its school being nonrenewed otherwise, NOCCS entered into the
3 Agreement under duress, and it has recently become clear that the Agreement was, in fact, drafted to
4 preclude any reasonable chance of NOCCS satisfying any terms to the District’s “sole and absolute
5 discretion,” such that NOCCS would have no meaningful chance of staying open beyond the first few
6 years of its charter renewal.

7 58. As a further part of its response, NOCCS respectfully asked that Agreement be
8 reexamined and updated, as it never was to reflect the state that all schools, and the world at large,
9 dealt with during the Pandemic shut down and the two years after with COVID restrictions that
10 affected education standards and practices, the economy, socializing, communication, etc.

11 59. COVID affected how children learn and how humans overall interact amongst other
12 things that was never taken into consideration when introducing and approving the Agreement.
13 NOCCS was never given the opportunity to have a level playing field to make significant
14 improvements. To be compared to a whole district or the State standard as a small school of 120
15 students was inequitable and unjust.

16 60. People all over the world lost homes, jobs, finances, schools were closed, distance
17 learning proved to be ineffective and inequitable for a lot of students; even employees at companies,
18 but NOCCS was expected to overcome the same adversities and outperform a whole district and/or
19 state standard while OUSD did not. Though the Agreement was amended, these considerations were
20 not taken into the account.

21 61. The District’s actions, including its entry into the coercive agreement with NOCCS,
22 reflect a pattern of conduct aimed at circumventing the established procedural safeguards for charter
23 school operations. On information and belief, OUSD's approach to this agreement was informed by its
24 previous experience with improper charter revocations, specifically its revocation of a charter school
25 which was ultimately reversed by the Court of Appeal in *American Indian Model Schools v. Oakland*
26 *Unified School Dist.* (2014), *supra*, 227 Cal. App. 4th at 268. On information and belief, this past
27 judicial rebuke likely influenced the District’s attempt to sidestep the stringent revocation procedures

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1 mandated by Education Code section 47607 through the imposition of the onerous terms of the
2 Agreement in question.

3 62. Further exacerbating the situation is the District’s apparent attempt to leverage its
4 authority in a manner reminiscent of its past actions that were judicially determined to be improper.
5 On information and belief, by compelling NOCCS into an overwhelmingly one-sided agreement, the
6 District sought to avoid the precise due process procedural protections outlined in Education Code
7 section 47607, which it had been previously found to have violated by the California Court of Appeal.
8 Such a strategy not only undermines the statutory framework designed to ensure fair and due process
9 but also signals a worrying trend of the District's engagement with its authoritative role over charter
10 schools.

11 63. Moreover, recent Grand Jury findings have revealed a troubling tableau regarding
12 OUSD’s administrative culture and financial stewardship, granting further support to NOCCS’s
13 assertion that OUSD’s coercive actions represent not an anomaly, but a symptom of deeper, systemic
14 issues. The Grand Jury explicitly recognized that “[t]ogether they alleged that abandoned policies and
15 procedures, misguided priorities and poor business practices have greatly contributed to a broken
16 administrative culture that thrives on dysfunction and self-interest.” (2018-2019 Grand Jury
17 Investigation Into OUSD, attached hereto as **Exhibit 3**, p. 33.) These disclosures in the Grand Jury’s
18 investigation are not peripheral but are central to understanding the ethos under which OUSD
19 pressured NOCCS into the current unconscionable Agreement.

20 64. Additionally, the Grand Jury report highlighted that OUSD was experiencing significant
21 financial instability, with the district spending about \$95 million more on non-classroom costs,
22 including administrative staff, contractors, and services, than the median amount spent by 37 Bay Area
23 districts during the 2017-2018 fiscal year. (*Id.* at p. 36.) The district also faced declining enrollment
24 for five consecutive years, which further exacerbated its financial woes. This context suggests that the
25 closure of a public school choice like NOCCS might be motivated by OUSD’s desire to regain
26 students and stabilize its financial situation. (*Id.* at p. 33.)

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1 **J. The Agreement Directly Conflicts With and is Preempted By Education Code Section**
2 **47607.**

3 65. School districts like OUSD have a duty to conform its actions in accordance with the
4 law, including Education Code section 35160, which provides in relevant part that “[t]he governing
5 board of any school district may initiate and carry on any program, activity, or may otherwise act in
6 any manner which is not in conflict with or inconsistent with, or preempted by, any law....”

7 Traditional mandamus is appropriate to generally “correct those acts and decisions of administrative
8 agencies which are in violation of the law....” (*Bodinson Mfg. Co. v. California E. Com.* (1941) 17
9 Cal.2d 321, 329.)

10 66. The District is preempted from taking administrative action like entering or enforcing
11 the terms of the Agreement that are inconsistent with the Act’s express statutory due process
12 requirements to revoke a charter school. (Ed. Code § 35160.) This conclusion is reinforced by
13 Education Code section 47607(o) which provides that these due process provisions are not waivable.

14 67. Local rules that conflict with or duplicate state law are preempted and void. (*O’Connell*
15 *v. City of Stockton* (2007) 41 Cal.4th 1061, 1067.) A conflict exists if a local requirement or ordinance
16 “*duplicates, contradicts, or enters an area fully occupied* by general law, either expressly or by
17 legislative implication.” (*Id.* (emphasis in original).) “A local ordinance *contradicts* state law when it
18 is inimical to or cannot be reconciled with state law.” (*Id.* at 1068 (emphasis in original).) And “[a]
19 local ordinance *enters a field fully occupied* by state law in either of two situations—when the
20 Legislature ‘expressly manifest[s]’ its intent to occupy the legal area or when the Legislature
21 ‘impliedly’ occupies the field.” (*Id.* (emphasis in original).) Implied preemption occurs when “the
22 subject matter has been so fully and completely covered by general law as to clearly indicate that it has
23 become exclusively a matter of state concern....” (*Id.* at 1068.)

24 68. The CSA provides the exclusive statutory process to revoke charter schools. (Ed. Code §
25 47607). By establishing charter schools as “*strictly creatures of statute*” and having “plotted all
26 aspects of their existence,” (*Wilson, supra*, 75 Cal.App.4th at 1135) the Legislature manifested its
27 intent to fully occupy the field for the petitioning process, requirements, and establishment, and
28 revocation of a charter school when enacting and amending the CSA.

1 69. In order to lawfully revoke NOCCS’s charter, Education Code section 47607(f) requires
2 the District first to find, through a showing of substantial evidence, that NOCCS committed one of
3 four specifically enumerated violations: (1) Committed a material violation of any of the conditions,
4 standards, or procedures set forth in the charter; (2) Failed to meet or pursue any of the pupil outcomes
5 identified in the charter; (3) Failed to meet generally accepted accounting principles, or engaged in
6 fiscal mismanagement; and (4) Violated any law.

7 70. Education Code sections 47607(g)-(i) outline the multiple specific procedural steps
8 required to revoke a charter petition based on one of those violations, including a public hearing to
9 determine if sufficient evidence of a violation exists to revoke, adequate notice of any such violation, a
10 reasonable opportunity to remedy the violation, a notice of intent to revoke with supporting evidence,
11 a public hearing on whether evidence exists to revoke the charter, and thereafter multiple levels of
12 appellate review by county and state boards of education. Critically, no provision, procedure, or right
13 within the revocation process may be waived by the District, NOCCS, or any other authority at any
14 level. (Ed. Code., § 47607, subd. (o).)

15 71. The terms of the Agreement directly contradict the terms of Education Code section
16 47607. First, the Agreement contradicts subdivision (f) because the District may only revoke a charter
17 petition upon finding NOCCS committed any of four specifically enumerated offenses, none of which
18 apply to the case at bar, yet the Agreement allows for the District to revoke the charter petition based
19 on NOCCS’s failure to voluntarily close pursuant to the District determining NOCCS materially
20 breached the terms of the Agreement for any reason “under its sole discretion.” (Exh. 2, p. 4; compare
21 with Ed. Code, § 47607, subd. (f).) Second, the Agreement contradicts subdivisions (g), which
22 requires the District to notify the charter school of any violation and give the school reasonable
23 opportunity to remedy the violation,” by providing that the District “shall not be required to provide
24 NOCCS with a notice of violation or opportunity to remedy” upon initiating revocation proceedings.
25 (Exh. 2, p. 4; compare with Ed. Code, § 47607, subd. (g).) Third, the Agreement contradicts the terms
26 of subdivisions (i) and (j), which allow for NOCCS to appeal a revocation by the district or county
27 boards, respectively, by requiring NOCCS to waive “all rights to appeal OUSD’s revocation of its
28 charter” pursuant to violations related to middle school grade spans and academic outcomes. (Exh. 2,

1 p. 4; compare with Ed. Code, § 47607, subds. (i), (f).) Finally, the Agreement contradicts subdivision
2 (o), which provides that “[t]he requirements of this section shall not be waived,” by providing that
3 NOCCS “waives all rights otherwise afforded to it under Education Code section 47607,” upon
4 entering the Agreement. (Exh. 2, p. 4; compare with Ed. Code, § 47607, subd. (o).) By directly
5 conflicting with these statutory requirements, the Agreement is preempted by Education Code section
6 47607.

7 72. Furthermore, the Agreement’s provisions attempt to circumvent the CSA’s established
8 oversight mechanisms by allowing the District to unilaterally determine breaches and enforce closure
9 without an objective review or intervention by state authorities. This usurpation of authority
10 undermines the Legislature’s intent to ensure fairness and transparency in the oversight of charter
11 schools, which is essential for maintaining the integrity of the charter school system.

12 73. The Agreement also fails to comply with Education Code section 47607’s procedural
13 safeguards designed to protect the educational interests of students and the rights of charter schools.
14 By bypassing these safeguards, the Agreement strips NOCCS of its statutory protections, leading to a
15 preemptive and unlawful termination process that jeopardizes the educational stability of the students
16 and community it serves.

17 74. In addition to procedural conflicts, the Agreement imposes conditions that are
18 substantively at odds with the legislative framework of the CSA. For instance, the Agreement’s
19 stipulation for NOCCS to waive its appeal rights not only contravenes the specific provisions of
20 Education Code section 47607 but also violates the broader principles of due process and fairness
21 embedded in the Act.

22 75. The Legislature’s comprehensive regulation of charter schools under the CSA reflects a
23 clear intent to occupy the field, leaving no room for local authorities to impose additional, conflicting
24 requirements. Therefore, the Agreement’s terms are not just inconsistent with, but fundamentally
25 antagonistic to, the state’s statutory scheme for charter school governance. This antagonism
26 underscores the preemptive effect of state law over the Agreement, rendering its provisions null and
27 void.

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1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **WRIT OF MANDATE – PREEMPTION – CONTRADICTION OF STATE LAW**

4 76. Petitioner realleges and incorporates all proceeding paragraphs and each and every
5 allegation contained therein as though set forth in full.

6 77. Petitioner NOCCS is a charter school authorized by Respondent Oakland Unified
7 School District (“OUSD”) pursuant to the Charter Schools Act (“CSA”), Education Code section
8 47600 et seq.

9 78. The CSA provides the exclusive statutory process for revoking a charter school's
10 petition. Education Code section 47607(f) allows revocation only upon a finding, supported by
11 substantial evidence, that the charter school committed one of four specifically enumerated violations.

12 79. Section 47607(g)-(i) outlines mandatory procedures that must be followed before
13 revocation, including a public hearing to determine if substantial evidence exists to support revocation,
14 providing adequate notice of any violation, a reasonable opportunity to remedy the violation, a notice
15 of intent to revoke with supporting evidence, a public hearing, and appellate review rights. No
16 provision or right within this process may be waived by even the State Board of Education.

17 80. The terms of the Agreement directly contradict the terms of Education Code section
18 47607. First, the Agreement contradicts subdivision (f) because the District may only revoke a charter
19 petition upon finding NOCCS committed any of four specifically enumerated offenses, none of which
20 apply to the case at bar, yet the Agreement allows for the District to revoke the charter petition based
21 on NOCCS’s failure to voluntarily close pursuant to the District determining NOCCS materially
22 breached the terms of the Agreement for any reason “under its sole discretion.” (Exh. 2, p. 4; compare
23 with Ed. Code, § 47607, subd. (f).)

24 81. Second, the Agreement contradicts subdivision (g), which requires the District to notify
25 the charter school of any violation and give the school reasonable opportunity to remedy the
26 violation,” by providing that the District “shall not be required to provide NOCCS with a notice of
27 violation or opportunity to remedy” upon initiating revocation proceedings. (Exh. 2, p. 4; compare
28 with Ed. Code, § 47607, subd. (g).)

1 82. Third, the Agreement contradicts the terms of subdivision (i), which allows NOCCS to
2 appeal a revocation by the district or county boards, respectively, by requiring NOCCS to waive “all
3 rights to appeal OUSD’s revocation of its charter...” (Exh. 2, p. 4; compare with Ed. Code, § 47607,
4 subds. (i), (f).)

5 83. Additionally, Education Code section 47607(o) states that “[t]he requirements of this
6 section shall not be waived[.]” This prohibition on waiving the revocation procedures is absolute - it
7 does not provide any exception or authority for even the State Board of Education to waive the
8 requirements. (*Ibid.*) Yet the Agreement directly contravenes this by stating that NOCCS “waives all
9 rights otherwise afforded to it under Education Code section 47607” upon entering into the
10 Agreement. The District lacks any authority under section 47607(o) to compel NOCCS to waive the
11 mandatory notice, opportunity to remedy, public hearing, appeal rights, and other revocation
12 procedures outlined in section 47607. By requiring such a waiver in the Agreement, the District has
13 violated an explicit statutory prohibition that does not allow for any exceptions, not even from the
14 State’s highest education authority. This blatant disregard for section 47607(o)’s non-waiver
15 provision further underscores how the Agreement conflicts with the Charter Schools Act’s
16 comprehensive revocation scheme.

17 84. By compelling NOCCS to enter the Agreement under threat of non-renewal, OUSD has
18 attempted to sidestep the stringent revocation procedures mandated by the CSA, which it was
19 previously judicially rebuked for violating.

20 85. OUSD’s actions conflict with and are preempted by the CSA, which fully occupies the
21 field of charter school revocation through its comprehensive statutory scheme.

22 86. The District a clear, present, and ministerial duty to follow the revocation procedures
23 outlined in Education Code section 47607, rather than attempting revocation pursuant to an
24 unconscionable Agreement.

25 87. NOCCS has a beneficial interest in maintaining its charter and operating its school free
26 from OUSD's unlawful attempts to circumvent the revocation procedures mandated by the CSA.

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1 88. The District has failed and refused to abide by provisions of the California Constitution
2 which prohibit municipalities from entering into contracts like the Agreement that contradict state law.
3 NOCCS has no plain, speedy, and adequate remedy at law other than to seek extraordinary writ relief.

4 89. Peremptory writ relief is necessary because NOCCS has no plain, speedy, or adequate
5 legal remedy to prevent the ongoing harm caused by the District's enforcement of the Agreement in
6 contradiction of state law.

7 90. Accordingly, NOCCS seeks a writ of mandate directing the District to immediately and
8 totally cease enforcing the Agreement because it contradicts state law.

9 **SECOND CAUSE OF ACTION**

10 **DECLARATORY RELIEF – PREEMPTION – CONTRADICTION OF STATE LAW**

11 91. Petitioner realleges and incorporates all proceeding paragraphs and each and every
12 allegation contained therein as though set forth in full.

13 92. An actual controversy exists between NOCCS and OUSD concerning their respective
14 rights and duties under the CSA, Education Code section 47600 et seq.

15 93. The CSA provides the exclusive statutory process for revoking a charter school's
16 petition through Education Code section 47607, which OUSD has attempted to circumvent through the
17 unlawful Agreement with NOCCS.

18 94. Section 47607 allows revocation only upon finding substantial evidence that the charter
19 school committed one of four enumerated violations, and outlines mandatory procedures that must be
20 followed, including notice, opportunity to remedy, public hearing, and appeal rights - none of which
21 may be waived.

22 95. OUSD's actions through the Agreement are preempted by the CSA, which fully
23 occupies the field of charter school revocation through its comprehensive statutory scheme.

24 96. Declaratory judgment is necessary and proper at this time so that the parties may
25 ascertain their rights and duties. NOCCS desires a judicial determination of the validity of the
26 Agreement and OUSD's revocation of NOCCS's charter pursuant to it. NOCCS contends the
27 Agreement is void as preempted by state law.

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1 **THIRD CAUSE OF ACTION**

2 **WRIT OF MANDATE – VIOLATION OF EDUCATION CODE SECTION 47607**

3 97. Petitioner realleges and incorporates all proceeding paragraphs and each and every
4 allegation contained therein as though set forth in full.

5 98. Code of Civil Procedure §§ 1085(a) and 1086 authorize this Court to issue a writ to any
6 inferior tribunal, corporation, board, or person “to compel the admission of a party to the use and
7 enjoyment of a right” where “the petitioner has no plain, speedy and adequate alternative remedy, the
8 respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear,
9 present and beneficial right to performance.” Specifically, when a statute “requires an officer to do a
10 prescribed act upon his prescribed contingency, his functions are ministerial, and upon the happening
11 of the contingency, the writ must be issued.” (*Drummev v. State Board of Funeral Directors* (1939) 13
12 Cal.2nd 75, 83; see also *City of King City v. Community Bank* (2005) 131 Cal.App.4th 913, 926.) “A
13 ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience
14 to the mandate of legal authority and without regard to his own judgment or opinion concerning such
15 act's propriety or impropriety, when a given state of facts exists.” (*Kavanaugh v. West Sonoma County*
16 *Union High School Dist.* (2003) 29 Cal.4th 911,916.)

17 99. The District has a clear, present, ministerial duty to comply with Education Code section
18 47607, which mandates that a charter shall only be revoked upon making discrete findings, established
19 through substantial evidence, and first providing the charter school with adequate notice and
20 reasonable opportunity to remedy the substantiated violation. (Ed. Code, § 47607, subs. (f)-(h).)
21 Further, the District’s actions under section 47607 are subject to oversight and review through a clear,
22 present, and nonwaivable right to appeal afforded to the charter school. (Ed. Code, § 47607, subs. (i),
23 (o).) In failing to make any such findings of statutorily enumerated violations, established by
24 substantial evidence, failing to provide statutorily mandated notice and any opportunity to remedy, and
25 depriving NOCCS of any opportunity for review of the District’s illegal actions through forced waiver
26 of due process, the District has violated Education Code section 47607.

27 100. NOCCS and its students and parents will suffer severe and irreparable injury if the
28 District’s unlawful and arbitrary actions in violation of mandatory state law are not enjoined.

1 101. At all times mentioned herein, the District has had, and continues to have, the ability to
2 perform its legal duties, including its duties under Education Code section 47607, but has refused to do
3 so.

4 102. NOCCS has a clear, present, and beneficial interest in maintain its charter free from
5 OUSD's unlawful attempts to circumvent sections 47607's revocation procedures by virtue of the facts
6 set forth above, and too in ensuring, on behalf of itself and the public, that the District carries out its
7 duties in a manner that does not violate the law.

8 103. NOCCS does not have a plain, speedy, and adequate remedy at law to challenge the
9 District's failure to comply with Education Code section 47607.

10 104. NOCCS has performed any and all conditions precedent to filing this action, including
11 exhaustion of any and all available administrative remedies.

12 105. NOCCS seeks a writ of mandate directing the District to: (1) disavow its Resolution and
13 any attempt of revocation not otherwise in compliance with Education Code section 47607.

14 **FOURTH CAUSE OF ACTION**

15 **DECLARATORY RELIEF – RESCISSION**

16 **(CIV. PROC. CODE SECTIONS 1060 & CIV. CODE SECTION 1689)**

17 106. Petitioner realleges and incorporates all proceeding paragraphs and each and every
18 allegation contained therein as though set forth in full.

19 107. An actual and justiciable controversy exists between NOCCS and Respondent OUSD
20 concerning their respective rights and duties under the Agreement. Under California Code of Civil
21 Procedure § 1060, et seq., the court may declare rights, and duties of the parties to a written
22 instrument.

23 108. Civil Code § 1689, et seq., provides for the rescission of contracts in certain
24 circumstances, including, but not limited to, those where consent was given by mistake or obtained
25 through duress, fraud, undue influence (Civ. Code, § 1689(b)(1)); where consideration fails (Civ.
26 Code, § 1689(b)(3)); where the contract is otherwise unlawful (Civ. Code, § 1689(b)(5)); and where
27 the public interest will be prejudiced by permitting the contract to stand. (Civ. Code, § 1689(b)(6.))
28 Each of these, individually, are grounds for rescission of the Agreement here, as by compelling

1 NOCCS to enter the unlawful Agreement under threat of non-renewal, OUSD has violated section
2 47607 and exceeded its authority under the Charter Schools Act.

3 109. Moreover, The Agreement was procured under duress and undue influence, as described
4 above, with OUSD asserting its position of power over NOCCS's charter renewal, thereby leaving
5 NOCCS with no reasonable alternative but to consent. Moreover, under the circumstances, including
6 the global pandemic, the Agreement was additionally unconscionable at the time of the Amendment,
7 setting forth terms that were unreasonably favorable to OUSD and detrimental to NOCCS. The
8 Agreement should therefore be rescinded pursuant to Civil Code section 1689(b)(1).

9 110. Pursuant to Civil Code section 1689(b)(3), a contract may be rescinded if the
10 consideration for it is unlawful. Here, the consideration for the Agreement was OUSD's renewal of
11 NOCCS's charter petition. However, this consideration was unlawful as OUSD lacked authority to
12 compel NOCCS to waive revocation rights under Education Code section 47607. Thus, the Agreement
13 may additionally be rescinded for this reason.

14 111. In accordance with Civil Code section 1689(b)(5), a contract may be rescinded if
15 unlawful. The Agreement was unlawful as it is preempted by and violates Education Code section
16 47607 from its inception by improperly allowing OUSD to revoke NOCCS's charter without
17 following mandatory procedures. The Agreement requires NOCCS to voluntarily close and allows
18 OUSD to revoke NOCCS's charter at its sole discretion for any perceived breach, circumventing the
19 mandatory revocation procedures outlined in Education Code section 47607. The Agreement further
20 requires NOCCS to waive rights under section 47607 related to notice of violation, opportunity to
21 remedy, public hearing, and appeal rights for revocation. The terms of the Agreement directly conflict
22 with and are preempted by the comprehensive statutory scheme for charter revocation in Education
23 Code section 47607. For these reasons, among others, the Agreement is unlawful and therefore should
24 be rescinded.

25 112. Moreover, the Agreement should further be rescinded pursuant to Civil Code section
26 1689(b)(6), as permitting it to stand would severely prejudice the public interest in ensuring charter
27 schools receive the due process protections mandated by the CSA before revocation.

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1 113. Based on the foregoing circumstances, NOCCS seeks declaratory relief that the
2 Agreement is void and/or subject to rescission, and that the District may not enforce its terms to force
3 the illegal closure of the charter school.

4 **FIFTH CAUSE OF ACTION**

5 **BREACH OF CONTRACT**

6 114. Petitioner realleges and incorporates all proceeding paragraphs and each and every
7 allegation contained therein as though set forth in full.

8 115. Without waiver of NOCCS’s claims that the Agreement is preempted or rescinded and
9 thus void, in the alternative, the Agreement and Amendment are each a contract between NOCCS and
10 the District.

11 116. The District promised, as a material representation of the Agreement, that NOCCS
12 would be able to complete the entirety of its renewal term upon satisfaction of the certain Academic
13 Outcomes provided in the Agreement’s terms. NOCCS adhered to and satisfied the Academic
14 Outcomes prescribed.

15 117. The Agreement specifically required NOCCS to either:

- 16 i) Meet certain thresholds in 2 of 3 testing domains in Year 1 and Year 2, including
17 the Key Student Groups domain; or
- 18 ii) Meet the thresholds in all 3 domains in either Year 1 or Year 2.

19 118. NOCCS fully performed and adhered to the Agreement and Amendment by satisfying
20 the prescribed Academic Outcomes for the 2021-22 and 2022-23 school years constituting Year 1 and
21 Year 2 under the Agreement and Amendment.

22 119. Contrary to the express terms and the spirit of the Agreement and Amendment, on
23 March 4, 2024, the District improperly and without just cause declared NOCCS to be in material
24 breach. The District’s unjustified assertion of breach disregarded the verifiable evidence of NOCCS’s
25 fulfillment of the Academic Outcomes, and was based instead on criteria that either did not form part
26 of the Agreement or Amendment or were unilaterally imposed without the consent of NOCCS. By
27 improperly declaring NOCCS in material breach despite its adherence to the Agreement’s express
28 terms regarding Academic Outcomes, OUSD breached the Agreement.

1 120. OUSD further breached the Agreement by seeking to revoke NOCCS's charter and
2 compel its closure based solely on the unjustified and pretextual assertion of breach, rather than
3 following the mandatory revocation procedures outlined in Education Code section 47607.

4 121. NOCCS has performed all conditions, covenants, and promises required on its part to be
5 performed in accordance with the terms and conditions of the Agreement except for those conditions
6 that are excused by reason of the District's nonperformance and bad faith, or due to waiver by the
7 District.

8 122. As a direct and proximate result of OUSD's breaches, NOCCS has suffered significant
9 harm including but not limited to reputational damage, loss of current and prospective student
10 enrollment, substantial costs and expenses, and the existential threat of unwarranted closure. NOCCS
11 seeks damages for the District's breach of contract, in an amount to be demonstrated at trial, and
12 demands a judicial declaration that NOCCS did perform in accordance with the Academic Outcomes
13 of the Agreement, thereby invalidating the District's wrongful declaration of a material breach.

14 **SIXTH CAUSE OF ACTION**

15 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

16 123. Petitioner realleges and incorporates all proceeding paragraphs and each and every
17 allegation contained therein as though set forth in full.

18 124. Each contract in California, including the Agreement and Amendment, is subject to the
19 covenant of good faith and fair dealing.

20 125. Without waiver of NOCCS's claims that the Agreement and Amendment are preempted
21 or rescinded and thus void, in the alternative, the Agreement and Amendment are each contracts
22 between NOCCS and the District.

23 126. Under the Agreement and Amendment, NOCCS substantially performed all of its
24 significant obligations set forth therein, or its performance was otherwise excused or waived.

25 127. The District prevented NOCCS from receiving the benefits of the Agreement and
26 Amendment, i.e., to continue operating the Charter School pursuant to its charter, by failing to adhere
27 to the material terms of the Agreement specifying the criteria constituting breach.

28 ///

1 128. As addressed above, the District acted in bad faith to deny NOCCS the benefits under
2 the Agreement through unconscionable conduct designed to punish and exploit NOCCS in deprivation
3 of all rights and procedural safeguards otherwise afforded by statute.

4 129. By engaging in the foregoing, the District did not act fairly and in good faith, and
5 NOCCS was harmed by and will continue to be harmed by the District's conduct. As a direct
6 consequence of the District's conduct and breach of the implied covenant of good faith and fair
7 dealing, NOCCS has suffered damages for which the District is obligated to compensate NOCCS in an
8 amount to be proven at trial.

9 130. The aforementioned conduct of the District was an intentional act by the District with
10 the intention on the part of the District of thereby depriving NOCCS of legal rights or otherwise
11 causing injury, and was despicable conduct that subjected NOCCS to a cruel and unjust hardship in
12 conscious disregard of NOCCS's rights, so as to justify an award of damages.

13 **VI. PRAYER**

14 WHEREFORE, NOCCS respectfully prays for judgment against OUSD as follows:

- 15 1. For the First Cause of Action, a peremptory writ of mandate pursuant to Code of Civil
16 Procedure sections 1085(a) and 1086 compelling OUSD to set aside the Agreement and
17 any actions taken pursuant to it, including the action taken by the District to revoke
18 NOCC's charter pursuant to the Agreement;
- 19 2. For the Second Cause of Action, for a declaratory judgment determining that the
20 Agreement and the District's revocation action taken pursuant to the Agreement is void
21 and unenforceable as preempted by the Charter School's Act comprehensive revocation
22 scheme in Education Code section 47607;
- 23 3. For the Second Cause of Action, for a temporary restraining order and preliminary and
24 permanent injunction pursuant to Code of Civil Procedure sections 525 and 526
25 enjoining OUSD from enforcing the Agreement and revoking NOCCS's charter
26 pursuant to it and accordingly notifying the California Department of Education pursuant
27 to Education Code section 47604.32 until final judgment is rendered;

28 ///

- 1 4. For the Third Cause of Action, a peremptory writ of mandate pursuant to Code of Civil
2 Procedure sections 1085(a) and 1086 directing OUSD if it wishes to revoke NOCCS's
3 charter, it must follow the revocation process mandated by Education Code section
4 47607;
- 5 5. For the Fourth Cause of Action, for a declaratory judgment declaring that the Agreement
6 is subject to rescission and that thus OUSD may not enforce the terms of a rescinded
7 Agreement to revoke NOCCS's charter;
- 8 6. In the alternative, for the Fifth Cause of Action, for declaratory judgment that OUSD
9 breached the express and implied terms of the Agreement and Amendment by
10 wrongfully declaring NOCCS in material breach despite its adherence to the prescribed
11 Academic Outcomes; and for damages according to proof at trial;
- 12 7. For the Sixth Cause of Action, that this Court award damages for the District's breach of
13 the covenant of good faith and fair dealing in an amount to be proven at trial;
- 14 8. For All Causes of Action, that this Court grant such other and further relief as the Court
15 deems just and proper, including but not limited to preliminary and permanent
16 injunctions to prevent any further actions by the District that would lead to the closure of
17 NOCCS or revocation of its charter in violation of statutory and due process rights;
- 18 9. For All Causes of Action, for reasonable costs of suit disbursements and expenses,
19 including but not limited to attorneys' fees under Code of Civil Procedure section
20 1021.5, and prejudgment interest; and
- 21 10. For All Causes of Action, that NOCCS be awarded any other relief the Court deems just
22 and equitable.

23
24 Dated: June 6, 2024

YOUNG, MINNEY & CORR, LLP

25
26 By: 


27 KAELA M. HAYDU
28 *Attorney for Plaintiff,*
NORTH OAKLAND COMMUNITY CHARTER SCHOOL

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VERIFICATION

I, SHAEONNA MUHAMMAD am the Board Chair NORTH OAKLAND COMMUNITY CHARTER SCHOOL, and am authorized to make this verification on its behalf. I have read the above **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**, and I am familiar with its contents. The matters stated in the Petition and Complaint are true of my own knowledge except those matters stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is this 6th day of June 2024, in Oakland, California.

DocuSigned by:

35599EBB29A7440...

SHAEONNA MUHAMMAD

EXHIBIT “1”

Board Office Use: Legislative File Info.	
File ID Number	19-2691
Introduction Date	1/8/2020
Enactment Number	20-0080
Enactment Date	1/8/2020 er



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Yvette Renteria, Deputy Chief of Innovation

Board Meeting Date January 8, 2020

Subject Agreement Between North Oakland Community Charter School and Oakland Unified School District

Action Vote

Background This agreement is between North Oakland Community Charter School ("NOCCS") and Oakland Unified School District ("OUSD"). This agreement is for the charter school's 5-year term which would begin in the 2020-2021 school year. The NOCCS board approved and signed the agreement as of December 19, 2019.

This agreement establishes that the school will:

- Close the middle school program at the end of the 2019-20 school year
- Close all grades after the 2021-22 school year if specific academic outcomes for the 2019-2020 and 2020-21 school years are not met.

Discussion The Office of Charter Schools staff and Superintendent recommend **approval** of the agreement between North Oakland Community Charter School and OUSD.

Fiscal Impact NOCCS currently serves about 23 students in grades 6 and 7. If the middle school closes at the end of the 2019-20 school year, those students will need to find another school to attend. While it is unclear what proportion of these students will choose district schools versus other options (charter school, private school, etc.), we might

anticipate an increase in OUSD district school enrollment of 10-15 students.

Attachment

Agreement Between Oakland Unified School District and North Oakland Community Charter School

**Agreement Between
Oakland Unified School District and
North Oakland Community Charter School**

This Agreement (“Agreement”) is entered into as of January 8, 2020 by and between the North Oakland Community Charter School, a California nonprofit public benefit corporation (“Non-Profit”), operating the North Oakland Community Charter School (“Charter School”), and the Oakland Unified School District (“OUSD”). The Non-Profit and Charter School are collectively referred to as “NOCCS.” OUSD and NOCCS are collectively referred to as the Parties.

RECITALS

Whereas, OUSD is the agency that authorized the current petition under which Charter School is operating. The District authorized that petition on March 25, 2015 for a term of five years, beginning on July 1, 2015 and expiring June 30, 2020.

Whereas, on October 23, 2019, NOCCS submitted its Renewal Petition to OUSD requesting a five-year renewal of its charter term, scheduled to begin on July 1, 2020 if approved; and

Whereas, the Renewal Petition was reviewed by OUSD staff to determine whether it met the standard for renewal; and

Whereas, although the Renewal Petition describes a Charter School program serving grades K through 8, NOCCS plans to phase out grades 6 through 8 (the middle school grade spans) during the term of its charter; and

Whereas, the Renewal Petition raises serious concerns regarding the operational feasibility of NOCCS’ plan to phase out the middle school grade spans; and

Whereas, the Renewal Petition and NOCCS’ academic performance data present serious concerns regarding the declines in NOCCS’ elementary school and middle school academic performance; and

Whereas, at the public hearing on November 6, 2019, NOCCS leadership expressed similar concerns regarding declines in academic performance; and

Whereas, by approving the Renewal Petition, OUSD assumes and continues its oversight responsibilities of NOCCS pursuant to the Charter Schools Act (Ed. Code, § 47600 et seq.), including but not limited to oversight related to academic performance;

Whereas, the purpose of this Agreement is to memorialize the Parties’ intent to authorize NOCCS to continue to operate under certain conditions specifically related to middle school grade span reduction and academic outcomes.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, NOCCS and OUSD agree to the following Terms and Conditions:

TERMS & CONDITIONS

- I. **Use of Terms.** Unless otherwise stated, for the purposes of this Agreement, the terms Charter School, Non-Profit, and NOCCS may be used interchangeably, with the duties and responsibilities of the Charter School, Non-Profit, and NOCCS being the same under this Agreement.
- II. **Interaction of Agreement with Renewal Petition, and Conflicts.** The Renewal Petition is attached to this this Agreement as Exhibit B. The Parties intend the terms and conditions of this Agreement to supplement the terms, conditions, standards and procedures set forth in the Renewal Petition and, in doing so, the Parties agree that this Agreement is consistent with the Renewal Petition. If any provision of this Agreement is inconsistent with the Renewal Petition, the terms of the Agreement shall prevail.
- III. **Term.** This Agreement shall commence on the date upon which it is executed by both Parties, but shall not be effective absent ratification or approval by the OUSD Governing Board. This Agreement shall cover the NOCCS charter term, beginning on July 1, 2020 and ending on June 30, 2025. If the Charter School's charter is revoked or the Charter School ceases operations prior to the expiration of the term of the Agreement, the Agreement shall immediately terminate.
- IV. **Approval with Conditions.** The Parties agree that OUSD has sufficient legal basis to deny the Renewal Petition but has, at its sole discretion, opted not to deny the Renewal Petition or adopt findings in support of denial. Instead, OUSD will approve the Renewal Petition, with conditions, as set forth in this Agreement. The Parties agree that OUSD's authorization of NOCCS, and NOCCS' continued operation of the Charter School is contingent upon its compliance with all conditions and terms set forth in this Agreement.
- V. **Consideration.** The parties have bargained for and expressly agree that the rights and obligations of each party contained in this Agreement, including as set forth in section IV, constitute sufficient consideration supporting this Agreement.
- VI. **Middle School Grade Span Reduction.** The Renewal Petition describes a Charter School program serving grades Kindergarten through eight (8). That notwithstanding, NOCCS agrees, during the term of this Agreement, that it will not enroll any students in grades six (6), seven (7), or eight (8), nor will it submit to OUSD any material revisions to its Renewal Petition that would enable it to enroll students in grades six (6), seven (7), or eight (8).

If OUSD determines that NOCCS has not complied with the terms of this section, OUSD shall notify NOCCS of its objections in writing, and NOCCS shall have ten (10) business days to provide a written explanation to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS has complied with the terms of this section upon review of any written explanation provided by NOCCS. Failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.

VII. Academic Outcomes. NOCCS shall meet the conditions set forth in this section and in Exhibit A.

- A. Meet the thresholds set forth in Exhibit A for two (2) of the three (3) domains (i.e. ELA, Math, Key Student Groups) in 2019-20 and 2020-21, including the Key Student Group domain in at least one (1) of the two (2) years; or
- B. Meet the thresholds set forth in Exhibit A for all three (3) domains (i.e. ELA, Math, Key Student Groups) in 2020-21.

If OUSD determines that NOCCS has not complied with the terms of this section, OUSD shall notify NOCCS of its objections in writing, and NOCCS shall have ten (10) business days to provide a written explanation to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS has complied with the terms of this section upon review of any written explanation provided by NOCCS. Failure to comply with this section shall constitute a failure by NOCCS to meet or pursue the pupil outcomes identified in its charter. Failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.

VIII. Academic Performance Review. The District shall monitor the academic performance of the student population of the Charter School in accordance with the District's policies and administrative regulations regarding charter school oversight. Oversight of academic performance shall be based, in whole or in part, on the Charter School's measurable student outcomes, annual goals, data such as state test scores and local assessments, the annual LCAP update, the annual visit, the charter petition, and other data and information requested by, or available to, the District.

IX. Revocation for Other Reasons. Notwithstanding any provision of this Agreement, OUSD retains its full statutory and regulatory authority to revoke the Renewal Petition for any reason as permitted by law. Notwithstanding any provision of this Agreement, NOCCS retains any and all rights under Education Code section 47607, including but not limited to notice of violation and opportunity to remedy, for any violation other than failure to meet the conditions set forth in section VI (Middle School Grade Span Reduction) or section VII (Academic Outcomes).

- X. **Voluntary Closure, Revocation, and Waiver of Rights.** If OUSD determines, in its sole discretion, that NOCCS has materially breached this Agreement for any reason, including but not limited to as set forth in sections VI and VII, OUSD will notify NOCCS in writing of the material breach. Upon receiving said notification, NOCCS shall voluntarily close the Charter School by the first June 30 immediately following the material breach or, if the first June 30 immediately following the material breach is June 30, 2025, NOCCS agrees that it shall not submit (or will withdraw if already submitted) any succeeding renewal petition.

If NOCCS fails to voluntarily close the Charter School as required by this section, OUSD shall initiate revocation proceedings against NOCCS pursuant to OUSD's authority under Education Code section 47607. For violations of section VI (Middle School Grade Span Reduction) or section VII (Academic Outcomes), NOCCS hereby waives all rights otherwise afforded to it under Education Code section 47607, and agrees the District shall not be required to provide NOCCS with a notice of violation or opportunity to remedy, pursuant to Education Code section 47607, subdivision (d), prior to revoking NOCCS charter except as otherwise provided for in this Agreement. NOCCS further waives all rights to appeal OUSD's revocation of its charter pursuant to this section for any violations of this Agreement related to reduction of middle school grade spans and academic outcomes.

If NOCCS fails to voluntarily close the Charter School as required by this section, and OUSD initiates revocation proceedings, NOCCS shall pay to OUSD all direct and indirect costs arising from said revocation, including but not limited to staffing costs.

- XI. **Indemnification.** NOCCS shall promptly defend, indemnify, and hold harmless OUSD, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the "Indemnified Parties") from and against any and all alleged or actual breach of any obligation imposed under this Agreement, or any other actual or alleged breach of any duty or obligation owed to OUSD or any third party, including any Charter School student (including any student placed with a school other than the Charter School, or in any nonpublic, nonsectarian school or in other special services to address special need or disability situations) or employee, by NOCCS or its officers, directors, employees, agents, representatives, volunteers, guests, students, administrators or trustees, successors or assigns.
- XII. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- XIII. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

- XIV. **Interpretations.** No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- XV. **Litigation.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- XVI. **Integration/Entire Agreement of Parties:** This Agreement, inclusive of the Renewal Petition, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- XVII. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.
- XVIII. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- XIX. **Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- XX. **Agreement Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

IN WITNESS WHEREOF, the Parties execute the document, as dated below.

Oakland Unified School District

North Oakland Community Charter School

Name: Jody London

Name: Dexon King-Neece

Signature: 

Signature: 

Title: President, Board of Education


Title: co-chair

Date: 1/9/2020

Date: 12/19/19

Name: Kyla Johnson Trammell

Name: Dominique Malone

Signature: 

Signature: 

Title: Secretary, Board of Education

Title: Co-Chair

Date: 1/9/2020

Date: 12/19/19

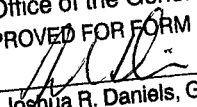
OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  12/27/19
Joshua R. Daniels, General Counsel

Exhibit A

Domains	Measurement Tools and Targets
ELA: To meet the ELA domain threshold for a given year, NOCCS must meet at least one of the three specified ELA targets	ELA CORE Growth for grades 3-5 shall be at the 50 th percentile or higher
	California School Dashboard – ELA Indicator shall be at Yellow or higher
	ELA SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of ELA SBAC
Math: To meet the Math domain threshold for a given year, NOCCS must meet at least one of the three specified Math targets	Math CORE growth for grades 3-5 shall be at the 50 th percentile or higher
	California School Dashboard – Math Indicator shall be at Yellow or higher
	Math SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of Math SBAC
Key Student Groups: To meet the key student group domain threshold for a given year, NOCCS must meet the specified target.	The non-weighted average of ELA and Math proficiency rates for at least half of the below listed student groups, where there are ELA scores for at least eleven (11) students in grades 3-5 and where there are math scores for at least eleven (11) students in grades 3-5, shall be at or above the non-weighted average of ELA and Math proficiency rates for students in grades 3-5 in non-charter OUSD-run schools in each of the below student groups: Black/African American; Hispanic/Latino; Socioeconomically Disadvantaged; English Learners; and Students with Disability. (For illustrative purposes, this measure tool means that the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at NOCCS would be compared with the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at non-charter OUSD-run schools.)

Additional Information:

- “Proficiency Rate” means the percent of students meeting or exceeding standards.
- If, for any reason, a measure took or any associated data is not available to determine whether NOCCS has met any of the above thresholds (including, but not limited to, whether data is available to determine whether NOCCS has met a particular target for a particular measurement tool), NOCCS shall be deemed to not have met the threshold, with the exception that student groups where there are ELA scores for ten (10) or fewer students or math scores for ten (10) or fewer students will not be factored into determining the number of students groups for purposes of determining whether NOCCS met the Key Student Groups domain.

EXHIBIT “2”

Board Office Use: Legislative File Info.	
File ID Number	20-2387
Introduction Date	12/9/2020
Enactment Number	20-1807
Enactment Date	12/9/2020 er



Memo

To Board of Education

From Kyla Johnson-Trammell - Superintendent
Kelly Krag-Arnold, Brett Noble, and Elizabet Wendt - Office of Charter Schools

Board Meeting Date December 9, 2020

Subject Amendment #1 to Agreement Between Oakland Unified School District and North Oakland Community Charter School

Action Approve Amendment #1 to Agreement Between Oakland Unified School District and North Oakland Community Charter School

Background NOCCS currently serves about 173 students in grades K-5. On January 8, 2020, the Oakland Unified School District (“OUSD”) and North Oakland Community Charter School (“NOCCS”) entered into an agreement that established, among other things, that NOCCS would close after the 2021-22 school year if specific academic outcomes—measurable principally by the results from the California Assessment of Student Performance and Progress (“CAASPP”)—for the 2019-20 and 2020-21 school years were not met.

Discussion However, CAASPP was not administered during the 2019-20 school year due to the COVID-19 pandemic. Therefore, corresponding academic outcome data is not available for that year and it is unclear whether it will be available for the current and/or future school years. Furthermore, the extreme change in circumstances and the disruption of learning conditions for all schools has made outcomes substantially less predictable. Due to the unavailability of expected academic outcome data and the change in circumstances surrounding learning conditions, Amendment #1 was negotiated with NOCCS to:

- Extend the timeline in the Agreement for when NOCCS would be required to close if specified academic outcomes are not met,
- Update certain terms in the Agreement to anticipate scenarios where academic outcomes are not available due to CAASPP testing not being administered in the current year and/or future years, and

- Change the initial CAASPP proficiency rate benchmarks set forth in the Agreement to the change in the average CAASPP proficiency rates for non-charter OUSD-run schools.

Fiscal Impact

No immediate fiscal impact.

Attachment

- Amendment #1 to Agreement Between Oakland Unified School District and North Oakland Community Charter School
- Agreement Between Oakland Unified School District and North Oakland Community Charter School

**Amendment #1 to the Agreement Between
Oakland Unified School District and
North Oakland Community Charter School**

This Amendment amends the Agreement (“Agreement”) between the Oakland Unified School District (“OUSD”) and North Oakland Community Charter School (“NOCCS, together with OUSD, “PARTIES”) entered into on January 8, 2020 (OUSD Enactment No.: 20-0080). The PARTIES agree to amend that Agreement as follows:

1. Section VII (Academic Outcomes) of the Agreement is modified as follows:

Academic Outcomes. NOCCS shall meet the conditions set forth in this section and in Exhibit A. For purpose of this section and Exhibit A: “Year 1” shall be defined as the first year in which the California Assessment of Student Performance and Progress (“CAASPP”) is administered annually during the 2020-21, 2021-22, and 2022-23 school years, if CAASPP is administered annually at least once during the 2020-21, 2021-22, and 2022-23 school years; “Year 2” shall be defined as the second year in which CAASPP is administered annually during the 2020-21, 2021-22, and 2022-23 school years, if CAASPP is administered annually in at least two of three years during the 2020-21, 2021-22, and 2022-23 school years.

- A. Meet the thresholds set forth in Exhibit A for two (2) of the three (3) domains (i.e. ELA, Math, Key Student Groups) in Year 1 and Year 2 ~~2019-20 and 2020-21, including and in the Key Student Group domain in at least Year 1 or Year 2~~ ~~one (1) of the two (2) years; or~~
- B. Meet the thresholds set forth in Exhibit A for all three (3) domains (i.e. ELA, Math, Key Student Groups) in Year 1 or Year 2 ~~2020-21.~~

If OUSD determines that NOCCS has not complied with the terms of this section, OUSD shall notify NOCCS of its objections in writing, and NOCCS shall have ten (10) business days to provide a written explanation to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS has complied with the terms of this section upon review of any written explanation provided by NOCCS. Failure to comply with this section shall constitute a failure by NOCCS to meet or pursue the pupil outcomes identified in its charter. Failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.

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2. Exhibit A of the Agreement is modified as follows:

Domains	Measurement Tools and Targets
<p>ELA: To meet the ELA domain threshold for a given year, NOCCS must meet at least one of the three specified ELA targets</p>	<p>ELA CORE Growth for grades 3-5 shall be at the 50th percentile or higher</p> <p>California School Dashboard – ELA Indicator shall be at Yellow or higher</p> <p>ELA SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of ELA SBAC <u>relative to the change over the same time period in the average ELA proficiency rate for all students in grades 3-5 at non-charter OUSD-run schools (e.g., if the OUSD average proficiency rate decreased by three (3) percentage points from the most recent prior administration of ELA SBAC, NOCCS would need to increase by at least two (2) percentage points in order to meet the domain threshold)</u></p>
<p>Math: To meet the Math domain threshold for a given year, NOCCS must meet at least one of the three specified Math targets</p>	<p>Math CORE growth for grades 3-5 shall be at the 50th percentile or higher</p> <p>California School Dashboard – Math Indicator shall be at Yellow or higher</p> <p>Math SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of Math SBAC <u>relative to the change over the same time period in the average Math proficiency rate for all students in grades 3-5 at non-charter OUSD-run schools (e.g., if the OUSD average proficiency rate decreased by three (3) percentage points from the most recent prior administration of Math SBAC, NOCCS would need to increase by at least two (2) percentage points in order to meet the domain threshold)</u></p>
<p>Key Student Groups: To meet the key student group domain threshold for a given year, NOCCS must meet the specified target.</p>	<p>The non-weighted average of ELA and Math proficiency rates for at least half of the below listed student groups, where there are ELA scores for at least eleven (11) students in grades 3-5 and where there are math scores for at least eleven (11) students in grades 3-5, shall be at or above the non-weighted average of ELA and Math proficiency rates for students in grades 3-5 in non-charter OUSD-run schools in each of the below student groups: Black/African American; Hispanic/Latino; Socioeconomically Disadvantaged; English Learners; and Students with Disability. (For illustrative purposes, this measure tool means that the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at NOCCS would be compared with the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at non-charter OUSD-run-schools.)</p>

- 3. **Remaining Provisions:** All other provisions of the Agreement, and of prior amendment(s) if any, remain unchanged and in full force and effect as originally stated.
- 4. **Amendment Publicly Posted.** This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- 5. **Signature Authority.** Each Party has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each Party has been given the proper authority and empowered to enter into this Amendment.
- 6. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been formally approved by OUSD's Governing Board.


IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Amendment and to be bound by its terms and conditions:


Oakland Unified School District

North Oakland Community Charter School

Name: Jody London

Name: Cynthia Varkevissler

Signature: 

Signature: 

Title: President, Board of Educaiton

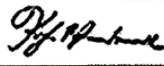
Title: Treasurer

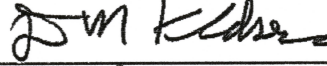
Date: 12/10/2020

Date: 11/24/2020

Name: Kyla Johnson Trammell

Name: David M. Klocker

Signature: 

Signature: 

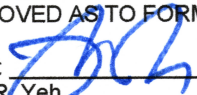
Title: Secretary, Board of Education

Title: Head of School

Date: 12/10/2020

Date: 1 December 2020

APPROVED AS TO FORM

Name: 

John R. Yeh
Burke, Williams & Sorensen

Date: December 1, 2020

DMK
3

Board Office Use: Legislative File Info.	
File ID Number	19-2691
Introduction Date	1/8/2020
Enactment Number	20-0080
Enactment Date	1/8/2020 er



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Yvette Renteria, Deputy Chief of Innovation

Board Meeting Date January 8, 2020

Subject Agreement Between North Oakland Community Charter School and Oakland Unified School District

Action Vote

Background This agreement is between North Oakland Community Charter School ("NOCCS") and Oakland Unified School District ("OUSD"). This agreement is for the charter school's 5-year term which would begin in the 2020-2021 school year. The NOCCS board approved and signed the agreement as of December 19, 2019.

This agreement establishes that the school will:

- Close the middle school program at the end of the 2019-20 school year
- Close all grades after the 2021-22 school year if specific academic outcomes for the 2019-2020 and 2020-21 school years are not met.

Discussion The Office of Charter Schools staff and Superintendent recommend **approval** of the agreement between North Oakland Community Charter School and OUSD.

Fiscal Impact NOCCS currently serves about 23 students in grades 6 and 7. If the middle school closes at the end of the 2019-20 school year, those students will need to find another school to attend. While it is unclear what proportion of these students will choose district schools versus other options (charter school, private school, etc.), we might

anticipate an increase in OUSD district school enrollment of 10-15 students.

Attachment

Agreement Between Oakland Unified School District and North Oakland Community Charter School

**Agreement Between
Oakland Unified School District and
North Oakland Community Charter School**

This Agreement (“Agreement”) is entered into as of January 8, 2020 by and between the North Oakland Community Charter School, a California nonprofit public benefit corporation (“Non-Profit”), operating the North Oakland Community Charter School (“Charter School”), and the Oakland Unified School District (“OUSD”). The Non-Profit and Charter School are collectively referred to as “NOCCS.” OUSD and NOCCS are collectively referred to as the Parties.

RECITALS

Whereas, OUSD is the agency that authorized the current petition under which Charter School is operating. The District authorized that petition on March 25, 2015 for a term of five years, beginning on July 1, 2015 and expiring June 30, 2020.

Whereas, on October 23, 2019, NOCCS submitted its Renewal Petition to OUSD requesting a five-year renewal of its charter term, scheduled to begin on July 1, 2020 if approved; and

Whereas, the Renewal Petition was reviewed by OUSD staff to determine whether it met the standard for renewal; and

Whereas, although the Renewal Petition describes a Charter School program serving grades K through 8, NOCCS plans to phase out grades 6 through 8 (the middle school grade spans) during the term of its charter; and

Whereas, the Renewal Petition raises serious concerns regarding the operational feasibility of NOCCS’ plan to phase out the middle school grade spans; and

Whereas, the Renewal Petition and NOCCS’ academic performance data present serious concerns regarding the declines in NOCCS’ elementary school and middle school academic performance; and

Whereas, at the public hearing on November 6, 2019, NOCCS leadership expressed similar concerns regarding declines in academic performance; and

Whereas, by approving the Renewal Petition, OUSD assumes and continues its oversight responsibilities of NOCCS pursuant to the Charter Schools Act (Ed. Code, § 47600 et seq.), including but not limited to oversight related to academic performance;

Whereas, the purpose of this Agreement is to memorialize the Parties’ intent to authorize NOCCS to continue to operate under certain conditions specifically related to middle school grade span reduction and academic outcomes.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, NOCCS and OUSD agree to the following Terms and Conditions:

TERMS & CONDITIONS

- I. **Use of Terms.** Unless otherwise stated, for the purposes of this Agreement, the terms Charter School, Non-Profit, and NOCCS may be used interchangeably, with the duties and responsibilities of the Charter School, Non-Profit, and NOCCS being the same under this Agreement.
- II. **Interaction of Agreement with Renewal Petition, and Conflicts.** The Renewal Petition is attached to this this Agreement as Exhibit B. The Parties intend the terms and conditions of this Agreement to supplement the terms, conditions, standards and procedures set forth in the Renewal Petition and, in doing so, the Parties agree that this Agreement is consistent with the Renewal Petition. If any provision of this Agreement is inconsistent with the Renewal Petition, the terms of the Agreement shall prevail.
- III. **Term.** This Agreement shall commence on the date upon which it is executed by both Parties, but shall not be effective absent ratification or approval by the OUSD Governing Board. This Agreement shall cover the NOCCS charter term, beginning on July 1, 2020 and ending on June 30, 2025. If the Charter School's charter is revoked or the Charter School ceases operations prior to the expiration of the term of the Agreement, the Agreement shall immediately terminate.
- IV. **Approval with Conditions.** The Parties agree that OUSD has sufficient legal basis to deny the Renewal Petition but has, at its sole discretion, opted not to deny the Renewal Petition or adopt findings in support of denial. Instead, OUSD will approve the Renewal Petition, with conditions, as set forth in this Agreement. The Parties agree that OUSD's authorization of NOCCS, and NOCCS' continued operation of the Charter School is contingent upon its compliance with all conditions and terms set forth in this Agreement.
- V. **Consideration.** The parties have bargained for and expressly agree that the rights and obligations of each party contained in this Agreement, including as set forth in section IV, constitute sufficient consideration supporting this Agreement.
- VI. **Middle School Grade Span Reduction.** The Renewal Petition describes a Charter School program serving grades Kindergarten through eight (8). That notwithstanding, NOCCS agrees, during the term of this Agreement, that it will not enroll any students in grades six (6), seven (7), or eight (8), nor will it submit to OUSD any material revisions to its Renewal Petition that would enable it to enroll students in grades six (6), seven (7), or eight (8).

If OUSD determines that NOCCS has not complied with the terms of this section, OUSD shall notify NOCCS of its objections in writing, and NOCCS shall have ten (10) business days to provide a written explanation to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS has complied with the terms of this section upon review of any written explanation provided by NOCCS. Failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.

VII. **Academic Outcomes.** NOCCS shall meet the conditions set forth in this section and in Exhibit A.

- A. Meet the thresholds set forth in Exhibit A for two (2) of the three (3) domains (i.e. ELA, Math, Key Student Groups) in 2019-20 and 2020-21, including the Key Student Group domain in at least one (1) of the two (2) years; or
- B. Meet the thresholds set forth in Exhibit A for all three (3) domains (i.e. ELA, Math, Key Student Groups) in 2020-21.

If OUSD determines that NOCCS has not complied with the terms of this section, OUSD shall notify NOCCS of its objections in writing, and NOCCS shall have ten (10) business days to provide a written explanation to OUSD. OUSD, at its sole discretion, shall determine whether NOCCS has complied with the terms of this section upon review of any written explanation provided by NOCCS. Failure to comply with this section shall constitute a failure by NOCCS to meet or pursue the pupil outcomes identified in its charter. Failure to comply with this section, in whole or in part, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall also constitute a material breach of the Renewal Petition.

VIII. **Academic Performance Review.** The District shall monitor the academic performance of the student population of the Charter School in accordance with the District's policies and administrative regulations regarding charter school oversight. Oversight of academic performance shall be based, in whole or in part, on the Charter School's measurable student outcomes, annual goals, data such as state test scores and local assessments, the annual LCAP update, the annual visit, the charter petition, and other data and information requested by, or available to, the District.

IX. **Revocation for Other Reasons.** Notwithstanding any provision of this Agreement, OUSD retains its full statutory and regulatory authority to revoke the Renewal Petition for any reason as permitted by law. Notwithstanding any provision of this Agreement, NOCCS retains any and all rights under Education Code section 47607, including but not limited to notice of violation and opportunity to remedy, for any violation other than failure to meet the conditions set forth in section VI (Middle School Grade Span Reduction) or section VII (Academic Outcomes).

- X. **Voluntary Closure, Revocation, and Waiver of Rights.** If OUSD determines, in its sole discretion, that NOCCS has materially breached this Agreement for any reason, including but not limited to as set forth in sections VI and VII, OUSD will notify NOCCS in writing of the material breach. Upon receiving said notification, NOCCS shall voluntarily close the Charter School by the first June 30 immediately following the material breach or, if the first June 30 immediately following the material breach is June 30, 2025, NOCCS agrees that it shall not submit (or will withdraw if already submitted) any succeeding renewal petition.

If NOCCS fails to voluntarily close the Charter School as required by this section, OUSD shall initiate revocation proceedings against NOCCS pursuant to OUSD's authority under Education Code section 47607. For violations of section VI (Middle School Grade Span Reduction) or section VII (Academic Outcomes), NOCCS hereby waives all rights otherwise afforded to it under Education Code section 47607, and agrees the District shall not be required to provide NOCCS with a notice of violation or opportunity to remedy, pursuant to Education Code section 47607, subdivision (d), prior to revoking NOCCS charter except as otherwise provided for in this Agreement. NOCCS further waives all rights to appeal OUSD's revocation of its charter pursuant to this section for any violations of this Agreement related to reduction of middle school grade spans and academic outcomes.

If NOCCS fails to voluntarily close the Charter School as required by this section, and OUSD initiates revocation proceedings, NOCCS shall pay to OUSD all direct and indirect costs arising from said revocation, including but not limited to staffing costs.

- XI. **Indemnification.** NOCCS shall promptly defend, indemnify, and hold harmless OUSD, its officers, directors, employees, agents, representatives, volunteers, administrators, successors, and assigns (collectively hereinafter the "Indemnified Parties") from and against any and all alleged or actual breach of any obligation imposed under this Agreement, or any other actual or alleged breach of any duty or obligation owed to OUSD or any third party, including any Charter School student (including any student placed with a school other than the Charter School, or in any nonpublic, nonsectarian school or in other special services to address special need or disability situations) or employee, by NOCCS or its officers, directors, employees, agents, representatives, volunteers, guests, students, administrators or trustees, successors or assigns.
- XII. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- XIII. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

- XIV. **Interpretations.** No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- XV. **Litigation.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- XVI. **Integration/Entire Agreement of Parties:** This Agreement, inclusive of the Renewal Petition, constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- XVII. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.
- XVIII. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- XIX. **Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- XX. **Agreement Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

IN WITNESS WHEREOF, the Parties execute the document, as dated below.

Oakland Unified School District

North Oakland Community Charter School

Name: Jody London

Name: Dexon King-Neece

Signature: 

Signature: 

Title: President, Board of Education


Title: co-chair

Date: 1/9/2020

Date: 12/19/19

Name: Kyla Johnson Trammell

Name: Dominique Malone

Signature: 

Signature: 

Title: Secretary, Board of Education

Title: Co-Chair

Date: 1/9/2020

Date: 12/19/19

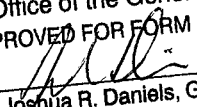
OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By:  12/27/19
Joshua R. Daniels, General Counsel

Exhibit A

Domains	Measurement Tools and Targets
ELA: To meet the ELA domain threshold for a given year, NOCCS must meet at least one of the three specified ELA targets	ELA CORE Growth for grades 3-5 shall be at the 50 th percentile or higher
	California School Dashboard – ELA Indicator shall be at Yellow or higher
	ELA SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of ELA SBAC
Math: To meet the Math domain threshold for a given year, NOCCS must meet at least one of the three specified Math targets	Math CORE growth for grades 3-5 shall be at the 50 th percentile or higher
	California School Dashboard – Math Indicator shall be at Yellow or higher
	Math SBAC Proficiency Rate for grades 3-5 shall increase by five (5) or more percentage points from most recent prior administration of Math SBAC
Key Student Groups: To meet the key student group domain threshold for a given year, NOCCS must meet the specified target.	The non-weighted average of ELA and Math proficiency rates for at least half of the below listed student groups, where there are ELA scores for at least eleven (11) students in grades 3-5 and where there are math scores for at least eleven (11) students in grades 3-5, shall be at or above the non-weighted average of ELA and Math proficiency rates for students in grades 3-5 in non-charter OUSD-run schools in each of the below student groups: Black/African American; Hispanic/Latino; Socioeconomically Disadvantaged; English Learners; and Students with Disability. (For illustrative purposes, this measure tool means that the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at NOCCS would be compared with the non-weighted average of ELA and Math proficiency rate for Hispanic/Latino students in grades 3-5 at non-charter OUSD-run schools.)

Additional Information:

- “Proficiency Rate” means the percent of students meeting or exceeding standards.
- If, for any reason, a measure took or any associated data is not available to determine whether NOCCS has met any of the above thresholds (including, but not limited to, whether data is available to determine whether NOCCS has met a particular target for a particular measurement tool), NOCCS shall be deemed to not have met the threshold, with the exception that student groups where there are ELA scores for ten (10) or fewer students or math scores for ten (10) or fewer students will not be factored into determining the number of students groups for purposes of determining whether NOCCS met the Key Student Groups domain.

EXHIBIT “3”

THE OAKLAND UNIFIED SCHOOL DISTRICT'S BROKEN ADMINISTRATIVE CULTURE – MILLIONS WASTED EVERY YEAR

EXECUTIVE SUMMARY

For years, the Grand Jury has reported on the Oakland Unified School District's (OUSD) financial woes and academic struggles. Blame has been spread in many directions: declining enrollment, charter schools, inequitable funding and so on.

This year, the Grand Jury received eight complaints from within the walls of OUSD, each challenging the common belief that the school district was struggling because of outside pressures. Together they alleged that abandoned policies and procedures, misguided priorities and poor business practices have greatly contributed to a broken administrative culture that thrives on dysfunction and self-interest.

Outlined in the complaints and confirmed by the testimony of over twenty witnesses, the Grand Jury was presented with example after example supporting the conclusion that the district's poor business practices and broken culture have greatly contributed to its financial instability. For example, within the facilities department, constantly changing priorities left the district without a facilities master plan, contributing to a district full of under-enrolled schools. Poor financial stewardship of the district's nearly billion dollar bond program coupled with unnecessarily costly policies that do not directly benefit students have left OUSD with little to show in the way of completed school projects. District-wide, decentralized procurement with lax competitive bidding practices have led to overspending and waste. Finally, within management ranks, self-interested decisions by midlevel staff and repeated breakdowns in the chain of command without anyone being held accountable has helped perpetuate all of this dysfunction.

All too often, policies and procedures have fallen by the wayside and administrative staff who are frequently undertrained in best practices make decisions that are not in the best interests of the school district.

OUSD certainly has greater financial needs than many surrounding districts, but state data shows that it also receives considerably more money than surrounding districts. OUSD received \$562 million in General Fund revenues in Fiscal Year (FY) 2017-2018 or \$16,154 per student, which ranked sixth among 37 local school districts. Total spending was \$532 million or \$15,269 per student, which ranked seventh. An analysis of spending revealed that OUSD expenses that directly affect students in the classroom (teachers' total compensation, local administrative and support staff, pupil services and books and supplies) were either near or far below the median

of the 37-district sample and state averages. However, spending on activities other than the classroom (central staff and administration, contractors and services) were above or far above the median of the 37-district sample and state averages. OUSD's extra spending per student was \$2,726 over the median spending for the same sample. This translates into total extra spending for OUSD of \$95 million per year.

While the district is large and complicated to run, it is struggling to survive financially, in part, because district leadership has not committed to a long-range, comprehensive strategic plan, implemented using sound financial practices. All too often, policies and procedures have fallen by the wayside and administrative staff who are frequently undertrained in best practices make decisions that are not in the best interests of the school district.

BACKGROUND

OUSD serves 36,000 students at 87 traditional public schools throughout Oakland. Its FY 2018 General Fund expenditures were \$531 million. Each district within the city elects a representative to the seven-member Oakland Unified School District Board of Education (Board). The average tenure among the current board members is six years.

The Board has responsibility for policy direction, budget approval, and hiring and firing the school superintendent. The superintendent has responsibility for implementing board policy and running day-to-day operations of the district, including hiring a core team of senior leaders to manage academic, financial, operations and facilities functions.

While Board membership has been comparatively stable, there have been nine OUSD school superintendents since 2003 – a new one every 18 months on average. This lack of continuity is in many ways connected to the district's long-term financial instability. The previous superintendent left the district's finances in shambles. Before OUSD settled its teacher strike this last spring, the state's school fiscal oversight organization estimated that OUSD faced a \$9 million deficit in FY2018-2019, \$6.4 million next year and \$15.7 million the following year.

The strike settlement will certainly add to the district's financial struggles. The Grand Jury confirmed that teacher raises will cost the district \$65 million over four years. This required the Board to identify \$21.7 million in cuts and revenue enhancements to ensure the district maintains state mandated reserves. The Board promised somewhat similar raises to other staff. The Alameda County Office of Education (ACOE) warned that such a decision would likely threaten the district's financial stability. If a deal is struck similar to that of the teachers, it could cost an additional \$46 million over the same four-year period.

The district's longstanding inability to manage its finances led the state to adopt Assembly Bill 1840 last September. The bill promised to cover a portion of OUSD's deficits if the district met specific financial reform benchmarks by March 1 of this year. Slow to respond, the Board did not meet all requirements by the deadline.

Ultimately, the Alameda County Office of Education, with the OUSD superintendent's support, embedded multiple top-level school finance experts within OUSD's business office. Simultaneously, the district announced it had dismissed its senior business officer and eliminated the position. The county team has already started to provide financial advice and training to the district's revamped fiscal team. They will help district staff transition to a new system for business, human resources and payroll that adds essential financial and staffing controls to all levels of the district.

INVESTIGATION

The Grand Jury interviewed 21 witnesses including members of the Board, OUSD senior leaders, outside experts in school district management, and past and present district employees. Additionally, Grand Jurors attended and watched video broadcasts of board meetings. Hundreds of hours were spent reviewing board agendas and minutes, data on OUSD's website, and other publicly available data sources relevant to finance, school bonds, contracting, district policies, management practices, and decision-making. The results of the Grand Jury's investigation are summarized in six topical areas.

Financial Analysis

To better understand OUSD's relative financial status, the Grand Jury compared the district's FY2017-2018 general fund revenue and expenses (prior to staff raises) to that of 37 local unified school districts and of statewide averages. The comparison is based on FY2017-2018 data collected by the State Department of Education from California's K-12 schools. Unless otherwise noted, all data in this analysis are from Ed-Data.org. More specific details are in Appendix A (page 52).

The median revenue per student for the 37 school district sampled was \$11,869. Thus, OUSD received \$4,285 more revenue per pupil than the median district, placing it in the top five among all samples school districts, and second highest among Alameda County's school districts.

OUSD's revenues were \$16,154 per student based on the district's average daily attendance (ADA) of 34,841 students. The median revenue per student for the 37 school districts sampled was \$11,869. Thus, OUSD received \$4,285 more revenue per pupil than the median district, placing it in the top five among all sampled school districts, and second highest among Alameda County's school districts. Table 1 lists total revenue per student for 14 school districts in Alameda County and six large nearby districts. Each district's rank among the 37 school districts is also indicated.

Table 1 – Revenue per Student in Local School Districts FY2017-2018

District	\$ Revenue	Rank	District	\$ Revenue	Rank
Oakland	16,154	5	Piedmont	15,577	7
Alameda	12,314	16	Pleasanton	10,753	32
Albany	13,124	12	San Leandro	11,869	19
Berkeley	16,774	4	San Lorenzo	12,429	15
Castro Valley	10,828	30	Mt. Diablo	11,604	21
Dublin	10,144	37	Palo Alto	20,508	1
Fremont	10,726	33	San Francisco	15,907	6
Hayward	13,359	9	San Jose	12,109	18
Livermore Valley	11,098	26	Santa Clara	17,764	3
Newark	11,130	22	W. Contra Costa	13,233	11

OUSD’s total General Fund expenses were \$15,269 per ADA or \$3,252 more than the median district, ranking OUSD seventh among the 37 school districts. OUSD oftentimes invokes special education expenses as a major contributor to their financial problems. OUSD spent \$81 million on special education from its general fund. However, that spending per student in the special education program was only 23rd among the 37 districts.

After subtracting special education expenses for all 37 districts, OUSD spending still exceeded the median by \$2,726 per student, which based on the district’s ADA, totals \$95 million in higher spending relative to the median spending of the 37 school districts.

OUSD’s spending for supervisors and administrator salaries was more than six times the statewide average.

OUSD ranked 37th (last) on share of spending for certificated teacher salaries; 36th for pupil services (e.g., guidance counseling, health services, psychological and social workers); and 30th for books and supplies (spending only 74% of the statewide average).

By comparison, OUSD ranked fourth on the share of spending for contractors, consultants, and other outside services and third on the percentage of expenditures for administrative, technical and logistical support of teaching. These are central office expenses that are only indirectly related to classroom instruction.

OUSD spent over \$55.7 million on professional/consulting services and operating expenditures, which was three times the statewide average per student. OUSD’s spending for classified

personnel (non-teachers) was 45% above the statewide average, and spending for supervisors and administrator salaries was more than six times the statewide average. In notable contrast, spending on teachers and credentialed administrators was only 4% above the statewide average.

Additionally, spending on total compensation (salaries plus benefits) for teachers and credentialed administrators was 9% above the statewide average while total compensation for classified personnel (non-teachers) was 51% above statewide averages.

This financial analysis demonstrates that OUSD consistently spends less on students and classroom needs and more (sometimes much more) on central staff, administrative programs, contracting and services.

Contracting Practices and Facilities Management

Many of the complaints received by the Grand Jury were related to OUSD's Facilities Planning and Management Department (Facilities). Facilities is responsible for maintenance and custodial services for the district's 87 school sites and has oversight of the billion dollar school bond-funded construction program. While Facilities operates quasi-independently from the academic side of the district, its failed stewardship of local taxpayer dollars over the past decade provides a clear example of the district's inability to properly prioritize spending and produce results for the children of Oakland. Poor execution of construction projects, failure to take advantage of economies of scale, financially irresponsible policies and inconsistent use of financial controls all contributed to these disappointing results.

While Facilities operates quasi-independently from the academic side of the district, its failed stewardship of local taxpayer dollars over the past decade provides a clear example of the district's inability to properly prioritize spending and produce results for the children of Oakland.

Facilities Master Plan

Facilities should play a key role in the district's strategic planning process by developing and executing a Facilities Master Plan (FMP). A master plan is essential to ensure that the district operates an appropriate number and geographic distribution of schools that are clean and safe spaces for OUSD's students.

An FMP should be the central guiding principle behind spending of the district's generous billion dollar voter-approved school construction bonds. Many schools need comprehensive updating. Many also need to be closed. Because of this, the district is especially in need of a comprehensive road map to direct these construction dollars. Yet the last Board-approved FMP was adopted in 2012. Three attempts to update the plan were either not completed or not adopted by the Board.

The previous superintendent cut the scope of many projects in the middle of planning, wasting critical dollars, and then added \$172 million in new projects. Years of second-guessing coupled

with constantly changing priorities stalled many of the 21 major projects promised in the language of a \$475 million school construction bond approved by voters in 2012 (Measure J).

Years of second-guessing coupled with constantly changing priorities stalled many of the 21 major projects promised in the language of a \$475 million school construction bond approved by voters in 2012 (Measure J).

In August 2018, the Board halted work on nine building projects after being told that the district needed an additional unbudgeted \$160 million to cover cost overruns: Fremont High School was \$51 million over budget, the Central Kitchen project was \$18 million over, Glenview Elementary \$12 million, and the Madison expansion was \$9 million over budget. The overruns, combined with \$18 million for project coordination,

meant that new and renovated science classrooms and labs, playgrounds, security upgrades, and kitchens at many schools would not be built as promised.

Consolidating Contracts and Economies of Scale

OUSD reviews and approves a burdensome number of contracts each month. Financial best practices are essential in the development of those contracts to ensure that scarce dollars are not wasted. A best practice is to consolidate contracts for similar services, which allows for economies of scale and consistent application of construction codes and design guidelines.

The Grand Jury is concerned that the district does not take advantage of consolidated contracts. After examining approved Facilities contracts in 2018, the Grand Jury found nine separate contracts with one firm for fire alarm support, six separate contracts to expand and replace alarm systems at different school sites, and three separate agreements to provide supervision of security installation at three different school sites. There were seven board actions which resulted in one firm being awarded contracts to work on five different projects with two additional amendments for previously awarded work. The practice of negotiating individual contracts for similar services at different school sites appears to be too common.

Lease-Leaseback Construction Procurement

For decades California public contracting laws relied on competitive bidding rules to prevent fraud, corruption and cronyism and to ensure that public agencies were good stewards of public dollars. Yet the lowest responsible bidder is not always the most competent contractor. For this reason, the California Education Code allows an alternative method of project delivery. The lease-leaseback method of funding and building public schools allows districts to hire a design professional to create a basic plan, which is used to select a contractor to build the project for a set price. The contractor then takes possession of the property through a temporary lease agreement and is responsible for refining the plans and completing construction for the agreed-upon price.

This has not turned out so well for OUSD. By releasing projects before the full scope of construction is defined, budgets and schedules inevitably fall victim to frequent change order requests, unscheduled delays, and cost overruns. This lack of management discipline is emblematic of OUSD's broken administrative culture.

Glenview Elementary School is a current lease-leaseback project that has been before the Board eleven times since its inception in 2013. After the project's initial funding, the architect and the general contractor each requested five change orders for additional funds and time to complete the construction. The budget increased from \$26 million to \$37.4 million – a 43.8% increase. Glenview construction completion is scheduled for the end of 2019 with the opening of classrooms delayed until August 2020 – a full seven years after the project began. Compare this to a new middle school in San Francisco that was completed, from start of design to classes, in under three years.

By releasing projects before the full scope of construction is defined, budgets and schedules inevitably fall victim to frequent change order requests, scheduled delays, and cost overruns. The lack of management discipline is emblematic of OUSD's broken administrative culture.

The district's attempt to build the Central Kitchen project is another failure. Its design began in 2013 and the general contractor was selected in August 2014 with an original project budget of \$23.2 million. In May 2016, the project's budget grew to \$41.8 million. Problems with the general contractor led the district to terminate the contract "for convenience" in March 2017, paying a penalty of almost \$5 million. The replacement developer was approved by the Board in January 2018 for the project's new guaranteed maximum price of \$43 million. On top of the construction cost is another \$1 million for three consultants: community outreach, site security, and non-construction project management.

High Cost of Small and Local Business Program

In December 2008 the district implemented a small and local business utilization (LBU) program requiring 20% mandatory local participation on all OUSD construction contracts and professional service agreements related to capital projects. The purpose of the program is to "keep the dollars within Oakland" and enhance opportunities for small businesses within the district. In 2014, based on perceived success of the program, the Board increased the local participation requirement to 50%. While the program goals are commendable, the pool of local contractors who can fulfill large school construction projects is small. This has resulted in larger, non-local firms being awarded contracts but needing to sub-contract portions of the project to smaller, local companies. Ideally, there would be competitive bidding to select sub-contractors but there are often too-few local firms for a legitimate competitive process.

While one proponent of the 50% local participation requirement told the Grand Jury that it saves the district money because the workers are local, the Grand Jury heard testimony from six others who work with OUSD and have construction backgrounds contradicting any claim of savings.

They all agreed the small and local business requirement adds significant costs to construction projects. Their estimates of the additional costs ranged from 10% to 40%. Grand Jury concerns were validated after receiving documentation that Facilities' normal practice is to add a 30% premium for local business utilizations and project labor agreements when developing a project's budget. For example, district cost estimates showed that these programs would add \$990,000 to a \$6 million gym project, and \$320,000 to another \$1.6 million science classroom project. One witness testified that Glenview Elementary School cost OUSD an estimated \$900 per square foot, while constructing the same school in San Francisco would have cost about \$650-700 per square foot (22-28% less) in part because of the LBU requirement.

The Grand Jury learned that the city of Oakland operates a similar program but in contrast to OUSD, the city does not factor in a premium for the small and local business requirement in their project cost estimates. When construction bids come in 3% or more above city estimates, staff will reevaluate the bidding process and consider seeking council approval to waive the requirements.

Adding to the cost of this OUSD program, the district paid a consultant \$334,500 in 2018 to monitor the district's compliance with its own policy. The Grand Jury was told that this consultant uses information provided by district staff to prepare reports for the Board. The consultant does perform some community outreach; however, witnesses testified that the tasks performed by the consultant could be performed by district staff with minimal additional cost. This consultant has received over \$3 million in contracts from the district since 2008. While the Grand Jury is heartened by the district's recent decision to competitively bid out these monitoring contracts, the district should consider performing these tasks in-house.

Competitive Bidding – “The District of Exceptions”

OUSD's policies with respect to competitive bidding are spelled out in Board Policy (BP) and Regulation 3311:

“Consistent with California law, the Governing Board requires competitive bidding for most public contracts. The purposes of competitive bidding are to secure economy in the construction of public works and the expenditures of public funds for materials and supplies, to protect the public from collusive contracts, to exclude favoritism and corruption, and to promote competition among bidders so as to ensure that all public contracts are secured at the lowest cost to District taxpayers.”

With this policy in mind, the Grand Jury reviewed 395 contracts with a total value of nearly \$78 million that were approved by the OUSD Board between January – June 2018. Only 33 of the contracts, with a total value of \$12.5 million, were competitively bid. The Grand Jury sought to understand this apparent anomaly. One witness testified that OUSD has long been called “the district of exceptions.” The contract justification form has a checklist with fifteen different

exceptions to the competitive bidding requirements, and these exceptions are being widely used (sometimes inappropriately) to avoid competitive bidding.

The most frequently used competitive bid exception is for Professional Services Agreements (PSAs) that are less than \$87,800. Over the six-month period, the PSA exception was used to exempt 186 contracts worth \$4 million from competitive bidding. One witness verified this was a well-known exception that staff uses to avoid the competitive bidding requirement. The contract justification forms for 98 contracts the Grand Jury examined simply state, “Price compared with other vendors.” The Grand Jury’s review found 102 contracts or amendments with community-based organizations for \$3.6 million in after-school and summer-learning programs. Each was awarded without being competitively bid even though 84 contracts exceeded the PSA exception limit.

The Grand Jury reviewed 395 contracts with a total value of nearly \$78 million that were approved by the Board between January – June 2018. Only 33 of the contracts, with a total value of \$12.5 million, were competitively bid.

Thirty-three other contracts, worth nearly \$8 million, applied the special services exception. This exception should only be applied to those contracts requiring a high degree of specialized skills defined as financial, economic, accounting, legal, or administrative services. It is difficult to conclude that a two-year \$4,118,572 contract for construction management services for the Measure J bond program and a \$150,000 contract to provide transportation services for special education students, and five other contracts for student enrichment programs properly fit under this exception.

The Grand Jury reviewed documentation supporting numerous complaints that certain vendors are awarded multiple contracts without ever going through competitive bidding. The small business program’s compliance consultant is one example. This consultant received 13 contracts worth a total value of over \$3 million without going through any competitive bidding. The Grand Jury found another instance of a consultant for project labor agreement oversight renewed annually for the last 16 years for a total value of over \$3 million with only two instances of bidding. Best practices would dictate that a formal bidding process be used at least every five years for every longstanding contract to ensure that the district is receiving competitive market pricing.

Bond Money

Voter-approved bond measures often provide for the creation of citizen bond oversight committees (CBOCs). These committees ensure that funds are spent consistent with bond language. In recent elections, independent oversight has been featured prominently in the language of approved OUSD bond measures. Two CBOCs oversee different bonds issued by the district. One of the CBOCs oversees the spending of the bond funds from Measures A, B and J. In its August 2018 annual report, the committee expressed concerns regarding OUSD’s financial

reporting, Facilities' contracting practices, and the use of bond funds to pay rent for the district's central administrative offices at 1000 Broadway.

A little background may be helpful. The district's administration building suffered severe flood damage in January 2014. The administrative functions were initially relocated to several of OUSD's vacant properties. In January 2015, the functions were consolidated in leased office space at 1000 Broadway, a prime downtown location. The central offices are still located there after four years with the rent from bond funds totaling over \$12.5 million to date. The Board has been presented with actionable alternatives but failed to commit to any permanent relocation plan.

The CBOC and the state's Fiscal Crisis and Management Assistance Team (FCMAT), along with the external accountants who conducted the bond program management performance audit, have all questioned the legality of using bond funds to pay rent for the Broadway offices. OUSD's

Poor financial controls, uncontrolled project budgets, and misuse of school construction bond funds exhibit senior management's lack of discipline and damages the public trust.

legal counsel has opined that such use of bond funds is within the scope of the bond measures. The supporting argument for Measure J in the Oakland voters' pamphlet made no mention of using the funds for anything other than school facilities. Language in the bond measure allows the use of bond funds for administrative buildings. However, these funds may only be used to pay rent for "temporary housing" of

administrative functions provided an approved plan is in place for a permanent location. To date, the Board has not approved any such plan, yet the Grand Jury heard testimony from OUSD staff in April that the district planned to continue to use bond funds to pay rent for 1000 Broadway. The district abandoned at least one relocation proposal after spending \$6 million, mostly on architect fees, city of Oakland fees, and some demolition costs.

Poor financial controls, uncontrolled project budgets, and misuse of school construction bond funds exhibit senior management's lack of discipline and damages the public trust.

Summer Internship Program

Until 2017 Facilities sponsored a paid summer internship program, funded by donations from architects and contractors doing business with OUSD, enabling high school students to learn about the workplace. A terrific idea, especially when it helps students with compelling financial needs. However, Facilities was using a funding process that lacked transparency and gave the appearance of "pay-for-play."

The Grand Jury learned that in 2017 the selection panel of the summer program was made up of Facilities employees. They selected eleven high school students for the paid internship positions, three of whom were the children or relatives of the interview panelists, including the child of the OUSD employee managing the program. Such favoritism was troubling.

Adding to concerns, because district policy did not allow Facilities to pay the interns directly, an outside contractor employed and paid the interns, then invoiced the costs of the program (such as wages, hotels, meals, and travel from Washington, DC) back to Facilities, adding a markup for the contractor's administrative services. The Grand Jury was told that the OUSD employee managing the summer internship program signed off to reimburse the outside contractor without having the authority to do so. This was discovered by the program manager's supervisor who accused the employee of making a side deal with the contractor, having a conflict of interest by hiring his child, and attempting to reimburse a vendor without authority. Yet, no disciplinary action was ever taken for these transgressions.

Eleven high school students were selected for the paid internship positions, three of whom were the children or relatives of the interview panelists, including the child of the OUSD employee managing the program.

The Grand Jury could not find clear evidence that senior management understood how the program worked. Some witnesses felt strongly the program was a valuable community asset that should be reinstated if managed correctly. Other witnesses viewed the program as only benefiting family and friends of select Facilities employees and unavailable to most students within the district. Either way, the summer internship program was a small but shining example of the "what's in it for me?" culture that permeates OUSD.

Board Policies and Actions

A key responsibility of the Board is to ensure the fiscal solvency of the district. Grand Jurors attended and watched video broadcasts of board meetings and reviewed board meeting agendas and minutes. There was little sense of urgency expressed concerning the district's current fiscal crisis. Given sustained public criticism, inputs from multiple financial experts, and years of conflicting and unreliable financial reporting, this was astonishing.

The Board meeting of November 14, 2018 provides an excellent illustration of how complicated meeting agendas can cause vital issues to be missed or misunderstood. This board meeting had a 57 page agenda with 17 items discussed in closed session, and 87 items on the consent calendar. Included were a wide range of topics such as staff acknowledgments, contract approvals, change orders, memoranda of understanding, and grant awards. Three items of unfinished business followed regarding charter schools. Finally, it was on to new business. It was here, for the first time in this marathon 6½ hour meeting, that the special committee on fiscal vitality presented their report followed by public comments.

School Based Budgeting

One practice, unique to OUSD, is BP 3150 which grants unusual budgeting and spending autonomy to each school. While school governance teams are supposed to make the budgeting and spending decisions, the task typically falls to the principal at each school who must negotiate and contract for many services and take on the financial management and reporting responsibilities. Financial experts inside and outside the district agree that BP 3150 contributes

significantly to the district's financial instability. Witness testimony estimated that principals spend about 30% of their time on these tasks often without sufficient background and training. Furthermore, the tendency for frequent turnover of principals at some struggling schools has led to consistent overspending with little accountability. Multiple witnesses testified that in addition to the overspending associated with this policy, the burden on the principals (in time and effort) is keeping them from focusing on providing leadership for quality education.

Management Practices and a Broken Culture

The Grand Jury received numerous complaints reporting a systematic breakdown of sound business practices in many areas. As confirmed by witness testimony, there were instances of favoritism, rampant disregard of district policies, disdain for leadership, and a breakdown in the chain of command with staff routinely bypassing their managers to get what they wanted. Many witnesses described a culture of "what's in it for me" rather than "how can we help students thrive."

For example, the Grand Jury learned about what one witness termed an annual "dance" within the custodial and grounds department. Under the leadership of a previous Facilities director,

As confirmed by witness testimony, there were instances of favoritism, rampant disregard of district policies, disdain for leadership, and a breakdown in the chain of command with staff routinely bypassing their managers to get what they wanted.

the custodial and grounds department consistently had high overtime costs that exceeded their budget. Rather than right-sizing the annual budget to reflect the true cost of services, the department's manager would routinely over-spend on overtime. The manager's supervisor would call the overtime expenses into question. But year after year these criticisms were simply ignored. When the district's finances worsened, the Facilities director ordered that overtime be limited to emergencies and life-safety purposes. Still, the manager knew he could ignore the order by circumventing the chain of command and going directly to the senior business officer (SBO) for permission to cover the

budget overages each year. Witness testimony confirmed "this was the way we always did things at OUSD," adding that the SBO always came up with the money.

This is emblematic of so many of the district's problems. Organizations wishing to stay on track must have meaningful budgeting. Ignoring basic budget principles helped put OUSD in its current financial predicament. As reported by FCMAT and confirmed by the Grand Jury investigation, the district routinely covered these poor practices by inappropriately raiding school bond funds, reserves, self-insurance funds, and developer fees.

The Grand Jury received another complaint alleging that the custodial department hired substitute janitors without using a traditional, formal process through which nearly every other district employee is hired. Since substitute janitors usually comprised the pool of candidates when permanent positions came available, this shortcut effectively circumvented the entire hiring process. A more formal process is necessary to eliminate friendships, nepotism and favoritism in hiring decisions.

If ethical norms are ignored year after year and few, if any, are held accountable for questionable conduct, then a broken culture emerges. For example, an employee reported to district leaders that the employee had uncovered questionable expenses on purchasing ledgers. This included a series of charges totaling just over \$600 for car washes. This raised a red flag because the small department had only one vehicle that was never washed. When asked about this discrepancy, the department's leader responded that these spending decisions "could be improved." No disciplinary action was ever taken. While the money involved is trivial, the perception that district funds could be used to wash personal vehicles represents another example of the broken culture.

In January 2016 OUSD staff signed a bussing contract without competitive bidding for \$45,000 (above the bid requirement threshold of \$10,000 for transportation) with a company owned by a then-trustee of the Alameda County Board of Education, which helps fund teacher training programs and support services for districts throughout the county. The contract was not presented to the OUSD Board until it had expired. Again, staff hired the same contractor for the following year without bidding out the work and paid the contractor \$82,000 for services rendered without ever receiving approval from the Board as required by policy. This is another example of poor business practices and perhaps favoritism in contracting.

Leadership establishes direction and a framework to enable employees to make decisions that are consistent with the "tone at the top." Good leadership inspires an organization to excel. Right choices become a habit and expectations clearly understood. Variances by employees bring negative consequences such as lower performance reviews and even loss of employment. If leadership strays from the highest standards of integrity and performance, the organization inevitably follows.

The Grand Jury found this to be true of OUSD. The Grand Jury heard testimony that the frequent changes in leadership have left the staff "running the show" with everyone working in silos with their own plans, leading to a dysfunctional environment of favoritism and mistrust.

In essence, OUSD's organizational culture is broken and must change. We defined culture as the learned values, behaviors and norms practiced in the workplace. A broken culture can be as subtle as ignoring policy in order to expedite paperwork or as blatant as hiring a relative to work under one's supervision. Allowing or encouraging such poor business practices will cause an organization to lose its way. A detached board and instability in senior management provided the perfect environment for this to happen at OUSD, leading to the profound crisis that the district faces today.

CONCLUSION

The culture in OUSD's administrative offices must change in order to provide its students with the quality of education they deserve. OUSD is wasting millions of dollars well in excess of its projected annual deficits. Drastic action is required to "right the ship" and this must begin at the top. OUSD needs to bring comprehensive and modern best business practices into district offices and leadership. Staff need regular training inculcating these throughout the organization. If staff refuses to buy into these plans, they must be held accountable. OUSD can no longer afford to be philosophical. Restoring financial stability requires sacrifices throughout the organization. Stringent controls, adherence to contracting procedures, updated policies, and school consolidations are immediate priorities.

Yet staff cannot be expected to buy into these changes if the elected Board continues to lead by reaction. Failure to put into place a strategic plan and have the courage to carry it out will ensure that the district continues to sputter with under-enrolled schools and shoestring budgets. Over one thousand school districts in the state operate competently with the state's current funding structure. Oakland is not one of them even though it receives significantly more funding than the median district in the region. The Board has "kicked every can down the line" and rarely acted with a sense of urgency on many vital issues. The state of the district today is the inevitable result.

This report has detailed repeated examples of mismanagement, favoritism, disregard for authority and poor controls. Policy and procedures are ignored causing one poor decision after another. Moreover, lack of accountability is rampant. Those who have attempted to instill better methods are ignored or quickly pushed aside. Well-intentioned policies such as individual school autonomy or hiring local businesses cannot continue at a premium in the face of dismal finances. OUSD cannot afford them.

The Board and OUSD's senior management have a monumental task in front of them. Full support from the Board, OUSD's leadership, management, and employees, as well as recently added support from the Alameda County Board of Education is needed to make progress possible.

FINDINGS

Finding 19-5:

The Oakland Unified School District consistently spends near or below the median of the 37-district sample on the needs of students (teachers' salaries, local administration, classroom support, books and materials and pupil services). It spends above and sometimes far above the median on non-classroom administrative, central office staff, contractors and consultants.

Finding 19-6:

The Oakland Unified School District's financial problems result from a combination of spending priorities skewed toward non-classroom staff and activities plus poor enforcement of competitive bidding requirements, expensive contracting policies, poor financial discipline and poor business practices.

Finding 19-7:

The Oakland Unified School District's Facilities Department does not follow best practices in developing and managing its operating budgets.

Finding 19-8:

The Oakland Unified School District's Facilities Department staff frequently ignored direct orders from superiors, often going over their manager's heads.

Finding 19-9:

The Oakland Unified School District's Facilities Department has not provided appropriate leadership in managing the capital program for the district. Approved project costs and schedules have not been controlled, required bidding was often avoided through exceptions, and the district's use of the lease-leaseback method has not demonstrated cost savings or resulted in speedy completion of projects.

Finding 19-10:

The Oakland Unified School District's 50% local business utilization policy adds significant cost to projects.

Finding 19-11:

The Oakland Unified School District has been using Measure J bond funds to pay rent (now over \$12.5 million) for their administration offices at 1000 Broadway. There is no approved plan to relocate the district's central administrative offices to a permanent location, raising serious legal questions about its continued use of bond funds to pay rent at 1000 Broadway.

Finding 19-12:

The Oakland Unified School District's culture is broken. It has been described as a district of exceptions with an attitude of "what's in it for me?" These attitudes harm the district whether it is displayed as favoritism, nepotism, or disregard for board policies. Employees trying to change this culture and move the district forward are sidelined and sometimes forced to leave because the proposed changes "aren't the way it's done at OUSD."

Finding 19-13:

The Oakland Unified School District's Board policies are out-of-date.

Finding 19-14:

The Oakland Unified School District's Board meetings and meeting processes create extraordinary burdens for Board members, the district's management and staff, and the public. Excessively long meetings fail to focus the Board on its priorities and details, which results in a lack of actionable decisions on key issues.

Finding 19-15:

The Oakland Unified School District Board has failed in its responsibilities to serve the students of Oakland. Collectively, the Board has not provided leadership and strategic direction to correct the severe financial problems facing the district.

RECOMMENDATIONS

Recommendation 19-5:

The Oakland Unified School District must realign its current spending priorities to ensure the focus is on the needs of students (certificated teacher salaries, classroom support, books and materials, pupil services including guidance counseling, social workers, and other critical student support services.)

Recommendation 19-6:

The Oakland Unified School District must significantly reduce the number of classified supervisors, administrators and staff and its expenditures for contractors, consultants, and other outside services.

Recommendation 19-7:

The Oakland Unified School District must incorporate best practices for financial management, budgeting and control, and if staff is unwilling to adopt these practices, they must be held accountable.

Recommendation 19-8:

The Oakland Unified School District must provide training to all personnel to clarify roles, responsibilities and accountability.

Recommendation 19-9:

The Oakland Unified School District's Board, Superintendent and Facilities Department must finalize and approve a robust Facilities Master Plan that can be immediately implemented, including proposed school closures, consolidations, and project priorities.

Recommendation 19-10:

The Oakland Unified School District's Facilities Department contracts must be publicly bid and broadly advertised, and follow an open, competitive bidding process. Recommendations within the bond program management performance audit regarding facilities program management and change order control should be immediately and fully implemented.

Recommendation 19-11:

The Oakland Unified School District Board must review, update and enforce its policies and regulations regarding conflicts of interests, bid exceptions, and school autonomy. The 50% local business utilization requirement should be immediately suspended until the district finances can afford it and until the policy is reevaluated.

Recommendation 19-12:

The Oakland Unified School District Board must restructure its board meetings to better align with district priorities, including: move critical topics to the beginning of meetings, aggregate like items for approval, and use the consent calendar to reduce time spent on minor items. Focus needs to be on gaining budget control, financial stability and improving students' access to a great education.

Recommendation 19-13:

The Oakland Unified School District must hire an effectiveness coach with the Alameda County Office of Education's approval for the superintendent and the Board as a whole and for individual members to improve effectiveness and transparency, leading to timely board decisions on identified priority items.

Recommendation 19-14:

The Oakland Unified School District Board must approve a plan to relocate its administrative offices as soon as possible.

RESPONSES REQUIRED

Oakland Unified School District Board of Education Findings 19-5 through 19-15
Recommendations 19-5 through 19-14

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines:

Responses to Findings shall be either:

- Agree
- Disagree Wholly, with an explanation
- Disagree Partially, with an explanation

Responses to Recommendations shall be one the following:

- Has been implemented, with a brief summary of the implementation actions
- Will be implemented, with an implementation schedule
- Requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a completion date that is not more than 6 months after the issuance of this report
- Will not be implemented because it is not warranted or is not reasonable, with an explanation

APPENDIX A

**Oakland Unified School District
General Fund Financial Analysis**

Table A1 compares OUSD’s FY 2018 total General Fund spending in major expense categories against 37 local school districts by activity and object codes. California schools use two methods for accounting their expenditures. Object codes allocate expenses to the type of expense, such as salaries, employee benefits, books and supplies and services. Activity codes organize the same expenses according to the activity using the money, such as education, general administration, and plant services. Both methods of accounting are used in Table A1 to analyze OUSD’s spending.

Table A1 – OUSD Expenses Compared to Local Districts – Per Student, FY 2018

	Spending Per Student - OUSD	Rank ¹	Spending per Student - Median of Local Districts	Difference	Total OUSD Spending Compared with Median District of Same Size
Total Expenses	\$15,269	7	\$12,017	\$3,252	\$113,302,932
BY ACTIVITY CODE					
Education Expenses	\$8,869	6	\$7,497	\$1,372	\$47,801,852
Instruction Expenses	\$2,868	2	\$1,436	\$1,432	\$49,892,312
Pupil Services	\$710	32	\$897	(\$187)	(\$6,515,267)
Ancillary Services	\$364	1	\$93	\$271	\$9,441,911
General Admin	\$768	14	\$702	\$66	\$2,299,506
Plant Services	\$1,408	10	\$1,196	\$212	\$7,386,292
Other Outgo	\$282	Nm			
BY OBJECT CODE					
Certificated Salaries	\$5,591	14	\$5,231	\$360	\$12,542,760
Classified Salaries	\$2,681	4	\$1,804	\$877	\$30,555,557
Employee Benefits	\$3,919	5	\$2,710	\$1,209	\$42,122,769
Books & Supplies	\$403	22	\$458	(\$55)	(\$1,916,255)
Services & Other	\$2,429	3	\$1,429	\$1,000	\$34,841,000
Other Outgo	\$246	Nm			

Nm = Not Meaningful ¹ Rank out of 37 local school districts

OUSD’s General Fund spending of \$15,269 per student ranked 7th among the local school districts. The table also shows for each expense category the difference between OUSD’s spending per student and the median spending per student in the 37 local school districts. For example, OUSD’s spending on education expenses (\$8,869 per student) was \$1,372 higher than

the median spending (\$7,497) in the 37 districts. The number in the far-right column (\$47,801,852) is the difference per student (\$1,372) times OUSD’s ADA (34,841). The far-right column shows how much OUSD’s total spending for each expense category was over or under the median level for the 37 districts (normalized to OUSD’s ADA school population size.)

Examining OUSD’s expenditures as percentages (or shares) of total spending gives a clearer picture of the district’s spending priorities. Table A2 shows OUSD’s percentages of expenses and compares them to the median of the 37 districts. The data show that OUSD’s percentages of total spending on expense categories that directly benefit students in the classroom were low compared to the other 37 districts. Certificated salaries (teachers) was 37th (last), pupil services was 36th, education expense was 32nd, books and supplies was 30th, general administration was 27th (principals and other classroom administrators), and plant services was 23rd. In contrast, expenses for central office administration and programs were high. Instruction expenses (central office “classroom-related” expenses and NOT classroom expenses) was 3rd, classified salaries was 6th, and services and other was 4th. A consistent story emerges that OUSD underspends for teachers, pupil services and classrooms, and overspends on central office administration and staff, “instruction-related” programs, contractors and consultants.

Table A2 – OUSD Expense Allocations Compared to Local Districts

	Share of Expenses – OUSD	Share of Expenses – Median of Local Districts	Rank ¹
BY ACTIVITY CODE			
Education Expenses	59%	63%	32
Instruction Related Expenses	19%	12%	3
Pupil Services	5%	8%	36
Ancillary Services	2%	1%	1
General Administration	5%	6%	27
Plant Services	9%	10%	23
BY OBJECT CODE			
Certificated Salaries	37%	45%	37
Classified Salaries	18%	15%	6
Employee Benefits	26%	23%	6
Books & Supplies	3%	4%	30
Services & Other	16%	12%	4

¹ Rank out of 37 local school districts

Table A3 highlights OUSD’s expenditures in four selected expense categories. Spending on books and supplies were 26% below the statewide average. Classified supervisors and administrative salaries were over six times the statewide average. Professional services and consulting, and other operating expenses were nearly three times the statewide average, and communications expenses were 3.5 times the statewide average.

Table A3 – Selected OUSD Expense Categories Compared to State of California Average, FY 2018

Expense Category	Total OUSD Expense	OUSD \$ per ADA	Statewide Average \$ per ADA	OUSD Variation from State Average
Books and Supplies	\$14,030,706	\$403	\$559	-26%
Classified Supervisors and Admin Salaries	\$31,628,739	\$908	\$146	522%
Professional/Consulting Services and Operating Expenditures	\$55,742,662	\$1,600	\$535	199%
Communications	\$4,390,814	\$126	\$36	251%

EXHIBIT “4”

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2324-0074

**Revoking the Charter of the North Oakland Community Charter School under Agreement with
the Oakland Unified School District entered into as of January 8, 2020 and subsequently
amended on December 9, 2020**

WHEREAS, on October 23, 2019, the North Oakland Community Charter School (“NOCCS”) submitted its Renewal Petition to OUSD requesting a five-year renewal of its charter term, scheduled to begin on July 1, 2020 if approved;

WHEREAS, the Renewal Petition and NOCCS’ academic performance data presented serious concerns regarding the declines in NOCCS’ elementary school and middle school academic performance;

WHEREAS, OUSD and NOCCS agreed that OUSD had sufficient legal basis to deny the Renewal Petition but, at its sole discretion, opted not to deny the Renewal Petition or adopt findings in support of denial, but rather to approve the Renewal Petition and enter into an Agreement with NOCCS to continue to operate under certain conditions specifically related to middle school grade span reduction and academic outcomes;

WHEREAS, on January 8, 2020, the OUSD Board approved an Agreement with NOCCS which required the Charter School to close the middle school program and to meet specific academic outcomes outlined in the Agreement in order to continue operation;

WHEREAS, on December 9, 2020, because the California Assessment of Progress and Proficiency (“CAASPP”) was not administered in 2019-20 due to the COVID-19 pandemic, the OUSD Board approved an Amendment to the Agreement, jointly signed by NOCCS, which specified academic outcome data would be evaluated during the first two years the CAASPP was once again administered annually;

WHEREAS, the CAASPP was administered annually beginning in the 2021-22 school year;

WHEREAS, OUSD evaluated NOCCS’ 2021-22 and 2022-23 academic outcomes, according to the Agreement and subsequent Amendment, and concluded that NOCCS did not meet the required outcomes;

WHEREAS, on March 4, 2024, OUSD notified NOCCS in writing of its determination that NOCCS did not comply with the academic outcome requirements outlined in the Agreement and subsequent Amendment;

WHEREAS, on March 18, 2024, NOCCS provided a written explanation to OUSD regarding the academic outcomes;

WHEREAS, upon review, OUSD concluded, in its sole discretion, that NOCCS' written explanation did not contain sufficient evidence to conclude the Charter School met the required academic outcomes;

WHEREAS, the January 8, 2020 Agreement provides that “[i]f OUSD determines, in its sole discretion, that NOCCS has materially breached this Agreement for any reason, including but not limited to as set forth in sections VI and VII, OUSD will notify NOCCS in writing of the material breach. Upon receiving said notification, NOCCS shall voluntarily close the Charter School by the first June 30 immediately following the material breach ...”;

WHEREAS, on March 27, 2024, this Board adopted Resolution No. 2324-0071, “Issuing Official Notice to the North Oakland Community Charter School of a Material Breach of their Agreement(s) with the Oakland Unified School District,” and “direct[ing] Staff to submit this Resolution to NOCCS as the official notification in writing of the material breach which shall, pursuant to the Agreement, direct NOCCS to voluntarily close the Charter School by June 30, 2024” (attached);

WHEREAS, on or about May 3, 2024, NOCCS's attorneys notified the District in writing that it would not comply with Resolution No. 2324-0071 and would not voluntarily close by June 30, 2024;

WHEREAS, the January 8, 2020 Agreement provides that “[i]f NOCCS fails to voluntarily close the Charter School as required by this section, OUSD shall initiate revocation proceedings against NOCCS pursuant to OUSD's authority under Education Code section 47607,” and that, for violations of the Agreement, “NOCCS hereby waives all rights otherwise afforded to it under Education Code section 47607, and agrees the District shall not be required to provide NOCCS with a notice of violation or opportunity to remedy, pursuant to Education Code section 47607, subdivision (d), prior to revoking NOCCS charter except as otherwise provided for in this Agreement”;

WHEREAS, the January 8, 2020 Agreement further provides that “NOCCS further waives all rights to appeal OUSD's revocation of its charter pursuant to this section for any violations of this Agreement related to reduction of middle school grade spans and academic outcomes.”

NOW, THEREFORE, the Board of the District hereby revokes the NOCCS charter, effective June 30, 2024, for failure to meet or pursue any of the pupil outcomes identified in the charter.

NOW, THEREFORE, BE IT RESOLVED, the Board of the District directs Staff to provide notification to the California Department of Education of the revocation of the NOCCS charter under Education Code section 47604.32.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this 5th day of June, 2024, by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSE:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on June 5, 2024.

Legislative File Info.	
File ID Number:	24-1469
Introduction Date:	6/5/2024
Enactment Number:	
Enactment Date:	6/5/2024

OAKLAND UNIFIED SCHOOL DISTRICT

—
Benjamin “Sam” Davis
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education