

SAN DIEGO CITY SCHOOLS

EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-8363

(619) 725-7785
Fax (619) 725-7564

OFFICE OF RESOURCE DEVELOPMENT
apalkowitz@sandi.net

May 7, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

SUBJECT: CLAIM NO. CSM-03-TC-03 "CHARTER SCHOOL IV"

This letter is in response to the letter you received from the Department of Finance dated January 20, 2004 containing their comments in response to the Charter School IV test claim.

I

THE COMMENTS OF THE DEPARTMENT OF FINANCE MUST BE EXCLUDED

Test claimant objects to the comments of the Department of Finance as being legally incompetent and move they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Further, the test claimant objects to any and all assertions or representation of the fact made in the response since the Department of Finance failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The comments of the Department of Finance do not comply with these essential requirements. Test claimant requests that the comments and assertions of the Department of Finance not be included in the Staff's analysis, since the Commission must not use unsworn comments or comments unsupported by declarations.

II

TEST CLAIM STATES ACTIVITIES WITH SPECIFICITY

Below are specific and complete identification of the activities being claimed.

Chartering Agencies (School Districts and County Offices of Education)

- A. Review that the following declarations are included in the charter petition.
 - (1) How a charter petition for charter schools which serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements.
 - (2) Procedures to be used if the charter school closes.

- B. Declarations regarding collective bargaining in public education employment.
 - (1) Whether or not the charter school shall be deemed the exclusive public school employer of the employees. (47611.5(b))
 - (2) That the charter is the employer of the employees at the charter for the purpose of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school intends to be operated by the University of California in University facilities. (47626(a))
 - (3) The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees. (47611.5(c))

- C. Review of the annual statement of all receipts and expenditures for the preceding fiscal year for fiscal soundness.

Charter Schools

- A. In its petition a declaration include the following.
 - (1) Whether the charter school is the exclusive public school employer of the employees at the charter school. (47611.5(b))
 - (2) That it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school is operated by the University of California in university facilities. (47626(a))
 - (3) The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees. (47611.5(c))

- B. Fiscal and geographic reporting
 - (1) Approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the chartering agency.
 - (2) Identify a single charter school and specify the geographic and site requirements for the establishment of a charter school renewal or petition sought on or after January 1, 2003.
- C. Respond promptly to all reasonable inquiries from its chartering authority.
 - (1) Respond to inquiries including but not limited to, inquiries regarding its financial records.
 - (2) Consult and respond to county office of educations inquires regarding investigations or monitoring by the county office.

County Superintendent of Schools

- (1) Monitoring the operations of charter schools.
- (2) Conducting investigations based on parental complaints or other information that justifies an investigation.

III

DISCRETIONARY ACTS

The Department of Finance sites the California Supreme Court decision in *Department of Finance v. Commission on State Mandates* claiming that “charter schools are not eligible claimants because establishing and maintaining a charter school is a discretionary act.” This contention is not supported by the Commission on State Mandates prior approval of *Charter School I*. Furthermore, the test claim and the California Supreme Court decision are distinguished since the program in *Department of Finance* involved a funded program and the establishing and maintaining of Charter Schools is not a funded program.

IV

GRANTING CHARTERS IS NOT DISCRETIONARY

Education Code Section 47605(b) reads that a school district or county superintendent of schools “shall” grant a charter if “the charter is consistent with sound educational practice” and meets all the other requirements specified in the Charter School Act. Section 47605(b) also reveals the intent of the legislature—“that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.”

A school district or county superintendent of schools must grant the charter petition unless the petition lacks a sound educational program and/or does not meet the other specified requirements of the Charter Schools Act.

V

ELIGIBLE CLAIMANTS

A. SCHOOL DISTRICTS

The Parameters and Guidelines for *Charter Schools* adopted October 18, 1994 issued by the Commission on State Mandates states, “(a)ny ‘school district’, as defined in Government Code section 17519, except for community colleges, which incurs increased cost is eligible to claim reimbursement and the right to amend its comments after the Commissions decides *Charter Schools III*.”

B. COUNTY SUPERINTENDENT OF SCHOOLS

County superintendent of schools are also included in Government Code section 17519 definition of ‘school district(s).’ Thus county superintendent of schools are also eligible claimants.

C. CHARTERING ENTITIES

Pending the passage of AB 2764 chartering entities may also include universities and community colleges. The District reserves the right to amend our response if future legislation broadens the privilege to grant charters to other entities.

VI

OVERSEEING CHARTER SCHOOLS IS AN INCREASE LEVEL OF SERVICE

The Department of Finance contends “school districts have always had the responsibility to oversee individual schools within their purview.” The oversight responsibility of district schools and charter schools differs. The foundation of charter schools is to move in the direction of a performance-based standard. Consequently, the governing district policies and procedures do not generally apply to charter schools. The District must create Memorandums of Understandings to establish an agreement between the District and the charter school outlining the District’s requirements from the charter school (i.e. financial reports). Accordingly, overseeing a charter school is at a higher level than that of a non-charter school site. The Commission recognized the increased level of service required to monitor charter schools in the Parameters and Guidelines issued for *Charter Schools*. The Parameters and Guidelines for *Charter Schools* states, a reimbursable cost is “Monitoring the Charter: Subsequent administrative review, analysis and reporting on the charter school’s performance for purposes of charter reconsideration, renewal, revision, evaluation or revocation by the governing body.” To remain consistent with the intent of Article XIII the increased level of service provided to charter schools must be reimbursed under the state mandate reimbursement process.

VII

REIMBURSABLE OVERSIGHT COSTS

The District disagrees with the Department of Finance's assertion that the cost of overseeing chartering entities is covered by the 1% or 3% oversight fee.

The reimbursable activities outlined in the test claim are unrelated to the authorized 1% or 3% of the charter school revenue charged by the chartering entities. The test claim illustrates essential elements to be in the charter petition. Approving or denying a charter petition is outside the chartering agencies' oversight capacity.

Comments from the Department of Finance omit the renewal of charter schools. A charter may only be approved for five years. The charter must submit a renewal petition once the five years has expired. Additionally, any material revisions to a charter petition must be approved by the chartering agency. Education Code Section 47607(a)(1) reads, "(r)enewals and material revisions of charters shall be governed by the standards and criteria in Section 47605". Reviewing renewal for new charter schools' petition is a time consuming and costly process. The Commission recognized this when it approved the Parameters and Guidelines for *Charter Schools*.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Art Palkowitz

Manager, Office of Resource Development

PROOF OF SERVICE

RE: *Charter Schools IV, 03-TC-03*

I am employed in the County of San Diego, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 4100 Normal Street, Room 3159, San Diego, California 92103.

On May 7, 2004, I served the foregoing document(s) described as:

Response to Department of Finance Analysis Dated January 20, 2004

On the person/parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite #300
Sacramento, CA 95814

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Mr. Keith Petersen
SixTen & Associates
5252 Balboa Avenue Suite 807
San Diego CA 92117

Ms. Sandy Reynolds, President
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City CA 92586

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Mr. Gerald Shelton, Administrator (E-8)
California Department of Education
Fiscal and Administrative Services
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Steve Shields,
Shields Consulting Group, Inc.
1536 36th Street
Sacramento CA 95816

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Jay Stewart
Western Placer Unified School District
1400 First Street
Lincoln, CA 95648

Ms. Jennifer Rockwell
Office of the Attorney General
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Mr. Joe Lucente
Fenton Avenue Charter School
11828 Gain Street
Lake View Terrace, CA 91342

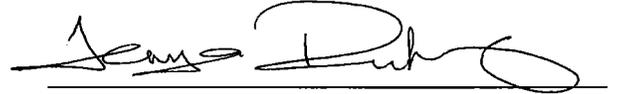
Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Fil Guzman
BWG Educational Consultants, LLC
1055 Copper Court
Vacaville, CA 95687

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 7, 2004, in San Diego, California.

A handwritten signature in black ink, appearing to read 'Tenya Rushing', written over a horizontal line.

Tenya Rushing