

EXHIBIT A

BERKELEY UNIFIED SCHOOL DISTRICT

**STAFF REPORT: PETITION TO RENEW THE REALM CHARTER
MIDDLE SCHOOL AND REALM CHARTER HIGH SCHOOL CHARTERS**

GOVERNING BOARD PUBLIC HEARING DATE:

November 4, 2015

GOVERNING BOARD DETERMINATION MEETING DATE:

December 9, 2015

I. INTRODUCTION

On June 9, 2010, the Berkeley Unified School District (“District”) granted two petitions to form the REALM Charter Middle School and REALM Charter High School for five-year terms, beginning on July 1, 2011 and ending June 30, 2016. The middle school serves grades 6-8, and the high school grades 9-12. On or about October 20, 2015, the District received separate petitions to renew the charters for the middle and high school for 5-year terms, starting on July 1, 2016.

The Charter Schools Act of 1992 permits school districts, county boards, and the State Board of Education (“SBE”) to grant charters for the operation of charter schools. (Ed. Code § 47600, *et seq.*) Charter schools “are part of the public school system,” but “operate independently from the existing school district structure.” (Ed. Code §§ 47615(a)(1), 47601.) Charter schools are established through submission of a petition by proponents of the charter school to the governing board of a school district, county board or to the SBE. The governing board must grant a charter “if it is satisfied that granting the charter is consistent with sound educational practice.” (Ed. Code §47605(b).) Nevertheless, a governing board may deny a petition for the establishment of a charter school if it finds that the particular petition fails to meet enumerated statutory criteria and adopts written findings in support of its decision to deny the charter. (*Ibid.*) Once a governing board grants a charter petition, the charter school becomes a separate legal entity.

Under Ed. Code §47607(a)(2), a school district evaluates a Renewal Petition under the same standards and criteria used to evaluate an initial petition to establish a charter school. If the Board grants a renewal petition, “[e]ach renewal shall be for a period of five years.” (Education Code § 47607(a)(1).)

II. PROCEDURAL STATUS

Ed. Code §§47605(b) and 45607 require the District’s Board of Education (“Board”), within 30 days of receiving a renewal petition, to “hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents.” Ed. Code §47605(b) requires the board to “either grant or deny the charter within 60 days of receipt of the petition.” The Board held the public hearing on November 4, 2015, and received input on the renewal petition. The Board will take action to grant or deny the renewal petition on December 9, 2015.

The review of the 2 renewal petitions for compliance with the requirements set forth in the Education Code was conducted by Javetta Cleveland, Deputy Superintendent; Pasquale Scuderi, Assistant Superintendent, Educational Services; Lisa Graham, Director, Special Education; and John R. Yeh, Burke, Williams & Sorensen, LLP, legal counsel.

III. REVIEW OF THE RENEWAL PETITION

Education Code §47605(b) sets forth the following guidelines for governing boards to consider in reviewing charter Renewal Petitions:

- The chartering authority shall be guided by 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 governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice.
- The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:
 - (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
 - (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
 - (3) The petition does not contain the number of signatures required by statute (not applicable to renewal petitions).
 - (4) The petition does not contain an affirmation of each of the conditions required by statute.
 - (5) The petition does not contain reasonably comprehensive descriptions of the required elements of a charter petition.

Education Code § 47607(a) contains specific requirements applicable to renewal petitions:

(1) A charter may be granted pursuant to Sections 47605, 47605.5, and 47606 for a period not to exceed five years. A charter granted by a school district governing board, a county board of education, or the state board may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period of five years...

... (2) Renewals and material revisions of charters are governed by the standards and criteria in Section 47605, and shall include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was

originally granted or last renewed.

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

(B) For purposes of this section, "all groups of pupils served by the charter school" means a numerically significant pupil subgroup, as defined by paragraph (3) of subdivision (a) of Section 52052, served by the charter school.

See. e.g., 5 C.C.R. 11966.4(b) also contains the following requirements:

(1) When considering a petition for renewal, the district governing board shall consider the past performance of the school's academics, finances, and operation in evaluating the likelihood of future success, along with future plans for improvement if any.

(2) The district governing board may deny a petition for renewal of a charter school only if the district governing board makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the grounds for denial set forth in Education Code section 47605(b) or facts to support a failure to meet one of the criteria set forth in Education Code section 47607(b).

Eligibility for Renewal

Under Ed. Code § 47607(b), a charter school must meet the following performance criteria on the Academic Performance Index (API) test in order to be eligible for or consideration for renewal:

(b) Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever date occurs later, a charter school shall meet at least one of the following criteria before receiving a charter renewal pursuant to paragraph (1) of subdivision (a):

...

(4)(A) The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

Because of the suspension of API testing for 2014, the last year that API data is available for the REALM schools is 2013. Therefore, the District has evaluated

alternative assessment data, including REALM's most recent results on the California Assessment of School Performance and Progress (CAASP) tests in 2015.

To obtain renewal, a charter school must meet all of the other legal requirements for renewal, including the additional performance goals set forth in its original charter and other provisions of law.

The Charter Review Team was also guided in its analysis by the SBE regulations for the evaluation of charter petitions and renewal petitions (hereinafter "regulations"). Where relevant, the content of the Education Code and regulations are stated or paraphrased with respect to each required element of the Petition in italics.

IV. CHARTER REVIEW TEAM RECOMMENDATION

The Charter Review Team recommends that the Board grant the Renewal Petition on the condition that REALM make the following changes to its Charters as set forth at the conclusion of this Report.

V. FINDINGS OF CHARTER REVIEW TEAM

The Charter Review Team's specific findings with respect to each element are described in numbered paragraphs below with reference to the applicable statutory and regulatory requirements.

1. **THRESHOLD LEGAL REQUIREMENTS OF EDUCATION CODE §47605(A)**

The Education Code requires that charter petitions identify a single charter school that will operate within the geographic boundaries of the District, unless certain conditions are met.

Analysis: The Charter School's Middle School is located at 2023 Eighth Street, Berkeley, and its High School at the District's West Campus, located at 1222 University Avenue, Berkeley. The parties are in discussion for a facilities arrangement for 2016-2017.

2. **EDUCATIONAL PROGRAM [EDUCATION CODE §47605(B)(1)]**

Education Code §47605(b)(1) permits a school board to deny a petition to establish a charter school that presents an "unsound educational program." The SBE regulations clarify an unsound educational program to be one that involves activities that would present the likelihood of physical, educational, or psychological harm to the students, and/or would not likely be of educational benefit to students. (Cal. Code Regs., tit. 5, § 11967.5.1(b)(1), (2))

Analysis: See below, starting on p. 6.

3. SIXTEEN REQUIRED CHARTER ELEMENTS SET FORTH IN EDUCATION CODE §47605(B)(5)

Following is the Charter Review Team’s analysis of each of the 16 elements required by Education Code §47605(b)(5).

A. Element One: A Description of the Educational Program [Ed. Code, §47605, subd. (b)(5)(A)]

The Education Code requires a description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. (Ed. Code, §47605(b)(5)(A)(i).)

The regulations require the educational program description to include a framework for instructional design that is aligned with the needs of the target student population, as well as descriptions of the following: the basic learning environment, and the instructional approach, including the curriculum and teaching methods that will enable the school’s students to master the content standards for the core curriculum areas and to achieve objectives specified in the charter. (Cal. Code Regs., tit. 5, §11967.5.1(f)(1).) The regulations further require an explanation of how the charter school will identify and respond to the needs of students who are not achieving at or above expected grade levels, how the charter school will meet the needs of students with disabilities, English learners, students achieving substantially above, or below grade level expectations, and other special populations, and the charter school’s special education plan. (Ibid.)

1. Target Student Population:

Analysis: Both REALM charters note that the original charters sought to serve a student demographic consisting of the following:

African American	Asian American	Latino	White
26%	9%	14%	34%

REALM’s Middle and High schools contain the following demographic breakdown

Middle School:

African American	Asian American	Latino	White
15.7%	4.0%	55.9%	10.5%

High School:

African American	Asian American	Latino	White
19.2%	1.6%	62.3%	4.1%

(Source: Petition, p. 11 (current), 13 (initial)¹.)

¹ Page citations refer to both Middle School and High School Petitions unless otherwise indicated.

BUSD Demographic Breakdown:

African American	Asian American	Latino	White
20%	8%	24%	35%

(Source: BUSD District Profile Sheet 2013: <http://www.berkeleyschools.net/wp-content/uploads/2011/06/BUSD-SIS-2013.pdf?5759fb>)

Though the REALM charter school demographics do not match that of the District's, the charter schools do enroll predominantly students of color, with its largest demographic consisting of Latino students.

Following is REALM's demographic breakdown of students eligible for the Federal Free and Reduced Lunch program, and English Language Learners:

	Free and Reduced Lunch Eligible/SED	English Language Learners
REALM Middle	78%	58%
REALM High	72%	58%
BUSD	12%	41%

(Source: Petition, p. 14 (REALM); BUSD District Profile Sheet 2013: <http://www.berkeleyschools.net/wp-content/uploads/2011/06/BUSD-SIS-2013.pdf?5759fb> (BUSD).)

2. Proposed Curriculum/Framework for Instructional Design:

Analysis: The Petition's description of the Charter School's instructional program is contained on pp. 16-25 (Middle) and 16-26 (High School). The Petition contains a program rooted in Project-Based Learning aligned with Common Core State Standards, and contains separate descriptions of the curricular programs in English, Mathematics, History/Social Science, Science, Physical Education, Foreign Language and Art & Design. The High School Petition also notes that REALM attained 3-year WASC accreditation in 2013, and also contains high school graduation requirements on p. 26.

Pasquale Scuderi, Assistant Superintendent, Educational Services, conducted site observations of REALM Middle and High Schools on November 23 and 30, 2015. The observations confirmed that REALM is delivering the program set forth in its charter petitions. The findings from the site observations are attached as Exhibit 1.

3. Special Education Program and § 504 Compliance:

Analysis:

District Feedback: The District notified REALM in writing on November 25, 2015 that it needed to provide a description of how the Charter Schools provide special education services to their students, and how they ensure that their students receive and Free and Appropriate Education. The District asked REALM to provide information in the categories listed below. Below is a summary of REALM's response, and the District's evaluation thereof.

1) Child Find:

REALM Response: REALM ensures that parents and staff are aware of the obligation and desire to assist students with learning needs. When students enroll at REALM and the family indicates that they may have an IEP or 504 plans, REALM staff actively search for the documents. If parents do not have a copy of the IEP, this includes contacting the previous district/school and requesting both electronic and hardcopy files. If the student does not have an IEP but the school staff suspect[s] learning and/or developmental needs, the school team will work in a variety of ways to ensure students who need assistance are identified. This includes referral to COST (Coordination of Services Team), provision of intervention services, and assessment by qualified school personnel. In addition, letters explaining the transition to EDCOE SELPA were mailed to families. Contact information for the REALM special education department was also distributed at family events such as the beginning of school welcome and back to school night. The COST process also provides information to parents and staff. Staff receive[s] ongoing training on the function of COST and the process to refer a student.

District Evaluation of REALM Response: REALM's response does not address Child Find obligations. An LEA may not use SST (or COST) as a way to delay or defer its site obligations to conduct a comprehensive evaluation of students they suspect may have a disability that would require specialized instruction.

The District would need to see the following documents to determine whether REALM is meeting its special education obligations under the law:

- Child Find policy & procedures manual describing the referral process.
- Comprehensive EDCOE SELPA Policy Binder.
- 504 Policy & Procedures Handbook, along with any forms used for this process.
- Pupil Records Guidelines Handbook.
- "Letters explaining the transition to EDCOE SELPA [that] were mailed to families."
- Any other information provided to families regarding the provision of special education services by EDCOE SELPA.
- The COST team & referral process professional development training materials, including agenda & sign-ins.

2) Referral and Assessment

REALM Response: REALM utilizes COST (Coordination of Services Team), an enhanced Student Study Team model, looking at any student that has needs and allocating and locating resources to assist the student. With behavioral and academic levels of interventions are attempted and documented prior to a referral to special education. The COST team meets on a weekly basis and monitors student progress. The interventions increase or decrease as needed, based on data collected such as behavioral charts or academic assessments and work samples. If a student is referred

for Special Education assessment by the team and/or family, the mandated timelines are followed. An assessment plan is developed and sent to the parent within 15 days of the referral. Once signed and returned by the parent, the IEP team has 60 days to complete the assessment and hold an IEP meeting. REALM staff will assess in all areas of suspected disability. A parent has the right to make a direct written referral for assessment. When this is received the COST team meets within 15 days to develop a plan of assessment with the parent and to provide additional interventions, if appropriate.

An interdisciplinary team assesses the student, including a school psychologist, an Educational Specialist, a school nurse and/or other professional staff, such as a speech and language pathologist or occupational therapist, in all areas of suspected disability/ areas of need. All staff use appropriate measures and batteries of assessments that they are familiar with and qualified to assess. In addition, data regarding interventions and other measures are factored in. These include individual testing, teacher observations, interviews, record reviews and work samples and parent input. Assessments are done in the student's primary language and parents are presented the information in their language, with the help of an interpreter as necessary. The assessments are completed within the 60 day timeline and the parent is invited to an IEP meeting to review the assessment data, determine eligibility, and plan for services if appropriate.

District Evaluation of REALM Response: REALM's response misstates the standard for triggering the obligation to assess. The LEA is obligated to assess in all areas related to the area(s) of suspected disability, not just "all areas of suspected disability." This is a critical distinction. REALM's response also contains no reference to providing parents with a copy of its procedural safeguards upon a request or referral for special education evaluation. REALM should provide a copy of its Procedural Safeguards document (in all languages made available to parents/guardians.)

REALM states that assessments are performed in a student's "primary language," but fails to detail how it enforces this practice for all languages or accesses multiple native language speakers for these evaluations. REALM also does not detail how it determines a student's "primary" language." REALM must provide a copy of its ELL & CELDT assessment Policy & Procedures Handbook.

3) Individualized Education Plan (IEP) meetings

REALM Response: When REALM took over special education services this school year, approximately 33% of IEPs were overdue. Within the first 30 days, all overdue IEPs were held, in addition to the interim IEPs necessary to document the change of SELPA. REALM will continue to hold annual and triennial IEP meetings as appropriate. IEP meetings consist of the following individuals: student, guardian, education specialist/case manager, general education teacher, administrator, and other specialists as appropriate (e.g., Speech Language Pathologist, Educationally Related Mental Health counselor). REALM case managers work closely with students to help them