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## **Letters Submitted as Written Public Comment for Item 3**

The information on the subsequent pages represents letters submitted through April 11, 2021, as written public comment for Item 3.

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OUR FILE NUMBER:

February 5, 2021

**VIA EMAIL (CHARTERAPPEALS@CDE.CA.GOV)**  
**AND OVERNIGHT MAIL**

State Board of Education  
Advisory Commission on Charter Schools  
California Department of Education  
1430 N Street, Suite 5401  
Sacramento, CA 95814

**Re: District's Opposition to Audeo Charter School II Renewal Appeal**

Dear State Board members and commissioners:

Carlsbad Unified School District denied Audeo Charter School II's ("Audeo II" or "petitioner") renewal petition on December 9, 2020. Audeo II's current appeal to the State Board of Education is pursuant to Education Code sections 47605.9(b) and 47605(k)(1)(B)<sup>1</sup> which call for the SBE to apply a "de novo" standard of review.<sup>2</sup>

As is further explained by the discussion below, the District opposes the inaccurate contentions made by Audeo II in its appeal to the state.<sup>3</sup> The SBE should deny Audeo II's appeal for the same reasons stated in denial Resolution No. 12-2021.<sup>4</sup> The District followed all legal requirements for non-renewal of a Dashboard Alternative School Status ("DASS") charter, made specific factual findings that still support the closure of Audeo II, and, contrary to its opinion, Audeo II is not entitled to any presumptive renewal.

<sup>1</sup> All statutory sections (§) herein refer to the Education Code, unless otherwise specified.

<sup>2</sup> "[W]hich means that the SBE makes an independent determination regarding the petition and considers all of the issues previously considered by the district." (Oct. 30, 2019 *Memorandum from Tony Thurmond to the SBE, Charter School Renewals - Charter Schools (CA Dept of Education)*.) In contrast to any subsequent appeals which would be subject to an abuse of discretion standard by the SBE under Section 47605(k)(2); in this case, the District was not required to prepare and the petitioner did not request a documentary record or transcripts from the Dec. 9, 2020 public hearing denying Audeo II's renewal petition.

<sup>3</sup> See Audeo II's cover letter to the SBE, dated Jan. 6, 2021.

<sup>4</sup> The state already has a copy of Resolution No. 12-2021 denying renewal, which was passed by the District's Board of Trustees on Dec. 9, 2020 and submitted to the state by Audeo II with its appeal packet.

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## DISCUSSION

### **I. The District followed legal requirements for nonrenewal of a DASS charter, and its factual findings support why closure of Audeo II is in the best interest of pupils.**

Audeo II inaccurately contends on appeal that “The District did not make any written findings that the closure of Audeo II is in the best interest of pupils, and did not include any specific facts to support such a finding for denial of the renewal petition.” Petitioners allege “no information whatsoever was shared to meet this legal requirement” despite that the District’s Resolution No. 12-2021 sets forth at least 19 factual findings supporting why renewal of Audeo II would not be in the “best interest of students.”

Like all renewals, DASS charter renewals “are governed by the standards and criteria described in Section 47605” excluding subdivisions (c)(7) and (8), and “shall include, but not be limited to, a reasonably comprehensive description of any new [legal] requirement.” (§ 47607(b).)

As an “additional criterion” to any findings made pursuant to Section 47605, “the chartering authority shall consider the performance of the charter school on the state and local indicators included in the evaluation rubrics adopted pursuant to Section 52064.5.” (§ 47607(c)(1).) For this additional standard, DASS charters “have their own renewal criteria based on: California School Dashboard [data] and Performance on alternative metrics, based on the student population served, as agreed upon with the authorizer during the first year of the charter school’s term.”<sup>5</sup> Specifically, for DASS charters, Section 47607(c)(7) says:

Paragraph (2) [high performing charter criteria] and subdivisions (a) and (b) of Section 47607.2 [low and middle performing charter criteria] shall not apply to a charter school that is eligible for alternate methods for calculating the state and local indicators pursuant to subdivision (d) of Section 52064.5. In determining whether to grant a charter renewal for such a charter school, the chartering authority shall consider, in addition to the charter school’s performance on the state and local indicators included in the evaluation rubrics adopted pursuant to subdivision (c) of Section 52064.5, the charter school’s performance on alternative metrics applicable to the charter school based on the pupil population served. The chartering authority shall meet with the charter school during the first year of the charter school’s term to mutually agree to discuss alternative metrics to be considered pursuant to this paragraph and shall notify the charter school of the alternative metrics to be used within 30 days of this meeting. The chartering authority may deny a charter renewal pursuant to this paragraph only upon making written findings, setting forth specific facts to support the findings, that the closure of the charter school is in the best interest of pupils. (§ 47607(c)(7).)

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<sup>5</sup> See June 2020 CDE webinar, “*Assembly Bill 1505: Criteria for Performance Categories*” (slide 13), [Assembly Bill 1505 Criteria for Performance Categories - Charter Schools \(CA Dept of Education\)](#).

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As stated in Resolution No. 12-2021, the District distinguished Audeo II's reported academic increases based on the Dashboard data and "alternative metrics" that Audeo II provided in its petition consisting of comparison performance of "similar DASS schools in the district" and in communities served by Audeo II (see finding I.A.1). The District also made several significant findings pursuant to Section 47605 relating to Audeo II's governance and operational structure (see findings B and C), and determined that based on these and other findings, renewal was not in the best interest of students. At the District's December 9, 2020 public hearing, members of the public including elected officials of neighboring school districts spoke in support of denial and to remind the District's Board of Trustees that the lack of governance and fiscal transparency in Audeo II's petition (and others like it circulated by its operator) have been the focus of authorizers' concern in the past. For these reasons, Audeo Charter School petitions have been denied locally, but continue to secure approval at the state level.<sup>6</sup>

Assembly Bill ("AB") 1505 changed the standards for charter renewals and appeals. Although Audeo II's current appeal is subject to the SBE's de novo review, any subsequent appeals would require more deference to the District's decision. The intent of AB 1505 is to encourage local control especially in cases like this where Audeo II's petition has been thoroughly vetted and the District has determined that the governance issues raised by that petition (among its other findings) make renewal a liability that would not be in the best interest of students going forward. AB 1505's legislative analysis highlights:

This bill seeks to strengthen the ability of charter authorizers to hold charter schools accountable for both academic and fiscal outcomes. ... According to the sponsors of the bill, by allowing the SBE or the county board to authorize charter schools despite having been thoroughly vetted through the locally elected bodies, the ability for local communities to set local needs and goals is undermined.

(Assem. Com. on Education, Analysis of Assem. Bill No. 1505 (2019-2020 Reg. Sess.) as amended April 1, 2019.)

While it is difficult to know why so many appeals have been approved over the years, part of the reason is likely that state law does not require county boards or the SBE to review whether school district governing boards wrongfully denied a petition in deciding whether to grant it. Instead, it allows petitions to be considered as though they were being seen for the first time... .

(Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1505 (2019-2020 Reg. Sess.) as amended Aug. 30, 2019.)

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<sup>6</sup> See District's December 9, 2020 "Live Streaming of Meeting," public comments for agenda item 5.2 (Resolution 12-2021) starting at 1:33:00, at [2020 Meeting Archive \(carlsbadusd.k12.ca.us\)](https://www.carlsbadusd.k12.ca.us).)

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As such, the SBE should deny Audeo II's renewal for any of the same, legally supported reasons in Resolution No. 12-2021. The SBE should also reject the petitioners' invented interpretation of the renewal standard for DASS schools. Without any legal authority, petitioners contend that the District's denial findings had to include information "about the schools that students would enroll in and how those schools are performing better; [and] how learning loss and loss of continuity of educational program would be overcome upon closure of Audeo II." That is not the law; that is not what Section 47607 says and "charter schools are *strictly* creatures of statute." (*United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 521; citing *Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1135.) Reviewing courts "refrain from rewriting a statute to find an intent not expressed by the Legislature." (*Anderson Union High School Dist. v. Shasta Secondary Home School* (2016) 4 Cal.App.5th 262, 279.) Nor will they "rewrite the law, add to it what has been omitted, [or] give it an effect beyond that gathered from the plain and direct import of the terms used, or read into it an exception, qualification, or modification that will nullify a clear provision or materially affect its operation so as to make it conform to a presumed intention not expressed or otherwise apparent in the law.'" (*Frazier v. City of Richmond* (1986) 184 Cal.App.3d 1491, 1496, quoting 58 Cal.Jur.3d, Statutes, § 86, pp. 436–437, fns. omitted.)

In accordance with Section 47607(b), the District made at least 19 specific factual findings pursuant to Section 47605 supporting non-renewal, several of which related to Audeo II's lack of a transparent governance structure and potential conflicts of interest. In accordance with Section 47607(c), the District considered Audeo II's alternate performance criteria and found that despite this data, closure is in the best interest of pupils for all the reasons stated in its Section 47605 findings.

## **II. There is no presumptive renewal for DASS Schools.**

Petitioners also suggest Audeo II is somehow subject to a presumptive renewal. They contend that "Education Code Section 47607(c)(7) demonstrates that the default outcome is for a DASS school's renewal charter to be approved." This proposition flatly contradicts the performance categories in Sections 47607 and 47607.2 that were put in place by AB 1505. (See *People v. Pieters* (1991) 52 Cal.3d 894, 899 ["we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness'"].)

With AB 1505, the law now identifies which charters are subject to "presumptive renewal" (non-DASS, high performing charters) or "presumptive non-renewal" (non-DASS, low performing charters).<sup>7</sup> There is no "default" renewal for DASS charters; these simply "are schools that serve high-risk students, but are not explicitly required to do so in the [Education Code]."<sup>8</sup> DASS charters are subject to alternate academic criteria "to more fairly evaluate" their

<sup>7</sup> See June 2020 CDE webinar, *supra*, fn. 3.

<sup>8</sup> DASS Eligibility Criteria - Accountability (CA Dept of Education) ["Other Alternative Schools"].

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performance (§ 52064.5(d), see § 47607(c)(7)), but they are not immune to the findings for nonrenewal under Sections 47605 and 47607(b).

**CONCLUSION**

The District followed the letter and intent of Section 47607 in denying renewal of Audeo II's charter, and requests that the SBE deny this appeal on its own determination or for any of the same legally supported findings made by the District.

Regards,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Alyssa Ruiz de Esparza

ARD:

cc: Robert Nye, Ed.D., Assistant Superintendent of Curriculum & Instruction,  
Carlsbad Unified School District



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April 9, 2021

Chair Mike Walsh and Commissioners  
Advisory Commission on Charter Schools  
1430 N Street, Suite 5111  
Sacramento, CA 95814

Dear Chair Walsh and Commissioners:

We are writing on behalf of the California Charter Schools Association (CCSA) regarding an item on the April agenda: Item 3 - Consideration of Audeo Charter II, which was denied by the Carlsbad Unified School District.

CCSA is a statewide, non-profit, membership-based organization representing 1310 charter public schools across California, and the 675,374 students and families they serve. We urge the commission to adopt the California Department of Education's recommendation and recommend approval of Audeo Charter II to the State Board of Education.

Audeo Charter II serves a unique student population, providing a quality public education to students who have not been successful in their previous schools. Due to their rigorous academic program, strong staff support, and incredible organization, students at Audeo Charter II have seen growth across a number of state indicators. Students and families are thriving at Audeo Charter II.

This school has been a leader in the charter school sector, continuously sharing best practices with interested stakeholders and constantly improving on their practice and pedagogy.

CCSA has worked closely with Audeo Charter II's leadership and staff throughout the renewal process and we have great confidence in the experience and capacity of the team. We are thankful for CDE's thoughtful and thorough review of this petition.

CCSA appreciates your consideration on this item. If you have any further questions about this item, please do not hesitate to contact me at Romel Antoine at (916) 584-0064 or [rantoine@ccsa.org](mailto:rantoine@ccsa.org).



A handwritten signature in black ink, appearing to read "Romel Antoine". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping tail.

Romel Antoine  
Director  
Policy & Regulatory Affairs