



October 26, 2015

VIA FAX and EMAIL

Jennifer McQuarrie
Law Offices of Jennifer McQuarrie
FAX: 888.900.3407
E-MAIL: mcquarrielaw@gmail.com

Re:	<u>Synergy Education Project and SEP High School</u>
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Dear Ms. McQuarrie,

This letter is written on behalf of our client, Encore Education Corporation (“Encore”) and in response to your correspondence dated October 23, 2015.

As you can imagine, it came as a complete surprise to hear that the Synergy Education Project (“Synergy”) Board of Directors, after defaulting over a month ago on a \$1.6 million note, after resigning from their duties and obligations as board members in violation of Cal. *Corp. Code* section 5226 and after ignoring repeated requests and even pleas to resume their duties and obligations as board members, now have reconstituted themselves without notice to Encore through the purported actions of Elisabeth Brookings as the sole remaining director pursuant to Cal. *Corp. Code* section 5224(a).

After conferring with our client, I write now to inform the Synergy Board of Directors that your assertion that the above described actions do not amount to an implied declaration of insolvency by the Synergy Board of Directors defies logic. The Synergy Education Project Board of Directors walked away from the repayment of a \$1.6 million debt that came due over a month ago and attempted to leave Encore holding the bag.

Now you make numerous specious demands on behalf of your client that Encore cease and desist a variety of alleged actions, including closure activities, which were begun at the direction of the California Department of Education in order to provide an orderly transition of students and families to schools that are actually solvent and functioning. Fine. The Synergy Board of Directors is in charge of its own affairs. Encore’s only role will be to abide solely and strictly by the terms of the current Memorandum of Understanding between the parties until November 18, 2015, after which that same Memorandum of Understanding is terminated.

Let me state Encore’s position clearly. Encore remains convinced by overwhelming evidence that Synergy simply does not have the ability to repay the massive and crushing debt that Synergy had already incurred prior to Encore’s agreement to provide management services to Synergy. Indeed, it seems obvious that for numerous reasons Synergy cannot enter into any repayment plan that would meet the unanimous consent of the note holders.

Jennifer McQuarrie, Esq.
Synergy Education Project
Page 2 of 5

Encore believes the most salient reasons are these:

1. Any repayment plan Synergy might propose would subject the school to a financially devastating debt service that would jeopardize the school's ability to pay its most basic expenses, such as salaries, utilities, the school's lease and other obligations. And given the past practices of the Synergy Board of Directors, it is quite obvious that Encore would be asked to make up the difference. Currently, Encore has to operate Synergy's school at a loss of approximately \$600 **daily**. Let me reiterate: Encore pays this expense (and is paying many, many others), yet now the Synergy Board of Directors thinks it can grow money on trees and begin to cover not only its past due note, the outstanding monies due to Encore, as well as its actual operating expenses. Such a belief defies logic.
2. As far as Encore is aware, Synergy's latest proposed repayment plan for the defaulted note would extend Synergy's debt service obligations over the course of three years, at a punishing default penalty interest of 12%, **for a total repayment of approximately \$2 million**. If this is not irresponsible corporate behavior for any Board of Directors, I do not know what is. Instead of acting in the best interests of the Synergy corporation and reacting rationally to the default, the Synergy Board of Directors' first response was to resign and let Encore deal with the default. Now, the Synergy Board of Directors has apparently determined that the best course of action is to dig the corporation even deeper into debt when it cannot possibly begin to repay current debt it has already defaulted on.
3. As far as Encore is aware, Synergy's proposed repayment plan would require an average enrollment of 250 students or more every year. The current Synergy facility can barely accommodate the less than 200 students that SEP High School already serves. Further, Encore questions whether the facility would accommodate 250 students, let alone more. The Synergy plan is not only nonsensical but is based on faulty assumptions and unworkable as proposed.
4. As far as Encore is aware, Synergy proposes to repay its debt over a three year period. Synergy's charter petition, however, comes up for renewal before the Pittsburg Unified School District (the "District") in two years, the same District that vehemently fought to deny the Synergy charter petition when it was first brought to them some years ago. Even Synergy Board members have apparently expressed disbelief that the District will renew the Synergy charter, especially given that, prior to Encore's Memorandum of Understanding with Synergy, the Synergy Board of Directors oversaw a school that failed every indicator of satisfactory academic performance and burdened the school with a \$1.6 million debt burden that simply surpasses the school's ability to repay that debt. Both for academic and fiscal reasons, we believe the likelihood that the Synergy charter will be renewed is next to none and I am confident at least some Synergy Board members feel the same way.
5. Finally, any proposed repayment plan of the overdue notes would now require **unanimous** consent of the note holders. Given all the facts above, does the Synergy Board of Directors honestly believe this unanimous consent is a realistic possibility?

Jennifer McQuarrie, Esq.
Synergy Education Project
Page 3 of 5

So now, in response to your correspondence which is filled with numerous spurious allegations that are untrue, misguided or simply baseless, here are our demands for documents to be provided to Encore by the Synergy Education Project Board of Directors.

1. Provide proof that the Synergy Board of Directors' special meeting held on October 22, 2015, at which Elizabeth Brookings' purported to seat four additional board members as the sole remaining director, complied with the requirements of Cal. *Corp. Code* section 5224(a) and other relevant sections and regulations. We require a copy of the agenda, the draft minutes and an appropriate Board resolution at minimum.
2. Provide proof that the Synergy Board of Directors' special meeting at which Elisabeth Brookings' purported to seat four additional board members as the sole remaining director complied with the requirements of Cal. *Govt. Code* section 54950 *et seq.* (the "Brown Act"). We require a copy of the agenda, proof of public posting of the agenda, the draft minutes and an appropriate Board resolution at minimum.
3. Provide the name, contact information and resumes for each new member of the Synergy Board of Directors. Encore requests that this information also be immediately provided to the California Department of Education, which is Synergy's authorizer.
4. Provide a copy of the completed Form 700 for each new member of the Synergy Board of Directors assuming office. Encore requests that this information also be immediately provided to the California Department of Education, which is Synergy's authorizer.
5. No later than November 18, 2015, repay all amounts Synergy owes Encore for at least the following: a) all construction-related costs to improve the SEP High School facility; b) all Encore management fees pursuant to the Memorandum of Understanding which are past due and owing; c) all employee related costs that Encore has been forced to pay out of its own funds; d) all curriculum costs that Encore has been forced to pay out of its own funds. Our office will provide a detailed breakdown of all outstanding payments that Synergy has failed to make to Encore since the inception of the Memorandum of Understanding between the parties as soon as possible. **At present, our understanding is that these payments amount to more than \$200,000.00.**
6. Provide a transition plan no later than October 30, 2015 to turn over all operations of SEP High School to the Synergy Board of Directors or its designated administrative representatives on November 18, 2015.

Finally, please inform the Synergy Board of Directors that it may not interfere with or attempt to conceal any and all property owned by Encore and/or bought by Encore but for which Synergy has failed to reimburse Encore. Any attempts to destroy, deface or otherwise alter Encore property without permission will be met with swift legal action.

Public Records Act Request

Additionally, please consider the requests for documents identified above a request made pursuant to the California Public Records Act, Cal. *Govt. Code* section 6250 *et seq.* This request thus requires a determination within 10 days of your receipt of this correspondence, and an even

Jennifer McQuarrie, Esq.
Synergy Education Project
Page 4 of 5

prompter reply if you can make that determination without having to review the records in question.

If you determine that any or all of the information qualifies for an exemption from disclosure, please note in your reply whether, as is normally the case under the Public Records Act, the exemption is discretionary, and if so whether Synergy believes it is necessary in this case to exercise its discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, we ask that you redact it for the time being and make the rest available as requested. In any event, you must provide a signed notification citing the legal authorities on which Synergy relies if it determines that any or all of the information is exempt and will not be disclosed.

If my office can provide any clarification that will help expedite your attention to this request, you are encouraged to contact me at any time using the contact information in this correspondence.

I ask that you notify me of any duplication costs exceeding \$100.00 before you duplicate the records so that my client may decide which records it wants copied.

Notice of Possible Brown Act Violation and Notice to Cure and Correct

Please take notice that this correspondence also serves as a cure and correct notice made pursuant to the Brown Act, Cal. *Govt. Code* section 54950 et seq. for a violation of the Brown Act that may jeopardize the finality of the action taken by the Synergy Education Project on or about October 22, 2015.

The nature of the violation is as follows: In its meeting of October 22, 2015, Synergy Education Project's sole remaining director, Elizabeth Brookings, took action to seat four new board members to the Synergy Education Project's Board of Directors. You stated in your correspondence dated October 23, 2015 in no uncertain terms that Ms. Brookings called this special meeting, yet this meeting was called without notice to Encore and no Encore representative has any evidence to show that the meeting was publicly noticed in compliance with the Brown Act.

Encore believes the action taken was not in compliance with the Brown Act because there was no adequate notice to the public inasmuch as no posted agenda for the meeting was made publicly available.

Pursuant to Cal. *Govt. Code* section 54960.1, we demand evidence that the October 22, 2015 was properly noticed and conforms in all respects to the requirements of the Brown Act. That evidence may take the form of a copy of the agenda, as well as proof that the agenda was posted in a publicly accessible location at least 24 hours in advance of the meeting and was publicly accessible for the full notice period. A declaration under penalty of perjury by Elisabeth Brookings attesting to the location of the posting, the amount of time the agenda was posted and who posted the agenda would suffice.

Jennifer McQuarrie, Esq.
Synergy Education Project
Page 5 of 5

As provided by Cal. *Govt. Code* section 54960.1, Synergy has thirty (30) days from the receipt of this demand to either cure or correct the challenged action or inform this office of Synergy's decision not to do so. If Synergy failed to provide public notice of the meeting and hold the meeting pursuant to the requirements of the Brown Act and if Synergy fails to cure or correct such conduct by holding a properly noticed and agendized meeting to appoint the new board members, such inaction may leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Cal. *Govt. Code* section 54960.1, in which case we would also ask the court to order Synergy to pay our court costs and reasonable attorney fees in this matter, pursuant to Cal. *Govt. Code* section 54960.5.

Should you have any questions or need any additional information, please do not hesitate to let us know.

Sincerely,
HANSBERGER & KLEIN, A Professional Law Corporation



Richard J. Hansberger

CC:

Denise Griffin and John Griffin, Encore Education Corporation
Cindy Chan, California Department of Education, Charter Schools Division
Judie Hall, California Department of Education, Charter Schools Division