



December 8, 2014

Via Regular Mail

Dr. Michael Kirst, President
California State Board of Education
1430 N Street
Suite #5111
Sacramento, CA 95814

San Francisco Flex Academy Charter Renewal Appeal

Dear Dr. Kirst:

San Francisco Flex Academy ("SF Flex") is proud of having been authorized by the State Board of Education and overseen by the California Department of Education over the last four and a half years of our five year charter term, as we have always had positive oversight reports by the Department and complete compliance with our charter and applicable laws.

In fact, after typical initial startup challenges with a groundbreaking blended learning program, we are now being emulated nationally and have been repeatedly profiled by Michael Horn and the Innosight Institute (now Clayton Christensen Institute) as one of the four main blended learning models. Academically, we even had the largest improvement of any school in San Francisco on the last API.

As a result, we were quite surprised when, following the standard application renewal process to San Francisco Unified School District ("SFUSD"), the district denied the renewal petition on October 28, 2014. Five years ago they unanimously denied the charter as well.

This letter is therefore formally submitting the San Francisco Flex Academy charter renewal petition to the California Advisory Commission on Charter Schools ("ACCS"), California and the State Board Education ("SBE") for appeal. As indicated below, the SFUSD board denied the charter renewal in writing solely on the grounds of financial reasons, disregarding our repeated explanations and the fact that all of the financial facts involved have been thoroughly reviewed by CDE with no violations claimed as part of their oversight during the entire term of the charter.

As a result, we respectfully request your recommendation and approval of the charter petition.

As you know, the following are the requirements for a successful appeal:¹

1. Documentation that the charter school met at least one of the criteria specified for charter renewal in Education Code Section 47607(b);
2. A copy of the renewal charter petition, as denied, including a reasonably comprehensive description of how the charter school has met all new charter school requirements enacted into law after the charter was originally granted or last renewed;
3. A copy of the school district governing board’s written factual findings denying the petition for renewal;
4. Evidence of the county governing board’s denial or, if the county board of education failed to act, evidence that the timeline set forth in 5 CCR Section 11966.5(d) . . . has expired;
5. A description of any changes to the renewal petition necessary to reflect the SBE as the chartering entity.

The following pages demonstrate SF Flex’s meeting all of these requirements.

1. Documentation that the charter school met at least one of the criteria specified in Education Code Section 47607(b)

As required, SF Flex has met the academic performance requirement of Education Code Section 47607(b) and the SFUSD Board does not dispute this in the written Factual Findings document dated October 28, 2014 (see Attachment #1).

More specifically, SF Flex submitted and SFUSD’s Board accepted the following summary of performance as meeting the criteria.

2010 – 2014 API SCORES

Year	API Statewide Ranking	API Similar Schools Ranking	API Growth Scores	API Growth Target (Actual Growth)	Met School Growth Target?
2010-2011	Base Year	Base Year	644	B ¹	N/A
2011-2012	2	--	648	8 (+4)	No
2012-2013	1	1	733*	8 (+85)*	Yes *
2013-2014		TESTING	SUSPENDED		

¹ <http://www.cde.ca.gov/sp/cs/re/sbeappeals.asp>

*The API Growth Score, API Growth Target (Actual Growth) and Met School Growth Target fields for 2012-2013 are highlighted by the author.

				¹ The school Had no Valid 2010 Base	
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This chart shows, as indicated in the highlighted column on the right, that San Francisco Flex Academy did meet API growth targets in the prior year (2012-13), satisfying criteria 47607(b)(1).²

2. A copy of the renewal charter petition, as denied, including a reasonably comprehensive description of how the charter school has met all new charter school requirements enacted into law after the charter was originally granted or last renewed

A copy of the renewal charter petition is included with this letter both in hard copy [as attachment #2] and electronic (MS Word document on CD ROM).

This new charter is similar to the document that was unanimously approved by the ACCS and unanimously approved by the SBE, with additions recommended by legal counsel Young Minney and Corr (“YMC”) to comply with all new charter requirements that have been added since that time.

To document this compliance, please see Attachment #3 that delineates statutes and how San Francisco Flex has met requirements enacted into law after the original charter was approved.

3. A copy of the school district governing board’s written factual findings denying the petition for renewal.

The written factual findings of SFUSD’s Board are included with this letter as Attachment #1.

San Francisco Unified School District Board of Education’s written findings only give one reason for denial:

Finding 1: The Financial Information Presented by the Petitioner Does Not Indicate the Likelihood of Future Success.

² <http://codes.lp.findlaw.com/cacode/EDC/2/d4/26.8/2/s47607>

The five-year financial plan presented by the Petitioner projects expenditures for each year that are far in excess of revenues (for example 2015-16: revenue of \$984,619 and expenditures of \$1,716,226) that are mitigated or balanced by “K12 BALANCED BUDGET CREDITS” (\$731,607 for 2015-16). K12 Classroom LLC is the school’s Charter Management Organization.

The Petition provides no discernible explanation of the balanced budget credits.

With all due respect to the district, SF Flex explained the budget credits in person to the district staff, budget committee and full board on numerous occasions and also addressed the question in writing to SFUSD staff and board (see Attachment 4).

For some reason, this written explanation was not mentioned in the findings that were presented to the Board. Our only conceivable explanation is that perhaps under the pressure of meeting the time constraints of the board, the district staff forgot or didn’t understand the verbal explanations and written submission; there is no other way to understand their claim that there “was no discernible explanation of the balanced budget credits.” We are not aware that of any dispute that we submitted the attached written explanation on time and as part of the process.

In addition, CDE has been aware of the matter, understood the explanation, and has been monitoring the matter closely since the school’s inception.

What is a balanced budget credit?

SF Flex is in the rare position of having K12 Inc., a large New York Stock Exchange traded company, as a partner who is/was responsible for securing the previous school facility, assisting with marketing and enrollment, and agreeing to, in effect, guarantee that San Francisco Flex Academy would have a balanced budget. This amounted to a waiver of over \$5 million over the last five years, mainly caused by the extremely high cost of San Francisco real estate.

SFUSD was likely not aware of this arrangement before our charter renewal process, as San Francisco Flex Academy is authorized by the California State Board of Education and overseen by CDE. It is obviously a large amount, but it is also one that K12, with a market capitalization of nearly \$600 million, could absorb as an investment for innovating and developing blended schools nationally.

K12’s guarantee of balanced budgets, the “balanced budget credit,” is provided under its Educational Products and Services agreement entered into by San Francisco Flex Academy and K12 Inc. K12 Inc. has agreed to provide assurance that the school ends each year at a break-even or better fiscal position by waiving its fees. Thus, if the expenses of the School are more than the funding the School receives, K12 issues a credit against its fees or cash to offset a loss larger than the

fees charged. The school only needs to repay these “waived” fees if the School has a surplus financial position at the end of the year, and there is a reasonable repayment schedule even in that case.

The past deficits were almost exclusively caused by the high rent required for operating the school. To punish the school for having secured a financially beneficial and sustainable agreement seems inappropriate to put it mildly.

In addition, as SFUSD and the SFUSD Board understands, the School’s future budgets are much less reliant on any fee waivers by K12 Inc. as it is now in a Proposition 39 SFUSD site (at the former Gloria R. Davis School), reducing its facilities costs by over 90%. The school’s board and staff have also prepared, as is always prudent, plans to reduce staff if ever needed.

As explained in more detail below, this school is financially sustainable, and has never had a deficit presented to the state.

Why would K12 Inc. Subsidize San Francisco Flex Academy?

The Flex model of Blended Learning at SF Flex has been an important investment for K12 to innovate the junction of online learning and facility-based, state-certified teacher led classroom instruction. K12 is developing software and blended teaching and learning methodology that can be brought to scale by offering these products and services to school districts. K12 is proud that SF Flex Academy has been the first and leading effort in this initiative. Over the last several years, educators, school leaders, and researchers have come to visit San Francisco Flex Academy to see blended teaching and learning in practice.

How can San Francisco Flex Academy be financially sustainable in the future?

Five years ago, based on the nation’s growing economic challenges, and as discussed verbally at the charter renewal hearing, the Flex board and K12 agree that they misjudged the escalating cost of San Francisco commercial real estate, as in fact did many others. The new creations of Twitter and similar social media companies had vast growth in San Francisco and helped double the costs of real estate in the last three years.

With the move to Gloria R. Davis in Bayview, San Francisco Flex Academy’s facility costs have been reduced by 90% and its budget is therefore one that is reasonable and manageable. With facility costs now under control, San Francisco Flex Academy is in a position to successfully manage a tuition free public charter school that operates at cost, and can successfully serve a diverse San Francisco student community that includes a broad range of learners with varying skill levels.

CDE has already seen all of the school’s detailed budgets for the term of the charter. We are happy to go through every line and explain as much as requested how K12 waived fees (so called “balanced budget credits”) to enable the school to always have a balanced budget. We are also happy to explain, as we did to SFUSD and their

board, how the school's budget is sustainable in the future and how the school is ready to make cuts if ever necessary so as to ensure the school always has a balanced budget.

We respectfully do not believe that the school's success in securing resources to benefit the diverse and low income students of San Francisco should be grounds for denial.

4. Evidence of the county governing board's denial or, if the county board of education failed to act, evidence that the timeline set forth in 5 CCR Section 11966.5(d) . . . has expired.

The San Francisco Unified School District Board of Education is one and the same as the County Board of Education so the evidence indicating the denial by the SFUSD Board of Education meets this requirement.³

5. A description of any changes to the renewal petition necessary to reflect the SBE as the chartering entity.

A copy of a revised charter indicating the SBE as the chartering entity is attached.

We look forward to working with you in the appeal process in order to successfully reauthorize the charter of San Francisco Flex Academy, an innovative, unique, and successful charter school.

Sincerely,



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cc: Cindy Chan, Interim Director Charter Schools Division

³ <http://www.sfusd.edu/en/about-sfusd/board-of-education/meeting-documents.html>