

STATE OF CALIFORNIA
EDMUND G. BROWN JR., *Governor*

CALIFORNIA STATE BOARD OF EDUCATION

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DRAFT May 11, 2016

Mark Kushner, Board President
Steve Henderson, Board Treasurer
Catherine Walcott, Board Secretary
Nancy Doty, Board Member
Andrew Gordon, Board Member
Flex Public Schools
1350 7th Avenue
San Francisco, CA 94122

Subject: Notice of Violation Pursuant to California *Education Code* Section 47607(d).

Dear President Kushner, Mr. Henderson, Ms. Walcott, Ms. Doty, and Mr. Gordon:

The State Board of Education (SBE) has been made aware of a number of issues that, if not resolved immediately by the Flex Public Schools (FPS) Board, will directly impact the ability of San Francisco Flex Academy (SFFA) to continue operations in 2016–17. Specifically, the issues of concern are as follows:

The FPS Board engaged in fiscal mismanagement (*Education Code* Section 47607[c][1][C]):

- The FPS Board has not submitted the second interim budget report for Fiscal Year (FY) 2015–16, which was due to the Charter Schools Division by March 15, 2016. On March 16, 2016, the California Department of Education (CDE) had a conference call with the SFFA administrator and was informed that the FPS Board will be hiring a company to prepare the Fiscal Corrective Action Plan (FCAP) and that the FPS Board should have it ready for the CDE in April 2016.
- The FPS Board failed to pay an oversight fee of \$6,356.12 for FY 2014–15, as required pursuant to *Education Code (EC)* Section 47613, and represents one percent of the revenue amount received in the local control funding formula (LCFF) calculated pursuant to *EC* Section 42238.02, as implemented by *EC* Section 42238.03. The CDE Fiscal and Administrative Services Division sent three Statement of Account letters to the SFFA charter administrator with no response to date from either SFFA or the FPS Board.
- The SFFA projected enrollment of 100 pupils with the average daily attendance (ADA) of 87 for FY 2015–16. However, the ADA certified at the FY 2015–16 First Principal (P-1) Apportionment was 73.59, which represents a 15 percent decline from the ADA projected in the budget. On March 28, 2016, the CDE had a conference call with the FPS Board Chair and FPS Board Treasurer, and was informed that SFFA pupil enrollment was around 68.

- The SFFA 2015–16 first interim budget report indicates that SFFA is projecting a fund balance of \$25,056 with 3.39 percent reserves for FY 2015–16, which is below the recommended five percent in reserves outlined in the 2015–2020 Memorandum of Understanding (MOU) between SFFA and the SBE.
- On December 3, 2015, the CDE issued a fiscal letter of concern to SFFA identifying the following issues: (1) the SFFA budget includes a projected enrollment of 100 pupils for FY 2015–16; however, as of November 24, 2015, SFFA's enrollment report to the CDE reflects actual enrollment at 83 pupils, or a 25 percent decline from the enrollment projected in the budget; (2) the current decline in enrollment will have a significant negative impact on SFFA's budget without expenditure adjustments. The CDE estimates that SFFA's financial condition, without expenditure adjustments, will be insolvent with a projected negative \$106,000 ending fund balance. As a result, the SFFA budget revenues and expenditures submitted to the CDE are no longer realistic and will need to be revised.
- Based on the concerns noted in the December 3, 2015, fiscal letter of concern, the CDE requested a FPS Board approved Fiscal Corrective Action Plan (FCAP) due to the CDE on December 17, 2015, to include: (1) a written narrative explaining what caused the decline in anticipated enrollment and what steps will be taken to address the decline; (2) a written narrative on what budget actions have been taken to date to adjust to the lower enrollment numbers; (3) a revised multi-year budget and cash flow statements for the current FY 2015–16 and two subsequent FYs (2016–17 and 2017–18) with written detailed assumptions to be included that reflect SFFA's resolution on addressing the unanticipated enrollment decline; and (4) a SFFA board agenda and scheduled meeting date acknowledging the SFFA FCAP.
- SFFA submitted a narrative response via e-mail regarding the FCAP on December 18, 2015, and via United States Mail on December 21, 2015; however, the CDE determined it was insufficient in that the response did not include: (1) a FPS Board approved multi-year budget for SFFA; and (2) a FPS Board agenda and scheduled meeting date acknowledging the SFFA FCAP.

The FPS Board committed a material violation of the conditions, standards, or procedures set forth in the charter (EC Section 47607[c][1][A]):

- The FPS Board has not conducted meetings, nor have agendas and minutes been posted, in accordance with the Ralph M. Brown Act requirements pursuant to California *Government Code* sections 54950–54962. The FPS Board agendas have not been posted on the SFFA Web site no less than 72 hours prior to each meeting. The FPS Board approved minutes have not been posted on the SFFA Web site within 30 days of the associated meeting of the FPS Board as required by the MOU between SFFA and the SBE.
- The CDE has established that the FPS Board has failed to meet specific requirements of the SFFA MOU with the SBE. Specifically, the FPS Board has failed to meet requirements outlined in the following sections:

- 1.3 Governing Board Responsibilities
 - Governing Board Meetings
 - Brown Act
- 3.5 Revenue and Expenditure Reporting
- 3.5 Reserves
- 3.7 Oversight Fees

Additionally, *EC* Section 47607(c)(2) states that 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 revoke a charter.

Under State Priorities 2 and 4: State Standards, Pupil Achievement (Conditions for Learning):

- SFFA Measurable Pupil Outcomes (MPOs): Establish benchmark scores for Smarter Balanced and other California Assessment of Student Performance and Progress (CAASPP) related assessments and improve on the initial benchmark scores in subsequent years.
 - SFFA schoolwide and SFFA two significant pupil subgroups (Black or African American and Socioeconomically Disadvantaged) scores on the 2015 CAASPP are below both the state average and the San Francisco Unified School District average for the same grades, grade eleven.
- SFFA MPO: Improve English Learner (EL) reclassification rate.
 - The CDE has determined that based on the 2015–16 LCFF State Priorities Snapshot, SFFA did not meet this outcome. In 2013–14 SFFA had four ELs and zero pupils reclassified as Redesignated Fluent-English Proficient (RFEP) and in 2014–15, SFFA had five ELs and zero pupils reclassified as RFEP. There is currently no available data for 2015–16.
- SFFA MPO: Forty percent of ELs will improve their English proficiency as measured by the California English Language Development Test (CELDT).
 - The CDE has determined that, based on the 2015–16 LCFF State Priorities Snapshot, SFFA did not meet this outcome. SFFA had one pupil test at proficiency on the CELDT; however, SFFA had five EL pupils who were not administered the CELDT.

Under State Priority 7: Course Access (Conditions of Learning).

- SFFA MPO: Eighty percent of pupils will complete courses that satisfy University of California/California State University (UC/CSU) a–g entrance requirements, or Career Technical Education.
 - The CDE has determined that, based on the 2015–16 LCFF State Priorities Snapshot, SFFA has not met this outcome in 2012–13 and 2013–14 with percentages of two percent and zero percent respectively. Data for 2014–15 will be available in May 2016.

Under State Priority 5: Pupil Engagement (Engagement).

- SFFA MPO: Meet or exceed 90 percent attendance rate.
 - The CDE has determined that SFFA has not met its 90 percent attendance rate MPO based on the certified Second Principal (P-2) Apportionment for 2013–14 with 84.9 percent ADA, 2014–15 P-2 Apportionment with 87.8 percent ADA, and 2015–16 P-1 Apportionment with 73.6 percent ADA.

Pursuant to *California Code of Regulations*, Title 5 (5 CCR) Section 11968.5.2, the FPS Board has the right to respond through the following actions:

- (1) Submit to the SBE a detailed, written response addressing each identified violation which shall include the refutation, remedial action taken, or proposed remedial action by the charter school specific to each alleged violation. The written response is due by close of business on **May 18, 2016**.
- (2) Attach to its written response supporting evidence of the refutation, remedial action taken, or proposed remedial action, if any, including written reports, statements, and other appropriate documentation.

Failure to provide substantial evidence that refutes, remedies, or proposes to remedy the alleged violations contained in this letter, may provide grounds sufficient to form the basis for the SBE to take action to revoke the SFFA charter pursuant to *EC* Section 47607(c).

On **June 7, 2016**, the FPS Board will have an opportunity to present its evidence to refute or remedy each alleged violation to the Advisory Commission on Charter Schools (ACCS). The ACCS will review the evidence and discuss the items in a public forum and take action regarding a recommendation to the SBE.

On **July 13, 2016**, the SBE, in a public hearing, will consider whether there is substantial evidence to refute or remedy each alleged violation, at which time it may issue a Notice of Intent to Revoke, pursuant to *EC* Section 47607(e). If the SBE issues a Notice of Intent to Revoke, the SBE will hold a public hearing on **July 14, 2016**, at which time the SBE will determine whether sufficient evidence

exists to revoke the SFFA charter. This letter serves as a formal Notice of Violation, pursuant to *EC* Section 47607(d) and 5 *CCR* Section 11968.5.2, and provides the FPS Board a reasonable period in which to address these concerns.

A written response and supporting evidence addressing each of the above-outlined issues must be received no later than the close of business (5:00 p.m. Pacific Standard Time) **May 18, 2016**. Please submit this correspondence to:

Cindy S. Chan, Director
Charter Schools Division
California Department of Education
1430 N Street, Ste. 5401
Sacramento, CA, 95814

If you have any questions regarding this subject, please contact Cindy Chan, Director, Charter Schools Division, by phone at 916-322-6029 or by e-mail at cchan@cde.ca.gov.

Sincerely,

Dr. Michael Kirst, President
California State Board of Education

MWK/rl

cc: Karen Stapf Walters, Executive Director, California State Board of Education
Nick Schweizer, Deputy Superintendent, California Department of Education
Services for Administration, Finance, Technology, and Infrastructure
Cindy S. Chan, Director, Charter Schools Division, California Department of Education
Judie Hall, Education Administrator, Charter Schools Division, California Department of Education
Charleston Brown, Principal, San Francisco Flex Academy