

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

CALIFORNIA STATE BOARD OF EDUCATION

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November 5, 2015

Elizabeth Brooking, Board Chair
Synergy Education Project
355 East Leland Road
Pittsburg, CA 94565

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

Dear Chairwoman Brooking:

The State Board of Education (SBE) has been made aware of a number of issues that, if not resolved immediately by the Synergy Education Project (SEP) Board, will directly impact the ability of SEP to continue operations in 2015–16. Specifically, the issues of concern are as follows:

The SEP Board engaged in fiscal mismanagement (*EC* Section 47607[c][1][C]):

- The SEP budget has ended with significant deficits for the first three years of operation with little sound evidence of progress towards eliminating the budget deficit. Currently, Synergy's financial condition is insolvent with a negative fund balance as of June 30, 2015, of \$793,916. Additionally, SEP currently owes Encore Education Corporation (EEC) approximately \$200,000 bringing the negative end fund balance to \$993,916.
- SEP has demonstrated a continued pattern of deficit spending when original budgets planned for operating surpluses, a pattern of projected enrollment not materializing and negatively impacting SEP's revenue flow, and an inability to meet financial obligations as evidenced by SEP's September 15, 2015, default on a \$1.6 million Revenue Anticipation Note (RAN).
- The SEP Board failed to pay off a \$1.6 million RAN which matured on September 15, 2015. At its July 9, 2015, meeting, the SBE approved a material revision to the SEP charter petition with technical amendments and conditions. One of the conditions requires SEP to provide a plan on how to repay that debt, which is now in default. SEP has not responded to the CDE's request to provide any documentation regarding the default of the RAN or the subsequent RAN repayment plan.

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

- **Governance:** SEP is in violation of its charter because the governance structure outlined in the SEP charter petition is no longer in effect, based on the following evidence:
 - SBE approval of the material revision to the SEP charter included a revision to SEP's governance structure and educational program. SEP recognized the critical situation

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and sought a partnership with EEC to provide a more sustainable future with regard to governance and fiscal solvency during the remainder of SEP's charter authorization under the SBE, currently through June 30, 2017. The revised SEP charter petition outlines a possible partnership that was later finalized through a Memorandum of Understanding (MOU) between SEP and EEC on July 1, 2015. This MOU outlined specific duties to be performed by EEC including, but not limited to, providing programmatic services, administrative services, fiscal management, student discipline, and SEP school administrative staff. On October 19, 2015, EEC provided thirty days written notice to the SEP board and the CDE of the termination of this MOU pursuant to section 2.5 of the MOU. Based on this correspondence, EEC states that it will no longer provide services to SEP after November 18, 2015. SEP therefore is in violation of its charter because the governance structure outlined in the SEP charter petition is no longer in effect.

- The SBE approved the material revision to the SEP charter petition with four conditions. To date, SEP has not met two of these conditions. SEP has failed to present a specific plan to the CDE that adequately addresses how SEP plans to repay the RAN of approximately \$1.6 million, which matured September 15, 2015. This plan was due to the CDE on July 1, 2015. Additionally, SEP provided multi-year budget projections, however, they are based on a RAN repayment plan which has neither been approved by the SEP Board or the RAN lenders.
- Additionally, the SEP Board has failed to meet specific requirements of its MOU with the SBE. Specifically, the SEP Board has failed to meet requirements outlined in the following sections:
 - 1.2 Board of Directors and establishment of Governance Council
 - 1.3 Board of Directors and Governance Council Responsibilities
 - Council Meetings
 - Adoption of Policies and Procedures
 - Internal Controls
 - 3.5 Reserves
 - 3.7 Oversight Fees
- **Additional Outstanding Documents:** The CDE notes that the following request has not been completed by SEP. The CDE issued a letter of concern to SEP on October 9, 2015, with specific corrective actions and assigned deadlines. Although some of these deadlines have not yet passed and SEP has time to complete the corrective actions, the CDE finds it helpful to reiterate the following:
 - **SEP Governing Board:** As of the date of the letter of concern, SEP did not have a functioning board, which is not consistent with the SEP charter petition or the SEP bylaws. The CDE issued two corrective actions related to this concern, one is due on November 16, 2015, and one is due November 30, 2015
 - **Technical Amendments:** At the July 9, 2015, SBE meeting, the SBE approved the SEP material revision to revise its governance structure and educational program with the condition to comply with the technical amendments identified by the CDE to the charter petition as a condition of approval. SEP submitted a revised charter petition by

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e-mail to the CDE on August 21, 2015. Upon reviewing the document, the CDE has noted that all of the technical amendments to be incorporated into the SEP petition were not addressed. The CDE requested that the technical amendments be completed and the revised SEP petition be resubmitted by August 28, 2015. To date, SEP has not completed this request. The CDE issued one corrective action related to this concern due on November 16, 2015.

- **Suspension and Expulsion:** The CDE noted several concerns with the suspension and expulsion policies outlined in the SEP charter petition and requested technical amendments be made to the SEP petition. To date, SEP has not addressed these technical amendments and therefore, it is unclear to the CDE which policies are being implemented with regard to the pupils that the SEP Dean of Students reported were expelled at the beginning of the school year. The CDE issued three corrective actions related to this concern, two were due on October 30, 2015, and one is due November 30, 2015.
- **Local Control Accountability Plan:** SEP has not completed a Local Control Accountability Plan for the 2015–18 school years or an annual update for the 2014–15 school year. The CDE issued one corrective action related to this concern due on November 30, 2015.
- **A–G Courses:** SEP has A–G approved courses for grade nine only. The CDE issued one corrective action related to this concern which was due on October 30, 2015.

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. Based on the most recent California Assessment of Student Performance and Progress data, SEP's scores are below the state average for the same grades.

Pursuant to *California Code of Regulations*, Title 5, Section 11968.5.2, the SEP governing 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 **November 13, 2015**.
- (2) Attach to its written response supporting evidence of the refutation, remedial action, or proposed remedial action, if any, including written reports, statements, and other appropriate documentation. SEP's response should include, at minimum, the following:
 - a. A detailed plan, based on documented commitments, to eliminate the negative balance in the budget; and
 - b. Documentation from the lender(s) of the RAN granting an extension past September 15, 2015, repayment period, payment due date(s), default interest rate, any penalties or other amounts owed, and total amount owed.

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Failure to provide substantial evidence that refutes, remedies, or proposes to remedy the alleged violations may provide grounds sufficient to form the basis for an action to revoke the SEP charter pursuant to *EC* Section 47607(c).

On **December 2, 2015**, SEP 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 **January 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 **January 14, 2016**, at which time the SBE will determine whether sufficient evidence exists to revoke SEP's charter. This letter serves as a formal Notice of Violation, pursuant to *EC* Section 47607(d) and *California Code of Regulations*, Title 5, Section 11968.5.2, and provides SEP 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 by Cindy S. Chan, Division Director, Charter Schools Division, CDE at 1430 N Street, Ste. 5401, Sacramento, CA, 95814 no later than the close of business (5:00 p.m. Pacific Standard Time) **November 13, 2015**.

If you have any questions regarding this subject, please contact Cindy Chan, Division 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/km

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