# Attachment 1: Draft Letter to Board President Higginbotham and Chief Executive Officer Okoye-Johnson Dated January 12, 2022: Notice of Violation Pursuant to California *Education Code* Section 47607(g)

**The below letter is pending approval by the California State Board of Education (SBE). If approved by the SBE, it will be prepared on the official letterhead of the SBE, bearing the SBE Seal, address, and contact information.**

January 12, 2022

Ken Higginbotham, Board President

Dr. Ogo Okoye-Johnson, Chief Executive Officer

Eagle Collegiate Academy

P.O. Box 803234

Santa Clarita, CA 91380

Dear President Higginbotham and Chief Executive Officer Okoye-Johnson:

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

The California State Board of Education (SBE) has been made aware of a number of violations that, if not resolved immediately by the Eagle Collegiate Academy (ECA) Board, will directly impact the ability of ECA to continue operations in 2021–22. The instances of violation are detailed below.

### Instances of Violation

#### The ECA Board engaged in fiscal mismanagement (California *Education Code* [*EC*] Section 47607[f][3]).

##### Budget Based on Unrealistic Enrollment

The ECA has based and continues to base its budget on unrealistic enrollment, creating a large anticipated deficit in its first year of operation. ECA’s charter petition, approved by the SBE on July 9, 2020, included a prospective enrollment of 168 students. A timeline of ECA’s attendance reporting since then is provided below:

* **May 28, 2021:** ECA informed the California Department of Education (CDE) that its prospective enrollment had decreased to 131 students.
* **July 13, 2021:** ECA submitted the Pupil Estimates for New or Significantly Expanding Charters (PENSEC) with an estimated October enrollment of 168 students and Average Daily Attendance (ADA) of 159.6.
* **September 30, 2021:** In its monthly oversight call with the CDE, ECA verbally reported that school began on September 7, 2021, with an enrollment of 131 students.
* **October 2021:** ECA received a charter school special advance payment of $611,729 based on the PENSEC report.
* **November 1, 2021:** ECA reported to the CDE a total enrollment count of 12 students in its Charter School 20-Day Attendance Report.
* **December 17, 2021:** The CDE requested a summary of ECA’s fall attendance. ECA provided the following:
	+ **September:** 13 students
	+ **October:** 15 students
	+ **November:** 12 students
	+ **December**: 12 students

As ECA estimated 159.6 ADA on its PENSEC report, it received an apportionment of $611,729 in the First Special Advance Apportionment for Charter Schools. However, only 12 ADA was reported in the Charter School 20-Day Attendance Report, reducing the charter school’s estimated state aid for fiscal year (FY) 2021–22 to $119,333.[[1]](#footnote-1) Therefore, as of the Second Special Advance Apportionment, ECA has been grossly overpaid in Local Control Funding Formula (LCFF) funds by an estimated $492,396.

Consequently, if ECA’s 2021–22 ADA remains consistent with the ADA reported in the Charter School 20-Day Attendance Report, funds will be due back to the state, which the CDE will collect through an invoice. Additionally, due to this overpayment, the charter school will likely not receive any additional Principal Apportionment payments in FY 2021–22.

##### Projected Fiscal Insolvency

Upon learning of the school’s substantial drop in enrollment, the CDE issued a letter of concern on November 12, 2021, and requested that ECA provide a Fiscal Corrective Action Plan (FCAP) that included a revised multiyear budget and cash flow statements for the current FY 2021–22 and two subsequent FYs (2022–23 and 2023–24) as well as written detailed assumptions that reflect ECA’s resolution on addressing its unanticipated enrollment decline.

On December 6, 2021, the CDE received ECA’s FCAP. The CDE conducted a fiscal analysis based on ECA’s FCAP and Charter School 20-Day Attendance Report, which included the following projections for FY 2021–22:

* Total revenues of approximately $169,000,
* Total expenditures of approximately $1,370,000, and
* An overall negative ending fund balance of $1.2 million.

Upon the completion of its fiscal analysis, the CDE concluded that ECA is not fiscally sustainable.

ECA’s FCAP included a revised budget based on an overestimated and unrealistic enrollment of 53.39 students in FY 2021–22 instead of its most recently reported enrollment of 12 students. Although this is an increase in projected enrollment from its reported count of 12 students on November 1, 2021, this is significantly short of the projected 168 students in ECA’s charter petition that was approved by the SBE. Even with its overestimated enrollment, ECA’s own revised budget includes a deficit of $282,054 and negative ending fund balance of $302,398 in FY 2021–22.[[2]](#footnote-2) ECA also projected an enrollment of 240 and 313 students in FY 2022–23 and FY 2023–24, which is unrealistic.

In the narrative that ECA submitted with their revised budget, ECA also stated that they will pay salaries and CalSTRS/retirement for employees through the end of the 2021–22 school year by conducting a Capital Fundraising Campaign to raise $1,000,000. As fundraising, or donation, is soft funding and no supporting documentation for fundraising that amount was provided, ECA should not rely on it to cover the shortfall of salaries and benefits. ECA’s cash flow statement reflects that all cash will be exhausted by May 2022.

Additionally, in their revised budget, ECA included $300,000 of Public Charter School Grant Program (PCSGP) implementation funds in their cash flow statement. Due to their failure to meet the minimum enrollment requirement for their first year of implementation as required by the federal grant, ECA is not eligible to receive PCSGP funds. On December 28, 2021, the CDE informed ECA that its PCSGP Start-Up Sub-Grant had been placed on hold.

Furthermore, ECA understated its LCFF repayment by $435,594. Due to its overstated ADA and incorrect PCSGP projections, ECA may have an estimated negative ending cash balance of $932,620 by June 2022.[[3]](#footnote-3)

#### The ECA Board committed a material violation of the conditions, standards, or procedures set forth in the charter petition (*EC* Section 47607[f][1]).

##### Failure to Acquire Appropriate Facilities Prior to the Start of FY 2021–22

According to Section 4.2 of the MOU between the SBE and ECA, changes to the charter petition deemed to be material revisions may not be made without SBE approval. Amendments to the charter petition considered to be material changes include, but are not limited to, "any action taken on the part of the School which will result in a significant shift in pupil population to or from a site.”

The fourth condition of approval by the SBE of ECA’s charter petition required ECA’s school facilities to be “completed and ready for the CDE inspection on or before
May 28, 2021.” Based on ECA’s reporting to the CDE, ECA has failed to open a facility as a classroom-based charter school by the SBE-approved date or before the start of the 2021–22 school year on September 7, 2021, and in accordance with the charter petition approved by the SBE.

On December 6, 2021, ECA informed the CDE that the school had obtained a short-term lease at a temporary facility. Per Section 4.3 of the MOU, ECA may not commence operations in the facility without written approval from the CDE. The CDE visited and inspected the facility on December 16, 2021, to ensure that it is safe for occupancy and meets all pertinent regulations. Upon its completion of the site visit, the CDE found the facility noncompliant based on the following findings:

* The facility currently has a person who is renting a room and residing on the property.
* The facility lacks a fire marshal inspection.
* The facility lacks an Educational Group E occupancy permit, as required by the MOU and the State Fire Marshal.
* The facility is not compliant with the Americans with Disabilities Act Standards for Accessible Design.
* Several other findings listed on the Pre-Opening Site Inspection Checklist.

##### Change to Nonclassroom-Based Educational Program

Per Section 4.2 of the MOU between the SBE and ECA, changes to the charter petition deemed to be material revisions may not be made without SBE approval. Amendments to the charter petition considered to be material changes include, but are not limited to, “substantial changes to the educational program including the addition or deletion of an educational program, mission, or vision.”

ECA’s charter petition, as approved by the SBE, outlines a classroom-based International Baccalaureate educational program; it does not include a 100 percent nonclassroom-based program. ECA has reported to the CDE that its students are receiving online instruction only. The approved charter petition does not outline an educational program consisting solely of remote learning nor has ECA requested a nonclassroom-based funding determination, which may additionally impact funding for the 2021–22 school year.

##### Failure to Maintain Adequate Budget Reserves

Per Section 3.5 of the MOU between the SBE and ECA, ECA is expected to maintain reserves at 5 percent of expenditures or $71,000. Due to the LCFF repayment and the discontinuance of PCSGP funding, the CDE projects ECA to have a negative ending fund balance of $1.2 million by June 2022.

#### The ECA Board committed a violation of law (*EC* Section 47607[f][4]).

##### Noncompliant Independent Study Written Agreements

*EC* Section 51747(g)(1) requires independent study written agreements to “include the manner, time, frequency, and place for submitting a pupil’s assignments, for reporting the pupil’s progress, and for communicating with a pupil’s parent or guardian regarding the pupil’s academic progress.”

The CDE notes the following areas of noncompliance in ECA’s independent study written agreement:

* The agreement lists options for manner of “reporting” and parent/guardian communication but lacks clarity and specificity as to when and under what circumstances to utilize the selected options.
* The agreement fails to indicate manner of assignment submission or parent/guardian communication.
* The agreement fails to indicate time and frequency of assignment submission, progress reporting, and parent/guardian communication.
* The agreement lacks clarity as to the place for assignment submission, progress reporting, and parent/guardian communication, stating that it may be virtual or in-person.

*EC* Section 51747(g)(4) provides that the independent study agreement shall include, in part, the number of missed assignments allowed before an evaluation of whether or not the pupil should be allowed to continue in independent study. This evaluation shall align with *EC* Section 51747(d) pertaining to tiered reengagement strategies for all pupils not generating attendance (i.e., missed assignments for traditional independent study). This section requires initiation of these strategies when pupils are not generating attendance for three school days or 60 percent of the instructional days in a school week, or 10 percent of required minimum instructional time over four continuous weeks of a local educational agency’s (LEA’s) approved instructional calendar, pupils found not participatory pursuant to Section 51747.5 for more than the greater of three school days or 60 percent of the scheduled days of synchronous instruction in a school month as applicable by grade span, or pupils who are in violation of the written agreement.

ECA’s written independent study agreement fails to mention and/or otherwise include the provision for tiered reengagement strategies, including the participation/non-participation in synchronous instruction and live interaction, which directly relate to the requirement for an evaluation to determine if the pupil should remain in independent study. Additionally, its agreement lacks clarity as to whether the board policy stated in the agreement regarding failing to complete “5 assignments during any period of 5 school days” is equivalent to the requirements set forth in statute as stated hereinabove.

*EC* Section 51747(g)(5) states that the independent study written agreement shall include the duration of the agreement, including the beginning and ending dates for the pupil’s participation in independent study. Independent study shall not exceed a period longer than one school year.

ECA’s written independent study agreements, as executed, fail to include end dates for the agreement. Given the lack of compliance, it is unclear if ECA is eligible to receive apportionments for students participating in independent study.

##### Inadequate Budget Reserves

In addition to being a material violation of the conditions, standards, or procedures of the charter petition and the MOU between the SBE and ECA, ECA’s inadequate budget reserves is also a violation of law. Pursuant to 5 *CCR* Section 15450, ECA is expected to maintain reserves at 5 percent of expenditures or $71,000. However, as previously stated on page five of this letter, due to the LCFF repayment and the discontinuance of PCSGP funding, CDE projects ECA to have a negative ending fund balance of $1.2 million by June 2022.

### Other Concerns

ECA’s Special Education Local Plan Area (SELPA), the El Dorado Charter SELPA, issued a formal notice of its concern about ECA’s ability to function as an LEA. According to the SELPA’s letter to ECA dated December 1, 2021, the SELPA found that ECA had not set up a child find process. Consequently, the SELPA was concerned that students with disabilities were not receiving their due services.

### Right to Respond to Instances of Violation

Pursuant to 5 *CCR* Section 11968.5.2, the ECA Board has the right to respond to this communication 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 **5 p.m. on Friday, January 21, 2022**.
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.

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 ECA charter pursuant to *EC* Section 47607(f).

On February 8, 2022, ECA 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 March 9, 2022, 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(h). If the SBE issues a Notice of Intent to Revoke, the SBE will hold a public hearing on March 10, 2022, at which time the SBE will determine whether sufficient evidence exists to revoke ECA’s charter.

This letter serves as a formal Notice of Violation, pursuant to *EC* Section 47607(g) and 5 *CCR* Section 11968.5.2, and provides ECA 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 the Charter Schools Division by **5 p.m. on Friday, January 21, 2022,** via email at sbeoversight@cde.ca.gov

If you have any questions regarding this subject, please contact Stephanie Farland, Director, Charter Schools Division, by email at sfarland@cde.ca.gov.

Sincerely,

/s/

Dr. Linda Darling-Hammond, President
California State Board of Education

LDH:rr

cc: Brooks Allen, Executive Director, California State Board of Education

Lisa Constancio, Deputy Superintendent, Operations and Administration Branch, California Department of Education

Stephanie Farland, Director, Charter Schools Division, California Department of Education

*Sent via First Class Mail and Email to:*

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1. This amount may be subject to ECA submitting and receiving a nonclassroom-based funding determination for the 2021–22 school year. [↑](#footnote-ref-1)
2. Fund balance shows the difference between a school’s total assets and liabilities. Because total assets can include non-cash assets (such as accounts receivables) and liabilities include all debts and obligations, fund balance is often used to determine long-term financial sustainability. Per *California Code of Regulations*, Title 5 (5 *CCR*), Section 15450, and the memorandum of understanding (MOU) between the SBE and ECA, ECA is expected to maintain a reserve fund balance of 5 percent of its total expenditures or $71,000, whichever is greater. A negative fund balance is a sign that the school will be financially unsustainable. Current budget standards adjusted for inflation can be found on the CDE School District Budgets 2021–22 web page at <https://www.cde.ca.gov/fg/fi/ss/distbudgetcsfy2122.asp>. [↑](#footnote-ref-2)
3. Cash balance indicates the amount of cash the school has in the bank. Fund balance includes all cash assets, plus any additional assets the school holds; therefore, a school’s fund balance is not likely to equal cash balance. When a school reaches a zero cash balance, the school can no longer meet its current obligations, including staff and teacher salaries and benefits. [↑](#footnote-ref-3)