

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-jul22item05

# California State Board of EducationJuly 2022 AgendaItem #18

## Subject

T.I.M.E. Community School: Consider Issuing a Notice of Violation Pursuant to California *Education Code* Section 47607(g).

## Type of Action

Action, Information

## Summary of the Issue

The California Department of Education (CDE) and Los Angeles County Office of Education (LACOE) believe that there is substantial evidence that T.I.M.E. (Teamwork, Individualization, Mastery, and Extension) Community School (TCS), a California State Board of Education (SBE)-authorized charter school, engaged in fiscal mismanagement; failed to meet or pursue any of the pupil outcomes identified in the charter petition; and committed a material violation of the conditions, standards, or procedures set forth in the charter petition, pursuant to California *Education Code* (*EC*) Section 47607(f). Pursuant to *EC* Section 47607(g), the authority that granted the charter petition shall notify the charter school of any violation and provide the school a reasonable opportunity to remedy the violation.

## Recommendation

The CDE recommends that the SBE consider issuing a Notice of Violation to TCS (Attachment 1), pursuant to *EC* Section 47607(g). TCS has committed the following:

* Fiscal mismanagement (*EC* Section 47607[f][3]),
* Failure to meet or pursue any of the pupil outcomes identified in the charter petition (*EC* Section 47607[f][2]), and
* Violation of several conditions, standards, or procedures set forth in the charter petition (*EC* Section 47607[f][1]).

Pursuant to *EC* Section 47607(g) and *California Code of Regulations*, Title 5 (5 *CCR*) Section 11968.5.2, TCS shall have the opportunity to present evidence that refutes, remedies, or proposes to remedy the alleged violations at the August 11, 2022, Advisory Commission on Charter Schools (ACCS) meeting. At that meeting, the ACCS will take action on a recommendation to the SBE regarding whether, at its
September 14–15, 2022, meeting, the SBE should issue a Notice of Intent to Revoke with Notice of Facts, pursuant to *EC* Section 47607(h), and take action to revoke the TCS charter petition.

## Reasons for Revocation

*EC* Section 47607(f) states that a charter petition may be revoked by the chartering authority if the authority finds, through a showing of substantial evidence, that the charter school did any of the following:

1. Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
2. Failed to meet or pursue any of the pupil outcomes identified in the charter.
3. Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.
4. Violated any law.

Substantial evidence exists to support the finding that the TCS Board has engaged in fiscal mismanagement; failed to meet or pursue any of the pupil outcomes identified in the charter petition; and committed a material violation of the conditions, standards, or procedures set forth in the charter petition.

## Background

On July 9, 2020, the SBE approved the charter petition to establish TCS, a new school, which anticipated serving 110 pupils in grade nine beginning in 2020–21 and growing to serve 600 pupils in grade nine through grade twelve in 2024–25. TCS was approved by the SBE for a term of five years, effective July 1, 2020, and with a delay in opening and starting instruction until the 2021–22 school year.

At this same meeting, the SBE delegated oversight of TCS to the Los Angeles County Board of Education (LACBOE), pursuant to former *EC* Section 47605(k)(1). In a memorandum of understanding (MOU) signed on October 19, 2020, the LACBOE agreed to supervisorial and oversight responsibilities for TCS on behalf of the SBE. The LACBOE delegated the monitoring and oversight of TCS to the Los Angeles County Superintendent of Schools and LACOE staff, as detailed in the LACOE MOU, which TCS signed on December 17, 2020.

Since March 2022, CDE and SBE staff have been in communication with LACOE about LACOE’s concerns regarding the sustainability of TCS. Due to the nature of the concerns, a recommendation to the SBE regarding the issuance of a Notice of Violation to TCS was discussed. However, at that time, LACOE expressed their desire to continue collaborating and providing guidance to TCS in the hopes of bringing the school into compliance and into a more stable fiscal position. Unfortunately, TCS’ condition has not improved.

## Instances of Violation

The LACOE Charter School Office identified a number of violations that, if not resolved immediately by the TCS Board, will directly impact the ability of TCS to continue operations in 2022–23.

### The TCS Board engaged in fiscal mismanagement (*EC* Section 47607[f][3]).

TCS has engaged in fiscal mismanagement under *EC* Section 47607(f)(3) by continuing to base its budget and multiyear projections on unrealistic enrollment projections and failing to demonstrate financial viability in the current or subsequent two fiscal years. TCS continues to incur substantial deficit spending and increasing debts due to cash deficiencies and is projected to be insolvent for fiscal year 2021–22. TCS’ future fiscal solvency is dependent on achieving unrealistic enrollment projections.

#### Unrealistic Enrollment and Average Daily Attendance Projections

Pursuant to *EC* Section 47652, a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year. TCS submitted its Pupil Estimates for New or Significantly Expanding Charters(PENSEC) report in order to receive the First Special Advance Apportionment for Charter Schools. As detailed in the table below, actual enrollment and average daily attendance (ADA) fall substantially below TCS’ estimated projections.

| **Criteria** | **PENSEC Estimates** | **20-Day Attendance Report** | **Month 10 (5/27/2022) Attendance Report** | **Projection for 2022–23** | **Projection for 2023–24** |
| --- | --- | --- | --- | --- | --- |
| **Enrollment** | 165 students | 29 students | 41students | 110 students | 165 students |
| **ADA** | 95 | 25.80 | 36.68 | 104.50 | 156.75 |

As of December 2021, TCS revised its budget and projected enrollment of 135 students for 2022–23 and 285 students for 2023–24. In its latest budget, TCS projects enrollment of 110 students for 2022–23 and 165 students for 2023-24. TCS has not submitted documentation or demonstrated that it will be able to achieve the projected enrollment of 110 students for 2022–23. Additionally, TCS’ approved Public Charter School Grant Program Start-Up Sub-Grant totaling $500,000 was placed on hold by the CDE during 2021–22 because it failed to enroll the required minimum of 80 students. The CDE has indicated this grant will be terminated if TCS does not meet the minimum enrollment target or demonstrate financial sustainability by June 30, 2022. Should TCS be unable to achieve its stated enrollment and ADA projections, its fiscal condition could further deteriorate.

#### Projected Fiscal Insolvency

The table below provides a summary of TCS’ financial projections during the 2021–22 fiscal year and includes year-to-date actuals from July 2021 through May 2022.

| **Criteria** | **2021–22 Budget** | **2021–22****First Interim** | **2021–22****Second Interim** | **July 2021 to****May 2022 Actuals** |
| --- | --- | --- | --- | --- |
| **Total Revenues** | $2,386,765 | $605,813 | $897,549 | $654,916 |
| **Total Expenditures** | $2,010,305 | $1,197,288 | $1,220,959 | $976,380 |
| **Surplus (Deficits)** | $376,460 | ($591,475) | ($323,401) | ($321,464) |
| **Beginning Net Position** | $91,812\* | $109,671 | $109,671 | $109,671 |
| **Ending Net Position** | $468,272 | ($481,804) | ($213,730) | ($211,793) |

\*The $91,812 was estimated based on TCS’ 2020–21 (planning year) estimated actuals ending Net Position. TCS’ 2020–21 actuals ended with a balance of $109,671 or $17,859 higher.

As illustrated in the table above, TCS’ 2021–22 adopted budget projected an operating surplus of approximately $376,000 and an ending Net Position of $468,000. Due to TCS’ substantial enrollment shortfall, in its 2021–22 First Interim Report, TCS projected an operating deficit of $591,000 and an ending Net Position of negative $482,000. Per a request from LACOE’s Business Advisory Services, TCS submitted a revised current year budget, multiyear projections for 2022–23 and 2023–24, and updated cash flow projection with its 2021–22 Second Interim Report. TCS’ 2021–22 Second Interim Report projected an operating deficit of $323,000 and an ending Net Position of negative $214,000. The Second Interim reflected improvement from the First Interim’s projected deficit spending due primarily to the addition of federal one-time ESSER II and ESSER III funding, totaling approximately $282,000. As of May 31, 2022, TCS has an operating deficit of $321,000, an ending Net Position of negative $212,000, and a reserve for economic uncertainties of negative 21.7 percent. The reserve is well below the 3 percent minimum reserve requirement pursuant to the MOU, page 18, section 3.4 (Revenue and Expenditure Reporting).In summary, TCS’ future fiscal solvency is dependent on achieving its unrealistic enrollment and ADA projections.

#### Debt Accumulation

TCS’ substantial enrollment and ADA shortfall contributed to deficit spending, cash deficiencies, and increasing debts in the current fiscal year. As of May 31, 2022, TCS reported total assets of $161,419; total liabilities of $373,213; an ending Net Position of negative $211,794. Included in the total liabilities are various notes payable totaling $221,348 due to its Executive Director, a private lender, and a California School Financing Authority (CSFA) Charter School Revolving Loan of $100,000. TCS’ ability to repay outstanding liabilities will be dependent on future revenue growth in excess of program expenditures. The CDE and LACOE remain extremely concerned about TCS’ rising debts and its ability to secure additional funding in order to satisfy its immediate and future financial obligations.

#### Cash Flow Projections

TCS’ ability to meets its financial obligations is reliant on substantial enrollment growth and cash borrowing, including the sales of current and future receivables. As of May 31, 2022, TCS has a cash balance of $8,105; this represents three days of operating cash. TCS’ 2022–23 cash flow projection includes selling current and future State Aid receivables and accessing a CSFA Charter School Revolving Loan in the amount of $150,000. Although TCS is projecting substantial revenue growth for 2022–23 due to a projected enrollment increase, the cash flow projections reflect negative cash balances, ranging from negative $14,679 to negative $81,254, for 6 out of 12 months; the months of July, August, October, December, January, and February reflect negative ending balances. TCS has indicated it will borrow, fundraise, and/or sell future receivables to address its cash needs. For the period of July 2021 through May 2022, TCS reported total Local Revenues of $11,206, which are comprised of fundraising and contributions. Because TCS has accumulated a significant amount of debts, its borrowing options or capacity to borrow may be limited, and the cost to finance debt could become costly, particularly in an inflationary and rising interest environment. The costs of borrowing also negatively impacts TCS’ financial resources. Due to its cash deficiencies, TCS may not be able to make payments on its current obligations, including payroll expenses and related benefits.

### The TCS Board failed to meet or pursue pupil outcomes identified in the charter (*EC* Section 47607[f][2]).

#### Failure to Report Academic Performance for All Students

According to Section 2.2 of the MOU between the LACOE and TCS, it is the school’s responsibility to submit to LACOE, in a timely manner, the results of the academic performance of the students for both English Language Arts and Mathematics, based on baseline, mid-year, and end of year results. TCS failed to report the results of interim/benchmark assessments used to evaluate student progress during the 2021–22 school year for all students and all student groups. TCS submitted partial school-wide benchmark assessment data and no data disaggregated by student groups. Benchmarks serve as a measurement gauge to monitor a student’s progress and to determine if the student is making sufficient progress towards attaining academic goals. TCS’ failure to submit data on the academic performance of all its students and student groups effectively prevented LACOE from evaluating the academic performance of students enrolled at the charter school.

#### Low Participation Rate for Benchmark Assessments

The student participation rates for TCS’ benchmark assessments are significantly below the 95 percent threshold established by the SBE for verifiable student data. Low benchmark assessment participation has a significant impact on the school’s ability to evaluate academic progress and make data-based instructional decisions for the school’s ninth and tenth grade students. TCS uses NWEA’s Measures of Academic Progress (MAP) for benchmark assessments. The NWEA benchmarks are designed to evaluate a full year’s learning through the administration of three assessments given in the Fall, Winter, and Spring that include assessments in math, reading, and language usage. The charts below show participation rates for TCS’ 2021–22 benchmark assessments for the schools 25 ninth grade students and 15 tenth grade students.

*2021–22 Ninth Grade NWEA Benchmark Participation Rates*

| **Subject** | **Fall** | **Winter** | **Spring** |
| --- | --- | --- | --- |
| **Algebra/Geometry** | 95% | 100% | No data reported |
| **Reading** | 38% | 100% | No data reported |
| **Language Usage** | 59% | 8% | Test not given |

Source: TCS 2021–22 Annual Report to LACOE

*2021–22 Tenth Grade NWEA Benchmark Participation Rates*

| **Subject** | **Fall** | **Winter** | **Spring** |
| --- | --- | --- | --- |
| **Algebra/Geometry** | 70% | 100% | No data reported |
| **Reading** | 50% | 100% | No data reported |
| **Language Usage** | 40% | 8% | Test not given |

Source: TCS 2021–22 Annual Report to LACOE

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

#### Facilities Design and Usage Does Not Reflect Description in Charter

The school facility that TCS occupied in the 2021–22 school year did not align with the facility design included in the charter petition. The petition describes a specific facility layout designed to support the unique TCS Learning Model. The petition includes a diagram of a school facility that integrates flexible classrooms, open classroom design, and a learning hub. TCS’ failure to provide a learning environment that meets the unique needs of the TCS Learning Model constitutes a material violation of the approved charter petition.

The petition states:

* TCS will build a lab school environment and border free classrooms in which our innovative daily schedule will prepare students for taking their twenty-first century STEAM learning into the community.
* TCS will expand the flexible classroom concept and integrate it into an open school design where students will be surrounded by a physical environment that adapts to their learning needs.
* Grade level space includes four classrooms and a learning hub that is both personalized and adaptable. Each of the four classrooms will have flexible seating, flexible tables/stations, and space to collaborate.

While the petition states that TCS recognizes traditional classroom space may be converted into learning hubs, there was no evidence of adjustments to the 2021–22 facility that aligned with the facility description included in the petition. While LACOE acknowledges the constraints that Prop 39 facilities usage agreements may impose on substantive modifications to existing school facilities, TCS did not show evidence that the traditional physical environment was personalized or adjusted to innovatively meet students’ learning needs.

#### Proposed 2022–23 Staffing Does Not Include the Key Position of Counselor

The 2022–23 proposed staff list provided by TCS does not include a full-time counselor. The original approved petition budget included one counselor in year 1, adding an additional counselor in years two and three. During the 2021–22 school year TCS hired a counselor; however, due to a budget shortfall, the counseling position was left vacant for most of the school year. The charter petition states that part of the counselor’s job responsibilities include:

* Working with students on developing academic and career goals, ensuring students are meeting high school graduation requirements, and addressing specific educational needs of students pertaining to college/career choices.
* Collecting, disaggregating, and analyzing student learning data from standardized tests and school assessments.

Based on the job responsibilities described in the petition, the impact of TCS operating without a counselor has already negatively impacted the instructional program. As previously noted, TCS failed to assess all students on NWEA benchmark assessments. In addition, there has been no evidence submitted to LACOE of analysis of NWEA assessment data. TCS will begin enrolling eleventh grade students in Fall 2022. This grade level requires significant support in exploring college/career choices and exploring post-secondary options. Additionally, research shows significant increases in the social-emotional needs of students resulting from the COVID-19 pandemic and traumatic experiences outside of school. With no counselor to implement school wide, small group, and individual supports for students, this key position that is critical for any high school will not be present at TCS. As such, TCS’ failure to hire and retain a full-time counselor is a material violation of the approved charter petition.

## Other Concerns

TCS’ initial WASC accreditation visit was in April of 2022; however, the school has not yet received an accreditation term.

Additionally, LACOE staff met with the TCS Board and Executive Director on May 25, 2022. During the meeting, TCS was asked to submit NWEA normed Condition Growth Index data, NWEA data broken down by student group, the number of students on track for CSU/UC eligibility, and end of year transcripts for all students. However, TCS has not submitted this data.

## Previous Board Action

On August 26, 2019, the petitioner submitted the TCS petition to Montebello Unified School District (MUSD). On October 23, 2019, MUSD voted to deny the TCS petition by a vote of four to zero.

On November 12, 2019, the petitioner submitted the TCS petition to the LACOE. On January 14, 2020, the LACBOE voted to amend the motion to approve the Superintendent’s recommendation to deny the TCS petition. The CDE notes that LACBOE only adopted Finding 2, Indicator 2 (Budget Plan[s] Deficiencies) of the staff report (Attachment 7 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). LACBOE denied the TCS petition by a vote of five to one.

The petitioner submitted the TCS petition to the SBE on March 6, 2020. The ACCS considered the TCS charter petition at its June 9, 2020, meeting. At this meeting, the CDE proposed to recommend that the SBE deny the TCS charter petition. The ACCS did not agree with the CDE’s recommendation and moved to recommend approval of the TCS petition with a delay in opening for one year, with the understanding that TCS would be in operation for four years. The motion passed by a vote of seven to two. The notice for the June 9, 2020, ACCS meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>.

At its July 9, 2020, meeting, the CDE again recommended that the SBE deny the TCS charter petition. However, the SBE moved to approve the TCS charter petition with conditions. The motion passed by a vote of 10 to 0. The meeting agenda and corresponding minutes for this item (Item 19) can be found on the SBE Meeting for July 2020 web page at <https://www.cde.ca.gov/be/ag/ag/yr20/agenda202007.asp> and <https://www.cde.ca.gov/be/mt/ms/documents/finalminutes0809jul2020.docx>, respectively.

## Attachments

* **Attachment 1:** Draft Letter to Board President Brown, Executive Director Ramirez, and T.I.M.E. Community School Governing Board Dated July 14, 2022: Notice of Violation Pursuant to California *Education Code* Section 47607(g) (8 Pages)
* **Attachment 2:** T.I.M.E. Community School Charter Petition as Approved by the California State Board of Education on July 9, 2020 (145 Pages)
* **Attachment 3:** Memorandum of Understanding between the Los Angeles County Office of Education and T.I.M.E. Community School (43 Pages)
* **Attachment 4:** Los Angeles County Office of Education Notice of Concern to T.I.M.E. Community School Dated January 26, 2022 (6 Pages)
* **Attachment 5:** Los Angeles County Office of Education Notice of Concern to T.I.M.E. Community School Dated June 28, 2022 (7 Pages)
* **Attachment 6:** T.I.M.E. Community School Pupil Estimates for New or Significantly Expanding Charters Report (4 Pages)
* **Attachment 7:** Public Charter Schools Grant Program Letter of Concern to T.I.M.E. Community School Dated January 31, 2022 (2 Pages)
* **Attachment 8:** Promissory Notes (5 Pages)
* **Attachment 9:** T.I.M.E. Community School May 2022 State of Cash Flow and Fiscal Year 2022–25 Forecasts (87 Pages)
* **Attachment 10:** T.I.M.E. Community School 2021–22 Annual Report to the Los Angeles County Office of Education (12 Pages)
* **Attachment 11:** Additional Documentation Provided by the Los Angeles County Office of Education in Support of the Issuance of a Notice of Violation to T.I.M.E. Community School (487 Pages)