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1/15/2021

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Special Board Meeting of the Carlsbad Unified School District Board of Trustees Wednesday, December 9, 2020

1. Opening

1.1 Call to Order at 5:00pm.

1.2 Public Hearing on Closed Session Items Community Member Ginger Kearns spoke about concerns due to Covid-19.

2. Closed Session

2.1 Recess to Closed Session

2.2 Oral Communications on Closed Session Items

2.3 Student Expulsions/Readmissions

2.4 Conference with Real Property Negotiator - Superintendent Benjamin Churchill

2.5 Conference with Legal Counsel - Existing Litigation - Subdivision (a) of Government Code Section 54956.9

2.6 Conference with Legal Counsel - Anticipated Litigation - Significant Exposure to Litigation Pursuant to Subdivision (b) of Government Code Section 54956.9

2.7 Liability Claims

2.8 Threat to Public Services or Facilities

2.9 Public Employee Appointment Pursuant to Government Code 54957

2.10 Public Employee Employment - Classified Personnel Action Report/Certificated Personnel Action Report

2.11 Public Employee Performance Evaluation

2.12 Public Employee Discipline/Dismissal/Release Pursuant to Government Code 54957

2.13 Conference with Labor Negotiator - Assistant Superintendent Rick Grove: CUTA / LIUNA / CUSD Management Team / Confidential Employees

2.14 Appeal as to Information in Student Record

2.15 Inter-District Attendance Request

2.16 Complaint Against District Employee (Gov. Code section 54957; Board Policy & Admin Reg 4144).

3. Reconvene to Open Session

Called to Order at 6:00pm.

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3.1 Public Report of Action Taken in Closed Session - Nothing reported out of Closed Session.

3.2 Pledge of Allegiance to the Flag led by Trustee Pearson.

3.3 Roll Call - Members Present: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Ray Pearson, Kathy Rallings

4. Approval of Agenda

4.1 Approval and/or reorganization of the December 9, 2020 meeting agenda.

Approval and/or reorganization of the agenda for the meeting of December 9, 2020.

Motion by Claudine M Jones, second by Kathy Rallings. Motion Passes - Ayes: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Ray Pearson, Kathy Rallings

5. Open Session

5.1 Oral Communications on Open Session Agenda Item Only

The following community members spoke in support of Audeo Charter School - Nikki Sarajedini, Dave Schaller, Sam Raimo, Monica Fraser. The following community members spoke against (to deny charter) Audeo Charter School - Lisa Harris, Clare Crawford, Paula Hall. Manasi Watts provided PTA update. The following community members spoke either for or against returning to school on January 5th - Scott Davison, Stacy Saltz, Sharon McKeeman, Francine Higley, Tiffany Boyd, Michelle Trott, Laurie Stover, Lindsey Gordon, Rachel Merino-Ott, Chloe Norton.

5.2 Resolution No. 12-2021 Denying Renewal of the Charter Petition of Audeo Charter School II

Presented by Chris Wright, Rob Nye and Alyssa Ruiz de Esparza for CUSD. Presented by Wade Aschbrenner and Janelle Ruley for Audeo.

Trustee Pearson will be voting no. All students should be given the opportunity to reach their full potential at our schools or a charter school. Trustee Jones is guided by the intent of legislature and cites the lack of transparency of financials and governance. She will be supporting staffs recommendation to deny. Trustee Rallings will support the resolution for the same reasons as Trustee Jones. CVA and CSA have overlapping services that we can provide for students. Trustee Williamson will be supporting the resolution as well. It is based on the petition submitted not on the services provided to the students. Trustee Williams will also be supporting the resolution based on staff findings.

It is respectfully requested that the Board of Trustees adopt Resolution No. 12-2021 to deny the renewal of a five (5) year term of the Audeo Charter School II based upon the findings set forth, Exhibit A. Motion by Claudine M Jones, second by Kathy Rallings. Motion Passes - Ayes: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Kathy Rallings. Noes: Ray Pearson

5.3 Facility Master Plan Phase 2 Modernization Project Initial Design: Valley Middle School

Presented by Chris Wright and Josh Eckle.

Trustee Jones thanked staff and architects. She is in favor of the items listed. She strongly supports consolidation of areas in the library and is less interested in office area. She would prefer to use funds in library for staff and students. Asked staff to

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consult with the school's VAPA staff since they have large choir and art programs. Maybe enhanced performance space. Seek neighborhood feedback and add deterrents for roof access. Trustee Rallings agreed with Trustee Jones. She is also in favor of keeping applied arts room and modernizing. Possibly use for classroom or student space. Not in favor of two gymnasiums and but okay with reducing kitchens to one central kitchen if possible. Maximize the natural light as much as possible. Trustee Williamson appreciates that they were able to identify some things that were not needed. Trustee Pearson asked for process check about making decisions. Mr. Wright said that these are items that are already being addressed. Trustee Williams appreciated Mr. Eckle's ideas.

Break 8:22pm-8:29pm.

5.4 First Interim Financial Report for the Period Ending October 31, 2020

Presented by Chris Wright.

It is respectfully requested that the Board approve submission of the First Interim Financial Report as of October 31, 2020, Exhibit A, including Positive Certification, Exhibit C. Motion by Claudine M Jones, second by Elisa M Williamson. Motion Passes - Ayes: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Ray Pearson, Kathy Rallings

5.5 2020-21 Budget Overview for Parents

Presented by Chris Wright.

Trustee Rallings said that she is not a big fan of adding work for staff but does like this simplified budget. Would like us to consider incorporating a document like this in the future.

It is respectfully requested that the Board of Trustees approve the 2020-21 Budget Overview for Parents, as presented, Exhibit A.

Motion by Ray Pearson, second by Claudine M Jones. Motion Passes - Ayes: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Ray Pearson, Kathy Rallings

5.6 COVID-19 Update / Safe Return to Instruction

Presented by Dr. Churchill, Chris Wright, Rick Grove and Dr. Nye.

5.7 Revision of Board Policies - First Reading

Dr. Churchill presented.

It is respectfully recommended that the Board of Trustees review the Board Policies as presented, approve as a First Reading and waive the Second Reading, if so inclined. All but BP 6174 approved as a first and second reading. BP 6174 approved as first reading only and to be brought back at December 16, 2020 meeting. Motion by Claudine M Jones, second by Elisa M Williamson. Motion Passes - Ayes: Veronica C Williams, Claudine M Jones, Elisa M Williamson, Ray Pearson, Kathy Rallings

6. Continuation of Oral Communications on Agenda Items

6.1 Continuation of Item 5.1 Oral Communications on Agenda Items

Community members who spoke either in support of or in opposition to returning to school on January 5th - Anna Sinnett, Valerie Rubin, Dawn Ebbs, Phil McLellan, Christen Foster, Mary Clarke, Heather Gearing, Sarah Anderson.

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7. Adjournment

7.1 Adjournment of December 9, 2020 Special Board Meeting at 10:19pm.

Ray Pearson, Clerk of the Board

Benjamin Churchill, Secretary to the Board

RESOLUTION NO. 12-2021

**RESOLUTION DENYING RENEWAL OF
THE CHARTER PETITION OF
AUDEO CHARTER SCHOOL II
BY THE GOVERNING BOARD OF THE
CARLSBAD UNIFIED SCHOOL DISTRICT**

RESOLVED by the Carlsbad Unified School District Board of Trustees, County of San Diego, State of California, that:

WHEREAS, Audeo Charter School II ("Audeo II" or the "Charter School") is operated by Audeo Charter School, a California non-profit public benefit corporation, authorized by the State Board of Education ("SBE"), and located within the boundaries of the Carlsbad Unified School District ("District"); and

WHEREAS, on appeal from denial by the District Board and the San Diego County Board of Education in 2016, the SBE approved the Charter for Audeo II for a term that expires on June 30, 2021, and pursuant to Education Code Section 47605.9(b), Audeo II must initially seek renewal of its SBE-approved Charter from the District Board;¹

WHEREAS, pursuant to the Charter Schools Act of 1992, on October 8, 2020, petitioners for Audeo II presented to the District a renewal Charter petition ("Petition" or "Charter") for Audeo II, and the District Board held a public hearing on the provisions of the Petition on October 14, 2020, at which time the District Board considered the level of support for the Charter School by teachers and employees of the District, and parents or guardians; and

WHEREAS, Audeo II has requested that the District Board renew its Petition for a five (5) year term from July 1, 2021 to June 30, 2026; and

WHEREAS, pursuant to Section 47607, renewals of charters are governed by most of the same standards and criteria as new charters described in Section 47605, and shall include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed; and

WHEREAS, Audeo II serves high risk students, qualifies for Dashboard Alternative School Status ("DASS"), is listed on the California Department of Education ("CDE")'s Active DASS Schools list (<https://www.cde.ca.gov/ta/ac/activeschools.asp>), is eligible for alternate methods for calculating state and local indicators of academic performance, and shall be considered for renewal in accordance with Section 47607(c)(7); and

WHEREAS Section 47607(c)(7) became operative on July 1, 2020, Audeo II has acknowledged in its Petition that it was therefore unable to meet with the District during "the first year of the charter school's term" as stated in that Section "to mutually agree to discuss

¹ All statutory section (§) references herein are to the California Education Code, unless otherwise noted.

alternative metrics to be considered” for renewal. However, the District has considered Audeo II’s performance on the California School Dashboard and its performance on the alternative metrics provided by Audeo II in its Petition; and

WHEREAS, the District staff, working with District legal counsel, has reviewed and analyzed all information received with respect to Audeo II’s request for Charter renewal and information related to its operation and potential effects, and made a recommendation to the District Board that the Petition be denied based on that review; and

WHEREAS, the District Board may deny a charter renewal pursuant to Section 47607(c)(7) upon making written findings, supported by specific facts, that the closure of the charter school is in the best interest of pupils; and

WHEREAS, the Petition is now before the Board for final action at a public meeting on December 9, 2020, in accordance with Section 47605(c), and the District Board has fully considered the Petition and proposed findings provided by District staff.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Trustees of the Carlsbad Unified School District, having fully considered and evaluated the Petition for Audeo II Charter School, hereby finds that renewing it is not consistent with sound educational practice or in the best interest of students based upon the following findings:

1. The Charter Petition does not contain reasonably comprehensive descriptions of all of the required elements. [Ed. Code § 47605(c)(5)]
2. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Charter Petition. [Ed. Code § 47605(c)(2)]
3. The Charter School presents an unsound educational program for the pupils to be enrolled in the Charter School. [Ed. Code § 47605(c)(1)].

BE IT FURTHER RESOLVED AND ORDERED that the Board of Trustees for the Carlsbad Unified School District hereby determines the foregoing findings are supported by the following specific facts:

I. THE CHARTER DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF ALL REQUIRED ELEMENTS. [Ed. Code § 47605(c)(5); 5 CCR § 11967.5.1]

A. Educational Program

1. *Academic performance.* District staff noted that between 2018 and 2019, Audeo II’s performance on the CA School Dashboard declined in Mathematics by 15.4 points, and its rate of chronic absenteeism increased by 4.4%. Under its alternative metrics, the Petition states that Audeo II “is a high-performing DASS school compared to similar DASS schools in the district and communities it serves,” and that it “outperforms the majority of DASS schools in serving its English Learners.” However, for ELs and

Audeo II's significant student groups (Hispanic and socioeconomically disadvantaged students), the comparison schools listed in the Petition serve a higher population of those groups. In 2019, Audeo II served 228 students, 57.5% were socioeconomically disadvantaged, 48.2% were Hispanic, and 7.5% were ELs. For the comparison schools in the Petition:

- a. Ocean Shores High (Surfside High) in Oceanside Unified served 132 students; 79.5% were socioeconomically disadvantaged; 76.5% were Hispanic; and 21.2% were ELs.
- b. Twin Oaks High in San Marcos Unified served 163 students; 63.8% were socioeconomically disadvantaged; 74.8% were Hispanic; and 19.6% were ELs.
- c. Carlsbad Village Academy served 85 students; 58.8% were Hispanic; and 8.2% were ELs.
- d. SIATech in Vista Unified served over 1,000 students; 93.1% were socioeconomically disadvantaged; 68.4% were Hispanic; 24.1% were ELs.

This context is relevant for concluding that these and other factual findings described below far outweigh Audeo II's reported academic increases and justify nonrenewal.

2. ***Requirements for High School students.*** Renewal charters must describe applicable new laws. (§ 47607(b).) District staff did not find evidence in the Petition of whether, commencing with the 2020-21 school year, Audeo II will ensure that each of its pupils receives information on how to complete and submit the Free Application for Federal Student Aid (FAFSA) or the California Dream Act Application at least once before the pupil enters grade 12, in the manner described in new Section 51225.8 (effective: January 1, 2019).
3. ***Independent study; learning environments.*** The Petition's discipline procedures raise concern that petitioners are unfamiliar with applicable law where it states that students may be "involuntarily removed" from Audeo II for failing to comply with their Master Agreement. The Petition references Section 51747 for this proposition, but that Section states that upon a certain number of missed assignments, a pupil may be evaluated as whether s/he should return to a regular school program. The purpose of this evaluation is to prevent a student from dropping out of school, not to remove them. The Petition's disciplinary policy proposes to violate a student's right to attend school, Audeo II's legal duty to serve all students who wish to attend and not disenroll a student based on academic performance. (§ 47605(e)(4)(C).)

Further, District staff noted that Audeo II offers several learning opportunities, including independent study, home study, blended (independent study/online), and online learning. However, the Petition is unclear as to the extent to which all these settings are offered, if they are assigned based on family request and/or student need, if they are available for all grade spans or specific to a course request. At a minimum, charters must describe “grade levels” served and “the basic learning environment or environments” offered; descriptions need to be “substantive,” not simply “a listing of topics with little elaboration,” and must be “specific to the charter petition being proposed.” (Cal Code of Regs., tit. 5, § 11967.5.1(f)(1),(g).) Audeo II plans to serve grades TK-12, but the Petition reflects primarily high school enrollment of 260 students—with 0 students projected to enroll in TK-3 and only 4 projected to enroll in grades 4-6 in 2021-22. (Appendix C.) District staff found no evidence in the Petition (or in Appendix U or V) of curriculum offered for elementary grades. Audeo II petitioners were on notice of a similar finding by this District Board in 2016 regarding the lack of instructional methodology to meet the needs of these grades. Recruitment of elementary grade students would be deceptive given the Petition still does not reflect a program that would be of educational benefit to this age group.

4. ***Special Education.*** Charters must serve students with disabilities in the same manner as such students are served in district schools (§ 56145.) Audeo II is its own LEA, and solely responsible for providing special education services to its students. 20% of Audeo II's pupil population qualifies for special education/504 services; however, the Petition's financial documents (Appendices A and B) fail to detail whether any salaries are budgeted for instructional aides. District staff also found no affirmation or evidence in the Petition that Audeo II would provide special education services regardless of a student's district of residence, or that it would notify the student's district of residence when a student enters, leaves, or becomes eligible for special education services.

B. Governance Structure

1. ***Potential Conflicts of Interest:*** The Petition raises potential conflicts of interest given the close affiliation among Audeo Charter School and two other nonprofit public benefits corporations, Altus Institute and Student Success Programs. Audeo Charter School corporation operates: (1) *Audeo Charter School II* (in Carlsbad Unified School District); (2) *Audeo Charter School III* (in Escondido Union School District); (3) *Grossmont Secondary School* (in Grossmont Union School District); and (4) *Sweetwater Secondary School* (in Sweetwater Union School District). All four charters share the same three-member board of directors. Mary Bixby is the CEO of both Audeo Charter School corporation, and Student Success Programs corporation which operates The Charter School of San Diego and Audeo Charter School (in San Diego Unified School

District). Audeo II's Bylaws (Article V) state that upon "liquidation or dissolution, all properties and assets remaining ... shall be distributed to Student Success Programs." According to CA Secretary of State statements and IRS Form 900s, Mary Bixby was the former CEO of Altus Institute corporation, which currently has its principal office at Sweetwater Secondary School; Altus Institute's current Treasurer (Jane Gawronski) and trustee (David Crean) are also board members of Student Success Programs²; in 2015, Audeo Charter Schools contracted with Altus Institute for "program support" services; and Audeo II's Bylaws currently state that the purpose of Audeo Charter School is to teach the "Altus Model." In 2016, as a condition of approval, the CDE requested Audeo II remove Altus Institute, Inc. "as the sole statutory member" of Audeo Charter School corporation—presumably because as a sole statutory member, Altus Institute would be isolated from liability for Audeo Charter School and from the oversight authority of Audeo II's charter authorizer.

Audeo II petitioners do not transparently describe the affiliations of these inter-related corporations, making it difficult to identify related party transactions and conduct oversight. Since Audeo II's last renewal, charters are now expressly subject to the same transparency laws as non-charter schools—with its enactment of Section 47604.1, the Legislature expressed a desire to ensure ethical practices and accountability in charter operations. District staff was unable to discern from the Petition the extent to which Audeo II's costs of management are shared with its other charter schools. The State's Charter FCMAT guidance (2017) says that when nonprofits operate multiple charter schools, charter petitions "should have a policy that prohibits commingling funds to such an extent that they become blended... . If there is no intent to share resources between related charter schools operated by a nonprofit, the charter school's policy should state so." Audeo II contains no such policy, much less disclosure of the affiliation among related corporations with an overlapping CEO and principal offices.

Further, there is no provision in the Audeo II's Bylaws or in the Petition prohibiting contracts with a *non*-director designated employee who has a financial interest. This is necessary given that Audeo II's officers cover multiple schools with affiliated corporations, as explained above.

2. ***Failure to include new law banning for-profit operation.*** The Petition does not describe or affirm anywhere that Audeo II will comply with new prohibitions in Section 47604(b) (eff. July 1, 2019) on for-profit operations and certain services provided by a for-profit entity. Audeo II plans to procure human resources, business and fiscal services, curriculum

² See October 21, 2020 board agenda for The Charter School of San Diego <https://charterschool-sandiego.net/wp-content/uploads/2020/10/SSP-Agenda-October-21-2020.pdf>, and Audeo Charter School <https://www.audeocharterschool.net/wp-content/uploads/2020/10/SSP-Agenda-October-21-2020.pdf> [last visited on 11/21/2020].

development, professional development, property management and operational administration through “appropriately qualified third-party contractors,” though it does not identify those contractors nor does it comply with the requirement that charter petitions must “describe criteria ... and the procedure for selection of the contractor.” (Cal. Code of Regs., tit. 2, § 11967.5.1(c)(3)(A)(2).)

3. ***Lack of board member qualifications.*** Neither the petition nor its Appendix M describe the “relevant qualifications of all persons whom the petitioner nominates to serve on the governing body of the charter school” as required in Section 47605(h).
4. ***Parental Involvement.*** A charter’s governance structure must ensure parental involvement. (§ 47605(c)(5)(D).) District staff found no assurances that local parents in the District would be afforded effective participation in Audeo II operations. Audeo II’s Bylaws (Article VII, Sec. 6) say the Charter’s three (3) board members will each have a six (6) year term, except for the parent representative whose term can last four years. There is no provision in the Petition assuring that parents in the Carlsbad community, specifically, can participate on the Audeo Charter School board that oversees schools in multiple districts. The Petition includes that parental involvement will be ensured through students’ Master Agreements, yet parent participation in those agreements is a statutory requirement for independent study (§ 51749.6) not a substitute for the parental involvement required in the Charter Schools Act.
5. ***Number of Board Meetings; potential Brown Act violation.*** Audeo II’s Bylaws (Article VII, Sec. 17) state it will hold regular board meetings “at least three (3) times per year.” Audeo II’s website shows that in 2020, it had regular meetings (not special board meetings or workshops) in January 2020, June 2020, and October 2020. Petitioners were on notice of this District Board’s finding in 2016 that evidence of Audeo II’s minimal public governance practices raises substantial questions about the Charter’s commitment to openness, or its ability to ensure parental involvement in operation of its schools.

Further, Audeo II’s Bylaws (Article VII, Sec. 23) do not prohibit its board committees from taking final action on items requiring the approval of a board majority. If a committee has the power of the board, this raises potential Brown Act violations since “action taken” can only be by a board majority. (See Government Code, § 54952.6.)

C. **Financial Statements; Audits**

1. District staff could not analyze key areas of Audeo II’s operation due to the lack of detail in the Petition’s financial statements. Factors in recognizing an unrealistic financial plan are if the Petition’s budget

includes reasonable estimates of all anticipated expenditures for special education, reasonable costs for facilities, and budget notes that clearly described assumptions for staffing levels. (Cal. Code of Regs., tit. 5, § 11967.5.1(c)(3)(B).) Audeo II employees 4 full-time “other certificated positions” and .2 FTE “other classified” positions, but nowhere does the Petition indicate what those other positions are. As stated above, the Petition does not account for instructional aides necessary to support the 20% of Audeo II’s pupil population that qualifies for special education/504 services. Neither does the Petition include any lease agreement, so it is unclear if the budgeted amount of \$268,900 “for lease of its resource center” is adequate to cover Audeo II’s resource centers in North (3821 Plaza Drive) and South Carlsbad (6965 El Camino Real), and its administrative office (10170 Huennekens Street). District staff could only speculate that costs of administrative management are shared with other charter sites, because the Petition does not detail its accounting practices or if resources will be commingled with other sites.

2. The Petition states that in “the event that there is an audit finding or exception,” an audit committee will communicate with the chartering authority until “the Charter School has sufficiently responded to the exception... .” Charters must state “the manner in which audit exceptions and deficiencies shall be resolved *to the satisfaction of* the chartering authority.” (Cal. Code of Regs., tit. 5 § 11967.5.1(f)(9).)

D. Insurance

1. The Petition thinly states that “insurance amounts shall be determined by recommendation of the District and the Charter School’s insurance company”; and that Audeo II intends to enter into a MOU with the District, “wherein the Charter School shall indemnify the District for the actions of the Charter School.” Likelihood of a charter’s success depends on whether its petition budgets for “general liability, workers compensations, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance.” (Cal. Code of Regs., tit. 5, § 11967.5.1(c)(3)(C).) Without budgeting or proof of policy limits, or an actual indemnification clause, the Petition is not specific or substantive, and does not propose to protect Audeo II or its authorizer from potential liability for Audeo II’s acts or omissions, even if Audeo II will be operated by a nonprofit public benefit corporation.

E. Health and Safety

1. The Petition does not address new Section 234.6 (eff. Jan. 1, 2020), to ensure that specified information, including a link to the CDE’s resources on bullying and harassment prevention, is readily accessible in a prominent location on Audeo II’s internet website. Nor does it address new Sections 49557.5 (eff. Oct. 12, 2019) or 49014 (eff. Jan. 1, 2019)

regarding protections for students with unpaid school meal fees or any debts owed to the charter school.

2. The Petition does not address or indicate that Audeo II has complied with new Section 234.7 (eff. Jan. 1, 2018) which requires a charter to adopt the model policy of the California Attorney General addressing the charter's response to immigration enforcement, notification to parents/guardians, prohibition on the collection of information on the immigration status of students or their family members, and other requirements by July 1, 2018.
3. The Petition does not address or indicate that Audeo II has complied with new Sections 222.5 and 46015 (eff. Jan. 1, 2019) to notify its pregnant and parenting pupils (of particular relevance to DASS schools serving this high risk group) of their rights and options available under the law through annual school year welcome packets and through independent study packets.

F. Admission Preferences

1. In 2016, as a condition of approval, the CDE requested that Audeo II "change the proposed order of admission preferences" to align with Section 47605(e)(2)(B) "to state preferences in the following order: (1) pupils currently attending ACS II, and (2) pupils who reside within the boundaries of the Carlsbad Unified School District." Petitioners were also on notice of a similar finding by this District Board in 2016. Yet, the Petition continues to state that Audeo II shall give lottery admission preferences in the following order: "1. Siblings of students admitted to or attending the Charter School; 2. Residents of the District" contrary to law.

G. Suspension/Expulsion Procedures

1. As stated above, the Petition states that students may be "involuntarily removed" from Audeo II for failing to comply with their Master Agreement. Not only is such a policy inconsistent with Section 51747's requirement to evaluate whether a student should return to a regular school program, it is poised to violate a student's right to attend school, Audeo II's legal duty to serve all students who wish to attend, and not disenroll a student based on academic performance. (§ 47605(e).).
2. The Petition states its suspension and expulsion procedures "may be amended from time to time without the need to seek a material revision." It is inconsistent with sound educational practice if the Petition does not provide for authorizer input on what warrants material revision for discipline procedures, given that substantiated complaints of noncompliance with student discipline procedures is now a basis for nonrenewal in Section 47607(d).

H. Dispute Resolution

1. The Petition states that in the event of a dispute, costs of the mediator shall be split equally between the District and Audeo II." This hampers the District's legal options for resolving disputes. To the extent this process applies to the SBE as authorizer, in 2016 as a condition for approval, the CDE requested that Audeo II revise the Petition "to recognize that the SBE cannot be pre-bound to a contractual obligation to split the costs of mediation." The Petition raises further liability concerns where it requires the District to refer any student and parent complaints to Audeo II, without any assurances that the Charter will update the District of timely investigation and resolution of such a complaint. Petitioners were on notice of a similar finding by this District Board back in 2016. Unless petitioners intentionally meant to ignore these prior findings and conditions, they are clearly not familiar with the content of their Petition which is further indication it is unlikely to be successfully implemented. (See Cal. Code of Regs., tit. 5, §11967.5.1(c)(2).)

II. PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE CHARTER PETITION. [Ed. Code § 47605(c)(2); 5 CCR § 11967.5.1(c).]

- A. The specific findings of fact set forth above in paragraphs I.A through H are re-alleged and incorporated herein by reference. Said specific facts evidence that Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition.

III. THE CHARTER PRESENTS AN UNSOUND EDUCATIONAL PROGRAM. [Ed. Code § 47605(c)(1); Cal. Code Regs. [CCR], tit. 5, § 11967.5.1.]

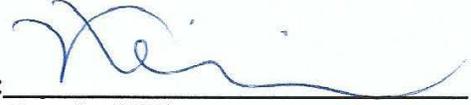
- A. The specific findings of fact set forth above in paragraphs I.A through H and II.A are re-alleged and incorporated herein by reference. Said specific facts evidence that Petitioner presents an unsound educational program.

Passed and adopted by the Carlsbad Unified School District Board of Trustees at a meeting held on this 9th day of December 2020 by the following vote:

[SIGNATURES TO FOLLOW ON NEXT PAGE]

AYE: 4
NO: 1
ABSTENTION: 0
ABSENT: 0

Dated: 12/9/2020

By: 
Veronica Williams
President, Board of Trustees
Carlsbad Unified School District

Dated: 12/9/2020

By: 
Elisa Williamson
Clerk, Board of Trustees
Carlsbad Unified School District



December 9, 2020

Via Email

bchurchill@carlsbadusd.net

Benjamin Churchill, Ed.D., Superintendent

Carlsbad Unified School District

6225 El Camino Real

Carlsbad, CA 92009

RE: Response to Findings for Denial of Audeo Charter School II Charter Petition

Dear Dr. Churchill:

We write in response to Carlsbad Unified School District's ("CUSD" or the "District") findings for denial of the Audeo Charter School II's ("Audeo II" or the "Charter School") charter renewal petition, contained in the District Board Resolution (the "Findings") emailed to me on November 24, 2020. Recognizing the myriad demands on District staff, heightened during the COVID-19 pandemic, we believe that the findings presented to the Board are legally defective, do not present an accurate review of the charter petition as a whole, and go far beyond the requirements of law in evaluating Audeo II's petition. We urge CUSD Board members to consider the following information in evaluating the Findings before casting your vote on our charter petition.

Overview of Law

Address: 6965 El Camino Real Spc. 202, Carlsbad, CA 92009

Website: www.audeo2.com

Phone: (858) 678-2050 Fax: (858) 552-9394

At the outset, we remind the District of the provisions of the Education Code that provides specific guidance to governing boards to approve the establishment of charter schools. Education Code Section 47605(c) states:

In reviewing petitions for the establishment of charter schools . . . the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system **and that establishment of charter schools should be encouraged.**

(Emphasis added.)

Education Code Section 47605(c) also provides the limited legal grounds on which a charter petition may be denied, as follows:

The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice and the interests of the community in which the school is proposing to locate. The governing board of the school district shall consider the academic needs of the pupils the school proposes to serve. **The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:**

- (1) The charter school **presents an unsound educational program** for the pupils to be enrolled in the charter school.
- (2) The petitioners are **demonstrably unlikely to successfully implement the program** set forth in the petition.
- (3) [Signature requirement not applicable to renewal charters].
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (e) [of Education Code Section 47605].
- (5) The petition does not contain **reasonably comprehensive descriptions** of [the 15 required elements.]
- (6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school . . .

(emphasis added.)

Accordingly, under the Charter Schools Act, a school district board of education is required to approve a charter petition, unless it makes specific written factual findings to support a denial based on the grounds enumerated under Section 47605 – “specific to the particular petition” before the chartering authority.

Further, and more importantly, the Board may not deny the Audeo II charter petition for renewal unless it makes written findings, setting forth specific facts to support the findings, **that the closure of the charter school is in the best interest of pupils.** (Education Code Section 47607(c)(7).) Because of the current state of affairs in California and across the nation with the COVID-19 pandemic, along with the critical importance of academic and learning continuity, this standard is a very high bar to reach at this time. This set of required findings, with factual support, is in addition to the findings noted above that are required by Education Code Section 47605(c). And conspicuously absent from the District resolution is the finding (and any supporting evidence) that the closure of the charter school is in the best interest of pupils. Not only has the District not met this legal threshold, the California Department of Education's most recent summary findings from its oversight visit demonstrate that keeping Audeo II open is certainly in the best interest of the students:

From: Craig Heimbichner <CHeimbichner@cde.ca.gov>
Sent: Friday, February 14, 2020 10:32 AM
To: Veronica Ballman <vballman@audeo2.com>
Cc: Tim Tuter <ttuter@altussschools.net>
Subject: Summary of Site Visit

Dear Veronica,

Thank you for the professional preparation and support that you, your team, and all of Audeo Charter II (ACII) gave to the annual monitoring visit from the California Department of Education (CDE) that occurred on February 6-7, 2020. The visit was a pleasure and in many respects, impressive. In addition, the full presentation in the morning by you and other members of both Audeo II and the Charter School of San Diego was exceptionally informative, detailed, and comprehensive.

As noted in the exit meeting, ACII was found to be compliant in all areas under CDE oversight, in accordance with the Memorandum of Understanding and the ACII Charter Petition. A formal letter will be forthcoming from the CDE to state this finding as well.

In addition, I once again wish to congratulate ACII in providing an exemplary implementation of the nonclassroom based charter school model. Staff members and teachers continue to exhibit high qualifications, high standards, and passion in delivering data-driven, personalized instruction to the students. Social-emotional learning and support for the students, including intervention, is also exceptional. The review of data and modification of instructional practice was notable in the changes to the math assessments as well as the daily practices of you and your teachers. I encourage this continuous review and monitoring of data and daily instruction as you continue to raise student achievement. Your leadership, and the organization, planning, teamwork, communication, transparency, and dedication to a continuous improvement model made it clear that the vision of the ACII charter petition is being implemented throughout the school.

Once again, congratulations, and best wishes in working with the students and families of ACII in the years ahead.

Sincerely,

Craig Heimbichner
Education Programs Consultant
Charter Schools Division, State Board of Education Charter Schools Oversight Unit
California Department of Education
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Sacramento CA 95814
916-323-5759
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The Findings are not valid grounds on which approval for the Audeo II Charter Petition may be denied. As demonstrated herein, the Findings are based on inaccurate facts, inaccurate legal interpretation, or go beyond the requirements set forth in law, and therefore the findings constitute an impermissible basis for denial of the Charter. Moreover, many of the Findings concern matters that could have been resolved by a collaborative discussion with District staff, or through a separate memorandum of understanding with the District. We were disappointed that neither of these options were presented by the District.

In summary, given the overall strength of Audeo II's charter petition, the team of professionals behind the Charter School, the support of interested teachers and students, and the value of and need for the Charter School's highly successful program within the community, the charter petition merits approval. The Findings in the Staff Report do not support denial in these circumstances.

Response to Findings

Below, please find excerpts of the findings, in the order in which they were presented (in *italicized* text), immediately followed by the Charter School's response (in plain text).

I. The Charter Does Not Contain Reasonably Comprehensive Descriptions of All Required Elements.

A. Educational Program

1. Academic Performance

District Finding: District staff noted that between 2018 and 2019, Audeo II's performance on the CA School Dashboard declined in Mathematics by 15.4 points, and its rate of chronic absenteeism increased by 4.4%. Under its alternative metrics, the Petition states that Audeo II "is a high-performing DASS school compared to similar DASS schools in the district and communities it serves," and that it "outperforms the majority of DASS schools in serving its English Learners." ...

This context is relevant for concluding that these and other factual findings described below far outweigh Audeo II's reported academic increases and justify nonrenewal.

Audeo II Response: This finding is an inaccurate basis for denial of the charter renewal petition. As stated in the charter, Audeo II is categorized as a DASS school and thus its renewal is must be considered only through the limited lens of the academic criteria in Education Code Section 47607(c)(7). In accordance with Education Code Section 47607(c)(7), the default outcome is for the chartering authority to approve a charter renewal petition for a DASS school. The chartering authority can only deny a charter renewal if it makes written findings, setting forth specific facts to support the findings, that the closure of the charter school is in the best interest of pupils.

Audeo II included a detailed description of its students' performance during the course of the current charter term, on both standardized and internal assessments, along with non-academic data and survey results, to provide a comprehensive overview of Audeo II's successes from the last charter term. Comparison data was included to show Audeo II's performance against other similar schools in the District for contextual purposes only; such comparison data is not a legal requirement for purposes of renewing a DASS school under Section 47607(c)(7).

The District did not make any written findings that the closure of Audeo II is in the best interest of pupils, and did not include any specific facts to support such a finding for denial of the renewal petition.

Audeo II included a detailed description of its students' performance during the course of the current

charter term, on both standardized and internal assessments, along with non-academic data and survey results, to provide a comprehensive overview of Audeo II's successes from the last charter term. Comparison data was included to show Audeo II's performance against other similar schools in the District and surrounding areas for contextual purposes only; such comparison data is not a legal requirement for purposes of renewing a DASS school under Section 47607(c)(7). Furthermore, when Audeo II compares its Dashboard outcomes to other local DASS schools, the San Diego County DASS schools' averages, and the state DASS schools averages, its overall performance is significantly higher in the majority of areas. For example, District staff noted Audeo II's performance on the California School Dashboard declined in Mathematics by 15.4 points. Figure 4 in the petition (pg. 16 of 706 in the Combined File) demonstrates many of the surrounding DASS schools also decreased in Math between 2018 and 2019. However, Audeo II students were much closer to meeting the standard in Math than any of the comparison schools were. In fact, Audeo II's distance from standard far exceeds the comparison schools, by 81.2-142.2 points. Audeo II's distance from standard exceeds the San Diego County DASS school's average by 91.9 points and exceeds the state DASS school's average by 96.9 points.

2. Requirements for High School Students

District Finding: Renewal charters must describe applicable new laws. (§ 47607(b).) District staff did not find evidence in the Petition of whether, commencing with the 2020-21 school year, Audeo II will ensure that each of its pupils receives information on how to complete and submit the Free Application for Federal Student Aid (FAFSA) or the California Dream Act Application at least once before the pupil enters grade 12, in the manner described in new Section 51225.8

Audeo II Response: Education Code Section 47607(b) requires renewal petitions to include "a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed." (Emphasis added.) There is no requirement that every single legal requirement applicable to charter schools must be recited in a charter petition. Thus, this finding is insufficient grounds for denial of the renewal petition.

Audeo II clearly states in the "Affirmations and Declaration" section of the charter, "the Charter School will follow any and all federal, state, and local laws and regulations that apply to the Charter School." Audeo II in no way suggests that it would not comply with the above-referenced requirement.

3. Independent study; learning environments.

District Finding: The Petition's discipline procedures raise concern that petitioners are unfamiliar

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with applicable law where it states that students may be "involuntarily removed" from Audeo II for failing to comply with their Master Agreement.

Further, District staff noted that Audeo II offers several learning opportunities, including independent study, home study, blended (independent study/online), and online learning. However, the Petition is unclear as to the extent to which all these settings are offered, if they are assigned based on family request and/or student need, if they are available for all grade spans or specific to a course request.

Audeo II Response: This Finding is based on both inaccurate facts and inaccurate legal interpretations. Education Code Section 51747(c) does not prohibit students from being involuntarily removed in accordance with the procedures outlined in Section 47605(c)(5)(J)(iii). The charter in no way suggests that Audeo II would not comply with the provisions of Section 51747(c)(4); where necessary, Audeo II will conduct an evaluation of whether or not the pupil should be allowed to continue in independent study as written in the Independent Study Board Policy. However, should situations arise where it is determined that independent study is no longer in the best interest of the student, Audeo II may exercise involuntary removal procedures in accordance with all due process procedures mandated by Education Code Section 47605(c)(5)(J)(iii) to remove a student from the Charter School. Education Code Section 51747 applies to school districts and charter schools alike; most nonclassroom-based charter schools, including Audeo II, do not operate a "regular school program" that an independent study student could simply be moved into. The charter in no way violates provisions allowed under law.

California Code of Regulations, Title 5, Section 11967.5.1 is applicable for charter petitions submitted to the State Board of Education for review. As such, the District's reliance on it is an impermissible ground for denial of Audeo II's renewal petition by CUSD. Nonetheless, and consistent with Section 11967.5.1(f)(1), students and their parent or guardian, in consultation with their teacher, will decide which is the best learning option for student. Students in Grades 6-12 will have the learning options of independent study, blended (independent study/online), and online learning, while students in grades TK-5 have the option of home study. Students in grades 6-12 may incorporate all available learning options throughout their enrollment to maximize engagement and academic success.

4. Special Education

District Finding: 20% of Audeo II's pupil population qualifies for special education/504 services; however, the Petition's financial documents (Appendices A and B) fail to detail whether any salaries are budgeted for instructional aides. District staff also found no affirmation or evidence in the Petition that Audeo II would provide special education services regardless of a student's district of residence,

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or that it would notify the student's district of residence when a student enters, leaves, or becomes eligible for special education services.

Audeo II Response: It is puzzling that, instead of offering praise to a nonclassroom-based charter school serving a student population that is 20% students with disabilities, the District has elected to highlight a truly picayune budgetary item to take issue with. Aside from being inaccurate, this finding strays far from any accepted definition of "reasonably comprehensive." Moreover, Audeo II provided the corresponding Full-Time Equivalent ("FTE") for fiscal years 2021-22 to 2024-25. See Table 3 on page 152 of 692. As indicated in Table 3, Audeo II budgeted for object code 1100 and object code 1900. Object Code 1900 is for Other Certificated Teacher Resource ("CTR"). CTR are instructional support staff that are certificated employees with credentials who provide instructional support to general education teachers and special education teachers. We comply with regulations and we ensure that the special education teachers, Education Specialists, or Special Education Resource Specialists have a caseload of 28:1.

Audeo II does not suggest or indicate that it would not provide special education services based on a student's district of residence. As stated in the charter, "Audeo Charter School II is strongly committed to serving the needs of all students enrolled in its program. Students with an IEP are welcomed and supported." (Charter, p. 66.)

As to serving all students with disabilities, regardless of their district of residence, the charter states: "Audeo Charter School II shall comply with all applicable state and federal laws in serving students with disabilities, including, but not limited to, Section 504 of the Rehabilitation Act ('Section 504'), the Americans with Disabilities Act ('ADA') and the Individuals with Disabilities Education Improvement Act ('IDEA')." (Charter, p. 66.) Audeo II affirms compliance with all applicable legal requirements, including any applicable requirements to provide notice to the student's district of residence.

B. Governance Structure

1. Potential Conflicts of Interest

District Finding: *The Petition raises potential conflicts of interest given the close affiliation among Audeo Charter School and two other nonprofit public benefits corporations, Altus Institute and Student Success Programs. Audeo Charter School corporation operates: (1) Audeo Charter School II (in Carlsbad Unified School District); (2) Audeo Charter School III (in Escondido Union School District); (3) Grossmont Secondary School (in Grossmont Union School District); and (4) Sweetwater Secondary*

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School (in Sweetwater Union School District). All four charter schools share the same three-member board of directors. Mary Bixby is the CEO of both Audeo Charter School corporation and Student Success Programs corporation. Audeo II's bylaws state that upon dissolution the corporation's assets shall be distributed to Student Success Programs, Inc. Mary Bixby is the former CEO of Altus Institute.

Audeo II petitioners do not transparently describe the affiliations of these inter-related corporations, making it difficult to identify related party transactions and conduct oversight.

Further, there is no provision in the Audeo II's Bylaws or in the Petition prohibiting contracts with a non-director designated employee who has a financial interest. This is necessary given that Audeo II's officers cover multiple schools with affiliated corporations, as explained above.

Audeo II Response: This finding is purely speculative, based upon outdated or factually incorrect information, and is therefore unsupported and not a permissible basis to justify nonrenewal.

The District suggests that there may be a potential conflict of interest but does not actually identify facts to support such a conclusion.

First, as the legal counsel for the District is fully aware, there is nothing unlawful about a single nonprofit operating multiple charter schools. To imply otherwise is an effort to create a finding where none exists.

Second, there is nothing unlawful about a person splitting their time in an administrative role between two separate organizations that operate separate charter schools.

Third, as the District notes the Audeo Charter School corporation removed Altus Institute, Inc. as the sole statutory member of the corporation to ensure that Audeo Charter School corporation is solely responsible for the operations of its own charter schools (this was completed in Sept. 2016). The fact that Mary Bixby used to be listed as the former officer of Altus Institute means nothing; the current documents publicly available clearly indicate that the CEO of Altus Institute is Jamie Hernandez and Alfred Ferris is the secretary and treasurer.

Fourth, there is nothing unlawful about one nonprofit corporation indicating that, upon dissolution, it would distribute its assets (upon approval by the Atty. Gen.) to another nonprofit that operates California public charter schools. In fact, the distribution of public assets from one corporation to another corporation operating public schools should be encouraged.

The Board Resolution argues that the Audeo II petitioners do not transparently describe the affiliations of these interrelated corporations -- which makes the assumption that they are interrelated when they are not. There are no fee sharing arrangements between Audeo Charter School and Student Success Programs corporations. Nor are there any overlapping board members between the two corporations.

Finally, as to the Bylaws, there is no legal requirement for the corporate bylaws to include a section addressing non-Board member conflicts of interest, and this does not in any way indicate that Audeo II would not comply with applicable law. Audeo II affirms that any non-Board member conflicts would be addressed by applicable law and the charter school's conflict of interest policies which fully comply with the Political Reform Act and Govt. Code 1090.

Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

2. Failure to include new law banning for-profit operation

District Finding: The Petition does not describe or affirm anywhere that Audeo II will comply with new prohibitions in Section 47604(b) (eff. July 1, 2019) on for-profit operations and certain services provided by a for-profit entity.

Audeo II Response: This Finding is unsupported. The charter affirms compliance with all applicable legal requirements, which necessarily includes Education Code Section 47604(b). Audeo II in no way suggests that it will procure services from contractors in violation of existing law. Again, 5 CCR 11967.5.1 is criteria applicable for review of petitions by the SBE, and is insufficient grounds for findings by CUSD.

3. Lack of board member qualifications

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District Finding: Neither the petition nor its Appendix M describe the “relevant qualifications of all persons whom the petitioner nominates to serve on the governing body of the charter school” as required in Section 47605(h).

Audeo II Response: Education Code Section 47605(h) applies to new charter petitions, and not renewals. This is because it seeks bios of Board members whom the “petitioner” nominated to serve on the corporate Board. Mr. Aschbrenner is the petitioner of Audeo II. Audeo Charter School was incorporated in 2000. Mr. Aschbrenner was not a representative of the corporation at that time, and thus could not have nominated Board members.

In Appendix M, page 375 of 692 of the charter, Audeo II provided the names, contact information, and terms of Board members.

4. Parental Involvement

District Finding: A charter’s governance structure must ensure parental involvement. (§ 47605(c)(5)(D).) District staff found no assurances that local parents in the District would be afforded effective participation in Audeo II operations.

Audeo II Response: This Finding is unsupported by fact or law. While Education Code Section 47605(c)(5)(D) requires a reasonably comprehensive description of parental involvement in the governance of the charter school, there is no additional requirements on how the scope of that parental involvement should look. Audeo II is committed to ensuring parental involvement in the governance of the Charter School through several different capacities, one of which includes parents the opportunity to serve directly on the Board of Directors. Parents are also encouraged to attend the Board meetings and share input directly with the Board of Directors. They’re given opportunities to participate in the ELAC, and are directly involved in their students’ education. Parents are surveyed regular for their input on the Charter School’s academic program, learning environment, student support services and safety.

5. Number of Board Meetings; potential Brown Act violation

District Finding: Audeo II’s Bylaws (Article VII, Sec. 17) state it will hold regular board meetings “at least three (3) times per year.” Audeo II’s website shows that in 2020, it had regular meetings (not

special board meetings or workshops) in January 2020, June 2020, and October 2020. Petitioners were on notice of this District Board's finding in 2016 that evidence of Audeo II's minimal public governance practices raises substantial questions about the Charter's commitment to openness, or its ability to ensure parental involvement in operation of its schools.

Further, Audeo II's Bylaws (Article VII, Sec. 23) do not prohibit its board committees from taking final action on items requiring the approval of a board majority. If a committee has the power of the board, this raises potential Brown Act violations since "action taken" can only be by a board majority. (See Government Code, § 54952.6.)

Audeo II Response: The first part of this Finding is an impermissible basis for denial of a charter, as there is no legal requirement imposing a specific number of Board meetings on a charter school's board of directors.

The second part of this Finding is inaccurate. In accordance with Corporations Code Section 5212(a), committees shall have "all the authority of the board" except with respect to the specific instances outlined in law. Further, Section 5212(b) further clarifies, "A committee exercising the authority of the board shall not include as members persons who are not directors. However, the Board may create other committees that do not exercise the authority of the board and these other committees may include persons regardless of whether they are directors." As such, provided that a committee is comprised solely of directors and no non-directors, that committee can exercise the authority of the board.

C. Financial Statements; Audits

District Finding: *District staff could not analyze key areas of Audeo II's operation due to the lack of detail in the Petition's financial statements. ... Audeo II employees 4 full-time "other certificated positions" and .2 FTE "other classified" positions, but nowhere does the Petition indicate what those other positions are. As stated above, the Petition does not account for instructional aides necessary to support the 20% of Audeo II's pupil population that qualifies for special education/504 services. Neither does the Petition include any lease agreement, so it is unclear if the budgeted amount of \$268,900 "for lease of its resource center" is adequate to cover Audeo II's resource centers in North (3821 Plaza Drive) and South Carlsbad (6965 El Camino Real), and its administrative office (10170 Huennekens Street).*

Audeo II Response: Audeo Charter School II takes a very conservative approach in developing its financial planning. With the projected enrollment and projected Average Daily Attendance shown on

Table 2 of the Budget Assumptions in *Appendix A, page 151 of 692*, Audeo II provided the corresponding Full-Time Equivalent (“FTE”) for fiscal years 2021-22 to 2024-25. See Table 3 on page *152 of 692*. As indicated below in Table 3, Audeo II budgeted for object code 1100 and object code 1900. Object Code 1900 is for Other Certificated Teacher Resource (“CTR”). CTR are instructional support staff that are certificated employees with credentials who provide instructional support to general education teachers and special education teachers. We comply with regulations and we ensure that the special education teachers, Education Specialists, or Special Education Resource Specialists have a caseload of 28:1.

Table #3: FULL-TIME EQUIVALENT (FTE) FACULTY for 2021-22 to 2024-25

POSITIONS	OBJECT CODE	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
Teachers (Gen. Ed & Special Ed)*	1100	12.00	12.00	12.00	12.00
Cert Pupil Support (Counselors/Nurse/Psych)	1200	0.98	0.98	0.98	0.98
Cert. Supervisor & Administrator	1300	0.43	0.43	0.43	0.43
Other Certificated (CTR)	1900	4.00	4.00	5.00	5.00
Classified Supervisor/Admin	2300	0.25	0.25	0.25	0.25
Clerical, Technical & Office Staff	2400	2.50	2.50	2.50	2.50
Other Classified (Administrative Support)	2900	0.20	0.20	0.20	0.20
TOTAL FTE POSITIONS BUDGETED		20.36	20.36	21.36	21.36

Moreover, facility lease costs reflected on the budgets are based on the actual costs of the lease per the Lease Agreements. Audeo II provided the exact addresses of the facilities, which directly meets the legal requirements. There is no legal requirement to provide a lease agreement, and Audeo II would have done so, if the District had simply asked for it. Additionally, an “E” Occupancy has been obtained from the City for these sites. Although Audeo II is a Non-Classroom Based Program, we adhere to the requirements of the State Board of Education that an “E” Occupancy must be obtained for resource centers.

District Finding: The Petition states that in “the event that there is an audit finding or exception,” an audit committee will communicate with the chartering authority until “the Charter School has sufficiently responded to the exception... .” Charters must state “the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.” (Cal. Code of Regs., tit. 5 § 11967.5.1(f)(9).)

Audeo II Response: This Finding is inaccurate. The District again only references an excerpt from the Charter, and fails to consider the whole description outlined in Element I. Specifically, the Charter states: “In the event that there is an audit finding or exception, the audit committee will develop a specific remediation plan which focuses on the issue(s) identified and presents a timeline for rectifying the concern, which shall be submitted to the Audeo Charter School Board of Directors with recommendations on how to address the concern. A remediation plan shall be developed that identifies the specific use of funds/resources and/or policies/procedures needed for improvement. This plan shall be submitted to the District. Open communication with all parties involved in the resolution will be maintained until it is determined that the Charter School has sufficiently responded to the exception and has met the requirements as applicable under state law.” (Charter, p.112.)

As indicated in the charter, Audeo II intends to communicate with all parties involved in the resolution of any audit findings or exceptions, including the District, until Audeo II has sufficiently responded and met requirements as applicable under state law.

D. Insurance

District Finding: The Petition thinly states that “insurance amounts shall be determined by recommendation of the District and the Charter School’s insurance company”; and that Audeo II intends to enter into a MOU with the District, “wherein the Charter School shall indemnify the District for the actions of the Charter School.” ... Without budgeting or proof of policy limits, or an actual indemnification clause, the Petition is not specific or substantive, and does not propose to protect Audeo II or its authorizer from potential liability for Audeo II’s acts or omissions, even if Audeo II will be operated by a nonprofit public benefit corporation.

Audeo II Response: Audeo Charter School II belongs to the San Diego County Schools Risk Management Joint Powers Authority, with coverages for real and personal property, cyber liability,

commercial general liability, auto liability, employment practices liability, auto physical damage and workers' compensation. Moreover, Audeo II has coverage with the Schools Excess Liability Fund – SELF with limits of \$50,000,000. Liability insurance is budgeted under the object code of 5400.

In addition to protections from liability codified in the Education Code, the charter also affirms Audeo II's intent to protect the chartering authority from potential liability. Audeo II clearly states in the charter: "The District Board of Education shall be named as an additional insured on all policies of the Charter School" (Charter, p.139), and "the Charter School shall indemnify the District for the actions of the Charter School under this charter." (Charter, p. 141.)

Further, Audeo II also acknowledges the indemnification for its own Board, officers, agents, and employees: "The corporate bylaws of Audeo Charter School shall provide for indemnification of the Board, officers, agents, and employees, and Audeo Charter School shall purchase and maintain general liability insurance, Board Members' and Officers' insurance, and fidelity bonding to secure against financial risks." (Charter, p. 141.)

E. Health and Safety

District Finding: The Petition does not address new Section 234.6 (eff. Jan. 1, 2020), to ensure that specified information, including a link to the CDE's resources on bullying and harassment prevention, is readily accessible in a prominent location on Audeo II's internet website. Nor does it address new Sections 49557.5 (eff. Oct. 12, 2019) or 49014 (eff. Jan. 1, 2019) regarding protections for students with unpaid school meal fees or any debts owed to the charter school.

Audeo II Response: The charter plainly states that Audeo II will adopt procedures for preventing acts of bullying, and make specific reference to the CDE's resource documents. This finding is unfounded. Education Code Section 234.6 outlines a list of information that should be posted on an LEA's existing internet website, but there is no legal requirement that charter schools must affirm compliance with each of the specific requirements outlined in Section 234.6 in its charter petition.

Further, as stated above, Audeo II clearly states in the "Affirmations and Declaration" section of the charter, "the Charter School will follow any and all federal, state, and local laws and regulations that apply to the Charter School" including, but not limited to the list of affirmations included in the petition. Audeo II in no way suggests that it would not comply with the above-referenced requirements.

District Finding: The Petition does not address or indicate that Audeo II has complied with new Section 234.7 (eff. Jan. 1, 2018) which requires a charter to adopt the model policy of the California Attorney General addressing the charter's response to immigration enforcement, notification to parents/guardians, prohibition on the collection of information on the immigration status of students or their family members, and other requirements by July 1, 2018.

Audeo II Response: As stated above, Audeo II affirms "the Charter School will follow any and all federal, state, and local laws and regulations that apply to the Charter School." Audeo II's Board Policy # 6020, Resource Center and School Volunteer, Visitation, and Removal Policy, incorporates all elements of the California Attorney General's model policy regarding response to immigration enforcement, notification to parents/guardians, and prohibition on collection of certain kinds of information. The Charter School gladly would have shared this policy, if requested.

District Finding: The Petition does not address or indicate that Audeo II has complied with new Sections 222.5 and 46015 (eff. Jan. 1, 2019) to notify its pregnant and parenting pupils (of particular relevance to DASS schools serving this high risk group) of their rights and options available under the law through annual school year welcome packets and through independent study packets.

Audeo II Response: Audeo II affirms "the Charter School will follow any and all federal, state, and local laws and regulations that apply to the Charter School." As part of the process to notify and support pregnant and parenting pupils, the School Nurse is assigned to provide the necessary information and guidance. A Pregnant and Parenting Resource Guide is given to, and reviewed with, all pregnant and parenting pupils to notifying them of their rights, along with information on a variety of supports that include; 211 Resource, Lamaze, Breastfeeding & Parenting Classes, Immunizations, WIC, Medi-Cal, Mental Health/Postpartum Depression, Shaken Baby Syndrome, Child Abuse Prevention Education Flyer, etc. This resource guide also includes an MD form to indicate student's access to prenatal care and if there are any specific instructions to support the student through school.

The School Nurse continues to provide support to each pregnant and parenting pupil during prenatal, delivery, post-partum and parenting. The School Nurses' case management of these students also includes: Prenatal Care, Accommodations and Leave Options, Family Support, Self-Care and Symptom Check & Education, Public Health Nurse Referral, Lamaze, Breastfeeding & Parenting Classes, WIC, Health Coverage, School Progress/Options, No Academic Penalty, Uniform Compliant Policy, etc. Pregnant and parenting pupils at Audeo II choose the school because they benefit from individual support, flexible scheduling options, and a variety of resources to help them meet all their needs.

F. Admission Preferences

District Finding: *In 2016, as a condition of approval, the CDE requested that Audeo II “change the proposed order of admission preferences” to align with Section 47605(e)(2)(B) “to state preferences in the following order: (1) pupils currently attending ACS II, and (2) pupils who reside within the boundaries of the Carlsbad Unified School District.” Petitioners were also on notice of a similar finding by this District Board in 2016.*

Audeo II Response: This finding is based on inaccurate legal interpretation. And, importantly, the CDE has reversed its position on this issue, as demonstrated by the charter petitions approved by the State Board of Education in the intervening years.

The Charter does comply with applicable law. Consistent with Education Code Section 47605(e)(2)(B), Audeo II ensures that in the event of a public random drawing, existing students of Audeo II are exempt from the lottery, as they are guaranteed enrollment in the following school year. Thereafter, admission preferences are provided to siblings of students admitted to or attending Audeo II, to residents of the District, and to all other students, which is also consistent with the admission preferences outlined in Section 47605(e)(2)(B). Education Code Section 47605(e)(2)(B) does not specify *how much* preference must be given to District residents. Audeo II agrees to “adhere to the requirements related to admission preferences as set forth in Education Code Section 47605(e)(2)(B)(i)-(iv).” (Charter, page 110.)

G. Suspension/Expulsion Procedures

District Finding: *As stated above, the Petition states that students may be “involuntarily removed” from Audeo II for failing to comply with their Master Agreement.*

Audeo II Response: See Response to Finding I.A.3 above.

District Finding: *The Petition states its suspension and expulsion procedures “may be amended from time to time without the need to seek a material revision.” It is inconsistent with sound educational practice if the Petition does not provide for authorizer input on what warrants material revision for discipline procedures, given that substantiated complaints of noncompliance with student discipline*

procedures is now a basis for nonrenewal in Section 47607(d).

Audeo II Response: This finding is inaccurate and takes a portion of the Charter out of context in order to speculate about some imagined wrongdoing. The Charter states: "This shall serve as the Charter School's policy and procedures for student suspension, expulsion, and involuntary removal, and it may be amended from time to time without the need to seek a material revision of the charter so long as the amendments comport with legal requirements." (Charter, p. 111.) The Charter narrowly states that the Charter School may amend its Suspension and Expulsion Policy and Procedures as required to comply with applicable updates to the law. The Charter does not indicate that Audeo II would be making any type of amendments to the Policy and Procedures without seeking a material revision.

H. Dispute Resolution

District Finding: *The Petition states that in the event of a dispute, costs of the mediator shall be split equally between the District and Audeo II.* This hampers the District's legal options for resolving disputes. To the extent this process applies to the SBE as authorizer, in 2016 as a condition for approval, the CDE requested that Audeo II revise the Petition "to recognize that the SBE cannot be pre-bound to a contractual obligation to split the costs of mediation." The Petition raises further liability concerns where it requires the District to refer any student and parent complaints to Audeo II, without any assurances that the Charter will update the District of timely investigation and resolution of such a complaint. Petitioners were on notice of a similar finding by this District Board back in 2016.

Audeo II Response: This finding is inaccurate and unsupported. Element N of the Charter clearly states at the beginning: "Audeo II recognizes that it cannot bind the District to a dispute resolution procedure to which the District does not agree. The following policy is intended as a starting point for a discussion of dispute resolution procedures. The Charter School is willing to consider changes to the process outlined below as suggested by the District." (Charter, p. 134.) Thus, the dispute resolution process outlined in the charter is not the final procedures that the District is bound to comply with. As such, any suggestion that this proposed policy "hampers the District's legal options for resolving disputes" is unsupported by the language in the charter. As indicated in the charter, Audeo II remains committed to engage in a good faith discussion with the District to identify a dispute resolution process that is agreeable to both parties.

Further, the Charter specifically states that "any complaints or reports regarding such disputes not related to a possible violation of the charter or law" shall be referred to the Charter School by the District, in order for Audeo II to resolve such matters in accordance with its internal dispute resolution procedures, as these are internal matters. (Charter, p.135.) Audeo II also recognizes the District's

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oversight rights and responsibilities as an authorizer and shall ensure all legally required information is provided to the District.

II. Petitioners are Demonstrably Unlikely to Successfully Implement the Program Set Forth in the Charter Petition.

District Finding: The specific findings of fact set forth above in paragraphs I.A. through H and II.A are re-alleged and incorporated herein by reference. Said specific facts evidence that Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition..

Audeo II Response: See responses above to Findings I.A through H and II.A.

III. The Charter Presents an Unsound Educational Program.

District Finding: The specific findings of fact set forth above in paragraphs I.A. through H and II.A are re-alleged and incorporated herein by reference. Said specific facts evidence that Petitioner presents an unsound educational program.

Audeo II Response: See responses above to Findings I.A through H and II.A.

* * *

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Audeo II Charter School looks forward to any additional questions from the District or its Board of Education, and collaboration with your office regarding its charter petition. Should you wish to discuss our responses to any of the above findings or require additional information, please do not hesitate to contact me at waschbrenner@altuschools.net or (760) 473-6075 anytime.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wade Aschbrenner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wade Aschbrenner
Lead Petitioner