

ATTACHMENT 1

Good Standing Confirmation Form
Downtown College Preparatory - El Primero

California School Finance Authority (CSFA)
Good Standing Confirmation Form
State Charter School Facility Grant Program (SB740)

Downtown College Preparatory (43696664330585) has applied to the above CSFA Program(s). CSFA is requesting that the Chartering Authority provide a response to the declarations below to consider this school's eligibility for Program funds. An eligible Program Applicant must satisfy all three of the following conditions: 1) compliance with the terms of its Charter Agreement, 2) no pending or outstanding Notices of Violation described in Education Code (EC) §47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in EC §47607(h).

An unreturned form will be presumed an acknowledgment that there are no outstanding compliance, violation, or revocation issues for **Downtown College Preparatory**.

Please check all the boxes that apply:

1) Downtown College Preparatory is NOT in compliance with the terms of its Charter Agreement with San Jose Unified.

If checked, please provide or attach an explanation:

Please see next page for explanation.

2) Downtown College Preparatory has one or more pending or outstanding Notices of Violation described in EC §47607(g).

3) Downtown College Preparatory has one or more pending or outstanding Notices of Intent to Revoke described in EC §47607(h).

If 2 or 3 is checked, please select the basis for the Notice(s) from the following:

- Committed a material violation of any of the conditions, standards, or procedures set forth in the Charter Agreement.
- Failed to meet or pursue any of the pupil outcomes identified in the Charter Agreement.
- Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement.
- Violated any provision of law.

If 2 or 3 is checked, please provide or attach an explanation:

4) At this time, Downtown College Preparatory is in compliance with the terms of its Charter Agreement, has no pending or outstanding Notices of Violation described in EC §47607(g), and has no unresolved or outstanding Notices of Intent to Revoke described in EC §47607(h).

I hereby certify that to the best of my knowledge and belief, this information is true and correct. This form was completed based on information as of this date and does not reflect future determinations of compliance or violations.



Signature

August 21, 2020

Date

Veronica Lara

Printed Name

Manager, Internal Audit

Title

The sole purpose of this form is to establish CSFA Program eligibility based on the date signed. This form is for internal use only.

California School Finance Authority (CSFA)
Good Standing Confirmation Form
State Charter School Facility Grant Program (SB740)

The San José Unified Board of Education voted to renew the petition for DCP – El Primero Charter School (Downtown College Preparatory) on December 12, 2019. Agenda item J.1. can be accessed via the following URL:

<https://agendaonline.net/public/Meeting.aspx?AgencyID=123&MeetingID=21137&AgencyTypeID=1&IsArchived=True>

The San José Unified School District determined that the academic performance of students attending Downtown College Preparatory compared less favorably to the academic performance of San José Unified comparison high schools. These results were consistent across multiple measures as evidenced by the available public data through the California School Dashboard and Data Quest.

With the overall academic performance of Downtown College Preparatory being less than the academic performance of San José Unified comparison high schools, the renewal process included a requirement that Downtown College Preparatory receive and implement advice and assistance from the California Collaborative for Educational Excellence, at no cost to Downtown College Preparatory. Despite San José Unified agreeing to bear the cost, Downtown College Preparatory has not received nor implemented any advice and assistance from the California Collaborative for Educational Excellence.

The San José Unified School District has general liability insurance for sexual molestation, auto liability, errors and omissions, and employment practices liability of \$50 million for each occurrence, with an additional \$50 million of excess coverage. This level of insurance to safeguard San José Unified's financial security became more important with the passage of Assembly Bill 218 in 2019. Effective January 1, 2020, California's Code of Civil Procedure and Government Code were amended specific to damages, childhood sexual assault, and statute of limitations. In brief, the statute of limitations for claims of childhood sexual assault have been extended and a three-year window to file past claims, regardless of statute of limitations, was opened. While San José Unified had previously updated its liability insurance for a variety of reasons, this level of coverage became an important safeguard for public schools throughout California with the implementation of Assembly Bill 218.

The renewal process included a requirement that Downtown College Preparatory maintain liability insurance that is at least on par with the coverage maintained by San José Unified. Despite the evident need for financial security and the clear requirement from San José Unified, Downtown College Preparatory has not increased its general liability insurance.

On November 16, 2016, Downtown College Preparatory entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory failed to complete the process, in breach of the MOU.

Downtown College Preparatory is not in compliance with the terms of its charter agreement with the San José Unified School District as it has not received nor implemented advice and assistance from the California Collaborative for Educational Excellence, as it has not maintained liability insurance that is at least on par with the coverage maintained by San José Unified, and as it remains in breach of the MOU between the parties.

The sole purpose of this form is to establish CSFA Program eligibility based on the date signed. This form is for internal use only.

ATTACHMENT 2

Good Standing Confirmation Form
Downtown College Preparatory Middle - El Camino

California School Finance Authority (CSFA)
Good Standing Confirmation Form
State Charter School Facility Grant Program (SB740)

Downtown College Preparatory Middle (43696660129718) has applied to the above CSFA Program(s). CSFA is requesting that the Chartering Authority provide a response to the declarations below to consider this school's eligibility for Program funds. An eligible Program Applicant must satisfy all three of the following conditions: 1) compliance with the terms of its Charter Agreement, 2) no pending or outstanding Notices of Violation described in Education Code (EC) §47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in EC §47607(h).

An unreturned form will be presumed an acknowledgment that there are no outstanding compliance, violation, or revocation issues for **Downtown College Preparatory Middle**.

Please check all the boxes that apply:

1) Downtown College Preparatory Middle is **NOT** in compliance with the terms of its Charter Agreement with **San Jose Unified**.

If checked, please provide or attach an explanation:

Please see next page for explanation.

2) Downtown College Preparatory Middle has one or more pending or outstanding Notices of Violation described in EC §47607(g).

3) Downtown College Preparatory Middle has one or more pending or outstanding Notices of Intent to Revoke described in EC §47607(h).

If 2 or 3 is checked, please select the basis for the Notice(s) from the following:

- Committed a material violation of any of the conditions, standards, or procedures set forth in the Charter Agreement.
- Failed to meet or pursue any of the pupil outcomes identified in the Charter Agreement.
- Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement.
- Violated any provision of law.

If 2 or 3 is checked, please provide or attach an explanation:

4) At this time, Downtown College Preparatory Middle is in compliance with the terms of its Charter Agreement, has no pending or outstanding Notices of Violation described in EC §47607(g), and has no unresolved or outstanding Notices of Intent to Revoke described in EC §47607(h).

I hereby certify that to the best of my knowledge and belief, this information is true and correct. This form was completed based on information as of this date and does not reflect future determinations of compliance or violations.



Signature

Veronica Lara

Printed Name

August 21, 2020

Date

Manager, Internal Audit

Title

The sole purpose of this form is to establish CSFA Program eligibility based on the date signed. This form is for internal use only.

California School Finance Authority (CSFA)
Good Standing Confirmation Form
State Charter School Facility Grant Program (SB740)

The San José Unified Board of Education voted to renew the petition for DCP – El Camino Charter School (Downtown College Preparatory Middle) on March 15, 2018. Agenda item I.1. can be accessed via the following URL:

<https://agendaonline.net/public/Meeting.aspx?AgencyID=123&MeetingID=15043&AgencyTypeID=1&IsArchived=True>

The San José Unified School District considered increases in pupil academic achievement for all groups of pupils served by Downtown College Preparatory Middle as the most important factor in determining whether to grant the charter renewal. Downtown College Preparatory Middle did not meet the necessary criteria for comparison academic performance and the most important factor of increasing pupil academic achievement. However, implementation of common core standards and the corresponding CAASPP data was relatively new and, of particular importance, Downtown College Preparatory Middle had experienced significant changes the prior couple of years.

Downtown College Preparatory Middle committed in its renewal petition, see page 124, to:

“Student proficiency in ELA as measured by the SBAC will either be **Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an annual average rate of 9 points** over the course of the charter term, overall and for all statistically significant subgroups.” and

“Student proficiency in Math as measured by the SBAC will either be **Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an average annual rate of 10 points** over the course of the charter term, overall and for all statistically significant subgroups.”

Downtown College Preparatory Middle was overall 65.6 points below standard for ELA in 2017.

Downtown College Preparatory Middle was overall 84.5 points below standard for ELA in 2018.

Downtown College Preparatory Middle was overall 52 points below standard for ELA in 2019.

Downtown College Preparatory Middle has not decreased its distance from met at an average annual rate of 9 points on the California School Dashboard for ELA.

Downtown College Preparatory Middle was overall 92.8 points below standard for Math in 2017.

Downtown College Preparatory Middle was overall 120.5 points below standard for Math in 2018.

Downtown College Preparatory Middle was overall 97.5 points below standard for Math in 2019.

Downtown College Preparatory Middle has not decreased its distance from met at an average annual rate of 10 points on the California School Dashboard for Math.

On November 16, 2016, Downtown College Preparatory Middle entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory Middle failed to complete the process, in breach of the MOU.

Downtown College Preparatory Middle is not in compliance with the terms of its charter agreement with the San José Unified School District as it has been unable to meet its stated goals for student proficiency and as it remains in breach of the MOU between the parties.

The sole purpose of this form is to establish CSFA Program eligibility based on the date signed. This form is for internal use only.

ATTACHMENT 3

Ineligibility Notice

Downtown College Preparatory - El Primero



CALIFORNIA SCHOOL FINANCE AUTHORITY

915 Capitol Mall, Suite 101
Sacramento, CA 95814
p (916) 651-7710
f (916) 651-7709

300 S. Spring St. Suite 8500
Los Angeles, CA 90013
p (213) 620-4608
f (213) 620-6309

CSFA@treasurer.ca.gov
www.treasurer.ca.gov/CSFA

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State Treasurer

TONY THURMOND
State Superintendent of
Public Instruction

KEELY MARTIN BOSLER
Director of Finance

EXECUTIVE DIRECTOR
Katrina M. Johantgen

January 4, 2021

Alice Huang,
Downtown College Preparatory
1402 Monterey Hwy.
San Jose, CA 95110

Dear Alice Huang:

Thank you for your interest in the Charter School Facility Grant Program (Program). Unfortunately your application, on behalf of Downtown College Preparatory, (CDS: 43696664330585) was deemed ineligible for a grant at this time. Representatives from San Jose Unified provided certification stating that Downtown College Preparatory is not in good standing and/or not in compliance with its charter.

Pursuant to Section 10170.3(f) of Program regulations, a charter school is eligible for a grant if the charter school is in "good standing with it's the chartering authority and is in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant."

Downtown College Preparatory shall have 30 calendar days in which to remedy this status with its chartering authority. Pursuant to Section 10170.10(f), Downtown College Preparatory may request a single extension of up to 30 calendar days. The California School Finance Authority is unable to intervene with any issues between charter schools and their chartering authorities. If Downtown College Preparatory is able to restore its status to good standing, it will once again be eligible to receive grant funds provided it meets all other eligibility requirements. If the charter school is unable to cure this status, an appeal for reconsideration of eligibility may be sent to the Authority no later than 30 calendar days (60 calendar days if an extension was granted) from receipt of this notice.

Should you have any questions or need additional information, please feel free to contact Jeff Martin at jmartin@treasurer.ca.gov or Ryan Storey at rstorey@treasurer.ca.gov.

Sincerely,

Shannon McEuen
Staff Services Manager I

ATTACHMENT 4

Ineligibility Notice

Downtown College Preparatory Middle - El Camino



CALIFORNIA SCHOOL FINANCE AUTHORITY

915 Capitol Mall, Suite 101
Sacramento, CA 95814
p (916) 651-7710
f (916) 651-7709

300 S. Spring St. Suite 8500
Los Angeles, CA 90013
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Director of Finance

EXECUTIVE DIRECTOR
Katrina M. Johantgen

January 4, 2021

Alice Huang,
Downtown College Preparatory Middle
1402 Monterey Hwy.
San Jose, CA 95110

Dear Alice Huang:

Thank you for your interest in the Charter School Facility Grant Program (Program). Unfortunately your application, on behalf of Downtown College Preparatory Middle, (CDS: 43696660129718) was deemed ineligible for a grant at this time. Representatives from San Jose Unified provided certification stating that Downtown College Preparatory Middle is not in good standing and/or not in compliance with its charter.

Pursuant to Section 10170.3(f) of Program regulations, a charter school is eligible for a grant if the charter school is in "good standing with it's the chartering authority and is in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant."

Downtown College Preparatory Middle shall have 30 calendar days in which to remedy this status with its chartering authority. Pursuant to Section 10170.10(f), Downtown College Preparatory Middle may request a single extension of up to 30 calendar days. The California School Finance Authority is unable to intervene with any issues between charter schools and their chartering authorities. If Downtown College Preparatory Middle is able to restore its status to good standing, it will once again be eligible to receive grant funds provided it meets all other eligibility requirements. If the charter school is unable to cure this status, an appeal for reconsideration of eligibility may be sent to the Authority no later than 30 calendar days (60 calendar days if an extension was granted) from receipt of this notice.

Should you have any questions or need additional information, please feel free to contact Jeff Martin at jmartin@treasurer.ca.gov or Ryan Storey at rstorey@treasurer.ca.gov.

Sincerely,

Shannon McEuen
Staff Services Manager I

ATTACHMENT 5

Appeal

Downtown College Preparatory - El Primero



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

PAUL C. MINNEY ESQ.
FOUNDER/PARTNER ■ ATTORNEY AT LAW
pminney@mycharterlaw.com

APRIL 20, 2021

VIA: ELECTRONIC MAIL ONLY
KJOHANTGEN@TREASURER.CA.GOV

Katrina Johantgen, Executive Director
CALIFORNIA SCHOOL FINANCE AUTHORITY
915 Capitol Mall, Room 101
Sacramento, CA 95814

**Re: Downtown College Prep – El Primero’s Charter School Facility Grant
Program Eligibility**

Dear Ms. Johantgen:

Our office provides general legal services to Downtown College Prep (“DCP”). We write to you now with respect to the School Facility Grant Program (“Program”) Application DCP – El Primero made to the California School Finance Authority (“CSFA”). With this correspondence, we seek to: (1) assert that DCP – El Primero is in good standing for purposes of eligibility, despite San Jose Unified School District’s (“SJUSD”) contention to the contrary; (2) explain how the good standing requirement of California Code of Regulations, Title 4, Section (“4 CCR”) 10170.3 is inconsistent with the eligibility determination of Education Code Section 47614.5 and is therefore invalid; and (3) relay how SJUSD’s refusal to certify good standing exemplifies the opportunity for abuse in the current the good standing requirement, which in this case may lead to the loss of \$628,000 in State funding intended to benefit students most in need. In the 2020-21 school year, DCP-El Primero enrolled 536 students, of which 84.3% were socioeconomically disadvantaged, 93.3% were Hispanic/Latinx, 30.6% were English Learners, and 7.5% were students with disabilities.

We have appreciated the care demonstrated by CSFA staff in alerting us to the certification of not in good standing made by SJUSD. But, in light of SJUSD’s refusal to work with DCP along with the factors enumerated above, we request that CSFA certify DCP – El Primero as eligible for the Program. We additionally respectfully request that CSFA work to amend/revise the good standing requirement to eliminate the gross subjective discretion that exists within the regulations that deprive many needy students the extra level of financial support that is intended in the law.

BACKGROUND

Downtown College Prep – El Primero’s Unqualified Success

DCP is deeply committed to educating the traditionally underserved students and families of San Jose. Though over 88% of students attending DCP – El Primero are classified as

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK
MAIN OFFICE: 655 UNIVERSITY AVENUE, SUITE 150, SACRAMENTO, CA 95825 ■ WWW.MYCHARTERLAW.COM

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socioeconomically disadvantaged and the vast majority start at DCP well below grade level, DCP’s unqualified success is illuminated through its college-going culture -- 96% of DCP students matriculate to college directly after high school, the vast majority of them to a four-year university, and 56% of these students have graduated or are on track to graduate within 6 years, compared to just 14% nationally. Recent graduates, many of whom are the first generation in their family to go to college, are now attending prestigious, world-renowned universities such as Stanford University, Brown University, UC Berkeley, and Wesleyan University. In fact, DCP is a statewide leader in postsecondary college success – a clear sign of their staff and students’ deep commitment to educational attainment.

Downtown College Prep – El Primero’s Renewal

In light of this success, on December 12, 2019, SJUSD’s Board of Education (“Board”) voted to renew DCP – El Primero’s charter for a five year term (the “Renewal”).

An Overview Letter that accompanied the Renewal asserted that DCP – El Primero would be considered in good standing upon satisfaction of the following five conditions¹:

- 1) That DCP – El Primero adhere to the terms of its charter as approved and shall request a material revision to its charter for anything other than minor administrative updates;
- 2) That DCP – El Primero comply with all applicable policies and laws, including applicable amendments to Education Code resulting from the implementation of AB 1505;
- 3) That DCP – El Primero receive and implement advice and assistance from the California Collaborative for Educational Excellence, at no cost to DCP – El Primero²;
- 4) That DCP – El Primero make the same unrestricted contribution on a per-pupil basis for special education services as all other schools of SJUSD for special education; and
- 5) That DCP – El Primero maintain liability insurance that is at least on par with the coverage maintained by SJUSD.

As outlined below and addressed in detail in the March 31, 2021 correspondence from DCP – El Primero to SJUSD (attached hereto as Attachment A), **DCP – El Primero has satisfied all five conditions and is in good standing.**

SJUSD’s Refusal To Certify Good Standing

¹ As discussed in greater depth below, these conditions constitute an abuse of the law; SJUSD is using the good standing argument to extract concessions out of DCP – El Primero that falsely place it not in good standing unless these arbitrary conditions are met.

² The “at no cost DCP” language was added by the Board at the time of adoption of the renewal resolution.



On August 21, 2020, SJUSD submitted a Confirmation Form to CSFA improperly indicating that DCP – El Primero is not in good standing, citing conditions that went beyond the specific five conditions enumerated in the Charter renewal. In order to be afforded good standing status, CSFA advised DCP that SJUSD may either withdraw its August 21, 2020 Confirmation Form or submit a new form indicating DCP is in good standing. In spite of DCP’s multiple requests to meet with SJUSD staff and Board leadership as well as DCP’s full demonstration of meeting the above-stated conditions (see, e.g., Attachment A,) **SJUSD has refused to take any action to modify or update the certification made in August 2020.** Should SJUSD’s denial of good standing preclude DCP – El Primero from receiving SB 740 funds for the 2021-22 school year, DCP – El Primero school will lose \$628,000 dollars in State funding intended to benefit the neediest students in the State.

LEGAL ARGUMENT

As discussed below, DCP – El Primero argues (1) that DCP – El Primero is in good standing per SJUSD’s approved conditions and that SJUSD’s assertion to the contrary is untrue; (2) that the good standing requirement of 4 CCR § 10170.3 is inconsistent with the eligibility determination of Education Code Section 47614.5 and is therefore invalid; and (3) that SJUSD’s refusal to certify good standing exemplifies the opportunity for abuse in delegating the good standing requirement. In light of these points, we request that CSFA certify DCP – El Primero as eligible for the Program.

DCP – El Primero Is In Good Standing Per SJUSD’s Approved Conditions; SJUSD’s Assertion to the Contrary is Untrue.

In support of its contention that DCP – El Primero was not in good standing (as stated in the August 21, 2020 Confirmation Form to CSFA), SJUSD staff stated as follows: “Downtown College Preparatory is not in compliance with the terms of its charter agreement with the San José Unified School District as it has not received nor implemented advice and assistance from the California Collaborative for Educational Excellence, as it has not maintained liability insurance that is at least on par with the coverage maintained by San José Unified, and as it remains in breach of the MOU between the parties.”³

Each contention is without support at this time. In fact, as asserted in detail in the correspondence from DCP – El Primero to SJUSD attached hereto as Attachment A, DCP – El Primero: (1) has on multiple occasions sought assistance from the California Collaborative for Educational Excellence; (2) has pursued extraordinary efforts to successfully secure liability insurance that is at least on par with SJUSD; and (3) has never violated its Memorandum of Understanding (“MOU”) with SJUSD. Further, although not a condition of renewal, DCP has now

³ On the Confirmation Form for DCP – El Primero, SJUSD staff did not contest that either of the first two conditions for good standing – that DCP – El Primero has adhered to the terms of its charter and has complied with applicable policies and laws – have been met. As such, though it will not be discussed because these points are not at issue, DCP – El Primero wishes to assert for the record that both of these conditions have also been satisfied.

voted to join the El Dorado County SELPA effective July 1, 2021. Each point is discussed below and explained in greater depth in Attachment A.

DCP – El Primero Has Sought Assistance from the California Collaborative for Educational Excellence.

DCP – El Primero has satisfied the condition that it seek assistance from the California Collaborative for Education Excellence. On December 13, 2019, DCP – El Primero requested assistance from the California Collaborative for Educational Excellence (“CCEE”) in writing.

In response to DCP - El Primero’s request, on January 14, 2020, the CCEE assessed DCP – El Primero’s performance and determined that DCP – El Primero does not meet the criteria for assistance. As explained in Education Code Section 52074, the CCEE may only provide assistance in the following two limited circumstances, neither of which were applicable to DCP – El Primero.

As such, CCEE informed DCP – El Primero that it does not meet either requirement and is therefore ineligible for assistance. DCP – El Primero and CCEE have both informed SJUSD of such in writing. And despite the fact that DCP was not obligated to incur any costs for CCEE’s services, per the terms of the Board’s Renewal approval, DCP offered to pay for CCEE’s services, and was rejected by CCEE. (See Attachment A.)

DCP – El Primero was therefore disappointed to see that in the CSFA Confirmation Form, SJUSD indicated that DCP “has not received nor implemented any advice and assistance from the California Collaborative for Education Excellence.” This is simply not true; DCP – El Primero has sought assistance from CCEE. It, of course, cannot be held liable for the CCEE’s independent determination of ineligibility that is dictated by California’s Education Code. In requesting assistance in writing from the CCEE, DCP – El Primero has satisfied this condition.

DCP – El Primero Has Secured Liability Insurance That Is On Par With the Coverage Maintained by SJUSD.

DCP – El Primero has satisfied the condition that it maintain liability insurance that is on par with the coverage maintained by SJUSD.

On the Confirmation Form, SJUSD explained it has general liability insurance for sexual molestation, auto liability, errors and omissions, and employment practices liability of \$50 million for each occurrence, with an additional \$50 million of excess coverage. SJUSD then incorrectly stated that DCP “has not increased its general liability insurance.”

SJUSD staff later demanded that DCP’s insurance provide precisely the same coverage as SJUSD’s (for example, \$50,000,000 in general liability), rather than coverage adjusted for DCP’s much smaller enrollment and square footage. In response, DCP immediately began working with its broker to purchase the required amounts, and increased its coverage limits where possible. However, DCP’s insurance broker indicated that a general liability policy of the size specified by SJUSD was not commercially available to an organization the size of DCP on the open market, as that level of coverage would be excessive for an organization of its size and operational history.



When SJUSD staff submitted the Confirmation Form on August 21, 2020, DCP was in the process of negotiating the excessive coverage requirement with SJUSD through an MOU governing the financial and operational responsibilities of both parties – at extreme cost to DCP.

Though DCP – El Primero maintains that this excessive coverage is unnecessary and believes it was not the intention of the Board, DCP has joined the School Excess Liability Fund (“SELF”) for excess coverage to meet SJUSD staff’s requirements. As such, this condition has also been satisfied.

DCP – EL Primero Has Never Violated Its MOU with SJUSD.

Despite SJUSD’s contention to the contrary, DCP – El Primero has never violated its MOU with SJUSD.

In the Confirmation Form, SJUSD contends that “On November 16, 2016, Downtown College Preparatory entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory failed to complete the process, in breach of the MOU.”

This is inaccurate for a number of reasons. First, the 2016 MOU did not require DCP to become an LEA with the El Dorado SELPA. Instead, it required DCP to *explore* membership and stated that if DCP chose not to become a member, it was allowed to remain a school of SJUSD.

Second, DCP explored membership with the El Dorado SELPA, and ultimately elected to remain a school of SJUSD, as permitted. As such, DCP and SJUSD met to renegotiate the special education provisions of the MOU. In this re-negotiated agreement, SJUSD acknowledged and accepted DCP’s right to remain a school of SJUSD.

Third, DCP remained a school of SJUSD throughout 2016 to 2019, years in which SJUSD certified that DCP was in good standing. **There has been no change on this issue since SJUSD last certified DCP to be in good standing, which calls into question why SJUSD would now make the opposite finding, with no substantive change in status – and highlights just how arbitrary this “good standing” requirement can be.**

Fourth, the charter renewal process itself further confirmed that DCP was not required to join El Dorado County’s SELPA, in which Deputy Superintendent Stephen McMahon provided as follows: “So we are not recommending that they join the El Dorado SELPA... That happened years ago there is nothing in this tonight that requires them to join the El Dorado SELPA.” It is both irresponsible and disingenuous for SJUSD to cite, as a reason for finding DCP to be not in good standing, a condition that was specifically addressed and dismissed as a requirement during the charter renewal process.



Fifth, the current draft of the MOU, which SJUSD has drafted and circulated for DCP – El Primero’s review, and which will be effective for the remainder of the renewal term, from July 1, 2020 through June 30, 2025, does not contain any requirement or even mention of the El Dorado SELPA.

And finally, sixth, though it is clearly not legally required, DCP has applied to the El Dorado SELPA to become a member and has notified SJUSD of such. Further, DCP has applied for early admission, which (if approved) would allow DCP to begin the 2021-2022 school year as a member of the El Dorado SELPA.

For the many reasons articulated above, DCP is not now, and has never been, in breach of the MOU. Therefore, this is not a basis upon which to claim DCP is not in good standing.

In light of the foregoing, DCP – El Primero is in good standing and meets this eligibility requirement.

As discussed in greater depth in below, SJUSD’s refusal to certify good standing highlights the danger inherent in this good standing requirement and the misuse it invites.

The Good Standing Requirement of 4 CCR § 10170.3 Is Inconsistent with the Eligibility Determination of Education Code Section 47614.5 and Is Therefore Invalid.

Under the Administrative Procedure Act, any regulation adopted by a state agency must be (1) within the scope of the authority conferred upon the agency and (2) reasonably necessary to effectuate the purpose of the statute. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 322.) A regulation that is beyond the scope of that authority conferred upon the agency is void. (Gov. Code §11342.1.) Although a regulatory agency is authorized to “fill up the details” of a statutory scheme (*California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530, 544), a regulation exceeds the scope of the authority where the regulation is “inconsistent with the governing statute, or that alters, amends, enlarges, or impairs the scope of the statute” (*Nortel Networks Inc. v. Board of Equalization* (2011) 191 Cal.App.4th 1259, 1276-1277.) This analysis is done without any weight given to the agency’s own interpretation of its authority. (*Sanchez v. State of California* (2009) 179 Cal.App.4th 467, 483 [“When determining whether a regulation comes within the scope of the authority a legislative body has delegated to an administrative agency, we do not defer to the agency’s interpretation of the enabling statute but instead exercise our independent judgment.”].)

Education Code Section 47614.5 Contains an Exclusive List of Factors on Which the CSFA is to Make an Eligibility Determination; and there is no Good Standing Requirement in the Education Code.

4 CCR 10170.3 provides in pertinent part that “[a]ny Applicant shall be eligible to apply for a grant if all of the following conditions are met...:[t]he Applicant is in Good Standing as described in Section 10170.2(g), during the fiscal year.” In Section 10170.2, Good Standing is defined as follows: “Good Standing” shall mean the Applicant satisfies all three of the following conditions: 1) **compliance with the terms of its Charter Agreement**, 2) no pending or



outstanding Notices of Violation described in Education Code Section 47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in Education Code Section 47607(h).” (Emphasis added.)

There is no definition of what it means for a charter school to be “in compliance with the terms of its charter petition,” and worse yet, this determination requirement is left to the chartering authority itself: “The Authority will rely on information prepared by the Chartering Authority and the submission of a Good Standing Confirmation Form (GSCF) (CSFA Form 1119), incorporated herein by reference.” (*Ibid.*) This is contrary to law; as discussed below, under Education Code Section 47614.5, CSFA has been granted the **sole authority** to determine a charter school’s eligibility for funding under the Program. The chartering authority’s perspective may only lawfully be one piece of information that CSFA considers.

However, Education Code Section 47614.5 (the ostensible authority of which 4 CCR 10170.3 was promulgated) is rather restrictive in defining eligibility for the Program. **Plainly and importantly, this statute does not impose a good standing requirement.** Instead, subsection (c)(2) of this statute provides that “[CSFA] **shall**...[u]pon application by a charter school, based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced-price meals, and a preference in admissions, as appropriate.”

There is no language indicating that this is a non-exclusive or merely illustrative list; notably, the statute does not include any word such as “including” that would indicate that the listed bases for determining eligibility are merely illustrative or non-exhaustive. (Compare *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 168 [the term “shall consider relevant factors including” indicates list is illustrative]; *People v. Brooks* (2018) 23 Cal.App.5th 932, 943 [the term “including, but not limited to...” indicates list is illustrative]; *Estate of Banerjee* (1978) 21 Cal.3d 527, 540 [the term “including” indicates list is illustrative].)

The statute then *again* states, later in the *same* subdivision that “A charter school **is eligible** for funding pursuant to this section if the charter schoolsite meets either of the following conditions:

- (A) The charter schoolsite is physically located in the attendance area of a public elementary school in which 55 percent or more of the pupil enrollment is eligible for free or reduced-price meals and the charter schoolsite gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter schoolsite is located.
- (B) Fifty-five percent or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced-price meals.

(Educ. Code § 47614.5, subd. (c)(2).)

Both of these conditions also relate to free and reduced-price meal pupil enrollment percentages (of the public elementary school in whose attendance area the charter school is

physically located and of the charter schoolsite itself, respectively). Neither of these conditions relate to authorizer “good standing” or compliance with the school’s charter. As above, these explicitly enumerated qualifying factors are unaccompanied by any language that would suggest that this list is non-exclusive or merely illustrative.

In other words, Education Code Section 47614.5 contains two different opportunities in the same statute where the Legislature could have opened the door to more holistic interpretation (and rulemaking discretion) by the CSFA -- but did not. Under standard principles of statutory interpretation, this omission must be respected. (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 450 [in interpreting legislation, it must be presumed that the Legislature “says what it means and means what it says”].) Far from “filling up the details” of Education Code Section 47614.5, the CSFA has created an entire exception (for those charter schools deemed to be not in “good standing”) to the otherwise applicable Legislative standard, based on a factor entirely extraneous to the analysis set forth in Education Code Section 47614.5. This it may not permissibly do. (*Communications Relay Corp v. County of Los Angeles* (2005) 130 Cal.App.4th 162, 169-170.)

Therefore, the addition of a determination of “good standing” is not consistent with Section 47614.5 of the Education Code and is invalid under Section 11342.2 of the APA, and expressed in greater depth below, makes for a wildly subjective standard that denies students funding in a manner inconsistent with the intent of the law.

When It Has Wished to Do So, the Legislature Has Included a Requirement in a Funding Statute that a Charter School be in “Good Standing” and in Compliance with its Charter.

The invalidity of the good standing requirement is further supported by the fact that when it has wished to do so, the Legislature has included a requirement in a funding statute that a charter school be in good standing and in compliance with its charter. Education Code Section 12001.6 (relating to the allocation of the federal tax credit bond volume cap for qualified school construction bonds) provides the following:

“A charter school may apply for the federal qualified school construction bond volume cap if it meets all of the following criteria...[t]he chartering authority certifies that the charter school is in good standing and is in compliance with the terms of its charter.” (*Id.*, subd. (d)(2)(C).)

Education Code Section 12001.6 was enacted in September 2010. Education Code Section 47614.5 has been amended six times since September 2010, the most recent in mid-2018. If the Legislature wanted to require that Program grantees receive a certification from their authorizer that they are in good standing and in compliance with their charter, it could have amended the statute to so state. Their repeated failure to do so, despite the willingness to amend other parts of the statute, and despite their willingness to include such a requirement as part of other funding statutes, indicates that the Legislature does not intend such a requirement to be imposed on schools seeking Charter School Facility Grants. (*Brown v. County of Los Angeles* (2012) 203 Cal.App.4th 1529, 1549 [“Where statutes involving similar issues contain language demonstrating the Legislature knows how to express its intent, the omission of such provision from a similar statute



concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.”.) *People v. Green* (2011) 197 Cal.App.4th 1485, 1495 [“The Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them.” (citations omitted)].)

By Basing its Own Legislatively-Delegated Eligibility Determination in Part on Whether or Not a Charter School’s Authorizer Provides a Letter of “Good Standing,” the CSFA Has Unlawfully Delegated Quasi-Legislative Duties to a Charter School’s Authorizer.

CSFA has been granted the **sole authority**, in Section 47614.5 of the Education Code, to determine a charter school’s eligibility for funding under the Program. Rather than safeguarding the CSFA’s discretion to administer the Program, 4 CCR 10170.2 and 10170.3 have transferred that authority to unregulated and independent outside agencies. Further, it is an unfortunate reality that many charter school authorizers, including SJUSD⁴, have taken an aggressive, adversarial approach to charter school oversight, largely due to the competitive nature of school funding. In essence, CSFA is handing authorizers the opportunity to determine the level of funding received by its competition – a clear violation of due process.

To fully understand how great a departure the “good standing” requirement of 4 CCR 10170.3 is from the statutorily-enumerated eligibility requirements of Education Code Section 47614.5, it must be emphasized that CSFA is delegating its own discretionary authority to an entirely separate government entity that does not even operate at the same state level.

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or subdelegated in the absence of statutory authorization. (*California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139, 144.) Sub-delegation outside of the agency to whom power has been delegated is inappropriate where ultimate control of the delegated power no longer resides in the hands of the agency. (*County of Los Angeles v. Nesvig* (1965) 231 Cal.App.2d 603, 617.)

Given the highly complex analysis and competing policy considerations involved in the question of state-level policymaking vs. local-level policymaking (see, e.g., *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897) and the fact that under the California Constitution, public education and the operation of the public school system are matters of statewide rather than local or municipal concern (see, e.g., *Butt v. State of California* (1992) 4 Cal.4th 668, 680; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524), it simply cannot be the case that the power to subdelegate decision-making power to local districts can be inferred to be within the scope of Education Code Section 47614.5, in the absence of express

⁴ It is worth noting that SJUSD has taken a particularly aggressive stance; historically and currently, the District is embroiled in litigation with charter schools, and SJUSD has been repeatedly found by the courts to be out of compliance – and now, they are punitively denying funding to DCP – El Primero in further violation of the law.

statutory authority to that effect. The risk of local concerns being prioritized over state-level concerns as a policy matter is simply too great. (*Antelope Valley-East Kern Water Agency, supra*, 204 Cal.App.3d at 996; *accord Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 816-818 [rule outside the scope of statutory authority where the implementing agency made an contrary policy decision that one public policy aim was more important than another].)

Further, unlike other straightforward confirmations, the determination of “good standing” connotes a discretionary decision. (See, e.g., *Matter of Kittle v. D’Amico* (2016) 141 A.D.3d 991, 994; *Bd. of Educ. v. Cahokia Dist. Council* 93 Ill. App. 3d 376, 379.) Determining good standing is not a simple, binary proposition, but “involves debatable issues over whether the steps taken by the entity adequately fulfilled its obligation,” which are the hallmarks of a discretionary determination. (*San Mateo High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 431.)

In short, by making the “good standing” determination contingent upon the subjective determination and response of the charter school’s authorizer, CSFA has improperly delegated its authority to administer the Program in a manner that conflicts with the law and seriously threatens to undermine the Program.

SJUSD’s Refusal to Certify Good Standing Exemplifies Precisely the Opportunity for Abuse in Delegating the Good Standing Requirement.

Even if adding a “good standing” requirement were legally permissible, the current definition is vague and overbroad, as it allows *any* allegation of noncompliance (even stale unsubstantiated claims) with any term of the charter to be raised as a lack of good standing – which, as in this case with SJUSD perfectly elucidates, has and will continue to allow for abuse by authorizers. Equating “good standing” with “compliance with the terms of the charter,” allows any trivial complaint to result in the loss of all Program funds – and opens the door to a SD arguing alleged violations of long since expired MOU’s serve as a basis of a loss of good standing. Predictably, as here, this has had disastrous consequences for charter schools in actual practice.

Far from a black and white determination, a determination of good standing can involve many shades of gray that open the door to manipulation by school districts, which, as here, has been used by SJUSD to serve goals that are completely unrelated to the Program. DCP – El Primero’s Renewal Petition is more than 700 pages and contains requirements for the school that must be achieved over the course of the term of the charter petition, not at a single point in time. In addition, because SJUSD’s requirements in their Overview Letter were sometimes unclear, there have been disputes as to their meanings. Thus, it has been extremely easy for SJUSD to misuse the good standing certification as a tactic to pressure DCP- EL Primero in entirely unrelated matters. As prime evidence, DCP – El Primero has satisfied each of the SJUSD’s conditions for good standing at great expense: 1) DCP – El Primero has sought assistance from CCEE; 2) DCP – El Primero has joined SELF for excess insurance coverage to meet SJUSD staff’s requirements, despite believing such excess coverage was not the intention of the board; and 3) SJUSD is joining the El Dorado SELPA, in spite of SJUSD stating that it was **not** a condition of renewal. And yet, the District refuses to inform CSFA of same.



In addition to inviting abuse, the good standing requirement as written also violates due process. In adding a burden that a charter school must meet to qualify for funding under the Program, the effect is to restrict the availability of funding under the Program in a manner which the Legislature did not intend or sanction. Charter schools in such cases are at risk of being denied an affirmative determination of good standing and losing potentially hundreds of thousands of dollars in SB 740 reimbursements, even though the legal status of the charter is never at risk.

The Program serves a vital function to provide much-needed financial assistance to charter schools serving students most in need. For that reason, it seems highly improbable that the good standing requirement was ever intended to provide a side venue for the airing of grievances wholly unrelated to the “standing” of a charter petition. Yet, that has been the precise effect of making the “good standing” determination contingent upon the response of the charter school’s authorizer.

It is both unfair and unlawful for CSFA to allow school districts – which operate outside of CSFA’s jurisdiction – to undermine a charter school’s eligibility for reasons that are entirely unrelated to the Program and are not mentioned in Section 47614.5. For the foregoing reasons, DCP – El Primero respectfully requests that CSFA certify Downtown College Prep – El Primero as eligible for the Charter School Facility Grant Program and apportion funds accordingly.

We thank you in advance for your prompt attention to this important matter for the benefit of hundreds of SJUSD’s neediest students. Please do not hesitate to call me at any time should you have any questions.

Very truly yours,
**LAW OFFICES OF YOUNG,
MINNEY & CORR, LLP**


PAUL C. MINNEY
ATTORNEY AT LAW



Attachment A



MARCH 31, 2021

VIA: ELECTRONIC MAIL ONLY

BWHEATLEY@SJUSD.ORG & NALBARRAN@SJUSD.ORG

Board President Brian Wheatley
Superintendent Nancy Albarrán
SAN JOSE UNIFIED SCHOOL DISTRICT
855 Lenzen Ave.
San Jose, CA 95126-2736

Re: Downtown College Prep El Primero's Good Standing

Dear Board President Wheatley and Superintendent Albarrán:

As you know, on December 12, 2019, the San Jose Unified School District (the "District") Board of Education ("Board") voted to renew Downtown College Prep – El Primero Charter School's ("DCP – El Primero") charter for a five year term (the "Renewal").

The Overview Letter that accompanied the Renewal asserted that DCP – El Primero would be considered in "good standing" upon satisfaction of the following five conditions:

- 1) That DCP – El Primero adhere to the terms of its charter as approved and shall request a material revision to its charter for anything other than minor administrative updates;
- 2) That DCP – El Primero comply with all applicable policies and laws, including applicable amendments to Education Code resulting from the implementation of AB 1505;
- 3) That DCP – El Primero receive and implement advice and assistance from the California Collaborative for Educational Excellence, at no cost to DCP – El Primero¹;
- 4) That DCP – El Primero make the same unrestricted contribution on a per-pupil basis for special education services as all other schools of the district for special education; and
- 5) That DCP – El Primero maintain liability insurance that is at least on par with the coverage maintained by SJUSD.

As outlined below, DCP – El Primero has satisfied all five conditions and therefore respectfully requests that no later than April 2, 2021, SJUSD file a Confirmation Form with CSFA

¹ The "at no cost to DCP" language was added by the Board at the time of adoption of the renewal resolution.

*Re: Downtown College Prep – El Primero’s Good Standing
March 31, 2021
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(indicating DCP is in good standing) or at the very least, withdraw the District’s August 21, 2020 Confirmation Form to CSFA (stating that DCP is not in good standing).² Without written action by the District **by this Friday (April 2, 2021)** DCP – El Primero’s students will be deprived of \$628,000 dollars in State funding intended to benefit the neediest students in the state.

DCP – El Primero is in Good Standing Per the Board’s Approved Conditions.

In support of its contention that DCP – El Primero was not in good standing (as stated in the August 21, 2020 Confirmation Form to CSFA), the District staff stated as follows: “Downtown College Preparatory is not in compliance with the terms of its charter agreement with the San José Unified School District as it has not received nor implemented advice and assistance from the California Collaborative for Educational Excellence, as it has not maintained liability insurance that is at least on par with the coverage maintained by San José Unified, and as it remains in breach of the MOU between the parties.”³

Each contention is without support at this time. In fact, DCP – El Primero: (1) has sought assistance from the California Collaborative for Educational Excellence; (2) has secured liability insurance that is at least on par with the District; and (3) has never violated its Memorandum of Understanding (“MOU”) with the District – and, although not a condition of renewal, DCP has now voted to join the El Dorado County SELPA effective July 1, 2021. Each point is considered in turn below.

DCP – El Primero Has Sought Assistance from the California Collaborative for Educational Excellence.

DCP – El Primero has satisfied the condition that it seek assistance from the California Collaborative for Education Excellence. Immediately after Renewal, on December 13, 2019, DCP – El Primero requested assistance from the California Collaborative for Educational Excellence (“CCEE”) in writing.

In response to DCP - El Primero’s request, on January 14, 2020, the CCEE assessed DCP – El Primero’s performance and determined that DCP – El Primero does not meet the criteria for assistance. As explained in Education Code Section 52074, the CCEE may only provide assistance in the following two limited circumstances:

² CSFA has informed DCP that the District may either withdraw its August 21, 2020 Confirmation Form or submit a new form indicating DCP is in good standing; either action will suffice.

³ On the Confirmation Form for DCP – El Primero, District staff did not contest that either of the first two conditions for good standing – that DCP – El Primero has adhered to the terms of its charter and has complied with applicable policies and laws – have been met. As such, though it will not be discussed because these points are not at issue, DCP – El Primero wishes to assert for the record that both of these conditions have also been satisfied.

*Re: Downtown College Prep – El Primero’s Good Standing
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“(A) If the county superintendent of schools of the county in which the school district or charter school is located determines, following the provision of technical assistance pursuant to Section 52071 or 47607.3, as applicable, and the geographic lead agency of that county identified pursuant to Section 52073 agrees, that the advice and assistance of the California Collaborative for Educational Excellence is necessary to help the school district or charter school accomplish the goals described in the local control and accountability plan adopted pursuant to this article.

(B) If the Superintendent determines that the advice and assistance of the California Collaborative for Educational Excellence is necessary to help the school district, county superintendent of schools, or charter school accomplish the goals set forth in the local control and accountability plan adopted pursuant to this article.”

CCEE informed DCP – El Primero that it does not meet either requirement and is therefore ineligible for assistance. On January 17, 2020, DCP – El Primero informed the District in writing of CCEE’s determination. On January 28, 2020, CCEE also wrote to the District confirming that DCP – El Primero is not eligible for assistance. On August 3, 2020, DCP – El Primero again informed the District of its ineligibility. Just recently, on March 23, 2021, CCEE wrote to DCP again (and copied the District) and explained that DCP – El Primero is ineligible for assistance. (See **Attachment A**, letter from CCEE dated March 23, 2021). And despite the fact that DCP was not obligated to incur any costs for CCEE’s services, per the terms of the Board’s renewal approval, DCP offered to pay for CCEE’s services, and was rejected by CCEE. (See Attachment A.)

DCP – El Primero was therefore disappointed to see that in the CSFA Confirmation Form, the District indicated that DCP “has not received nor implemented any advice and assistance from the California Collaborative for Education Excellence.”

This is simply not true; DCP – El Primero has sought assistance from CCEE. It, of course, cannot be held liable for the CCEE’s independent determination of ineligibility that is dictated by California’s Education Code.

In requesting assistance in writing from the CCEE, DCP – El Primero has satisfied this condition.

DCP – El Primero Has Secured Liability Insurance That Is On Par With the Coverage Maintained by the District.

DCP – El Primero has satisfied the condition that it maintain liability insurance that is on par with the coverage maintained by the District.

On the Confirmation Form, the District explained it has general liability insurance for sexual molestation, auto liability, errors and omissions, and employment practices liability of \$50 million for each occurrence, with an additional \$50 million of excess coverage. The District then incorrectly stated that DCP “has not increased its general liability insurance.”

*Re: Downtown College Prep – El Primero’s Good Standing
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To be sure, it is DCP – El Primero’s understanding that the insurance requirement imposed by the Board was not intended to require DCP, which enrolls approximately 1,700 students, to have the same levels of insurance as the District, which enrolls more than 30,000 students. Rather, the requirement was to have insurance that was “on par” as indexed with the District’s insurance (as insurance levels are indexed by different parameters – for example, some are by square foot, others by number of students, etc.)

In spite of this, however, when the District staff sent a draft MOU to DCP on June 23, 2020, it demanded that DCP’s insurance provide precisely the same coverage as the District’s (for example, \$50,000,000 in general liability insurance), rather than coverage adjusted for DCP’s much smaller enrollment and square footage. In response, DCP immediately began working with its broker to purchase the required amounts, and increased its coverage limits where possible. However, DCP’s insurance broker indicated that a general liability policy of the size specified by the District was not commercially available to an organization the size of DCP on the open market, as that level of coverage would be excessive for an organization of our size and with our operational history.

When the District staff submitted the Confirmation Form on August 21, 2020, DCP was in the process of negotiating the excessive coverage requirement with the District through an MOU governing the financial and operational responsibilities of both parties – at extreme cost to DCP.

Though DCP – El Primero maintains that this excessive coverage is unnecessary and believes it was not the intention of the Board, DCP has now joined a Joint Powers Authority to obtain the excess coverage. As such, on January 13, 2021, DCP applied to join the School Excess Liability Fund (“SELF”) for excess coverage to meet the District staff’s requirements. On March 19, 2021, SELF approved DCP’s membership in SELF’s Excess Liability Program effective July 1, 2021. (See **Attachment B** – confirmation of DCP’s coverage with SELF effective July 1, 2021.)

As such, this condition has been satisfied.

DCP – EL Primero Has Never Violated Its MOU with the District.

Despite the District’s contention to the contrary, DCP – El Primero has never violated its MOU with the District, and in fact, has satisfied the condition that it make the same unrestricted contribution on a per-pupil basis for special education services as all other schools of the District.

In the Confirmation Form, the District contends that “On November 16, 2016, Downtown College Preparatory entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory failed to complete the process, in breach of the MOU.”

This is inaccurate for a number of reasons. First, the 2016 MOU did not require DCP to become an LEA with the El Dorado SELPA. Instead, it required DCP to *explore* membership and stated that if DCP chose not to become a member, it was allowed to remain a school of the District. The 2016 MOU

*Re: Downtown College Prep – El Primero’s Good Standing
March 31, 2021
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further provided that “[i]f the Charter is unable to become a partner of the El Dorado County Charter SELPA, the parties shall renegotiate the special education provisions of this MOU.”

Second, DCP explored membership with the El Dorado SELPA, and ultimately elected to remain a school of the District, as permitted. As such, DCP and the District met to renegotiate the special education provisions of the MOU. In this re-negotiated agreement, the District acknowledged and accepted DCP’s right to remain a school of the District.

Third, DCP remained a school of the District throughout 2016 to 2019, years in which the District certified that DCP was in good standing. There has been no change on this issue since the District last certified DCP to be in good standing, which calls into question why the District would now make the opposite finding, with no substantive change in status.

Fourth, the charter renewal process further confirmed that DCP was not required to join El Dorado County’s SELPA. The law firm of Young, Minney & Corr, LLP has provided us with a transcript of the December 12, 2019 Board Meeting when DCP – El Primero was renewed. In that transcript, during board discussion prior to Renewal, Board Member Collins asked whether DCP was required to join the El Dorado SELPA. In response, Deputy Superintendent Stephen McMahon provided as follows:

“So we are not recommending that they join the El Dorado SELPA. The references there were to a previously signed agreement between the District and DCP that if DCP was able to join El Dorado, it would. DCP was accepted to the El Dorado SELPA confirmed by the El Dorado SELPA and later said they would not join. **That happened years ago there is nothing in this tonight that requires them to join the El Dorado SELPA.”**

(Emphasis added.)

Fifth, the current draft of the MOU, which the District has drafted and circulated for DCP – El Primero’s review, and which will be effective for the remainder of the renewal term, from July 1, 2020 through June 30, 2025, does not contain any requirement or mention of the El Dorado SELPA. Instead, it accepts and acknowledges that at present, DCP – El Primero has elected to remain a school for the District for special education purposes.

And finally, sixth, though it is clearly not legally required, DCP has recently applied to the El Dorado SELPA to become a member and has notified the District of such. Indeed, the DCP Board voted on March 17, 2021 to join the El Dorado SELPA. As you may know, becoming a member is a seven-stage process. DCP has submitted its initial application packet and has completed its program and financial review and is thus nearly complete with the second stage, as has been confirmed and told to the District by both DCP and the El Dorado SELPA. DCP is hoping that its membership will be secured in June so it can begin the 2021-2022 school year as a member of the El Dorado SELPA.

For the many reasons articulated above, DCP is not now, and has never been, in breach of the MOU. Therefore, this is not a basis upon which to claim DCP is not in good standing.

Re: Downtown College Prep – El Primero’s Good Standing
March 31, 2021
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With this letter, we wish to demonstrate that DCP – El Primero is in good standing, as it has satisfied all five conditions articulated above. We now need your help and assistance; **DCP – El Primero respectfully requests that the District either file a new Confirmation Form (indicating DCP is in good standing) or withdraw the August 21, 2020 Confirmation Form no later than close of business on April 2, 2021.**

We thank you in advance for your prompt attention to this important matter for the benefit of hundreds of the District’s neediest students. Please do not hesitate to call me at any time should you have any questions.

Sincerely,

DocuSigned by:

Maria Arellano

89D4E4BFB208460

Maria Arellano

Board President

Downtown College Prep

cc: Paul C. Minney, Legal Counsel, Young, Minney & Corr, LLP



March 23, 2021

Amy Fowler, Chief Academic Officer
Downtown College Prep

Re: Response to Request for Direct Technical Assistance

Dear Ms. Fowler,

This letter is in response to your February 22, 2021, request for Direct Technical Assistance (DTA) from the California Collaborative for Educational Excellence (CCEE) on behalf of the Downtown College Preparatory El Primero High School (DCP-EPHS). DCP-EPHS sought assistance to increase student performance in mathematics and to satisfy a condition of charter petition renewal by the authorizing school district, San Jose Unified School District.

Upon review, we determined the CCEE will not be able to provide technical assistance to DCP-EPHS at this time. The basis for our decision is as follows:

1. DCP-EPHS does not meet the criteria for a referral to the CCEE for technical assistance from the State Superintendent, County Superintendent or Geographic Lead Agency as described in Education Code section 52074(g)(1)(A) and (B).
2. The discretionary CCEE fee-for-service technical assistance model provided for in Education Code section 52074(g)(3) does not require nor suggest that the fee-for-service model be utilized to inform renewal consideration for charter school petitions.

Thank you for your interest in partnering with CCEE. We encourage you to consider accessing the resources available through the Statewide System of Support or from your local County Office of Education. Please contact me at 530-957-0710 or dtoston@ccee-ca.org if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David M. Toston', is written over a light blue horizontal line.

David M. Toston
Senior Advisor, Equity and Innovation

CC: Stephen McMahon, Deputy Superintendent, San Jose Unified School District
Veronica Cursor-Lara, Manager, San Jose Unified School District
Mefula Fairley, Director, Santa Clara County Office of Education
Karla Estrada, Ed.D., Deputy Executive Director, California Collaborative for Educational Excellence

Attachment B

----- Forwarded message -----

From: **Lois Gormley** <lois@selfjpa.org>
Date: Fri, Mar 26, 2021 at 10:33 AM
Subject: RE: DCP's current Coverage
To: Ruth Wamuyu Schriver <rschriver@dcp.org>

Hi Ruth,

I just wanted to circle back with you and let you know that the Board approved your membership in SELF's Excess Liability Program effective 7/1/2021 at their March 19 meeting. We look forward to having you as our member. Please don't hesitate to contact me if you have any questions in the interim, but I will be reaching out in coming months to get things set up for 7/1.

Thank you,

Lois

Lois Gormley

Director of Communications &

Member Services

Schools Excess Liability Fund

(916) 553-3203



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ATTACHMENT 6

Appeal

Downtown College Preparatory Middle - El Camino



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

PAUL C. MINNEY ESQ.
FOUNDER/PARTNER ■ ATTORNEY AT LAW
pminney@mycharterlaw.com

APRIL 20, 2021

VIA: ELECTRONIC MAIL ONLY
KJOHANTGEN@TREASURER.CA.GOV

Katrina Johantgen, Executive Director
CALIFORNIA SCHOOL FINANCE AUTHORITY
915 Capitol Mall, Room 101
Sacramento, CA 95814

**Re: Downtown College Prep – El Camino Middle School’s Charter School
Facility Grant Program Eligibility**

Dear Ms. Johantgen:

Our office provides general legal services to Downtown College Prep (“DCP”). We write to you now with respect to DCP - El Camino Middle School (“DCP – El Camino”)’s School Facility Grant Program (“Program”) Application made to the California School Finance Authority (“CSFA”). With this correspondence, we seek to: (1) assert that DCP – El Camino is in good standing for purposes of eligibility, despite San Jose Unified School District’s (“SJUSD”) contention to the contrary; (2) explain how the good standing requirement of California Code of Regulations, Title 4, Section (“4 CCR”) 10170.3 is inconsistent with the eligibility determination of Education Code Section 47614.5 and is therefore invalid; and (3) relay how SJUSD’s refusal to certify good standing exemplifies the opportunity for abuse in the current the good standing requirement, which in this case may lead to the loss of \$557,000 in State funding intended to benefit students most in need. In the 2020-21 school year, DCP – El Camino enrolled 573 students, of which 86.7% were socioeconomically disadvantaged, 90.1% were Hispanic/Latinx, 45.9% were English Learners, and 11.7% were students with disabilities.

We have appreciated the care demonstrated by CSFA staff in alerting us to the certification of “not in good standing” made by SJUSD. But, in light of SJUSD’s refusal to work with DCP along with the factors enumerated above, we request that CSFA certify Downtown College Prep – El Camino as eligible for the Program. We also respectfully request that CSFA work to amend/revise the good standing requirement to eliminate the gross subjective discretion that exists within the regulations that deprives many needy students the extra level of financial support that is intended in the law.

BACKGROUND

Downtown College Prep – El Camino’s Unqualified Success

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK
MAIN OFFICE: 655 UNIVERSITY AVENUE, SUITE 150, SACRAMENTO, CA 95825 ■ WWW.MYCHARTERLAW.COM

TEL 916.646.1400 ■ FAX 916.646.1300

DCP is deeply committed to educating the traditionally underserved students and families of San Jose. Though over 86% of students attending DCP – El Camino are classified as socioeconomically disadvantaged and the vast majority start at DCP well below grade level, DCP’s unqualified success is illuminated through its college-going culture -- 96% of DCP students matriculate to college directly after high school, the vast majority of them to a four-year university, and 56% of these students have graduated or are on track to graduate within 6 years, compared to just 14% nationally. Recent graduates, many of whom are the first generation in their family to go to college, are now attending prestigious, world-renowned universities such as Stanford University, Brown University, UC Berkeley, and Wesleyan University. In fact, DCP is a statewide leader in postsecondary college success – a clear sign of their staff and students’ deep commitment to educational attainment.

Downtown College Prep – El Camino’s Renewal and SJUSD’s Subsequent Refusal To Certify Good Standing

In light of this success, on March 15, 2018, SJUSD’s Board of Education (“Board”) voted to renew DCP – El Camino’s charter for a five year term (the “Renewal”). The Renewal contained no conditions precedent or subsequent for a good standing determination. And yet, on August 21, 2020, without proper basis, SJUSD submitted a Confirmation Form to CSFA improperly indicating that DCP – El Camino is not in good standing.

In order to be afforded good standing status, CSFA advised DCP that SJUSD may either withdraw its August 21, 2020 Confirmation Form or submit a new form indicating DCP is in good standing. In spite of DCP’s multiple requests to meet with SJUSD staff and Board, as well as DCP’s full demonstration of meeting the above-stated conditions (see, e.g., the March 31, 2021 correspondence from DCP – El Camino to SJUSD attached hereto as Attachment A), **SJUSD has refused to take any action to modify or update the certification made in August 2020.** Should SJUSD’s denial of good standing preclude DCP – El Camino from receiving SB 740 funds for the 2021-22 school year, DCP – El Camino school will lose \$557,000 dollars in State funding intended to benefit the neediest students in the State.

LEGAL ARGUMENT

As discussed below, DCP – El Camino argues (1) that DCP – El Camino is in good standing per SJUSD’s approved conditions and that SJUSD’s assertion to the contrary is untrue; (2) that the good standing requirement of 4 CCR § 10170.3 is inconsistent with the eligibility determination of Education Code Section 47614.5 and is therefore invalid; and (3) that SJUSD’s refusal to certify good standing exemplifies the opportunity for abuse in delegating the good standing requirement. In light of these points, we request that CSFA certify DCP – El Camino as eligible for the Charter School Facility Grant Program.

DCP – El Camino Is In Good Standing Per SJUSD’s Approved Conditions; SJUSD’s Assertion to the Contrary is Untrue.



In support of its contention that DCP – El Camino was not in good standing (as stated in the August 21, 2020 Confirmation Form to CSFA), SJUSD staff stated as follows: “[DCP – El Camino] is not in compliance with the terms of its charter agreement with the San José Unified School District as it has been unable to meet its stated goals for student proficiency and as it remains in breach of the MOU between the parties [regarding joining the El Dorado SELPA].”

Each contention is without support at this time. In fact, DCP – El Camino: (1) has never violated its Memorandum of Understanding (“MOU”) with the District – and, although not a condition of good standing, DCP has now voted to join the El Dorado County SELPA effective July 1, 2021 and (2) has met its stated goals for student proficiency. Each point is considered in turn below and is discussed in greater depth in Attachment A.

DCP – El Camino Has Never Violated Its MOU with the District.

Despite SJUSD’s contention to the contrary, DCP – El Camino has never violated its MOU with the District.

In the Confirmation Form, SJUSD contends that “On November 16, 2016, Downtown College Preparatory Middle entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory Middle failed to complete the process, in breach of the MOU.”

This is inaccurate for a number of reasons. First, the 2016 MOU did not require DCP to become an LEA with the El Dorado SELPA. Instead, it required DCP to *explore* membership and stated that if DCP chose not to become a member, it was allowed to remain a school of SJUSD.

Second, DCP explored membership with the El Dorado SELPA, and ultimately elected to remain a school of SJUSD, as permitted. As such, DCP and SJUSD met to renegotiate the special education provisions of the MOU. In this re-negotiated agreement, SJUSD acknowledged and accepted DCP’s right to remain a school of SJUSD.

Third, DCP remained a school of SJUSD throughout 2016 to 2019, years in which SJUSD certified that DCP was in good standing. **There has been no change on this issue since SJUSD last certified DCP to be in good standing, which calls into question why SJUSD would now make the opposite finding, with no substantive change in status – and highlights just how arbitrary this “good standing” requirement can be.**

Fourth, the current draft of the MOU, which SJUSD has drafted and circulated for DCP – El Camino’s review, and which will be effective for the remainder of the renewal term, from July 1, 2020 through June 30, 2025, does not contain any requirement or even mention of the El Dorado SELPA.



And finally, fifth, though it is clearly not legally required, DCP has applied to the El Dorado SELPA to become a member and has notified SJUSD of such. Further, DCP has applied for early admission, which (if approved) would allow DCP to begin the 2021-2022 school year as a member of the El Dorado SELPA.

For the many reasons articulated above, DCP is not now, and has never been, in breach of the MOU. Therefore, this is not a basis upon which to claim DCP is not in good standing.

DCP – El Camino Has Met Its Stated Proficiency Goals.

In support of its contention that DCP – El Camino has not met its stated proficiency goals, the District referenced data in years that are almost entirely outside the term of the current charter, which is inapplicable to the current determination of good standing. Further, during these prior years, the District certified that DCP – El Camino was in good standing, which again calls into question why the District has now made the opposite finding.

DCP – El Camino’s current charter spans from July 1, 2018 through June 30, 2023. The first year of testing during the current charter term was in the Spring of 2019. **In the Spring of 2019, English Language Arts scores increased from the prior year by 32.5 points, and Mathematics scores increased by 23.0 points! Both of the increases exceed the academic targets set forth in DCP – ECMS’s renewal petition,** which provides the following goal for English Language Arts: “Student proficiency in ELA as measured by the SBAC will either be Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an annual average rate of 9 points over the course of the charter term, overall and for all statistically significant subgroups,” and the following goal for Math: “Student proficiency in ELA as measured by the SBAC will either be Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an annual average rate of 9 points over the course of the charter term, overall and for all statistically significant subgroups.”

In the Spring of 2020, the State did not offer assessments due to COVID-19. In light of this, for all State testing administered during the current charter term, DCP – El Camino has exceeded its achievement targets and is proud of its students’ achievements. As such, this is not a basis for asserting any lack of good standing.

As discussed in greater depth in below, SJUSD’s refusal to certify good standing highlights the danger inherent in this good standing requirement and the misuse it invites.

The Good Standing Requirement of 4 CCR § 10170.3 Is Inconsistent with the Eligibility Determination of Education Code Section 47614.5 and Is Therefore Invalid.

Under the Administrative Procedure Act, any regulation adopted by a state agency must be (1) within the scope of the authority conferred upon the agency and (2) reasonably necessary to effectuate the purpose of the statute. (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 322.) A regulation that is beyond the scope of that authority conferred upon the agency is void. (Gov. Code §11342.1.) Although a regulatory agency is authorized to “fill up the details” of a



statutory scheme (*California School Bds. Assn. v. State Bd. of Education* (2010) 191 Cal.App.4th 530, 544), a regulation exceeds the scope of the authority where the regulation is “inconsistent with the governing statute, or that alters, amends, enlarges, or impairs the scope of the statute” (*Nortel Networks Inc. v. Board of Equalization* (2011) 191 Cal.App.4th 1259, 1276-1277.) This analysis is done without any weight given to the agency’s own interpretation of its authority. (*Sanchez v. State of California* (2009) 179 Cal.App.4th 467, 483 [“When determining whether a regulation comes within the scope of the authority a legislative body has delegated to an administrative agency, we do not defer to the agency’s interpretation of the enabling statute but instead exercise our independent judgment.”].)

Education Code Section 47614.5 Contains an Exclusive List of Factors on Which the CSFA is to Make an Eligibility Determination; and there is no Good Standing Requirement in the Education Code.

4 CCR 10170.3 provides in pertinent part that “[a]ny Applicant shall be eligible to apply for a grant if all of the following conditions are met...:[t]he Applicant is in Good Standing as described in Section 10170.2(g), during the fiscal year.” In Section 10170.2, Good Standing is defined as follows: ““Good Standing” shall mean the Applicant satisfies all three of the following conditions: 1) **compliance with the terms of its Charter Agreement**, 2) no pending or outstanding Notices of Violation described in Education Code Section 47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in Education Code Section 47607(h).” (Emphasis added.)

There is no definition of what it means for a charter school to be “in compliance with the terms of its charter petition,” and worse yet, this determination requirement is left to the chartering authority itself: “The Authority will rely on information prepared by the Chartering Authority and the submission of a Good Standing Confirmation Form (GSCF) (CSFA Form 1119), incorporated herein by reference.” (*Ibid.*) This is contrary to law; as discussed below, under Education Code Section 47614.5, CSFA has been granted the **sole authority** to determine a charter school’s eligibility for funding under the Program. The chartering authority’s perspective may only lawfully be one piece of information that CSFA considers.

However, Education Code Section 47614.5 (the ostensible authority of which 4 CCR 10170.3 was promulgated) is rather restrictive in defining eligibility for the Program. **Plainly and importantly, this statute does not impose a good standing requirement.** Instead, subsection (c)(2) of this statute provides that “[CSFA] **shall**...[u]pon application by a charter school, based on the geographic location of the charter schoolsite, pupil eligibility for free or reduced-price meals, and a preference in admissions, as appropriate.”

There is no language indicating that this is a non-exclusive or merely illustrative list; notably, the statute does not include any word such as “including” that would indicate that the listed bases for determining eligibility are merely illustrative or non-exhaustive. (Compare *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 168 [the term “shall consider relevant factors including” indicates list is illustrative]; *People v. Brooks* (2018) 23 Cal.App.5th 932, 943 [the term



“including, but not limited to...” indicates list is illustrative]; *Estate of Banerjee* (1978) 21 Cal.3d 527, 540 [the term “including” indicates list is illustrative].)

The statute then *again* states, later in the *same* subdivision that “A charter school **is eligible** for funding pursuant to this section if the charter schoolsite meets either of the following conditions:

- (A) The charter schoolsite is physically located in the attendance area of a public elementary school in which 55 percent or more of the pupil enrollment is eligible for free or reduced-price meals and the charter schoolsite gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter schoolsite is located.
- (B) Fifty-five percent or more of the pupil enrollment at the charter schoolsite is eligible for free or reduced-price meals.

(Educ. Code § 47614.5, subd. (c)(2).)

Both of these conditions also relate to free and reduced-price meal pupil enrollment percentages (of the public elementary school in whose attendance area the charter school is physically located and of the charter schoolsite itself, respectively). Neither of these conditions relate to authorizer “good standing” or compliance with the school’s charter. As above, these explicitly enumerated qualifying factors are unaccompanied by any language that would suggest that this list is non-exclusive or merely illustrative.

In other words, Education Code Section 47614.5 contains two different opportunities in the same statute where the Legislature could have opened the door to more holistic interpretation (and rulemaking discretion) by the CSFA -- but did not. Under standard principles of statutory interpretation, this omission must be respected. (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 450 [in interpreting legislation, it must be presumed that the Legislature “says what it means and means what it says”].) Far from “filling up the details” of Education Code Section 47614.5, the CSFA has created an entire exception (for those charter schools deemed to be not in “good standing”) to the otherwise applicable Legislative standard, based on a factor entirely extraneous to the analysis set forth in Education Code Section 47614.5. This it may not permissibly do. (*Communications Relay Corp v. County of Los Angeles* (2005) 130 Cal.App.4th 162, 169-170.)

Therefore, the addition of a determination of “good standing” is not consistent with Section 47614.5 of the Education Code and is invalid under Section 11342.2 of the APA, and expressed in greater depth below, makes for a wildly subjective standard that denies students funding in a manner inconsistent with the intent of the law.

When It Has Wished to Do So, the Legislature Has Included a Requirement in a Funding Statute that a Charter School be in “Good Standing” and in Compliance with its Charter.



The invalidity of the good standing requirement is further supported by the fact that when it has wished to do so, the Legislature has included a requirement in a funding statute that a charter school be in good standing and in compliance with its charter. Education Code Section 12001.6 (relating to the allocation of the federal tax credit bond volume cap for qualified school construction bonds) provides the following:

“A charter school may apply for the federal qualified school construction bond volume cap if it meets all of the following criteria...[t]he chartering authority certifies that the charter school is in good standing and is in compliance with the terms of its charter.” (*Id.*, subd. (d)(2)(C).)

Education Code Section 12001.6 was enacted in September 2010. Education Code Section 47614.5 has been amended six times since September 2010, the most recent in mid-2018. If the Legislature wanted to require that Program grantees receive a certification from their authorizer that they are in good standing and in compliance with their charter, it could have amended the statute to so state. Their repeated failure to do so, despite the willingness to amend other parts of the statute, and despite their willingness to include such a requirement as part of other funding statutes, indicates that the Legislature does not intend such a requirement to be imposed on schools seeking Charter School Facility Grants. (*Brown v. County of Los Angeles* (2012) 203 Cal.App.4th 1529, 1549 [“Where statutes involving similar issues contain language demonstrating the Legislature knows how to express its intent, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.”].) *People v. Green* (2011) 197 Cal.App.4th 1485, 1495 [“The Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions as have a direct bearing upon them.” (citations omitted)].)

By Basing its Own Legislatively-Delegated Eligibility Determination in Part on Whether or Not a Charter School’s Authorizer Provides a Letter of “Good Standing,” the CSFA Has Unlawfully Delegated Quasi-Legislative Duties to a Charter School’s Authorizer.

CSFA has been granted the **sole authority**, in Section 47614.5 of the Education Code, to determine a charter school’s eligibility for funding under the Program. Rather than safeguarding the CSFA’s discretion to administer the Program, 4 CCR 10170.2 and 10170.3 have transferred that authority to unregulated and independent outside agencies. Further, it is an unfortunate reality that many charter school authorizers, including SJUSD¹, have taken an aggressive, adversarial approach to charter school oversight, largely due to the competitive nature of school funding. In essence, CSFA is handing authorizers the opportunity to determine the level of funding received by its competition – a clear violation of due process.

¹ It is worth noting that SJUSD has taken a particularly aggressive stance; historically and currently, the District is embroiled in litigation with charter schools, and SJUSD has been repeatedly found by the courts to be out of compliance – and now, they are punitively denying funding to DCP – El Camino in further violation of the law.

To fully understand how great a departure the “good standing” requirement of 4 CCR 10170.3 is from the statutorily-enumerated eligibility requirements of Education Code Section 47614.5, it must be emphasized that CSFA is delegating its own discretionary authority to an entirely separate government entity that does not even operate at the same state level.

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or subdelegated in the absence of statutory authorization. (*California School Employees Assn. v. Personnel Com. of Pajaro Valley Unified School Dist.* (1970) 3 Cal.3d 139, 144.) Sub-delegation outside of the agency to whom power has been delegated is inappropriate where ultimate control of the delegated power no longer resides in the hands of the agency. (*County of Los Angeles v. Nesvig* (1965) 231 Cal.App.2d 603, 617.)

Given the highly complex analysis and competing policy considerations involved in the question of state-level policymaking vs. local-level policymaking (see, e.g., *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897) and the fact that under the California Constitution, public education and the operation of the public school system are matters of statewide rather than local or municipal concern (see, e.g., *Butt v. State of California* (1992) 4 Cal.4th 668, 680; *California Teachers Assn. v. Hayes* (1992) 5 Cal.App.4th 1513, 1524), it simply cannot be the case that the power to subdelegate decision-making power to local districts can be inferred to be within the scope of Education Code Section 47614.5, in the absence of express statutory authority to that effect. The risk of local concerns being prioritized over state-level concerns as a policy matter is simply too great. (*Antelope Valley-East Kern Water Agency, supra*, 204 Cal.App.3d at 996; *accord Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 816-818 [rule outside the scope of statutory authority where the implementing agency made a contrary policy decision that one public policy aim was more important than another].)

Further, unlike other straightforward confirmations, the determination of “good standing” connotes a discretionary decision. (See, e.g., *Matter of Kittle v. D’Amico* (2016) 141 A.D.3d 991, 994; *Bd. of Educ. v. Cahokia Dist. Council* 93 Ill. App. 3d 376, 379.) Determining good standing is not a simple, binary proposition, but “involves debatable issues over whether the steps taken by the entity adequately fulfilled its obligation,” which are the hallmarks of a discretionary determination. (*San Mateo High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 431.)

In short, by making the “good standing” determination contingent upon the subjective determination and response of the charter school’s authorizer, CSFA has improperly delegated its authority to administer the Program in a manner that conflicts with the law and seriously threatens to undermine the Program.

SJUSD’s Refusal to Certify Good Standing Exemplifies Precisely the Opportunity for Abuse in Delegating the Good Standing Requirement.



Even if adding a “good standing” requirement were legally permissible, the current definition is vague and overbroad, as it allows *any* allegation of noncompliance (even stale unsubstantiated claims) with any term of the charter to be raised as a lack of good standing – which, as in this case with SJUSD perfectly elucidates, has and will continue to allow for abuse by authorizers. Equating “good standing” with “compliance with the terms of the charter,” allows any trivial complaint to result in the loss of all Program funds – and opens the door to a SD arguing alleged violations of long since expired MOU’s serve as a basis of a loss of good standing. Predictably, as here, this has had disastrous consequences for charter schools in actual practice.

Far from a black and white determination, a determination of good standing can involve many shades of gray that open the door to manipulation by school districts, which, as here, has been used by SJUSD to serve goals that are completely unrelated to the Program. DCP – El Camino’s Renewal Petition is more than 700 pages and contains requirements for the school that must be achieved over the course of the term of the charter petition, not at a single point in time. In addition, because SJUSD’s requirements in their Overview Letter were sometimes unclear, there have been disputes as to their meanings. Thus, it has been extremely easy for SJUSD to misuse the good standing certification as a tactic to pressure DCP – El Camino in entirely unrelated matters. As prime evidence, DCP – El Camino never violated its MOU with SJUSD (and is also joining the El Dora SELPA) and has met each of its proficiency goals, and yet, SJUSD refuses to inform CSFA of same.

In addition to inviting abuse, the good standing requirement as written also violates due process. In adding a burden that a charter school must meet to qualify for funding under the Program, the effect is to restrict the availability of funding under the Program in a manner which the Legislature did not intend or sanction. Charter schools in such cases are at risk of being denied an affirmative determination of good standing and losing potentially hundreds of thousands of dollars in SB 740 reimbursements, even though the legal status of the charter is never at risk.

The Program serves a vital function to provide much-needed financial assistance to charter schools serving students most in need. For that reason, it seems highly improbable that the good standing requirement was ever intended to provide a side venue for the airing of grievances wholly unrelated to the “standing” of a charter petition. Yet, that has been the precise effect of making the “good standing” determination contingent upon the response of the charter school’s authorizer.

It is both unfair and unlawful for CSFA to allow school districts – which operate outside of CSFA’s jurisdiction – to undermine a charter school’s eligibility for reasons that are entirely unrelated to the Program and are not mentioned in Section 47614.5. For the foregoing reasons, DCP – El Camino respectfully requests that CSFA certify Downtown College Prep – El Camino as eligible for the Charter School Facility Grant Program and apportion funds accordingly.



We thank you in advance for your prompt attention to this important matter for the benefit of hundreds of SJUSD’s neediest students. Please do not hesitate to call me at any time should you have any questions.

Very truly yours,
**LAW OFFICES OF YOUNG,
MINNEY & CORR, LLP**



**PAUL C. MINNEY
ATTORNEY AT LAW**



Attachment A



MARCH 31, 2021

VIA: ELECTRONIC MAIL ONLY

BWHEATLEY@SJUSD.ORG & NALBARRAN@SJUSD.ORG

Board President Brian Wheatley
Superintendent Nancy Albarrán
SAN JOSE UNIFIED SCHOOL DISTRICT
855 Lenzen Ave.
San Jose, CA 95126-2736

Re: Downtown College Prep El Camino Middle School's Good Standing

Dear Board President Wheatley and Superintendent Albarrán:

As you know, on March 15, 2018, the San Jose Unified School District (the "District") Board of Education ("Board") voted to renew Downtown College Prep – El Camino Middle School's ("DCP – ECMS") charter for a five year term (the "Renewal").

As outlined below, **DCP – ECMS is in good standing**. **DCP – ECMS therefore respectfully requests that no later than April 2, 2021, the District file a Confirmation Form with CSFA (indicating DCP – ECMS is in good standing), or at the very least, withdraw the District's August 21, 2020 Confirmation Form to CSFA (stating that DCP is not in good standing).¹ Without action by the District by this Friday (April 2, 2021), DCP – ECMS's students will be deprived of \$557,000 dollars in State funding intended to benefit the neediest students in the State.**

DCP – ECMS is in Good Standing.

In support of its contention that DCP – ECMS was not in good standing (as stated in the August 21, 2020 Confirmation Form to CSFA), the District staff stated that DCP – ECMS is "not in compliance with the terms of its charter agreement with the San José Unified School District as it has been unable to meet its stated goals for student proficiency and as it remains in breach of the MOU between the parties [regarding joining the El Dorado SELPA]."

Each contention is without support at this time. In fact, DCP – ECMS: (1) has never violated its Memorandum of Understanding ("MOU") with the District – and, although not a condition of renewal, DCP has now voted to join the El Dorado County SELPA effective July 1, 2021, and (2) has met its stated goals for student proficiency. Each point is considered in turn below.

¹ CSFA has informed DCP that the District may either withdraw its August 21, 2020 Confirmation Form or submit a new form indicating DCP is in good standing; either action will suffice.

Re: Downtown College Prep – ECMS’s Good Standing
March 31, 2021
Page 2 of 3

DCP – ECMS Has Never Violated Its MOU with the District.

Despite the District’s contention to the contrary, DCP – ECMS has never violated its MOU with the District.

In the Confirmation Form, the District contends that “On November 16, 2016, Downtown College Preparatory Middle entered into a Memorandum of Understanding (MOU) that included a provision to be an LEA within the El Dorado County Charter SELPA for special education purposes beginning with the 2018-2019 school year or sooner. Despite formal approval to join the El Dorado County Charter SELPA, Downtown College Preparatory Middle failed to complete the process, in breach of the MOU.”

This is inaccurate for a number of reasons. First, the 2016 MOU did not require DCP to become an LEA with the El Dorado SELPA. Instead, it required DCP to *explore* membership and stated that if DCP chose not to become a member, it was allowed to remain a school of the District. The 2016 MOU further provided that “[i]f the Charter is unable to become a partner of the El Dorado County Charter SELPA, the parties shall renegotiate the special education provisions of this MOU.”

Second, DCP explored membership with the El Dorado SELPA, and ultimately elected to remain a school of the District, as permitted. As such, DCP and the District met to renegotiate the special education provisions of the MOU. In this re-negotiated agreement, the District acknowledged and accepted DCP’s right to remain a school of the District.

Third, DCP remained a school of the District throughout 2016 to 2019, years in which the District certified that DCP was in good standing. There has been no change on this issue since the District last certified DCP to be in good standing, which calls into question why the District would now make the opposite finding, with no substantive change in status.

Fourth, the current draft of the MOU, which the District has drafted and circulated for DCP – ECMS’s review, and which will be effective for the remainder of the renewal term, from July 1, 2018 through June 30, 2023, does not contain any requirement or mention of the El Dorado SELPA. Instead, it accepts and acknowledges that at present, DCP – ECMS has elected to remain a school of the District for special education purposes.

And finally, fifth, though it is clearly not legally required, DCP has recently applied to the El Dorado SELPA to become a member and has notified the District of such. Indeed, the DCP Board voted on March 17, 2021 to join the El Dorado SELPA. As you may know, becoming a member is a seven-stage process. DCP has submitted its initial application packet and has completed its program and financial review and is thus nearly complete with the second stage, as has been confirmed and told to the District by both DCP and the El Dorado SELPA. DCP is hoping that its membership will be secured in June so it can begin the 2021-2022 school year as a member of the El Dorado SELPA.

For the many reasons articulated above, DCP is not now, and has never been, in breach of the MOU. Therefore, this is not a basis upon which to claim DCP is not in good standing.

DCP – ECMS Has Met Its Stated Proficiency Goals.

Re: Downtown College Prep – ECMS’s Good Standing
March 31, 2021
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In support of its contention that DCP – ECMS has not met its stated proficiency goals, the District referenced data in years that are almost entirely outside the term of the current charter, which is inapplicable to the current determination of good standing. Further, during these prior years, the District certified that DCP – ECMS was in good standing, which again calls into question why the District has now made the opposite finding.

DCP – ECMS’s current charter spans from July 1, 2018 through June 30, 2023. The first year of testing during the current charter term was in the Spring of 2019. **In the Spring of 2019, English Language Arts scores increased from the prior year by 32.5 points, and Mathematics scores increased by 23.0 points! Both of the increases exceed the academic targets set forth in DCP – ECMS’s renewal petition,** which provides the following goal for English Language Arts: “Student proficiency in ELA as measured by the SBAC will either be Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an annual average rate of 9 points over the course of the charter term, overall and for all statistically significant subgroups,” and the following goal for Math: “Student proficiency in ELA as measured by the SBAC will either be Met on the California School Dashboard or the Distance From Met (DFM) will decrease at an annual average rate of 9 points over the course of the charter term, overall and for all statistically significant subgroups.”

In the Spring of 2020, the State did not offer assessments due to COVID-19. In light of this, for all State testing administered during the current charter term, DCP – ECMS has exceeded its achievement targets and is proud of its students’ achievements.

With this letter, we wish to demonstrate that DCP – ECMS is in good standing. We now need your help and assistance. **DCP – ECMS respectfully requests that the District either file a new Confirmation Form (indicating DCP is in good standing) or withdraw the August 21, 2020 Confirmation Form no later than close of business on April 2, 2021.**

We thank you in advance for your prompt attention to this important matter for the benefit of hundreds of the District’s neediest students. Please do not hesitate to call me at any time should you have any questions.

Sincerely,

DocuSigned by:

Maria Arellano

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Maria Arellano

Board President

Downtown College Prep

cc: Paul C. Minney, Legal Counsel, Young, Minney & Corr, LLP

ATTACHMENT 7

Appeal Denial

Downtown College Preparatory - El Primero



CALIFORNIA SCHOOL FINANCE AUTHORITY

300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
p (213) 620-4608
f (213) 620-6309

915 Capitol Mall, Room 101
Sacramento, CA 95814
p (916) 651-7710
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csfa@treasurer.ca.gov
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MEMBERS

FIONA MA, CPA, CHAIR
State Treasurer

TONY THURMOND
*State Superintendent of
Public Instruction*

KEELY MARTIN BOSLER
Director of Finance

EXECUTIVE DIRECTOR
Katrina M. Johantgen

May 20, 2021

Paul Minney, Esq.
Young, Minney & Corr LLP
655 University Avenue, Suite 150
Sacramento, CA 95825

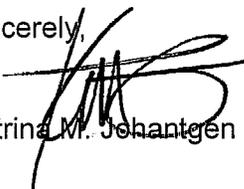
RE: Downtown College Preparatory - El Primero High School (CDS #: 43 69666 4330585)
Charter School Facility Grant Program Eligibility

Dear Mr. Minney:

Thank you for your letter dated April 20, 2021 regarding your client, Downtown College Preparatory - El Primero High School and the California School Finance Authority's (Authority) finding of ineligibility due to the school being found not in good standing with its authorizer, San Jose Unified School District (District). While we understand the complexities of charter school and authorizer disputes, the Authority's regulations regarding eligibility rely on good standing and compliance certification from charter authorizers. You stated that our regulations are outside the scope of the law, however, our regulations are deemed lawful and within our scope by the Office of Administrative Law (OAL). All state regulations must be reviewed and approved by OAL. OAL's review includes whether the regulations are within the agency's scope per governing statute.

Your client's remedy for our ineligibility finding is for the District to either withdraw their originally submitted Good Standing Confirmation Form (GSCF) or submit a new GSCF confirming Downtown College Preparatory - El Primero High School's good standing. Per Program regulation section 10170.3(f)(1), the school has until June 30, 2021 to resolve this eligibility matter. If this issue is not resolved by that date, the school's appeal of the initial ineligibility determination will be rejected.

Sincerely,


Katrina M. Johantgen

ATTACHMENT 8

Appeal Denial

Downtown College Preparatory Middle - El Camino



CALIFORNIA SCHOOL FINANCE AUTHORITY

300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
p (213) 620-4608
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*State Superintendent of
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KEELY MARTIN BOSLER
Director of Finance

EXECUTIVE DIRECTOR
Katrina M. Johantgen

May 20, 2021

Paul Minney, Esq.
Young, Minney & Corr LLP
655 University Avenue, Suite 150
Sacramento, CA 95825

Re: Downtown College Preparatory School – El Camino’s Charter School Facility Grant
Program Eligibility

Dear Mr. Minney:

Thank you for your letter dated April 20, 2021 regarding your client, Downtown College Preparatory - El Camino and the California School Finance Authority's (Authority) finding of ineligibility due to the school being found not in good standing with its authorizer, San Jose Unified School District (District). While we understand the complexities of charter school and authorizer disputes, the Authority's regulations regarding eligibility rely on good standing and compliance certification from charter authorizers. You stated that our regulations are outside the scope of the law, however, our regulations are deemed lawful and within our scope by the Office of Administrative Law (OAL). All state regulations must be reviewed and approved by OAL. OAL's review includes whether the regulations are within the agency's scope per governing statute.

Your client's remedy for our ineligibility finding is for the District to either withdraw their originally submitted Good Standing Confirmation Form (GSCF) or submit a new GSCF confirming Downtown College Preparatory - El Camino's good standing. Per Program regulation section 10170.3(f)(1), the school has until June 30, 2021 to resolve this eligibility matter. If this issue is not resolved by that date, the school's appeal of the initial ineligibility determination will be rejected.

Sincerely,

Katrina Johantgen (e-signature - 1:18 p.m. 5/26/21)

Katrina M. Johantgen

ATTACHMENT 9

Response to Appeal Denial
Downtown College Preparatory (El Primero) & Downtown College
Preparatory Middle (El Camino)



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

SARAH J. KOLLMAN ESQ.

PARTNER ■ ATTORNEY AT LAW

skollman@mycharterlaw.com

JUNE 4, 2021

VIA: ELECTRONIC MAIL
KJohantgen@treasurer.ca.gov

Katrina Johantgen, Executive Director
CALIFORNIA SCHOOL FINANCE AUTHORITY
915 Capitol Mall, Room 101
Sacramento, CA 95814

**Re: Downtown College Prep – El Primero
Downtown College Prep – El Camino
Charter School Facility Grant Program Eligibility**

Dear Ms. Johantgen:

Thank you for your response to the April 20, 2021, letter we sent on behalf of our client Downtown College Preparatory (“DCP”) – El Primero High School and El Camino Middle School regarding each school’s eligibility for funding under the California School Finance Authority’s (“CSFA”) SB 740 funding program.

While CSFA’s letter was not the response we hoped for, it did highlight some areas where we believe continued engagement may be productive.

In your response you stated that CSFA’s regulations commit CSFA staff to “relying” on local school district determinations of “good standing”, and that because these regulations were approved by the Office of Administrative Law (“OAL”), they are within the scope of the authority granted by statute and are thus legal.

We greatly appreciate the time and effort expended by CSFA to engage with us regarding these issues. Nonetheless, for the reasons that follow, we respectfully request that you to revisit the positions articulated in your response letter. First, we request that you reconsider the position that CSFA has no choice but to accept a charter authorizer’s good standing certification – even in the face of demonstrated bad faith by the local school district. But the regulations regarding the good standing requirement simply do not rob CSFA of making the final determination of funding eligibility, as explained below, and in fact require it where the authorizer is denying certification in bad faith and abusing the good standing certification process to intentionally harm a participant charter school.

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

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Second, we request that you more comprehensively address our argument regarding the lack of statutory authority for the good standing requirement of 4 CCR section 101703, subdivision (f). While we are aware that the OAL has reviewed and approved the good standing regulations, that approval is not conclusive as to legality and referring to that approval does not address the substance of our argument regarding the lack of authority in the Education Code for CSFA to establish a good standing requirement in the regulations; indeed, we believe CSFA’s role in overseeing “eligibility” and “amounts” of SB 740 support for charter schools is quite limited and does not involve a “good standing” determination -- and even if it did, it is certainly not one that CSFA can delegate to another agency.

1. Education Code section 47614.5 does not authorize discretionary review of funding eligibility.

In our April 20, 2021, letter to CSFA disputing the grounds for the District’s refusal to certify DCP-EP’s good standing, we presented several legal arguments regarding the validity of the good standing requirement itself. Your response to our letter did not address these arguments but presumed the validity of the good standing requirement regulation based on its preliminary OAL review. As we discuss below, OAL review is not determinative of the legal validity of regulations. As such, we once again ask you to revisit your position regarding the validity of the good standing regulation under the APA.

As indicated in our prior letter, we believe the good standing requirement is not valid. In crafting Education Code section 47614.5, the Legislature created three clear-cut, objective bases for determining “eligibility” for funding under the SB 740 program: “geographic location of the charter schoolsite, pupil eligibility for free or reduced-price meals, and a preference in admissions.” The limited eligibility criteria outlined in subdivision (c) do not require CSFA to exercise its discretion in determining whether a particular school is eligible, nor are there any other criteria for eligibility in the statute – each criteria is objectively defined and eliminates and subjectivity (e.g., a charter school is either in or outside the geographic boundaries of a qualifying school attendance area).

In other words, the statute creates a streamlined ministerial approval process where applicants can clearly establish and demonstrate program eligibility. Thus, the authority delegated to CSFA from the Legislature in the enabling statute is purely ministerial -- to find a charter school “eligible” or not based on the three limited objective factors. The extra requirement of a subjective and discretionary “good standing” certification by another agency contradicts this limited grant of authority to CSFA.

Furthermore, CSFA’s attempt to add an eligibility determination around good standing to the regulations is further contradicted by subdivision (d)(4), which provides that the only other decision to be made by CSFA is the “grant amount awarded to each charter school” that shall be “consistent with eligibility requirements as specified in this section and in regulations adopted by the authority.” In other words, the amount of the award as calculated based on documented rent and lease costs may be confirmed by. Beyond baseline eligibility related to geographic location, free and reduced price meal percentages, and admissions preferences, however, there are no further



eligibility requirements that can be added by regulation. CSFA cannot delegate authority it does not have.

2. CSFA’s regulations do not Prevent CSFA from Determining DCP Schools are in “good standing”.

In response the CSFA letter it notes that CSFA will “rely on good standing and compliance certification from charter authorizers.” CSFA appears to be taking the position that the regulation creating the “good standing” certification requirement delegates this eligibility criteria exclusively to the granting agency. Respectfully, we believe that is not the case. CSFA has the legal authority—in fact the responsibility—to make the final determination on a charter school’s good standing for purposes of SB 740 funding eligibility, especially if it has been presented with evidence from the charter school that its authorizer is acting in bad faith.

As we explained in our letter, the “good standing” requirement found in 4 CCR section 10170.2 and 4 CCR section 10170.3 is invalid to the extent it is interpreted to delegate an unqualified and unappealable veto over SB 740 funding to charter authorizers. Our prior letter details why this is the case. Briefly stated, such an interpretation would violate the California Administrative Procedure Act by conflicting with the eligibility provisions of Education Code section 47614.5, by effecting a sub-delegation of legislative authority to an inappropriate party (i.e., a party the legislature did not include the statutory authority for this program), and by substituting CSFA’s determination for a discretionary and subjective (and herein arbitrary) third-party veto that is wholly lacking in enforceable standards and insulated from meaningful scrutiny or review.

Fortunately, CSFA has not relinquished all control to the eligibility determination process. CSFA can follow the plain language of the good standing provision of the regulations to make the final call on DCP’s good standing. In California, as in federal administrative law, agencies are entitled to deference when interpreting their own regulations. (*Sharp Image Gaming, Inc. v. Shingle Springs Bank of Miwok Indians* (2017) 15 Cal.App.5th 391, 432-433; *Auer v. Robbins* (1997) 519 U.S. 452, 461.) “[W]here an agency interprets its own regulation, even if through an informal process, its interpretation of an ambiguous regulation is controlling under *Auer* unless ‘plainly erroneous or inconsistent with the regulation.’” (*Public Lands for People v. Department of Agriculture* (9th Cir. 2012) 697 F.3d 1192, 1199.)

Under the plain meaning of the CSFA regulations its retains authority to make final eligibility determinations. Per 4 CCR section 10170.2, subdivision (q) “Good Standing” is defined to mean:

*“...the Applicant satisfies all three of the following conditions: 1) compliance with the terms of its Charter Agreement, 2) no pending or outstanding Notice of Violation described in Education Code Section 47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in Education Code Section 47607(h). The Authority will **rely** on information prepared by the Chartering*



Authority and the submission of a Good Standing Confirmation Form (GSCF) (CSFA Form 1119), incorporated herein by reference.” (Emphasis added.)

Under this definition, the requirement of good standing does not prohibit CSFA from making a final determination that is contrary to the opinion of a charter authorizer, so long as CSFA finds, based on the information provided by the authorizer and the charter school that the charter school has satisfied the three conditions of good standing. Per the definition of good standing, CSFA is only required to “rely” on “information” prepared by the charter authorizer and included in the GSCF. The CSFA need only rely on that information and is not required to draw the same *conclusions* from said information that the charter authorizer does. This interpretation, which is consistent with the plain meaning of the regulations, preserves to CSFA the ultimate decision of eligibility for the program.

Under such an interpretation, a vast majority of funding eligibility determinations would continue to require the same amount of CSFA oversight that they do now. The only difference would be that CSFA would have greater ability to maintain control over its program, prevent apparent injustices, and ensure that its program is not abused for bad faith purposes.

3. The OAL’s preliminary review of a regulation is not determinative as to its legality.

In response to our letter’s argument that delegating the determination of funding eligibility to charter authorizers is inconsistent with statute, you replied that OAL has reviewed the regulation for consistency with statutory authority and approved it. With all due respect to OAL and the important work it does, the regulatory preclearance procedure is not—and was never intended to be—conclusive as to the legality of a regulation. That the good standing regulation was reviewed by OAL does not meaningfully address our argument that it is inconsistent with statutory authority.

As provided in Government Code section 11349.1, OAL reviews every proposed regulation for “necessity, authority, clarity, consistency, reference, and nonduplication.” “Authority” as used in this section means “the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.” (Government Code § 11349, subd. (b).) However, while OAL is tasked with reviewing and approving regulations’ consistency with their statutory authority, that approval has no conclusive prospective effect. (*Sims v. Department of Correction & Rehabilitation* (2013) 216 Cal.App.4th 1059, 1077 [“The statutory authority of the OAL is limited to the review of *proposed* regulations...”].) In fact, the California Administrative Procedure Act specifically states that such approval *shall not be considered* in an action to contest a regulation’s consistency with its authorizing statute:

“The approval of a regulation or order of repeal by the office or the Governor’s overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.”

(Government Code § 11350, subd. (c).)



In other words, “[t]he text of the APA thus makes clear that initial review of a proposed regulation by the OAL is not exclusive but subordinate to judicial review.” (*Sims v. Department of Correction & Rehabilitation, supra*, 216 Cal.App.4th 1059, 1078.) As such, the OAL’s approval of a regulation’s compliance with the requirements of Government Code section 11349.1 does not defeat the authority of a superior court to review regulations for compliance with those requirements. (*Id.* at pp. 1080-1081.)

Given the foregoing, our argument that the good standing regulation is inconsistent with statutory authority remains very much a live issue—and one that your response letter does not substantively address. In the interests of expeditiously and productively resolving this issue, we respectfully request that you share your view of the legal justification for how the good standing regulation is consistent with Education Code section 47614.5 and the California Administrative Procedure Act.

Conclusion

Thank you again for your continued attention to this important matter. As we have laid out in this in this letter, we believe that CSFA has the authority and the responsibility to step in and prevent abuses of the SB 740 program. We request that CSFA take action, consistent with its regulations, to certify DCP’s two schools in good standing and ensure that this critical funding can be used to support these students who desperately need it and it was intended to support.

We also request that CSFA consider amending its regulations to either remove the good standing requirement entirely as illegal and problematic, or at a minimum amend the good standing requirement to rely on objective standards – for example, issuance of a notice to cure or notice to revoke – that cannot be easily abused by authorizers to the detriment of California’s most vulnerable student populations.

* * *



Katrina Johantgen, Executive Director
Re: Downtown College Prep – El Primero’s Charter School Facility Grant Program Eligibility
Re: June 4, 2021
Page 6 of 6

Please do not hesitate to call me at any time should you have any questions or concerns regarding this matter.

Sincerely,

**LAW OFFICES OF YOUNG,
MINNEY & CORR, LLP**

Sarah Kollman
SARAH J. KOLLMAN
ATTORNEY AT LAW

Cc: Jennifer Andaluz, Co-Founder and Executive Director
Maria Arellano, Board Chair



ATTACHMENT 10

Letter to San Jose Unified School District
Downtown College Preparatory (El Primero)
& Downtown College Preparatory Middle (El Camino)



June 14, 2021

Dear Ms. Causor-Lara and Mr. Spielberg

This letter provides a summary of efforts to resolve the issue relative to CCEE assistance for DCP El Primero.

Over the past year and a half, DCP has been diligently working to address the SJUSD Board's requirement that we receive technical assistance from CCEE as a condition of the charter renewal. During our hearing, DCP clearly articulated that we did not qualify for support from CCEE, this has proven to be true as CCEE has twice rejected providing any assistance to DCP. SJUSD has been aware of this rejection for over a year now (see timeline below).

Now, over a year later and at the District's behest, CCEE has sent DCP a list of four technical assistance partners (see email below). DCP immediately reached out to each provider that was referred to us by CCEE. During the interviews with each provider they all recommended the following to us:

1. Improvement efforts of this type are typically multi-year engagements and the scope of work should reflect a strategy over time;
2. Efforts aimed at improving mathematics, MTSS, or any other aspects of school improvement should involve teachers, instructional coaches and site and central office leadership; and
3. The relationship between the provider, the contracting agency (SJUSD), and the receiving entity (DCP) will need to be clearly articulated.

As stipulated in the District Board resolution, these services are to be provided to DCP at no cost to DCP. Each provider indicated its willingness to work with DCP. However, DCP will not be the contracting party as the District is paying for these services. DCP cannot control the District procurement procedures, nor do we know the scope of your funds to dedicate to this work. As a result, our conversations with each prospective partner was designed to understand the scope of their services and prospective fit for the work ahead. All providers we spoke with have strong skills in a variety of areas that could be beneficial to DCP El Primero High School. It is now incumbent upon the District to engage one of the technical assistance providers for DCP.

The condition that was approved by the District Board was as follows: **That DCP El Primero receive and implement advice and assistance from the California Collaborative for Educational Excellence, at no cost to DCP El Primero.**

In conclusion, DCP has actively sought and followed the advice of CCEE -- to contact the technical assistance providers. CCEE has advised that we seek assistance from other parties. DCP has consulted with all other parties and received their recommendations. DCP cannot receive further assistance at no cost until SJUSD has completed any procurement procedures as required. While DCP is willing to work with a provider selected by the District, working with a CCEE



recommended technical assistance provider is not the condition that the District Board approved; the condition was to “receive and implement advice and assistance by CCEE” -- which DCP has done. Thus, DCP considers this matter resolved.

Regards,

Dr. Amy Fowler
Chief Academic Officer



Date	Critical Event
December 12, 2019	SJUSD Board approved the DCP El Primero charter renewal stipulating that DCP receive assistance with an amended statement that such assistance would be at no cost to DCP. San Jose Board Meeting Audio Recording at 41:56
January 14, 2020	DCP met with CCEE to request assistance and were denied. SJUSD was informed on January 17, 2020. Several follow ups were sent to Ms. Katie Chang with no response to DCP. In addition, SJUSD did not follow up with CCEE's invitation for consultation.
August 2020	SJUSD reports DCP El Primero is "Not in Good Standing" due, in part, to lack of assistance from CCEE.
January 2021	DCP learns of SJUSD report from the CSFA
January 29, 2021	DCP and SJUSD meet to discuss the "Good Standing" dispute. DCP again requests assistance from CCEE.
February-March 2021	CCEE asks that DCP re-submit our request for assistance. This is submitted on February 20, 2021. CCEE schedules a meeting for March 18 and then informs DCP and SJUSD on March 23 that DCP El Primero does not qualify for support and they are not able to take on work for a service fee at this time.
April-May 2021	<p>DCP requests clarification from Ms. Causor Lara if the matter with CCEE is considered resolved. We send follow up requests on May 4 and 11 with the only response on a separate thread that Ms. Lara will "respond to your questions regarding CCEE as soon as I am able." No response has been received to date.</p> <p>On May 14, DCP received a call from CCEE that they have since talked with SJUSD and will be sending us a list of potential partners for additional contract work as they cannot provide direct assistance.</p>
June 2021	On June 2, CCEE sent a list of providers to DCP that they recommend for assistance, by June 3 all providers were contacted and meetings were scheduled with each provider to review options. Meetings occurred June 10-14.



From: **David Toston** <dtoston@ccee-ca.org>
Date: Wed, Jun 2, 2021 at 5:59 PM
Subject: Technical Assistance Providers
To: Amy Fowler <afowler@dcp.org>
Cc: Rocio Gonzalez-Frausto <RGonzalez-Frausto@ccee-ca.org>

Hello Amy,

I hope this message finds you well as you are wrapping up the school year. As mentioned in our last conversation, we hope to assist you by connecting DCP with potential partners. The attached documents provide information regarding the areas of support, expertise, and contact information of four agencies. I believe any of these partners may be able to support the improvement efforts at DCP. Since CCEE is not engaged in direct technical assistance with DCP, DCP will need to work directly with the provider to coordinate any agreements to begin the work. Please let us know should you choose to work with one of these partners for our records. Feel free to reach back out if you have difficulty accessing the attached materials.

International Center for Leadership in Education (ICLE)

Scott Traub , Associate Partner

straub@leadered.com

Orenda Education

Genny Cadena, Director of Education Partnerships

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TNTP

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Pivot Learning

Monica Ng, Vice President, Education Programs

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ATTACHMENT 11

Charter School Facility Grant Program Regulations
4 CCR § 10170

TEXT OF REGULATIONS

CALIFORNIA CODE OF REGULATIONS

Title 4, Division 15, Article 1.5 Charter School Facility Grant Program

§ 10170.1. Purpose.

This Article implements the California School Finance Authority's administration of the Charter School Facility Grant Program (Education Code section 47614.5) which provides financial assistance for charter school facilities.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.2. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning as described below:

- (a) "Applicant" shall mean the Charter School, educational management organization, or charter management organization applying on behalf of a Charter School for a grant under this article.
- (b) "Application" shall mean a completed Charter School Facility Grant Program Online Application (CSFA Form 740-01; revised July 2018), incorporated herein by reference, as developed by the Authority, and described in Section 10170.6.
- (c) "Authority" shall mean the California School Finance Authority.
- (d) "Average Daily Attendance" (ADA) shall mean the unit of attendance, as reported by the Department for the second period of the school year.
- (e) "Average Daily Attendance Cap" (ADA Cap) shall mean for the 2017-18 Fiscal Year, an amount equal to one thousand one hundred seventeen dollars (\$1,117) per unit of ADA. Commencing with the 2018-19 Fiscal Year and moving forward, the amount of funding provided per unit of ADA in the preceding Fiscal Year, as adjusted by the Cost Of Living Adjustment Index or the amount specified in the current Budget Act.
- (f) "Chartering Authority" shall mean the school district, county board of education, or State Board of Education that granted a Charter School's petition to become a Charter School pursuant to Education Code Section 47605.
- (g) "Charter School" shall mean a school established and operating pursuant to the Charter Schools Act of 1992 (Education Code Section 47600, et seq.). Except where the defined term First Year Charter School is specifically used, Charter School shall also be meant to include schools that otherwise meet the definition of First Year Charter School.
- (h) "Cost Of Living Adjustment Index" (COLA Index) shall mean a percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior Fiscal Year. This percentage change shall be determined using the latest data available as of May 10 of the preceding Fiscal Year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter

of the second preceding Fiscal Year, using the latest data available as of May 10 of the preceding Fiscal Year, as reported by the Department of Finance.

- (i) "Department" shall mean the California Department of Education.
- (j) "Estimated Annual Entitlement" shall mean the estimated grant amount to which a Charter School is entitled as calculated pursuant to Section 10170.7 prior to the first apportionment.
- (k) "Facility Invoice Expenditure Report" shall mean the annual Charter School Facility Grant Program Facility Invoice Expenditure Report (CSFA Form 740-02; revised October 2017) herein incorporated by reference.
- (l) "Fair Market Rent" shall mean the mean amount of money a property would rent or lease for if it was available at the time the appraisal was conducted.
- (m) "Final Fiscal Year Entitlement" shall mean the final calculated grant amount to which a Grantee is entitled based on the calculation prescribed in Section 10170.8.
- (n) "First Year Charter School" shall mean a school that anticipates beginning operations as a Charter School in the Fiscal Year for which it submits an Application and was not open the previous school year.
- (o) "Fiscal Year" shall mean the school year for which an Application for grant funds is submitted.
- (p) "Free or Reduced-Price Meal Eligibility" or "FRPM Eligibility" shall mean the percentage of enrolled students in grades Kindergarten through 12th grade or students ages 5 through 17, whichever is greater, eligible for free or reduced-price meals, as reported by the Department and certified through the annual Fall 1 data submission to the California Longitudinal Pupil Achievement Data System (CALPADS).
- (q) "Good Standing" shall mean the Applicant satisfies all three of the following conditions: 1) compliance with the terms of its Charter Agreement, 2) no pending or outstanding Notices of Violation described in Education Code Section 47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in Education Code Section 47607(h). The Authority will rely on information prepared by the Chartering Authority and the submission of a Good Standing Confirmation Form (GSCF) (CSFA Form 1119), incorporated herein by reference.
- (r) "Grantee" shall mean a Charter School determined by the Authority to be eligible for a grant.
- (s) "Independent Appraisal" shall mean a value assessment of rent and lease costs for a Charter School facility completed and signed by a Certified Real Estate Appraiser or Certified General Appraiser licensed by the California Department of Real Estate Appraisers who confirms that the appraisal is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- (t) "New Facility Agreement" shall mean either 1) a rental or lease agreement for a facility not previously occupied by the Charter School; 2) a rental or lease agreement that includes additional square footage not included in the previous year's agreement; or 3) a new agreement for existing facilities or square footage when the existing lease is up for renewal or expires. Options to renew contained in existing rent or lease agreements on file with the Authority executed by the Charter School and the lessor will not be considered a New Facility Agreement.
- (u) "Prior Year" shall mean the school year prior to the school year for which an Application is submitted.

Note: Authority cited: Section 47614.5, Education Code. Reference: Sections 47614.5,

47600 et seq. and 47605, Education Code.

§ 10170.3. Eligible Applicant.

Any Applicant shall be eligible to apply for a grant if all of the following conditions are met:

- (a) The Application is submitted by or on behalf of a Charter School.
- (b) An approved charter has been awarded, is in place, and is current at the time of Application.
- (c) In the case of a First Year Charter School, a charter petition has been submitted for approval to the Chartering Authority and evidence, such as a copy of the charter petition, is submitted that the school anticipates beginning operations in the Fiscal Year for which an Application is submitted.
- (d) The Charter School meets one of the following criteria:
 - (1) Fifty-five percent (55%) or more of the student enrollment at the Charter School site is eligible for prior year FRPM; or
 - (2) The Charter School site for which grant funds are requested is physically located in the attendance area of a public elementary school in which fifty-five percent (55%) or more of the pupil enrollment is eligible for prior year FRPM and the school site gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the Charter School site is located, as determined by the local school district.
 - (3) First Year Charter Schools not operational in the prior year shall be eligible in the current year if the school meets the FRPM Eligibility requirements based on current year data.
 - (4) In all subsequent funding rounds, all schools shall adhere to Application dates outlined in Section 10170.5.
- (e) The Charter School, educational management organization, or charter management organization is not in default with the requirement of all programs administered by the Authority.
- (f) The Applicant is in Good Standing, as described in Section 10170.2(q), during the Fiscal Year. An Applicant found not to be in Good Standing, as determined by their Chartering Authority, shall be ineligible for grant funds. An Applicant may cure ineligibility for grant funds by meeting one of the following criteria:
 - (1) The Applicant receives confirmation of Good Standing within the Fiscal Year.
 - (2) An Applicant found not to be in Good Standing solely due to the Applicant failing to meet the requirements of Education Code Section 47607(f)(3) must provide evidence demonstrating fiscal solvency to the satisfaction of the Authority. Such evidence may include the Applicant's organizational budgets and audited financials.
- (g) The Charter School shall not operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter organization.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.4. Eligible Costs.

- (a) Grant funds may be applied toward a Charter School's facilities costs for all of the following:
- (1) Costs associated with facility rents or leases as evidenced by an executed rental or lease agreement and beginning with the 2017-18 funding round, shall be subject to one of the following conditions:
 - (A) Reimbursable facility rent or lease costs do not exceed prior year's reimbursable costs on file with the Authority, subject to an adjustment of the annual COLA Index (COLA Cap); or
 - (B) The rent or lease costs of New Facility Agreements are at or below Fair Market Rent based on an Independent Appraisal as described in Section 10170.6(d) and paid for by the Applicant.
 - (i) If the Independent Appraisal finds the rent and lease costs above the Fair Market Rent, the costs will be based on Fair Market Rent as determined by the Independent Appraisal.
 - (2) If funds remain, costs associated with the facility but not limited to, remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and common area maintenance charges that are based on the Charter School's usage of the facility and are limited to maintaining and repairing the facility and its common areas will be evaluated for an award.
 - (3) Costs described in subdivisions (a)(1) and (a)(2) and associated with portions of school district or county office of education facilities that are not existing school district or county office of education facilities and are not reasonably equivalent facilities received from the Charter Authority.
 - (4) Costs associated with a ground lease as evidenced by an executed rental or lease agreement where there is no existing district facility on the ground being leased.
- (b) Grant funds may not be apportioned for any of the following:
- (1) Units of ADA generated through nonclassroom-based instruction as defined in Education Code Section 47612.5;
 - (2) Facility rent and lease costs associated with a Charter School's occupancy of existing district or county office of education facilities;
 - (3) Facility rent and lease costs associated with a Charter School's occupancy of reasonably equivalent facilities received from its Chartering Authority pursuant to Education Code Section 47614;
 - (4) Costs incurred to meet a Charter School's local match obligation for Charter School facilities that receives funds pursuant to the Charter School Facilities Program;
 - (5) Costs incurred for instructional or administrative costs including, but not limited to, salaries and benefits paid to teachers, instructional aides, the educational management organization or charter management organization responsible for managing the Charter School, or the Chartering Authority and existing district personnel;
 - (6) Lease costs assessed to the Charter School based on grant funds awarded to the school by the Authority during the same funding round;
 - (7) Facility rent and lease costs associated with a facility previously purchased and paid in full by the Charter School with State Charter School Facilities Incentive

- Grants Program funds unless those costs are associated with capital improvements;
- (8) Facility rent and lease costs associated with lease-to-purchase agreements where the rent and lease costs lower the final purchase price;
 - (9) Facility rent and lease costs associated with a facility that is inaccessible to the Applicant. The Authority reserves the right to request evidence such as a Certificate of Occupancy or letter from the lessor that establishes the date the Applicant began to occupy the leased site; or
 - (10) Costs incurred during any period the Applicant is found not to be in Good Standing.
- (c) Grant funds must be expended and liquidated within the guidelines of this article and the Charter School Facility Grant Program.
 - (d) No grant, whether for costs described in subdivision (a)(1), (a)(2), (a)(3), (a)(4), or a combination of, shall exceed the ADA Cap as defined in Section 10170.2(e) or 75% of the annual facility rent and lease costs for the Fiscal Year for which the Application is submitted, whichever is less.
 - (e) Where an Application is for multiple school sites, each site's eligibility and costs will be evaluated separately. The ADA applied to the determination of the grant, as described in subdivision (d), shall only be based on the eligible site(s).
 - (1) Where the Charter School's students migrate between eligible and ineligible school sites, the ADA applied shall be based upon the square footage ratio of eligible facilities to all facilities.
 - (2) Where the Charter School's students do not migrate between eligible and ineligible school sites, the ADA applied shall be based upon the school's self-certification of the ADA for the facility the students are assigned to.

Note: Authority cited: Section 47614.5, Education Code. Reference: Sections 47612.5 and 47614.5, Education Code.

§ 10170.5. Application Submission.

- (a) Application for grant funds shall be made on an online form (CSFA Form 740-01) prescribed by the Authority, and will be available as described below. The Authority will accept Applications during the Application periods described. Applications may not be submitted by email or facsimile.
 - (1) The Initial Application period for each grant year shall be made available by the Authority in the month of April. Application deadlines shall be 5:00 p.m. on the date five weeks from the date the Application is made available by the Authority. The Authority shall make Application materials available on the Authority's website and notify the public of the Application release date.
 - (2) The Second Application period for each grant year shall be made available by the Authority on September 10 of each Fiscal Year. The Application deadline shall be 5:00 p.m. on October 15 of each Fiscal Year. The Authority shall make Application materials available on the Authority's website and notify the public of the Application release date. Under the following circumstances, an Application may be submitted during the Second Application Period:
 - (A) A Charter School relocates from a facility that was ineligible for a grant award to a facility that is eligible, and the Application includes a description of the change in facility circumstances; or

(B) A First Year Charter School.

- (b) The Authority's review and evaluation of an Application for purposes of calculating the Estimated Annual Entitlement shall be based on the information contained in and submitted with the Application, and supporting information obtained directly from other state and local agencies.
- (c) Organizations operating more than one Charter School, as identified by separate County District School (CDS) codes, must submit a separate Application for each Charter School with a separate CDS code for which a grant award is sought. Organizations operating more than one facility location under the same CDS code must combine all facilities operating under that CDS code in one Application.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.6. Content of Application.

Completed Applications and all attachments shall be submitted to the Authority via the online Application form (CSFA Form 740-01) and shall include all of the following items.

- (a) Application. The Application shall include identifying information, a completed Legal Status Questionnaire, and signed certification that the data and information reported is true and correct and the charter will continue to comply with state and federal laws.
- (b) Copy of current charter agreement and verification of Authorizing Board adoption and expiration date.
- (c) Copy of the rent or lease agreement contract, or other documentation, verifying the Charter School's facilities rent or lease costs for the Fiscal Year for which a grant award is requested, and evidence that the rent or lease term matches or exceeds the anticipated grant term. If the Charter School does not have an executed rent or lease agreement for the Fiscal Year, the Applicant shall produce an executed lease or rental agreement for the Prior Year or other documentation sufficient to show the Charter School's actual facilities rent or lease costs for the Prior Year. If the Charter School does not have a rental or lease agreement for the Fiscal Year or Prior Year, the Applicant shall provide such other evidence to the satisfaction of the Authority, such as a pending lease agreement, that establishes the Applicant's best estimate of such costs for the Fiscal Year.
- (d) After the Authority has confirmed the Applicant's eligibility and determined one or more of the Applicant's facilities is a New Facility Agreement, the Authority will use an Independent Appraisal, completed within the last three Fiscal Years, that was previously filed with the Authority during a prior Application round. Otherwise, the Authority will request an Independent Appraisal completed within the Fiscal Year. The Appraisal shall be consistent with the USPAP, and at a minimum contain the following items:
 - (1) Use a Certified Real Estate Appraiser or Certified General Appraiser licensed by the California Department of Real Estate Appraisers;
 - (2) The Appraiser shall not be a Related Party as defined in Section 10170.14(a)(3);
 - (3) "Client" shall be the Charter School;
 - (4) "Intended User" shall be the California School Finance Authority for Charter School Facility Grant Program eligibility;
 - (5) Provide a Fair Market Rent Analysis including an explanation that supports the conclusions reached; and

- (6) Signed Certification consistent with language found in USPAP.
- (e) An Applicant requesting reimbursement for Charter School costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites and common area maintenance charges shall submit no later than July 15 following the applicable Fiscal Year all of the following:
- (1) A description of the work for which the reimbursement is requested, including how it meets one of the categories of eligible work;
 - (2) A Facility Invoice Expenditure Report, as provided by the Authority, detailing the costs to be reimbursed; and
 - (3) Applicable contracts for work to be performed to the extent they exist at the time of the Application.
- (f) An Applicant applying for or on behalf of a First Year Charter School shall submit an Application and the supporting documentation listed in subdivisions (f)(1)-(3), as they are made available. Grant funds will not be disbursed until items (1), (2) and (3) have been received by the Authority.
- (1) An approved charter agreement evidencing the First Year Charter School's intention of operating a Charter School during the Fiscal Year for which grant funds are requested. If an approved charter agreement is not available, the Applicant shall submit the charter petition and Application and additional documentation demonstrating its intent to receive charter approval to operate a Charter School during the Fiscal Year for which grant funds are requested;
 - (2) An executed rental or lease agreement for the Fiscal Year for which grant funds are requested. If an executed rent or lease agreement is not available at the time of Application, the Applicant shall submit an estimate of rent or lease costs for the Fiscal Year; and
 - (3) A Charter School 20 Day Attendance Report shall be submitted within 20 days of initial California Department of Education Application submission date.
- (g) The Authority shall be entitled to the return of all grant funds from an Applicant if it is determined that the Applicant failed to provide complete and accurate information, or provided misleading information, that resulted in the disbursement of grant funds for which an Applicant is not eligible.
- (h) All requested documentation required to complete the Applicant's eligibility review or award calculation shall be due to the Authority within 60 calendar days of notification. Failure to submit this documentation by the stated deadline will result in Program ineligibility or ineligibility of applicable facility costs described in Section 10170.4(a)(1)-(4).
- (i) The Authority will request completion of the GSCF directly from the Chartering Authority. This form shall be completed and returned only if the Chartering Authority is aware of any outstanding compliance or revocation issues; otherwise, no action is necessary. An Applicant may appeal any response by the Chartering Authority's staff directly to the Chartering Authority's governing board.
- (1) Requests for completion of the GSCF will be sent out to the Chartering Authority upon receipt of each Application.
 - (2) The Authority reserves the right to request completion of an additional GSCF at any time during the Fiscal Year.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5,

Education Code.

§ 10170.7. Estimated Annual Entitlement Calculation.

- (a) Authority staff will make an initial determination regarding each Charter School's eligibility pursuant to Section 10170.3.
- (b) For each eligible Charter School, the Authority will determine the Estimated Annual Entitlement, pursuant to Section 10170.4(d).
- (c) The Estimated Annual Entitlement Calculation shall not include reimbursement of invoices as defined by Section 10170.4(a)(2).
- (d) If an Applicant is unable to provide an executed rental or lease agreement for the Charter School for either the Fiscal Year or for the Prior Year, the Authority may base the Estimated Annual Entitlement on information provided by the Applicant that constitutes an estimate of the Charter School's expected facilities rent or lease costs for the Fiscal Year.
- (e) For Charter Schools that submit an Application pursuant to Section 10170.5(a)(2), or Charter Schools that do not have Prior Year enrollment data, the Authority will make the Estimated Annual Entitlement calculation within 30 days of receipt of a complete Application and enrollment data from the Department.
- (f) For Charter Schools that do not have Prior Year enrollment data, the Authority shall base the units of ADA on 90% of the school's enrollment as reported in the Charter School 20 Day Attendance Report pursuant to Section 10170.6(f)(3).

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.8. Final Fiscal Year Entitlement Calculation.

- (a) By the second apportionment as described in Section 10170.9, Grantees shall provide final and actual rent or lease costs for the Fiscal Year.
- (b) The Authority shall obtain from the Department final average daily attendance figures and FRPM Eligibility for each Grantee.
- (c) Pursuant to Section 10170.9(d), the Authority shall consider invoices for additional facility costs as submitted pursuant to Section 10170.6(e). Reimbursement for additional eligible costs submitted by invoice shall be limited to the criteria set forth in Section 10170.4(a)(2).
- (d) Based on the information provided pursuant to subdivisions (a)-(c), the Authority shall verify program eligibility and calculate each Grantee's Final Fiscal Year Entitlement, pursuant to Section 10170.4(d).

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.9. Apportionment of Grant Funds.

- (a) The first apportionment of 50% of the Estimated Annual Entitlement shall be disbursed to each Grantee by October 31 of the Fiscal Year for which the grant is requested, or 30 days after enactment of the annual Budget Act, whichever is later.
- (b) For a Grantee that submitted an Application pursuant to Section 10170.5(a)(2), the first apportionment of 50% of the Estimated Annual Entitlement shall be made within 30 days after the Authority determines eligibility and the Estimated Annual Entitlement.

- (c) No later than March 1 of each Fiscal Year, the Authority shall provide to each Grantee a second disbursement of 75% of the Estimated Annual Entitlement less the initial disbursement and less any adjustments due to receipt of the executed rental or lease agreement for the designated Fiscal Year.
- (d) No later than 30 days after the end of each Fiscal Year or 30 days after receiving the data and documentation needed to compute the Charter School's total annual entitlement, whichever is later, the Authority shall provide to each Grantee a third disbursement of 100% of the Final Fiscal Year Entitlement less the first two disbursements and adjusted for any changes to the FRPM Eligibility data, ADA, and executed rental or leases agreements for the designated Fiscal Year. If reimbursement of invoices considered eligible pursuant to Section 10170.4(a)(2) is requested and Program funds remain, these costs will be incorporated into this final disbursement.
- (e) If there are insufficient funds to cover all eligible costs, the following conditions shall be in effect:
 - (1) Facility rent and lease costs as described in Section 10170.4(a)(1), (a)(3), and (a)(4) shall be awarded first. If funds remain, the Authority shall determine the pro rata share for each Grantee's invoice costs as described in Section 10170.4(a)(2) by calculating the percentage of the remaining funds available as compared to the funds needed to award all Grantees' eligible invoice costs. This percentage shall be applied to the Grantee's eligible invoice costs, as described in subsection (A) below.
 - (A) Eligible invoice costs = If 75% of (invoice costs + lease costs) > ADA Cap, then ADA Cap - (75% x lease costs), otherwise invoice costs.
 - (2) If insufficient funds remain available from the Fiscal Year's appropriation to reimburse Grantee's facility rent and lease costs, the award shall be based solely on rent and lease costs as described in Section 10170.4(a)(1), (a)(3) and (a)(4). The Authority shall determine the pro rata share to which each Grantee is entitled by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantees' rent and lease costs. This percentage shall be applied to the Grantee's annual award and shall serve as the Grantee's pro rata share.
 - (3) The Authority shall disburse funds in three apportionments pursuant to subsections (b)-(e).
 - (A) The first apportionment shall be 50% of the pro rata share of the Estimated Annual Entitlement as determined by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantee's Maximum ADA Cap.
 - (B) The second apportionment shall be 25% of the pro rata share of the Estimated Annual Entitlement as determined by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantee's Maximum ADA Cap.
 - (C) The third apportionment shall be the pro rata share of the Grantee's remaining balance of the Final Fiscal Year Entitlement.
 - (4) Until the current year FRPM data is made available, Charter Schools with no Prior Year enrollment data shall have their FRPM based solely on the Charter School sites' Period 1 FRPM submission to the Department.
 - (5) During the Final Fiscal Year Entitlement Calculation, each eligible Applicant

shall receive a Notice of Eligible Facility Costs (CSFA Form 740-03; revised October 2017), incorporated herein by reference. This notice shall serve as the Section 10170.10 Notification of Grantee and upon receipt, the Applicant shall have 30 days to review and execute the notice.

- (6) The Applicant shall have the opportunity to appeal the Notice of Eligible Facility Costs and the Appeal Process under Section 10170.10 (b)-(g) shall be implemented.
- (7) The Authority shall not disburse the third apportionment under subsection (e) until each eligible Applicant's executed Notice of Eligible Facility Costs has been received or October 30, whichever is earliest.
- (f) If a Grantee's Final Fiscal Year Entitlement is less than the amount disbursed to the Grantee through the first two apportionments the Authority shall provide the Grantee with notice and require that the Grantee reimburse the Authority for the excess within 60 days of the Grantee's receipt of such notice.
- (g) Prior to disbursement of funds for costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and common area maintenance, the Grantee shall complete the annual Invoice Expenditure Report, provided by the Authority. Grantee shall also submit supporting invoices, work orders, or other evidence of completed work to the Authority. Upon presentation of such evidence of actual costs incurred, such costs shall be reimbursed as a portion of the final apportionment. Such evidence shall be provided to the Authority no later than July 15 of the applicable Fiscal Year.
- (h) At any time during each Fiscal Year the Authority reserves the right to:
 - (1) Adjust each Grantee's Estimated Annual Entitlement on a pro rata basis based on the number of approved Grantees, the total amount of Estimated Annual Entitlements, and the amount of funds available;
 - (2) Adjust Estimated Annual Entitlements for individual Grantees based on the Authority's receipt of updated data from the Grantee or the Department; and
 - (3) If final data for FRPM Eligibility provided by the Department establishes that the Grantee is not eligible for the program pursuant to Section 10170.3(d), request reimbursement of grant funds already disbursed to the Grantee consistent with subdivision (d).

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.10. Notification of Grantee; Appeal Process.

- (a) The Authority will provide notice to each Applicant of Authority staff's eligibility determination and award calculation pursuant to Sections 10170.7 and 10170.8.
- (b) An Applicant shall have 30 calendar days from receipt of the Authority's notice to request reconsideration of eligibility or the award calculation by Authority staff.
- (c) Authority staff shall have 30 calendar days to review an Applicant's request for reconsideration and provide a final staff decision.
- (d) If the Applicant is unsatisfied with Authority staff's final decision, the Applicant shall have 30 calendar days following receipt of notice of the decision to notify the Authority that the Applicant wishes to appeal the matter to the Authority board.
- (e) Upon receipt of an appeal notice from an Applicant, the matter will be considered by the Authority board at the next regularly scheduled Authority meeting.

(f) Applicants may request a single extension of up to 30 days for either of the deadlines provided in Section 10170.10 (b) or (d). Including the 30 day extension, the entire Appeal Process under subsections (b)-(d) may not exceed 120 days. The extension request must be approved by Authority staff and can be granted only one time during an appeal process. Staff shall consider the request for extension based on a showing of good cause and evaluate on a case-by case basis. Extensions granted under these conditions are considered final and not subject to an additional appeal process.

(g) If an appeal is not able to be resolved by the deadlines provided in Section 10170.10 (b), (d), and (f), the Authority shall deny the appeal based on a failure to comply with Program regulations. This decision is considered final and is not subject to an additional appeal.

(h) If an eligibility determination or award calculation is modified by Authority staff or the Authority Board, changes in apportionments will be processed and distributed to the Applicant within 30 days.

Note: Authority cited: Section 47614.5, Education Code.

Reference: Section 47614.5, Education Code.

§ 10170.11. Obligation and Expenditure of Grant Funds.

(a) Each Grantee shall defend, indemnify and hold harmless the Authority and the state, and all officers, trustees, agents, and employees of the same, from and against any and all claims, losses, costs, damages, or liability of any kind or nature, whether direct or indirect, arising from or relating to the grant and the project or the program.

(b) Each Grantee shall comply with any audit provisions as may be required by the Authority and/or the State Controller.

(c) Each Grantee shall maintain a valid charter and operate a charter school continuously throughout the Fiscal Year. The Authority reserves the right to routinely contact the Chartering Authority directly seeking written verification that the Grantee is in good standing and in compliance with the terms of its charter.

(d) Each Grantee shall notify the Authority, within 30 days, of any material changes to the charter school's facilities, enrollment, FRPM Eligibility, charter status, student operations, or scope of the project that occurs between the time of Application and the end of the grant period.

Note: Authority cited: Section 47614.5, Education

Code. Reference: Section 47614.5, Education Code.

§ 10170.12. Approval of Grant Use Change.

The Authority may, on a case-by-case basis, consider a change in the use of the grant funds if the Grantee demonstrates that the change is consistent with the program and this Article.

Note: Authority cited: Section 47614.5, Education Code.

Reference: Section 47614.5, Education Code.

§ 10170.13. Audits.

- (a) The Authority and/or the State Controller may conduct or require periodic audits to ensure Grantees are using grant funds consistent with the requirements of the program and this article as approved. Grantees shall retain all documentation and financial data necessary to substantiate the purposes for which the grant funds were spent for a period of three years after the end of the grant period.
- (b) Grantees may be required to routinely verify continued eligibility.
- (c) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.14. Conflicts of Interest.

- (a) For purposes of this section, the following definitions shall apply:
 - (1) "Affiliate" shall mean a shareholder, partner, member, officer or board member of, or person who directly or indirectly controls, a Corporate Entity.
 - (2) "Corporate Entity" shall mean any type of organization or legal entity other than an individual, including a corporation, partnership, limited liability company or unincorporated association.
 - (3) "Related Party" shall mean:
 - (A) School Official or a spouse, domestic partner, or dependent child of a School Official; or
 - (B) A Corporate Entity if a School Official or a spouse, domestic partner, or child of a School Official is an Affiliate of the Corporate Entity, except that a non-profit Corporate Entity formed exclusively for the purpose of managing or providing support to the Applicant or Charter School or to a group of related charter schools, and any direct or indirect wholly-owned subsidiary of any such Corporate Entity, shall not be considered a Related Party.
 - (C) "School Official" shall mean a board, member, officer, or employee of an Applicant or the Charter School.
- (b) Grantees must avoid actual conflicts of interest when applying for or receiving grants from the Authority.
- (c) Grant funds may not be used by an Applicant or Charter School to pay for any lease or rental or service agreement with a Related Party, unless all of the following conditions are satisfied:
 - (1) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding approval of the lease, rental agreement, or any amendment thereto;
 - (2) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding the decision to apply for a grant to cover costs associated with the lease or rental agreement, as well as abstaining from participating in the Application for grant funds or administration of the Charter School's receipt of grant funds;
 - (3) The Related Party, and, in the case of a Corporate Entity, any School Official

- who is an Affiliate of the Corporate Entity, discloses its interest in the lease or rental agreement to the governing board of the Charter School;
- (4) The amount of the lease or rent is at or below Fair Market Rent based on an Independent Appraisal paid for by the Applicant or Charter School or the governing board in approving the lease or rental agreement or amendments thereto has made a finding that the agreement is reasonable under the circumstances, and
 - (5) The lease or rental agreement is not signed by the Related Party, or in the case of a Corporate Entity, by any School Official who is an Affiliate of the Corporate Entity, on behalf of the Applicant or Charter School.
- (d) Nothing in this section is intended to supercede Government Code Section 1090, the Political Reform Act (commencing with Government Code Section 81000), or any other conflicts of interest laws that may be applicable to the Applicant or Charter School's participation in the program.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

§ 10170.15. Funding Contingency.

- (a) Funding for this grant program in each Fiscal Year is contingent upon the appropriation of funds.
- (b) Apportionments to each Grantee will be contingent upon the Grantee's continuing eligibility to receive such apportionments.
- (c) The Authority or Authority staff may seek third party verification regarding any and all applicable costs associated with the facility/project receiving a grant pursuant to this Article.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.