

**MEMORANDUM****Staff Summary No. 7**

**Date:** June 24, 2021

**To:** Members of the California School Finance Authority

**From:** Katrina Johantgen, Executive Director

**Subject:** Appeal of the Charter School Facility Grant Program’s 2020-21 Funding Round Ineligibility Determination for Downtown College Preparatory (Downtown College Prep – El Primero) and Downtown College Preparatory Middle (Downtown College Prep – El Camino)

**Background:** Downtown College Preparatory – El Primero (DCPEP) and Downtown College Preparatory Middle – El Camino (DCPEC), or collectively referred to as DCP, applied for the 2020-21 funding round of the Charter School Facility Grant Program (Program) on June 2, 2020. Per Program regulation section 10170.3(f), applicant schools must be certified to be in Good Standing with their charter authorizer. The California School Finance Authority (CSFA) certifies Good Standing by sending the relevant charter authorizer a Good Standing Confirmation Form (GSCF or CSFA Form 1119). The authorizer is asked to confirm the following: 1) the applicant is in compliance with the terms of its charter agreement; 2) there are no pending or outstanding Notices of Violation described in Education Code 47607(g); and 3) there are no pending or outstanding Notices of Intent to Revoke described in Education Code 47607(h). Failure to return a GSCF or the return of a blank form is presumed an acknowledgement by the charter authorizer that there are no outstanding compliance, violation, or revocation issues for the school in question. The Program’s Good Standing requirement is an important tool developed as part of CSFA’s best practices to ensure that high-quality schools are accessing coveted program funds. As part of a broader regulatory package, CSFA’s Good Standing requirement was approved by board members and reviewed by the Office of Administrative Law (OAL) following a public comment period.

Downtown College Prep Charter Schools has been active in the Program since the 2013-24 funding round (DCP Alum Rock Middle School), while DCPEP and DCPEC have both been Program awardees since the 2016-17 Funding Round. For the 2020-21, DCP applied for awards totaling \$1,165,377.57 for the two schools combined.

School	2016-17	2017-18	2018-19	2019-20	2020-21
DCP - El Primero	\$267,780.00	\$348,940.09	\$352,769.73	\$638,604.66	\$608,418.51
DCP - El Camino	\$332,290.37	\$305,118.63	\$311,438.50	\$537,772.38	\$556,959.06

For the 2020-21 funding round, DCPEP and DCPEC both meet all eligibility requirements, other than the lack of Good Standing.

2020-21 Program Eligibility	INELIGIBLE
Status Per CDE	ACTIVE
CSFA Program Compliance	ELIGIBLE
Good Standing Certification	INELIGIBLE
FRPM Eligibility	ELIGIBLE
LSQ Eligibility	ELIGIBLE
Conflict of Interest Status	ELIGIBLE

**Issue:** On August 21, 2020, DCP’s charter authorizer, San Jose Unified School District (SJUSD), informed CSFA of the lack of Good Standing for both schools through submission of a GSCF. Specifically, SJUSD stated both schools were not in Good Standing due to the claim both schools are not “in compliance with the terms of its charter agreement”. SJUSD provided vast and detailed information regarding the following issues of non-compliance:

1. Neither school had received nor implemented any advice and assistance from the California Collaborative for Educational Excellence.
2. Neither school had increased their general liability insurance to a level that is at least on par with the coverage maintained by SJUSD.
3. Both schools remain in breach of a Memorandum of Understanding (MOU) that included a provision to be a local educational agency within El Dorado County Charter Special Education Local Plan Area for special education purposes prior to the beginning of the 2018-19 school year.

On January 4, 2021, CSFA sent an ineligibility notice to DCP due to the lack of Good Standing with its charter authorizer. On April 20, 2021, the schools’ legal representation, Young, Minney, & Core (YMC), provided a response and is appealing the CSFA’s ineligibility determination specific to SJUSD’s determinations and claims. In summary, YMC makes the following assertions:

1. Both schools are in Good Standing per “approved conditions” with SJUSD.
2. Both schools are not in violation of their agreement(s) with SJUSD.
3. The Good Standing requirement is inconsistent with Education Code and invalid.
4. The Good Standing requirement allows for authorizers the “opportunity” to “abuse” charters.

Staff provided the letter and background information to STO Legal Counsel, Ravinder Kapoor, to garner his opinion on the matter and determine if YMC put forth a compelling legal position. Mr. Kapoor verified that YMC's claims are directed toward the district and advised the school and its counsel to raise the issues with the authorizer or directly to the board of SJUSD.

On May 20, 2021, CSFA responded to YMC's appeal on behalf of the schools stating that the two remedies for CSFA's ineligibility finding are: 1) for SJUSD to either withdraw its originally submitted GSCF; or 2) submit a new GSCF confirming both schools' Good Standing. The schools have until June 30, 2021 to resolve this ineligibility matter; if they fail to do so then CSFA's ineligibility determination stands.

On May 25, 2021, a partner from YMC provided public comment to the CSFA Board during a regularly scheduled meeting regarding this issue at the start of the meeting.

On June 4, 2021, YMC responded to CSFA's appeal denial requesting that CSFA revisit the positions articulated in its response letter and that it more comprehensively addresses the schools' argument regarding the lack of statutory authority for the Good Standing requirement. YMC restates the following claims:

1. YMC argues that Education Code (EDC) section 47614.5 does not authorize discretionary review of funding eligibility.
  - a. CSFA has developed various regulations to ensure that Program funds are awarded to schools in adherence with EDC 47614.5. These regulations were implemented under the guidance of EDC 47614.5(d)(4) which allows for CSFA to adopt regulations that allow discretionary review of Program eligibility requirements. EDC 47614.5(d)(4) states that "The California School Finance Authority shall verify that the grant amount awarded to each charter school is consistent with eligibility requirements as specified in this section and in regulations adopted by the authority."
2. CSFA's regulations do not prevent CSFA from determining the schools are in Good Standing. YMC argues that CSFA may also find an applicant in Good Standing as our regulations state that "the Authority will rely on information prepared by the Chartering Authority." YMC argues that this language leaves room for the Authority to also rely on information obtained from applicants directly or from other sources.
  - a. While CSFA is not obligated to make determinations of Good Standing solely based on the conclusion of the authorizer, it recognizes that the chartering authority is the subject matter expert on the charters within their scope.
    - (A) 4 CCR § 10170.2(q) states that "'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.”

(B) 4 CCR § 10170.3(f) states that “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.”

3. The OAL’s preliminary review of a regulation is not determinative as to its legality.
  - a. Approval of a regulation by OAL, if not dispositive to its legality, is a strong presumption of legality. Furthermore, even without the presumption of legality, the Good Standing regulation is legal as a proper exercise of the discretion delegated to CSFA under EDC 47614.5(d)(4).

The EDC 47614.5(d)(4) allows for CSFA to adopt regulations, which confirms the Good Standing requirement is inside of CSFA’s scope and abilities. Virtually every other applicant to the Program has been able to meet this eligibility requirement. In the three funding rounds prior to the 2020-21 round, 98.9% of applicants had their authorizers certify Good Standing. This figure includes schools that did not originally receive a Good Standing confirmation from their authorizer and were able to remedy the concerns with their authorizers. (These authorizers then submitted a new GSCF to supersede the original.)

CSFA is aware of the complexities of some authorizer/charter school relationships and requirements to resolve compliance issues. For this reason, CSFA is in the process of proposing a regulation change that will strike the first condition in 4 CCR § 10170.2(q) that requires the applicant to be in compliance with the terms of its charter agreement. While CSFA is currently preparing this change to bring to the CSFA board in July, this change will not benefit DCP as it is not legal to retroactively implement Program regulations (according to STO Counsel).

**Recommendation:** Staff recommends denial of the appeal on behalf of Downtown College Preparatory – El Primero and Downtown College Preparatory Middle – El Camino based on the schools’ failure to meet Program eligibility requirements.

**Attachments:**

- Attachment 1 – Good Standing Confirmation Form (Downtown College Preparatory – El Primero)
- Attachment 2 – Good Standing Confirmation Form (Downtown College Preparatory Middle – El Camino)
- Attachment 3 – Ineligibility Notice (Downtown College Preparatory – El Primero)
- Attachment 4 – Ineligibility Notice (Downtown College Preparatory Middle – El Camino)
- Attachment 5 – Appeal (Downtown College Preparatory – El Primero)
- Attachment 6 – Appeal (Downtown College Preparatory Middle – El Camino)
- Attachment 7 – Appeal Denial (Downtown College Preparatory – El Primero)
- Attachment 8 – Appeal Denial (Downtown College Preparatory Middle – El Camino)
- Attachment 9 – Response to Appeal Denial (Downtown College Preparatory – El Primero and Downtown College Preparatory Middle – El Camino)
- Attachment 10 – Letter to San Jose Unified School District RE: California Collaborative for Educational Excellence (Downtown College Preparatory – El Primero and Downtown College Preparatory Middle – El Camino)
- Attachment 11 – Insurance Excess Liability Policy Documents (Downtown College Preparatory – El Primero and Downtown College Preparatory Middle – El Camino)
- Attachment 12 – El Dorado Charter SELPA Participation Agreement (Downtown College Preparatory – El Primero and Downtown College Preparatory – El Camino)
- Attachment 13 – Letter of Rebuttal to San Jose Unified School District (Downtown College Preparatory – El Primero and Downtown College Preparatory – El Camino)
- Attachment 14 – Charter School Facility Grant Program Regulations (4 CCR § 10170.)
- Attachment 15 – CA Education Code 47614.5