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VIA ELECTRONIC MAIL

John Yeh, Esq.
Dannis Woliver Kelley
71 Stevenson Street, 19th Floor
San Francisco, CA 94105

Dear Mr. Yeh:

I am writing on behalf of my client, Chico Green School (“CGS”), in response to the Notice of Intent to Revoke (“Notice”) sent to CGS by Chico Unified School District (“CUSD”) on July 27, 2011. In light of California Rules of Professional Conduct, Rule 2-100(A), I trust that you will forward this response to your client in a timely fashion. This information is submitted for inclusion in the record for purposes of this revocation proceeding.

In light of the short timeframe given CGS to respond to the Notice and its efforts to prepare to open the school at the end of this month, CGS reserves the right to produce additional evidence in support of its position up to the date of the hearing on the revocation. The evidence cited herein will be submitted by CGS directly to CUSD by the close of business Wednesday. To the extent that any pieces are not included, they will be given to CUSD as soon as reasonably practicable.

As an initial matter, the Notice is somewhat confusing in that it seemingly relies upon grounds for revocation that were sufficiently remedied by CGS earlier in the year. Thus, this response necessarily covers all items identified in the Notice and prior notices.

Background Facts

CGS opened its doors in August 2010. Almost immediately thereafter, CUSD issued a Notice to Remedy on September 9, 2010 (“September Notice”) identifying several grounds it believed constituted charter and other violations. It appears that these allegations were the result of disgruntled employee reports to CUSD.

CGS responded to these allegations (“September Response”) and a public hearing was held. CUSD, after its investigation, issued a second Notice to Remedy on October 20, 2010 (“October Notice”) based largely on the same issues identified in the September Notice. CUSD issued its October Notice even though it largely had no new allegations of problems occurring between the September and October timeframe. CGS responded to the October Notice (“November Response”).

CUSD followed up with a December 16, 2010 Letter (“December Letter”) responding to the back and forth between CUSD and CGS, and concluding it would not move forward with the revocation process at that time.

While the current Notice contains explicit grounds for revocation, it appears to rely upon allegations identified in the prior Notices to Remedy. Thus, this response comprehensively deals with all CUSD allegations.

Explicit Grounds for Revocation Identified in the Notice

Ground #1: “CGS’ charter expressly states that the charter school will seek and obtain accreditation from WASC, to ensure that the Charter School’s coursework meets the a-g entrance requirements for the US and CSU systems;

“Chico Green School will seek accreditation through the Western Association of Schools and Colleges. This accreditation will ensure that the curriculum is acceptable to, and transferable to, other high schools. CGS will seek an agreement with both the University of California (UC) and California State University (CSU) systems. The aim of this agreement will be the development of courses meeting the a-g entrance requirements of both systems. (CGS Charter, p. 13.)” Notice, p. 4.

Response

No Charter Violation. CGS’ charter expressly states that it will **SEEK** accreditation through WASC. Charter, p. 13. While the goal is obviously to obtain that accreditation, the charter does not identify any specific deadlines for such accreditation. In CGS’ November Response, it attached a WASC Plan timeline. In that timeline, CGS articulated that it had 18 months to attain accreditation and accelerated the process by scheduling the initial visit for April 2011 so that it could make any necessary changes for accreditation. Eighteen months from the initiation of the WASC process previously provided would give CGS until August 2012. CUSD did not, however, indicate that this timeframe was unreasonable or unacceptable. *See* WASC Plan timeline.

While CGS was not accredited in its first attempt, it continues to actively pursue accreditation with WASC. Since CGS learned of WASC’s decision declining approval for candidacy received on July 20, 2011, it has been in touch with Dr. David Brown, Executive Director of WASC. Dr. Brown informed Cheryl Eining by means of a telephone conversation on or about August 3rd that WASC was willing to schedule a second initial site visit for CGS early in the 2011/12 school year to further expedite the accreditation process.

In fact, WASC has confirmed in writing that it will conduct a second initial site visit in the fall of 2012. It states that “[a]ssuming the school’s ability to address the recommendations listed in the report completed by the Visiting Committee the school should be able to attain either Candidacy or Initial Accreditation Status at that time.” WASC Letter dated 8/9/11.

Additionally, eleventh grade student Ryan Shidyak also called Dr. Brown to discuss the implications of the accreditation decision on his continued enrollment at CGS. Dr. Brown informed him that WASC would conduct another site visit in the fall of 2011. *See* Letter to the editor written by Ryan Shidyak.

Stop Gap Measures Provide Sufficient Protections for Students. There are sufficient resources available to CGS that will enable it to supplement its curriculum to provide approved a-g curriculum pending WASC accreditation. It is common practice for new charter schools to use these tools in order to address the needs of UC or CSU college bound students. There are two organizations that CGS is planning to research and with which to partner: UCCP and Cyberhigh. Sandoe Decl., ¶ 2. Information about these organizations and their programs may be found at www.cyberhigh.org and www.uccp.org.

The following is an excerpt taken off of the UCCP website:

University of California College Prep (UCCP) publishes high-quality UC-approved courses and course content to benefit California students, with a special emphasis on helping underserved students gain college eligibility. We strive to connect educators and students to ubiquitous and effective UC-quality online materials. Our curriculum is free to California schools, school districts and educational organizations.

Almost one million students in California attend schools that do not offer enough college prep or "a-g" courses for their students to prepare for college. Students in low performing, small and remote schools are even more challenged to become college eligible. Shortages of Advanced Placement® courses and teachers put students at a disadvantage.

UC College Prep seeks to bridge that gap by helping schools, districts and partners deliver our college prep courses to these and other students online. Since 1999, thousands of students in underserved schools have completed UC AP® and other "a-g" courses and taken AP® exams. In previous years, 76.2 percent of UCCP participants overall and 68% of underrepresented students in the cohort enrolled in a two- or four-year college the year following high school graduation. Please note that UC College Prep does not provide instruction, grades or credit for its courses.

UCCP makes its best course content available to California students and teachers by freely licensing its courses to schools and educational organizations, and by putting its content up on open access web sites for all learners to use. UCCP Advanced Placement® courses are audited and certified by the College Board. Courses employ UCCP's unique expertise in digital pedagogy and cutting edge educational content development.

Exciting new online courses are being developed by tapping into the expertise and resources of UC campuses and partnering with community colleges, CSU campuses and others to create the best courses possible — content that can be used by all educational segments and partners. Although UC College Prep's prime focus is on high school students, the program also reaches middle school and community college students.

It's UCCP's goal to create courses that engage and stimulate students by integrating with the latest technologies and media. In this way students and teachers will find dynamic educational content easily accessible through the devices they use every day. With UC College Prep's courses, California educators have 21st century educational technology and top quality approved curriculum at their fingertips.

WASC Appeal Deadline Has Not Run. While CGS is hopeful that it can resolve the accreditation issue with WASC without filing an appeal, its ability to do so does not expire until August 20, 2011. See WASC Constitution, Article VI., § 1, WASC Appeal Manual, § 2.A. CGS may appeal the decision on any of the following grounds: “(1) there were errors or omissions in carrying out prescribed procedures on the part of the evaluation team and/or the Accrediting Commission which materially affected the Accrediting Commission’s decision; (2) there was demonstrable bias or prejudice on the part of one or more members of the evaluation team or Accrediting Commission which materially affected the Accrediting Commission’s decision; (3) the evidence before the Accrediting Commission prior to and on the date when it made the decision which is being appealed as materially in error; or (4) the decision of the Accrediting Commission was not supported by substantial evidence.” WASC Constitution, Article VI., § 8. In light of the evidence below, it is clear that CGS has grounds for an appeal.

The declaration of Selena Logan (“Logan Decl.”) demonstrates that the WASC initial site visit was highly irregular. WASC presented CGS with the schedule for the initial site visit. See WASC Site Visit Agenda. In this agenda, WASC’s representatives planned to arrive at 8:00 a.m. and leave at 1:30 with a half hour meeting scheduled with John Bohannon. In reality, they arrived at 7:50 a.m. and left well before noon with a full hour meeting with John Bohannon. Logan Decl., ¶¶ 2-9.

Prior to the meeting with Mr. Bohannon, the WASC representatives were very positive and interested in learning about CGS and its program. After the closed meeting with Mr. Bohannon, their tenor changed dramatically. CGS was not permitted to attend this meeting and was not given an opportunity to respond to whatever it was that Mr. Bohannon told them. Logan Decl., ¶¶ 2-9.

The following sequence of events, along with the WASC site response, however, demonstrate that Mr. Bohannon provided the WASC team with the prior notices to remedy as some sort of evidence against CGS. *See* WASC Sources.

For instance, immediately following the meeting with Mr. Bohannon, the WASC representatives asked pointed questions of Mr. Sandoe for about twenty minutes and then

cancelled all meetings for the rest of the day. They did not present any type of summary to the school that day as planned. CGS was simply not given the ability to respond to the negative report provided by Mr. Bohannon. Logan Decl., ¶¶ 2-9.

Furthermore, there is a perceived conflict of interest between CUSD Superintendent, Kelly Staley and WASC Commission member Valene Staley, who are mother and daughter. Superintendent Staley openly does not support CGS and it can be presumed that she has spoken with her mother about her negative opinions about CGS. Without evidence that Valene Staley recused herself from participation in the decision to deny CGS accreditation, there is demonstrable evidence of bias or prejudice on behalf of the WASC Commission.

WASC Appeal Could Be Resolved Timely. The timeline prescribed by WASC for an appeal demonstrates that it could be resolved by the end of October 2011. Once a Notice of Appeal is filed, a Notice of Hearing is issued announcing the time and place of the hearing with at least 60 days' notice. WASC Appeal Manual, § 2.D. CUSD's argument that it cannot receive accreditation to meet the needs of its seniors is unsupported and directly refuted.

Ground #2: "CGS began the 2010-2011 school year enrolling 11th grade students, even though the charter approved by the CUSD Board only permitted grades 9-10. CGS failed to seek a material revision from the CUSD Board to serve students in the 11th grade."

Response

CGS Had Prior Approval for 11th Grade. Prior to the start of the 2010-11 school year, CGS asked John Bohannon if it could enroll 11th grade students for the 2010-11 school year. Mr. Bohannon responded on August 26, 2010 in an email, which stated as follows: "I spoke with Superintendent Staley today. She said she thinks the 11th graders have shown a desire to attend Green and she doesn't want to get in the way of that. However, we do think you should get on a board agenda soon to ask for the material change, so the CUSD board is aware of the change. Call me about how to get on the board agenda and we'll take care of it." Bohannon Email dated 8/26/10.

CGS Remedied the 11th Grade Issue. Shortly thereafter on September 9, 2011, CUSD issued its September Notice stating that "The Chico Green School charter states that '[w]e will begin our first year with a population of 50 students in the 9th and 10th grades. Over the next few years we intend to grow to a size of approximately 200 students in 9th through 12th grades.' (Charter Petition, p.1) ¶ As of September 7, 2010, the Chico Green School website, under the "Enroll Now" link, states that 'Chico Green School is pleased to announce that we are now accepting enrollment for the 11th grade'..." The September Notice stated that in order to remedy the alleged violation, that it "Cease all efforts to enroll students for the 11th grade, in violation of the charter." September Notice, pp. 2-4.

In its September Response, CGS requested a material revision of its charter adding one word, and striking six words so that its enrollment of 11th graders would be in compliance with the terms of the charter. Through a telephone conversation in September with Mr. Bohannon, CGS was informed that the material revision would be addressed at the public hearing on the

September Notice. Sandoe Decl., ¶ 3. CGS included the language of the requested change in the September Response for board action. The CUSD Board did not act on this request. At this time, CGS stopped enrolling any additional 11th graders. Sandoe Decl., ¶ 5.

In CUSD's October Notice, it again identified the 11th grade enrollment issue, even though CGS had ceased enrollment of additional 11th grade students in September. CUSD concluded that "[w]hile the District will attempt to avoid disrupting the academic progress of those eleventh grade students who have already enrolled, because CGS is in violation of its charter, it should avoid committing further violations by enrolling additional eleventh graders." October Notice, p. 5. Once again, CGS was able to remedy the violation by continuing to refuse to enroll additional eleventh graders. Sandoe Decl., ¶ 5.

While CGS at no point in time conceded that the enrollment of 11th graders was a material revision of the charter, CGS believed that it had properly requested CUSD, pursuant to the requests of Mr. Bohannon, to approve its proposed change pursuant to the September Response. CUSD, however, did not place the issue on the agenda within the sixty (60) day timeframe identified in Education Code sections 47605 and 47607. In a follow-up telephone conversation between CGS and CUSD in early November, and through its November Response, CGS asked CUSD to act on its request for a material revision to its charter. Sandoe Decl., ¶ 4; November Response.

After the timeframe had run, arguably in an attempt to correct its failure to follow the Education Code, CUSD notified CGS that it did not consider the September Response a formal request for a material revision of the charter. CUSD December Letter, p. 1.

Following the December Letter, CGS contacted Mr. Bohannon asking for written guidelines for submitting a formal request to modify a charter in accordance with the December Letter. Sandoe Decl., ¶ 6. CGS was not provided with any further information about the process. Sandoe Decl., ¶ 6.

Enrollment Change Not Material. Enrolling 11th graders in the first year of instruction cannot be found to be a material change in the terms of the charter. The charter school followed the CUSD permitted process for changing the charter. The Charter provides that "The Board of Directors is responsible for all future modifications to the School's Charter. Any such modifications require a two-thirds vote of the Board. CUSD must approve all material revisions to the charter prior to implementation." Charter, p. 26. The CGS board unanimously approved the addition of the 11th grade on May 8, 2010. Sandoe Decl., ¶ 9.

What constitutes a "material revision" for purposes of Education Code sections 47605 and 47607 is not defined. Nor is there any case law on point that would assist in defining what constitutes a "material revision" of a charter. In other contexts, "material alterations" of contracts are those that work "some change in the rights, interests or obligations of the parties to the writing." See, e.g., *Hill & Morton, Inc. v. Coughlan*, 214 Cal. App. 2d 545, 549 (1963)(citation omitted). In this instance, starting the 11th grade in its first year did not change CGS' rights, interest or obligations. Nor did it affect those of CUSD. Rather, CGS was always given the right to serve 11th grade students, it simply did not articulate that it would happen in

its first year of operation. Thus, the revision cannot be held to be “material” as contemplated by the Education Code and no prior CUSD board approval was required.

Furthermore, CGS is aware of other charter schools within the CUSD jurisdiction that have made unilateral changes to their enrollment without prior CUSD board action. For instance, Inspire College Prep High School’s initial charter school petition that was approved by CUSD specified enrollment in particular grades and at certain enrollment levels. The Inspire Charter read: “The Inspire College Prep High School will open in the fall of 2010/11 as a school serving approximately 245 students in grades 9 through 12 (105 freshmen, 70 sophomores, 35 juniors, and 35 seniors). . . .” In reality, it opened the school with 280 students, with no 12th grade. Sandoe Decl., ¶ 8. These changes were not CUSD board approved via a public hearing prior to implementation. CUSD has not issued notices to remedy for these enrollment changes. Based upon these CUSD actions, CGS reasonably believed that offering 11th grade in its first year with the approval of the CUSD Superintendent was sufficient to meet the terms of its charter and the law. Sandoe Decl., ¶ 7.

The Issue is Moot, CGS Reasonably Relied Upon CUSD’s Representations and CUSD is Estopped from Revoking on this Ground: CUSD now seeks to revoke CGS’ charter based on a violation that no longer has any import. A case becomes moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. *See, Murphy v. Hunt*, 455 U.S. 478 (1982). CUSD, as shown above, allowed CGS to enroll these 11th grade students prior to opening its doors. CUSD permitted these students to remain enrolled in CGS throughout the school year. None of the prior Notices directed CGS to disenroll the 11th grade students and stop providing educational services to them. Now, CUSD seeks to revoke the charter based upon prior alleged violation that no longer constitutes an alleged violation. CGS’ charter explicitly allows it to serve students in grades 9 through 12 in its second year of operation. Charter; Bohannon Email of 4/18/11.

In any event, CUSD should be estopped from arguing this technical violation simply because it gave CGS prior approval to enroll 11th grade students and allowed it to continue to serve these students throughout the year.

Ground #3: “The District issued Notices of Violation/Notices to Remedy or Face Revocation on September 9, 2010, October 20, 2010 and December 16, 2010, directing CGS to make satisfactory progress towards attaining WASC accreditation. The October 20, 2011 Notice directed CGS to ‘[i]mplement a plan to seek accreditation from WASC, allowing eleventh graders to have sufficient coursework for college eligibility by the time they apply to college next year.’”

Response

The October Response provided by CGS provided CUSD with plans for attaining WASC accreditation. It outlined an 18 month process, giving itself until August 2012. CUSD representatives have admitted that it usually takes about 18 months for accreditation. Newspaper Article dated 10/29/2010. CUSD did not object to this plan or notify CGS that failure to obtain accreditation in its first attempt would constitute grounds for revocation.

CUSD's aggressive prodding for CGS to obtain WASC accreditation with the specter of revocation looming likely affected CGS' ability to obtain WASC accreditation in the first instance. *See, also*, Response to Ground #1 *supra*.

Ground #4: "The December 16, 2011, Notice stated that '[t]he District will continue to monitor the education of eleventh grade students to ensure compliance with California State Standards and to ensure that CGS is making satisfactory progress with the WASC accreditation process."

Response

This ground relies upon several assumptions that are simply not accurate. First, this alleged ground does not notify CGS that failure to attain WASC accreditation in its first attempt in the process would give rise to revocation. CGS reasonably believed that its articulation of an 18 month process would be honored by CUSD. In fact, as demonstrated above, WASC is planning to revisit CGS in the fall of 2011.

Second, the allegation implies that the December Letter somehow constituted a notice to remedy. This is factually inaccurate. The December Letter is a response to CGS' November Response. It states so in its first sentence: "The Chico Unified School District ("District") has received the November 12, 2010 response of the Chico Green School ("CGS") to the District's Notice to Remedy or Face Revocation. The District responds as follows:" Furthermore, the December Letter states "[t]he District concludes that although CGS might not agree that certain conduct has constituted a violation of the charter or the law, the charter school has taken a number of measures to remedy past incidents and prevent their recurrence. In light of these measures, the District will not proceed with a Notice of Intent to Revoke at this time."

As noted in my previous correspondence, CUSD has not reinstated the proper process in order to properly continue with these proceedings. This is supported by the draft¹ regulations articulating appeal procedures previously presented to CUSD and incorporated herein by reference.

Ground #5: "After an April 27, 2011, site visit, the Accrediting Commission for Schools on June 30, 2011, provided written notice to CGS that the Charter School was not approved for candidacy for Site Approval."

Response

While the letter notifying CGS of the decision was dated June 30, 2011, CGS did not receive that notice until July 19, 2011. Sandoe Decl., ¶ 10. CGS also learned from a third party that Superintendent Staley notified parents to withdraw their children from CGS due to the

¹ In your written response to my July 29, 2011 letter, you make much of the fact that I did not articulate that the regulations had not been approved by the State Board of Education or Office of Administrative Law. The use of the word "draft" is an explicit acknowledgement that they are in "draft" form – meaning they are provisional and not finalized. The point is that they articulate what the law is likely to prescribe in terms of process, one that CUSD is clearly ignoring.

accreditation issue as early as July 17, 2011. Sandoe Decl., ¶ 11. The Superintendent notified these individuals before CGS learned that it had not been accredited. *See, also*, Response to Ground #1. Thus, it is reasonable to conclude that Superintendent Staley had notice of this decision through informal means prior to final notification to CGS.

Ground #6: “The Commission cited a number of factors for its conclusion, including the lack of a proper allocation of duties between the CGS Board and administration, lack of alignment between the curriculum and California State Standards and the lack of systems and processes to ensure that students would be afforded adequate credit acquisition to make progress towards graduation, and to be eligible for admission to CSU or UC schools. These concerns were similar to those noted by the District in its September 9, 2010, October 20, 2010, and December 16, 2010, Notices of Violation.”

Response

The WASC Report Does Not Constitute Substantial Evidence as Required for Revocation. The conclusions contained in the WASC report constitute hearsay. Hearsay is defined as “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” Ca. Evidence Code § 1200(a). While this report may be admissible in an informal administrative proceeding such as this revocation, it is not sufficiently considered “substantial evidence” required by the Education Code for revocation proceedings. The Court in *In re Lucero L. v. Otilio L.*, 22 Cal. 4th 1227, 1244-45 (2000) concluded as follows:

“‘The admissibility and substantiality of hearsay evidence are different issues.’ (citation omitted) As this court has long recognized, “[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence.’ There must be substantial evidence to support such a ...ruling, and hearsay, unless specially permitted by statute, is not competent evidence to that end.’ (citations omitted). Except in those instances recognized by statute where the reliability of hearsay is established, ‘hearsay evidence alone “is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence.’”” (citations omitted).

“”[I]f the word ‘substantial’ means anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with ‘any’ evidence. It must be reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of the essentials which the law requires in a particular case.”” *Gregory v. State Bd. of Control*, 73 Cal. App. 4th 584, 598 (1999).

Thus, the WASC report does not constitute substantial evidence in itself to support CGS’s charter revocation. The WASC report does not present any evidence of the items that CUSD points to for support of its revocation. Furthermore, there is no corroborating evidence presented by CUSD for these assertions. CGS is informed and believes that the evidence shows that Mr. Bohannon provided copies of the Notices to Remedy to the WASC representatives, providing these representatives with the unsubstantiated information that

ultimately appeared in the WASC report. As is evident from the Notices to Remedy, CUSD has not provided any factual evidence to support CUSD's conclusory findings.

A review of the document entitled WASC Sources links each WASC finding to the language identified in each Notice to Remedy issued to CGS. *See* WASC Sources. WASC did not review at its site visit documents that could lead to the findings identified in its report. Sandoe Decl., ¶ 12; Logan Decl., ¶¶ 2-9.

CUSD has also presented its prior Notices to Remedy as evidence that CSG has somehow violated its charter and the law. These Notices, however, do not constitute competent evidence since they have no factual support. These documents are mere conclusory assertions, and thus constitute hearsay. CUSD cannot overcome the fact that the WASC report is considered to be hearsay by corroborating it with unsubstantiated hearsay; and vice versa.

Ground #7: "As a result of CGS's failure to cure the deficiencies noted in the Notices of Violation, the Charter School has failed to attain candidacy status for the purposes of the accreditation process, and will be unable to do so in time for the coursework of its current 12th graders to be considered eligible for admissions to the CSU and UC systems. CGS's students and their potential to continue their education, have been directly harmed by CGS's failure to cure the violations."

Response

CUSD takes a monumental leap concluding that the WASC report is somehow proof that CGS failed to cure prior notices to remedy. As mentioned above, this type of hearsay is not considered "substantial evidence" for due process purposes. It is undisputed that charter operators have a property right to their charters, which cannot be taken away without due process of law. *Today's Fresh Start, Inc. v. Los Angeles County Office of Education*, ___ Cal. App. 4th ___, 2011 WL 2685955, *13 (2011). Thus, CUSD is required to produce something more in support of its revocation.

CUSD presents no factual support for its assertion that CGS will be unable to attain candidacy status in time for the coursework of its current 12th graders to be considered eligible for admissions to the CSU and UC systems. Furthermore, CUSD presents no evidence that CGS' students have been harmed by this initial WASC determination.

CGS only had 5 students who would become seniors in the 2011/12 school year. Sandoe Decl., ¶ 13. Of those, only one is college bound. Sandoe Decl., ¶ 13. This student has called WASC to discuss whether he would be harmed and will be able to take advantage of the stop gap measures identified above. Letter to the Editor.

CUSD's "Facts" Presented in Support of Its Notice of Intent to Revoke: The following represent the totality of the "evidence" presented by CUSD that CGS somehow committed a material violation of its charter, failed to meet pupil outcomes or violated any provision of law. As is shown below, this "evidence" is uncorroborated hearsay, lacking foundation, irrelevant to the revocation proceeding at hand and/or conclusory opinion.

September Notice

- “Chico Green School’s first day of instruction was Tuesday, September 7, 2010. The District has received information that the school has not yet hired teachers in all of the areas creditable under the “A” to “G” admissions requirements for UC/CSU, including but not limited to the following: * Pre-Calculus and Trigonometry; * Physics; * Advanced Foreign Language & Immersion.”
 - This “evidence” is uncorroborated hearsay, lacks foundation and irrelevant. It is undisputed that the subjects identified in the September Notice are typically taught at a senior level. Sandoe Decl., ¶ 14. CUSD cannot expect CGS to hire teachers for non-existent students. CGS did not enroll any seniors in its first year of operation. For those juniors who were advanced in the “A” to “G” subjects, CGS conducted assessments to determine each student’s need for such advanced instruction. As a result of the assessments, CGS hired part-time NCLB compliant, credentialed instructors for advanced mathematics and Spanish. Sandoe Decl., ¶ 14.
 - The 11th Grade issue is addressed above.
 - “The District has been informed that the charter school has failed to develop curriculum for the educational program set forth in the charter, and that the charter school has failed to implement industry-standard attendance accounting practices.”
 - This “evidence” regarding curriculum is uncorroborated hearsay, lacks foundation and cannot constitute “substantial evidence” as discussed above. CGS submitted extensive curriculum for all subjects taught during the 2010-11 academic year. 2010-11 Curriculum. Furthermore, CGS submits its curriculum for the 2011-12 academic year in support hereof, which also demonstrates that it aligns with California Standards. *See* 2011/2012 Curriculum.
 - The “evidence” presented relating to attendance accounting is similarly uncorroborated by any facts, lacks foundation, constitutes hearsay and thus irrelevant. CGS also had implemented and is following its extensive procedures for attendance accounting. *See* Procedures for Attendance Accounting and Sandoe Decl., ¶ 15. Furthermore, on August 17, 2011, CGS will begin its annual independent audit, wherein its attendance procedures will be audited. CGS’ Office Manager attended a fall training on October 25, 2010, entitled “Pupil Attendance Accounting for School Site Personnel” offered by California Association of School Business Officials. Sandoe Decl., ¶ 16; Pupil Attendance Accounting for School Site Personnel PowerPoint Presentation. Furthermore, the Office Manager and Chief Financial Officer attended the Charter Schools Development Center’s Chief Business Officer Training Program from March to June 2011, which included an in-depth module on attendance accounting. Sandoe Decl., ¶ 16.
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- “At least two members of the Chico Green School Board have resigned since September 1, 2010. The District also believes that the Board Chair and Secretary have submitted or will soon submit their resignation as well. Such rapid turnover in Board membership during the crucial opening weeks of school threatens the charter school’s governance and operations. In addition, after the Board of Directors place the Director on administrative leave on September 5, 2010. Thereafter, in addition to the Board turnover, the school has no director.”
 - This “evidence” is irrelevant, does not constitute a charter violation or violation of law. *See* September Response.
 - “The Board recently took personnel action with respect to the charter school’s director. The District believes that a quorum of the Board may have met with the school’s staff during the first week of September to discuss personnel matters without an agenda meeting, in violation of the Brown Act.”
 - This “evidence” is irrelevant, lacks foundation and constitutes hearsay. The District’s unsubstantiated belief that the CGS board somehow violated the Brown Act does not constitute evidence. That belief is directly refuted by competent evidence articulated in the Sandoe Declaration. Sandoe Decl., ¶ 17.
 - “The minutes of the Board’s meetings appear to be inaccurate in terms of recording the votes cast by Board members, and/or the Board members present when action was taken. In some instances, votes are recorded as ‘unanimous’ even though the number of persons voting differs from the number of members present.”
 - This “evidence” is irrelevant to the current proceedings. There is no Brown Act violation or other law articulated as having been violated. The minutes accurately reflect what transpired at the board meetings and who voted. Sandoe Decl., ¶ 18. Any discrepancies in the vote tallies may be accounted for by the fact that, in accordance with parliamentary procedure, the Board Chair had in the past refrained from voting except to resolve a tie. Roberts Rules of Order were being followed, which state “...the impartiality required of the presiding officer of an assembly precludes exercising the right to make motions or debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result.” Although this had been the practice of the CGS Board, it remedied this situation after its legal counsel advised that this is an atypical situation in the charter school context. In any event, following Roberts Rules of Order is not a violation of law. The Board has done away with non-voting board members since the September Notice. Sandoe Decl., ¶ 18.
 - “The District believes that the Board of Directors has not complied with the posting requirements of the Brown Act, including the failure to post agendas of all meetings at the school site.”
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- The District's unsubstantiated "belief" is irrelevant. The District's belief also does not constitute a violation of the Brown Act. The Brown Act does not require that meeting agendas be posted at the school site, merely that they are posted within the "jurisdiction" of the public agency in a place that is accessible 24 hours per day (78 Ops.Cal.Atty.Gen. 327, 331-332, 1995). Prior to taking possession of its school site, agendas were posted within the boundaries of Chico Unified School District in advance of each meeting (72 hours for regular meetings, 24 hours for special meetings) in compliance with the Brown Act. Since the time the school took possession of the current school site at the beginning of August 2010, it has posted meeting agendas at the entrance to the school where they can be viewed 24 hours per day. Sandoe Decl., ¶ 19.
- "The District has been informed that the charter school's facility does not maintain a sufficient number of fire extinguishers to meet legal requirements."
 - This statement does not constitute competent evidence. It is hearsay. CGS did, however, provide sufficient numbers of fire extinguishers to meet legal requirements as soon as it began instruction. September Response, Appendix I.

October Notice

- "A review of CGS's Board agendas show that, until August 2010, the CGS Board met in a number of locations, including Glenn Hall at Cal State Chico, the Butte County Library, Grilla Bites at 196 Cohasset Road, as well as what appears to be residence addresses at West 11th Avenue, Broadway Street, and Oakdale Street. While the District realizes that CGS did not have access to its site until August 2010, the lack of consistence in meeting locations for the CGS Board makes the Board less accessible to its constituency and the public."
 - These agendas are again irrelevant. They do not show any violations of the Brown Act. The Brown Act requires that the Board of CGS meet within the boundaries of CUSD. Each of these locations falls within these boundaries. The agendas also do not indicate any other alleged Brown Act violations other than what had been previously alleged in the September Notice.
 - "The District also understands that there has been a lack of consistency in the location at which the Board minutes have been posted, including posting at a Board member's home on one instance, and that, as of the date that this Notice to Remedy has been issued, CGS has a fully-functional website, yet posts neither agendas or minutes on it."
 - The District's uncorroborated understanding is irrelevant and constitutes hearsay, in addition to the arguments made in CGS' November Response. *See* November Response.
 - "The District's investigation revealed that CGS Board President Kent Sandoe, and Board Vice President Selena Logan, divulged to a candidate for the Director position
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closed session discussion regarding whether that person should be hired for the position of Administrative Assistant instead, and that then-Board member Sarah Parada did not like the candidate.”

- This statement is not supported by any facts and thus is uncorroborated hearsay. Furthermore, the factual inaccuracies of the statement are directly contradicted by the Sandoe Declaration. Sandoe Decl., ¶ 20.
 - “The District’s investigation revealed that a quorum of the Board met on at least one occasion without the proper posting of an agenda. Over Labor Day weekend in 2010, members of the teaching staff asked Sandoe and Logan to attend a meeting. At various times, Board members David Orneallas and Martin Schwabe were present at the meeting, which constituted a quorum of the Board as constituted at the time.”
 - This statement is not support by any facts and thus is uncorroborated hearsay. Furthermore, the factual inaccuracies of the statement are directly contradicted by the Sandoe Declaration. Sandoe Decl., ¶ 21.
 - “The CGS Board attempted to cure this violation by re-enacting the meeting on October 5, 2010. However, faculty members received notice of the meeting at approximately 10 p.m. the previous night, which constituted less than 24-hours’ notice.”
 - This statement implies that CGS somehow admits that it violated the Brown Act. CGS denies that it violated the Brown Act and attempted to cure any *perceived* violation. Evidence Code section 1151 prevents admission of such information as evidence of culpable conduct. *See* November Response.
 - “The CGS Board, or at least a quorum thereof, also has participated in group e-mail discussions, in violation of the Brown Act.”
 - This statement is not supported by any facts and is thus uncorroborated hearsay. It is also contradicted by evidence introduced in the Sandoe Declaration. *See* Sandoe Decl., ¶ 23.
 - “The CGS Board membership has not been well defined.”
 - This statement is not supported by any facts and is thus uncorroborated hearsay. It is also contradicted by the bylaws of CGS.
 - “Board member Carolyn Nava missed approximately 6 months of meetings in early 2010 due to illness, but was still listed as a Board member.”
 - This statement is irrelevant for the current proceeding. It does not reflect a violation of the Brown Act or any other law. *See also* October Response.
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- “Furthermore, Board member Harry Winard resigned from the Board in April 2010 after he obtained a new job out of town. However, he was asked to attend the July 2010 Board meeting, at which he submitted his resignation.”
 - This statement is irrelevant for the current proceeding. It does not reflect a violation of the Brown Act or any other law. *See also* October Response.
 - “The minutes of the Board’s meetings appear to be inaccurate in terms of recording the votes cast by Board members, and/or the Board members present when action was taken. In some instances, votes are recorded as ‘unanimous’ even though the number of persons voting differs from the number of members present.”
 - This issue is addressed above and it does not articulate any violation beyond the alleged violation in the September Notice. *See also* October Response.
 - “At least three former Board members indicated that they felt pressured and/or intimidated by Board President Sandoe. Three Board members believed that Sandoe was abusive when he yelled at Board member Portia Ceruti at the May 24, 2010, Board meeting.”
 - This issue is irrelevant and does not identify a violation of law or CGS’ charter. *See also* October Response.
 - “The District also has not yet been provided a copy of the minutes from that meeting, which were originally taken by Ceruti, but which were in the process of being revised.”
 - This issue is irrelevant to the current proceedings and has since been remedied. *See also* October Response.
 - “It also appears that Board President Sandoe and Vice President Logan are attempting to perform too many administrative tasks, and are unable to delegate these responsibilities to the school’s staff.”
 - This statement is uncorroborated hearsay, lacks foundation and is irrelevant to the current proceedings. *See also* October Response.
 - “Compounding the problem is the fact that the school’s newly-hired director has only been hired at a part-time FTE.”
 - This statement is irrelevant and does not constitute a violation of the charter or law.
 - “The Board therefore is failing to adhere to the proper division of roles between the Board and the school’s administration, as set forth in the charter.”
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- This statement is not supported by any fact and CUSD fails to articulate what part of the charter this conclusion allegedly violates. The charter does not set forth any “proper division of roles” as articulated. There are no specific allegations supporting an alleged charter violation. *See also* October Response.
- “The school’s staff also issued a vote of no confidence in the Board in September.”
 - This statement is uncorroborated hearsay, irrelevant to the current proceedings, and does not constitute a violation of law or charter. *See also* Letter Dated 11/10/10 included in the October Response.
- “The CGS Board is not functioning as a viable governing body of the charter school, as was promised in the Charter.”
 - This statement is conclusory, lacks foundation and is irrelevant uncorroborated hearsay. The December Letter identifies portions of the charter it ostensibly relies upon, but again, CUSD provides no facts to support its claim of a material violation of the charter. There are no facts supporting a conclusion that the board did not fulfill its duties as identified in the CGS charter. CGS continues to perfect its governing structure. Job Descriptions.
- The 11th Grade issue is addressed above. *See also* October Response.

December 16 Letter from CUSD

Generalized responses to CGS’ prior Responses to the Notices to Remedy are included in this letter, although no facts are presented in support of CUSD’s conclusions. A few generalized comments in response to CUSD’s conclusions should be noted.

First, CGS’ board has been provided with two 3-hour sessions of Brown Act and Conflicts of Interest training – One in November 2010 and another in May 2011. *See* Brown Act Power Point presentations. CGS takes the Brown Act very seriously and has made every attempt to adhere to not only the letter of the law, but the spirit of the law. Sandoe Decl., ¶ 24. CUSD is aware of some of the technical difficulties in adhering with the Brown Act, as is evident from its own Brown Act violation on its agenda from the Public Hearing dated August 1, 2011. CUSD Agenda dated 8/1/11.

The December Letter provides further directives to CGS for future performance. None of these directives have been demonstrated through competent evidence to have been violated.

CGS also submitted a Status Report in April 2011 addressing these previously raised concerns. April 2011 Status Report.

Notice of Intent to Revoke

The Notice also attaches a newspaper article alleging that CGS did not provide a reporter with notice of meetings. Again, this article is uncorroborated hearsay and does not constitute substantial evidence to support a charter revocation. In any event, after learning that the reporter purported that she did not receive notice, CGS reheld the board meeting providing her with sufficient notice to join the meeting if she wanted; thus, curing any alleged violation of the Brown Act. Sandoe Decl., ¶ 25.

Due Process Issues Remain

CGS further reiterates (without repeating them) that it believes CUSD has failed to follow proper process for the present Notice of Intent to Revoke. *See* McQuarrie Letter dated 7/29/11 and all testimony presented at the CUSD public hearing on 8/1/11.

CGS asks that the CUSD board vote “No” on the issue of whether to revoke CGS’ charter. There simply is not substantial evidence to support revocation. CGS has ensured that it will meet with WASC in the early part of 2011/12 to obtain the required accreditation. CGS is confident that it has sufficiently addressed the concerns raised in the WASC report. Rather than continue on this path, CGS looks forward to building a collaborative future relationship with CUSD.

Sincerely,

/Jennifer/

Jennifer McQuarrie

cc: Chico Green School
