

MT. DIABLO UNIFIED SCHOOL DISTRICT  
JAMES W. DENT EDUCATION CENTER  
1936 Carlotta Drive  
Concord, California 94519-1397  
(925) 682-8000  
FAX (925) 689-1649

OFFICE OF  
GENERAL COUNSEL

March 5, 2015

Karen Sakata, County Superintendent of Schools  
Contra Costa County Office of Education  
77 Santa Barbara Road  
Pleasant Hill, CA 94523

Re: Clayton Valley Charter High School

Dear Superintendent Sakata:

We write to you in your capacity as Superintendent of Schools for the Contra Costa County Office of Education ("County Office"), the authorizing agency of the Clayton Valley Charter High School ("CVCHS"). We understand that the County Office has been investigating concerns related to CVCHS' operation, including whether it has complied with open meeting laws. We write to you to express concerns over CVCHS' conduct with respect to its facility, which is owned by the Mt. Diablo Unified School District (the "District"). We believe CVCHS' conduct is of sufficient concern and urgency to bring to the attention to the County Office as the authorizer of the charter.

**Pro-Rata Share:**

Under Cal. Admin. Code tit. 5, § 11969.7 of the Proposition 39 regulations, CVCHS is obligated to pay its pro-rata share of the District's facilities costs incurred from its general fund. The District has reduced CVCHS' pro-rata share for the 2014-2015 school year from \$417,407 to \$308,173.49. Notwithstanding the reduction, CVCHS refuses to make any payment from of its current-year pro-rata share though it acknowledges that it does owe some amount.

CVCHS is refusing payment on two grounds: (1) a dispute about the plain language of the Proposition 39 regulations; and (2) the District's purported responsibility for Title IX violations that the Legal Aid Society Employment Law Center ("LAS") sued CVCHS for back in December 2013 and which CVCHS never bothered to inform the District of until February 2015.

As to the Proposition 39 issue, CVCHS claims that certain facilities costs related to Routine Restricted Maintenance ("RRM") should be deducted from its pro-rata share. However, the Proposition 39 regulations are clear that CVCHS must pay its fair share of the District's RRM costs:

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For purposes of this section, facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases, as defined in section 11969.2(h). For purposes of this section, facilities costs also include:

(1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine Restricted Maintenance Account (Education Code section 17014), and/or deferred maintenance fund ...

In a good faith attempt to resolve the existing dispute between the parties, at the request of CVCHS' attorney, the District is willing to exclude certain costs from its calculation of the pro-rata share, which decreased CVCHS' 2014-2015 pro-rata share down from \$417,407.18 to approximately \$308,173.49. The parties had discussions about a fee in the range of \$308,173.49, which included some RRM costs. At no time during prior discussions did counsel for CVCHS indicate that it expected the District to discount all RRM fees.

Notwithstanding that CVCHS has the use of 1,741,516.20 square feet of interior and exterior facilities space at a cost of only .18 per square feet, it still claims that it should only pay \$160,000 annually rather than \$417,407.18 that the Proposition 39 regulations clearly requires (or the \$308,173.49 the District is willing to accept as a compromise) for 2014-2015.

CVCHS insists it will pay no more than \$160,000 as its pro-rata share. The \$160,000 CVCHS paid in 2012/13 was intended to be a one-time fee the District agreed to charge CVCHS based on a compromise and Amendment to the Facilities Use Agreement for the 2012/13 school year. The compromise was the result of a dispute over how much the maintenance and operations costs each party incurred in the immediate aftermath of the conversion of the facility to a charter school in 2012.

The Charter School's refusal to pay its pro-rata share of facilities costs has delayed completion of the Facilities Use Agreement for 2014-2015. On February 27, 2015, the District sent a written request to CVCHS to invoke the dispute resolution procedure in accordance with its Charter Petition. Today, CVCHS informed the District's outside counsel that it will not meet with the District pursuant to the timeline set forth in the dispute resolution procedure of the Charter Petition.

#### **Title IX Complaint:**

Compounding the District's concerns regarding CVCHS' conduct is the fact that CVCHS recently brought to the District's attention that it had made modifications to some of its athletic facilities in response to a written complaint dated December 17, 2013 made by the LAS. Specifically, the complaint alleged that CVCHS' athletic facilities violated the gender equality requirements of Title IX of the Education Amendments of 1972.

CVCHS' approach to responding to the Title IX complaint is problematic in several respects, and creates great concern on the part of the District. First, under the terms of

Proposition 39 (Education Code section 47614), facilities occupied by a charter school “shall remain the property of the school district.” The Charter School made numerous modifications to its athletic facilities without notifying the District, or obtaining the written consent required under the Facilities Use Agreement between the parties. For instance, CVCHS installed a fitness studio; added a bullpen and batting cages; installed permanent or semi-permanent fixtures; made improvements to the varsity and JV softball field dugouts; laid a new concrete bleacher pad; and refurbished bleachers. The District has demanded that CVCHS cease all ongoing or further modification of the site until further notice.

Second, even though CVCHS has known about the Title IX complaint since December 17, 2013, it only brought the complaint to the attention of the District in February 2015. It appears that CVCHS’ eventual notification to the District was motivated by a desire to pressure the District to subsidize a significant portion of the LAS’ threatened claim for \$500,000 in attorneys’ fees. The District believes that CVCHS is using the threat of the LAS attorneys’ fees claim to absolve itself of its statutory obligation to pay its full pro-rata share of the District’s facilities costs. Our belief is based on the fact that CVCHS raised the issue of the Title IX violation and consequent attorneys’ fees shortly after the District’s refusal to agree to a multi-year facilities agreement. What is also ironic is that one of the improvements CVCHS claims it made in response to the Title IX complaint and is seeking an offset for is to the batting pavilion. However, the improvements to the batting pavilion had been planned/approved approximately six years ago.

CVCHS’ attempt to use the Title IX complaint to extort a financial contribution to the LAS’ attorneys’ fees claim and to evade its obligation to pay the full pro-rata share is problematic in a number of respects:

1. The conditions addressed in the LAS letter all arose from unilateral programmatic decisions made by CVCHS after it assumed conversion charter status effective the 2012-2013 school year;
2. At the time of CVCHS’ conversion, and when the District turned the facility over to it, the site was deemed a reasonably equivalent facility under the law;
3. The LAS issued its complaint directly against CVCHS, and not the District;
4. Not only did CVCHS fail to notify the District of the complaint when it received it in December 2013, it proceeded to make modifications to its physical education facilities at the site without notifying the District, or obtaining its written consent, and only involved the District when it saw the opportunity to leverage the LAS’ attorneys’ fees claim as a way to avoid paying its full pro-rata share;
5. CVCHS is seeking up to a \$150,000-\$200,000 offset against the LAS’ fees without having obtained evidence that those fees the LAS is seeking are reasonable, appropriate or accurate;
6. Some of the improvements CVCHS claims it made in response to the Title IX complaint were paid for from the \$6.7 million in bond funding allocated to it by the District.

Therefore, it is disingenuous now for CVCHS to claim or recover any sum in connection with these improvements from the District; and

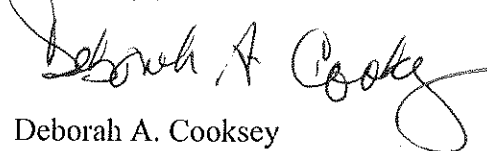
7. On February 20, 2015, during a meeting with District personnel, Mr. Linzey acknowledged that CVCHS chose to improve the boys' sports fields in part with donations from the boys' sports boosters even though he knew the girls' fundraising efforts were not nearly as robust. So, CVCHS chose to accept and use the donated funds, which created the purported disparity that over which the LAS sued. Now, CVCHS wants the District to rectify the alleged inequality that the Charter School created.. CVCHS is clearly and solely responsible for any and all conditions described in the December 17, 2013 LAS letter.

**Conclusion and Request for Authorizer Action:**

Since the County Office is CVCHS' authorizer, the District is in no position to ensure that CVCHS complies with the law, or the terms of its charter. However, as the owner of the facility occupied by CVCHS, the District has the obligation to protect and preserve its inventory of schools, as well as to safeguard its fiscal condition by ensuring that third-party debtors honor their financial obligations. To help carry out these objectives, the District has invoked the dispute resolution procedure contained in the Facilities Use Agreement with CVCHS, and hopes that CVCHS will work with the District in good faith to reach a successful and expeditious resolution of these issues.

We ask that the County Office exercise its oversight duties and ensure that CVCHS' conduct complies with applicable law, as well as the terms of its charter, including adhering to the provisions of the dispute resolution clause.

Very truly yours,



Deborah A. Cooksey  
Associate General Counsel

cc: Mt. Diablo Unified School District Board of Education  
Nellie Meyer, Ed.D, Superintendent Mt. Diablo Unified School District  
David L. Linzey, Executive Director, Clayton Valley Charter High School  
Clayton Valley Charter High School Governing Board  
Jeff McDaniel, Executive Director Operations  
Tim Cody, Director of Measure C  
John Yeh, Counsel to Mt. Diablo Unified School District  
Paul Minney, Counsel to Clayton Valley Charter High School