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**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

September 13, 2021

Via E-Mail Only: akonigar@akaesq.com

Adrienne Konigar-Macklin, General Counsel
San Diego County Office of Education

Re: Legal Opinion: Scope of Authorizer Authority Relative to Charter School Plan to Achieve Balanced Pupil Population

Dear Adrienne:

This provides our legal opinion regarding the scope of an authorizer's authority relative to a charter school's plan to achieve a balanced and diverse pupil population.

The Charter Schools Act ("Act") requires charter schools to develop a plan, set forth in the charter petition, describing "the means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, as defined by the evaluation rubrics in Section 52064.5, that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted." (Ed. Code, § 47605, subd. (c)(5)(G).) Other than requiring such a plan, the Act does not dictate the terms a charter school's plan must include—rather, the decision is left up to each charter school. Some authorizers and charter schools may negotiate language in their operational MOUs adding detail as to implementation, monitoring, or oversight of the charter school's plan—however, this is not a requirement of the Act.

Within the scope of its authority, an authorizer may provide support and oversight to a charter school in implementing its plan. Support and oversight may take a variety of forms, as determined by the relationship between the authorizer and charter school. Consistent with the autonomy charter schools enjoy under the Act, however, the law offers no express authority enabling an authorizer to demand that a charter school's plan contain specific metrics relative to pupil enrollment, population, demographics, or otherwise. While an authorizer may request such metrics be included, or negotiate the same within an MOU, it ultimately lacks statutory authority to *insist* metrics or terms desired by the authorizer be included within the charter school's plan or incorporated into an MOU.

Similarly, an authorizer does not have statutory authority to terminate a charter school's charter on the sole basis that it declines to include the authorizer's desired metrics in its plan, or declines

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to agree to terms regarding the same within an MOU. Under the Act, a charter may be revoked by an authorizer only if the authorizer makes findings, through a showing of substantial evidence, that the charter school did any of the following: (1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter; (2) Failed to meet or pursue any of the pupil outcomes identified in the charter; (3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement; or (4) Violated any law. (Ed. Code, § 47607, subd. (f).) Before revocation, a charter school is entitled to a number of due process measures including a public hearing, notice of violation, and an opportunity to cure the alleged violation(s). (*Id.* at subds. (g), (h).) Even when substantial grounds exist supporting revocation, it is not uncommon for charter revocation decisions to lead to litigation.

This is not to say a charter authorizer lacks authority to act if a charter school fails to meet its obligations as to student diversity. If, for example, a charter school fails to comply with its plan, fails to meet the terms of its petition or operational MOU, or engages in discriminatory student enrollment practices, these may be potential grounds to consider revocation. As set forth in the Act, it is indeed the intent of the legislature that charter schools seek to achieve a balanced student population. But where a charter school's plan is consistent with the requirements of Education Code section 47605(c)(5)(G), and the charter school works in good faith to implement the measures set forth in its plan and/or associated MOU, revoking a charter for failure to include other, more stringent terms desired by the authorizer, bears legal risk.

Here, SDCOE is a party to an MOU with the charter school at issue providing, among other things, for the charter school to develop a comprehensive plan to recruit and support a more diverse student population. The MOU also provides measures for implementation and oversight of the charter school's plan, which must occur to the "sole satisfaction" of the SDCSS. In short, through the MOU, SDCOE has established support and oversight mechanisms to assist the charter school in achieving compliance with its legal obligations. The current MOU language is consistent with the meaning and intent of the Act, and within the scope of authorizer authority under the same.

Please do not hesitate to contact me if you have any questions.

Sincerely,

LOZANO SMITH

A handwritten signature in blue ink that reads "Erin M. Hamor". The signature is written in a cursive, flowing style.

Erin M. Hamor