

December 10, 2020

Via Email
superintendent@ousd.org

Kyla Johnson-Trammell, Superintendent
Oakland Unified School District
1000 Broadway, Suite 300
Oakland, CA 94607

RE: Response to Findings for Denial of Alternatives in Action High School Charter Petition

Dear Dr. Johnson-Trammell:

We write in response to Oakland Unified School District's ("OUSD" or the "District") findings for denial of Alternatives in Action High School's ("AIAHS" or the "Charter School") charter renewal petition, contained in the District Staff Report (the "Findings"). Recognizing the myriad demands on District staff, heightened during the COVID-19 pandemic, we believe that the findings presented to the Board do not present an accurate review of the charter petition as a whole, and go far beyond the requirements of law in evaluating AIAHS's petition. We urge OUSD Board members to consider the following information in evaluating the Findings before casting your vote on our charter petition.

Overview of Law

At the outset, we remind the District of the provisions of the Education Code that provides specific guidance to governing boards to approve the establishment of charter schools. Education Code Section 47605(c) states:

In reviewing petitions for the establishment of charter schools . . . the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system **and that establishment of charter schools should be encouraged.**

(Emphasis added.)

Education Code Section 47605(c) also provides the limited legal grounds on which a charter petition may be denied, as follows:

The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice and the interests of the community in which the school is proposing to locate. The governing board of the school district shall consider the academic needs of the pupils the school proposes to serve. **The governing board**

of the school district **shall not deny a petition** for the establishment of a charter school unless it makes **written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:**

- (1) The charter school **presents an unsound educational program** for the pupils to be enrolled in the charter school.
- (2) The petitioners are **demonstrably unlikely to successfully implement the program** set forth in the petition.
- (3) [Signature requirement not applicable to renewal charters].
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (e) [of Education Code Section 47605].
- (5) The petition does not contain **reasonably comprehensive descriptions** of [the 15 required elements.]
- (6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school . . .

(emphasis added.)

Accordingly, under the Charter Schools Act, a school district board of education is required to approve a charter petition, unless it makes specific written factual findings to support a denial based on the grounds enumerated under Section 47605 – “specific to the particular petition” before the chartering authority.

The Findings are not valid grounds on which approval for the AIAHS Charter Petition may be denied. As demonstrated herein, the Findings are based on inaccurate facts, inaccurate legal interpretation, or go beyond the requirements set forth in law, and therefore the findings constitute an impermissible basis for denial of the Charter. Moreover, many of the Findings concern matters that could have been resolved by a collaborative discussion with District staff, or through a separate memorandum of understanding with the District. We were disappointed that neither of these options were presented by the District.

In summary, given the overall strength of AIAHS’s charter petition, the team of professionals behind the Charter School, the support of interested teachers and students, and the value of and need for the Charter School’s highly successful program within the community, the charter petition merits approval. The Findings in the Staff Report do not support denial in these circumstances.

Response to Findings

Below, please find excerpts of the findings, in the order in which they were presented (in *italicized* text), immediately followed by the Charter School’s response (in plain text).

I. Renewal Criteria I: Has the Charter School Presented a Sound Educational Program?

B. School Performance Analysis, State Indicators, and Local Indicators

District Finding: *Charter schools are required to report annually on five State Board of Education (SBE)-approved local indicators aligned to State priority areas where other State data is not available... If a charter school does not submit results to the Dashboard by the given deadline, including completing the self-reflection tool, the charter school will have “Not Met” that indicator.*

AIAHS Response: AIAHS acknowledges there was a reporting error due to a missed deadline. Similar to the 2018 school year, the results of the 2019 Charter School’s local indicators would have received all “Met” designations. The AIA Board stepped in, and outsourced back office support to EdTec, including compliance data reporting, to ensure expertise in the handling of compliance timelines.

C. Selection of Comparison Schools

District Finding: *Due to its qualification for the DASS program and the unique body of students that AIA serves that is substantially different from both the District as a whole as well as District-run DASS schools, staff determined that comparing the charter school to either of these groups of schools would not be appropriate. Therefore, staff identified a subset of comparison schools that were most similar to AIA with regards to students’ prior (i.e. 8th grade) test scores and the enrollment percentages for a several key student groups.*

AIAHS Response: The District was determined to utilize comparison schools, but this approach is specifically not called for in the law, as relates to AIAHS. Dashboard Alternative School Status (“DASS”) charter schools receive unique consideration at renewal, as AB 1505 created a distinct carve-out for these charter schools, separate from the three performance categories for non-DASS. Education Code Section 47607(c)(7) provides:

[High-, middle-, and low-performing designations] shall not apply to a charter school that is eligible for alternate methods for calculating the state and local indicators pursuant to subdivision (d) of Section 52064.5. In determining whether to grant a charter renewal for such a charter school, the chartering authority shall consider, in addition to the charter school’s performance on the state and local indicators included in the evaluation rubrics adopted pursuant to subdivision (c) of Section 52064.5, the charter school’s performance on alternative metrics applicable to the charter school based on the pupil population served. The chartering authority shall meet with the charter school during the first year of the charter school’s term to mutually agree to discuss alternative metrics to be considered pursuant to this paragraph and shall notify the charter school of the alternative metrics to be used within 30 days of this meeting. The chartering authority may deny a charter renewal pursuant to this paragraph only upon making written findings, setting forth specific

facts to support the findings, that the closure of the charter school is in the best interest of pupils.
(Emphasis added.)

As a DASS school, AIAHS therefore is not subject to comparisons with other schools. OUSD’s analysis here is an impermissible basis for denial of the charter renewal petition.

D. Comparison of Academic Performance for Key Student Groups

District Finding: *The following comparison of academic performance is included to provide additional insight and context related to the charter school’s academic progress... As shown in the figures below...*

AIAHS Response: OUSD selected Fremont High, Castlemont High, McClymonds High, Street Academy, and Independent Study, Sojourner Truth school data for comparison of academic performance, only one of which are DASS schools. We would like to note that OUSD DASS Schools are: Community Day High, Community Day Middle, Civicorps Corpsmember Academy, Oakland International High School, Ralph J. Bunche High, Rudsdale Continuation, Dewey Academy, Independent Study, Sojourner Truth. Data for this can be found in AIA’s charter petition.

E. School Quality Review Rubric Ratings

District Finding: *The School Quality Review found low academic expectations and rigor and lack of student engagement.*

AIAHS Response: The Office of Charter Schools conducted a virtual site visit with AIAHS on Wednesday, October 14 from 9:00 am - 4:30 pm. This was the first time OUSD staff “visited” AIAHS, in its 19-year history. OUSD staff participated in three, 30-minute classroom observations of our distance learning, and also met virtually with various focus groups for about an hour each throughout the day. Of course, our school is operating remotely due to the COVID-19 pandemic, and what OCS observed is not reflective of our typical school program; although teachers are finding new and creative ways of reaching students during these challenging times, the virtual environment is truly no substitute for live instruction. AIAHS did not receive any written or verbal feedback from their visit, and there was no opportunity to engage in the findings or address any concerns or questions. The OUSD team used the School Quality Review (“SQR”) rubric for their evaluation, which seems to be based on the one-day site visit, which is unfair and unreasonable.

II. Renewal Criteria II: Is the Charter School Demonstrably Likely to Successfully Implement the Proposed Educational Program?

A. Financial Condition

District Finding: *The charter school is in fair financial standing and has maintained a healthy ending fund balance and a reserve well above 3% in each year of the charter term. ... The two most recent audit reports identified material weaknesses, which noted that “the Board did not have a clear picture of the budget position of the organization.” Additionally, during the current charter petition term, there were allegations of financial mismanagement of the nonprofit that resulted in a third party investigation. OUSD requested the investigative report and has not been provided with a copy.*

AIAHS Response:

The Charter School is in positive financial standing and maintains a healthy ending fund balance and a reserve well above 3% in each year of the charter term. The audit reports identifying material weaknesses were related to programs outside of the Charter School. These concerns were immediately addressed and resolved.

As to allegations of financial mismanagement, as stated in our response to the 30-day notice, there were no investigations conducted by or regarding the Charter School. The Executive Director properly communicated to OUSD staff that there were no investigations to report. OUSD asked for investigations about the Charter School. There were none.

B. Notices of Concern

The Staff Report correctly observed that AIAHS received zero notices of concern during its current charter. The Charter School is deservedly proud of its operational history. OUSD staff’s unfounded speculation about the procedures of another chartering authority cannot form the basis for denial of the charter renewal petition.

C. Board Health and Effectiveness

State Requirements

District Finding: *AIA has not adhered to a number of important state requirements. AIA has “Not Met” its local indicators in two out of three years. To have “Not Met” a local indicator reveals an inability of leadership to be aware of an important state requirement and plan ahead and administer the self-reflection tool; it also reveals an inability of the Board to hold leadership accountable [sic.] adhere to an important state requirement. Additionally, there are a number of instances where AIA failed to correct errors in data reported to the State (e.g., AIA reported inaccurate data in 2016-17 for its chronic absenteeism rate and again in 2018-19 for its Graduates Meeting UC/CSU Requirements).*

AIAHS Response: The District engages in wild speculation in this finding, and damages the reputations of the professionals involved. Put simply, OUSD staff has no reliable insight into

reasons why some local indicators were not met. It has no license to speculate, and doing so is an impermissible basis for denying the charter. AIAHS acknowledges was a reporting error due to a missed deadline. The AIA Board stepped in, and outsourced back office support to EdTec, including compliance data reporting, to ensure expertise in the handling of compliance timelines.

30-Day Notice and Response

District Finding: *In the 2018-19 school year, allegations of financial mismanagement were raised against AIA’s former executive director. In addition, in 2019, AIA staff removed and failed to return \$21,000 worth of OUSD property from 3 OUSD high schools.*

*AIA provided a response to the District on 11/13/20 (“AIA’s Response”). Upon review, OCS determined that the school **provided sufficient evidence to resolve the concern about non-response to notices (i.e. Concern 3).** However, AIA’s corrective action plan did not effectively resolve all of the concerns identified in the 30-day notice. In particular,*

- AIA’s Response did not capture the gravity of the allegations and its implications for governance. ... OCS’s concern with the financial improprieties is that the same Board that oversaw the afterschool program also oversaw the charter school.*
- AIA’s Response did not identify who will be transitioning off the Board and the skill areas/expertise the Board will be seeking in replacement board members. This detail is critical to understanding AIA’s proposed transition plan.*

As a result, the corrective actions proposed by the Charter School cannot be successful and, separately, are not viable because the violations are too severe and pervasive. (Emphasis added.)

AIAHS Response: As explained in detail in AIAHS’s response to the District’s purported “30-Day Notice,” this particular reason for denial, legally, cannot be relied upon by OUSD to deny the renewal charter. The Staff Report acknowledges the dubious legal propriety of using the notice of substantial fiscal or governance factors, offhandedly remarking that the underlying issues could also stand on their own as valid concerns. However, this is not how the law operates. OUSD can only deny the charter by making specific factual findings, specific to the particular charter petition, identifying one or more of the statutory reasons for denial. The only way these findings can be relied upon is if they are located in a permissible reason for denial.

Further, the conclusions that corrective actions cannot be successful and are not viable are not supported by facts as required by Education Code Section 47607(e). Put simply, OUSD has not met its legal burden to deny the charter for these reasons.

OUSD staff have supplied their judgment about how Alternatives in Action (“AIA”) Board members felt about alleged financial improprieties surrounding the now-closed afterschool program. But OUSD staff have no way of knowing just how seriously the Board took the concerns, and how quickly it took action to investigate and remediate the underlying issues. When an allegation of impropriety was made, it was the all-volunteer Board that jumped into

action. It was the Board that hired a third-party investigator. It was the Board that reviewed the investigator's observations. And it was the Board that decided to move all accounting outside of the organization, to a third-party vendor. Indeed, the Board showed swift and decisive action, for which it should be commended.

Indeed, the Staff Report supports the efficacy of this action, by stating on page 13:

AIA ultimately found violations of AIA's internal Fiscal Policies and Procedures and HR Policies and Procedures. As a result, both the Executive Director and Director of Operations and Finance were replaced. Starting in 2019, the Charter School also started outsourcing its accounting, finance, and HR operations. AIA also ceased operations of its after school program where the allegations originated.

The District's rationale that the AIAHS charter must be denied because its response to the 30-Day Notice did not include the names of Board members transitioning off the Board, and the skill areas/expertise of individuals who would be recruited to the join the Board, is preposterous. There was no way AIA could have divined that OUSD was seeking that information. The demanded corrective action stated only:

A plan for how the board will guarantee institutional memory is transferred to new leadership during a leadership transition. This should specify how the board will ensure that new school leadership is fully informed of a) significant allegations that arose under previous leadership and b) the steps taken to reform the situation so as to prevent a recurrence.

OUSD staff easily could have specified that it was looking for names and qualifications; elected not to do so; and then penalized AIAHS for not being mind-readers. This approach cannot be utilized to close down a nineteen-year-old school.

III. Renewal Criteria III: Is the Petition Reasonably Comprehensive?

OUSD staff found that the AIAHS renewal charter: (a) provided a reasonably comprehensive description of all fifteen required charter elements; (b) included all other required information; and (c) included OUSD-specified requirements. As such, this section contains no findings for denial.

IV. Renewal Criteria IV: Is the Charter School Serving All Students Who Wish to Attend (limited to State definition)

OUSD staff concluded that there is "no data to suggest that the school is not serving all students who wish to attend," and that neither OUSD nor Alameda Unified School District received "any substantiated complaints related to noncompliance with suspension and/or expulsion requirements." As such, this section contains no findings for denial.

V. Analysis of Best Interest of Charter School Pupils

District Finding: *When [sic.] respect to renewing a petition for a DASS school, the chartering authority should also examine whether the closure of the charter school is in the best interest of pupils. In doing so, the chartering authority shall consider the charter school’s performance on the state and local indicators as well as the charter school’s performance on alternative metrics applicable to the charter school based on the pupil population served. Additionally, when determining whether to recommend denial, District staff consider other public school options available to the charter school’s current students and whether students are likely to be better served by these schools. The [Staff Report] provides an overview of where AIA’s students live, what other public school options currently exist in these areas, and where students who have transferred from the school have subsequently enrolled.*

AIAHS Response: OUSD gravely misinterprets the applicable legal standard for denying renewal of a DASS school. The staff report states that the chartering authority “should” examine whether closure is in the best interest of students. The word “should” indicates discretion. However, there is no discretion in the law. The only lawful way to deny renewal of a DASS school is by making this finding: “[t]he chartering authority **may deny** a charter renewal pursuant to this paragraph **only** upon making written findings, setting forth specific facts to support the findings, that the closure of the charter school is in the best interest of pupils.” (Education Code Section 47607(c)(7), emphasis added.)

The law is clear that OUSD has only one way to deny renewal of this DASS school. OUSD fell short of the legal requirement.

In order to make a determination that closure is in the best interest of the students attending AIAHS, which is a drastic finding to make, the District would have to: demonstrate that the Charter School’s students are being so poorly served that they would be better off being taken out of the program (including weighing the negative effects of learning loss and loss in continuity of instruction); and identify specific programs for AIAHS students to enroll in. The District did not do this.

The OUSD Staff Report, instead, includes only data tables showing where AIAHS students in years past have enrolled, after leaving the charter school, lists the charter schools and traditional public schools serving the zip codes of current AIAHS students, and provides the demographic and student outcome information of those schools. The Staff Report contains a few conclusory sentences, but nothing approach the standard necessary to make a finding that closure of AIAHS is in the best interest of its students.

Accordingly, this Finding is an impermissible basis for denial of the charter renewal petition.

Correction of Data

AIAHS averages an 80% teacher retention rate. We note that the data for the 2019-20 school year for teacher retention should be 9 and not 1.

F. Teacher Retention

| Year | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 |
|--|---------|---------|---------|---------|---------|
| Total classroom teachers | 12 | 10 | 12 | 10 | 10 |
| Number of classroom teachers retained from prior year | 10 | 9 | 8 | 1 | 7 |
| Percent of classroom teachers retained from prior year | N/A | 75% | 80% | 8% | 70% |

Figure 43. Source: Teacher Retention Information Self-Reported by Charter School in its Charter Renewal Performance Report

* * *

Alternatives in Action High School looks forward to any additional questions from the District or its Board of Education, and collaboration with your office regarding its charter petition. Should you wish to discuss our responses to any of the above findings or require additional information, please do not hesitate to contact me at plai@alternativesinaction.org or (510) 285-6290 anytime.

Sincerely,

Phung Lai
Executive Director and Lead Petitioner