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OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel

Board Meeting Date December 10, 2014

Subject **RESOLUTION 1415-0113 AUTHORIZING RESOLUTION 1213-0124 TO BE VACATED**

Action Requested **ADOPTION OF RESOLUTION 1415-0113 AUTHORIZING RESOLUTION 1213-0124 TO BE VACATED (REVOCATION OF CHARTERS OF AMERICAN INDIAN MODEL SCHOOLS**

Background and Discussion

American Indian Model Schools ("AIMS") holds three charters granted by the District:

- (1) American Indian Public High School, Grades 9-12 (CDE No. 01-61259-0111856);
- (2) American Indian Public Charter School, Grades 6-8, (CDE No. 01-61259-6113807);
- (3) American Indian Public Charter School II, Grades K-8, (CDE No. 01-61259-0114363

In March 2013, the Board of Education approved Resolution No. 1213-0124 revoking the three AIMS charters. AIMS filed a petition for writ of mandate to set aside the revocation in Alameda County Superior Court (Case No. RG13680906).

In July 2014, the Court issued an order granting AIMS' petition for writ of mandate, and in August 2014, the Court issued a peremptory writ of mandate.

In ruling for AIMS, the Court held that under Education Code Section 47607(c), increases in student academic achievement is "the most important" factor to consider in deciding to revoke a charter and that the District in revoking the AIMS charters considered increases in student achievement *as an important factor*, but did not consider it to be the most important factor.

The court therefore ordered the District to vacate Resolution 1213-0124. The resolution before the Board complies with the Court order. As a result



of the order, the charters of the 3 AIMS schools remain in effect for the original terms of the charters.

Recommendation **ADOPTION OF RESOLUTION 1415-0113 AUTHORIZING
RESOLUTION 1213-0124 TO BE VACATED (REVOCATION OF
CHARTERS OF AMERICAN INDIAN MODEL SCHOOLS**

Fiscal Impact No new funding required

Attachment Resolution 1415-0113
Court Order Vacating Resolution

**RESOLUTION OF THE BOARD OF EDUCATION
OF THE OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1415-0113**

**AUTHORIZING RESOLUTION 1213-0124 TO BE VACATED (VACATING REVOCATION
OF CHARTERS OF AMERICAN INDIAN MODEL SCHOOLS**

WHEREAS, American Indian Model Schools (“AIMS”) holds three charters granted by the Oakland Unified School District (the “District”): (1) American Indian Public High School, Grades 9-12 (CDE No. 01-61259-0111856); (2) American Indian Public Charter School, Grades 6-8, (CDE No. 01-61259-6113807); and (3) American Indian Public Charter School II, Grades K-8, (CDE No. 01-61259-0114363); and

WHEREAS, on March 20, 2013, the OUSD Board of Education approved Resolution No. 1213-0124 revoking the three AIMS charters; and

WHEREAS, on May 23, 2013, AIMS filed a petition for writ of mandate to set aside OUSD’s Resolution No. 1213-0124 revoking AIMS’ three charters (Alameda Superior Court Case No. RG13680906); and

WHEREAS, on May 20, 2014, AIMS’ petition for writ of mandate came on regularly for hearing and the Court heard oral arguments in support of and in opposition to the petition; and

WHEREAS, on July 17, 2014, the Court filed an order granting AIMS’ petition for writ of mandate; and

WHEREAS, on August 11, 2014, the Court entered a judgment granting AIMS’ petition for writ of mandate; and

WHEREAS, on August 12, 2014, the Court issued a peremptory writ of mandate; and

WHEREAS, on September 22, 2014, the District filed an appeal from the August 11, 2014 judgment (California Court of Appeal, First District, Case No. A143045); and

WHEREAS, the Court held that under Education Code Section 47607(c), increases in student academic achievement is “the most important” factor to consider in deciding to revoke a charter and that the District in revoking the charters considered increases in student achievement as an important factor, but did not consider it to be the most important factor; and

WHEREAS, the Court ordered the District to vacate Resolution 1213-0124 and remanded the case back to the Board of Education for further proceedings by the Board; and

THEREFORE, BE IT HEREBY RESOLVED that the Oakland Unified School District Board of Education does hereby vacate Resolution 1213-0124 rescinding the charters of (1) American Indian Public High School, Grades 9-12 (CDE No. 01-61259-0111856); (2) American

hdian Public Charter School, Grades 6-8, (CDE No. 01-61259-6113807); and (3) American
hdian Public Charter School II, Grades K-8, (CDE No. 01-61259-0114363.

PASSED AND ADOPTED by the Board of Education the Oakland Unified School District, this
10th day of December, 2014, by the following vote:

AYES: Jody London, Jumoke Hinton Hodge, Anne Washington, Christopher Dobbins,
Roseann Torres, Vice President James Harris, and President David Kakishiba

NOES: None

ABSTAINED: None

ABSENT: None

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted, at a
Regular Board Meeting of the Governing Board of the Oakland Unified School District held on
December 10, 2014.

File ID Number: 14-2302
Introduction Date: 12-10-14
Enactment Number: 14-2035
Enactment Date: 12-10-14
By:


Antwan Wilson
Superintendent/Secretary, Board of
Education

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG13680906

Case Name: American Indian Model Schools vs. Oakland Unified School Dist.

- 1) Order Granting Petition for Writ of Mandate

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 24, 2014

23



Executive Officer/Clerk of the Superior Court
By M. Scott Sanchez, Deputy Clerk

Heidelberg, Evelyn F
Procopio Cory Hargreaves & Savitch LLP
525 B Street, Ste 2200
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RECEIVED

JUL 25 2014

Burke, Williams & Sorensen



12101092

FILED
ALAMEDA COUNTY

JUL 17 2014

By 10

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

AMERICAN INDIAN MODEL SCHOOLS, Plaintiff, v.	Case No. RG13-680906 ORDER GRANTING PETITION FOR WRIT OF MANDATE
OAKLAND UNIFIED SCHOOL DISTRICT, et al, Defendants.	DATE: 5/20/14 TIME: 1:30 PM DEPT.: 31

The petition of American Indian Model Schools ("AIMS") for a writ of mandate came on regularly for hearing on May 20, 2014, in Department 31 of this Court, Judge Evelio Grillo presiding. The Court having considered the pleadings and arguments submitted in support of and in opposition to the petition, it is hereby ORDERED: The petition of American Indian Model Schools for a writ of mandate is GRANTED. The court directs the clerk to issue a writ that directs the Oakland Unified School District's ("OUSD") to vacate Resolution 1213-0124. The court remands the matter to the OUSD for further proceedings.

1
2 FACTS

3 The Court of Appeal summarized the relevant facts presented on the motion for a
4 preliminary injunction in *American Indian Model Schools v. Oakland Unified School District*
5 (2014) 2014 WL 2811562, at *3-5. The court states the facts below with references to the
6 exhibits presented in the trial court in the petition on the merits.

7
8 AIMS has charters for three schools - AIPCS II (Grades K-8), AIPCS (Grades 6-8) and
9 AIPHS (Grades 9-12). There are approximately 505 students in AIPCS II (Grades K-8),
10 approximately 206 students at AIPCS (Grades 6-8) and approximately 143 students at AIPHS
11 (Grades 9-12). (Ruiz Dec., para 8, 13, 20)

12 The AIMS elementary and middle school was recognized with at Distinguished School
13 Award in the 2010-2011 year, had the highest Academic Performance Index (API) for any
14 Alameda county Middle School in 2012, and was the fourth highest performing middle school in
15 California in 2012. (Ruiz Dec., para 21) The AIMS middle school is currently the second
16 highest performing middle school in the OUSD. (Ruiz Dec., para 6.) The AIMS high school
17 has maintained average API Scores of approximately 950 over the past 5 years. (Ruiz Dec, para
18 14.)

19
20 Staff at the Oakland Unified School District (“OUSD”) prepared a report on April 4,
21 2012, regarding AIMS’s request for a charter renewal. (OUSD, Ex. 3.)

22 The OUSD conducted an audit of the AIMS schools dated June 12, 2012, that found
23 financial self-dealing and other financial irregularities. (OUSD Ex 1A.)

24 The Superintendent of the OUSD, Anthony Smith, issued a Notice of Intent to Revoke
25 dated January 24, 2013, that states “The District has considered the paramount importance of the
26

1 academic achievement of the AIMS program and considers AIMS's academic record as the
2 paramount factor to consider during the revocation process." (OUSD Ex 1G, page 34 [OUSD
3 6274].)

4 The Superintendent's report to the Board of Education, dated March 16, 2013, notes the
5 requirement of Education Code 47607(c) and the definitions in 47607(a)(3)((B) and 52052.
6 (OUSD Ex 1M [OUSD 7194-7207].) The Report states that the OUSD considered the academic
7 performance of the AIMS schools, lists their scores on the Academic Performance Index,
8 acknowledges the "track record of high academic performance," and notes that the OUSD must
9 "balance the academic performance of the AIMS schools against [the] weighty legal obligation"
10 to oversee the use of public funds. (OUSD Ex 1M, pages 13-14 [OUSD 7206-7207].)

12 On March 20, 2013, the Board of Education of the OUSD revoked the charter of the
13 AIMS schools under Education Code 47607(c)(1) under subsections (A) [material violation of
14 charter], (C) [Failed to meet generally accepted accounting principles, or engaged in fiscal
15 mismanagement], and (D) [Violated any provision of law]. The OUSD Resolution recites the
16 requirement of Education Code 47607(c) and lists the academic performance scores of the AIMS
17 schools (OUSD Ex 1O, pages 4-5 [OUSD 7215-7216].) The Resolution also states that the
18 OUSD finds that the financial irregularities outweigh the academic performance. (OUSD Ex 1O,
19 pages 11-12 [OUSD 7222-7223].) The OUSD made the revocation effective June 30, 2013, to
20 permit students to complete the regular school year.

22 On April 18, 2013, AIMS filed an appeal to the Alameda County Office of Education
23 ("ACOE"). On June 6, 2013, the court issued a temporary restraining order that permitted the
24 AIMS schools to remain open through their summer session while the ACBOE appeal process
25
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1 was underway and the parties had an opportunity to prepare briefs on the motion for preliminary
2 injunction. On June 25, 2013, the ACBOE upheld OUSD's Resolution.

3 On July 8, 2013, this court issued a preliminary injunction issued a preliminary injunction
4 to permit AIMS to continue its administrative appeal process. On July 23, 2013, AIMS filed a
5 further appeal with the State Board of Education (SBE). The SBE took no action, so the
6 administrative process has been fully exhausted. (5 CCR 11968.5(f).)

7
8 STANDARD.

9
10 The court will apply the standard of review for an administrative writ under CCP 1094.5
11 and not the standard for a traditional writ under CCP 1085.

12 The OUSD's revocation decision was pursuant to Education Code 47607, which requires
13 a notice and hearing. (Ed. Code 47607(e).) This fits squarely within CCP 1094.5(a), which
14 states that "Where the writ is issued for the purpose of inquiring into the validity of any final
15 administrative order or decision made as the result of a proceeding in which by law a hearing is
16 required to be given, evidence is required to be taken, and discretion in the determination of facts
17 is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the
18 court sitting without a jury." In addition, the OUSD's revocation was a "quasi-judicial"
19 decision that involved the application of a rule to a specific set of existing facts. (*Southern*
20 *California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship*
21 *Council* (2013) 213 Cal.App.4th 1531, 1541; *California Water Impact Network v. Newhall*
22 *County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482-1483.)

23
24 The court first determines whether the OUSD proceeded in the manner required by law
25 and applied the proper legal standard. The court interprets the Education Code as matter of law
26

1 to determine whether the agency applied the proper legal standard. (*United Ass'n Local Union*
2 *246, AFL-CIO v. Occupational Safety and Health Appeals Bd.* (2011) 199 Cal.App.4th 273,
3 281.)

4 The court then determines whether the administrative decision affects a fundamental right
5 and is subject to the court's independent review or concerns other rights and should be reviewed
6 for substantial evidence. (*Nathan G. v. Clovis Unified School District* (2014) 224 Cal.App.4th
7 1393, 1403-1404.) The court's analysis starts with *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144-
8 145, which states:

9
10 The courts must decide on a case-by-case basis whether an administrative
11 decision or class of decisions substantially affects fundamental vested rights and
12 thus requires independent judgment review. ... As we shall explain, the courts in
13 this case-by-case analysis consider the nature of the right of the individual:
14 whether it is a fundamental and basic one, which will suffer substantial
15 interference by the action of the administrative agency, and, if it is such a
16 fundamental right, whether it is possessed by, and vested in, the individual or
17 merely sought by him.

18
19 In determining whether the right is fundamental the courts do not alone weigh
20 the economic aspect of it, but the effect of it in human terms and the importance
21 of it to the individual in the life situation. This approach finds its application in
22 such an instance as the opportunity to continue the practice of one's trade or
23 profession.

24
25 (See also *Amerco Real Estate Company v. City of West Sacramento* (2014) 224 Cal.App.4th 778,
26 783 ["A right may be deemed fundamental "on either or both of two bases: (1) the character and
quality of its economic aspect; (2) the character and quality of its human aspect"].)

27
28 The interest of AIMS in its Charter is superficially in the nature of a person's interest in a
29 professional license, suggesting that the court find a fundamental right. (*Cassidy v. California*
30 *Board of Accountancy* (2013) 220 Cal.App.4th 620, 626; *Lone Star Sec. & Video, Inc. v. Bureau*
31 *of Sec. and Investigative Services* (2012) 209 Cal.App.4th 445, 452.) AIMS, however, is a

1 California non-profit benefit corporation. (Verified Petition, para. 1) so there are two significant
2 differences between AIMS and a person with a professional license.¹

3 AIMS is a corporation. The references in *Bixby* to “human terms” and “the individual in
4 the life situation” raise the question whether a private legal entity such as a corporation can
5 possess “fundamental rights.” (*Kawasaki Motors Corp. v. Superior Court* (2000) 85 Cal.App.4th
6 200,203-204.) The court holds as a matter of law that under the *Bixby* analysis a private legal
7 entity cannot have “fundamental rights.” This is consistent with (1) the references in *Bixby* to
8 “human terms” and “the individual in the life situation” and (2) California law in other contexts
9 that corporations do not have the rights of natural persons. (See, e.g, *Nativi v. Deutsche Bank*
10 *National Trust Company* (2014) 223 Cal.App.4th 261, 314 fn 16 [“Several appellate courts have
11 concluded that this constitutional provision [regarding the right of “people” to privacy] does not
12 apply to corporations”]; *Williams v. FreedomCard, Inc.* (2004) 123 Cal.App.4th 609, 615 [“[I]t
13 is well settled that a corporation is not a “person” for the purposes of establishing indigency”].)
14 (But see *Daniell v. Riverside Partners I, L.P.* (2012) 206 Cal.App.4th 1292, 1300 [“Artificial
15 entities, such as corporations and limited partnerships, have First Amendment rights”].) (See
16 also *Burwell v. Hobby Lobby Stores, Inc.* (2014) --- S.Ct. ----, 2014 WL 2921709 [closely held
17 corporations have rights under the federal Religious Freedom Restoration Act].) The court
18 therefore reviews the OUSD’s factual determinations under the substantial evidence standard.
19

20
21 AIMS is a non-profit benefit corporation. California authorities have consistently held
22 that the interest of a corporation in profit is “merely economic” in nature and that “merely
23

24 ¹ This case concerns the right of AIMS to operate schools, which affects the ability of
25 parents and children to utilize those particular schools, but it does not concern the fundamental
26 right of students to receive an education. Similarly, in cases regarding the revocation of
professional licenses the Court of Appeal has focused on the effect of revocation on the licensee
and not on the potential loss of services to the public.

1 economic” interests are not fundamental rights. (*Ogundare v. Department of Industrial*
2 *Relations, Division of Labor Standards* (2013) 214 Cal.App.4th 822, 829; *JKH Enterprises, Inc.*
3 *v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1059-1061.) As a non-
4 profit benefit corporation, AIMS has no interest in profit and technically has no “merely
5 economic” interest in the renewal of its charter. AIMS has a “public or charitable purpose” in
6 operating its schools. (Corp. Code 5111.) Because AIMS serves a charitable purpose it arguably
7 has fundamental rights because it exists to serve natural persons and not to further its own
8 interests. The court is, however, cautious about focusing on a person or entity’s stated purpose.
9 Were AIMS a natural person with a license, the court would be inclined to evaluate whether
10 AIMS’s interest in the license was a fundamental right without regard to whether AIMS intended
11 to use the license for a profit making or charitable purposes. AIMS is a private legal entity and
12 on that basis the court finds that AIMS does not have a fundamental right in its charter.
13

14
15 The court considers factual issues to see if they are supported by substantial evidence.
16 “Substantial evidence” is relevant evidence that a reasonable mind might accept as adequate to
17 support a conclusion. ... Such evidence must be reasonable, credible, and of solid value.”
18 (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584-585.) “The
19 ultimate determination is whether a *reasonable* trier of fact could have found for the respondent
20 based on the *whole* record. ... While substantial evidence may consist of inferences, such
21 inferences must be “a product of logic and reason” and “must rest on the evidence”” (*Kuhn v.*
22 *Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

23 The court considers two factual issues: (1) whether substantial evidence supports the
24 findings of the administrative board and (2) whether the findings support the board's action.
25 (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 510.)
26 *Topanga* states:

1
2 [I]mplicit in section 1094.5 is a requirement that the agency which renders the
3 challenged decision must set forth findings to bridge the analytic gap between the
4 raw evidence and ultimate decision or order.... By focusing ... upon the
5 relationships between evidence and findings and between findings and ultimate
6 action, the Legislature sought to direct the reviewing court's attention to the
7 analytic route the administrative agency traveled from evidence to action.

8 (*Topanga*, 11 Cal.3d at 515.) (See also *Scott B. v. Board of Trustees of Orange County High*
9 *School of Arts* (2013) 217 Cal.App.4th 117, 122; *Eureka Teachers Assn. v. Board of Education*
10 (1988) 199 Cal.App.3d 353, 367-368.)

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REQUIREMENTS OF EDUCATION CODE 47607.

The court first interprets the Education Code. The court independently considers the interpretation of the statute. The court gives little deference to the OUSD's interpretation of the Education Code because the OUSD is a local entity interpreting a state law, and the interpretation of Education Code 47607 "does not involve technical, obscure, or complex language." (*American Indian Model Schools*, 2014 WL 2811562, at *16.)

Education Code 47607 states:

(c)(1) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following:

(A) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

(B) Failed to meet or pursue any of the pupil outcomes identified in the charter.

(C) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

(D) Violated any provision of law.

(2) The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter.

1 (e) ... The chartering authority shall not revoke a charter, unless it makes written
2 factual findings supported by substantial evidence, specific to the charter school,
3 that support its findings.

4 The court must determine the interaction between section 47607(c)(1), 47607(c)(2), and
5 47607(e). The OUSD argues that section 47607(c)(1) is substantive in nature and is the basis for
6 any revocation decision whereas section 47607(c)(2) is procedural in nature and merely
7 identifies a factor to be considered on the way to reaching the substantive decision. AIMS
8 argues, in contrast, that section 47607(c)(1) identifies the negative factors about a charter school
9 that a school board may consider when making a revocation decision whereas section
10 47607(c)(2) identifies a positive factor that a school board must consider when making a
11 decision. The court agrees with AIMS.

12 The statute is plain that a school board's decision must demonstrate that "increased pupil
13 academic achievement" was the "most important factor" in the school board's substantive
14 analysis. Under well-settled principles of statutory construction, the court construes the word
15 "shall" as mandatory. (*Boeken v. Philip Morris USA Inc.* (2013) 217 Cal.App.4th 992, 1002.)
16 The court also considers the Legislative history. The Assembly Floor Analysis of SB1290 dated
17 8/20/12 states:
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19 While this bill makes changes to charter school renewal and revocation policies to
20 align the state's statutes with the federal requirements of the PCSG program, these
21 changes are not technical. While the policy changes are not sweeping, they are
22 also not unsubstantial. This bill specifies that a charter authorizer must consider
23 increases in pupil academic achievement for all groups of pupils served by the
24 school, as measured by the API, "as the most important factor" for renewal and
25 revoked, but it does mean that the charter authority must consider this information
26 as the most important factor in making its decision. In other words, the charter
authority must give extra weight to this factor when it considers all the factors for
renewal or revocation.

1 (Yamakawa Dec., Exh A.) The court also considers the purpose of requiring a school board to
2 make written findings. In *Lucas v. Board of Education* (1975) 13 Cal.3d 674, 679, the court
3 pointed out that requiring written findings both “serves to prompt more deliberate consideration
4 and analysis of the matter at hand” and “elicit[s] a written record which facilitates judicial
5 review.” In *Eureka Teachers Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 368, the
6 court held that the requirement of an explanation “is particularly crucial where the decision may
7 be based on one or more of several theories, each relating to different factual considerations.”
8 Similarly, the importance of written analysis is heightened when the legislature directs school
9 boards to give extra weight to one factor, as it is only through a review of the board’s analysis
10 that a reviewing court can determine if the board actually gave extra weight to that factor.
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12 The court holds that under section 47607(c) a school board considering whether to revoke
13 a charter may consider whether the school did any of the section 47607(c)(1) negative actions,
14 must consider whether the charter school has increased pupil academic achievement, must weigh
15 the considerations treating pupil academic achievement as the most important factor, and can
16 then reach a decision. If the school board elects to revoke a charter, the school board must both
17 (1) make written factual findings supported by substantial evidence specific to the charter school
18 that support its findings and (2) make a written explanation stating why the board found the
19 schools deficiencies outweighed the school’s ability, if any, to produce increases in pupil
20 academic achievement even after giving extra weight to any increases in pupil academic
21 achievement. This is consistent with Court of Appeal’s interpretation of the statute in *American*
22 *Indian Model Schools*, 2014 WL 2811562, at *9-14.
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1 SUBSTANTIAL EVIDENCE SUPPORTS THE OUSD'S FACTUAL FINDINGS OF
2 FINANCIAL PROBLEMS AND HIGH ACADEMIC PERFORMANCE.

3 OUSD Resolution 1213-0124 dated 3/20/13 revoking the charter of the AIMS schools
4 made specific findings that the AIMS schools had financial problems. (OUSD 7217-7219.)
5 AIMS does not contest this.

6 OUSD Resolution 1213-0124 revoking the charter of the AIMS schools did not make
7 specific findings regarding whether the AIMS schools had increases in pupil academic
8 achievement for all groups of pupils served by the charter schools. Nevertheless, the OUSD
9 made an implicit factual finding that "the AIMS charter schools have a track record of high
10 academic performance." OUSD Resolution 1213-0124 includes in a "whereas" clause the API
11 scores for the three AIMS schools for the 2012 test. (OUSD 7515-7516.) The Superintendent's
12 Memorandum dated 3/16/13 includes the API scores for the three AIMS schools for the 2012 test
13 and "acknowledges that the AIMS charter schools have a track record of high academic
14 performance." (OUSD 7206.) The Superintendent's Notice of Intent to Revoke dated 1/24/13
15 makes a general reference to "the academic achievement of the AIMS program" (OUSD 7321)
16 but did not make specific findings. The OUSD Staff report dated 4/4/12 regarding charter
17 renewal (not charter revocation) is the only document that contains significant data on the
18 performance of students in the AIMS schools generally and the changes in in pupil academic
19 achievement for the groups of pupils served by the charter schools specifically. (Exh 3. AIMS
20 0871-0879.) The OUSD Staff report found that the AIMS Schools were "academically sound"
21 and ranked near to or at the top of the Oakland schools in many criteria. There is substantial
22 evidence to support the OUSD's implicit factual finding that "the AIMS charter schools have a
23 track record of high academic performance." The OUSD does not contest this conclusion.
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2 **SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE OUSD'S ACTION.**

3 Petitioner argues that the OUSD's analysis did not support its conclusion because the
4 OUSD (1) failed to consider increases in pupil academic achievement "as the most important
5 factor," (2 and 3) failed to consider "increases" in pupil academic achievement "for all groups of
6 pupils," and (4) failed to explain the decision and bridge the analytic gap between the evidence
7 and the ultimate decision. The court agrees with AIMS.

8 Substantial evidence does not support a finding that the OUSD considered academic
9 achievement as the most important factor. There is no substantial evidence in the Resolution, or
10 in the record as a whole, demonstrating that OUSD considered increases in pupil academic
11 achievement "as the most important factor" in its decision to revoke the AIMS Charter. The
12 resolution revoking the AIMS charter does not explain how it weighed "the most important
13 factor" against the other factors and does not bridge the analytic gap between the evidence and
14 the ultimate decision. In fact, the Resolution and the record strongly suggest that the OUSD's
15 conclusory references to academic achievement were merely after-the-fact recitals made to
16 suggest compliance with the newly enacted Education Code 47607(c)(2).
17

18 Education Code 47607(c) requires an authority to consider "increases in pupil academic
19 achievement" as "the most important factor." The Resolution dated 3/20/13 and the
20 Superintendent's Report dated 3/16/13 each states "Although the performance of AIMS students
21 is an important factor ..." (OUSD 7222, 7392.) The words that the OUSD chose are the best
22 indicators of its analysis and intent. The words used in the Resolution and in the
23 Superintendent's Report state clearly that the OUSD considered pupil academic achievement
24 only as "an" important factor. (*People v. Ramirez* (2010) 184 Cal.App.4th 1233, 1238 ["the
25
26

1 words the Legislature chose are the best indicators of its intent”]; *Nissho of California, Inc. v.*
2 *Bond Safeguard Insurance Company* (2013) 220 Cal.App.4th 974, 983 [in contract
3 interpretation, “we seek to discover the intent of the parties, primarily by examining the words
4 the parties have chosen giving effect to the ordinary meaning of those words.”].)

5 The Superintendent’s Notice of Intent to Revoke dated 1/24/13 states that the OUSD
6 considered “AIMS’s academic record as *the paramount* factor.” (OUSD 7321.) The court is
7 more concerned with substance than form (Civil Code 3528) and is not inclined to base its
8 decision on the Superintendent’s use of the word “paramount” instead of the phrase “most
9 important” (Civil Code 3533, 3542). That said, the court is reviewing the Board’s decision to
10 revoke the AIMS charter, not the Superintendent’s notice to the AIMS schools.
11

12 Substantial evidence does not support a finding that the OUSD considered “increases” in
13 academic achievement. Education Code 47607(c) requires an authority to consider “increases”
14 in pupil academic achievement. The reference in the statute to “increases” suggests that an
15 authority must consider improvement over time rather than a one year snapshot of academic
16 performance.
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18 There is no information in the Resolution regarding “increases” in academic
19 achievement. The Resolution refers to the 2012 API scores for AIPCS II (Grades K-8), AIPCS
20 (Grades 6-8) and AIPHD (Grades 9-12), but the court was required to mine the record and dig
21 backwards from the Board’s Resolution dated 3/20/13, to the Superintendent’s Memorandum
22 dated 3/16/13, to the Superintendent’s Notice of Intent to Revoke dated 1/24/13, to the OUSD
23 Staff report dated 4/4/12 to locate *any* specific information concerning the year over year
24 academic performance of the AIMS schools. None of this information was cited in the
25 Resolution and there is no substantial evidence in the record that the Superintendent or the Board
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1 considered or evaluated the information. Furthermore, the Staff report concerned the Charter
2 renewal request and not the revocation decision. (*American Indian Model Schools*, 2014 WL
3 2811562 at *15 [“the report prepared to consider whether to renew a charter does not establish
4 that the District properly evaluated this information when deciding to revoke the charter”].)

5 The court is not required to, and indeed is precluded from, engaging in speculation to
6 determine whether there was a connection between the obtuse references and information in the
7 Staff report dated 4/4/12 and the Board’s analytical process one year later in the Resolution dated
8 3/20/13. This was the duty of the Board. (*Lucas v. Board of Education* (1975) 13 Cal.3d 674,
9 679; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506,
10 510; *Eureka Teachers Assn. v. Board of Education* (1988) 199 Cal.App.3d 353, 368.)

11 Substantial evidence does not support a finding that the OUSD considered pupil
12 academic achievement for “all groups of pupils.” Education Code 47607(c) requires an authority
13 to consider increases in pupil academic achievement for “all groups of pupils.” There is no
14 information in the Resolution suggesting that the OUSD considered the test scores of any
15 “numerically significant pupil subgroup” or that the OUSD determined that there were no
16 “numerically significant pupil subgroups” as defined by Education Code 52052. Again, one
17 must dig all the way back to the Staff Report to find any material information regarding
18 performance by “numerically significant pupil subgroups.”
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21 The Resolution does not bridge the analytic gap. The Resolution does not bridge the
22 analytic gap and explain how the OUSD weighed the evidence of whether and to what extent
23 AIMS had increased academic achievement over time against the evidence of financial and
24 administrative misfeasance at AIMS. The Board’s decision was deficient at several levels.
25
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1 First, there is no substantial evidence of “increases” in academic performance both
2 generally and for “numerically significant pupil subgroups.” The only information in the record
3 with that information is the Staff report dated 4/4/12. The court is aware that under certain
4 circumstances an agency decision can simply incorporate a staff report as a means of stating the
5 agency’s factual findings and explaining its reasoning. (*Save Our Carmel River v. Monterey*
6 *Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 701-702; *McMillan v.*
7 *American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 184-185.) In this case, however, the
8 Board Resolution on revocation made no reference to the Staff report and the Staff report was
9 prepared for the Charter renewal request and not Charter revocation. It would completely
10 undermine the *Topanga* requirement that an agency explain its reasons for a decision if the
11 agency could after the fact mine the record for evidence that could have supported a reasoned
12 decision.
13

14 Second, assuming there were substantial evidence in the record and that the Board
15 considered the evidence, the Board misapplied Education Code 47607. The Board stated
16 repeatedly that it considered “increases in pupil academic achievement for all groups of pupils”
17 as “an” important factor rather than “as the most important factor in determining whether to
18 revoke a charter.” (Ed. Code 47607(c).)
19

20 Third, the Resolution and the record as a whole contain exhaustive factual recitation
21 regarding the financial and administrative problems at the AIMS schools and then make
22 conclusory statements that the OUSD has considered academic performance as “an important
23 factor.” There is no written explanation stating why the OUSD found the AIMS’s schools
24 deficiencies outweighed their ability to produce increases in pupil academic achievement.
25 Furthermore, there is no indication that the OUSD gave extra weight to the increases in pupil
26

1 academic achievement in its decision. This failure to explain the decision making process is
2 deficient under Education Code 47607(e), *Topanga*, and *Lucas*, and *Eureka*.

3 The OUSD's conclusory statements are not a substitute for compliance with the legal
4 requirement of Education Code 47607 that the Board consider "increases" in academic
5 performance both generally and for "numerically significant pupil subgroups," that the Board
6 consider academic performance as "the most important factor," and that the Board's decision set
7 out the both the facts and the analytical path that bridges the gap between the facts and the
8 Board's conclusion.

9
10 IT IS ORDERED:

11 The petition of American Indian Model Schools for a writ of mandate is GRANTED. The
12 court directs the clerk to issue a writ that directs the OUSD to vacate Resolution 1213-0124 and
13 the court remands the matter to the OUSD for further proceedings. The court does not control
14 the discretion of the OUSD in how it might choose to proceed on remand. (*Sacks v. City of*
15 *Oakland* (2010) 190 Cal.App.4th 1070, 1071.) The court expressly does not address or decide
16 whether the OUSD may or must consider the pupil academic achievement at the AIMS schools
17 to date and the financial management of the AIMS school to date when considering any potential
18 revocation of the charters for the AIMS schools or whether the OUSD must or may consider only
19 the information that was presented or known on March 20, 2013, when the OUSD approved
20 Resolution 1213-0124.
21

22 The Court ORDERS AIMS and the OUSD to meet and confer regarding a proposed
23 judgment and a proposed writ and to submit an agreed form of judgment and writ or competing
24 forms within 5 court days of service of this order. If the parties cannot agree on forms of a
25 judgment and writ, then the parties may file objections 5 court after service of the proposed
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1 judgments. The court asks the parties to both file their documents and to send MS Word
2 versions to the court at Dept31.alameda.courts.ca.gov.

3
4 Dated: July 17, 2014



A handwritten signature in black ink, appearing to read 'Evelio Grillo', is written over a horizontal line. The signature is stylized and cursive.

Evelio Grillo
Judge of the Superior Court

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