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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Jenine Lindsey, General Counsel
Kelly Krag-Arnold, Director, Office of Charter Schools

Meeting Date October 23, 2024

Subject Notice Regarding American Indian Public Charter School II Pursuant to Education Code Section 47607(e)

Ask of the Board Adoption by the Board of Education of Resolution No. 2425-0013 - Providing the American Indian Public Charter School II with Notice and A Reasonable Opportunity to Cure Pursuant to Education Code Section 47607(e)

Background According to the California Department of Education, the Board, as the statutory authorizer of charter schools, is “responsible for ensuring the charter school operates in compliance with all applicable laws and the terms of its charter.” As part of this responsibility, OUSD responds to and, if necessary, investigates complaints from concerned families, staff, and/or community members regarding OUSD-authorized charter schools.

Education Code section 47607, subdivision (e), states that a “chartering authority may deny renewal of a charter school upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors, or is not serving all pupils who wish to attend” but “only after [the chartering authority] has provided at least 30 days’ notice to the charter school of the alleged violation and provided the charter school with a reasonable opportunity to cure the violation, including a corrective action plan proposed by the charter school.” The chartering authority may then deny renewal only by finding that “[t]he corrective action proposed by the charter school has been unsuccessful” or [t]he violations are sufficiently severe and pervasive as to render a corrective action plan unviable.”

American Indian Public Charter School II (“AIPCS II”) is an OUSD-authorized charter school whose charter petition expires on June 30, 2025. The school submitted a renewal petition to the District on September 30, 2024.

On September 27, 2023, the OUSD Board of Education issued a Notice to AIPCS II pursuant to Education Code section 47607(e) in response to a formal investigation which concluded there is strong evidence to support each of the following findings:

- AIPCS II is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial governance factors, and
- AIPCS II is not serving all pupils who wish to attend.

Per the recommendations included in the Notice, AIPCS II submitted a written Corrective Action Plan (“CAP”) to OUSD on November 15, 2023, with subsequent written updates to OUSD on February 1, 2024, May 1, 2024, and August 1, 2024.

Upon reviewing new evidence from the 2023-24 school year, and in light of new evidence made available to OUSD by the California Department of Education, OUSD continues to have concerns regarding AIPCS II’s governance and whether the Charter School is serving all students who wish to attend.

Discussion The proposed Resolution would direct the Superintendent or designee to immediately transmit the attached Notice to AIPCS II, which requests AIPCS II submit a supplementary CAP to address the concerns outlined therein.

Fiscal Impact No direct fiscal impact.

Attachment(s)

- Resolution No. 2425-0013 – Providing the American Indian Public Charter School II with Notice and A Reasonable Opportunity to Cure Pursuant to Education Code Section 47607(e)
- Notice to American Indian Public Charter School II Pursuant to Education Code Section 47607(e)

**RESOLUTION OF THE
BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2425-0013

**Providing the American Indian Public Charter School II with Notice and A Reasonable
Opportunity to Cure Pursuant to Education Code Section 47607(e)**

WHEREAS, on January 25, 2017, the OUSD Governing Board (“Governing Board”) adopted the current American Indian Public Charter School II (“AIPCS II”) Charter Petition (“Petition”); and

WHEREAS, the term of the Petition began on June 1, 2017, and was initially due to expire on June 30, 2022; and

WHEREAS, due to changes in State law, the end of AIPCS II’s current charter term has been automatically extended to June 30, 2025 without action by the Governing Board; and

WHEREAS, Education Code section 47607, subdivision (e), states that a “chartering authority may deny renewal of a charter school upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors, or is not serving all pupils who wish to attend” but “only after [the chartering authority] has provided at least 30 days’ notice to the charter school of the alleged violation and provided the charter school with a reasonable opportunity to cure the violation, including a corrective action plan proposed by the charter school”; and

WHEREAS, under Education Code section 47607, subdivision (e), the chartering authority may then deny renewal only by finding that “[t]he corrective action proposed by the charter school has been unsuccessful” or [t]he violations are sufficiently severe and pervasive as to render a corrective action plan unviable”; and

WHEREAS, according to the California Department of Education, the Governing Board, as the statutory authorizer of charters schools, is “responsible for ensuring the charter school operates in compliance with all applicable laws and the terms of its charter”; and

WHEREAS, as part of this responsibility, the Governing Board issued a Notice to AIPCS II on September 27, 2023, pursuant to Education Code section 47607(e), in response to a formal investigation which concluded there is strong evidence to support each of the following findings:

- AIPCS II is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial governance factors, and
- AIPCS II is not serving all pupils who wish to attend;

WHEREAS, in response to recommendations included in the Notice, AIPCS II submitted a written Corrective Action Plan to OUSD on November 15, 2023, with subsequent written updates to OUSD on February 1, 2024, May 1, 2024, and August 1, 2024; and

WHEREAS, AIPCS II submitted a renewal petition to the District on September 30, 2024; and

WHEREAS, upon reviewing new evidence from the 2023-24 school year, and in light of new evidence made available to OUSD by the California Department of Education, OUSD continues to have concerns regarding AIPCS II's governance and whether the Charter School is serving all students who wish to attend, as documented in the Notice to American Indian Public Charter School II ("Notice"), attached hereto and incorporated herein by reference; and

WHEREAS, the Notice shall provide AIPCS II sufficient opportunity to cure the violations set forth therein, pursuant to Education Code section 47607(e); and

NOW, THEREFORE, BE IT RESOLVED, the Governing Board hereby adopts and agrees with the Notice; and

BE IT FURTHER RESOLVED, the Governing Board directs the Superintendent or designee to immediately transmit the Notice to AIPCS II; and

PASSED AND ADOPTED by the Governing Board of the Oakland Unified School District this 23 day of October, 2024, by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: Michele Vasquez, Maximus Simmons

PREFERENTIAL RECUSE: None

AYES: Jennifer Brouhard, VanCedric Williams, Jorge Lerma, Valarie Bachelor, Clifford Thompson,

President Benjamin Davis

NOES: None

ABSTAINED: Vice President Mike Hutchinson

RECUSED: None

ABSENT: None

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Governing Board of the Oakland Unified School District, held on October 23, 2024.

Legislative File Info.	
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OAKLAND UNIFIED SCHOOL DISTRICT



Benjamin "Sam" Davis
President, Governing Board



Kyla Johnson-Trammell
Superintendent and Secretary, Governing Board



October 23, 2024

30-Day Notice re: Concerns regarding AIMS Governance and Whether AIPCS II is serving all students who wish to attend

American Indian Public Charter School II (“AIPCS II”), a charter school serving students in grades K-8, is authorized by the Governing Board (“Board”) of the Oakland Unified School District (“OUSD” or “District”). Its current Charter Petition expires on June 30, 2025, and the school submitted a renewal petition to the District on September 30, 2024.

Although AIPCS II was placed in the High Tier by the California Department of Education (“CDE”), California Education Code section 47607, subdivision (e) provides, in relevant part, that “the chartering authority may deny renewal of a charter school upon a finding that the school is demonstrably unlikely to successfully implement the program set forth in the petition due to substantial fiscal or governance factors or is not serving all pupils who wish to attend.” To deny a charter renewal petition based on the standard set forth in Education Code section 47607, subdivision (e), a charter authorizer must have provided “at least 30 days’ notice to the charter school of the alleged violation and provided the charter school with a reasonable opportunity to cure the violation, including a corrective action plan proposed by the charter school.”

In light of significant evidence which gave rise to substantiated concerns that AIPCS II is demonstrably unlikely to successfully implement the program set forth in its petition and is not serving all pupils who wish to attend, the OUSD Board of Education issued a Notice to AIPCS II, pursuant to Education Code section 47607(e), on September 27, 2023 (“Initial Notice” or “September 2023 Notice”). Per the recommendations included in the Initial Notice, AIPCS II submitted a written Corrective Action Plan (“CAP”) to OUSD on November 15, 2023, with subsequent written updates to OUSD on February 1, 2024, May 1, 2024, and August 1, 2024.

Upon reviewing the Corrective Action Plan and associated evidence, and in light of new evidence from the California Department of Education, the OUSD Board continues to have concerns regarding AIPCS II’s governance and whether the Charter School is serving all students who wish to attend. Therefore, this Notice (“Notice” or “October 2024 Notice”) represents an additional 30-day notice regarding these concerns, pursuant to Education Code section 47607(e). Importantly, this Notice does not negate the contents of the September 2023 Notice nor does it aim to serve as the OUSD Board’s determination as to whether the initial CAP and subsequent updates have been, or have not been successful in remedying the concerns outlined in the September 2023 Notice. This determination will occur at the Decision Hearing as part of the OUSD Board’s decision to approve or deny the AIPCS II renewal petition submitted on September 30, 2024. The purpose of this Notice is to address continuing concerns, as well as to provide Notice of new ones.

By this Notice, OUSD is providing AIPCS II with an additional opportunity to cure or remedy the concerns set forth herein. AIPCS II, at its option, may develop a supplementary corrective action plan (“supplementary CAP”).



AIPCS II is not serving all students who wish to attend

Part 1: California Department of Education Enrollment Data

State law mandates that, upon request, the State provide charter school authorizers with certain aggregate data, specified in the law, reflecting student enrollment patterns for authorized charter schools. The State does not provide any guidance regarding how this data should be interpreted. This data includes the following for each year of the charter term:

- **Data Set 1:** The percentage of students enrolled at any time between the beginning of the school year and the census day who were not enrolled at the end of the same school year, and the average State test results for these students from the prior school year, if available.
- **Data Set 2:** The percentage of students enrolled during the prior school year who were not enrolled as of the census day of the school year in question (excluding students who completed the highest grade served by the school), and the average State test results for these students from the prior year, if available.

The tables below summarize the data provided by the State. To avoid exposing potentially personally identifiable information, State test results are excluded for any group with fewer than 11 students. Additionally, it is important to note the data provided is limited in that it can only show correlation, not causation. Therefore, while an analysis is included below, the data, on its own, cannot definitively show whether or not the school is serving all students who wish to attend. However, OUSD finds the data concerning enough to include in this Notice given the evidence outlined in the September 2023 Notice, including at least one substantiated violation of the Charter School’s suspension, expulsion, or involuntary disenrollment policies.

Analysis

Data Set 1: For the first set of data, students who left the Charter School performed slightly below (between 20 points and 1 point below), moderately below (between 21 points and 40 points below), or significantly below (more than 40 points below) the Charter School’s school wide average for each year of the charter term for which data is available. While this represents a concerning trend, the total number of students tested was not significant enough to conclude definitively that the school is not serving all students who wish to attend.

Figure 1: Charter School Enrollment Data – Education Code Section 47607(d)(1)(B)

Data Set 1	2017-18	2018-19	2019-20	2022-23
Percent of students enrolled at the Charter School between start of the school year and census day who were not enrolled at the end of the school year	4.87% (33 of 678)	4.59% (38 of 828)	2.54% (17 of 668)	3.23% (22 of 681)
Number of these students with State test results from the prior year	14	16	ELA: 5 Math: 6	12



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ELA: Difference between average DFS of unretained students and schoolwide average	-29.93 Unretained = -0.43 School = 29.5	-59.81 Unretained = -28.81 School = 31	N/A*	-12.57 Unretained = 9.33 School = 21.9
Math: Difference between average DFS of unretained students and schoolwide average	-46.03 Unretained = 1.57 School = 47.6	-37.32 Unretained = 9.38 School = 46.7	N/A*	-26.3 Unretained = -14 School = 12.3

Source: Aggregate enrollment-pattern data provided by the State

* Data excluded due to an insufficient number of students with results for this group

Data Set 2: The second set of data demonstrates that students who left the Charter School performed below the Charter School’s schoolwide average for each year of the charter term for which data is available. There were multiple data points within this second set of data which cause concern:

1. The percentage of students who left AIPCS II more than doubled from 2017-18, with over 20% of students leaving in 2022-23.
2. Students who left the Charter School consistently performed below the Charter School’s schoolwide average across both subjects and across all years for which data is available.
3. In 2022-23, the difference between the average DFS for unretained students and the schoolwide average was the greatest out of all OUSD-authorized charter schools with reportable data (22 schools for ELA and 21 schools for Math).
4. For every year measured, AIPCS II ranked in the bottom 5 of OUSD-authorized charter schools when measuring the difference between the average DFS for unretained students and the schoolwide average.

Taken together, the data included in Figure 2 below suggests that AIPCS II may not be serving all students who wish to attend, as students who perform lower on state tests are exiting the school at consistently disproportionate rates. Given the evidence outlined in the September 2023 Notice, including witness statements which attested that AIPCS II employs practices which indirectly push lower-achieving students to disenroll, this data is particularly concerning.

Figure 2: Charter School Enrollment Data – Education Code Section 47607(d)(1)(C)

Data Set 2	2017-18	2018-19	2019-20	2022-23
Percent of students enrolled at the Charter School during the prior school year who were not enrolled as of the census day for the specified year (excluding graduating students)	8.77% (58 of 661)	9.88% (67 of 678)	16.55% (137 of 828)	20.42% (137 of 671)
Number of these students with State test results from the prior year	38	ELA: 47 Math: 45	ELA: 111 Math: 113	ELA: 107 Math: 108
ELA: Difference between average DFS of unretained students and schoolwide average	-14.76 Unretained = 14.74 School = 29.5	-42.87 Unretained = -11.87 School = 31	-12.28 Unretained = 12.32 School = 24.6	-38.97 Unretained = -17.07 School = 21.9



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<i>Difference compared with other OUSD authorized charter schools with at least 11 students tested</i>	<i>2nd largest out of 18</i>	<i>3rd largest out of 20</i>	<i>4th largest out of 18</i>	<i>Largest out of 21</i>
Math: Difference between average DFS of unretained students and schoolwide average	-24.39 Unretained = 23.21 School = 47.6	-39.46 Unretained = 7.24 School = 46.7	-35.76 Unretained = 13.84 School = 49.6	-47.07 Unretained = -34.77 School = 12.3
<i>Difference compared with other OUSD authorized charter schools with at least 11 students tested</i>	<i>4th largest out of 18</i>	<i>4th largest out of 19</i>	<i>4th largest out of 18</i>	<i>Largest out of 22</i>

Source: Aggregate enrollment-pattern data provided by the State

Part 2: Enrollment of Students with Disabilities and Child Find Compliance

The September 2023 Notice outlined concerns regarding whether AIPCS II is serving all students who wish to attend, particularly students with disabilities. Specifically, the Notice referenced a very low enrollment rate of students with disabilities at AIPCS II, non-compliance with Child Find requirements, multiple complaints submitted to OUSD regarding the experiences of students with disabilities at AIPCS II, and witness statements which outlined a pattern of ineffective special education programming.

The CAP submitted by AIPCS II, and the subsequent updates, outlined a variety of steps to address the concerns identified in the Notice, including, but not limited to, the following:

- Marketing and Recruitment:** AIPCS II updated website and recruitment materials to include information about special education programming.
- Board Presentations:** AIPCS II gave presentations to the AIMS Governing Board regarding enrollment demographic data and special education law and best practices, including Child Find requirements.
- Staff Training:** AIPCS II submitted a staff training schedule which identified various professional development opportunities to learn about special education processes, requirements, and best practices.

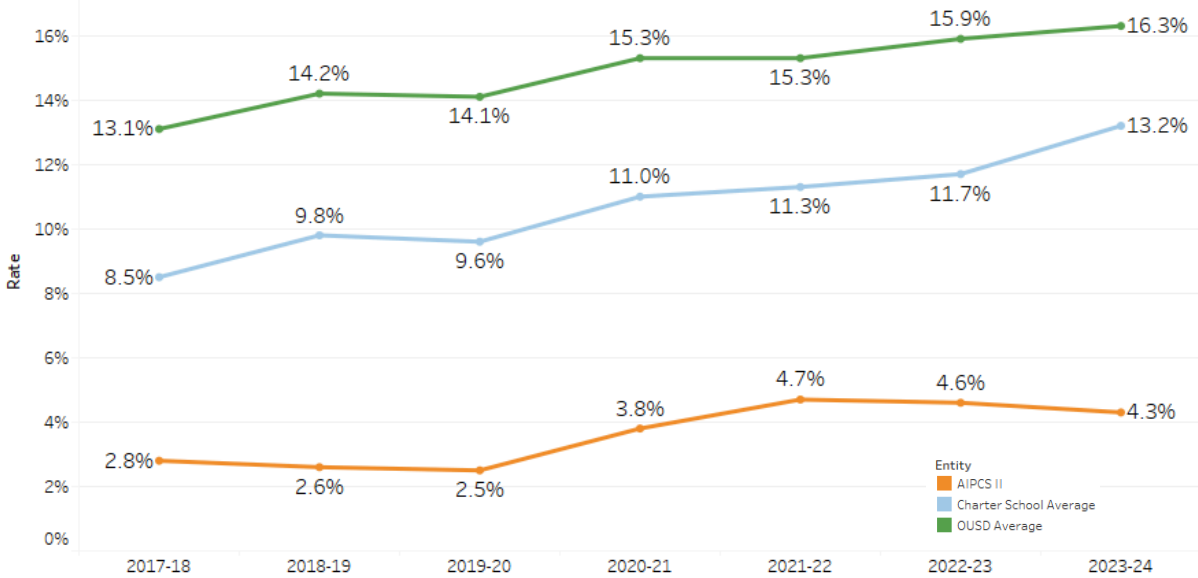
Although OUSD recognizes that meaningful change takes time, the District continues to have concerns based on evidence currently available to OUSD. These concerns are outlined below.

A. Enrollment of Students with Disabilities

As shown in the figure below, in the 2023-24 school year, the enrollment rate of students with disabilities increased at both OUSD and across OUSD-authorized charter schools. For the latter, the enrollment rate increased by 1.4 percentage points. Conversely, the enrollment rate of students with disabilities at AIPCS II decreased from 4.6% to 4.3% in 2023-24.



Figure 3: Enrollment Rate of Students with Disabilities over Charter Term



Source: California Department of Education

B. Child Find Compliance

In the September 2023 Notice, OUSD outlined concerns regarding AIPCS II’s compliance with Child Find requirements. Specifically, the Notice referenced the below special education referral data from the 2021-22 school year.

Figure 4: 2021-22 Special Education Enrollment and Referrals

School	Grades	Enrollment	SPED Enrollment	SPED Percentage	Total Referrals	Referral Percentage
AIPCS II	K-8	643	30	4.7%	0	0.0%
AIMS Middle	6-8	235	12	5.1%	1	0.4%
Lincoln	K-5	674	78	11.6%	21	3.1%
Franklin	K-5	498	71	14.3%	19	3.8%
MLK Jr.	K-5	339	69	20.4%	13	3.8%
Roosevelt	6-8	571	114	20%	13	2.3%
Westlake	6-8	277	60	21.7%	3	1.1%

Per data that AIMS submitted to the OUSD Office of Charter Schools, in the 2023-24 school year, there were three total referrals for IEP evaluations at AIPCS II across grades K-8, with 2 referred by teachers and 1 by a parent. While this is an increase from 0 in the 2021-22 school year, it still falls well below the average for nearby schools of similar size. Additionally, in the Staff Focus Group at the AIPCS II Renewal Site Visit conducted on April 22-23, 2024, educators at AIPCS II expressed that the referral and subsequent evaluation process was slow and could be improved.



Governance Concerns

The September 27, 2023 Notice outlined a variety of governance issues at AIPCS II, including, but not limited to, concerns regarding retaliation, the dissolution of the Human Resources department, an ineffective complaint tracking and investigation process, non-compliance with Uniform Complaint Procedure (“UCP”) processes, high rates of teacher turnover, a reliance on emergency credentials for staff, and unsafe school conditions related to an outdated Comprehensive School Safety Plan and non-compliance with required safety drills. While OUSD is still evaluating the Charter School’s progress on resolving these issues based on the actions taken in the CAP, concerns remain based on evidence currently available to OUSD. These concerns are outlined below.

A. Teacher retention and credentialing

On Census Day 2023, only 32% of core assignments at the elementary level were staffed by individuals with a preliminary or clear credential. The other 68% were considered “ineffective”, or were either vacant or staffed by an individual with an emergency or no credential. Of particular concern, for the first half of the school year, AIPCS II did not have any 1st grade educators employed.

Figure 5: 2023-24 Census Day CORE Assignments at AIPCS II Elementary

Grade	Section	Credential Status on Census Day 2023	Notes
K	A	None	PIP issued on 11/19/23
	B	Prelim Math	Out-Of-Field
1	A	Vacant	Filled by educator with STSP on 2/2/24
	B	Vacant	Filled by educator with PIP on 12/26/24
	C	Vacant	
2	A	STSP	
	B	Clear MS	
	C	None	STSP issued on 12/25/23
3	A	None	STSP issued on 12/1/23
	B	Prelim MS	
	C	STSP	
4	A	STSP	
	B	Prelim MS	
	C	Prelim MS	
	D	Vacant	
5	A	Prelim MS	
	B	STSP	
	C	None	STSP issued 12/25/23
	D	Vacant	

Source: Data submitted to OUSD by AIMS; California Commission on Teacher Credentialing

At the middle school level at AIPCS II, approximately 19% of core section assignments (for a total of 3 sections) were staffed by individuals with a preliminary or clear credential, although 1 of these 3 sections



was out-of-field for the educator. Another 19% of assignments were staffed by educators with an Intern Credential, although the educator for 1 of these 3 sections was not authorized by a credential after December as the Intern Credential expired. The remaining 63% of assignments were either vacant or staffed by an individual with an emergency or no credential.

Figure 6: 2023-24 Census Day CORE Assignments at AIPCS II Middle

Grade / Assignment	Section	Credential Status on Census Day 2023	Notes
6th Grade <i>Math and Science</i>	A	None	PIP issued 12/1/23
	B	Prelim Social Studies	Out-Of-Field for both
6th Grade <i>English and History</i>	A	None	STSP issued 12/20/23
	B	PIP	
7th Grade <i>Math and Science</i>	A	Vacant	Filled by Educator with Clear MS on 10/8/23
	B		
	C	Vacant	Only 2 students per CALPADS report
7th Grade <i>English and History</i>	A	PIP	
	B		
	C	Vacant	Only 2 students per CALPADS report
8th Grade <i>Math and Science</i>	A	Prelim MS	
	B		
	C	Intern MS	Expired 12/1/23
8th Grade <i>English and History</i>	A	Intern MS	
	B		
	C	Vacant	Remained Unfilled

Source: Data submitted to OUSD by AIMS; California Commission on Teacher Credentialing

Furthermore, based on information submitted to OUSD by AIPCS II, the educator retention rates for core assignments at both the elementary and middle school grades continue to be of concern. Although the retention rates improved slightly from 2022-23 to 2023-24, the Charter School still had turnover in over 25% of core subject positions. Additionally, of the core subject educators retained, 50% currently have either no credential authorizing instruction or an emergency credential which expires in January 2025. At the April 23-24, 2024 renewal site visit, both students and staff mentioned the vacancies and turnover rate as a problem. Students specifically shared that the vacancies and turnover make it not only difficult to learn, but also makes it harder to build relationships with teachers. Staff shared the frequent turnover makes it difficult to collaborate on best practices and grade-level content.

Figure 7: AIPCS II Core Assignment Retention Rates

	2022-23	2023-24
Elementary	50%	70%
Middle	50%	75%

Source: Data submitted to OUSD by AIMS; California Commission on Teacher Credentialing



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While OUSD recognizes there is an educator shortage which has impacted schools across California, the vacancy rates, turnover rates, and the use of emergency credentials at AIPCS II have still been much higher than at other OUSD-authorized charter schools. OUSD therefore has continued concerns regarding the staffing at AIPCS II and the impact it has on student learning.

B. General Governance Concerns

In addition to concerns regarding staffing, OUSD has continued concerns regarding the general governance of AIPCS II. Since the September 2023 Notice, the OUSD Office of Charter Schools has issued multiple Notices of Concerns as outlined below.

Figure 8: 2023-24 Notices of Concern

Date Sent	Category	Description
1/22/24	Response to OCS Inquiry	Despite multiple attempts at informal communication and an extension, AIPCS II did not respond to OCS' inquiry regarding student exit data.
2/20/24	Brown Act Violation	The AIMS Board held a full day Special Board Meeting which listed "planning session" as a closed session item and the sole item on the agenda, in violation of the Brown Act.
10/17/24	Exposure of Confidential Employee and Student Information	Multiple board meeting agendas posted on the AIMS Board on Track Site included social security numbers and home addresses for AIMS employees and confidential student information.

Conclusion

Again, the purpose of this Notice is to ensure that AIPCS II has an opportunity to address the concerns outlined therein prior to the Charter School's Decision Hearing. If AIPCS II chooses to develop a supplementary Corrective Action Plan to address these concerns, please submit any documentation to Kelly Krag-Arnold, Director of the OUSD Office of Charter Schools: kelly.krag.arnold@ousd.org.