



Oakland Unified School District

STATE ADMINISTRATOR
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July 25, 2007

CERTIFIED MAIL

Mr. Prentice Deadrick
President
Board of Governors
University Preparatory Charter Academy
565 N. Rosemead Blvd.
Pasadena, CA 91107

**Re: University Preparatory Charter Academy (UPrep)
Charter School number 0454; CDS Code 01-61259-0130591
Amendment to Notice of Intent to Revoke Charter – Education Code Section
476070(c) and Reasonable Opportunity to Cure dated July 17, 2007**

Dear Mr. Deadrick and UPrep Governing Board Members,

A recent communication to the University Preparatory Charter Academy on July 17, 2007 indicated that the District is requiring that “cures” be met as they pertain to the violations outlined in that letter; material violations of standards, conditions, and procedures set forth in the charter and violations of the law with regards to governance and state testing irregularities. The District is still pursuing this action and intends to continue to implement the Notice to Cure/ Intent to Revoke process initiated by that Notice on July 17, 2007.

However, as indicated in the July 17, 2007 Notice to the UPrep Governing Board, the District has continued to investigate allegations not addressed in that Notice. These were referred to in that July 17, 2007 Notice as “pending allegations”. The District has evidence that it believes substantiates the claim that the school has not engaged in Generally Acceptable Accounting Practices and has engaged in Fiscal Mismanagement with respect to the accounting and submission of the school’s average daily attendance for State apportionment. As you know, these reports are relied upon by the District and the State to account for the average daily attendance of students, which constitutes, among others, the general fund revenue provided to the

school annually. In addition, the District has evidence that raises significant concerns with regards to the schools practices regarding official transcript reporting. This Notice constitutes an amendment to the Notice of Intent to Revoke Charter – Education Code Section 476070(c) and Reasonable Opportunity to Cure dated July 17, 2007.

I. CONCERNS

PART I: ADA ATTENDANCE ACCOUNTING

A) VIOLATION OF ANY PROVISION OF LAW

- 1) Committing a violation with the CA False Claims Act (1992) based on fraudulent submission of daily attendance accounting data.
- 2) Committing violations under Education Code 47607 (c)(3) Failure to meet generally accepted accounting principles or engaged in fiscal mismanagement

The California False Claims Act,
Cal. Gov't Code 12650-12655 (1992)

12651 Acts subjecting person to treble damages, costs and civil penalties; exceptions

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three times the amount of damages which the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the state or political subdivision for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim:

- (1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval.
- (2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision.

UPrep charter's Assurances page states;

"UPrep shall comply with all applicable federal state and local laws."

Applicability of state law:

S123951 - 08/31/06

**Civil Procedure, Consumer Protection Law, Corporation & Enterprise Law,
Education Law, Government Law, Injury And Tort Law**

Public school districts are not "persons," as defined in the California False Claims Act (CFCA), who may be sued under the terms of that statute. However, charter schools, and the individuals, corporations, entities, or organizations that operate them, are "persons" subject to suit under both the CA False Claims Act and the unfair competition law, and are not exempt from either law merely because such schools are deemed part of the public school system.

Source: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0751-0800/ab_766_cfa_20070417_101354_asm_comm.html

On August 31, 2006 the California Supreme Court found that "charter schools, and the individuals, corporations, entities, or organizations that operate them" are subject to suit under both the CA False Claims Act and the UCL and are not entitled to the "public entity" immunity the way school districts are.

The Court based its decision on the fact that these charter schools were operated, not by the public school system, but by distinct outside entities (nonprofit corporations) that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy. The court decision points to several places in law where charter schools are "exempt from the laws governing school districts." The court further found that, "The autonomy, and independent responsibility, of charter school operators extend, in considerable degree, to financial matters. Thus, where a charter school is operated by a nonprofit public benefit corporation, the chartering authority is not liable for the school's debts and obligations." (see #3 under existing law in this analysis).

The CA False Claims Act applies generally to nongovernmental entities that contract with state and local governments to provide services on their behalf and was designed to help the government recover public funds of which it was defrauded by outside entities with which it deals. The statutory purpose is equally served by applying the CA False Claims Act to the independent corporations that receive public monies under the Charter Schools Act to operate schools on behalf of the public education system. Allowing charter schools to be defined as "public entities" would defeat the purpose of the protections under the CFCA.

Education Code Section 47607(c), a charter may be revoked by the authority that granted the charter if the authority finds that the charter school engaged in any of the following conduct:

- 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.
- 4) Violated any provision of law.

UPrep has violated the CA False Claims Act as well as committed acts which allow for charter revocation under Education Code 47607 (c)(3) by submitting attendance accounting documents to the District that represent an inflated attendance rate that is higher than the actual average daily attendance based on reports by UPrep staff, and documents in evidence accounting for actual classroom attendance over a three month period by at least one UPrep teacher. Additionally the attendance accounting records submitted to the District by UPrep contain a substantial number of documents that include the forged signatures of UPrep staff.

EVIDENCE A: UPREP ATTENDANCE ACCOUNTING RECORDS (06-07)

All Attendance Accounting documents submitted by UPrep to OUSD are preceded by a **signed statement** certifying the information contained therein to be **true and factual**.

When charter schools submit attendance accounting manually to OUSD they must include a **signed document by every teacher** for each 20 day period **verifying** the reported attendance. This was required of UPrep for their 06-07 attendance reporting as it was submitted manually.

An internal District investigation of the ADA reports submitted by UPrep for the 06-07 school year revealed a **minimum of 30 instances where teacher's signatures** appear to have been written by two or more different individuals, **suggesting forgery**. In one instance, a teacher's signature is misspelled. Based on interviews conducted in July, 2007 with three (3) UPrep teachers whose signatures appeared to have been falsified, of the 27 attendance reports for 06-07 with their respective signatures on them, **16 of the 27 signatures were verified as having been forged without their consent or prior knowledge**. This pattern of forgery with respect to teacher's signatures accounting for daily attendance rates occurred throughout each of the 11 attendance reporting periods the 06-07 school year.

A review of the attendance accounting documents for 05-06 reveal that a similar pattern of apparent forgery has occurred.

EVIDENCE B: STATEMENTS SIGNED UNDER "PENALTY OF PERJURY" BY UPREP STAFF RE: AVERAGE DAILY ATTENDANCE

Attendance Accounting documents submitted to OUSD by UPrep for the **06-07 school year** report that the annual ADA for the entire school was **97.25%**.

Interviews were conducted by District staff with three (3) former UPrep teachers who were employed during the 06-07 school year. It was the responsibility of these teachers to account for the daily attendance of the students in their classes. The following was revealed in these interviews along with statements signed under "penalty of perjury". One such declaration is as follows:

1. To the best of my recollection, the following is a true and factual statement of the daily attendance rate of students who attended my classes while I taught at University Preparatory Academy from the period of 8/28/2006 to the date of May 18/2007.

2. On average, my reported daily attendance fell into a **range of 60-80%** of my students being present in class for the duration of the period above.
3. During **any 20 day period**, my attendance has on **more than one occasion** been reported by me to be **as low as 60%**.
4. I would characterize it as **“rare”** that my daily attendance rate during **any 20 day period** was **above 80%**.

Three such declarations were signed and submitted to District staff by former UPrep teachers who were employed at the school during the 2006-07 school year.

EVIDENCE C: ATTENDANCE ACCOUNTING RECORDS SUBMITTED BY ONE (1) UPREP TEACHER FOR THE FIRST THREE ATTENDANCE ACCOUNTING PERIODS

In July, 2007, Excel spreadsheets maintained by one UPrep teacher accounting for the first three attendance accounting periods (8/28/07 – 11/17/07) was submitted to District staff. This document contains a daily account of the presence and absence of all students enrolled in those classes taught by this teacher, including start dates of each student.

This submitted documentation was deemed by this teacher as an accurate representation of the actual daily attendance of her students during that period:

Classes	Period 1 (8/28 – 9/22) <i>Absences</i>	Period 2 (9/29 – 10/20) <i>Absences</i>	Period 3 (10/23 – 11/17) <i>Absences</i>
1A 9 th Grd. Eng.	12	61	103
2A 10 th Grd. Eng.	24	55	106
1B 9 th Grd. Eng.	87	135	192
2A2 10 th Grd. Eng.	60	188	217
Absences reported to OUSD by UPrep for this teacher	7	6	33

The record above is a summary of the findings made by District staff. They indicate that it would have been impossible to account for the *“reported”* attendance rates UPrep made to the District for this teacher during that period, using even the most conservative class absence rates.

EVIDENCE D: UPREP GOVERNING BOARD RESPONSE TO THE DISTRICT DATED JUNE 29, 2007

The UPrep Governing Board response to the District on June 29, 2007 (corroborated by interviews with three UPrep teachers) states that UPrep uses the *Powerschool* student information program to report its attendance.

In **July, 2007** an internal OUSD investigation of the Attendance Accounting reported to the District by UPrep revealed that UPrep attendance has **never been submitted to OUSD using**

Powerschool. UPrep has continued to **report its ADA manually to OUSD** for the duration of the 06-07 school year.

Therefore UPrep staff must **transfer** its attendance records from *Powerschool* to the manual Excel document required by the District, **prior to submitting its attendance accounting to OUSD**. This is a **highly irregular practice**, as all charter schools chartered by the District who use *Powerschool*, or a similar student information data system, report their attendance to the District using these programs.

SUMMARY OF CONCERNS REGARDING ATTENDANCE ACCOUNTING

This substantial evidence from documents submitted by the school site, as well as interviews with UPrep staff and relevant attendance evidence, indicates that the school has not engaged in generally acceptable accounting principles, has engaged in fiscal mismanagement, and is in violation of the CA False Claims Act, which raises significant concern to OUSD.

In summary:

- UPrep has submitted false reports to the District that include teacher’s forged signatures.
- UPrep has reported inflated daily attendance rates, as evidenced by discrepancies between staff declarations, actual staff records and those submitted to the District by UPrep.
- UPrep has engaged in the highly unorthodox practice of transferring its automated attendance accounting data to a manual accounting document prior to submission to the District.

Based on this evidence of false claims, and falsified supporting documents made by UPrep to the District, and consequently the State of California, for ADA-based revenue the District has determined that UPrep is in violation of the law.

PART II: TRANSCRIPT REPORTING

CONCERN:

- 1) Evidence to suggest that the school engages in the practice of falsely altering student records including courses taught, credit earned, and grade values applied to the coursework.

UPrep Charter:

“All students who wish to attend a four year college after graduating UPrep are required to complete the following High School Graduation requirements. [Following is a set of courses, outlined by grade level which establishes the “graduation requirements” for UPrep.]

Education Code Section 47607(c), a charter may be revoked by the authority that granted the charter if the authority finds that the charter school engaged in any of the following conduct:

- 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.
- 4) Violated any provision of law.

Evidence of conflicting Report Card and Transcript records for the same student who has graduated UPrep over the same time period suggest discrepancies inconsistent with the requirements above in so much as credit has been given for coursework that was either not taken, or not completed with a passing grade. This raises significant concern with regards to UPrep's compliance with the conditions set forth in the charter and with acceptable record keeping practices of student academic outcome data.

EVIDENCE A: Conflicting Report Card and Transcript Records for a UPrep Student During the 2005-2006 School Year

OUSD has received copies of conflicting report card and transcript records for a UPrep student reflecting the 2005-2006 school year. Based on the report card records, the students was said to have received the following grades in the following courses during the 2005-2006 school year:

Course	Grade
Math Analysis	D
English Literature	C+
World Civilization	C-
Biology	C
Spanish	D
Development	D

Based on the official transcript records *for the same student during the same period of the 2005-2006 school year*, the student was said to have received the following grades in the following courses:

Course	Grade
Trigonometry	B-
English 3 P	B+
US History	B
Journalism	A
SAT Prep English	A
SAT Prep Math	A

There is no record of the Biology course in the transcript. World Civilization occurs the year before and receives a grade of B+ on the transcript. Spanish also occurs the year before and receives a grade of B. Development and Math Analysis do not exist on the transcript document.

SUMMARY OF CONCERNS REGARDING TRANSCRIPT REPORTING

The conflicting report card and transcript records for a UPrep student during the 2005-2006 school year provide evidence that UPrep has, on at least one occasion, demonstrated failure to ensure that required graduation coursework is being completed and that there have been inappropriate record keeping practices of student achievement data.

Required Actions based on Concern:

UPrep must provide evidence in writing that all active UPrep student transcripts accurately reflect the courses completed by UPrep students and accurately reflect the letter grade assigned by each individual teacher. This evidence must be provided to the District by close of business on Monday, August 24, 2007. If this request is not complied with, further action will be taken by the District.

II. NOTICE TO REVOKE AND REQUIRED CURES

By being in violation of the law, and by committing acts outlined in Education Code 47607 (c), UPrep is not fulfilling its performance contract with the District.

Pursuant to Education Code Section 47607(c), a charter may be revoked by the authority that granted the charter if the authority finds that the charter school engaged in any of the following conduct:

- 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.
- 4) Violated any provision of law.

As required by **Education Code Section 47607(d)**, the district hereby notifies University Preparatory Charter Academy of its intent to revoke this charter, effective August 24, 2007 because it has violated provision (3) and provision (4) of Education Code 47607(c) unless the governing board provides evidence of the cures described below by close of business, Monday, August 20, 2007.

Cure:

- 1) UPrep must submit accurate attendance accounting with supporting written contemporaneous attendance records for all reporting periods for the 2006-2007 school year such that the documentation is sufficient to verify its accuracy.
- 2) UPrep must repay the state a minimum of \$260,561.00 based on initial, conservative estimates * of the overpayment incurred against the district for the 2006-07 school year as a result of this violation. Additional amounts may be required for repayment based on

a final audit of all UPrep and District records. (** Estimate is based on a conservative approximation of classroom-based enrollment of 265 students, a conservative ADA apportionment of \$5,700, and a conservative estimate of the actual average daily attendance as stated in evidence referenced above as 80%.*)

This letter constitutes notice of my intention to revoke OUSD's charter with University Preparatory Charter Academy, effective August 24, 2007 in accordance with Education Code Section 47607(d) unless evidence is provided by close of business on August 20, 2007 that demonstrates cures 1), and 2), have been met. The cures outlined in this letter are in addition to those outlined in the Notice to UPrep Governing Board on July 17, 2007. All cures outlined in the July 17, 2007 Notice must be met by the timeline outlined in that letter, dated July 17, 2007. This notice will appear on the Oakland State Administrator & Board of Education agenda on August 8th, 2007.

The Alameda County Office of Education is being provided with the evidence referenced herein so that the County Superintendent can make a determination as to whether a 1241.5 Audit (commonly referred to as an AB 139 audit) is warranted. The District is indicating that there is sufficient evidence to provide a "reason to believe" that fraud, misappropriation, or abuse occurred with respect to the attendance accounting practices at UPrep.

Address your written response as follows:

Kimberly Statham, OUSD State Administrator
Attn. David Montes de Oca, Coordinator, Office of Charter Schools
1025 Second Ave., Room 301
Oakland, CA 94606-2212

Sincerely,

Kimberly A. Statham, Ph.D.
OUSD State Administrator

CC: Members of the OUSD Board of Education
Members of the University Preparatory Charter Academy Governing Board
Deb Cooksey, OUSD Legal Counsel
Kirsten Vital, Chief of Community Accountability
Allison Sands, Director of School Portfolio Management
David Montes de Oca, OUSD Coordinator, Office of Charter Schools