

**Sent Via Email**

February 19, 2019

Dr. Kyla Johnson-Trammell, Superintendent  
Aimee Eng, President, Board of Directors  
Oakland Unified School District  
1000 Broadway, Suite 680  
Oakland, CA 94607

Re: OEA Collective Bargaining Negotiations

Dear Dr. Kyla Johnson-Trammell and Board President Aimee Eng:

I am writing on behalf of the California Charter Schools Association (“Association”). As you know, the Association is a statewide, non-profit membership-based organization that supports charter schools in California. More than 40 charter schools in Oakland are dedicated to educational innovation and educating public school students in the Oakland Unified School District (“OUSD” or “District”).

This letter is written to express our concerns with the negotiations between the District and the Oakland Education Association (“OEA”) to reach a Collective Bargaining Agreement (“CBA”) between the parties. In particular, we are concerned that the parties’ rhetoric surrounding the impact of charter schools on the District may lead to illegal requirements in the final CBA that violate and undermine the rights of charter school students, parents and teachers under California law, or to other District action related to charter schools that do not provide a solution that supports the needs of students in OUSD.

Unfortunately, the recently released Fact Finding Report dated February 15, 2019 will likely contribute to the anti-charter school rhetoric of opponents as a result of the written statements by the arbitrator<sup>1</sup> claiming that there is an “unlevel playing field” between the traditional OUSD schools and charter schools. In particular, the arbitrator highlighted alleged systemic shortcomings confronted by the District, which he claims are further aggravated by charter schools, that contribute with (1) the attendance-based district funding system, (2) the costs, including pensions, that school districts must bear, and (3) disproportionate special education enrollments. The arbitrator’s contention that charter schools have an unfair fiscal advantage in comparison to the traditional OUSD public schools belies the numerous state and national studies over the past decade identifying a funding inequity for charter schools, including in California.

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<sup>1</sup> Frankly, we question the objectivity and veracity of Najeeb Khoury’s (the arbitrator) analysis concerning the impact of charter schools on the District’s finances and programs. Mr. Khoury served until August of last year as the Director of Labor Relations for the Los Angeles Unified School District, another school district that has blamed the success and increase in charter schools for its fiscal challenges. According to a January 27, 2019 article in the Los Angeles Times, Mr. Khoury, as Executive Director of the City of Los Angeles Employee Relations Board and part of Mayor Eric Garcetti’s mediation team, helped facilitate an agreement to end the strike by the United Teachers Union of Los Angeles, and resulted in the Board resolution calling for a moratorium of charter schools in Los Angeles.

While it is true that the Local Control Funding Formula (LCFF) has increased funding for high-needs students in both traditional public schools and charter schools, some charter schools do not receive the equitable amount of total funding for such students compared to school districts, including OUSD. Provided they serve the requisite 55% percent of high needs students for the concentration grant, charter schools receive concentration grants only up to their percentage of high needs students if it is lower than the District's percentage and no more than the District's percentage of high needs students even though they would otherwise be entitled to a larger concentration grant based on their greater percentage of high needs students. The arbitrator failed to mention that OUSD is entitled to receive an additional appropriation in the millions of dollars under AB 1840 (2018) beginning with the 2019-20 school year through 2021-22, which charter schools will not receive, provided it take certain activities to address its structural deficit. Lastly, while the arbitrator notes the decline in District enrollment, OUSD saw an increase in enrollment of 288 students for the 2017-18 school year based on CALPADS information.

The arbitrator's contention that charter schools incur lower operational costs, including related to employee pension costs, is based on erroneous assumptions. Over 80% of charter schools participate in the California State Teachers' Retirement System for the purpose of ensuring that they can offer competitive salary and retirement packages to attract high quality teachers. Unlike traditional public schools which rely on state and local facilities funding, each charter school must pay for its facilities costs out of its general fund. Even charter schools receiving school district facilities under Proposition 39 (2000) spend approximately 3% of their LCFF funding on their facilities. On average, charter schools in OUSD spend 7% of their LCFF on facility costs, which is significantly more than traditional District public schools. It is misleading for the arbitrator to assert that charter schools are able to spend more money for instructional purposes simply based on these erroneous assumptions of district/charter school expenditures.

Similarly, the arbitrator's recitation of facts concerning special education is incomplete and misleading. Under California law, charter schools have a choice in how they operate for special education purposes – as independent local education agencies (LEAs) in a Special Education Local Plan Area (SELPA) or as “schools of the district”. In the “schools of the district” charter schools, OUSD is responsible for services and placement of students with disabilities, thus, any enrollment trends are a reflection of District's practices. In addition, the District keeps charter school special education funding and charges additional fees for districtwide costs. During the 2017-18 school year, about 20% of charter schools operated as “schools of the district” for special education purposes. Charter schools that have opted to operate as independent LEAs for special education have increased the percentage and range of students with disabilities served in Oakland charter schools. Data from the California Department of Education shows that between 2015 and 2017 Oakland charter schools increased their special education enrollment by 35%. Additionally, significantly more students with disabilities receive an inclusive education in OUSD charter schools than in traditional OUSD schools.

We encourage the District to limit its negotiations with OEA to the appropriate matters within the scope of representation, and not engage in policy or legislative proposals to undermine the rights of charter school students, parents and teachers under the Charter Schools Act and Proposition 39. Such negotiations are outside the scope of bargaining and prohibited by the Educational Employment Relations Act (“EERA”). The EERA limits the “scope of representation” to “matters relating to wages, hours of employment, and other terms and conditions of employment” and states that all “matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating.” (Govt. Code § 3543.2(a).) We also remind the District that the Charter Schools Act does not allow a charter school authorizer to

impose additional criteria for approval of charter petitions. The California Supreme Court has ruled that a charter school authorizer may not add to the statutory obligations for securing approval of a charter petition. (Educ. Code § 47605; *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504).

While we vehemently disagree with the arbitrator's contention that the District's fiscal challenges are due to the concentration of charter schools, the Association agrees that California public schools are underfunded and that we must focus our efforts in Sacramento to increase funding for all public schools. Instead of identifying ways to limit the choices of parents and students for high-quality schools, we should be working together to build on the historic K-12 investments included in Governor Newsom's budget, and partner with California officials and legislators to continue to make the kind of investment our students, parents and teachers deserve.

Sincerely,



**RICARDO J. SOTO**  
General Counsel

- C: Libby Schaaf, Mayor, City of Oakland (via email)  
Marion McWilliams, General Counsel, Oakland Unified School District (via email)  
Jody London, Vice President, Oakland Unified School District Board of Directors (via email)  
Shanthi Gonzales, Oakland Unified School District Board of Directors (via email)  
James Harris, Oakland Unified School District Board of Directors (via email)  
Jumoke Hinton Hodge, Oakland Unified School District Board of Directors (via email)  
Roseann Torres, Oakland Unified School District Board of Directors (via email)  
Gary Yee, Oakland Unified School District Board of Directors (via email)