



Eureka City Schools

2100 J Street, Eureka, CA 95501 / Tel: 707-441-2400

November 2, 2017

Gary Storts, Superintendent/Principal
South Bay Union School District
6077 Loma Avenue
Eureka, CA 95503

Re: Alder Grove Charter School

Dear Mr. Storts:

I am surprised by South Bay Union School District's recent position on considering to continue to sponsor Alder Grove Charter School ("Alder Grove"). Eureka City Schools ("ECS") has been operating under the impression Alder Grove would petition ECS for an Independent Charter following appealing to the State Board of Education for a one-year waiver as you confirmed in your email dated April 10, 2017 (attached).

Per your email dated October 18, 2017 (attached), you asked whether Alder Grove may continue to be lawfully chartered by South Bay Union School District ("South Bay"), if Alder Grove operates a facility within the boundaries of ECS. From the perspective of ECS, and with the law in mind, the answer is "no".

The Law

Pursuant to Education Code section 47605, subdivision (a)(1), a charter school must "operate within the geographic boundaries of that [chartering] school district." A charter school may only operate outside of the geographic boundaries of its chartering district if a specific statutory exception applies. The operation of a charter school outside of the chartering school district should be the rare exception, not the rule.

It is our understanding that Alder Grove claims it is, at present, exempt from the geographic restrictions of the Education Code. It claims to be exempt pursuant to Education Code section 47605.1, subd.(d), which states that "a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if" 3 conditions exist:

- 1) The school district in which the charter school proposes to operate is notified in advance of the charter petition approval; and,
- 2) The county superintendent of schools is notified of the location of the charter school before it commences operations; and,
- 3) The charter school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the charter school chooses to locate.

(I will refer to this exemption as the "Exemption" through the remainder of this letter.)

The Exemption Does Not Apply to Alder Grove

Alder Grove's attempts to explain how it is exempt from keeping its facilities within South Bay's boundaries appear ever changing. As recently as 2016, when the Alder Grove charter was most recently renewed, no statement is made in the petition regarding the exercise of the Exemption. Rather, the petition reads: "This charter authorizes the operation of the Alder Grove Charter School, which may operate numerous enrichment / resource sites within Humboldt County and contiguous counties." (2016 Petition, p. 1, underline added.) Exercise of the Exemption limits the Charter School to one facility. Alder Grove claimed the right to operate "numerous" facilities. Therefore, Alder Grove was not claiming the Exemption until now. More likely, Alder Grove had taken the position many of California's charter schools took until 2017; facilities for non-classroom based charter schools, such as Alder Grove, are not covered by the geographic restrictions of the Education Code.

However, in 2016, a California Court of Appeal, in *Anderson Union High School District v. Shasta Secondary Home School* ("Anderson") 4 Cal.App.5th 262 (2016), reaffirmed these geographical restrictions apply equally to non-classroom based programs, such as the Charter School. In other words, the geographic limitations of the Education Code apply to the location of that non-classroom based program's "resource centers."

In the wake of the *Anderson* decision, Alder Grove submitted an amended petition, on March 9, 2017, to claim it was exercising the Exemption and to identify its facility at 714 F Street in Eureka. (Petition, p. 18.)

In what appears to be a post hoc rationalization, and an attempt to fit within an exemption, Alder Grove now says it cannot locate its facility within South Bay's boundaries, and must locate within ECS boundaries, presumably at its current location at 714 F Street in Eureka.

While Alder Grove has represented it will look for a facility within South Bay's boundaries, this appears to be a self-serving pretext to set up a faux process to look for a facility within South Bay and then claim to be eligible for the Exemption. Alder Grove cannot operate a facility at a location for 11 years, unlawfully, and then claim that they can remedy it: a) by pretending that they are looking for a facility in South Bay, and, b) by providing belated notice to ECS and the County Superintendent of Schools of their intentions.

The very exemption the Charter School claims tells us that Alder Grove does not qualify for the exemption. The exemption contemplates all of these actions take place before a charter school's petition is approved by the chartering school district. The law specifically contemplates notice to ECS will occur prior to the Charter School's petition being approved. Alder Grove has been in operation for over 10 years and is only now seeking to comply with the obligations of subdivision (d).

Further, if Alder Grove claims it was operating under the Exemption all along, the wording in its own charter petition, prior to 2017, belies that fact. Recall, the exemption under subdivision (d) allows a charter school to open one facility and only one facility. Per the language of the charter, it was Alder Grove's intent to operate numerous sites. If Alder Grove claims it has been operating under the Exemption for the past several years, ECS does not have copies of the following written notice:

- 1) To ECS in advance of the charter petition approval; and,
- 2) To the County Superintendent of Schools notifying of the location of the charter school before it commences operations.

If Alder Grove has produced such written notice, ECS requests copies (from either the Alder Grove or South Bay) for review.

Further, per the Exemption, Alder Grove must have demonstrated that exceptional circumstances exist, *prior* to locating the facility outside of South Bay's geographic boundaries. Specifically, Alder Grove must show it was **unable** to locate within South Bay's geographic boundaries because **attempts** to locate the Alder Grove facility in a single site or facility have failed. (Ed. Code, § 47605.1, subd. (d)(1).) To our knowledge, at no point has this been shown.

Evidence of an *attempt* to locate a charter school facility within South Bay's boundaries must include some or all of the following: evidence of research performed regarding potentially viable properties in the area *prior* to commencing operations at a new location, contacts with a realtor or property agent inquiring as to possible vacancies *prior* to commencing operations, inquiries regarding vacant and/or available commercial real estate properties, data analysis regarding number of students served and proposed facilities needs, cost analyses regarding potentially viable properties, evidence of communications with South Bay requesting assistance pursuant to its obligation to provide charter school facilities under Prop. 39.

Alder Grove has offered no viable bases in support of the applicability of this exemption. It has provided no evidence supporting its contention it is unable to locate a facility within South Bay's boundaries. All available evidence suggests Alder Grove had *not* attempted to locate a facility within the geographical boundaries of South Bay. To support its proposed encroachment upon ECS boundaries, Alder Grove must provide evidence of its attempts to locate adequate facilities within the geographic boundaries of South Bay.

Alder Grove has also failed to make any showing there is *not* an adequate location for its facility within the geographical boundaries of South Bay. Regardless of its enrollment, the absence of an eligible facility is harder to show for an independent study program like the Charter School. In 2016, minutes from the South Bay Board meeting, where the charter was renewed, states, "Not all kids actually attend the physical location."

Moving Forward

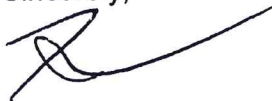
In Alder Grove's Director's email to me on October 20, 2017, Alder Grove raised the prospect of submitting a petition to South Bay, and if denied, appealing the petition to the County Board of Education. However, this may not be done here. Alder Grove is already chartered by South Bay. Therefore, there is no route for the Charter School to submit a petition for South Bay and then appeal to the County.

South Bay should work with Alder Grove to have the Charter School submit a petition to charter its school with ECS. If Alder Grove were chartered by ECS, it could operate its facility in Eureka and remain in compliance with the law.

This also serves as notice to South Bay that it must exercise proper discretion in its review of Alder Grove's operation, and is compelled to take action if a Charter School under its purview operates in a manner inconsistent with the law. An authorizing school district is statutorily immune from the liabilities and claims against the charter school it oversees, only to the extent "the authority has complied with all oversight responsibilities required by law." (Ed. Code, § 47604, subd. (c).) If South Bay continues to allow the Alder Grove to operate in direct violation of the law, it will be complicit in enabling Alder Grove's unlawful operations, and may be liable for failing to provide sufficient oversight. As a result, South Bay could be exposed to the legal and financial liabilities of Alder Grove in relation to this matter.

Let me know if you would like to discuss these issues further.

Sincerely,



Fred Van Vleck, Ed.D.

Encl.

cc: Tim Warner, Director, Alder Bay Charter School
Alder Grove Charter Governance Council
South Bay Board of Trustees
Chris Hartley, Ed.D., Humboldt County Superintendent of Schools
Humboldt County Office of Education Board Members
Eureka City Schools Board of Trustees

From: **Gary Storts** <gstorts@southbayusd.org>
Date: Wed, Oct 18, 2017 at 9:10 AM
Subject: Re: Alder Grove Transition Plan
To: Fred Van Vleck <vanvleckf@eurekacityschools.org>, Chris Hartley <superintendent@hcoe.org>, Tim Warner <tim.warner@aldergrovecharter.org>

Good morning All-

Yesterday evening, at our South Bay USD Governing Board Meeting, I was directed by my Board of Trustees to review and seek clarification on Education Code Sections 47605.1(d) as well as 47605(a)(5). Specifically, the Legal Update from SCLS dated November 14, 2016 states, p.2 - "...Therefore, the in-district geographic limitations applies to Cottonwood Resource Center unless there is an applicable exception." My board is asking me to investigate whether or not Alder Grove can continue to be chartered under South Bay USD under one of the applicable exceptions.

If anyone has any clarifying questions, please do not hesitate to give me a call. This particular option is near the top of my priority list and I hope to have direction in the very near future. In a nutshell, we are wanting to make certain that we are following the intent of the appeals court decision.

GS

On Mon, Oct 16, 2017 at 9:49 AM, Fred Van Vleck <vanvleckf@eurekacityschools.org> wrote:

Hi Tim,

Thank you for sending us your transition plan. I do have a couple of clarifying questions:

According to your plan, after you seek a location within the South Bay Union School District, if unsuccessful, you will submit a Charter Petition to a school district for a approval. Why did you not specify Eureka City Schools (ECS)? Are you planning on staying within ECS attendance boundaries if you cannot find a location within the boundaries of South Bay?

What are your timelines for each of these steps? The charter petition period often takes more time than originally anticipated and this is why the State Board of Education allows for a waiver. From my perspective, we need to start discussions on the charter soon if you plan to stay at your current location or a location which is within ECS.

I want to assure you ECS is interested in working out a amicable charter and MOU for Alder Grove, but we will need some time to work through this.

Thank you in advance for your clarification,

Fred

Fred Van Vleck, Ed.D.

Superintendent
Eureka City Schools

Inspiring academic Excellence, Creativity, and the confidence to Succeed – ECS



Fred Van Vleck <vanvleckf@eurekacityschools.org>

Re: Alder Grove Charter

1 message

Gary Storts <gstorts@southbayusd.org>

Mon, Apr 10, 2017 at 10:29 AM

To: Fred Van Vleck <vanvleckf@eurekacityschools.org>

Good morning Fred.

1. South Bay USD's board will hear the material revision to Alder Grove's charter petition this Thursday evening.
2. Alder Grove will prepare a one-year waiver extension to remain under South Bay USD's umbrella for the 17/18 school year -- upon review, South Bay USD will submit to the SBE.
3. South Bay USD will not be sponsoring Alder Grove beyond 17/18.
4. It is my understanding that Alder Grove will be seeking authorization from ECS for the 18/19 school year and beyond.

If you need anything, you do not hesitate to reach out. Have a good week.
GS

On Mon, Apr 10, 2017 at 8:54 AM, Fred Van Vleck <vanvleckf@eurekacityschools.org> wrote:

Hi Gary,

I hope is well and you had a good weekend.

I am following up on the phone conversation we had a couple of weeks ago about Alder Grove Charter. In this conversation, you stated you understand and agree with our interpretation of the new court decision and plan to proceed as follows:

1. Your Board is going to hear an amended petition this Thursday with a likelihood they will accept the petition.
2. Alder Grove is going to appeal to the State Board of Education for a one year waiver to the court ruling to allow them to continue for the 2017-18 school year to be sponsored by South Bay.
3. South Bay will not be sponsoring Alder Grove beyond the 2017-18 school year.
4. Alder Grove will petition Eureka City Schools during the 2017-18 school year for an independent charter into the future.

Can you please confirm the above is accurate. While my Board is hesitant to allow Alder Grove to continue within the ECS boundaries without us being the petitioning District, I believe I can convince them to wait for one year if we have an agreement on the future.

Your clarification is appreciated,

Fred

Fred Van Vleck, Ed.D.**Superintendent
Eureka City Schools***Inspiring academic Excellence, Creativity, and the confidence to Succeed – ECS*

--

Gary Storts
South Bay USD, Superintendent
6077 Loma Ave. Eureka, CA
707.267.9174
gstorts@southbayusd.org