



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

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SENT VIA HAND DELIVERY

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L. McLean King, Ed.D., Superintendent
ENCINITAS UNION SCHOOL DISTRICT
101 South Rancho Santa Fe Road
Encinitas, CA 92024-4349

Re: *TIP Academy*
Response to Notice to Remedy

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Dear Superintendent King:

This letter comes in response to the Encinitas Union School District's ("District") Notice to Remedy ("Notice"), dated May 6, 2008 and sent to the Board of Directors of Theory Into Practice Academy ("TIP Academy" or "Charter School"). The Notice sets forth a number of allegations against members of the TIP Academy Board of Directors ("TIP Board") and employees of TIP Academy, as well as stating a number of actions the District expects TIP Academy to take in order to remediate the violations alleged in the Notice. In the alternative, the District is asking TIP Academy to substantiate and document those allegations which it believes have not occurred. The District also requests that TIP Academy produce voluminous amounts of documentation. The District further demands a response and all the documentation from TIP Academy by May 30, 2008. In addition, the District provided a Supplemental Notice to Remedy to TIP Academy on May 16, 2008.

First, TIP Academy would like to commend its Board members and teachers for their many accomplishments in its first two years of operation. In addition to achieving an Academic Performance Index score of 910, and a ranking of 10 on both the Similar Schools and State indices, the School's enrollment has more than doubled from its first year, with a long wait list. TIP Academy has also built a strong community of committed teachers, parents, and students who continue to support the School. While TIP Academy recognizes that all schools in the infancy of their development go through a maturation process and make mistakes, at all times the Board members and employees of the Charter School, including its founders, have had only the best intentions and have never acted in a manner that is inconsistent with the best interests of TIP Academy students.

Second, TIP Academy wants to assure the District that it will address any and all concerns raised by the District that remain, if any, after the District has had an opportunity to review this Response, the Charter School's remedial measures, and all the documentation submitted along with this Response. Moreover, the Charter School wants to reaffirm its absolute commitment to transparency in operation (as it has over the last two years). In that vein we would respectfully request that we schedule a meeting between representatives of the TIP Board and the District no later than June 13, 2008 to address and review any remaining concerns of the District or additional information that the District may desire to review.

With that being said, TIP Academy offers the following response to the District's Notice of Remedy:

THE DISTRICT SHOULD HAVE DISCUSSED ITS CONCERNS WITH TIP ACADEMY PRIOR TO ISSUING A PUBLIC NOTICE TO REMEDY

The Notice to Remedy received by TIP Academy was the first written communication the Charter School received after the signing of a Memorandum of Understanding ("MOU") in 2006 between the District and TIP Academy which indicated that the District had such strong concerns about many of the specific allegations contained in the Notice.¹ The relationship between authorizer and charter school should be one in which the parties work together to meet the needs of students. In the case at hand, the District should have informed the Charter School that it had a concern when the concern first arose; that way the Charter School could have immediately addressed the issues as they arose and avoided the accumulation of concerns the District outlined in its Notice that date back over two years.

Moreover, in order to ensure that its Notice was complete and accurate, the District should have completed a full factual investigation of the allegations against TIP Academy prior to finalizing its Notice. Had the District consulted or communicated with TIP Academy as it compiled its allegations, TIP Academy would have been able to address many of the factual inaccuracies and explain many of the misconceptions. For example, consideration of the alleged MOU between TIP Academy and TIP Education, Inc. ("TIP Education"), which forms the basis for several of the District's allegations, never involved compensation or monies flowing to any Board member or employee of TIP Academy (or TIP Education) and was abandoned by the TIP Board several weeks before the Notice was received. And the two alleged charter petitions initiated with the Los Angeles Unified School District and Palos Verdes Peninsula Unified School District were developed by Debbie and Mike Hazelton during the weekends and week nights under the umbrella of TIP Education and were also abandoned several weeks prior to receipt of the Notice. Had the District made any effort to communicate with TIP Academy on these matters, the District could have avoided making inaccurate and uninformed written allegations that damage the reputation of the School.

¹ A review of the District Board of Trustee minutes reveals that while the District received monthly financial reports from TIP Academy and raised concerns surrounding TIP Academy's fiscal health, there was no concern expressed about TIP Academy's governance structure on the record after September 2006.

In addition, pursuant to Education Code Section 47604(b), a District representative sits on the TIP Board.² As a member of the TIP Board, this individual has a fiduciary duty of inquiry and fiduciary duty of care to articulate any concerns he might have about TIP Academy's governance. (Corporations Code Section 5231) Mr. Saadat attended all but four of the TIP Board's meetings, yet the minutes do not show that he articulated any concerns about the Charter School's governance structure or any of the activities outlined in the Notice at any TIP Board meeting. As a District employee, one may also presume Mr. Saadat was aware of the District's concerns, since it was his responsibility to report back to the District. Had he brought these concerns to the attention of the TIP Board, TIP Academy could have addressed them in a timely manner. Moreover, in accordance with Education Code section 47604.32, the District was required to visit the school annually as part of its oversight responsibilities (which includes monitoring for legal compliance). Again, over the course of two years the District has not mentioned any concern over the fact that the Charter School was operating with paid employees on the Board even though the District was aware of this fact for over two years.

Finally, the Charter itself would seem to require the District to "attempt to resolve all disputes regarding this charter pursuant to the terms of this [Dispute Resolution] section." In addition, the charter states that the District "shall refer any complaints or reports" to the School for resolution. And the Charter's Dispute Resolution section states that "both [parties] shall refrain from public commentary regarding any disputes until the matter has progressed through the dispute resolution process." While the District has the option under the Dispute Resolution section to pursue revocation steps for those allegations that would subject the Charter School to revocation, several of the allegations – including those for violations of the MOU – cannot form the basis for revocation and should have gone through the Dispute Resolution process. Again, an initial conversation with TIP Academy to make the TIP Board aware of the magnitude of the District's concerns would have been in keeping with the spirit of the Dispute Resolution section. In the instant matter, while the District may have made passing verbal comments to different administrators of the School at different times, no one at the District called a meeting or sent an email or letter to the Charter School administration or Board requesting the School address any of the concerns in the Notice. Instead, two years into the School's operation the School received a letter of 163 pages obviously drafted by an outside law firm summarizing and accumulating allegations that stretch over two years. While no other process is technically required by any law, the District's process is not the one envisioned by the Charter School when it received its charter nor is it the most productive means of achieving effective governance of the School.

TIP ACADEMY RESPONSE TO DISTRICT'S ALLEGATIONS

Below, TIP Academy will respond to each of the District's allegations in full and in the order in which they are presented in the Notice. Immediately following the responses, TIP

² TIP Academy would also note that the District representative, Abdollah Saadat, Assistant Superintendent of Business Services, is a District employee. The Charter specifically states that "to prevent any real or perceived conflict of interest or incompatibility of office, this district representative will not be a district staff or board member and will sit on the board as a nonvoting member who facilitates communications and mutual understanding between the charter school and district." We point this out to note that even the District is not 100% in compliance with the documents it refers to throughout the Notice.

Academy has provided a list of the remedies it intends to adopt to address the District's concerns.

District Allegation: TIP Academy has violated conflict of interest laws and terms of its charter and MOU and committed fiscal mismanagement.

A.2.a: Government Code 1090

Charter School Response:

THE CHARTER SCHOOL IS NOT REQUIRED TO COMPLY WITH GOVERNMENT CODE 1090

The District bases many of its allegations on an assumption that Government Code 1090 applies to the Charter School. However, TIP Academy asserts that, as a California charter school operated by a nonprofit public benefit corporation, it is not subject to the provisions of Government Code 1090, even if the MOU attempts to make it so. Moreover, TIP Academy would note that the District has tacitly concurred with this position for the duration of TIP Academy's existence by failing to raise any objection to TIP employees serving on the TIP Board, even though at all times a District representative sat on and participated in the TIP Board and thus the District was aware of its composition.

The MOU Cannot Make TIP Academy Subject to Government Code 1090

The District asserts that Government Code 1090 applies to TIP Academy because the District and TIP Academy entered into a Memorandum of Understanding ("MOU") in May of 2006 that purportedly supersedes the TIP Academy Charter ("Charter") and makes TIP Academy subject to Government Code 1090. The Charter only makes TIP Academy subject to the Political Reform Act, and not Government Code 1090.

First, provisions in the Charter cannot be superseded by provisions in an MOU; the charter is adopted following the standards, criteria and procedures of Education Code section 47605 (charter) or section 47607 (material revisions) – the MOU is not adopted following these same provisions of law. Indeed, the supremacy of the charter over inconsistent provisions of an MOU (that declared itself part of the charter) was determined recently by the Sacramento County Superior court VAPAC v. Sacramento City Unified School District (Case No. 06CS00183). In that case, the court found an MOU executed by the parties subsequent to the approval of the charter was nothing more than a contract between the parties (even though the MOU stated that it was intended to be a material revision and supersede anything inconsistent in the charter) and did not rise to the level of the charter nor could it supersede the charter. Second, violations of the MOU cannot be used to revoke a charter petition under Education Code Section 47607(c)(1).

As further outlined below, a provision in an MOU or a charter cannot make TIP Academy subject to a law or code that does not apply to them. Criminal statutes are designed to apply to a specific class of individuals and the legislature defines to whom a law applies. Criminal laws by their definition cannot be expounded upon by an agreement between private

parties. If parties were able to contract around the application of criminal laws to a particular class of individuals, the force of these criminal laws would be compromised.

As set forth below, Government Code 1090 was not and is not intended to apply to Charter Schools. Neither TIP Academy nor the District can change the basic tenet of that code via any agreement between them.

The TIP Academy Charter Cannot be Revoked for Failure to Comply With the MOU

The District cannot revoke the TIP Academy Charter for a violation of the MOU. Pursuant to Education Code Section 47607(c)(1)-(4), a charter may be revoked if its authorizer finds, through a showing of substantial evidence, that the charter school did any of the following:

- (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.

Here, the District's allegations regarding compliance with Government Code 1090 are based on language contained in the MOU, not the Charter. However, as stated above, the MOU is not part of the Charter. Instead, the MOU's purpose is described as "to clarify matters in the charter and to address matters not proved in the charter." Because the MOU is a separate document that is not specifically incorporated into the Charter but only acts as a supplementary agreement between the District and TIP Academy (and because it was not approved by the District in accordance with Section 47605), TIP Academy has not violated a condition, standard, or procedure set forth in its Charter. In addition, there is currently no provision of law that makes Government Code 1090 applicable to charter schools. Therefore, under the law the District may not revoke TIP Academy's Charter for failure to comply with a provision of the MOU.

Government Code 1090 Does Not Apply to Charter Schools

Even if, for the purpose of argument, TIP Academy agreed that the MOU attempted to make TIP Academy subject to Government Code 1090, an MOU cannot make a charter school subject to punishment for violation of a criminal law with which it is not required to comply. Because Government Code 1090 does not apply to charter schools, any effort to make it applicable to TIP Academy must be moot.

Government Code 1090 provides that "state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." The section goes on to

define a “district” to mean “any agency of the state formed pursuant to general law . . . for the local performance of governmental or proprietary functions within limited boundaries.” School districts were specifically made subject to Government Code 1090 by Education Code Section 35233, but charter schools are not mentioned at all. In other words, absent Education Code section 35233, the provisions of Government Code 1090 would not apply to school districts. A *fortiori*, charter schools cannot be considered to be subject to Government Code section 1090.

Since it is only Education Code Section 35233 which applies Government Code 1090 to school districts, charter schools are exempted from this statute by virtue of the so-called “mega-waiver” found in Education Code Section 47610, which states that charter schools are exempt from all laws applicable to school districts. Since Education Code Section 35233, by its terms, does not apply to charter schools, no statute applies Government Code 1090 to charter schools. The Legislature was aware of Education Code section 35233 when it enacted the charter school laws. It made no exception to this particular statute in adopting Education Code section 47610, although it has expressly made a number of other exceptions. Thus, Government Code 1090 is inapplicable to charter schools.

Application of Government Code 1090 to charter schools is also inconsistent with the statutory scheme of both the Charter Schools Act and Government Code 1090. Application of Section 1090 could, for example, restrict the ability of teachers to fully participate in charter school governance when decisions about allocation of resources were being made. This would be inconsistent with the statement of legislative intent in Education Code 47601, to “provide opportunities for teachers . . . to establish and maintain schools that operate independently...[and to] create new professional opportunities for teachers.” It would also limit the ability of charter schools to enter into joint ventures, partnerships and other arrangements with private entities to promote education.

I would also note that the California Department of Education, in response to the question of whether a charter school may have a paid employee as a member of its governing board, has responded that non-profit law permits the practice, and the charter school should have policies in place to prevent the perception or occurrence of conflicts by complying with Government Code section 87100 (the Political Reform Act).

In addition to the analysis set forth above, it is also telling that the California Legislature is currently considering legislation that will explicitly make charter schools subject to the provisions of Government Code 1090. If charter schools already are subject to Government Code 1090, such legislation would not be necessary, nor would any provision in an MOU that attempts to make a charter school subject to it.

All this being said, the Charter School will continue to maintain its commitment to the MOU between the parties and will operate its School as if Government Code 1090 applied to it. Consequently, the Charter School has drafted revised bylaws that eliminate references to paid employees on the Board of TIP and eliminate references to “interested directors” serving on the Board and prevented the contracting between any Board members and the School. The Charter School expects to formally adopt these new bylaws in June.

District Allegation: TIP Academy has violated conflict of interest laws and terms of its charter and MOU and committed fiscal mismanagement.

A.2.b: Political Reform Act

Charter School Response:

While TIP Academy agrees that it is subject to the Political Reform Act (“PRA”), it must note that the employment or payment of monies to a board member or his/her spouse does not automatically violate the PRA. It is only if the board member or employee actively involves him or herself in securing the employment or monies that a violation of the PRA occurs. There are many references in the Notice to employment of spouses of TIP Board members and the payment of monies to Board members for consultation but there is only one allegation in the Notice of involvement in the process by a Board member/employee who is financially interested (that is the allegation of Debbie Hazelton's involvement in the employment of her husband). There is no evidence in the notice that Lisa Bishop, Sandra Kaplan, Chis Manis or Greg Hagen violated the PRA. The Charter School will admit, however, that it could have done a better job documenting the noninvolvement and abstention of these Board members in any matters in which they had a financial interest. With the elimination of paid employees from the Board (as fully outlined below) the potential for re-occurrence of any of these events is substantially reduced and the Charter School is fully committed to additional training in compliance with the PRA and the Corporations Code provisions on self-dealing, and will fully document any situation in which a direct or remote material interest is involved by an employee or board member.

It should be noted that the employment of Mr. Michael Hazelton as Chief Operations Officer for TIP Academy was always anticipated by the Charter School and it was understood that Mr. Hazelton and Debbie Hazelton would be hired as a team. Not only did the Charter specifically note that two administrators, a Chief Education Officer and Chief Executive Officer, would be part of the governance structure of the School, but Mr. Hazelton was the lead petitioner for the TIP Academy charter petition, as well as the sole incorporator for the Theory Into Practice Academy, Inc. non-profit. During the first year of TIP Academy’s operation, he worked numerous hours on nights and weekends to establish and operate the Charter School at no salary, to ensure the fiscal stability of the Charter School. Notably, at the time he was hired, Mr. Hazelton enjoyed unanimous support from the staff and broad support from the parents. Hiring him as Chief Operations Officer in the second year of operation merely formalized his position and fulfilled the originally intended design of the School’s administration.

Therefore, the District’s allegations that Debbie Hazelton used her position on the TIP Board to influence the TIP Board to enter into a contract with Mr. Hazelton is not accurate. Moreover, Debbie Hazelton abstained from and did not involve herself in the contract negotiations with her husband. In fact Mrs. Hazelton changed her role on the Board from voting member to non-voting member before she accepted employment at TIP Academy, she was not present when the Board voted to approve her contract. Therefore, Mrs. Hazelton has always

made a good faith effort to remove herself from any matter in which she had a material financial interest. Had the hiring of Mr. and Mrs. Hazelton occurred at the same time when the School first began operation, we do not believe there would be any concern over the employment of the husband and wife team that were intended to run the school. But because the School only had the resources to hire Mrs. Hazelton in the first year and her employment preceded the hiring of her husband, the School has agreed to take steps to alleviate any perceived conflict of interest by the subsequent hiring of her husband.

In order to allay the District's concerns, the TIP Board has terminated Mr. Hazelton's Chief Operations Officer position. Mr. Hazelton also resigned from his advisory position on the TIP Board at the May 28th meeting. And the Board took official action on the record noting that it will not be returning Mike Hazelton to the School during the 2008/2009 school year. The Charter School will not be seeking restitution or disgorgement of Mr. Hazelton's salary for the 2007/2008 school year. The Charter School is not the policing agency for the Political Reform Act (nor is the District) and cannot impose penalties on private individuals or employees for alleged violations of the Political Reform Act. However, the School is investigating the potential filing of a complaint with the Fair Political Practices Commission ("FPPC") and if the FPPC investigates any allegations that are raised in the District's Notice, the Charter School will fully cooperate with the FPPC.

Along with the other restructuring of the Charter School Board noted below, Mrs. Hazelton also resigned from her advisory position on the TIP Board at the May 28th meeting. In order to ensure the long-term success and the integrity of the Charter School's curriculum, she will remain in her position as Principal of TIP Academy through the end of the 2007-2008 school year and potentially beyond. The TIP Board may approve a new contract for Deborah Hazelton after she resigns from the TIP Board for the 2008/2009 school year.

The District also alleges that Mr. and Mrs. Hazelton, and potentially Sandra Kaplan, began "prohibited participation in the TIP Board's consideration of a MOU with TIP Education, that would also appear to benefit themselves financially in violation of the PRA without taking sufficient steps, if such steps were possible, to disqualify themselves from any participation in the interested matter." First, TIP Education has no money and no paid employees (indeed, Mr. and Mrs. Hazelton volunteered their time to TIP Education in working to assist other charter schools to get started) and as such no one was going to benefit financially from the proposed transaction. Therefore, there is no conflict of interest. Moreover, consideration of this MOU terminated weeks ago, prior to TIP Academy receiving the Notice, and no action was ever taken on the MOU. In addition, no money was ever transferred between TIP Academy and TIP Education. However, in order to fully address the District's concerns, formal action to terminate consideration of this MOU took place at the May 28th, 2008 TIP Board meeting. For the record, the primary purpose of the proposed agreement was to compensate TIP Education for curriculum and related intellectual property, with the understanding that TIP Education would foster charter school development based upon the curriculum and education design that have proven so successful in TIP Academy. This form of self replication is becoming common among successful charter schools and is highly encouraged by the Education Code and CDE.

District Allegation: TIP Academy has violated conflict of interest laws and terms of its charter and MOU and committed fiscal mismanagement.

A.2.b: Corporations Code Prohibition Against "Self Dealing"

Charter School Response:

In order to address the District's concerns and to avoid any appearance of impropriety, the following individuals resigned from the TIP Board at the May 28, 2008 Board meeting: Michael Hazelton, Debbie Hazelton, Lisa Bishop, Chris Manis, and Kathleen Blough. With these resignations from the Board and two new appointees, the Board is constituted in compliance with the Charter and MOU (it is now at seven members including the District representative).

As stated above, the TIP Board terminated Mr. Hazelton's position as Chief Operations Officer at its Board meeting on May 28, 2008. Mr. Hazelton also resigned from the TIP Board at the May 28th Board meeting.

District Allegation: TIP Academy has violated conflict of interest laws and terms of its charter and MOU and committed fiscal mismanagement.

B: TIP Academy may have violated the Federal Tax Code prohibition against private inurement.

Charter School Response:

The allegations of private inurement based on the compensation of Mike Hazelton and the contractual relationship between TIP Academy and TIP Education are unfounded. As outlined in the Notice, prohibited private inurement occurs when we have a transfer of the organization's financial resources to "an individual solely by virtue of the individual's relationship with the organization, and without regard to accomplishing exempt purposes."

First, Mr. and Mrs. Hazelton did not have a controlling interest on the TIP Board and therefore could not have directed the financial resources to themselves without the involvement of the majority of disinterested directors. Second, the retention of Mike Hazelton was not the redirection of financial resources outside the exempt purpose of the organization. To the contrary, the retention of Mike Hazelton was to a position of employment specifically outlined in the charter (which makes up part of the exempt purpose of the organization -- that is, a publicly funded school). With respect to the compensation of Mike Hazelton, it is our understanding that his compensation was the result of arm's length negotiations between Mr. Hazelton and a committee of the Board. Mr. Hazelton does not exercise control over the corporation. Additionally, the amount of Mr. Hazelton's compensation was reasonable in terms of the responsibilities and duties assumed by Mr. Hazelton and the amount of time Mr. Hazelton had committed to the School and its development during its first year of operation. Further, the alleged sampling of local salary data is not useful for comparison purposes. A charter school

administrator does not have the back office support and multitude of support service groups that a school district chief business official has in a school district central office; a charter school administrator is more akin to a District superintendent without a central office support staff. Moreover, an administrator at a charter school serves in multiple capacities, such as a superintendent, principal, and, on occasion, teacher. Therefore, a comparison of Mr. Hazelton's compensation with that of a school district's chief business official is irrelevant and misleading.

In sum, TIP Academy does not concede that private inurement existed based on the relationship between TIP Academy and TIP Education and any inurement allegations are moot. The proposed Memorandum of Understanding between TIP Academy and TIP Education was never executed. Additionally, as further outlined below, TIP Education has resigned as the sole member of TIP Academy, eliminating any argument of control by TIP Education over TIP Academy.

District Allegation: TIP Academy has violated conflict of interest laws and terms of its charter and MOU and committed fiscal mismanagement.

C: TIP Academy may have made additional apparent misrepresentations in violation of the charter and applicable law and committed additional acts of fiscal mismanagement.

Charter School Response:

The District makes several allegations in this section, which the Charter School will respond to in full.

First, the District alleges that the number of TIP Board members has varied over the past two years. While TIP Academy acknowledges that there has been some fluctuation in the number of Board members, TIP Academy now has a board that is fully in accordance with the Charter, Bylaws, and MOU. As noted above, Michael Hazelton, Debbie Hazelton, Lisa Bishop, Chris Manis, and Kathleen Blough resigned from the TIP Board at the May 28, 2008 Board meeting. Sandra Kaplan, Ron Defibaugh, Kelly Ma, and Linda Saxon are not required to resign and will remain on the Board. In addition, Jake Bartow has been elected by the parents of TIP Academy to serve on the TIP Board as the Parent Representative. Pyper Brenner, a community member, has also been elected to the TIP Board. Both Mr. Bartow and Ms. Brenner are Certified Public Accountants and began their term during the May 17, 2008 Board meeting. Including the District representative, there are now seven TIP Board members, with no employees, thus bringing the TIP Board into compliance with the Charter and the MOU.

The District alleges that "significant amendments to the Bylaws were apparently approved in August or September, 2007 without notice to and consent of the District as required by the Charter and state law." First, it is not a violation of the charter to amend the bylaws. The bylaws are neither part of the charter, nor have they been made a part of the MOU. Indeed, the Charter specifically states that the bylaws may be amended in accordance with the bylaws. Thus an amendment of the bylaws does not violate the Charter and cannot form the basis of a revocation. Secondly, Education Code Section 47607(a)(1) (mistakenly cited in the Notice as Section 47606(a)(1)) does not prohibit a charter school from amending its bylaws. Third, the

District alleges that the Board's bylaws were amended to include a sole statutory member. Again, had the District expressed its concerns to the Charter School prior to sending the Notice, this misconception could have been resolved. At the time of charter approval, the District did not have a copy of the TIP Academy Bylaws; TIP Academy was directed to provide a copy of the Bylaws at the District's May 16, 2006 Board meeting. The Board's bylaws attached to the May 2006 meeting reflect the sole statutory membership structure. Lastly, the District alleges without any specific references that the bylaws violate the Brown Act.

In order to ameliorate all of the above-referenced concerns the Charter School has taken the following actions: (a) it has developed revised bylaws in compliance with the charter and the MOU and the Brown Act for review by the District; and (b) the Charter School and TIP Education have terminated the sole statutory membership structure to avoid any unnecessary complications in the governance of the School. A new set of Board bylaws for the District's review and approval as outlined herein is attached as Exhibit 16.

The District also alleges that "an unusual Confidential and Non-Disclosure Agreement, restricting TIP Academy Board Members' ability to discuss information related to TIP Academy and its representatives, was presented to the Board for adoption but ultimately rejected." First and foremost, the District has alleged nothing illegal about this action. It is within the rights of any board of directors to propose written agreements to protect a corporation and its proprietary information. Furthermore, had the District requested additional information about this allegation from TIP Academy, TIP Academy could have explained that this agreement would simply have restricted former Board members from using the proprietary aspects of the TIP Academy curriculum to start their own charter school without permission from the curriculum's creator. Again, the District has not alleged anything illegal about this action, and TIP Academy was within its rights to attempt to protect its proprietary curriculum.

The District also makes extremely vague and unsupported allegations that the TIP Board has violated the Brown Act. The TIP Board has always operated subject to and within the constraints of the Brown Act. In fact, the TIP Board has attended two trainings regarding fiduciary duties, Brown Act compliance, and related governance issues. Board agendas and minutes are posted on the TIP Academy website in a timely manner, and Board members adhere to the provisions of the Brown Act when considering agenda items. Without additional information about the specific violations that the District is alleging, however, TIP Academy cannot fully respond to this item. Should the District provide additional information, TIP Academy would of course be willing to respond with additional detail.

The District also alleges that Mr. Hazelton's salary does not meet a test of reasonableness for services rendered to a non-profit corporation. The TIP Board and its attorney negotiated a contract for Mr. Hazelton for the normal school year of approximately 180 school days (one school year) over the course of 10 months; Mr. Hazelton would work full time during this period, which was understood and agreed to by the Board. Had TIP Academy executed the employment agreement at the commencement of its term, Mr. Hazelton would have been obligated to perform

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approximately 220 days of work, which is common for an executive at his level. Attached as Exhibit 3-16 thru 3-21 is a copy of Mr. Hazelton's contract reflecting his duty days. Though the District has alleged that his salary does not exactly mirror that of other school district administrators, as set forth above, it is not unreasonable, nor has the District alleged any illegality. In fact, Mr. Hazelton's salary at TIP was approximately 25% less than his compensation at his previous employer, where he was performing similar duties. While two administrators for a small school also may be unusual according to the District's allegations, it is also not illegal. In context, Mr. Hazelton worked for the first year of the Charter School's operation without receiving a salary. When TIP Academy's finances allowed Mr. Hazelton to receive an offer of employment to compensate him going forward for work he was already doing, the TIP Board made him an offer. As noted below, however, in order to address the District's concerns, the TIP Board terminated Mike Hazelton's COO position at its May 28, 2008 Board meeting, and has carefully reviewed the salaries of its employees to ensure they are commensurate with their responsibilities and with similar salaries in the region.

The District claims that it has received "numerous" complaints from TIP parents. The only two specific allegations contained in the Notice are alleged documentary evidence of an "unauthorized pay raise" from a prior employer of Mr. Hazelton, and allegations that Mr. Hazelton incorrectly completed a charter petition to be submitted to the Los Angeles Unified School District. It is our understanding that Mr. Hazelton has retained the assistance of an attorney to clear up the Cortez Hill matter, that he believes his pay increase was approved by the Charter School, and that the letter seeking reimbursement was "sour grapes" because he left that program to take a job at TIP Academy (this letter seeking reimbursement is hardly "documentary evidence" of an unauthorized pay increase as outlined in the Notice). Moreover, this issue is unrelated to Mr. Hazelton's position at TIP Academy and is not grounds for revocation of the TIP Charter. In any case, the TIP Board does not have the authority to demand repayment of funds to an unrelated third party. Furthermore, the manner in which Mr. Hazelton filled out a charter petition that is not to be submitted to the Encinitas Unified School District is unconnected to Mr. Hazelton's position at TIP Academy and, more importantly, certainly not grounds for revocation of the TIP Charter.

The District alleges that TIP Academy officials have submitted charter petitions to form two new charter schools. This claim is yet another example of the District's failure to fully investigate its allegations. The two charters referenced in the Notice were withdrawn more than one month ago, long before the Notice was received. Had the District contacted the Charter School to verify or discuss its allegations prior to sending the Notice, the District could have avoided making unfounded accusations. Moreover, even if the allegations were true, a charter school's working to replicate itself is not grounds for revocation of the TIP Charter. As noted above, the work by Mr. and Mrs. Hazelton on these charters school applications was done on their own time during nights and weekends. Moreover, the fact that current teachers of the School might have signed the petition does not indicate that the teachers would have left the School in mass exodus but only that they were meaningfully interested in potentially teaching at another school – this is neither a violation of the Charter nor of the law. Lastly, without the complete charter submitted to LAUSD there does not appear to be any incorrect misrepresentations made in the "Request for Information from Prospective Charter School Board

Members" completed by Mike Hazelton. As previously noted, Mike was working as an unpaid volunteer officer of TIP Education at the time he completed this application.

Finally, TIP Academy would also note that none of these items rise to the level of fiscal mismanagement. Mr. and Mrs. Hazelton's salaries, while higher than the comparison salaries provided by the District, are not unreasonable and are commensurate with their levels of experience and work performed at the School. Therefore, the District has not alleged or substantiated any actions or issues that would constitute fiscal mismanagement by the Charter School.

IT IS THE RESPONSIBILITY OF TIP ACADEMY TO DETERMINE THE MANNER IN WHICH TO RESPOND TO THE NOTICE TO REMEDY

While the Charter School continues to believe that it is not subject to the provisions Government Code 1090, the Charter School remains committed to full compliance with the law and the maintenance of a healthy, transparent and communicative relationship with the District. The District has set forth its allegations in great detail, and has listed the remedies it believes are necessary to bring the Charter School into full compliance with the law. TIP Academy appreciates the District's efforts. However, TIP Academy would respectfully note that while the District may provide the Charter School with a Notice to Remedy that identifies the areas in which the District believes the Charter School is out of compliance with its Charter and the law, it is the responsibility of TIP Academy, and not the District, to identify the means by which TIP Academy shall cure any alleged deficiencies. As the District will see below, while TIP Academy has adopted a number of the District's remediation suggestions, it has also chosen in some instances to take alternative courses of action that it believes fully address the District's concerns. Of course, representatives of the TIP Academy Board would also wish to meet with the District and discuss any remaining concerns, and the TIP Board is willing to make other adjustments as necessary to assuage any remaining concerns of the District.

REMEDIAL ACTION

As noted above, TIP Academy believes that the remediation plan it has set forth below will respond in full to the District's Notice. TIP Academy will take the following actions:

1. Mike Hazelton has resigned immediately from the TIP Board and the TIP Board has terminated Mr. Hazelton's COO position; and during the Board meeting of May 28, 2008 the Board took official action to announce that it would not be renewing Mike Hazelton's contract for the following school year. The Board will be considering hiring a new chief executive or consolidation the COO position with other existing jobs. The Board will be studying the management structure of the School during the summer months. In the interim, the COO responsibilities will be assigned to the Principal and other employees.
2. Deborah Hazelton resigned from the TIP Board at its May 28th meeting. However, the TIP Board believes that in order to continue the success of the School and to

identify an acceptable plan for delivery of the School's curriculum (one of the District's proposed remedial actions), and to initiate and implement that plan, Deborah Hazelton should remain in her position as Principal of TIP Academy through the end of the 2007-2008 school year and potentially beyond. The TIP Board will likely approve a new contract for Deborah Hazelton after she resigns from the TIP Board.

3. As noted above, consideration of an MOU between TIP Academy and TIP Education, Inc. terminated several weeks ago. However, formal TIP Board action to announce the termination of consideration occurred at the May 28, 2008 Board meeting.
4. The TIP Board has secured the immediate resignation of the following employees currently on the Board: Michael Hazelton, Debbie Hazelton, Lisa Bishop, and Kathleen Blough. In addition, Chris Manis will resign. All other TIP Board members will not resign. Specifically, Sandra Kaplan will not resign, nor will Ron Defibaugh, Kelly Ma (community member), or Linda Saxon (community member). In addition, while TIP Academy believes that the appointment of Abby Sadaat as the District representative violates the Charter and potentially creates conflict of interest issues for Mr. Sadaat, should the District believe that it is appropriate for Mr. Sadaat to continue to serve as the District representative, TIP Academy would be amenable to this.
5. Going forward, the TIP Board will continue to undergo yearly training in Board governance and other relevant laws, including the Brown Act, conflicts of interest laws, the Public Records Act, effective board governance etc. The TIP Board will also consist of seven members (with no employees). While the Charter School does not believe that Government Code 1090 applies to it, it will fully adhere to the legal construct of Government Code 1090 upon the removal of paid employees from the Board.
6. TIP Education, Inc. has approved a resolution and proposed changes to the TIP Academy Board bylaws and has dissolved its sole statutory membership rights on the TIP Board. In addition, the TIP Bylaws will be revised to comply with the Charter, MOU, and Brown Act. These documents are attached to the response for the District's review.
7. As noted above, TIP Academy has no police power or enforcement authority under the Political Reform Act. The TIP Board is currently investigating the potential for filing a complaint with the FPPC or filing a lawsuit in order to seek restitution of these monies. Obviously, in the event that a final judgment is rendered by a tribunal or court of competent jurisdiction, finding that improper payments were made, TIP Academy will actively seek repayment or disgorge said improper payments.

8. In order to demonstrate adequate funding, resources and means for continued operation of TIP Academy, TIP Academy has attached as Exhibit 8 its most recent adopted budget for 2007-2008, three projected budgets for 2008-2009 (based upon different contingencies), as well as proposed budgets for the three years thereafter. In addition, TIP Academy has attached its most recent independent financial audit. As the District will recall, this audit contained no major exceptions and revealed that TIP Academy is in excellent fiscal health. The next audit is scheduled to commence within the next few weeks and a final report should be available in late June or early July. TIP Academy will provide a courtesy copy of the report to the District. In addition, prior to the receipt of the Notice, the TIP Board voted to undergo an additional and elective legal audit as part of its ongoing commitment to ensuring sound business practices. TIP Academy is also willing to request that the Fiscal Crisis & Management Assistance Team (FCMAT) perform a comprehensive audit of its fiscal and curricular programs at the School's expense, should the District desire additional assurances.
9. In the Notice, the District requested copies of TIP Academy's current policies and protocols for handling fiscal matters. Attached as Exhibit 17, please find draft fiscal policies that the TIP Board has initially reviewed and will consider for final adoption during its June 2008 meeting.

The District's Notice also requested voluminous documentation, which is attached to this letter. Please see the attached index to the attached documents that outlines the documents that are being produced.

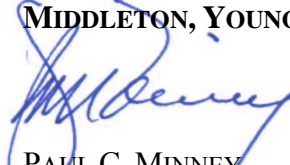
* * *

Please do not hesitate to contact me with any questions. The Charter School feels this letter responds to and cures all of the District's concerns. TIP Academy wants to assure the District that it will address any and all concerns raised by the District that remain, if any, after the District has had an opportunity to review this Response, the Charter School's remedial measures, and all the documentation submitted along with this Response. Moreover, the Charter School wants to reaffirm its absolute commitment to transparency in operation (as it has over the last two years). In that vein we would respectfully request that we schedule a meeting between the Charter School and the District no later than **June 13, 2008** to address and review any remaining concerns of the District or additional information that the District may desire to review.

L. McLean King, Ed.D., Superintendent
Re: Response to Notice to Remedy
May 29, 2008
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I appreciate your time and attention to these matters and I remain committed and available to answer any questions you may have about the Charter School's Response or the supporting documentation.

Sincerely,
**LAW OFFICES OF SPECTOR,
MIDDLETON, YOUNG & MINNEY, LLP**



PAUL C. MINNEY
ATTORNEY AT LAW

Cc: TIP Academy Board
Robert Berkowitz, Esq.
Janet L. Mueller, Esq. Miller, Brown & Dannis
Members, Board of Trustees, EUSD
Randolph E. Ward, San Diego County Superintendent of Schools

Attachment: Index to Exhibits and Exhibits 1 through 17.