

I. BACKGROUND AND HISTORY

On May 6, 2008, in compliance with Education Code section 47607, subdivision (d), Encinitas Union School District (“District”) issued to Theory Into Practice Academy, Inc. (“TIP Academy”) a Notice to Remedy various violations. The District supplemented its Notice to Remedy with a May 16, 2008 letter from its legal counsel, Janet L. Mueller, to legal counsel for TIP Academy, Paul Minney. TIP Academy provided its Response to Notice to Remedy (“Response”) by letter from Paul Minney received on May 30, 2008. All three documents, as well as all attachments thereto, are incorporated herein by reference.

Since issuance of the Notice to Remedy and receipt of the Response, District staff has reviewed the Response and all supporting documentation and continued its ongoing investigation of violations alleged in its Notice to Remedy. The District’s investigation has been conducted by District staff, including legal counsel and the private investigation firm of ESI International, Inc. As part of its investigation, District staff has reviewed additional documentation produced before and after issuance of the Notice to Remedy and has interviewed former and present officials, employees and other associated individuals and parents of TIP Academy. It is important to note that District staff’s ongoing investigation of TIP Academy has uncovered evidence of numerous additional issues that are of significant concern. Depending on the outcome of the Board’s deliberations in this matter, these items may be made the subject of a second, or supplemental Notice to Remedy, or they may be recorded in the public record and, if necessary, turned over to other agencies for further investigation.

II. STAFF CONCLUSIONS

After reviewing the Response, the documents produced, and information produced for the District in the form of emails, and letters, District staff has substantial evidence to demonstrate that most, if not all of the conduct alleged in the Notice did in fact occur, notwithstanding TIP Academy’s denials of much of the alleged conduct. District staff also has substantial evidence to show that additional legal violations occurred. Further, District staff has determined that TIP Academy has failed to remedy the violations identified in the Notice to Remedy. The bases for District staff’s conclusions include the following:

- A. TIP Academy committed serious violations of law, its charter, and MOU
 1. TIP Academy’s Board disregarded Government Code section 1090 et. seq., the Political Reform Act (“PRA”) (Government Code §§ 87000 et seq. and Cal. Code Regs., tit. 2, § 18700 et. seq.), and the Corporation Code prohibition against self-dealing, as required by law and by its MOU with the District
 - At least three Board members obtained paid employment or consulting positions with TIP Academy concurrently with or after becoming Board members, including Lisa Bishop,

Deborah Hazelton and Michael Hazelton; Board member Sandra Kaplan received an \$8,000 payment without documentation to support the payment

- Deborah Hazelton used her position on the Board and in administration of the school to coerce the Board into hiring her husband at a very high salary for a part-time position;
- Michael Hazelton obtained a lucrative employment position with TIP Academy while he and his wife were on the Board, and he used his position on the Board to persuade the Board to contract with him
- Spouses of various Board members also obtained paid employment or consulting arrangements with TIP Academy during their terms on the Board, including Suzanne Hagen and Claudia Defibaugh
- The TIP Academy Board of Directors breached its fiduciary duty to the public by approving illegal contracts in violation of applicable conflict of interest laws

2. TIP Academy's Board repeatedly disregarded the Ralph M. Brown Act and made decisions without any public review or accountability for its actions

- TIP Academy routinely held meetings at times and in locations not noticed to the public, and on more than one occasion deliberately began meeting privately an hour before the District's representative to the TIP Board was told to arrive
- Board members met and discussed issues such as the hiring of Michael Hazelton outside of noticed, public board meetings
- TIP Academy's Board agendas and minutes fail to meet Brown Act standards, and repeatedly fail to document Board action, Board voting, and abstentions; Board minutes indicate that closed session meetings were held to discuss unapproved closed session items; many minutes fail to indicate a report out of closed session; the constantly changing composition of the Board and the presence of apparently "advisory" directors on the Board makes it impossible to verify whether a quorum was present for action; in at least one case, the Board noted the absence of a quorum but Board minutes indicate that action was taken anyway

3. TIP Academy violated its charter

- TIP Academy failed to comply with state laws incorporated into its charter, as detailed above
- TIP failed to maintain a transparent governance structure

- TIP Academy omitted meaningful disclosure of its plans with regard to TIP Education, Inc. to the District as well as to its own founders and Board members, and has refused to provide the requested documentation about TIP Education, Inc.
4. TIP Academy engaged in fiscal mismanagement
 - TIP Academy failed to maintain sound business practices
 - TIP Academy approved employment and other contracts without complying with applicable laws and its conflict of interest policy, its procurement policy, and the standards sets forth in its charter, including Board approval
 - TIP Academy failed to observe corporate formalities, including annual filings to the California Secretary of State, and failed to provide truthful information to the Internal Revenue Service on its Form 1023 about its corporate organization
- B. TIP Academy’s violations were willful, deliberate, and knowing
- C. TIP Academy’s Response lacks credibility and undermines staff’s belief that any proposed remedy will right the wrongs that were committed
1. The Response attempts to shift blame to District, despite acknowledgement of no additional District obligations
 2. TIP Academy attempts to evade application of law to TIP Academy’s Board, and to avoid contractual obligations of TIP Academy
 3. The Response is based on a self-serving interpretation of legal concepts that would insulate TIP Academy from public accountability for its expenditure of tax dollars and individuals and members of the Board from liability for self-dealing transactions
 4. TIP Academy’s Response denies the occurrence of conduct that the District’s substantial evidence shows to be true
 - Deborah Hazelton unlawfully benefited from her own employment contracts and pay raises, as well as the employment of her husband, and actively manipulated the then-current Board to approve a contract with her husband
 - Deborah Hazelton received a \$23,000 raise between the time she started at \$87,000 and her current salary of \$110,000,

without any evidence of Board action, approval or consideration

- Michael Hazelton unlawfully benefited from obtaining a contract with TIP Academy while he was on the Board, notwithstanding whether he voted on the contract
- Despite its statement that “The TIP Board has always acted in accordance with the Brown Act,” the TIP Board in fact has repeatedly violated Brown Act, and many of those violations are evident in the agendas and meeting minutes provided by TIP as part of its Response
- TIP Academy has paid TIP Education for consulting fees, after denying that any such transfers had occurred. Deborah Hazelton wrote at least one check out of TIP Academy account and endorsed check for deposit into a TIP Education account
- The employment contract of Suzanne Hagen provided to the District was signed by Ms. Hagen on May 19, 2008, but signed by Deborah Hazelton on June 20, 2007, raising a serious question as to whether the contract was deliberately backdated to appear as though a contract was in place at the time services were rendered
- As recently as July 2, 2008, Michael Hazelton contacted the District’s technology consulting firm identifying himself as “Mike Hazelton from TIP Academy” on behalf of TIP Academy, thus raising a serious question as to his continued service or employment role.

D. TIP Academy’s proposed remedy is inappropriate and insufficient to remedy the violations that occurred

1. Deborah Hazelton, Lisa Bishop, and Sandra Kaplan continue to hold positions of authority, with substantial discretion over TIP Academy decision-making, despite their documented involvement in unlawful transactions with public funds
2. TIP Academy has refused to take any action to disgorge funds expended through illegal contracts void at their inception
3. Sandra Kaplan remains on the Board, despite the fact that investigation and documentation have shown that she has received financial remuneration while a member of the TIP Academy Board
4. TIP Academy has not revised or developed a Conflict of Interest Code that is legally compliant, nor has it provided evidence of the filing of said Code with the local Code-reviewing body
5. At least one conflicted Board Member, Chris Manis, who resigned as part of remedy, was placed on a Standing Committee at June 9, 2008 meeting

- E. TIP Academy continues to commit violations even after its promised remedy
1. TIP Academy continues to employ at least one spouse of a current Board Member (Board President Defibaugh's wife, Claudia Defibaugh, continues to be employed by TIP Academy)
 2. TIP Academy continues to employ or consult with Deborah Hazelton, Lisa Bishop, and Claudia Defibaugh; Sandra Kaplan continues to sit on the TIP Academy Board, and Chris Manis has now been appointed to a Standing Committee, where he will have continued input to TIP Academy decision-making
 3. TIP Academy has not adopted a legally-compliant Conflict of Interest Code, despite the serious nature of the District's complaints, nor did it accurately or fully complete Form 700s (Statements of Economic Interest), which would enable members of the public to determine whether future decision-making on the part of Board members and designated employees was free from conflict
 4. TIP Academy continues to publicly refute, dispute and question its conflict of interest obligations and the District's oversight authority and duty, which is an indication that TIP does not accept or acknowledge the seriousness of its misconduct nor does it intend to conduct itself in compliance with applicable legal standards
 5. Michael Hazelton continues to conduct business on behalf of TIP Academy, as recent as July 2, 2008, when he contacted the District's technology consulting firm identifying himself as "Mike Hazelton from TIP Academy." His actions call into question whether he has severed his relationship with TIP Academy, as stated in the Response.

Therefore, District staff recommends that in accordance with Education Code section 47607, subdivision (e), the District now proceed to issue a Notice of Intent to Revoke and Notice of Facts in Support of Revocation of the TIP Academy Charter and schedule a public hearing, in the normal course of business, on the issue of whether substantial evidence exists to revoke the TIP Academy Charter. "Evidence is substantial if any reasonable trier of fact could have considered it reasonable, credible and of solid value." *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040.) During the public hearing, the Board will have an opportunity to receive information and comment from District staff, TIP Academy, and the public regarding the issue of whether substantial evidence exists to revoke the TIP Academy Charter before deciding its final course of action.

III. STAFF ANALYSIS

District staff has confirmed that TIP Academy has: 1) committed a material violation of the conditions, standards, or procedures set forth in the charter (Ed. Code, § 47607(c)(1)); 2) failed to meet generally accepted accounting principles, and engaged in fiscal mismanagement (Ed. Code, § 47607(c)(3)); and 3) violated provisions of law (Ed. Code, § 47607(c)(4)), as alleged in the District's Notice to Remedy. After its thorough investigation and review of the Response, District staff has concluded that TIP Academy has failed to remedy its violations and that grounds are apparent for proceeding with revocation of the TIP Academy Charter. The bases for the District staff's conclusions are analyzed below.

A. TIP Academy committed serious violations of law, its charter, and MOU.

The conduct alleged in the District's Notice to Remedy has been confirmed through the District's investigation, despite assertions and assurances in TIP Academy's Response to the contrary. District staff believes these violations are particularly egregious because they involve the illegal and irresponsible expenditure of public funds through transactions fraught with conflicts of interests and self-dealing. That conduct includes:

- Procurement of illegal employment contracts with TIP Academy by Michael Hazelton and Deborah Hazelton by using their positions within TIP Academy to benefit themselves financially. Other Board members also obtained paid employment or consulting arrangements with TIP Academy for themselves or their spouses and relatives to their own personal financial benefit while serving on the Board, including Sandra Kaplan, Lisa Bishop, Greg Hagen, and Chris Manis. There is no documentation as to how salaries and other terms of employments were determined and agreed upon.
- Engaging in financial transactions with actual and potential conflict of interests without documenting non-participation or abstentions, if any, and engaging in self-dealing without required validation, as explained above. In addition, funds were transferred from TIP Academy to TIP Education through a check both signed and endorsed by Deborah Hazelton at a time when the TIP Academy Board was unaware of the existence or role of TIP Education, Inc. Michael and Deborah Hazelton, Lisa Bishop, and Sandra Kaplan all sat on the boards of both TIP Academy and TIP Education when monies were transferred from TIP Academy to TIP Education in July 2007, and false assurances were made to the TIP Academy Board, parents, and the District that no monies were ever transferred.
- Conducting Board meetings behind closed doors at unannounced times and locations; meeting in closed session to discuss unauthorized topics, inappropriately agendaizing and reporting Board action such that it is impossible to determine the nature of business being conducted, in what capacity each Board member was serving, and for what period of time, all in repeated violation of the Brown Act.

- Failure to complete Statements of Economic Interest (Form 700) to document of the economic interests held by Board members and designated employees.
- Responding falsely to the Internal Revenue Service on the IRS Form 1023 (Request for Recognition of Exemption from 501(c)(3) of the Internal Revenue Code), particularly on questions related to topics of concern in these proceedings.
- Financial irregularities in procurement procedures, contract approvals, payment of salaries and consulting or contractor fees, as well as unknown/undocumented loan origination, credit card payments, and repayment terms in TIP Academy's Financial Reporting to the District documented over the past two years.

B. TIP Academy's violations were willful, deliberate, and knowing.

TIP Academy's Response attempts to make light of alleged violations – essentially claiming that they made innocent mistakes reflective of a new organization – when in fact the District had repeatedly drawn TIP Academy's attention to applicable legal standards and TIP Academy officials had many years of professional experience in the administration of public education. Rather than innocent mistakes, TIP Academy's violations were conscious violations in willful defiance of laws applicable to a public school using public funds.

TIP Academy's financial mismanagement, including numerous incidents of conflicted decision-making and self-dealing, is made even more egregious in light of the binding MOU between the District and TIP Academy, and the level of expertise and amount of experience TIP Academy Charter Petitioners had when negotiating the Petition and MOU with the District. The MOU was the result of arms length negotiations between TIP Academy and the District. Specific written and verbal discussion took place on the very conflict of interest and self-dealing prohibitions that TIP Academy proceeded to violate. As laid out in the May 16, 2008 Supplement to Notice to Remedy, the parties consciously created an MOU to supersede the Charter due to deficiencies in the Charter document that were presented to TIP Academy Petitioners before the Charter was approved. Those deficiencies included a failure to plan for a governance structure that would avoid the very conduct committed, and was the specific subject of correspondence between the parties. TIP Academy officials knowingly disregarded the directives of its oversight agency, and created a Board, retained an attorney, and developed a systematic manner of handling business transactions that quickly ran afoul of applicable laws, despite having retained an attorney for much of the period during which the conduct occurred.

Evidence shows that TIP Academy officials began to violate applicable laws, their charter, and binding contract terms almost immediately, and have continued to disregard laws, charter provisions, and MOU provisions applicable to public decision-making and use of funds for public education even after the District's Notice. Because of the amount of negotiation and information which was exchanged on these topics during the

chartering process, as well as the professional experience the Petitioners brought with them, District staff construes TIP Academy's repeated violations as willful, deliberate, and knowing.

C. TIP Academy's Response lacks credibility and undermines staff's belief that any proposed remedy will right the wrongs that were committed.

TIP Academy's Response to the District's Notice to Remedy was based upon unsound technical arguments regarding the applicability of particular laws, and only confirmed and further substantiated the District's concerns as alleged in the Notice. The Response misconstrues the District's obligations as an oversight agency, reveals TIP Academy's inability to follow applicable laws, and demonstrates little, if any, accountability for its own actions.

The Response first asserts that whatever TIP Academy has done, it was done with only the best intentions and consistent with the best interests of TIP Academy students. This position reveals that TIP Academy does not have the requisite understanding and appreciation of the gravity of the governance and fiscal issues that were outlined in the District's Notice and the responsibilities that attend the use of public funds for public education. This lack of understanding and appreciation disturbingly comes after the District put Petitioners on notice by conditioning the grant of the Charter on entering the MOU, two years of operation, and the District's Notice to Remedy.

The Response also demonstrates a lack of credibility and undermines the District's confidence that TIP Academy can manage public funds appropriately, comply with applicable law and its charter, and abide by agreements with the District. The Response is defiant of applicable law, of operational agreements, and of the District's legally-required oversight. TIP Academy's Response uses evasive legal arguments to deny, minimize, or ignore conduct alleged in Notice to Remedy that substantial evidence shows to be true.

TIP Academy's Response spends three pages putting forth technical legal arguments which appear designed to circumvent the applicability of conflict of interest and self-dealing laws to TIP Academy and to excuse TIP Academy from breaching the MOU. TIP Academy's effort to evade foundational laws and principles that were fully discussed and disclosed in May of 2006, and that TIP Academy agreed to follow in the charter granting process, only further undermines TIP Academy's assertion that it understands its obligations as an educational agency operating almost exclusively on public funds. It also undermines District staff's confidence in TIP Academy's ability to remedy these significant infirmities and to avoid future violations.

Conflict of interest laws and principles prohibiting self-dealing and impropriety are central to the conducting of public business with public money. The District believes TIP Academy is required to comply with Government Code section 1090, as was explained in the charter granting process. TIP Academy's contention in its Response that it is not required to comply with the provisions of Government Code section 1090 et seq.,

regardless of the fact it agreed to comply therewith as a condition of chartering by entering into the MOU, is untenable.

1. Government Code section 1090 applies to charter schools.

District staff believes TIP Academy’s assertions regarding Government Code section 1090 are legally unsound. TIP Academy asserts their charter school is not required to comply with Government Code section 1090 because: one, it is exempt from compliance with Education Code section 35233 under the so-called “mega-waiver” for charter schools contained at Education Code section 47610; two, application of section 1090 is inconsistent with the statutory scheme of the charter schools act and Government Code section 1090; three, the California Department of Education (“CDE”) alleged opinion that a charter school may have a paid employee as a member of its governing board; and four, that the California Legislature is considering legislation that will make Government Code section 1090 applicable to charter schools. TIP Academy further asserts the MOU cannot subject the charter school to a law that is otherwise not applicable, and in any case, violation of the MOU cannot support revocation of the charter. These assertions undermines staff’s confidence that TIP Academy is capable of remedying violations of this law and the MOU.

District staff believes TIP Academy is required to comply with Government Code section 1090 et seq by the force of the MOU and California case law. In *People v. Darby* (1952) 114 Cal.App.2d 412, 423, the court held that school district board members were subject to the provision of Government Code section 1090 and concluded that school district board members were municipal officers as well as state officers for the purposes of section 1090, regardless of the fact the California Legislature had yet to specifically apply Government Code section 1090 to local school districts. (See, also, *People v. Elliott* (1953) 115 Cal.App.2d 410, 414 [“The courts have consistently recognized the two-fold nature of school board members as both city and state officials”].)

It is also undisputed that “charter schools are public schools because, as explained above, charter schools are part of the public school system.” (*Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1139 (emphasis original).) Likewise, “[c]harter school officials are officers of the public schools to the same extent as members of other board of education of public school districts.” (Id. at 1141.) For the purposes of public funding priority and allocation of property taxes, charter schools are considered “school districts.” (Ibid.) They also are part of the public school funding scheme and benefit from public funding. (Id. at 1138; Ed. Code, §§ 47612-47613.5) It is clear then that charter schools are considered part of the public school system, and its board members are officers of the public schools in the same way school district trustees are officers of the public schools. For purposes of Constitutional requirements regarding priority in education funding and allocation of local property taxes, charter schools are also considered school districts.

a. Education Code section 35233 does not exempt charter schools from Government Code section 1090.

TIP Academy’s reasoning fails to recognize the basic operation of the “mega-waiver” contained in Education Code section 47610. That statute exempts charter schools from laws applying *uniquely* to school districts, which includes most of the provisions of the Education Code. Because Government Code section 1090 does not apply exclusively to school districts, the “mega waiver” does not serve to exclude its application. Moreover, Education Code section 35223 does not independently impose the obligations of Government Code section 1090 on school districts. Rather, it affirms the application of that section to school districts. Government Code section 1090, by its own terms, applies to school districts, irrespective of Education Code section 35223. (*People v. Darby* (1952) 114 Cal.App.2d 412, 423 [school board members are municipal officers as well as state officers for the purposes of Government Code section 1090].) Therefore, even given that charter schools are exempt from the application of Education Code section 35223, they remain subject to Government Code section 1090 by its own terms.

b. Application of Government Code section 1090 to charter schools is consistent with the statutory schemes of the Charter Schools Act and Government Code section 1090 et. seq.

TIP Academy further asserts that application of 1090 to charter schools is inconsistent with the statutory scheme of both the Charter Schools Act and Government Code 1090. On the contrary, the purpose of Government Code section 1090, to protect a public agency’s interests by assuring the loyalty of its officials, is only served if applicable to charter schools. (See e.g. *Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 266 (discussing purposes of Government Code section 1090 scheme)). That statutory scheme is also designed to protect the public fisc by ensuring that public officials entrusted with the fiduciary duty of making expenditures of public funds hold their exclusive loyalty to the public entity that they serve, and not succumb to their own financial interests. (*Id.*) Since charter schools are public schools, part of the public school system, and part of the public school funding scheme, it serves the purpose of the statute to require charter school officials to comply with its requirements. Thus, opposite of the assertion that 1090 is inconsistent with the statutory scheme, nothing in the Charter Schools Act undermines the purposes of Government Code section 1090 to assure undivided loyalty and allegiance by the officials charged with spending public funds, and removing direct and indirect influences of an interested officer to discourage dishonesty, self-dealing, and placing ones’ own interest before that of the public body on behalf of which funds are expended.

TIP Academy cites to Education Code section 47601 as exemplary of the inconsistent statutory structures. However, review of Education Code section 47601 does not suggest that teachers are to be involved in the boards of charter schools but rather that the statutory scheme provides “teachers, parents, pupils and community members” with the opportunity to establish and maintain schools. This language gives no greater right to a teacher than a pupil to sit on the governing board.

District staff finds the comment that application of Government Code section 1090 “would also limit the ability of charter schools to enter into joint ventures, partnerships

and other arrangements with private entities to promote education” as exemplary of why 1090 must apply to any body expending public funds. Egregious conflict of interest violations recently occurred in California in the case of California Charter Academy, where millions of public dollars were diverted to benefit the CEO of the charter school. Conflict of interest and self-dealing prohibitions are designed to prevent this very misappropriation, and in fact only confirm the need for conflict of interest laws to protect the public fisc. Moreover, no opportunities are missed if required to comply with Government Code section 1090, because 1090 allows for contracts where there is a remote interest, and requires the use of safeguards to protect public funds. To the degree a proposed arrangement truly serves the charter school and the charter official holds only a remote interest, such arrangement would not violate 1090.

c. The California Department of Education did not opine that Government Code section 1090 was inapplicable to charter schools.

The citation to the California Department of Education (“CDE”) does not support the position that Government Code section 1090 does not apply. The comment of CDE to which the Response alludes reads, in its entirety:

In California, the nonprofit law permits staff members of a nonprofit corporation to be on its governing board as long as 50 percent or more of the board members are neither staff nor “interested parties” (such as relatives of staff). The charter school should consider the impact of allowing school employees to also sit on the governing board on sensitive matters such as performance review, salary and contract negotiation, and board-staff relations. There may be other ways to give staff input in governance, such as through participation in advisory committees that report to the board. The board should have clear policies in place to prevent the perception or occurrence of conflicts of interest between board members and their decisions, complying with Government Code section 87100.

This statement does not address the application of Government Code section 1090 but does make clear that employees may participate in the governance of the school in alternative ways and without sitting on its board and making decisions on matters in which they have a personal financial interest. We also note in response to this argument that in the context of California Charter Academy, CDE’s Extraordinary Audit acknowledged that Government Code section 1090 prohibited the charter school board members, officers and employees from participating in the decisions and transactions that constituted conflicts of interests.

d. Current legislative efforts support application of Government Code section 1090 to charter schools.

TIP Academy’s conclusion that Government Code section 1090 does not apply to charter schools because the California Legislature is currently considering legislation that will

explicitly make charter schools subject to the provisions of Government Code section 1090 is illogical. In fact, the Legislature affirmed Government Code 1090's applicability to local school boards through Education Code section 35223 long after the courts had already found local school boards are subject to Government Code section 1090. Any such new legislation would be surplusage because the law as currently structured and interpreted already includes charter schools in its application. It is entirely possible the Legislature is considering enacting such provision to avoid the very arguments made by TIP Academy in its Response here.

District staff finds that Government Code section 1090 applies with equal force to officials of TIP Academy, or any other charter school, as it applies to the officials of other school districts. District staff also finds it indefensible for a charter school to resist compliance with a law that only benefits the public entity and the public trust, by protecting public confidence and the public funds upon which the public program operates.

2. TIP Academy's Response demonstrates that it lacks understanding of proper methods for resolving conflicts of interests and avoiding self-dealing.

Despite assuring future compliance after denying applicability, the Response evidences a lack of understanding of conflict and self-dealing prohibitions and of avenues available to resolve conflicts and avoid self-dealings. For example, whether Deborah Hazelton actually voted or engaged in negotiations on Michael Hazelton's contract is not dispositive of a conflict analysis, although that is all TIP Academy asserts in response to cure these deficiencies. This lack of understanding is further demonstrated by TIP Academy's assertions that it was always going to hire Michael Hazelton, regardless of Deborah Hazelton's involvement, that Michael Hazelton deserved the position, and that his hiring was somehow justified by his service on the Board of TIP Academy the prior school year. Not only is this statement contradicted by contemporaneous emails between TIP Academy Board Members, and their additional statements, it is also not dispositive of the conflict analysis. The Response itself, while failing to recognize it, documents the self-dealing that occurred: Michael Hazelton volunteered as a Board member until he knew TIP Academy could afford to pay him, and then he used his position and status within the organization, and his wife's position at the school, to secure employment for himself, and obtain nearly \$100,000 in public funds for part-time work.

Moreover, even assuming Government Code section 1090 does not apply, TIP Academy's response admits that it is subject to the PRA and Corporation Code. While TIP Academy denies violations of the PRA, and attempts to defray consequences by acknowledging it could have done a better job at demonstrating compliance therewith, TIP Academy relies on facts shown to be untrue. TIP Academy's factual assertions in its Response are contradicted by statements of past Board members. Moreover, TIP Academy does not address their Corporation Code violations, but instead asserts it has reconstituted its Board such that it is now compliant. Also very troubling is that TIP Academy essentially refuses to take affirmative steps available to it to recoup funds illegally expended.

The Response also asserts that merely removing paid employees from the Board would cure any PRA violations and also eliminate the potential for re-occurrence of PRA violations. In doing so, it summarily dismisses the fact that even non-paid Board members can violate the PRA by involving themselves in the employment of their spouses, and other immediate family members. The fact that TIP Academy does not see a problem with hiring spouses of Board members shows an alarming lack of understanding of laws and principles prohibiting self-dealing.

3. TIP Academy's Response denied conduct alleged in Notice to Remedy that substantial evidence shows to be true.

After TIP Academy attempts to evade its legal duties and contractual obligations in its Response, it summarily denies much of the conduct alleged in the District's Notice to Remedy ever took place. It also again attempts to displace responsibility by accusing the District of failing to investigate on the basis of its assertion that the allegations were untrue or premature. Notwithstanding, District staff believes it has substantial evidence to demonstrate the allegations regarding conflicts of interest, self-dealing, and fiscal mismanagement are true. These substantiated allegations include:

- Deborah Hazelton used her position at TIP Academy to procure an employment contract for her husband, Michael Hazelton, while both sat on the Board.
- Lisa Bishop, Sandra Kaplan, Chris Manis, Greg Hagen, and Ron Defibaugh likely violated Government Code section 1090, the PRA, and the Corporation Code prohibition against self-dealing by participating in the employment of themselves and/or their spouses at TIP Academy, and through other self-dealing transactions.
- TIP Academy Board violated Brown Act by meeting in private on numerous occasions, intentionally excluding the District's representative for portions of Board meetings, failing to properly notice and agendaize meetings, and failing to document Board action at those meetings. Lisa Bishop discussed charter business with other board members, excluding the district's representative, regarding the hiring of the additional administrator.
- Money was transferred from TIP Academy to TIP Education. Deborah Hazelton wrote at least one check from TIP Academy's account and then endorsed the check on behalf of and deposited into TIP Education account. According to the check memo line, it was for consultant fees in July 2007. At least one Board Agenda during the 2006-2007 school year reflects consulting arrangements with TIP Education; Board minutes are silent as to any consideration.
- TIP Education has exercised a controlling interest over the TIP Academy Board, or dissolving that interest at this time would not be necessary. TIP Education applied for and obtained an employer identification number in May 2006. The IRS has not granted tax-exempt status to TIP Education, calling into question numerous assertions by TIP officials that TIP Education was a tax-exempt organization.

- Employment contract of Suzanne Hagen was signed by her on May 19, 2008, but signed by Deborah Hazelton June 20, 2007.
- Required Form 700 Conflict of Interest Disclosure Forms were not prepared or submitted until May 2008 and continue to be inaccurate and insufficient; there is no evidence that a legally sufficient Conflict of Interest Code has been approved or filed with the County of San Diego.
- There is no evidence presented to substantiate Michael Hazelton's salary as reasonable for the schedule he was expected to work.
- TIP Academy has the authority to demand repayment of funds expended through illegal contract.
- Fiscal mismanagement has occurred by virtue of self-dealing, entering illegal contracts, expending money without contracts or board approval, and insufficient documentation.

TIP Academy's failure to acknowledge or appreciate the gravity of its mistakes is exacerbated by the Response's factual assertions that are contradicted by documents provided with the Response itself and by facts ascertained in the District's investigation. The above list is not exhaustive, but only exemplary.

Additionally, documents produced by TIP Academy in its Response and in the District's investigation have substantiated and intensified, rather than ameliorated, District concerns regarding actual conflicts of interests and self-dealing in TIP Academy decision-making. For example, in its Notice, the District expressed concern about possible conflicts of interest that arise when employees and spouses of employees sit on the Board of a charter school. TIP's Response denies that the presence of such individuals on the charter Board by itself creates a conflict of interest, and yet, documents produced demonstrate the very existence of those conflicts, as laid out in this Report.

Moreover, TIP's Response assures the District it will comply with Government Code section 1090, the PRA, and the Corporations Code, but the Conflict of Interest policy submitted therewith is incomplete and does not meet accepted and defined legal standards. The policy identifies categories of employees but does not contain an enumerated listing of positions for the referenced categories within the charter school that involve the making or participating in the making of decisions which may have a material effect on any financial interest as required by Government Code section 87302, subd. (a). The policy's relating of categories of employees to disclosures of types of interests also appears arbitrary and illogical. Employees with greater discretion over decision-making would normally be subject to more extensive disclosures. There is also no indication that the Conflict of Interest Code was officially submitted to or approved by the Board of Supervisors of the County of San Diego as required by Government Code section 87303.

Further troubling are the Form 700 Statements of Economic Interests submitted with the response. These forms appear arbitrary, incomplete, and untimely. It appears that TIP

Academy officials met recently and prepared a number of Form 700 statements hastily but they are nonetheless incomplete and insufficient to meet legal standards for required disclosures. Untimely Assuming Office statements are provided for some officials, but without Annual Statements, and in another case an Annual Statement is provided without evidence of an Assuming Office statement. There is no evidence of any Form 700 Statements for many former TIP Academy officials. An unsigned, undated, and undesignated statement is provided for Michael Hazelton. Failures to meet reporting requirements and the late filing of required statements would potentially subject the individuals to civil penalties and fines under Government Code sections 91004 and 91013. It also further undermines the school's credibility as it shows insufficient and unlawful handling of applicable legal requirements.

Finally, the Form 1023 Application for Recognition of Exemption Under 501 (c)(3) of the Internal Revenue Code ("Form 1023") produced contains untruthful responses to form inquiries on issues of concern to the District, and is incomplete, omitting required explanations. The District expressed concerns with TIP Academy's nonprofit status, as well as concerns about its dealings with TIP Education. TIP Academy's unwillingness to provide complete and accurate information even after being put on notice of concerns further undermines its ability to sufficiently remedy the violations alleged in this regard.

In sum, even after being put on notice by the District, following a publicized complaint by a former Board member, TIP Academy continues to deny wrongdoing and to show a consistent ability to follow legal requirements. TIP Academy's Response does not add clarity or transparency to its decision-making. TIP Academy's Response combines technical, legal arguments seeking to avoid normal responsibilities of public agencies with recently drafted, incomplete documents demonstrating that, in fact, proper procedures have not been in place. It is unclear, for example, what TIP Academy intends to establish through the provision of an unsigned, undated, undesignated Form 700 disclosure for the past President of the Board that certainly must have been partially completed mere weeks ago with the other attached forms. Essentially, TIP Academy's Response shows that appropriate procedures have not been and are still not in place and that TIP Academy's decision makers have insufficient understanding of and respect for their legal responsibilities.

D. TIP Academy's proposed remedy is inappropriate and insufficient to remedy the violations that occurred.

The Remedies proposed by TIP Academy are insufficient and inappropriate for reasons that include the following:

1. Facts show that TIP Academy's denials of wrongdoing are unfounded and untruthful.
2. Deborah Hazelton, Lisa Bishop and Sandra Kaplan continue in positions of authority without adequate safeguards in place.
3. TIP Academy has refused to take action to disgorge funds expended through illegal contracts void at their inception.

4. TIP Academy continues to employ Deborah Hazelton and Lisa Bishop.
5. Sandra Kaplan remains on the Board, despite the fact investigation and documentation has shown that she is financially interested in the curriculum used at TIP Academy.
6. TIP Academy asserts TIP Education 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. This is inconsistent with denial of any relationship between TIP Academy and TIP Education and is also inconsistent with the explanation of Bylaws in Response. Other incorporators of TIP Education are redacted, demonstrating a lack of transparency and accountability. Documents produced show TIP Academy, and the Hazeltons particularly, intended to pay TIP Education for curriculum from TIP Academy's inception, even though this entity was never discussed with the District, the school's founders or even the Board of Directors until a contract was proposed for action.
7. TIP Academy promises to amend TIP Bylaws to comply with the charter, MOU, and Brown Act but simultaneously asserts in the Response that its Bylaws are already compliant.
8. TIP Academy failed to revise its conflict of interest and procurement policies in compliance with conflict of interest and self-dealing laws it again agreed to comply with.
9. TIP Academy continues to have incomplete and inaccurate conflict disclosure forms, and has failed to produce all documents responsive to District's Notice to Remedy.
10. TIP Academy continues to employ spouses of Board Members.
11. Recently TIP Academy has placed resigned Board Members on Standing Committees, such that although Board is somewhat reconstituted, TIP Academy is potentially being run by the same individuals. Michael Hazelton also appears to continue to be working for TIP Academy.

In its Response, TIP Academy refuses to release Deborah Hazelton, to remove Sandra Kaplan from the Board, to seek restitution of funds illegally expended and attempts to defer responsibility for such restitution by asserting it lacks jurisdiction to seek payment from "unrelated third parties." TIP Academy claims that neither the District nor TIP Academy is a "policing agency" for the Political Reform Act. TIP Academy defers to the possibility of "investigating the potential filing" of a complaint with the Fair Political Practices Commission. TIP Academy's Response misses the point and understates the seriousness of the misuse and misappropriation of public funds.

Contrary to assertions in the Response, TIP Academy has the ability to seek restitution, like any taxpayer in California. According to the Attorney General, "it is clear that a civil action for reimbursement could be brought under Code of Civil Procedure section 526a

by any affected individuals or organizations, taxpayers, or the Attorney General against the members of the governing board of a school district who received unauthorized cash payments . . .” (83 Ops. Cal. Atty. Gen. 124 (May 3, 2000).

Furthermore, where a contract is made in violation of Government Code section 1090, the public entity involved is entitled to recover any compensation that it has paid under the contract without restoring any of the benefits it has received from the contract. (*Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 583, 110 Cal.Rptr.2d 552.) This remedy of disgorgement of benefits received under a void contract is automatic. (*Carson Redevelopment Agency v. Padilla*, supra, 140 Cal.App.4th at p. 1336, 44 Cal.Rptr.3d 881.) Moreover, Government Code section 1092 thus extends to a private party who is paid money by a public entity pursuant to a contract which is void because it violates Government Code section 1090. Such a party must disgorge those public funds. (*Carson*, at p. 1337, 44 Cal.Rptr.3d 881.)

Unfortunately rather than state its intention to comply with a proposed corrective action and take all steps possible to restore public confidence and ensure appropriate expenditures, TIP Academy seeks to avoid responsibility and find a partial solution at best. TIP Academy’s intentional attempts to avoid the scrutiny of an oversight agency cast serious doubt on its ability to recognize and respect legal protocols in its operations while any key personnel intertwined in past violations remain at TIP.

TIP Academy has not established that it understands the seriousness of its violations or the ongoing responsibilities that adhere to providing public education with public funds. The partial remedies proposed are insufficient. TIP Academy has not demonstrated a commitment to bringing accountability and credibility to its procedures. Rather, TIP Academy seeks to debate its responsibilities in technical fashion and even asks the District to accept that TIP Academy’s obligation in a written, legal agreement long in place, and well discussed at the time of its execution, was not in fact an obligation at all. It is unfathomable how TIP Academy’s decision makers expect such a position to inspire confidence in an oversight agency.

E. TIP Academy continues to commit violations even after its promised remedy.

The additional fact that there are ongoing violations of the sort identified by the District in its Notice to Remedy further undermines staff ability to believe TIP Academy is capable of remedying the violations alleged therein and preventing future violations. For example, TIP Academy continues to employ at least one spouse of a current Board member (Board President Defibaugh’s wife, Claudia Defibaugh continues to be a consultant or employee of TIP Academy). More important, TIP Academy continues to employ Deborah Hazelton and Lisa Bishop, both of whom were involved in many of the violations at issue. TIP Academy continues to have a conflict of interest policy which fails to meet legal standards and demonstrates lack of understanding of appropriate disclosure of interests and avoidance of self-dealing. The Form 700s that appear to have been recently completed, no evidence of the filing of a Statement of Information has been

provided, and TIP Academy officials' conduct at the May 30, 2008 TIP Academy Parent Information meeting also cause continuing concerns.

IV. STAFF RECOMMENDATION

After a thorough review of the Response and investigation, District staff has concluded that TIP Academy has failed to remedy the conduct alleged by the District in its Notice to Remedy. TIP Academy has lost credibility through their extensive violations, through their insufficient and inappropriate Response, and through their continuing inappropriate conduct. District staff recommends the Board issue a Notice of Intent to Revoke the TIP Academy Charter and set a schedule for a public hearing and final action on the Notice of Intent to Revoke.