



OPA Preparatory Academy Charter Schools

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Andrew Crowe, Managing Director

September 28, 2017

VIA OVERNIGHT DELIVERY AND ELECTRONIC MAIL

Dr. Susan Holliday
Associate Superintendent, Education Services
Capistrano Unified School District
33122 Valle Road
San Juan Capistrano, CA 92675

Re: Oxford Preparatory Academy's ("Oxford Prep") Response to Notice of Concern
Received September 18, 2017

Dear Dr. Holliday:

Thank you for your letter dated September 15, 2017, that we received on September 18, 2017, regarding the Capistrano Unified School District's ("District") concerns about Oxford Prep's fiscal management and stability. We appreciate this ongoing dialogue so we can assist with the District's oversight responsibilities. Your letter requested a response by September 28, 2017. I am happy to provide the explanations below and enclosed documents so you can see that Oxford Prep and the two remaining Oxford Prep charter schools are fiscally and operationally stable.

We understand that, as the charter authorizer of Oxford Prep SOC, the District is required to monitor the school's fiscal condition, but do not believe that another independent audit of Oxford Prep's finances is necessary. Oxford Prep has engaged Gilbert Associates, Inc. to independently review Oxford Prep's finances and internal controls on a monthly basis through at least June 2018. In addition, our annual independent audit by Christy White Associates is currently ongoing with the audit report expected shortly. Finally, a representative from Charter Impact regularly reports to the board on the financial health of the organization. Oxford Prep believes these steps should provide the District with adequate evidence that Oxford Prep remains fiscally viable. Nevertheless, if the District intends to engage another auditing firm to look into Oxford Prep's finances, Oxford Prep will fully cooperate with the District's inquiry. Please note, however, that as Oxford Prep is already paying for three fiscal monitoring services, the District must bear all fees and costs arising out of its inquiry.



Board of Directors

Sandra Garner – Chair, Albert Diaz - Secretary, Joseph Haney – Member, Raymond Jackson - Member

Your letter also asked that Oxford Prep hold and retain all documents now in existence, in paper and in electronic form, because the District believes that a possibility of future administrative or legal action is foreseeable. First, please be advised that Oxford Prep is not destroying documents in its possession nor is it attempting to circumvent any future administrative or legal action. Oxford Prep is merely taking appropriate steps to protect the school in response to questionable conduct of a former board member. As will be discussed in further detail below, significant concerns arose that the former board member breached her legal obligations and her fiduciary duty to Oxford Prep by disseminating confidential material from a closed session and material protected by the attorney-client privilege.

Of more concern is that the District's request for a "litigation hold" on Oxford Prep's documents, in its current form, is overbroad. For example, under the current instruction, Oxford Prep employees cannot delete SPAM email, throw away old homework assignments, or delete incidental communications among themselves. Typically, when such a litigation hold is requested, it is limited to matters potentially relevant to a specific legal action which is likely or actually pending. The hold is therefore tailored to a specific topic or topics. In this instance, Oxford Prep is not clear what future administrative or legal action the District is referring to. Oxford Prep therefore requests that the District identify the scope of the matters of concern requiring retention, beyond Oxford Prep's general legal obligation to retain public records, as promised in its charter.

1. Oxford Prep's Fiscal Management

Oxford Prep makes a conscious effort to separately and carefully track all revenues and expenses of each school, as evidenced by our independent audit reports each year that show the assets, liabilities, revenues, expenses, and cash flows of each school and Oxford Prep as a whole. Each school has a separate account at Wells Fargo where its revenues are deposited and used to pay for its own expenses. For school-specific expenses, such as facilities costs or teacher salaries, each school pays its own expenses out of its own bank account. For expenses that benefit the Oxford Prep organization as a whole, such as shared administrative staff or costs of the administrative offices, the expenses are split between the schools pro rata based on each school's ADA. This will not change with the closure of Oxford Prep Chino Valley.

Currently, Andrew Crowe is responsible for day-to-day purchasing and contracting decisions in the absence of an Executive Director. The Oxford Prep board at its meeting on July 6, 2017 added Mr. Crowe as a signor on each of the school's checking accounts and delegated signing authority to him temporarily while the Executive Director position is vacant, subject to the limits and requirements in its adopted Fiscal Policies and Procedures Manual. The approval of Mr. Crowe or the Coordinator of Business Services is required for purchases or contracts of an amount up to \$1,000, Mr. Crowe's approval is required for an amount up to \$10,000, the approval of both Mr. Crowe and the board chair is required for an amount between \$10,000 and \$25,000, and board approval is required for an amount above \$25,000. Even when board

approval is not required, the board is kept apprised of all fiscal operations via regular reports at board meetings from Charter Impact, Gilbert Associates, Inc., and staff.

Oxford Prep is committed to transparency in all aspects of our operations, so we are discussing with Charter Impact the possibility of posting monthly updates on our website with key financial data so that our authorizers, parents, and other stakeholders may have constant access. We will let the District know if those plans come to fruition.

Copies of the updated financials for each school are enclosed. These demonstrate that, as of August 31, 2017, Oxford Prep SOC had a cash balance of \$1.3 million and Oxford Prep Saddleback had a cash balance of \$1.14 million, both above a healthy 15% reserve level.

2. Oxford Prep Chino Valley's Legal Fees

Oxford Prep apologizes if there was a misunderstanding about the California Charter Schools Association's ("CCSA") generous contribution to our legal costs. We received a grant of \$75,000 from CCSA for the costs of our Chino charter renewal appeal to the Superior Court and now the Court of Appeal. Oxford Prep Chino Valley paid a total of \$675,887 in legal fees in FY 2017, which have all come from the Chino school's separate bank account. Oxford Prep SOC and Oxford Prep Saddleback have not paid any of those legal costs.

3. Turner Agassi Charter School Facility Fund Lease Purchase Agreement

Oxford Prep is still in the midst of settlement negotiations with Turner Agassi, so the actual amount of any potential liability is still uncertain. No contingent liability to Turner Agassi of \$1.1 million was reflected in the Chino school's 2017-18 preliminary budget because Oxford Prep was advised by Charter Impact that it was not called for under GAAP criteria for reporting potential liabilities. A contingent liability is only booked when the loss is both probable and the amount can be reasonably estimated. In June 2017, when the budget was approved, sufficient facts were not known to make it clear that Oxford Prep actually owed *anything* to Turner Agassi, much less allow an estimate of how much, so it was too early under accounting standards to accrue any contingent liability. While the settlement negotiations are still ongoing and confidential, Oxford Prep intends to accrue \$1.1 million as a potential liability as part of the 2017-18 final audited financials for Oxford Prep Chino Valley.

A copy of the updated financials for Oxford Prep Chino Valley is enclosed.

4. Oxford Prep's Chino Management Team

We are not clear how this concern arose, but we are happy to allay it. Oxford Prep did not transfer the Chino school's management team to its other two remaining schools to preserve their jobs. While one of Oxford Prep's goals as an organization is to retain its most qualified and proven staff members, it has not preserved these staff members' jobs at an excessive cost to the organization.

In its letter, the District refers to the fact that Andrew Crowe was formerly the chancellor at Oxford Prep Chino Valley and is now the Managing Director of Oxford Prep as evidence of potential fiscal irresponsibility. However, in actuality, Mr. Crowe's becoming Managing Director on December 15, 2016 had nothing to do with the Chino school's closure, which occurred well before Oxford Prep knew the Chino school was closing. As to the District's reference to Garrett Bridges, that is likewise not accurate. While Mr. Bridges was named the Dean of Oxford Prep Saddleback, that position was already vacant and Mr. Bridges has proven to be a valuable asset to our schools. Both are more than qualified to hold their respective positions.

It's also not true that new staff members have caused unnecessary financial burden on the schools. The salaries of all employees are incorporated into the budgets of the schools, and year-to-date expenses, including salaries, are actually in line or *below* the projected budget.

A list of employees from Oxford Prep Chino Valley who are currently working at the other schools, which incorporates all of the requested information, is enclosed.

5. Absence of an Executive Director

In response to requests by parents, the search to hire an Executive Director was put on hold until Orange County representatives were elected to the Oxford board. With the recent election of two new members, the board is committed to proceeding with the process to attract and hire the best qualified candidate. In the meantime, the board has delegated authority to Mr. Crowe, such as purchasing and contracting authority while the Executive Director position is vacant, and Mr. Crowe is responsible for the day-to-day operations of the organization. The board understands its role as the governing body responsible for setting policy and goals of the organization and approving major items like budgets and large contracts or purchases. But the board does not make daily operational decisions—those are handled by Mr. Crowe and the Oxford Prep staff.

6. Absence of a Chief Financial Officer

The Oxford Prep board is evaluating the size and scope of the senior leadership team now that Oxford Prep Chino Valley has closed and Charter Impact has been brought on for professional financial support. Even without a CFO, Oxford Prep's finances have several layers of review to help ensure that we stay on budget, including review by staff, Charter Impact, Gilbert Associates, and the board. Pursuant to our Fiscal Policies and Procedures Manual, every purchase or contract must be approved by the Coordinator of Business Services, Mr. Crowe, the board chair, or the full board, depending on the amount. Every invoice that is received by the Coordinator of Business Services is first matched to the appropriate purchase requisition and, if approved, is forwarded to Charter Impact for review. Charter Impact double checks that the

proper approval was acquired and that there are funds available before remitting payment. A check register that lists all non-payroll payments is included in the board's monthly financial packet for review by the board, and a representative from Charter Impact regularly reports to the board on the financial health of the organization. Gilbert Associates also independently reviews Oxford Prep's finances and internal controls and a representative regularly reports their findings to the board. We are confident that these multiple layers of review are sufficient to monitor Oxford Prep's financial condition.

7. Proposal to Split Oxford Prep

In the course of discussion of pending litigation, the board has considered a number of options and responses. As I'm sure you know, disclosing confidential information acquired by being present at a closed session is a violation of the Brown Act by the individual that may lead to disciplinary action or even referral to the grand jury. (Gov. Code, § 54963.) We intend to look into the disclosure of closed session discussions further and deal with it appropriately. If corporate changes are decided upon, this will be the subject of public meetings and board actions and you will be informed.

8. Oxford Prep's Communications with Neveen Adly

In response to a request under the Public Records Act, Oxford Prep reviewed many communications by board members to locate responsive documents. As a part of this review, Oxford Prep discovered that former board member Neveen Adly had forwarded email communications with confidential information from a closed session or protected by the attorney-client privilege to third parties not authorized to receive these communications. As mentioned above, disclosing confidential information acquired by being present at a closed session is a violation of the Brown Act by the individual that may lead to disciplinary action or even referral to the grand jury. (Gov. Code, § 54963.) Further, only the Board as a whole may decide to waive the attorney-client privilege. (See *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639.) An individual board member cannot make that decision.

Oxford Prep did not have the opportunity to ask Ms. Adly about these unauthorized disclosures of confidential information. Rather than respond to the board's inquiry, Ms. Adly abruptly resigned from the board. Ms. Adly's actions are very concerning because that information belongs to Oxford Prep and her disclosure to third parties not authorized to receive that information potentially waived Oxford Prep's right to keep that information privileged and confidential.

Even more concerning, Oxford Prep discovered that Ms. Adly forwarded multiple Oxford Prep emails containing confidential and privileged information to her personal email address **after** she resigned from the board. Those emails similarly belong to Oxford Prep and contain privileged information from Oxford Prep's attorneys for which Oxford Prep is the holder of the privilege. Ms. Adly had no right to access Oxford Prep's records after she resigned from the board. So, in order to preserve the attorney-client privilege and protect Oxford Prep's

confidential information, Oxford Prep’s legal counsel kindly requested that she return or destroy any records belonging to Oxford Prep in her possession because she is no longer on the Oxford Prep board and no longer legally permitted to possess them.

Of course, Oxford Prep still retains all of the information we requested that Ms. Adly return or destroy. Oxford Prep complies with its legal obligations and, additionally, would never do anything to interfere with the District’s oversight duties or jeopardize our ongoing and productive dialogue.

Thank you again for your continued support of Oxford Prep. I hope this letter will alleviate all of the District’s concerns. If you have any follow up questions, I’m more than happy to discuss them with you on the phone or in person, whichever works best for you. Please feel free to reach out to me directly at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Crowe', written in a cursive style.

Andrew Crowe, Managing Director
Oxford Preparatory Academy

cc: Capistrano Unified School District Board of Trustees
Kirsten Vital, Superintendent
Heidi Crowley, Coordinator of Charter Schools and Strategic Initiatives
Orange County Department of Education’s Charter Office
Saddleback Valley Unified School District’s Superintendent’s Office