

**Education Audit Appeals Panel
State of California**

Appeal of Fiscal Year 2003-04 Audit
Finding Regarding Pupil-Teacher Ratio, in
the Report of the Audit dated February 15,
2007, by:

California Virtual Academy at Kern,

Appellant.

EAAP Case No. 07-03

OAH No. L2007060145

Decision as to Finding Regarding Pupil-Teacher Ratio

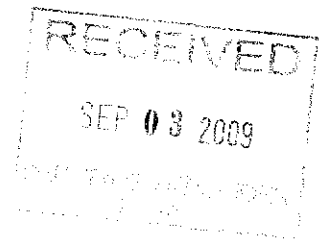
The Education Audit Appeals Panel has adopted the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

Effective date: October 12, 2009

IT IS SO ORDERED.

October 12, 2009
Date

Original Signed
Diana L. Ducay, Chairperson
for Education Audit Appeals Panel



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8 BEFORE THE EDUCATION AUDIT APPEALS PANEL
 9 STATE OF CALIFORNIA

11 **Appeal of Fiscal Year 2003-04 Audit**
 12 **Findings Regarding Overpayment Resulting**
 13 **From Calculation Error in the Pupil-**
 14 **Teacher Ratio, in the Report of the Audit of**
 15 **the California Virtual Academy at Kern**
 16 **County dated February 15, 2007, by:**
 17
 18 **CALIFORNIA VIRTUAL ACADEMY AT**
 19 **KERN (CAVA@KERN),**
 20 Appellant,
 21
 22 v.
 23 **STATE CONTROLLER'S OFFICE,**
 Respondent,
 24
 25 **CALIFORNIA DEPARTMENT OF**
 26 **FINANCE,**
 27 Intervener.

OAH Case No.: 2007060145
 EAAP Case No.: 07-03

SETTLEMENT STIPULATION AND PROPOSED DECISION

28 Appellant California Virtual Academy at Kern (appellant or CAVA), respondent California State Controller's Office (SCO), and intervener California Department of Finance (Finance) agree to a complete resolution of the above-captioned matter as follows:

RECITALS

1
2 A. The independent accounting firm of MGT of America, Inc. (MGT) conducted a
3 limited scope audit of the appellant pursuant to Education Code section 1241.5, subdivision (c) to
4 determine if appellant was in compliance with the independent study requirements for the
5 calculation of its fiscal year 2003-04 pupil-to-teacher ratio (PTR), Full Time Equivalent (FTE)
6 teachers, and Average Daily Attendance (ADA). The results of the audit were included in the
7 audit report issued and dated February 15, 2006 (Audit Report).

8 B. MGT found that CAVA had overclaimed nearly \$1 million in Fiscal Year 2003-04
9 because its pupil to teacher ratio did not meet state guidelines. (See Audit Report, pp. 4-7.) More
10 specifically, the Audit Report found that pursuant to Education Code sections 47633, 51745.6 and
11 Title 5, California Code of Regulations section 11704, CAVA's PTR in 2003-04 exceeded the
12 state required threshold of the prior year's PTR for all other education programs operated by the
13 school or district with the largest ADA in the counties in which the school operates, i.e., the Los
14 Angeles Unified School District (LAUSD). MGT found that CAVA's PTR was approximately
15 31 to 1 and LAUSD's PTR was approximately 21 to 1. CAVA had reported its own PTR as
16 29.48 to 1 and the PTR of LAUSD as 26.8 to 1. (See Audit Report, Exhibits 1-2, pp.4-5.)

17 MGT also determined that CAVA had miscalculated its FTE by overstating its certificated
18 FTE teachers by one, thereby understating its own PTR. When combined with the misstated PTR
19 of LAUSD, the erroneous FTE made it appear that CAVA met the threshold for receiving the
20 apportionment funding it received based on its reported ADA. The MGT Audit Report calculated
21 the resulting ineligible ADA to be 207.81 units or an equivalent of about \$987,865. (See Audit
22 Report, Exhibit 1, p.4, and pp.6-7.)

23 C. MGT also found that CAVA improperly claimed more that \$100,000 in state funds
24 for ineligible ADA. (Audit Report, pp. 8-9.) CAVA had claimed ADA for students who lived
25 outside of the allowable geographic boundaries and for student attendance that was outside the
26 student enrollment period, in violation of the requirements of Education Code section 51747.

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1 D. Appellant disputed the findings and recommendations of the MGT Audit Report.
2 Although appellant filed a timely formal appeal to the Education Audit Appeals Panel
3 (EAAP), appellant also objected to the jurisdiction of EAAP to hear the appeal, claiming the audit
4 report was not a final audit report to trigger the formal appeal process pursuant to Education Code
5 sections 41344 and 41344.1 as well as Title 5, California Code of Regulations section 19800
6 subdivision (a).

7 E. Finance timely moved to intervene in the instant EAAP proceeding, and was granted
8 intervener status.

9 F. Respondent SCO informed EAAP that it would not actively participate in the
10 proceedings, as it did not conduct or review the Audit Report.

11 G. Appellant filed a motion to dismiss its appeal, which was opposed by Finance and
12 denied after hearing and without prejudice for renewal on issues not decided by the
13 Administrative Law Judge. (ALJ)

14 H. Appellant then filed a supplemental motion to dismiss based on, among other things,
15 the contention that EAAP lacked jurisdiction due to the "mega-waiver" exemption provided to
16 charter schools pursuant to Education Code section 47610. Appellant also filed a Motion for
17 Declaratory Order seeking to challenge the MGT Audit Report's finding regarding the PTR of
18 LAUSD as the comparison PTR, pursuant to Title 5, California Code of Regulations section
19 11704. Finance opposed both motions.

20 I. After briefing and hearing on both motions, the ALJ issued a proposed decision based
21 on the supplemental motion to dismiss and found that the mega-waiver provisions of Education
22 Code section 47610 applied. The ALJ granted the supplemental motion to dismiss the audit
23 appeal in its entirety without prejudice. The ALJ did not rule on the Motion for Declaratory
24 Order on the basis that it was moot.

25 J. EAAP issued a Notice of Rejection of the ALJ's proposed decision, and after
26 additional invited briefing, issued a corrected final decision as to appellant's motion to dismiss.
27 EAAP made findings of fact and conclusions of law that included, among other things, a ruling
28 that cause did not exist to grant appellant's supplemental motion to dismiss and that the mega-

1 waiver of Education Code section 47610 did not exempt charter schools from EAAP's audit
2 appeal jurisdiction. (See EAAP Decision, No. 07-03, California Virtual Academy at Kern [Part 1
3 – corrected] (3-23-2009) (www.eaap.ca.gov.)

4 K. The remaining issues were remanded to the Office of Administrative Hearings for
5 proceedings on the merits of the appeal in accordance with Education Audit Appeal section
6 41344, subdivision (d). (See EAAP Decision, No. 07-03, California Virtual Academy at Kern
7 [Part 1 – corrected] (3-23-2009) (www.eaap.ca.gov.)

8 L. The parties agreed that Appellant's pending Motion for Declaratory Order regarding
9 the issue of the comparison PTR of LAUSD could be decided by the ALJ based on the earlier
10 briefing and oral argument at the hearing on said motion. Dates were scheduled for the
11 mandatory settlement conference, prehearing conference and the administrative hearing on the
12 merits of the audit appeal by the Office of Administrative Hearings.

13 M. In order to avoid the cost and uncertainty of litigation, the parties to this case agree to
14 resolve this dispute on the terms and conditions described herein.

15 AGREEMENT

16 For the purpose of completely settling and resolving the appeal of the audit findings and
17 recommendations of the MGT Audit Report, appellant and Finance agree as set forth below:

18 1. This stipulation and proposed decision fully and completely resolve all claims,
19 demands, appeals, obligations, or causes of actions arising from or relating to the MGT Audit
20 Report of February 15, 2007. Accordingly, appellant and Finance expressly waive any right or
21 claim to assert or pursue hereafter any claim, demand, obligation, and/or cause of action relating
22 to the recitals of the above described findings and recommendation of the Audit Report. This is a
23 settlement of a disputed claim, and none of the parties hereto makes any admission with respect to
24 the issues presented.

25 2. Appellant shall repay in full satisfaction of the findings of the MGT Audit Report, the
26 amount of \$400,000.00, within the next eight years following the execution of this agreement.
27 Appellant and Finance agree that the appellant will repay the \$400,000.00 in eight annual
28

1 installments of \$50,000.00 each, from future principal apportionment funding by the State of
2 California to the appellant, as follows:

- 3 a. 2009-2010 \$50,000.00
- 4 b. 2010-2011 \$50,000.00
- 5 c. 2011-2012 \$50,000.00
- 6 d. 2012-2013 \$50,000.00
- 7 e. 2013-2014 \$50,000.00
- 8 f. 2014-2015 \$50,000.00
- 9 g. 2015-2016 \$50,000.00
- 10 h. 2016-2017 \$50,000.00

11 3. The State of California will not charge the appellant any interest for the amounts
12 specified in paragraph 2, above, under the terms of this stipulation.

13 4. This stipulation and proposed decision are subject to and conditioned upon approval
14 and adoption by EAAP, pursuant to Education Code section 41344.1, subdivision (b). This
15 stipulation and proposed decision shall be submitted to EAAP for approval following execution
16 hereof by appellant and Finance and submission to the Office of Administrative Hearings.

17 5. This stipulation and proposed decision may be executed in counterparts, each of
18 which shall constitute an original. Facsimile signatures transmitted to other parties to this
19 stipulation and proposed decision are deemed to be the equivalent of original signatures on
20 counterparts.

21
22 [Signature page follows]

1 Dated: August 13, 2009

Original Signed

Middleton, Young and Minney, LLP
Attorneys for Appellant, CAVA @ Kern

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3
4 Dated: August 5, 2009

Original Signed

For Appellant, CAVA @ Kern

5
6 Dated: August 13, 2009

EDMUND G. BROWN JR.
Attorney General of the State of California
RICHARD T. WALDOW
Supervising Deputy Attorney General

Original Signed

ERNEST MARTINEZ
Deputy Attorney General
Attorneys for Intervener
Department of Finance

13 Approved as to form only

14 Dated: August 6, 2009

Original Signed

Attorneys for Respondent
State Controller's Office

18 This stipulation is adopted and submitted to the Education Audits Appeal Panel as my
19 proposed decision of the above entitled matter.

20 Dated Sept. 3, 2009

By: *Original Signed*
Administrative Law Judge

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