

**Education Audit Appeals Panel  
State of California**

Appeal of 2005-06 Audit Finding 2006-01  
by:

Center for Advanced Research and  
Technology,  
Appellant.

EAAP Case No. 07-10

OAH No. N2007080451n

**Decision**

The Education Audit Appeals Panel has adopted the attached Stipulation and Proposed Decision of the parties as its Decision in the above-entitled matter.

Effective date: March 17, 2008.

IT IS SO ORDERED.

March 17, 2008

Date

*Original Signed*

Diana Ducay, Chairperson  
for Education Audit Appeals Panel

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 JULIE WENG-GUTIERREZ  
Supervising Deputy Attorney General  
3 PAULINE GEE, State Bar No. 74447  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P.O. Box 944255  
5 Sacramento, CA 94244-2550  
Telephone: (916) 323-0335  
6 Fax: (916) 324-5567  
E-mail: Pauline.Gee@doj.ca.gov  
7 Attorneys for Intervenor Department of Finance

8  
9 BEFORE THE  
10 EDUCATION AUDIT APPEALS PANEL  
11 STATE OF CALIFORNIA

12 **In the Matter of the Appeal of Audit 2005-06 Audit**  
13 **Finding 2006-01 by Center for Advanced Research**  
14 **and Technology,**  
15  
16 **v.**  
17 **Office of the State Controller,**  
18  
19 **Department of Finance,**  
20

Appellant,  
  
  
  
  
  
  
Respondent,  
  
  
  
Intervenor.

EAAP Case No. 07-10  
OAH No. N2007080451

**STIPULATION AND  
PROPOSED DECISION**

21  
22 Appellant Center for Advanced Research and Technology (CART), respondent  
23 Office of the State Controller (Controller) and intervenor California Department of Finance  
24 (Finance) agree to a complete resolution of this appeal of audit finding 2006-01 for fiscal year  
25 ending June 30, 2006 as follows:

26 **RECITALS**

27 1. CART is a charter school and was established in April, 1997, by a Joint  
28 Exercise of Powers Agreement (JPA), between the Clovis Unified School District (Clovis USD)

1 and Fresno Unified School District (Fresno USD) pursuant to the provision of Title 1, Division 7,  
2 Chapter 5, Articles 1 through 4 of the California Government Code. The JPA purpose is to  
3 provide for the financing and operation of a joint technical center for high school age students  
4 from Clovis USD and Fresno USD (the two JPA school districts).

5 2. CART, Clovis USD and Fresno USD are physically located in Fresno County.

6 3. In the 2005-06 school year, CART served 1189 students, grades 11 and 12 from  
7 Clovis USD and Fresno USD by operating an educational program, which integrates college  
8 prep-academic courses and career courses with a focus on the latest technology and on  
9 development of students' technical, design, business and critical thinking skills. There are four  
10 "career clusters": (1) Professional Sciences with learning laboratories in English/forensic, bio-  
11 medicine, and environment sciences and field research; (2) Global Dynamics with learning  
12 laboratories in Economics and Finance, Marketing and Advertising, and Law and Policy; (3)  
13 Advanced Communications with learning laboratories in Multimedia, Network Management, and  
14 Database Design; and (4) Engineering and Design with learning laboratories in product  
15 development and bioengineering. CART has established partnerships with community  
16 businesses for internships, projects, and computer certification programs and with colleges for  
17 Advanced Placement (AP) or college level courses for CART students.

18 4. The CART program is meeting its educational goals for its students. For  
19 example, one-hundred percent of all CART seniors graduated from high school in school year  
20 2004-05 and 2005-06. Ninety-six percent (96%) of CART seniors have matriculated to post-  
21 secondary education or training for the past three years. For the past two school years in  
22 2004-05 and 2005-06, one-hundred percent (100%) of CART applicants have been accepted to  
23 California State University, Fresno.

24 5. CART has been recognized for its successful educational program as a model  
25 education program by the education and business community. The California School Boards  
26 Association recognized CART with its Golden Bell Award in 2004 as an "exemplary  
27 Instructional Model for Improving Achievement." In 2003, the Microsoft Center of Excellence  
28 selected CART as one of eight schools in the nation it honored. CART was selected as a field

1 study school in the "Charter High Schools & Real-World Practices", an applied research project  
2 by the Center on Education and Work at the University of Wisconsin-Madison between 2001 and  
3 2003.

4           6. CART students spend 50% classroom instruction time in CART classroom  
5 laboratories in either the morning session (7:30 am to 10:30 am) or the afternoon session (12:30-  
6 3:30 pm) and spend 50% classroom instruction time in CART students' home school classroom  
7 facilities provided to CART by the two JPA school districts in either the morning or afternoon  
8 sessions. Attendance records are kept for all CART students for each class period whether they  
9 are attending classes at CART's facilities or facilities provided to CART by the two JPA school  
10 districts.

11           7. CART has no salaried employees, because the CART teachers and administrators  
12 are provided and paid for by the two JPA school districts in exchange for ADA funds received by  
13 CART in proportion to the number of CART students from each of the two JPA school districts.  
14 In addition, the two JPA school districts each contribute approximately \$700,000 to \$800,000 per  
15 year to CART over and above ADA funds received by CART to operate and maintain its  
16 program.

17           8. CART reported average daily attendance (ADA) for its CART students as  
18 classroom-based instruction for school year 2005-06 and received ADA funds on that basis. In  
19 order to receive such ADA funds, a charter school must meet the requirements of classroom  
20 based instruction as set forth in California Education Code section 47612.5, subdivision (e)(1),  
21 which provides:

22           •The charter school's students are engaged in educational activities required  
23 of those students, and the students are under the immediate supervision and  
24 control of an employee of the charter school who is authorized to provide  
instruction to students within the meaning of Education Code section 47605,  
subdivision (l).

25           •At least 80% of the instructional time offered at the charter school is at the  
26 school site (as defined in Cal. Code of Regs., tit. 5, section 11963).

27           •The charter school's school site is a facility that is used principally for  
28 classroom instruction.

28 ///

1 •The charter school requires its students to be in attendance at the school site  
2 at least 80% of the minimum instructional time required under Education  
Code section 47612.5(a)(1).

3 9. CART retained Boceta, Macon, Workman and Associates (Auditor) to conduct a  
4 financial and compliance audit of CART for fiscal year ended June 30, 2005 and prepare an audit  
5 report. The audit report, as certified by the Controller, includes Audit Finding 2006-1.

6 10. Audit Finding 2006-01 reports that CART does not appear to be in compliance  
7 with three of the four conditions in California Education Code section 47612.5 as follows:

8 a. CART students are not under the immediate supervision and control of a teacher  
9 who is an employee of CART because CART services are contracted from Clovis USD and  
10 Fresno USD;

11 b. CART students do not spend 80% of instructional time at CART facilities.  
12 CART is a unique program whereby 50% of the students' time is at CART and 50% of their time  
13 is at their home school facilities provided by Clovis USD or Fresno USD; and

14 c. CART students are not in attendance at CART for 80% of their minimum  
15 instructional time (64,800 minutes for grades 9-12) because CART students spend 50% of their  
16 time at CART and 50% of their time at facilities provided to CART by Clovis USD and Fresno  
17 USD pursuant to the JPA agreement. The combination of both programs meets the instructional  
18 time requirement. (A true and correct copy of Audit Finding 2006-01 is attached to this  
19 Stipulation as Exhibit 1.)

20 11. Audit Finding 2006-01 reports CART is in compliance with the requirement that  
21 its facility be used principally for classroom instruction. (See Exhibit 1.)

22 12. Audit Finding 2006-01 reports that Clovis USD had obtained an opinion from its  
23 legal counsel, Lozano Smith, that amendments to Education Code section 47612.5 and newly  
24 enacted Education Code section 47634.2 (re nonclassroom-based instruction programs were  
25 intended for independent studies-type programs) were not applicable for a charter school  
26 arrangement such as CART. (A true and correct copy of a letter dated February 5, 2002 to Clovis  
27 Unified School District from Lozano Smith is attached to this Stipulation as Exhibit 2.)

28 13. As a result of Finding 2006-01, the Auditor estimated that CART must disallow

1 the ADA funding (general purpose entitlement funding) of approximately \$5,749,529.00, of  
2 which approximately \$4,950,714.00 is the state share of general purpose entitlement funding and  
3 of which the remaining amount is categorical block grant funding. (A true and correct copy of  
4 CART revenue distribution between the two JPA districts for 2005-06 is attached as Exhibit 3.)

5 14. CART timely filed an appeal of Audit Finding 2006-01.

6 15. Finance timely moved to intervene in this Appeal on August 18, 2007, and is a  
7 party to this Appeal.

8 16. Following the certification of the 2005-06 audit of CART, Fresno USD and  
9 Clovis USD work in cooperation with Finance, and others, to support Senate Bill 345. As  
10 enacted, Senate Bill 345 (Stats. 2007, ch. 524), amended Education Code section 47612.7,  
11 among other sections not relevant herein, to allow CART to receive ADA funding for the 2007-  
12 08 fiscal year.

13 17. This Stipulation is subject to approval and adoption by the Education Audit  
14 Appeals Panel, pursuant to Education Code section 41344.1, subdivision (b).

#### 15 **STIPULATION**

16 1. This Stipulation shall fully resolve any and all claims, demands, audit findings,  
17 appeals, obligations and/or causes of action arising from or relating to Audit Finding 2006-01 for  
18 school year 2005-06.

19 2. The parties agree that CART is an unusual educational program resulting from its  
20 JPA and educational services agreement and that CART has been recognized as a successful  
21 model educational program by both the education and business community.

22 3. The parties agree that CART students were offered the full instructional time  
23 requirement of 64,800 minutes from the CART educational program for school year 2005-06  
24 pursuant to the JPA and educational agreements between the Clovis USD and Fresno USD and  
25 CART.

26 4. CART agrees to seek to secure legislation, with the advice and consent of  
27 Finance, which will ensure that CART's educational program is in full compliance with all  
28 applicable statutes and regulations required as a condition of state funding in fiscal year 2008-09

1 and beyond. Additionally, CART agrees to seek to secure legislation, with the advice and  
2 consent of Finance, that addresses any audit findings for 2006-07 audit year.

3           5. For the sole purpose of effecting a compromise of this action and to avoid the  
4 uncertainties of litigation, Finance agrees to not seek reimbursement for Audit Finding 2006-01  
5 from CART, and the Controller agrees that he is not opposed to this compromise.

6           6. The parties agree that a request will be made to the Office of Administrative  
7 Hearings in Sacramento, California that the hearing now scheduled for March 5, 2008, be taken  
8 off calendar based on the parties' Stipulation providing for a full resolution of the above-entitled  
9 matter subject to the approval and adoption by the Education Audit Appeals Panel pursuant to  
10 Education Code section 41344.1, subdivision (b).

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1           7. The parties agree that this Stipulation may be signed in counterparts and facsimile  
2 copies accepted as original if necessary. This Stipulation shall be considered fully binding as if  
3 the parties executed the same documents at the same time.

4 Dated: March 3, 2008

**CENTER FOR ADVANCED RESEARCH AND  
TECHNOLOGY (CART)**

*Original Signed*

SUSAN FISHER, Chief Operating Officer, CART

8 Dated: March 4, 2008

**CENTER FOR ADVANCED RESEARCH AND  
TECHNOLOGY (CART)**

*Original Signed*

EUGENE HILL  
WILLIAM TUNICK  
Olson Hagel & Fishburn LLP

12 Dated: March 4, 2008

**OFFICE OF THE STATE CONTROLLER**

*Original Signed*

KELLY CHING, Senior Staff Counsel  
Attorney for John Chiang, State Controller

16 Dated: March 4, 2008

**EDMUND G. BROWN JR.**  
Attorney General of the State of California  
**JULIE WENG-GUTIERREZ**  
Supervising Deputy Attorney General

*Original Signed*

PAULINE GEE  
Deputy Attorney General  
Attorneys for Intervenor Department of Finance





**BOCETA, MACON, WORKMAN & ASSOCIATES**  
CERTIFIED PUBLIC ACCOUNTANTS

MAY 23 2007

SAMUEL J. MACON, JR.  
CPA

May 11, 2007

JEANETTE L. GARCIA  
CPA

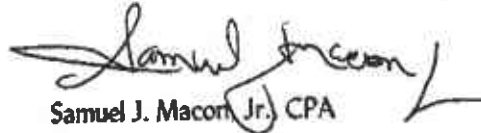
Controller of the State of California  
Division of Audits  
School District Audits Branch  
P.O. Box 942850  
300 Capital Mall, Suite 418  
Sacramento, CA 95814

Gentlemen:

Enclosed is replacement page 41 of the Annual Financial Statements of the Center for Advanced Research and Technology for the fiscal year ended June 30, 2006. The revisions includes further quantification.

Should you have any questions, please call.

Yours very truly,

  
Samuel J. Macon, Jr. CPA  
Partner

MEMBERS:

AMERICAN  
INSTITUTE OF  
CERTIFIED PUBLIC  
ACCOUNTANTS

CALIFORNIA  
SOCIETY OF  
CERTIFIED PUBLIC  
ACCOUNTANTS

SJM:tb

Enclosures

1950 S. SUNWEST LN.  
SUITE 300  
SAN BERNARDINO  
CALIFORNIA 92408

(909) 386-5420  
FAX (909) 386-5424

www.bmwcpa.com

Exhibit 1

CENTER FOR ADVANCED RESEARCH AND TECHNOLOGY  
SCHEDULE OF AUDIT FINDINGS AND QUESTIONED COSTS  
JUNE 30, 2006

MAY 23 2007

Section IV - State Award Findings and Questioned Costs

FINDING 2006-01  
AB3627 Code 40000  
Additional Nonclassroom-Based Instruction

Specific Requirements: Per Education Code, classroom-based instruction in a charter school occurs only when all four of the following conditions are met:

1. The charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils within the meaning of Education Code section 47605(i).
2. At least 80 percent of the instructional time offered at the charter school is at the school site.
3. The charter school's school site is a facility that is used principally for classroom instruction.
4. The charter school requires its pupils to be in attendance at the school site at least 80 percent of the minimum instructional time required pursuant to Education Code section 47612.5(a)(1).

Condition: CART reports its Average Daily Attendance (ADA) as classroom-based instruction; however, CART does not appear to be in compliance with three of the four above mentioned requirements.

1. CART students are not under the immediate supervision and control of a teacher who is an employee of the charter school. In fact, CART has no employees. All services, including teachers, are contracted from Clovis and Fresno Unified School Districts.
2. CART students do not spend 80 percent of the instructional time at the charter school. CART is a unique program whereby 50 percent of a student's time is at CART and 50 percent of their time is at their home school in the Clovis or Fresno Unified School District.
3. CART is in compliance with the requirement that its facility be used principally for classroom instruction.
4. CART students are not in attendance at CART for 80 percent of the minimum instructional time required (64,800 minutes for high school). As previously mentioned, CART students spend half of their day at CART and half at their regular high school. The combination of both programs meets the instructional time requirement.

The Clovis Unified School District obtained a legal opinion regarding these issues in February 2002, shortly after these requirements went into effect. Because the laws appear to restrict nonclassroom-based instruction (independent study), it is the opinion of the legal counsel that these requirements were not intended for a charter school arrangement such as CART. However, it does not appear that there has been a formal agreement made with the California Department of Education as to this legal opinion.

Questioned Costs: Not applicable

Context: Not applicable

Effect: If any Average Daily Attendance reported to the California Department of Education as classroom-based instruction was not generated in compliance with all of the preceding conditions, the charter school is not able to claim the ADA. The Charter must disallow the 955 ADA, resulting in the loss of general purpose entitlement funding of approximately \$5,749,529.

Ruth E. Mendyk  
Attorney at Law

E-Mail: [rmendyk@clovisunified.com](mailto:rmendyk@clovisunified.com)

February 5, 2002

Dr. Terry Bradley, Deputy Superintendent  
Mr. Bill McGuire, Associate Superintendent, Business Services  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, California 93612

Re: Senate Bill 740

Dear Dr. Bradley and Mr. McGuire:

Introduction:

You have provided us with a copy of Janet Sterling's January 15, 2002 memorandum regarding required funding determinations for Nonclassroom-based Charter Schools and the implementation of Senate Bill 740. You have asked for our input on whether CART can comply with the prerequisites for funding outlined in this new legislation. Based on our review of the amendments to Education Code section 47612.5 and the new Education Code section 47634.2 and related emergency regulations, we conclude that the purpose of this new legislation was not intended to include a charter school arrangement such as CART and therefore it is not necessary to submit the Funding Determination Form for Fiscal Year 2001-02.

Senate Bill 740:

SB 740 made significant changes to the funding process for charter schools that offer something other than "classroom-based instruction." The emergency regulations define classroom-based instruction as occurring when all of the following four conditions are met:

- 1) The charter school's pupils are engaged in education activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils within the meaning of Education Code section 47605(1);
- 2) At least 80 percent of the instruction time offered at the charter school is at the school site;

Exhibit 2

Dr. Terry Bradley  
Mr. Bill McGuire  
February 5, 2002  
Page 2

- 3) The charter's school site is a facility that is used principally for classroom instruction; and
- 4) The charter school requires its pupils to be in attendance at the school site at least 80 percent of the minimum instructional time required pursuant to Education Code section 47612.5(a)(1).

The regulations also specifically exclude an individual's personal residence from the definition of a school site.

CART Students:

We understand that CART students spend 1/2 of each instructional day at the CART facility and the other 1/2 of each day in the classroom at his or her respective home school.

The intent of SB 740 appears to be to eliminate, or at least reduce, the payment of ADA to charter schools whose students are enrolled in at-home instruction. This is evident by the specific exclusion of an individual's personal residence from the definition of a school site.

The purpose does not appear to be to eliminate or reduce ADA payments to charter schools whose students spend 100% of their time in classroom instruction. Because of the unique arrangements for CART, it is not surprising that the legislation did not contemplate or provide a specific exception for the CART format.

Based on our analysis of the these Education Code sections and emergency regulations, we conclude that the purpose of this new legislation was not intended to include a charter school arrangement such as CART and therefore it is not necessary to submit the Funding Determination Form for Fiscal Year 2001-02. Should you have any questions or comments, please feel free to give us a call.

Sincerely,

LOZANO SMITH

Michael J. Whilden

bcc: JMB

Total ADA P2 apportionment

955.23

FUSD	297.10	31.10%
CUSD	658.13	68.90%

	Total	FUSD	CUSD
Block Grants			
General (calc including taxes)	5,749,529.00	1,788,244.78	3,961,284.22
Special Purpose	326,045.00	101,408.01	224,636.99
Sub-Total	6,075,574.00	1,889,652.79	4,185,921.21
Less In lieu Property Taxes	(1,124,860.00)		(1,124,860.00)
Apportionment Total	4,950,714.00	1,889,652.79	3,061,061.21
			4,950,714.00

Exhibit 3