

**Education Audit Appeals Panel
State of California**

In the Matter of:

Gorman Learning Center,

Re: Appeal of 2003-04, 2004-05, and 2005-06
Audit Findings in Chapter One of the Los
Angeles County Office of Education Review
of the Gorman Learning Center Charter
School,

Appellant.

Case No. 07-05

OAH No. L2008050384

DECISION AS TO A PORTION OF THE MATTER

On October 17, 2008, the Office of Administrative Hearings (OAH) issued a Proposed Decision that incorporated the parties' Stipulation to Dismiss Portion of Audit Appeal with Prejudice. At its meeting on November 17, 2008, the Education Audit Appeals Panel (EAAP) rejected the Proposed Decision in order to decide the case itself under the provisions of Government Code Section 11517(c)(2)(E). On November 19, 2008, EAAP issued the Notice of Rejection of Proposed Decision As to a Portion of the Matter and invited written argument by December 4, 2008, particularly with regard to whether EAAP has authority under the provisions of Education Code sections 41344(d) and 41344.1(b) to determine disputes regarding nonclassroom-based funding determination requests in light of the discretion given the State Board of Education to adjust the amount of funding to be allocated (Education Code Section 47634.2). Appellant filed a timely argument.

FACTUAL FINDINGS

1. MGT of America, Inc., conducted an audit of the Gorman Learning Center Charter School (Gorman Charter) at the request of the Los Angeles County Superintendent of Schools pursuant to Education Code Section 1241.5(c).¹ The resulting report (MGT Report) was received by Gorman Charter on or about March 15, 2007, and includes Gorman Charter's response to the report's recommendations.²

¹ The Stipulation incorrectly states that the Kern County Superintendent of Schools initiated the audit, and refers to the audit firm as "MGT International." Stipulation, page 1, paragraph 1; but see Gorman Learning Center April 23, 2007, appeal letter.

² Gorman Charter filed the full audit report as Exhibit A to its "Motion to Dismiss Audit Appeal Without Prejudice" on June 24, 2008. The Stipulation recites that Gorman Charter will dismiss this pending motion "upon approval of this stipulation by OAH and EAAP." (Stipulation, page 2, paragraph 8.) That Motion is not considered here.

2. On April 23, 2007, Gorman Charter filed an appeal of the audit findings “on page 20 of the audit report, ... [which identify] ‘inaccurate financial data used for the SB 740 Funding Determinations’ for three years – 2003-04, 2004-05 and 2005-06.”³

3. On September 26, 2008, Gorman Charter and Intervenor Department of Finance⁴ entered into the Stipulation that is considered here (copy provided in the Appendix to this Decision), seeking dismissal with prejudice of “all portions of the audit appeal related to SB 740 funding determinations.” (Stipulation, page 2, paragraph 2.)⁵

4. Despite the seemingly straightforward agreement to dismiss the SB 740 portions of the appeal with prejudice, the Stipulation includes statements that are ambiguous or contradictory (see Stipulation, page 2, paragraph 4, which appears to say that further relief may be sought before EAAP; and paragraph 6, calling for continuing jurisdiction to ensure enforcement of the Stipulation, which may possibly refer to recitations in paragraphs 2 and 5 related to resubmission of SB 740 funding determination requests for the affected fiscal years to SBE, and paragraph 8 regarding dismissal by Gorman Charter of its motion to dismiss now pending before OAH).

LEGAL CONCLUSIONS

1. EAAP hears appeals filed pursuant to Education Code sections 41344(d) and 41344.1(b). Education Code Section 41344, subdivision (a), provides that a repayment plan may be established “If, as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception or to pay a penalty arising from an audit exception, ...” Subdivision (d) of that section provides that “a local educational agency may appeal a finding contained in the final report, ... A repayment schedule may not commence until the panel reaches a determination regarding the appeal.” The phrase “audit or review” used in subdivision (a) of Section 41344 is defined in subdivision (e) to include “an audit or review conducted by a governmental agency that provided the local education agency with an opportunity to provide a written response.”

2. The MGT Report meets the definition of “an audit or review” that may be appealed to EAAP (Factual Findings, paragraph 1). The report also includes an audit finding regarding SB 740 funding determinations that identifies certain amounts of overpayment that qualify as “apportionment significant” as defined in Education Code Section 41341(a) (“an amount equal to revenue limit funding for one unit of average daily attendance”).

³ Gorman Charter also appealed “a finding regarding inaccurate FTEs and pupil-to-teacher ratios reporting for the years 2004-05 and 2005-06.” The Stipulation recites that “All non-SB 740 reconsideration issues in Chapter 1 of the MGT Report (all issues related to the calculation of full-time equivalent teachers and pupil-to-teacher ratio) will not be dismissed and will be heard before the Education Audit Appeals Panel.” (Stipulation, page 2, paragraph 3; see also page 3, paragraph 9.)

⁴ Education Code Section 41344.1(b) provides that “The Controller shall be a party to all appeals.” The Controller has not taken an active role.

⁵ In the usual matter, a motion to dismiss any part or all of an appeal is not favored, but the appellant should submit an appropriate withdrawal notice (which may be in the form of a letter) as provided in Title 5, Cal.CodeRegs, § 19804(b).

3. The question that remains is whether Gorman Charter is “required to repay” the amount identified in the audit report as overpayments resulting from “inaccurate financial data used for the SB 740 Funding Determinations” absent a decision by EAAP to reduce or eliminate the amount to be repaid. That is, even if EAAP were to make a determination on the accuracy of the financial data submitted by Gorman Charter, would Gorman Charter be required to repay the resulting amount or would the amount remain subject to adjustment?

4. To be eligible to receive funding for nonclassroom-based instruction, charter schools must submit a funding determination request for approval by the State Board of Education (SBE). (Title 5, Cal.CodeRegs, § 11963.2.) The funding request, commonly referred to as an “SB 740 funding determination,” requires the submission of various revenue and expenditure information and other data. Based on ratios determined from certain revenues and expenditures, and consideration of other information, the Advisory Commission on Charter Schools makes a recommendation to SBE to approve funding at a certain percentage level or to deny the request. The regulations adopted by SBE set benchmarks for recommendation of funding at the 70 percent, 85 percent, or 100 percent level, with each recommendation level subject to adjustment if “there is a reasonable basis to recommend otherwise.” After approving a multi-year funding request, SBE may modify the number of years or the percentage of funding “if any information that may change the conclusion to approve the original multi-year funding determination is found.” (Title 5, Cal.CodeRegs, § 11963.3; also see Educ. Code §§ 47612.5, 47634.2, and Title 5, CalCodeRegs, §§ 11963 and following.) This process places the ultimate determination of funding levels for nonclassroom-based instruction by charter schools within the discretion of SBE.

5. In addition to hearing audit appeals pursuant to sections 41344(d) and 41344.1(b) of the Education Code, EAAP adopts as Title 5 regulations the *Standards and Procedures for Audits of California K-12 Local Educational Agencies* (“audit guide;” Educ. Code § 14502.1). Audit procedures specifically related to charter school matters were added to the audit guide for audits of the 2005-06 fiscal year and following pursuant to Education Code Section 47634.2(d). Although the content of the audit guide does not circumscribe EAAP’s jurisdiction to hear audit appeals,⁶ the audit procedures set out in Title 5, Section 19853, Determination of Funding for Nonclassroom-Based Instruction, for verifying the accuracy of the information submitted in a charter school’s SB 740 funding determination request are instructive. If the auditor identifies inaccurate data, the procedures do not require that an overclaimed amount based on an unsupported funding level, if any, be identified and reported. Instead, the auditor is directed to “prepare a schedule displaying the inaccurate data and the corresponding correct data. Include the schedule in the Findings and Recommendations section of the audit report.”

⁶ For purposes of Ed. Code § 41344, subdivision (e) defines “audit or review” as “an audit conducted by the Controller’s office, an annual audit conducted by a certified public accountant ... pursuant to Section 41020, and an audit or review conducted by a governmental agency...” The audit guide sets out the programs and procedures required to be included in the annual audits conducted pursuant to Section 41020 (Ed. Code §§ 14503(a), 41020(g)(1)(A); Title 5, Cal.CodeRegs., § 19800).

6. Based on paragraphs 1 to 4 of the Factual Findings and paragraphs 1 to 5 of the Legal Conclusions, EAAP has no authority to determine whether a charter school may be “required to repay” any amount as a result of audit findings related to the information submitted to SBE on a charter school’s SB 740 funding determination request.

ORDER

EAAP makes no determination with regard to the recitations set forth in the Stipulation to Dismiss Portion of Audit Appeal with Prejudice. As to all portions of the audit appeal related to SB 740 funding determinations, this matter is dismissed effective 12-16-08 .

Date: 12-16-08

Original Signed

Diana L. Ducay, Chairperson
for Education Audit Appeals Panel

Appendix

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 Gorman Learning Center

8 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
 9 STATE OF CALIFORNIA

11 GORMAN LEARNING CENTER)

12 Appellant,)

13 v.)

14 OFFICE OF THE CONTROLLER, STATE OF)
 15 CALIFORNIA,)

16 Respondent,)

17 And)

18 DEPARTMENT OF FINANCE, STATE OF)
 19 CALIFORNIA,)

20 Intervenor.)
 21)

) EAAP Case No. 07-05
) OAH Case No. 2008050384

) STIPULATION TO DISMISS
) PORTION OF AUDIT APPEAL
) WITH PREJUDICE

) TRIAL DATE: OCTOBER 20-24, 2008
) TIME: 9:00 A.M.

) CASE FILED: APRIL 23, 2007

) JUDGE: HONORABLE MICHAEL SCARLETT

22 Pursuant to California Government Code 11415.60, the undersigned parties through their
 23 respective attorneys of record herein hereby stipulate, subject to approval of the Administrative Law
 24 Judge and the Education Audit Appeals Panel:

25 1. On April 23, 2007, Gorman Learning Center ("Charter School") filed for an appeal from
 26 the audit performed by MGT International ("MGT Report") and initiated by the Kern County
 27 Superintendent of School pursuant to Education Code Section 1241.5.
 28



1 2. All portions of the audit appeal related to SB 740 funding determinations will be
2 dismissed with prejudice; Charter School will submit its revised SB 740 funding application for 2003-
3 2004, certified by an accountant who will be approved by the State Controller on its published list as an
4 educational audit provider, to the California Department of Education ("CDE") by November 12, 2008
5 2008. The Charter School will subsequently submit its revised SB 740 funding applications for 2004-
6 2005 and then for 2005-2006 within 60 days after the State Board of Education ("SBE") has made a
7 determination regarding each previous year's funding. Nothing herein shall be construed to prevent the
8 Charter School from seeking reconsideration of any other SB 740 funding year determination.

9 3. All non-SB-740 reconsideration issues in Chapter 1 of the MGT Report (all issues related
10 to the calculation of full-time equivalent teachers and pupil-to-teacher ratio) will not be dismissed and
11 will be heard before the Education Audit Appeals Panel ("EAAP").

12 4. The Charter School will stipulate that the CDE, Advisory Commission on Charter
13 Schools ("ACCS"), and SBE will be the Charter School's sole and exclusive remedy for redressing any
14 issues regarding SB 740 funding reconsideration. The parties acknowledge and agree that CDE, ACCS,
15 and SBE will render SB 740 reconsideration decisions that the parties will accept as final for purposes of
16 SB 740 funding determinations and related apportionments addressed in the MGT Report. However,
17 nothing herein shall be construed as preventing the Charter School from seeking judicial relief to
18 challenge the CDE, ACCS, and SBE SB 740 funding reconsideration process or final result provided
19 that such relief may not be sought before EAAP.

20 5. The Charter School will take any and all steps necessary to move the SB 740 funding
21 reconsideration process along in a timely fashion following the submission of its data.

22 6. The Office of Administrative Hearings ("OAH") and EAAP will retain jurisdiction over
23 this Stipulation to ensure its enforcement.

24 7. This stipulation will not in any way prevent the Charter School from claiming hardship or
25 requesting a repayment plan for any ultimate apportionment finding.

26 8. Upon approval of this stipulation by OAH and EAAP, Appellant will dismiss its motion
27 to dismiss currently pending before OAH.

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9. The parties hereby enter into this stipulation that the portion of the pending audit appeal regarding SB 740 funding determinations be dismissed by the Administrative Law Judge and that the remaining parts of the appeal be remitted to the OAH for such further proceedings as are consistent with such dismissal.

Dated: 9-25-08

SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

By Original Signed

Paul C. Minney

Attorney for Appellant Gorman Learning Center

Dated: 9/25/08

DEPARTMENT OF FINANCE

Original Signed

By

Andrew Dhadwal

Attorney for Intervenor
Department of Finance