MEMORANDUM

Date: October 12, 2018

To: The County Board of Education

From: Bill Clark, Associate Superintendent

Regarding: Forensic Audit of Clayton Valley Charter High School

The Contra Costa County Office of Education (CCCOE) has reviewed the Forensic Audit of Clayton Valley Charter High School (Audit). The Audit was undertaken as a result of possible irregularities identified as part of the ongoing oversight of Clayton Valley Charter High School (CVCHS). The Audit was conducted by Christy White Associates in accordance with standards established by the American Institute of Public Accountants and Association of Certified Fraud Examiners. This memorandum was prepared to assist the County Board of Education as they consider additional actions they may choose to pursue based on the findings and recommendations of the Audit.

CCCOE acknowledges that since the release of the Audit, CVCHS responded to the Audit with an outline of the initial next steps taken, noting that almost all of the recommendations from the Audit either have been or will be implemented by CVCHS.

Executive Director Salary and Benefits

The salary of the former Executive Director (ED) totaled $301,212 annually and the position is for the management of one high school, which includes a full-time central office and site administrative staff. This salary exceeds those of all but one of the superintendents in Contra Costa County, which in most cases serve a greater number of students, sites and programs. The ED’s salary contract included an annual increase of three percent in addition to the annual salary settlement increase received by all other employee groups, an amount which was negotiated by the ED. Finally, an amendment to the ED’s compensation agreement added payments for health benefits and a car allowance to the base salary.
Recommended Action

The compensation for the future ED should be reviewed and set at a level competitive with positions with similar levels of responsibility. A compensation summary of the former ED should be prepared and submitted to CalSTRS to determine if benefit spiking has occurred.

CCCDOE noted that prior to hiring its new Executive Director, a compensation study was completed and presented to the CVCHS board during open session on August 8, 2018. The new Executive Director's salary totals $175,000 annually and is within 1% of the average salary found in the compensation study for roles of similar responsibility.

Chief Program Officer Salary and Benefits

In February 2017, the wife of the former ED was hired to fill the second highest compensated position in the organization. The organization chart included in the Audit indicates that the position reported to the ED. The position was filled without posting internally or externally. The ED's wife was paid $223,392 annually, an amount greater than that earned by many superintendents in Contra Costa County, bringing the combined salary for these two CVCHS positions to $524,604 annually.

Recommended Action

The individual and combined salary of the ED and his wife appear to represent the potential for the substantially improper use of charter school funds for the personal benefit of any officer (See Education Code 46704.5). This possible misuse of funds could be referred to the District Attorney, or other appropriate agency, for evaluation of possible violations of law.

Assistant Superintendent Salary and Use of Funds

In November 2017, the ED hired Ron Leone to the position of Assistant Superintendent. There is no superintendent position at CVCHS. The Assistant Superintendent position was created and filled without posting internally or externally, without conducting interviews or receiving board approval. Appointing Ron Leone to this newly created position went against the standing practice of the Board. At the time of his employment with CVCHS, Mr. Leone was running for the office of county superintendent of schools. His position at CVCHS was included as part of his employment credentials on his ballot statement. Mr. Leone resigned this position in June 2018 following the primary election.

Recommended Action

Hiring the Assistant Superintendent position creates the possibility of expending charter funds for political purposes. This possible misuse of funds could be referred to the District Attorney, or other appropriate agency, for evaluation of possible violations of law.
Potential Financial Irregularities

In 2015, CCCOE expended approximately $230,000 investigating practices and management issues at CVCHS. Some of the findings and recommendations developed at that time continue to be problems at CVCHS today. The clearest example is the continuation of poor procedural controls over the use of credit cards. Additionally, the justification for the prepayment of $706,273 to Charter School Management Company (CSMC) needs further investigation. This prepayment resulted in a loss of approximately $20,000 in interest income annually and should be investigated to determine if this is a transaction in which CVCHS and CSMC acted independently without having any relationship to each other.

Recommended Action

In August 2018, CVCHS contracted with Van Dermyden Maddux, an investigative firm specializing in forensic audit work, for the purpose of conducting an internal investigation (Internal Audit). This Internal Audit (or a new investigation if necessary) should include a complete audit of all credit card purchases, legal invoices and the services provided, identification of all funds transferred or paid to the former ED and/or his wife, including settlements, all expenditures of any kind used for the purpose of establishing other charter schools, if any, and all funds and activities, if any, used for political purposes. The contractual relationship with CSMC should be included as part of the CVCHS internal forensic investigation with the purpose of developing a complete record of how and why these prepayments were made and who, if anyone, benefited. Any overpayments that do not benefit CVCHS should be recovered.

CCCOE staff acknowledges that CVCHS is finalizing a memorandum of understanding with the Board of East Bay Tech Academy charter school to ensure all CVCHS funds are repaid.

Board Appointment and Control

The CVCHS Board appointment process may have been compromised. (See attached November 8, 2017 Notice to Cure communication) CVCHS Board bylaws were modified requiring all potential board candidates to be screened by a committee chaired by the former ED.

Recommended Action

Best practices for Board member selection should be studied. Board members should be selected in an open, competitive process from members of the community served by the charter school. Changes to the board election process could be a condition of the charters renewal petition, which will take place in the fall of 2019.

CCCOE noted that the CVCHS Board has acknowledged and is in agreement with County Staff regarding implementing shifts in board composition and is willing to engage with CCCOE
and the CCCOE Board of Education in an accelerated timeline for adjustments to the composition of the CVCHS Board.

Other Concerns

At the County Board of Education October 3, 2018 meeting, members of the community spoke about possible irregularities including the creation and use of hidden bank accounts, alteration of documents to conceal the transfer of funds and other unauthorized use of funds at CVCHS. These alleged transactions may have taken place outside of the period evaluated in the recently completed Audit.

Recommended Action

Members of the public should be encouraged to file a complaint with CVCHS using the internal complaint procedures. CVCHS should expand the scope of its investigation (or begin a new investigation if necessary) to address valid concerns raised by the public. CVCHS should permit the CCCOE to review public complaints and provide feedback to ensure these complaints are addressed. Findings and recommendations from any investigation should be made available to the Contra Costa County Board of Education, the CCCOE and the public at the completion of work.

CCCOE acknowledges that concerns regarding financial irregularities were examined in the Audit conducted by Christy White Associates. The Audit did not identify any administrators receiving disbursements from the cash disbursement process except for reimbursements with proper documentation. Additionally, the CCCOE monitors the financial activities of the charter school in accordance with state law and noted that all assets of CVCHS were verified and accounted for.
November 08 2017

VIA EMAIL & U.S. MAIL

David Linzey, Executive Director
Clayton Valley Charter High School
1520 Kirker Pass Road, Suite B
Clayton, CA 94517

Re: Notice to Cure Regarding Clayton Valley Charter High School Material Bylaw Amendments

Dear Mr. Linzey:

I am writing to you regarding Clayton Valley Charter High School’s (“CVCHS”) Bylaws. At its October 11, 2017 Board Meeting, the CVCHS Board agendized the amendment of existing Bylaws. Having reviewed the proposed changes to CVCHS’s Bylaws (“10-11-17 Bylaws”), I am writing to notify you that if CVCHS wishes to operate pursuant to those bylaws, CVCHS must first seek and receive approval from the County Board of Education.

The Education Code allows the authorization of charter schools only pursuant to an approved charter meeting all requirements under the Charter Schools Act. (Ed. Code, § 47605, et seq.) A charter school operating in contradiction to the material conditions, standards, or procedures set forth in its authorized charter has committed a material violation, and its charter may be revoked. (Ed. Code, § 46707, subd. (c)(1)(A).)

Further, CVCHS’s 2015-2020 charter (“Charter”) states that the school’s bylaws, “shall be maintained to remain consistent with the terms of this charter.” (Charter, at p. 79.) The CVCHS Charter defines the structure, composition, and mandatory qualifications for its Board Members. (Charter at pp. 79-82.) Those material requirements relate to CVCHS’s governance structure, which is a material element of any charter petition (Ed. Code, § 47605, subd. (b)(5)(E)), and which was discussed at length during CVCHS’s renewal process. The 10-11-17 Bylaws, however, make material changes to who is entitled to serve on CVCHS’s Board shifting control of six Board seats away from stakeholders.

The 10-11-17 Bylaws contain the following new language:

The Corporate Officers, in collaboration with the Elections Committee, shall determine in its sole and absolute discretion by a majority vote whether each candidate meets the qualifications set forth in Article VII, Section 4 [describing qualifications for the different classes of stakeholder representatives on CVCHS’s Board].

(Bylaws, at p. 6, Art. VII, Section 8.)

This new language allows CVCHS’s Corporate Officers unfettered discretion to prevent candidates from running for open positions, and even to prevent classes of stakeholders from
being represented as required under the Charter. (10-11-17 Bylaws, at p. 6.) Per its Charter, the CVCHS Board includes seats for:

Two (2) Certificated Teacher Representatives;

Two (2) Parent Representatives;

Two (2) At-large Representatives;

One (1) Classified Staff Representative;

One (1) Administrative Staff Representative; and

One (1) Retired Teacher Representative.

(Charter at p. 81.)

Of the nine Board Members identified, six of the seats must be filled through an election or vote of the stakeholders: Two Certificated Teacher Representatives, Two Parent Representatives; One Classified Staff Representative, and One Administrative Staff Representative. (10-11-17 Bylaws at pp. 4-6.) The remaining three seats are appointed by the Board. (Id.)

The amended bylaws allow the Corporate Officers to control the candidacy of a majority of the CVCHS Board, to prevent interested individuals from running, to prevent four different classes of stakeholders from voting on all interested candidates, and even to prevent four different classes of stakeholders from being represented. This level of consolidated control over the CVCHS Board was never contemplated by the County Board of Education and was never authorized. The amended language fundamentally impacts community and stakeholder involvement and has already been used to prevent an interested candidate from running for one of the Parent Representative seats.

Further, because the Corporate Officers are comprised of only three positions, with one of them being the Executive Director and a second position being appointed directly by the Executive Director, the new language effectively allows the Executive Director "sole and absolute discretion" to prevent individuals from running for open positions without justification or explanation. (See 10-11-17 Bylaws at p. 6.) As already noted, at least one individual has been precluded from running for a Parent Representative seat with no justification or explanation. This new restriction on stakeholder involvement is a material change.

As you know, when the County Board of Education considered CVCHS's petition for renewal, governance, transparency, stakeholder involvement, and community involvement were of particular import to the County Board, and were discussed at great length. The changes here undermine the authorized Charter's commitment to those issues. The amended bylaws constitute a material revision to the provisions of CVCHS's existing, approved Charter, which is in violation of Education Code 47606, subdivision (a)(1). These changes allow far-reaching and significant impacts to CVCHS's governance and must be brought to the County Board of Education for consideration.
CVCHS is now on notice that the 10-11-17 Bylaws require approval by the Contra Costa County Board of Education before they are valid and effective, and that any actions taken pursuant to the 10-11-17 Bylaws to date and relating to Board Member candidacy are void and not effective. CVCHS is also directed to remove the copy of the 10-11-17 Bylaws from its website and to cease its use of those bylaws until such time as they may be approved by the Contra Costa County Board of Education. As noted above, continued use constitutes a violation of a material term of CVCHS’s Charter and grounds for revocation.

I am sure that by bringing this to your attention the issue will be resolved quickly, and I appreciate your professional courtesy by providing a prompt response to this letter by **November 28, 2017** confirming:

(1) CVCHS will cease its use of the 10-11-17 Bylaws; and

(2) any actions taken pursuant to those bylaws is void and ineffective.

My Office is happy to coordinate with you to agendize County Board consideration of the 10-11-17 Bylaws at an upcoming meeting.

Sincerely,

Karen Sakata  
County Superintendent of Schools

cc: County Board of Education