REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 26, 2013

SCHOOL DISTRICT DATA	
School District: GATEWAY COMMUNITY CHARTERS, INC.	County: .....SACRAMENTO
Application Number:.....54/76505-00-004 and 006	School Name: ..... FUTURES HIGH
Total Enrollment (GATEWAY):..... 3,518	Project Grade Level:.....K-12
Financial Hardship: ..... ……N/A	

PURPOSE OF REPORT

To present the Gateway Community Charter's (Gateway) request for State Allocation Board (Board) approval to re-locate the Futures High School Charter School Facilities Program (CSFP) new construction project from the originally proposed school district-owned site to an alternate charter-owned site and rescind the companion rehabilitation application.

DESCRIPTION

In May 2008, Gateway received two CSFP Preliminary Apportionments for a combined new construction and rehabilitation project of Futures High. Previously (May 2007) Grant Joint Union High School District (GJUHSD) had entered into an agreement to allow Gateway to rehabilitate seven classrooms at a school district facility as a part of the CSFP project.

As a result of a reorganization election in November 2007, GJUHSD and several other districts merged into the newly created Twin Rivers Unified School District (TRUSD). Gateway and TRUSD have been in discussions for several years over the agreement for the long term use of the district facility. As of November 12, 2012, Gateway has been unable to negotiate the required Charter School Agreements with TRUSD for use of its site.

As an alternative, Gateway requested to move the new construction portion of the project to a charter-owned site and rescind the rehabilitation portion. Staff administratively denied Gateway's request for the relocation of the CSFP new construction portion of the Futures High project on the basis that a relocation of the project would no longer include a rehabilitation component. The loss of this project component would result in Gateway receiving funding for a project scope that is not consistent with the preference points previously awarded.

AUTHORITY

See Attachment A.

BACKGROUND

The CSFP permits a charter school (or school district filing on behalf of a charter) to apply for a Preliminary Apportionment (reservation of funds) for the construction of new facilities and/or rehabilitation of existing district-owned facilities that are at least 15 years old. To qualify for funding, a charter must be found financially sound by the California School Finance Authority (CSFA). The Preliminary Apportionment for a CSFP project must be converted within a four-year period to a Final Charter School Apportionment meeting all the School Facility Program (SFP) criteria, unless a single one-year extension is granted. Charter schools face unique challenges in completing school construction projects. Thus, the CSFP was designed to address these issues, including providing advance fund releases for design and site acquisition, and providing loans for up to the full 50 percent local matching share.

(Continued on Page Two)

BACKGROUND (cont.)

Due to the limited bond authority, the program incorporates competitive funding rounds and preference points to rank applicants. For each CSFP funding cycle held to date, the total requests for Preliminary Apportionments exceeded the available bond authority. Therefore, all applications were assigned points based on criteria established in statute and SFP Regulations. Additional preference points are awarded to applicants that would rehabilitate existing district facilities. New construction applications that are submitted in conjunction with a rehabilitation application at the same site receive the same amount of preference points awarded to a rehabilitation application, as both applications are part of one overall project.

In May 2008, Gateway received two Preliminary Apportionments for Futures High School under the CSFP. The two project components for this school included new construction application, 54/76505-00-004, and rehabilitation application, 54/75605-00-006. The projects were approved to be constructed at the former Pacific High School site where the Futures High School continues to operate today. This is a district-owned site, which at the time was part of the Grant Joint Union High School District (GJUHSD).

As required by regulation, Gateway had signed a rehabilitation agreement with GJUHSD to allow Gateway to rehabilitate classrooms at the former Pacific High School site as part of the CSFP project prior to approval of the Preliminary Apportionment. In July 2008, the GJUHSD was reorganized into the TRUSD. Since the reorganization, Gateway has been unable to enter into the required Charter School Agreements with TRUSD, preventing them from advancing their project.

In order to proceed with these two projects, Gateway must enter into a use agreement with TRUSD for use of the former Pacific High School site. The CSFP requires charter schools to have a use agreement for use of the district-owned site before a fund release can be approved. Gateway states that it has made multiple attempts to negotiate a use agreement with TRUSD for the Pacific High School site and has been unsuccessful in meeting this requirement.

Gateway currently holds title to another site where it will construct a separate CSFP new construction project for a different school, Higher Learning Academy (54/76505-00-001 and 54/76505-00-008). Gateway is requesting to move the new construction portion of the Futures High School project to the Higher Learning Academy site, which would allow them to move forward with the new construction portion of the project without having to enter into a use agreement with the TRUSD. The alternate site does not contain any district-owned facilities and the need for the rehabilitation component of the project would no longer exist. Consequently, the rehabilitation application would have to be rescinded.

On November 5, 2012, Gateway submitted a request to the Office of Public School Construction (OPSC) for approval to relocate the project to the alternate site owned by Gateway. The OPSC administratively denied Gateway's proposed site relocation because the new construction project would not have received enough preference points to be funded if it had originally been submitted without the rehabilitation component of the project. As a result of the OPSC's administrative denial, Gateway filed the Appeal Request (Form SAB 189) on March 19, 2013. A timeline of relevant dates and events pertaining to the life of the Futures High project is included as Attachment B.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS

CHARTER SCHOOL POSITION

Gateway presented the following statements for consideration in the Appeal Request, which is included as Attachment C:

1. "GCC [Gateway Community Charter] initiated the request to re-locate the project after four years of unsuccessful attempts to negotiate the required long-term lease agreement with Twin Rivers Unified School District 'TRUSD' at the existing district school site. TRUSD's unwillingness to execute a long-term use agreement with GCC is not within GCC's control…"

2. "There is no 'unfair funding advantage.' GCC has not 'chosen' to move to a new site and eliminate the rehabilitation project (and thus forgo 40 preference points related to the rehabilitation project). Without a long-term use agreement signed by the District, we are blocked from proceeding with the Futures rehabilitation project, as it can only be completed on the TRUSD site."

3. "Due to the limited time remaining under the CSFP to proceed with the Futures High New Construction project, we believe our only option is proposing to move forward with the project at a site already owned by GCC. … GCC understands that it is a priority of the SAB to fund and construct shovel-ready projects, and GCC is proposing a means by which it can proceed with the Futures New Construction project in a timely manner consistent with OPSC deadlines."

STAFF POSITION

Charter School Agreements

CSFP rehabilitation projects rehabilitate existing school district facilities and therefore must be located on district-owned sites. However, before a charter school can receive funding for a project on a district-owned site, it must enter into a use agreement and a memorandum of understanding with the district. Up to this point, Gateway states that it has been unable to negotiate the required use agreement with TRUSD as demonstrated in the timeline in Attachment B. Charter schools have the option to request to hold title to the site for new construction projects. By holding title, the charter school does not need to have the district included in the agreements. Gateway could achieve this result by moving the Futures School to its own site.

Combined CSFP New Construction and Rehabilitation Projects

When a charter school submits CSFP applications for new construction and rehabilitation at a single site, the applications are paired and processed as a single project with the understanding that the two applications are necessary for one *project*. This process assists charter schools who may have access to some district-owned facilities, but need additional classrooms to make use of the site offered by the district. Submitting two separate funding applications is necessary to provide the applicant with the full complement of grants for which the project qualifies: rehabilitation grants, which are calculated on a per square foot basis and provided for the existing facilities; and new construction grants, which are calculated on a pupil grant basis and provided to add new capacity to a site. Preference points are awarded for the project as a whole, based on the components of both the new construction and rehabilitation portions.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

Program & Funding Impact
Preference points are only calculated at the time a charter school applies for a Preliminary Apportionment. These applications are processed by the OPSC as a snapshot in time when the application is submitted. The points are not recalculated when a charter school converts to a Final Charter School Apportionment. The Education Code (EC) defines the criteria by which Preliminary Apportionments are to be determined and the areas to be rated for preference points when requests exceed available authority. EC Section 17078.56 states in part:

> (a) The board … shall make preliminary apportionments only to financially sound applicants in accordance with all of the following criteria: …
> (b) … the board shall… give a preference to charter schools in overcrowded school districts, charter schools in low-income areas, charter schools operated by not-for-profit entities, *and charter schools that utilize existing school district facilities*. (emphasis added)

The law does not address any continued requirements that must be maintained before conversion to a Final Charter School Apportionment. Gateway met all of the necessary requirements at the time of application submittal. However, if Gateway moves the project to the new site and does not include the rehabilitation of district-owned facilities, the project would no longer be connected to the rehabilitation component, which generated the 40 preference points that were a determining factor that allowed it to receive a Preliminary Apportionment.

Had this project come in as a standalone new construction project, it would not have received enough preference points to receive a Preliminary Apportionment. A different charter school project that did not qualify for a Preliminary Apportionment would have been funded in its place. It is unfortunate that the attempts to negotiate the necessary use agreement have been unsuccessful. Despite extenuating circumstances, from a program perspective Staff's concern is that if rehabilitation work was only a concept necessary for purposes of receiving a Preliminary Apportionment and did not need to result in actual rehabilitation, allowing the current request could set precedence for the program in the future.

Required Approvals
Gateway has already received a recommended site size approval from the California Department of Education (CDE) to construct both the Futures High School and Higher Learning Academy projects on the same site in the event a location change is allowed for the new construction project. Based on the information provided by Gateway, CDE confirmed the acreage of the Higher Learning Academy site will be adequate to support the proposed enrollment of both schools. This site adequately accommodates the ten classrooms to be constructed by the new construction project. Gateway must also obtain DSA-approved plans in order to submit an *Application for Funding* (Form SAB 50-04) to convert the project to a funded apportionment.

Previous Action
In the past, OPSC has only allowed alterations to an application that would not change the number of points awarded based on the original qualifying criteria. For example, in 2011, the OPSC had allowed the Language Academy of Sacramento to relocate a proposed site within the Sacramento City Unified District. However, in this scenario, the relocation of the proposed site did not affect any of the funding categories that generated preference points used to determine the Preliminary Apportionment funding order.

(Continued on Page Five)

STAFF ANALYSIS/STATEMENTS (cont.)

Alternate Solutions
The current deadline for Gateway to convert their Futures High School apportionments is November 13, 2015, which does not include the possible one-time, one-year extension to November 13, 2016. If Gateway's request is not approved they could continue to pursue the use agreement with TRUSD. However, Gateway will be unable to access planning funds through a design fund release until the use agreement is executed.

Conclusion
If the Board approves Gateway's request to relocate to the alternate site, the rehabilitation portion of the project would be rescinded. The resulting rescission would return $970,420 in bond authority to the CSFP, and a charter school program would continue at an alternate site with minimal additional change of scope. Staff's initial concern was that by removing the rehabilitation project, Gateway would receive funding for the remaining new construction project which would not have received a Preliminary Apportionment without the rehabilitation component. However, this situation is unique and unanticipated in the CSFP statute or regulations. Therefore, Staff is seeking Board direction.

BOARD OPTION

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following option for the Board's consideration. A positive vote by six members is required for the Board to take action that is an alternative to Staff's administrative action. Absent a positive vote by six members of the Board, Staff's administrative action will stand and the school district's appeal will be considered closed."

Grant the Gateway Community Charter's appeal.

BOARD ACTION

In considering this Item, the SAB approved the District's request to: 1) relocate the Futures High School Charter School Facilities Program new construction project from the originally proposed school district-owned site to an alternate charter-owned site; and 2) rescind the companion rehabilitation application.

ATTACHMENT A
AUTHORITY

Education Code Section 17078.56:

(a) The board, in consultation with the authority, shall approve projects pursuant to this article as otherwise set forth in this chapter, and shall make preliminary apportionments only to financially sound applicants in accordance with all of the following criteria:
(1) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various geographical regions of the state.
(2) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of urban, rural, and suburban regions of the state.
(3) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of large, medium, and small charter schools throughout the state.
(4) The board shall seek to ensure that, when considered as a whole, the applications approved pursuant to this article are fairly representative of the various grade levels of pupils served by charter school applicants throughout the state.
(b) While ensuring that the requirements of subdivision (a) are met when considering all approved projects under this article as a whole, the board shall, within each factor of the criteria set forth in subdivision (a), give a preference to charter schools in overcrowded school districts, charter schools in low-income areas, charter schools operated by not-for-profit entities, and charter schools that utilize existing school district facilities.

SFP Regulation Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:
…
"Charter School" shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.
"Charter School Agreements" mean a memorandum of understanding, a funding agreement and a use agreement as established by the California School Finance Authority (CSFA).
"Charter School Facilities Program Rehabilitation" shall mean work that includes, but will not be limited to, structural changes or other types of work on an existing district facility that extends the useful life of or enhances the physical environment of the school, as provided in Education Code Section 17078.58(a).
…
"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.
"Preliminary Apportionment" means an apportionment made pursuant to Education Code Section 17078.10(c).
…
"Preliminary Charter School Application" means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.
"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(d)(3).

SFP Regulation Section 1859.163.4 - Preliminary Charter School Rehabilitation Apportionment Eligibility Criteria.

A Charter School or School District may apply for a Preliminary Charter School Rehabilitation Apportionment by submittal of Form SAB 50-09 if all of the following requirements are met:
(a) The application includes existing school buildings made available by a school district; and,
(b) The application includes classrooms that are at least 15 years of age at the time of submittal; and,
(c) The facilities included in the application were not previously built or modernized with SFP funds; and,
(d) For a Charter School applying on its own behalf, the application must include an agreement between the school district and the charter school for the use of the facilities to be rehabilitated. The agreement must

have been approved prior to submittal of application and must have been discussed and approved at the school district board meeting.
The age of the facilities shall begin 12 months after the plans for the building were approved by the DSA; or in the case of facilities that were previously modernized under the LPP, the 15 year old period shall begin on the date of its previous modernization apportionment.

SFP Regulation Section 1859.164 Application Funding Criteria.

If the estimated total apportionments of all Financially Sound Preliminary Charter School Applications received in either filing period specified in Section 1859.161 exceed the funds available, the applications shall be identified in each of the following four categories:
(a) Geographical Region One, Two, Three, or Four.
(b) Urban, Rural, or Suburban areas.
(c) Large, Medium, or Small Charter Schools.
(d) K-6, 7-8, or 9-12 grade levels.
The Board shall first apportion one project of each possible type, a maximum of four in category (a) and a maximum of three in categories (b) through (d), starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points, calculated in Section 1859.164.1. If a project has the highest preference points but was previously apportioned, the project with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), or until no funding remains. If after funding one project in each category (a) through (d), funding remains available, the process shall be repeated until no funding remains. All funds approved as a Preliminary Charter School Apportionment shall be transferred to the Restricted Charter School Fund within the appropriate Charter School Facility Account. Any funds not approved as a Preliminary Charter School Apportionment shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account. All Preliminary Charter School Applications received from a Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same entity for a Charter School project located within the geographical jurisdiction of same district, those applications will be processed by the OPSC based on the priority order assigned to those applications by the applicant on Form SAB 50-09. If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. In the event that the applications were received on the same day, applications will be funded in the following order:
(a) Projects submitted by entities that have not previously received funding under the SFP, the CSFP or the State Charter School Facilities Grants Incentives Program will be funded before those that have received said funding;
(b) Projects proposing to utilize existing facilities will be funded before projects that propose to build new facilities;
(c) As applicable, projects that provide more seats to relieve overcrowding will be funded over those that provide fewer seats (as determined by dividing the number of un-housed pupils pursuant to Section 1859.50 that the project will house by the remaining new construction eligibility in the district); In the event that a tie remains after the previous criteria have been applied, a lottery system will be used to select the project that is funded. Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

ATTACHMENT A
AUTHORITY

SFP Regulation Section 1859.164.1 - Calculation of preference points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), (c) and (d), up to a maximum of 160 points, as follows:

(a) Low Income: Up to 40 points based on the percentage of pupils at either the Charter School or school district where the Charter School is or will be located, or any public school within the Charter School General Location meeting the definition of Low-income. The Charter School may report the highest percentage of the three. Use the following sliding scale to determine the number of reference points:

[Chart omitted]…

(b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment and multiplying the product by 100. The following sliding scale determines the maximum number of preference points available for the degree of overcrowding:

[Chart omitted]…

The method of allocating preference points to applicants will utilize the percentage overcrowded chart for a maximum point distribution. Next, each application will be assigned an "effort" percentage which further allocates points within each overcrowding point category. The percentage generated by the number of un-housed pupils that the project will house, divided by the project capacity will represent the effort made to relieve overcrowding in the district. The "effort" percentage will be assigned the following point distribution:

[Chart omitted]…

The total points assigned for overcrowding will be calculated by applying the appropriate "effort" percentage and its corresponding ratio of points to the percentage overcrowded category for the district in which the project will be physically located.

(c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 40 preference points.

(d) Existing Facilities: If the project proposes to rehabilitate existing facilities, the project will receive 40 preference points.

SFP Regulation Section 1859.165 - Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

(a) The Final Charter School Apportionment request must meet all criteria on the Form SAB 50-04.

(b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04. The number of pupils being requested cannot exceed the amount the Charter School originally requested and received at the Preliminary Charter School Apportionment. If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

ATTACHMENT B

Timeline of Events:

- **December 6, 2006** – Sacramento County Committee on School District Organization approved the plan to merge Grant Joint Union High School District (GJUHSD), Rio Linda Union School District, Del Paso Heights School District, and the North Sacramento School District.
- **May 29, 2007** – GJUHSD Assistant Superintendent of Facilities Operations sends letter to Gateway confirming that the District would provide facilities (seven classrooms) at the Campos Verdes (Pacific High) site for the purpose of requesting funding for rehabilitation of these facilities under the Charter School Facilities Program (CSFP).
- **June 5, 2007** – Gateway submits *Application for Charter School Preliminary Apportionment* (Form SAB 50-09) to the OPSC.
- **July 18, 2007** – GJUHSD approves Gateway Community Charter to construct new construction and rehabilitation projects at the Pacific High School site.
- **November 2007** – Voters approve Measure B which merges GJUHSD, Rio Linda Union School District, Del Paso Heights School District, and the North Sacramento School District, creating the new Twin Rivers Unified School District (TRUSD).
- **May 28, 2008** – Board approval of Preliminary Apportionments for both Futures High School new construction and rehabilitation projects (54/76505-00-004 and 54/76505-00-006).
- **June 15, 2008** – Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **July 1, 2008** – TRUSD assumes operational responsibility for four merged school districts.
- **July 18, 2008** - Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **November 21, 2008** - Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **February 26, 2009 -** Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **March 18, 2009 -** Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **April 24, 2009 -** Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **June 8, 2009 -** Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **August 2009 –** Gateway is made aware of pending Senate Bill SB 592, which proposed a means by which a charter school can hold title to property. Gateway continues negotiations with TRUSD.
- **August 7, 2009** - Gateway meets with TRUSD to negotiate long-term use agreement for Futures High School.
- **December 2010 –** Gateway continues negotiations with TRUSD for use agreements and/or purchase of a district-owned site.
- **January – February 2011** – Gateway conducts approximately six conference calls with TRUSD to negotiate use agreement for Futures High project.
- **December 14, 2011** – Board approves Gateway's petition to hold title to a new site for the Higher Learning Academy.
- **September 20, 2012** – The California Department of Education (CDE) issues revised recommended site size letter to include Futures High enrollment of 250 pupils on the Gateway-owned Higher Learning Academy site.
- **November 5, 2012** – Gateway submits request to the Office of Public School Construction (OPSC) to relocate the Futures High School new construction project to the charter-owed site.
- **February 4, 2013** – OPSC administratively denies Gateway's request to relocate the Futures High School new construction project to the Gateway-owned site.
- **March 18, 2013** – Gateway Superintendent meets with TRUSD Assistant Superintendent, who confirms that TRUSD and Gateway have been, and continue to be, unable to come to resolution on any of the necessary CSFP agreements for the Higher Learning Academy and Futures High School CSFP projects.
- **March 19, 2013** – Gateway submits appeal to OPSC.
- **November 13, 2015** - Due date for Gateway to submit the Form SAB 50-04 for applications (54/76505-00-004 and 54/76505-00-006) to convert to Final Charter School Apportionment.

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Gateway Community Charters, Inc.	54/67363-020004
SCHOOL NAME	COUNTY
Futures High School (NC Project)	Sacramento
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Dr. Cindy Petersen	cindy.petersen@twinriversusd.org

Purpose of Request:

Gateway Community Charters ("GCC") seeks the SAB's approval to re-locate the Futures High School New Construction Project from the originally proposed school district site to a site owned by the charter school, due to a unification of the school district which resulted in a new administration that has not agreed to enter into a long-term lease with GCC, which is required to proceed with GCC's Futures High CSFP application at the existing school site.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☒ Other (specify) good faith and events beyond GCC control

Description:

This SAB 189 appeal responds to OPSC's letter dated February 4, 2013, denying GCC's request to re-locate the Futures High School New Construction project to a site owned by GCC. GCC initiated the request to re-locate the project after four years of unsuccessful attempts to negotiate the required long-term lease agreement with Twin Rivers Unified School District ("TRUSD") at the existing district school site. TRUSD's unwillingness to execute a long-term use agreement with GCC is not within GCC's control, as described in the attached letter and its Exhibits A and B. We ask staff and the State Allocation Board to examine the circumstances and the timeline leading up to this appeal, taking into account that GCC has acted in good faith to meet all the requirements of the Charter School Facility Program ("CSFP") with respect to its Futures High applications that were submitted to OPSC in June of 2007 and that received preliminary apportionments in May of 2008. Through no fault or lack of effort on GCC's part, despite four years of negotiations, we are blocked from constructing the projects on the planned site without a TRUSD-approved long-term use agreement.

There is no "unfair funding advantage." GCC has not "chosen" to move to a new site and eliminate the rehabilitation project (and thus forego 40 Preference Points related to the rehabilitation project). Without a long-term use agreement signed by the District, we cannot proceed with the Futures rehabilitation project, as it can only be completed on the TRUSD site. The original school location is not a viable option as GCC cannot force the District to change its position. It is a unique (and potentially harmful) quirk of the CSFP that, unlike a traditional school district, a charter school is not always in control of its ability to comply with a CSFP requirement, but must depend on its affiliated LEA to satisfy certain requirements, such as the long-term use agreement. GCC understands that it is a priority of the SAB to fund and construct shovel-ready projects, and GCC is proposing a means by which it can proceed with the Futures New Construction Project in a timely manner consistent with OPSC deadlines. Since early 2007, GCC has acted in good faith and invested a significant amount of work and time into planning and preparing to embark on this new construction project for Futures High School.

In consideration of GCC's good faith and earnest efforts to comply with all requirements of the CSFP grant, and GCC's numerous attempts to negotiate a long-term use agreement with TRUSD, GCC respectfully requests that GCC should not be penalized (and lose its place in priority funding order) due to the District's unwillingness to sign a use agreement with GCC. Please allow GCC to proceed with the Futures New Construction Project at the proposed alternate site. Gateway Community Charters is appreciative of your efforts to assist us in exploring various options to proceed with our Proposition 1D Futures High New Construction Project. Please review the attachments. GCC staff and consultants are available to answer any questions.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
Cindy L. Petersen	3.15.13

ATTACHMENT C

March 15, 2013

Tracy Sharp
Supervisor, Policy and Special Projects Team
Office of Public School Construction
707 Third Street, 4th Floor
West Sacramento, CA 95605

Bill Savidge
Assistant Executive Officer
State Allocation Board
707 Third Street, 4th Floor
West Sacramento, CA 95605

Re: Gateway Community Charter's Appeal Request to Move the Futures New Construction Project (54/76505-00-004) to the Higher Learning Academy Site

Dear Ms. Sharp, Mr. Savidge, and Members of the State Allocation Board:

Re: SAB 189 Appeal for relocation of Futures High New Construction Project (54/76505-00-004) to the Gateway Community Charters' Higher Learning Academy Site

This letter responds, with the attached SAB 189 appeal, to OPSC's letter dated February 4, 2013, denying GCC's request to re-locate the Futures High School New Construction project to a site owned by GCC. GCC initiated the request to re-locate the project after four years of unsuccessful attempts to negotiate the required long-term lease agreement with Twin Rivers Unified School District ("TRUSD") at the existing district school site. TRUSD's unwillingness to execute a long-term use agreement with GCC is not within GCC's control, as described below. We ask staff and the State Allocation Board to examine the circumstances and the timeline leading up to this appeal, taking into account that GCC has acted in good faith to meet all the requirements of the Charter School Facility Program ("CSFP") with respect to its Futures High applications that received preliminary apportionments in May of 2008. Through no fault or lack of effort on GCC's part, despite four years of negotiations, we are blocked from constructing the projects on the planned site without a TRUSD-approved long-term use agreement. Due to the limited time remaining under the CSFP to proceed with the Futures High New Construction project, we believe our only option is proposing to move forward with the project at a site already owned by GCC.

Futures High School is currently located at an existing TRUSD school site at 3701 Stephens Drive in North Highlands under a short-term agreement. When GCC's CSFP project applications were submitted to OPSC on June 5, 2007, the school site was under the control of Grant JUHSD, and the Grant District was amenable to entering into a long-

term use agreement with Gateway Community Charters for charter school use. The CSFP requirement of a long-term use agreement had been discussed and agreed to between the Grant JUHSD Assistant Superintendent of Facilities Operations and GCC staff, prior to submission of the GCC applications for CSFP funding. At that time, it was understood by both parties that Grant JUHSD would cooperate in executing the required use agreement. In addition, Grant's Assistant Superintendent of Facilities Operations confirmed with GCC in a writing dated May 29, 2007 that the District would provide District facilities to GCC at this site, and that GCC would be rehabilitating facilities at the site under the CSFP. At the time the Futures applications for CSFP funding were filed (June of 2007) and also when the applications were preliminarily apportioned (in May of 2008), GCC staff had no reason to imagine that any problems would arise relating to the required use agreement. A letter from the former Grant JUHSD Assistant Superintendent of Facilities Operations verifying this information is attached as **Exhibit A**.

Following Grant JUHSD's absorption into TRUSD upon unification in July 2008, GCC has attempted, on numerous occasions, to negotiate long-term use agreements with TRUSD (both with respect to the Higher Learning Academy and Futures High projects), to no avail. Over the past 4-1/2 years, GCC has made overtures to various members of TRUSD's staff to address this matter, with no success. Without an executed long-term use agreement, GCC is ineligible to apply to OPSC to convert its preliminary apportionment and receive design and planning funds for the Futures projects at the originally intended site. The original school location is not a viable option as GCC cannot force the District to change its position. It is a unique (and potentially harmful) quirk of the CSFP that, unlike a traditional school district, a charter school is not always in control of its ability to comply with a CSFP requirement, but must depend on its affiliated LEA to satisfy certain requirements, such as the long-term use agreement. GCC asks the State Allocation Board not to penalize GCC and its students for the unanticipated lack of willingness by the successor district to enter into a long-term use agreement.

We request that the State Allocation Board permit GCC to move forward with the Futures New Construction Project at the existing site owned by GCC. The California Department of Education ("CDE") has reviewed GCC's proposal to locate the Futures High School New Construction Project on the nearby site owned by GCC, and CDE modified its contingent site approval letter for Higher Learning Academy, to note that this GCC-owned site is adequate to support the proposed enrollment of Higher Learning Academy as well as the Futures High enrollment. CDE's Recommended Site Size Letter, is attached as **Exhibit B**. Additional information about the GCC site can be provided.

There is no "unfair funding advantage." ***GCC has not "chosen" to move to a new site and eliminate the rehabilitation project (and thus forego 40 Preference Points related to the rehabilitation project). Without a long-term use agreement signed by the District, we are blocked from proceeding with the Futures rehabilitation project, as it can only be completed on the TRUSD site.*** GCC understands that it is a priority of the SAB to fund and construct shovel-ready projects, and GCC is proposing a means by which it can proceed with the Futures New Construction Project in a timely manner consistent with OPSC deadlines. Since early 2007, GCC has acted in good faith and invested a significant amount of work and time into planning and preparing to embark on this new construction project for Futures High School.

In consideration of GCC's good faith and earnest efforts to comply with all requirements of the CSFP grant, and GCC's numerous attempts to negotiate a long-term use agreement with TRUSD, GCC respectfully requests that GCC should not be penalized (and lose its place in priority funding order) due to the District's unwillingness to sign a use agreement with GCC. Please allow GCC to proceed with the Futures New Construction Project at the proposed alternate site. Gateway Community Charters is appreciative of your efforts to assist us in exploring various options to proceed with our Proposition 1D Futures High New Construction Project. I am available to answer any questions. Thank you.

Sincerely,

Cindy L Petersen

Cindy Petersen, Ed.D
Superintendent/CEO
Gateway Community Charters

Attachments: Exhibit A and Exhibit B; cc: Erin Cunneen

EXHIBIT A

February 25, 2013

Tracy Sharp
Supervisor, Policy and Special Projects Team
Office of Public School Construction
707 Third Street, 4th Floor
West Sacramento, CA 95605

Bill Savidge
Assistant Executive Officer
State Allocation Board
707 Third Street, 4th Floor
West Sacramento, CA 95605

Re: Gateway Community Charter's Appeal Request to Move the Futures New Construction Project (54/76505-00-004) to the Higher Learning Academy Site

Dear Ms. Sharp, Mr. Savidge, and Members of the State Allocation Board:

My name is John Raymond and I write to support Gateway Community Charters ("GCC") request to relocate the Futures Proposition 1D Charter School Facility Program 10-classroom New Construction project (grades 9-12) to GCC's site at 4525 May Street, in Sacramento. I understand that after Grant Joint Union High School District was absorbed into Twin Rivers USD upon unification in July 2008, GCC has made several unsuccessful attempts to negotiate a long-term use agreement with Twin Rivers USD, and the use agreement is required for participation in OPSC's Charter School Facility Program.

I am currently retired, but at the time the Futures High School CSFP applications were submitted to OPSC on June 5, 2007, I was Grant Joint Union High School District's Assistant Superintendent for Facilities Operations. The Futures High school site at 3701 Stephens Drive was a Grant school site, and Grant was supportive of GCC constructing its proposed Futures High School New Construction Project and the related Rehabilitation Project at this site.

Before the Futures High applications were submitted to OPSC, I had discussed with Dr. Cindy Petersen (Superintendent of GCC) that Grant intended to enter into a long-term use agreement with GCC for charter school use. When the Futures High applications were submitted, it was understood by both parties that, at the appropriate time, Grant would cooperate in executing the required long-term use agreement. Also, I confirmed with GCC in a letter dated May 29, 2007 that the District would provide certain facilities to GCC at this site, and GCC would be applying for funding to rehabilitate those facilities under the CSFP. A copy of that letter is provided on the next page. Our district superintendent and board supported cooperating with GCC to proceed with these projects. GCC staff had no reason to anticipate that any problems would arise relating to the required use agreement. With the changed circumstances, obtaining a use agreement appears to be beyond GCC's control. Please do not penalize the charter school and its students for the new district's unwillingness to execute this agreement. Utilizing the site owned by the GCC is a reasonable alternative that should be considered.

Sincerely,

John Raymond
Assistant Superintendent of Facilities Operations **(Retired)**
Grant Joint Union High School District

ATTACHMENT C

GRANT JOINT UNION HIGH SCHOOL DISTRICT
FACILITIES OPERATIONS DIVISION

Diamond Jubilee

John H. Raymond, Assistant Superintendent
1333 Grand Avenue, Building C, Sacramento, CA 95838
P: (916) 286-4950 F: (916) 286-4944 E: johnraymond@grant.k12.ca.us

May 29, 2007

To Whom It May Concern:

The Grant Joint Union High School District has agreed to provide an additional seven (7) classrooms at Campos Verdes (Pacific High) site, 3701 Stephen Drive, North Highlands, CA 95660-4532 to the Grant Community Charters, Futures High School Charter. It is understood that the Charter School will apply for funding to rehabilitate the classrooms. A site plan of the affected spaces is attached.

Sincerely,

John H. Raymond
Assistant Superintendent
Facilities Operations Division

Attachment: Site Plan

Grant Community Charters, Inc. will apply for funding to rehabilitate the seven (7) classrooms at Futures High School referenced above.

Jason Sample
President
Grant Community Charters, Inc.

EXHIBIT B

JACK O'CONNELL
State Superintendent of
Public Instruction
PHONE: (916) 319-0800

CALIFORNIA
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

September 20, 2012

Ms. Cindy Peterson
Gateway Community Charters, Inc.
5712 Dudley Blvd.
McClellan, Ca 95652

RE: Higher Learning Academy – revised to include Futures High enrollment of 250 pupils

Dear Ms. Peterson:

This letter is to confirm information that is relevant to the Application for Charter School Preliminary Apportionment, SAB 50-09, as part of the procedure for the Charter School Facility Program. In the instructions for the preliminary apportionment application package to be submitted to the Office of Public School Construction, the charter school is to enclose a copy of the California Department of Education (CDE) recommended site size letter. As relayed to our office, the information available at this point for the proposed project is as described in the following paragraph.

The applicant charter school, or district submitting on behalf of the charter school, has described the project as serving grade levels K-12. The proposed master plan capacity of the project is for 900 students. Based on the submitted information, the CDE recommends a site size of 33.3 total acres for the project. The existing site, which received a contingent site approval on April 7, 2011, is comprised of 21.7 acres, which represents 65 percent of the recommended site size for the enrollment stated above. Based on the program discussion included in the submittals to CDE, the acreage will be adequate to support the proposed enrollment.

If you require any further information, please contact me by phone at (916) 445-5657 or by e-mail at lolukoya@cde.ca.gov.

Sincerely,

Liese W. Olukoya

Liese W. Olukoya, Consultant
School Facilities Planning Division

THIS PAGE INTENTIONALLY LEFT BLANK