

Editor's note: In the following report on KIPP Academy, Fresno Unified School District blacked out the names of students and parents. Pages 19-20 contain potentially offensive language.

**NOTICE TO CURE AND CORRECT
VIOLATIONS**

December 11, 2008

To: Nolan Highbaugh
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From: Fresno Unified School District, Chartering Authority

WHEREAS, Fresno Unified School District (hereinafter "the District" or "FUSD") received multiple complaints from students' parents at KIPP California Schools/KIPP Academy Fresno Charter School (hereinafter the "Charter School") in April, May, and June of 2008; and

WHEREAS, the District, as chartering authority of the Charter School, responded to the parents' complaints by initially turning the complaints over to the Charter School's Board. The Chairman of the Board informed the District that it was unable to conduct an effective investigation. Accordingly, the District initiated an investigation into the complaints. The investigation included numerous interviews with current and former parents, students, teachers, board members, and the principal of the Charter School. The investigation is completed and the investigator, Dan Brake, has prepared a report ("Investigation Report").

NOW, THEREFORE, based on the results of the investigation and pursuant to California Education Code § 47607(d), the District hereby issues to KIPP Academy Fresno Charter School (hereinafter "the Charter School") NOTICE TO CURE AND CORRECT violations of the law and/or Charter which must be corrected to avoid further action.

BACKGROUND

The District has responded to numerous incidents occurring at the Charter School over the last four years. In the 2004-2005 school year, the District was informed that Johnny Nellum of the NAACP had visited the school with concerns about student treatment at the Charter School. The District made an inquiry, and counseled the School Administrator, Chi Tschang, that the conduct alleged was inappropriate. After other incidents came to the attention of the District, which included allegations of mistreating students, forcing students to walk home from school, and leaving a student to walk three miles to school, the District took further action. The District met with a member of the KIPP Foundation and Mr. Tschang to discuss the appropriate treatment of students. The District also sent a representative to several Charter School Board meeting in an effort to monitor the Charter School's progress. To improve the Charter School's treatment of students, the District insisted that the Board respond to the allegations, and the District requested a copy of the Board's written resolution to the incidents alleged.

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In the 2005-2006 school year, the District engaged the Charter Schools Development Center ("CSDC") to review the Charter School's compliance with the Charter and with California and federal statutes and regulations. Based on the CSDC's written report, the District followed up to ensure the Charter School complied with the CSDC's recommendations. That same school year, the District had a representative attend a parent meeting, after which the District required the Charter School to develop a Parent Handbook that adequately outlined the discipline policies of the Charter School as well as procedures for complaints by parents against the Charter School. The District also met with Mr. Tschang that year regarding proper student discipline.

In the 2006-2007 school year, the District's representative met with the Charter School's Board and discussed the Board's role and responsibilities. Recognizing that the Board did not have an understanding of its role and responsibilities, the District arranged for the Board to receive training in these matters.

Problems with the Board continued in the 2007-2008 school year. The Charter School Board evaluated Mr. Tschang's performance as the Charter School Administrator. Based on the evaluation, the Board requested Mr. Tschang to take specific actions to address the Board's findings. The Board received little to no response from Mr. Tschang on several of the requests. Further, after the District delivered complaints about the Charter School that were received directly by the District, the Board informed the District that it had no control over Mr. Tschang's actions as School Administrator, could not effectively change or discipline Mr. Tschang, and was informed by the KIPP Foundation that even though the Board wanted to remove Mr. Tschang, that they had no authority to do so as a removal would cause the Charter School to no longer be a KIPP charter. In essence, the termination of Tschang would cause the charter school to close given the charter would no longer be in effect as written. The majority of the Board resigned shortly thereafter.

That same school year, based on parent concerns about the psychological and emotional well-being of students, the District offered to provide the Charter School staff with training by a school psychologist to help identify students with psychological and emotional problems so they could receive appropriate help. Mr. Tschang refused the offer.

A District representative was also called to the school after receiving information that Mr. Tschang was punishing students who had shoplifted at a nearby convenience store by forcing them to stand outside. Upon arrival at the school, the District's representative found the students

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sitting in an atrium area doing school work. However, shortly after the incident, Child Protective Services (CPS) notified the District's representative that one of the student's involved in the discipline for shoplifting had made a suicidal threat. CPS told the District representative that Mr. Tschang had notified CPS about the student's suicidal threat, but never notified the parent. This

Based on the foregoing parent complaints received by the District against the Charter School, and the inability of the Board to respond to the complaints, the District initiated an investigation to address parents' concerns about the Charter School.

VIOLATIONS

The following actions by the Charter School faculty and staff constitute material violations that must be corrected:

I. STUDENT DISCIPLINE AND PUNISHMENT

Investigation Determined:

The investigation determined that disciplinary measures taken at the Charter School included the use of unwarranted physical force and willful infliction of physical pain on students in violation of the California Education Code sections 44807 and 49001.

Facts:

The following are incidents wherein unwarranted physical force or the willful infliction of physical pain was used as disciplinary measures against students:

2004-2005

1. In her interview, Kia Spenhoff stated that she witnessed Mr. Tschang put his hands on students. She witnessed Mr. Tschang pick a student up off the ground, hold the student by the neck against a wall, and then drop the student. When asked about this incident Mr. Tschang stated, "I don't remember picking up and dropping a student, I do remember shaking a kid."
2. Student [REDACTED] witnessed Mr. Tschang grab a student named [REDACTED] by the shirt and hold him against the wall while yelling at the student

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for not doing his homework. She stated that [REDACTED] feet were maybe 2 feet of the ground.

3. Student [REDACTED] witnessed Mr. Tschang discipline [REDACTED] by pulling a chair out from under him and pushing him against the wall. Mr. Tschang's response during the investigation was that he disciplined [REDACTED] by lifting him up out of his chair and carrying him out of the room.
4. [REDACTED] mother of student [REDACTED], witnessed Mr. Tschang push her son's face against a wall.
5. [REDACTED] reported to investigators that he gave Mr. Tschang a high-five after [REDACTED] did a problem correctly, and that Mr. Tschang shoved him in the chest for high-fiving him so hard.
6. [REDACTED] also reported witnessing Tschang push another student's face against the wall and saying, "Put your ugly face against the wall, I don't want to see your face."
7. Student [REDACTED] reported that Mr. Tschang slapped [REDACTED] hands off of his face and they hit the desk hard enough to cause [REDACTED] to cry.
8. [REDACTED] reported witnessing a student named [REDACTED] being taped to her chair.
9. [REDACTED] reported witnessing Mr. Tschang slam a student against a wall for disobeying Mr. Tschang's demand to stand against the wall.
10. Student [REDACTED] reported witnessing Mr. Tschang draw a circle on the ground and force a student to stand in the circle for two hours in the sun during the summertime.
11. [REDACTED] of [REDACTED] stated that [REDACTED] began to get physically sick from the abusive discipline and a counselor told her to get [REDACTED] out of KIPP.

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12. [REDACTED] a student at KIPP from 2004 to 2007, stated that in the 2004-2005 term he saw Mr. Tschang pick students up and drop them. If a student wasn't sitting correctly he would pick them up by their shirt, move the chair, and drop them on the floor.

2005-2006

1. [REDACTED] witnessed Mr. Tschang force a female student to stand in the parking lot in the sun for 30 minutes.
2. [REDACTED] also reported that teachers would cut off the pull strings on students' sweatshirts if they were caught playing or fidgeting with them.
3. Vincent Montgomery, former Chief Operating Officer for the school, reported that he observed several incidents in which he felt Chi Tschang was emotionally abusive toward students, such as requiring students to stand outside in the rain. Mr. Montgomery also stated he felt that any gains made by kids were offset by the emotional abuse they experienced.
4. Richard Keyes made a comment to Mr. Tschang that he thought Mr. Tschang needed training in child growth and development because there were things going on that were psychologically damaging.
5. Student [REDACTED] was put outside by Ms. Sosa without a coat in January for two class periods. At some point, Mr. Tschang brought him a coat.
6. Parent [REDACTED] confronted Mr. Tschang about the discipline of her son [REDACTED]. Mr. Tschang admitted to [REDACTED] that he has a problem with his temper and that he is working on it.
7. Student [REDACTED] stated in an interview that Mr. Tschang would make kids stand in the sun while he yelled at them, and that [REDACTED] had to stand there for an hour.

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2006-2007

1. Marcella Mayfield witnessed Mr. Tschang grab a backpack off of a student and then repeatedly kick it.

2007-2008

1. Student [REDACTED] reported during the investigation that he asked Ms. Sosa to go to the bathroom and she physically shook him by his backpack.
2. In December of 2007, the police reported several students for shoplifting at a [REDACTED] store. As punishment, Mr. Tschang had them sit at their desks outside in the cold for two days. Diane Gutierrez, an employee at the Charter School, stated that Mr. Tschang took away their shoes on one day to let them know how it feels to have something taken away from them. Marcella Mayfield stated that it was bitterly cold in December and the students were only allowed to wear sweatshirts. She also stated that Mr. Tschang screamed at the students during the entire day. She told this investigation, "I lost count how many times he could be heard from the classroom. When there was a quiet spell in the class, you could hear him outside screaming at them."
3. Mr. Tschang also admitted to cutting the hood off of a student's sweater because he was wearing the hood inside.
4. Student [REDACTED] wrote a complaint [REDACTED] [REDACTED] about mistreatment at the Charter School in April 2008. [REDACTED] stated that he was doing group work and one of the other students was talking about something else, so [REDACTED] told him to shut up. Mr. Tschang overheard [REDACTED] and told him to leave. As [REDACTED] was packing up his backpack, Mr. Tschang walked over and grabbed the backpack, and in the process, hit [REDACTED] in the head with it. Mr. Tschang then threw the backpack into the hallway. (Complaint from [REDACTED] and [REDACTED] dated April 22, 2008) [REDACTED] subsequently removed his [REDACTED] children from the Charter School because he wanted to protect them. (Drop Slips for [REDACTED] [REDACTED] and [REDACTED] dated April 22, 2008)

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5. Diana Gutierrez stated in her interview that Mr. Tschang raged and screamed at students on several occasions. She stated that he: "has thrown backpacks belonging to students in a manner that the contents fell out. He has grabbed papers out of students' hands and yelled at them. He yells at students right in their faces. The children are so afraid of him that they do not want to look at him. He will just yell louder and say things like 'Look at me,' 'Listen to me,' and 'What's wrong with you?' 'Do you want me to kick you out of school?' [sic].
6. Ms. Gutierrez also reported, that recently in the summer of 2008, Mr. Tschang punished students by having them stand in the heat and read a book. This could last anywhere from 30 minutes to 45 minutes without water.
7. [REDACTED] a student who was asked to leave after fighting in class, stated that he was left outside in the winter for two hours.
8. Former Board member Steve Hopper stated that Mr. Tschang was so focused on peer accountability that he would lose track of the moment. Mr. Hopper said, "[w]hen he yells or throws books, and you confront him, he calls it 'strategic.'"

Law/Charter Violated:

According to Element J in the Charter, "[a]ll disciplinary actions taken by KIPP Academy Fresno will strictly comply with California Education Code, KIPP Academy Fresno School policies and procedure, and applicable federal law." By incorporating the California Education Code into the charter, KIPP Academy Fresno is required to abide by all disciplinary standards and procedures established by the code.

The exercise of physical control over a pupil by certificated employees like teachers, vice principals or principals is allowed under specific circumstances. The physical control must occur during performance of the school employee's duties and must be of the same degree of physical control that a parent would be legally privileged to exercise. Cal. Educ. Code § 44807. However, in no event can the physical control exceed the amount of physical control reasonably necessary to maintain order, protect property, or protect the health and safety of pupils, or to maintain proper and appropriate conditions conducive to learning. *Id.*

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In addition to the statute granting authority to exercise physical control, the degree of physical control that can be exercised is limited. California Education Code § 49001 prohibits the willful causing of infliction of physical pain on a pupil except for an amount of force that is reasonable and necessary for a school employee to (1) quell a disturbance threatening physical injury to persons or damage to property, (2) for purposes of self-defense, or (3) to obtain possession of weapons or other dangerous objects within the control of the pupil.

Here, Mr. Tschang's and others' actions exceeded the bounds of the law.

Questionable Leadership Ability

The investigation elicited incidents and allegations that raise concerns about Mr. Tschang's continued ability to lead the Charter School. While the following incidents and allegations may not be material violations of the Charter or the law, they demonstrate that Mr. Tschang has questionable judgment and a demeanor unbefitting a school principal. The following incidents and allegations support the requirement that Mr. Tschang either be removed as the Charter School Principal or complete the remedial measures outlined below:

1. [REDACTED] reported that Mr. Tschang put the entire 5th grade class into a two stall bathroom and kept them there for 20 minutes. When asked about the incident, Mr. Tschang stated that he did ask students to go into the bathroom and figure out a way to solve the bathroom vandalism issue.
2. Kia Spenhoff witnessed Mr. Tschang put a garbage can on a student's head. Mr. Tschang admitted to putting the garbage can over a student's head because the student, [REDACTED], had been clowning around. The lesson was, "If you want to act like a clown then you'll look like a clown." The student was required to pick up all the trash Mr. Tschang dumped out of the trash can. Mr. Tschang stated, "I took an empty, clean trash can and placed it over his head for a few minutes while talking with him. I essentially said, 'This is how you look in the eyes of others when you don't take school or work seriously.'"
3. A 5th grade class had their behavior tested by being left unattended in the cafeteria where a video camera recorded their actions. Mr. Tschang told the investigator that this was an exercise to ask the students the question, "What are you doing when no one is watching?"

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4. Students who had too few points on their progress reports were demoted to "4th grade." These students were required to sit in small chairs and desks and write letters to each teacher. They were required to stay at school until they finished the letters. [REDACTED] reported staying at school until 10:00 p.m to finish letters. The other students voted on whether a student could get out of "4th grade." Mr. Tschang stated to the investigator that this may have been the case as there was a detention system if students' paycheck progress reports are below a certain level. He also told the investigator that "KIPP is a tough-love school. Some parents go for it and some don't."
5. One practice at the Charter School that started in the 2004-2005 school year and is an annual tradition is to require students on the first day of school to earn their desk and earn their chair. Mr. Tschang told the investigator "The first couple of days students sit on the floor. We are trying to teach the invaluable life lesson that in life, nothing is free; everything must be earned." The duration that this practice of earning takes, according to Mr. Tschang, "depends on the kid, how well they do in learning our school values, culture and behaviors." Most students earn their school chair and desk after two half days. Parents have complained about this practice, and in the current school year, parents pulled their students from the Charter School because of this hazing practice.
6. Vincent Montgomery was the Charter School's Chief Operating Officer from February 2005 to April of 2006. He told investigators that Mr. Tschang would ask him why the school was losing so much money on the school lunch program and instructed Mr. Montgomery to count students as present whether they were there or not. Mr. Montgomery disagreed because he thought that this practice was illegal. Mr. Montgomery also complained to Mr. Tschang about the lack of due process in Mr. Tschang's decision-making in whether to throw students out of school. Mr. Montgomery said that the staff would have weekly teacher and administration meetings and would vote on whether to keep a student or ask them to leave, and did not involve the Board in the process. Mr. Montgomery reported that before he left the Charter School he called KIPP Foundation to tell them about the problems he had with Mr. Tschang but his calls were never returned.
7. Allegations that Mr. Tschang constantly yelled at students occurred frequently. Chris Frazer, a teacher who taught at the Charter School during the 2007-2008 term, stated, "I often hear, or observed, Mr. Tschang yelling very loudly at some student or other about some infraction from talking, to chewing gum, to not having a book while waiting in line

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at the bathroom, or because of some perceived disrespect. His yells were not simply talking loud, he was yelling at the singled-out student and doing so publicly."

On April 18, 2008, [REDACTED] mother of former KIPP student [REDACTED] stated that when her son was asked to leave after being involved in a physical altercation with another student Mr. Tschang called her. During this phone call Mr. Tschang "continuously yelled at me and demand[ed] that, 'Your son is out of here!' and 'Come pick him up right now or I will send him in a taxi to your job!!'" When [REDACTED] arrived to pick up her son Mr. Tschang would not speak to her at all. In talking about the incident, [REDACTED] stated, "I can handle him yelling a[t] me, but not my mom." [REDACTED] also stated that he experienced "situations w[h]ere students were either being yelled at or their comfort zone was being violated by the principal . . ." When asked about this incident with [REDACTED] Mr. Tschang said, "I did not yell at her. I'm sorry she perceived that. I do remember her coming to KIPP and making excuses for her child's belligerent behavior."

Kia Spenhoff also reported that she had personally heard Mr. Tschang yelling at kids, "and using profanity. He and a few other teachers have used words to make the kids feel bad about themselves, not just what they have done." Ms. Spenhoff also recalled an incident in the 2007-2008 school year where Mr. Tschang yelled at a student in front of prospective parents. She stated, "Mr. Tschang had a student in his office and he was yelling obscenities and screaming at the child so loudly that the new parents were looking at each other in disbelief. I recall I was in the office and I walked across the office and closed the door to his office. You could still hear him. I don't believe that those parents send [sic] their child to KIPP. I don't remember any particular words just the feeling of being uncomfortable. Also feeling a bit embarrassed that our Principal would speak in such a way to a child, let alone while new parents were in the office."

When asked about his yelling at students Mr. Tschang stated, "If parents are not happy with the school program, it is a school of choice. They are free (and indeed, encouraged) to remove their kids from the school. There are plenty of other public school options for their children."

Former employee Vincent Montgomery told the investigator that he observed Mr. Tschang yelling at students. Mr. Montgomery said, "He definitely yells at kids. I regularly observed him hollering at them to get in line. I never heard him curse at kids."

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But his body language usually demonstrated anger and frustration; biting his bottom lip as if he wanted to curse. He even stormed into my office on several occasions for minor things and screamed at me. He loses his temper all the time.” In response to these allegations, Mr. Tschang stated, “This was never true; I never ‘stormed into Vincent’s office and screamed at him.’” However, Mr. Tschang did not deny regularly yelling at students.

Parent [REDACTED] confronted Mr. Tschang about yelling at her daughter who was a student at the school. [REDACTED] reported that she told Mr. Tschang she did not appreciate Mr. Tschang yelling at her daughter. [REDACTED] said that Mr. Tschang responded, “well next time I won’t yell, I will ask you to leave the school.” Mr. Tschang told the investigator, “my thought on this is if a parent or child is not happy with our disciplinary methods; to get the results we do, discipline and structure is a part of the way we instruct; you can’t have it both ways. This is a school of choice.”

8. One incident that typifies Mr. Tschang’s behavior occurred when several students were caught shoplifting at a [REDACTED] store [REDACTED]. Mr. Tschang wrote an email to the teachers and staff outlining his response to the shoplifting:

Dear staff,

This evening, I received a call from the local police. Apparently, several of our students who take the bus home have been going to the [REDACTED] and [REDACTED], and stealing food from it in a group. I understand that this has been going on for about a month.

- 1) Starting tomorrow, here is our follow up plan:

Transportation - These students have ZERO TRUST. They will not be allowed to take the city bus to or from KIPP this year. Their parents MUST drop them off and pick them up from the cafeteria everyday after school.

- 2) Isolation – For the time being, everyone in this group will be in TOTAL ISOLATION during the school day. This looks like sitting apart from other students in class and never communicating to peers; sitting in isolation during

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lunch with the advisory group and never communicating to peers; sitting in isolation during PE.

- 3) Restitution – Everyone in this group (and their families) will pay [REDACTED] back everything they took.

We have a wonderful school, of much to be proud, but this is atrocious behavior that we can not accept. Tomorrow, during enrichment, Robert and I will be meeting in a special Team and Family with 7th and 8th graders during the first half (1:00-1:30) and 5th and 6th graders during the second half (1:30-2:00).

Thank you for your support. Please let me know if you have any questions.

Chi

Marcella Mayfield witnessed the punishment of the students by Mr. Tschang and stated that when she was in the office, "Mr. Tschang walked in with one of the [REDACTED]. He started screaming at the top of his lungs 'You embarrassed me, you embarrassed the school, and what the hell were you thinking?' Those are the words I remember, but he was yelling other comments too. What I do remember, or what I was impacted by was that I had never heard an adult scream at a child like that. The outburst caused me to become frozen solid, like I didn't want to breathe, and I felt it was extremely frightening." Ms. Mayfield also stated that for the first day of isolation, "During the entire day he would be screaming and yelling at the children off and on. I lost count of how many times he could be heard from the classroom." [REDACTED] was one of the students who was caught shoplifting, and she stated that on one of the days they were being punished Mr. Tschang told her and her sister, "Oh, you and your sister are going to the barber shop." When they asked why, Mr. Tschang responded, "Because you are going to get your head shaved."

When asked about this incident, Mr. Tschang stated, "The next day [after the shoplifting incident] one of the 7th grade students came in with his head shaved and [REDACTED] asked 'What should I do with my girls?' I responded, 'This is what another family did, maybe you should try that.' She was asking for ideas and so I gave her one."

Another allegation involving the theft incident was a statement that Mr. Tschang called one of the students an embarrassment. In reply to a question on this subject, Mr. Tschang

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stated that he did not remember exactly saying that, but that the students did embarrass the school when they stole while wearing KIPP sweatshirts. Mr. Tschang also responded, "I absolutely yelled that day. Our students broke the law repeatedly and in a group . . . Anyone who cared about their students would have disciplined them in a similar way."

██████████ mother of two of the students caught shoplifting, received a call from CPS a few days after the school punishment that her daughter ██████████ had made a suicidal threat at school. ██████████ said, "My first thought was, 'why hasn't he [Chi] called me?'" When asked about the incident, Mr. Tschang first stated that he did not remember the incident, but then stated that in situations like this, "We would call FUSD, and they would advise us what to do; which I did in this case."

9. Despite being confronted with the results of this investigation, Mr. Tschang said that he did not use obscenities and that he raised his voice infrequently. He told the investigator, "As the main disciplinarian at KIPP, at times, I do need to discipline." Although he denies using obscenities, he admitted to yelling at student ██████████ "Get your ass in my office." Mr. Tschang said, "In my opinion she was being defiant; there was a concert going on inside the building and she was right outside and laughing out loud; this was being disruptive, so I addressed this. I asked her to come to my office. After a few minutes she was not coming and I found her socializing outside again. I had to tell her again to come to my office, and that is when I said, 'Get your ass in my office.'"
10. A common complaint from students was that teachers were not letting students go to the bathroom. Student ██████████ reported that there was a student in Ms. Sosa's class who urinated in his pants because he was not allowed to use the restroom. Student ██████████ who started with the Charter School in 2004 and just graduated in 2008, stated, "They would not let us use the bathroom during classes. Parents heard about this and they had to have a meeting to get them to allow us this, to allow us to go to the bathrooms." Student ██████████ stated that in February of 2006, she was at school on Saturday and began to feel ill. Mr. Tschang would not let her use the bathroom because he was simulating a field trip where bathrooms would not always be available. Mr. Tschang told her that she could go the bathroom now, but she would not be able to go on the real field trip if she did. Eventually, Mr. Tschang let her go to the office, but when she got there she began to throw up in front of the office staff and other students. Former teacher Marcella Mayfield stated that there was an issue of not having enough bathrooms for the students, "Only three boys and three girls." Ms. Mayfield also

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reported, "Some of the teachers do not allow the children to use the bathroom during class." Former teacher Laura Allen stated, "we did encourage them to hold it when possible so as not to miss instruction. Accidents of this type did not happen to my students, but other students had accident [*sic*] because they said they could hold it, but couldn't, or they would go to the bathroom and because of the line, they could not make it."

When asked about the bathroom policy, Mr. Tschang stated, "we let them use it as much as reasonable [*sic*] possible. If there are more th[a]n 3 out of class and in the bathroom, then they have to wait. Teacher Robin Sosa stated, "At first, the student could use the restroom the last ten minutes of class, but after a while we realized that it wasn't going to work. Another factor is that we only have 3 boys and 3 girls toilets for over 300 students. So waiting can be an issue."

11. Several former employees reported that Mr. Tschang has issues with older teachers. Diana Gutierrez stated that Mr. Tschang, "recently made a remark that he was hiring just young and inexperienced teacher for next school year so they could learn the KIPP way." Chris Frazer stated that when discussing a teaching position with Mr. Tschang at the school, Mr. Tschang said he didn't hire older people because they tended not to work very hard. Mr. Frazer reported that Mr. Tschang went further and said that the school had a young culture and that Mr. Frazer would not fit in. In regard to these remarks, Mr. Tschang responded that he did not say that he hired only young teachers, but "It is true that we have a young staff culture filled with committed teachers who routinely work over 60 hours a week. Often, older teachers are not able or willing to maintain this kind of pace."
12. Several students stated that students are not allowed to talk or socialize at all during school hours. When asked about this policy, Mr. Tschang stated, "If parents are not happy with the school program, it is a school of choice. They are free (and indeed, encouraged) to remove their kids from the school. There are plenty of other public school options for their children."
13. The staff was administering over-the-counter medications such as acetaminophen, ibuprofen, visine, and throat spray to students. Mr. Tschang said that every year parents fill out a medical form stating that they would agree to allow office personnel to

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administer these medications to the student, but that he discontinued the practice last year.

14. Another allegation was that Mr. Tschang would hold students at school for however long it took for them to complete their work for the day. Mr. Tschang said that he kept students for more than a few hours after class, and that he sometimes does this for tutoring or if teachers are helping out a student.
15. Several allegations against Mr. Tschang concerned the misappropriation of public funds. One allegation was that staff member Mrs. Hawke was allowed to bill for and receive money for hours not actually worked. Another allegation was that Mr. Tschang allowed a student's family to live in a house on the school premises and provided utilities. Mr. Tschang admitted that he let a student's family live in a house on school property, because, "We had a couple of months that the house was vacant before it would be torn down. I made that decision on my own. We see ourselves as a family; when someone is hurt or in pain, we go out of our way to help them out. In this case, a student was homeless." When asked to provide the utility bills for the house to determine if the school paid for them, Mr. Tschang stated that, to his knowledge, the utilities were not on, and refused to provide the requested documentation.
16. Several allegations were made that Mr. Tschang was rude. [REDACTED] was the guardian of former student [REDACTED], and he stated that Mr. Tschang hung up on him when he was talking about a situation where [REDACTED] was held at school and [REDACTED] was never informed. [REDACTED] said that throughout the discussions that Mr. Tschang was, "just plain rude." Mr. Tschang's response to this allegation was, "The Board addressed this issue and handled it."
17. One incident regarding racial slurs upset a parent. Students were calling each other "Nigga" and [REDACTED] brought this to Mr. Tschang's attention to stop it. Mr. Tschang first asked the student if being called by that name offended her. [REDACTED] told Mr. Tschang that it offended her. Mr. Tschang stated that the students were using the term as a term of affection and when they were made aware of it, the students were told to stop.
18. Marcella Mayfield reported an incident to the investigation about a student bringing a BB gun to school in September of 2007. She alleged that Mr. Tschang set the gun on his

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desk in plain view and left his door open. Ms. Mayfield brought the zero tolerance expulsion policy in regard to weapons in the Education Code to Mr. Tschang's attention. Ms. Mayfield said Mr. Tschang then "picked up the gun and said, 'It is just a BB gun and it is not loaded.' When he did this, picked it up, it was pointed at me and made me feel uncomfortable and so I told him to please put it down. He told me, 'You don't see the big picture, I talked to the parent and it is taken care of. He only brought it to share with another student; he didn't mean to hurt anyone.'" In response to this allegation Mr. Tschang stated, "I remember an incident with the air gun. We dealt with it by suspending that student." Mr. Tschang also denied pointing it at Ms. Mayfield.

19. It was reported by Kim Kutzner that students who were late to school would not be allowed to eat their meals provided by the state. Student [REDACTED] stated that Mr. Tschang told her, "People who are late don't get to eat." Mr. Tschang's response to this allegation was, "at the end of allotted time for breakfast I asked everyone to throw their breakfast away. My question would be, 'You want your child to eat breakfast then you should be here on time, and not being responsible on both the parent and teachers side. If I was to make exceptions then it would be preferential treatment and I would be unfair.'"

20. Student [REDACTED] reported that when Mr. Tschang noticed a male student had his finger in his mouth, Mr. Tschang "walked up, spat in his hand, and made the student shake his hand. Mr. Tschang's lesson was that's what it was like when the boy had his finger in his mouth." Mr. Tschang's response to this was, "No, this was absolutely not true. With students who suck on their fingers, I sometimes teach them that it's not appropriate to do that. One reason is if you had to shake someone's hand. I might ask, 'What if you had to shake my hand?' I've never actually had a student shake my hand who had put their fingers in their mouths. That's unsanitary."

One allegation raised by student [REDACTED] was that a teacher ripped up school assignments on which the students had worked hard because the teacher felt students did not check their work often enough. Mr. Tschang responded to this allegation, "If it had come to my attention, and the student was turning in unacceptable work, I would probably say this is not as [sic] acceptable assignment. There are a wide range of possible ways to address this issue."

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21. Student [REDACTED] said that in December of 2007, Mr. Tschang told him to get on his hands and knees and bark like a dog. [REDACTED] said that it was a metaphor to get him to stop joking around in class. [REDACTED], guardian of [REDACTED], also alleged that in the summer of 2007, Mr. Tschang got upset at [REDACTED] for asking to call [REDACTED], took his cell phone, threw it, and told [REDACTED] to, "go fetch it." [REDACTED] confronted Mr. Tschang about the incident and she said Mr. Tschang stated it was, "my school and I can run it the way I want it run." Mr. Tschang replied to this incident, "He was being defiant to a teacher prior to this. The teacher sent for me. He asked if he could use the phone to call his guardian and I threw it and said fetch. Parent complained why are you treating my child like a dog? I said, 'Then why is he acting like a dog?'"
22. Parent [REDACTED] complained that she did not receive her daughter's report card and was not contacted until June of 2008 to learn the Charter School found she did not meet the criteria to go on to the 6th grade. In discussing the situation with the [REDACTED] family, Mr. Tschang said, "We always have evidence for these decisions. Our staff makes promotion decisions as a team and with every individual case. Since many other schools promote socially, KIPP is a real cultural shock to kids and parents because they have to meet the standard before they are promoted."
23. Certain allegations also demonstrated a failure on the part of Mr. Tschang to follow through on investigating incidents. In the 2007-2008 school year, two incidents occurred where "KKK" was written on a student's notebook and on one of the walls at the school. Instead of investigating the situation, Mr. Tschang asked Mr. Yrigollen to look into it. The email Mr. Tschang sent in regard to the incidents is below:

Wednesday, April 16, 2008 7:59 PM

Hey Joseph,

A few weeks ago, [REDACTED] journal – which had been sitting in your room for a week or two – had three K-shaped post-it's notes labeled on it. Her mom called me and talked to me about it, but I didn't really respond, thinking that it was an aberration. Then, [REDACTED] pointed out to me that someone had written in the back corridor "KKK" next to a student's name. I'm now thinking this might be a kid in the 6th grade, and that we may need to address it as a whole.

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Can you please put this on the agenda for the 6th grade level meeting after school Tuesday? Your team should plan the follow through, and I'm happy to help out if needed.

Thanks,

Chi

Another issue on following through with student concerns occurred with student [REDACTED] [REDACTED] mother [REDACTED] had a parent-teacher meeting with Mr. Tschang that Mr. Tschang accidentally double-booked. [REDACTED] alleged that she was supposed to meet with Mr. Tschang at 7:00 a.m. on a Saturday morning, and that Mr. Tschang never showed up for this appointment. [REDACTED] also stated that when her daughter got mono, Mr. Tschang did not reply to [REDACTED] messages about collecting homework for [REDACTED]. When asked about this issue, Mr. Tschang said that he did not know whether anyone followed through with [REDACTED], but that he was not made aware of it not happening.

24. Student [REDACTED] reported that students were called "gay" and "ignorant," and that teachers said things like, "Go change your diapers, you're acting like a 2 year old."
25. Parent [REDACTED] reported that Mr. Ammon admitted to intentionally humiliating her son [REDACTED] and that in a meeting between Mr. Ammon, Mr. Tschang, and [REDACTED] Mr. Ammon said, "I thought he needed to be humiliated, that it is my job to do this." and "I just really think he needs to be humbled, he reminds me of me at that age, and I know he has no dad at home." When asked about the incident, Mr. Tschang stated, "No, I don't remember this. What I do remember is that [REDACTED] was repeatedly acting in a defiant and disrespect way [*sic*] to Mr. Ammon and other teachers."
26. When asked about a situation where a teacher forgot about a student that she left outside of her classroom for tapping his pencil, Mr. Tschang replied, "Why was he tapping his pencil and being disruptive."
27. Parent [REDACTED] reported that Mr. Tschang took student [REDACTED] glasses away from him because [REDACTED] was constantly adjusting his glasses. [REDACTED] is totally dependent on his glasses and cannot see without them. Mr. Tschang admitted to taking [REDACTED] glasses away.

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28. [REDACTED] also reported that Mr. Tschang left a student named [REDACTED] on the side of the road 3 to 4 miles from school at 7:10 a.m. and she walked to school alone. Mr. Tschang admitted that he was giving [REDACTED] a ride to school every day and that one day she was misbehaving. Mr. Tschang said he dropped her off at the corner of Martin Luther King and Church, half a block from the school.
29. The 8th grade class had a lesson on profanity and improper language which included the use of a South Park video clip. A transcript of what was played for the students is provided below:

Funny Part At South Park School

(Bell ringing)

(Children singing): "Shut your fucking face uncle-fucker, you're a boner biting bastard uncle-fucker, you're a dirty...."

(Teacher says): "Okay children, let's take our seats. We have a lot to learn today, we sure do Mr. Hand. Okay children lets start the day with a few new math problems. What is 5×2 ? Come on Children. Don't be shy just give it your best shot. Yes Clyde."

Clyde: "Twelve"

Teacher: "Okay, now let's try to get an answer from someone who's not a complete retard. Anyone? Come on, don't be shy."

Kyle: "I think I know the answer Mr. Garrison."

Eric: "Mumble, mumble, mumble"

Kyle: "Shut up fat boy!!"

Eric: "Hey, don't call me fat you fucking Jew!!"

Teacher: "Eric, did you just say the F word?"

Eric: "Jew?"

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Kyle: "No, he is talking about fuck. You can't say fuck in school you fucking fat ass!"

Teacher: "Kyle!"

Eric: "Why the fuck not?"

Teacher: "Eric!"

Kyle: "Dude, you just said fuck again!"

Teacher: "Stanley!"

Kenny: "Fuck!"

Teacher: "Kenny!"

Eric: "What's the big deal? It doesn't hurt anybody. Fuck, fuckety, fuck, fuck, fuck!"

Teacher: "How would you like to go see the school counselor?"

Eric: "How would you like to suck my balls?"

(Class gasps)

Teacher: "What did you say?"

Eric: "I'm sorry, I'm sorry, actually what I said was," *(grabbed a megaphone, squeaking noise)*, "How would you like to suck my balls, Mr. Garrison?"

Kyle: "Holy shit, dude!"

Mr. Tschang sent out the following email in regards to the use of the clip:

From: Chi Tschang <ctschang@kipfresno.org>

To: [REDACTED]

Sent: Monday, September 29, 2008 8:29:17 PM

Subject: link

Hi [REDACTED]

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Here's the South Park clip: <http://www.youtube.com/watch?v=8lmzvJdPfp4>

I appreciate your openness and willing [sic] to engage in conversation with me. This will not happen again. Period.

Every weekend, I write a letter to my staff...I thought you might like to see an excerpt from yesterday's letter:

Last week, we had our first public relations incident of the year when we were featured on KMJ 580 and on the Channel 47 news. The topic was the Team and Family lesson taught two weeks ago to our 8th graders on popularity and profanity. In the immediate aftermath, a few parents were upset about a 70-second South Park clip that was shown. A similar situation happened last year during my 7th grade English class; in a lesson on conformity, I used a youtube clip of the Rodney King beating and a reading about the Kitty Genovese murder. Two parents were upset about the violent content of both the video and the reading.

There were two lessons that I learned from that incident; the same two lessons apply to last Friday's events. First, if we ever use any content with anything offensive (language, violence), notify our parents beforehand with a letter and permission slip. In these cases, we should use the "most sensitive person" test: that is, err on the side of what would offend a really sensitive person, not an average person. Second, if and when we ever use potentially-disturbing content, always give kids a chance to opt out beforehand.

Have a nice evening and say hi to your kids for me,

Mr. Tschang

Remedial Action Required:

To remedy these material violations of the Charter and the law, the Charter School must:

1. Immediately cease and desist all discipline of the type described in this section and immediately comply with the law and Charter.

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The following are also required:

1. Mr. Tschang must be removed from the school, or:
 2. Mr. Tschang must complete the following:
 - i. A full course in anger management through the Marjaree Mason Center. This course must be completed by January 31, 2009 and proof of completion must be submitted to the District by February 5, 2009;
 - ii. The following courses in childhood growth and development selected and approved by FUSD:
 1. PSY 301 Child Development through National University;
 2. EDU 566 Adolescent Psychology through the University of Phoenix;
 3. MAT 505 Child and Adolescent Development through the University of Phoenix
 4. ED 511 Growing and Learning Theories through University of Phoenix.
- These courses must be completed by March 1, 2009 and proof of completion must be submitted to the District by March 5, 2009.
- iii. A course in unlawful harassment training; and
 - iv. A monthly meeting with Dr. Rosylin Bessard and Debra Odom to review discipline and any other issues at the Charter School.
- b. Mr. Tschang will not be able to discipline students in any manner until he has successfully completed the courses listed above;
 - c. Mr. Tschang will be required to sign an agreement that he will not touch students with the intention of inflicting physical pain except to:

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- (1) quell a disturbance threatening physical injury to persons or damage to property;
- (2) for purposes of self-defense; or
- (3) to obtain possession of weapons or other dangerous objects within the control of the pupil.

d. These remedial measures must be completed by March 31, 2009.

Finally, the Charter School shall create a parent complaint procedure approved by FUSD that shall be posted and visible to all parents and students and with which the Charter School will consistently abide. This procedure must be posted by December 30, 2008.

II. SUSPENSION AND SUSPENSION PROCEDURES

Investigation Determined:

The investigation determined that throughout the school years from 2004 to 2008, the Charter School failed to abide by the California Education Code grounds and procedures for suspension of students as stated in California Education Code § 48900 *et. seq.*

Facts:

1. Interviews with the Charter School Board Members indicated that the Board was generally not notified of suspensions except for what was provided in the Board Packet by Mr. Tschang after the fact, or when Mr. Tschang anticipated that there would be a problem with the parent.
2. The Board also stated that Mr. Tschang made the decision to suspend students on his own.
3. The Board did not make decisions on the length of suspensions. The Board was also unaware of a process for suspensions or, if there was one, it was vague.

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4. Richard Keyes, a founding Board Member who resigned this year, stated that there was no consistency in suspensions. A slight infraction with some students became a big discipline issue, but with huge problems, Mr. Tschang “appeared to look the other way.”
5. When asked about sending students home for non-serious offenses, Mr. Tschang answered, “We believe small details matter greatly . . . we don’t tolerate disruptive behavior or violations of school rules. Kids who are disruptive or flout school rules are disciplined, and in some cases asked to leave the school.”
6. In his interview, when Mr. Tschang was asked about whether the Board was notified of suspensions, he answered, “No.” When asked if the Board decided upon the number of days for a suspension, Mr. Tschang also answered, “No.” He also stated that he had suspensions that were for more than five days, despite having failed to notify the Board of the suspension.

The following incidents, which are categorized by year, are suspensions that violated the provisions of the Charter:

2004-2005

1. Student [REDACTED] was late in lining up with his class members, and as punishment, he was required to stand against the wall for an entire day.
2. Parent [REDACTED] who was regularly on school grounds, witnessed a child forced to stand across the street from the school for hours.
3. Student [REDACTED] stated in his declaration that he and other students were placed in the cafeteria in the dark for four periods.

2005-2006

1. Former teacher Kim Kutzner stated that students were routinely left outside without supervision.

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2. In November, Ms. Kutzner stated that she saw [REDACTED] was left outside without supervision for three hours for a minor infraction that occurred during breakfast.
3. Kim Kutzner also witnessed students being forced to stay in small rooms near the school's office for hours or even entire days without supervision.
4. Ms. Kutzner stated that parents of suspended students were frequently not notified of the suspensions.
5. Ms. Kutzner stated that students were routinely sent home for non-serious offenses like talking in class, chewing gum, and bringing a mechanical pencil to school.
6. She also stated that students were routinely transported from school without their parents being notified.
7. [REDACTED] was a student in the 2004-2005 school year. In his interview, he stated that [REDACTED] gave Mr. Tschang a high-five that was too hard and it hurt Mr. Tschang. This caused other students to laugh. After giving [REDACTED] a hard high-five back to make him see how it felt, Mr. Tschang began yelling at the kids that laughed.

[REDACTED] stated that he had his hands on his cheeks and his elbows on the desk and that Mr. Tschang slapped his hands off of his face and onto the desk. Mr. Tschang then told him to leave school and walk home alone. [REDACTED] mother, [REDACTED] stated that when she went to pick up [REDACTED] from school, other kids told her he was sent home. She did not allow [REDACTED] to walk home alone.

2006-2007

1. [REDACTED] was suspended indefinitely for sexual assault, and the suspension was never brought to the attention of the Board.

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2007-2008

2. An entire class was suspended for failing to stop or report a fight that occurred when a teacher left his class unattended. Mr. Tschang sent the entire class home because no students reported that the students who fought had been bickering two hours earlier that day. [REDACTED] was one of the students suspended that day. Because her mother, [REDACTED] unable to pick up [REDACTED] from school, Mr. Tschang sent [REDACTED] in a taxi cab without [REDACTED] permission.
3. In April of 2008, student [REDACTED] was in supervised, isolated suspension for three weeks for inappropriately touching another student.
4. Teacher Iman Obeid recommended that a student be suspended for cussing during class, and Mr. Tschang suspended the student for one day.
5. Diana Gutierrez, a former employee of the Charter School, stated that in 2007-2008:
"there is no consistent protocol for dismissing students he [Tschang] gets upset with. At times, because he is angry regardless of the infraction, he will just kick a student out that same day. Sometimes he will have them sit in the office writing prepared sentences all day, or for as many days as he sees fit. He has kept students out of class instruction and writing the entire day, or longer."

Law/Charter Violated:

Element J of the Charter provides that "All disciplinary actions taken by KIPP Academy Fresno will strictly comply with California Education Code, KIPP Academy Fresno School policies and procedures, and applicable federal law." For suspensions, the California Education Code establishes specific actions that are grounds for suspension. California Education Code § 48900 (a) through (q) as well as § 48900.2, § 48900.3 and § 48900.4, establish the grounds justifying suspension and exclusively include:

- Causing, attempting to cause, or threatening to cause physical injury to another person;

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- Willfully using force or violence upon the person of another, except in self-defense;
- Possessing, selling, negotiating, or furnishing dangerous objects such as guns, knives, etc., or possessing a realistic imitation firearm;
- Possession, sale, use, negotiating, or furnishing of controlled substances, tobacco products, drug paraphernalia, and/or alcohol;
- Committing robbery or extortion;
- Causing or attempting to cause damage to school or private property;
- Stealing, or attempting to steal, or receiving stolen school or private property;
- Committing an obscene act or engaging in habitual profanity or vulgarity;
- Disrupting school activities or otherwise willfully defying the valid authority of school faculty & staff;
- Committing or attempting to commit a statutorily defined sexual assault;
- Harass, threaten, or intimidate a complaining witness or a witness in a school disciplinary proceeding;
- Engaging or attempting to engage in hazing;
- Sexual harassment;
- Harass, threaten, or intimidate school personnel or students that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting class work, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment; and
- Causing, attempting to cause, threatening to cause, or participating in an act of hate violence.

Further, if a suspension is by a principal for one of the above acts, then the suspension can be for no more than five consecutive days, and must be preceded by an informal conference between the principal or the principal's designee, and the pupil. (Cal. Educ. Code §48911) The Student has to have the opportunity to present his or her version of the events and evidence in his or her defense. *Id.* However, a conference is not necessary when an emergency situation exists. *Id.* An emergency situation is where there is a clear and present danger to the life, safety, or health of pupils or school personnel. *Id.* The school must make a reasonable effort to contact the parents or guardian in person or by telephone. *Id.* Suspensions also must be reported to the governing board of the school district. *Id.* The school district shall specifically identify each offense and suspension in the student's official record for each suspension under the above

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bulleted grounds for suspension. (Cal. Educ. Code § 48900.8). Students cannot be suspended for more than 20 days. (Cal. Educ. Code § 48903). Failure to notify parents of a suspension lasting longer than one hour is a violation of California Education Code § 48911.1.

Remedial Action Required:

To remedy these material violations of the Charter the Charter School must:

1. Immediately cease and desist current or future suspensions of students in violation of the California Education Code provisions regulating suspensions including, but not limited to, the Code sections listed above;
2. The Board must be notified of each school suspension, even in-school suspensions;
3. Parents must be notified of suspensions lasting more than one hour, even if suspension is during school;
4. Further, suspensions must comply with the California Education Code sections regulating suspensions;
5. The Charter School must revise its discipline policy to conform to the California Education Code provisions regulating suspensions and must include the Education Code provisions regulating suspensions and suspension policies in its discipline policy. The policy must also include a conduct referral process, discipline log (date, time, offense, action taken) and parent notification.;
6. The revised discipline policy must be submitted to the District for approval by December 30, 2008;
7. Suspension and expulsion documents must be maintained for each suspension and expulsion, and copies must be made available to the District within 10 days of the suspension. The reports shall include the following information: a) a detailed description of the offense; b) the applicable Education Code section that was violated; c) the name and phone number of the parent or guardian contacted, who was contacted, and the time contacted; and d) the dates of suspension and/or expulsion.

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8. The specific grounds for suspension and the consequences must be listed in suspension reports for each infraction; and
9. All suspension reports for the school years from 2004 to 2008 must be produced to the District as requested during this investigation.
10. The violations of the Education Code sections on suspension of students also suggests that there may have been violations of the Charter and the Education Code regarding expulsions. Therefore, the Charter School must provide documentation for all withdrawals of students for the years from 2004 to 2008.

III. BOARD COMPOSITION

The investigation determined that the Charter School failed to have not more than 49% of the Charter School's Board of Directors be compensated by the school for services rendered to it within the previous 12 months.

Facts:

1. The following Board members resigned in June and July of 2008: James Aldredge, Rick Skaff, Anne Franson, Richard Keyes, and Steve Hopper.
2. At present there are only two Directors on the Board: Nolan Highbaugh and Chi Tschang.
3. Mr. Tschang is compensated by the Charter School as the school director, amounting to 50% of the Board being compensated by the school.
4. When discussing the Board resignations Mr. Tschang stated, "Actually, and for the record, I am very pleased that we now have a new board of directors."

Law/Charter Violated

This is in violation of the Charter provisions for the *Method for Resolving Issues of Conflict of Interest* section one, page 47 which states:

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Not more than 49% of the people serving on the school's Board of [sic] may be comprised of: (a) people currently being compensated by the school for services rendered to it within the previous twelve months, whether as full-time or part-time employee, independent contractor or otherwise; or (b) any sister, brother, ancestor, descendant, spouse, sister-in-law, brother-in-law, daughter-in-law, son-in-law, mother-in-law, or father-in-law of any such person.

Remedial Action Required:

In order to cure this material violation of the Charter, the Charter School must:

1. Comply with Charter requirements that the Board members include, "at least one financial expert, one fundraising expert, one community leader, and an educational leader"; and
2. The Charter School must recruit Board members so that the Charter School's governance conforms to the requirements of the Charter no later than December 30, 2008.

IV. CREDENTIALING

Investigation Determined:

The investigation determined the Charter School failed to assign teachers who hold appropriate California teaching credentials, permits, or other documents issued by the Commission on Teacher Credentialing, to teach core curriculum classes.

Facts:

1. In the 2005-2006 school year, Chi Tschang taught 7th grade Math. The Charter School did not produce a teaching credential, a permit, or a waiver to teach core curriculum classes during this school year for Chi Tschang. (Email to Dick Keyes dated 8/11/2006 ¶ 3)
2. In the 2007-2008 school year, the District discovered that Laura Allen taught 6th grade Science without a California teaching certificate, permit, or other document issued by the California Commission on Teacher Credentialing. Laura Allen had a provisional Elementary Education certificate in Arizona, but did not have a valid California

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certificate, and her teaching certificate in Arizona expired on April 20, 2008. (KIPP 2007-2008 credential update; Laura Allen's Credential from Arizona; 2007-2008 KIPP Staff Phone List)

3. Chi Tschang also taught 7th grade English in the 2007-2008 school year. (2007-2008 KIPP Staff Phone List; Team and Family Handbook 2007-2008, p. 26) Chi Tschang did not have a teaching credential, nor did he have a teaching permit or waiver to teach core curriculum classes during this school year. Although listed in the telephone phone list for the staff as teaching 7th grade English in 2007-2008, no credentialing documents were provided to investigators on Chi Tschang.
4. When asked about teachers being properly credentialed, Chi Tschang responded that all of the school's teachers were credentialed fully, or were in a program, or had a waiver. This statement is untrue because Mr. Tschang was a teacher during the 2007-2008 year and he lacked a valid California credentialing document, as did Laura Allen. Mr. Tschang also stated that when interviewing a prospective teacher for a new position, he did not look at whether or not they were credentialed because it is "such an unseemly low bar" to obtain. However, Mr. Tschang and Ms. Allen failed to meet this bar, which is required to teach classes at a California public school.
5. James Aldredge, one of the Board members who resigned in July of 2008, stated in his interview, "We had been talking about what Chi needed to do, that he needed to come back with a credentialing plan for all the teachers. Instead of finding someone credentialed and qualified, he hired someone out of the front office to teach when someone quit."
6. The Charter School Board Personnel Committee recognized this was an issue and in October of 2007, recommended that credentialing be overseen by a third party to ensure compliance with all regulations. (Personnel Committee Report to Board, October 2007) Chi Tschang ignored the Board's recommendation.

Law/Charter Violated:

California Education Code § 47605(l) establishes that, "Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering

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authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.”

Element E of the Charter also requires that “KIPP Academy Fresno will retain or employ teaching staff who hold appropriate California teaching certificates, permits, or other documents issued by the Commission on Teacher Credentialing . . . These teachers will instruct all core academic classes . . . The school will maintain a current copy of teacher certificates on file and ready for inspection.” The Charter School’s assignment of non-credentialed teachers to teach core academic classes is in violation of the California Education Code and is a material violation of the Charter.

Remedial Action Required:

In order to cure the violations, the Charter School must provide the District with the following:

1. Documentation that each teacher who taught or is teaching core-curriculum classes had or has a valid teaching certificate, permit, or other document issued by the California Commission on Teacher Credentialing equivalent to that which a teacher in other public schools would be required to hold for the school years 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009. To avoid further action, the Charter School must produce documentation verifying that core curriculum teachers are or were properly credentialed.
2. Teachers assigned to core-curriculum classes without proper credentialing documents must apply for proper certification documents in order to teach core classes and be assigned to non-core-curriculum classes, or be terminated from employment.
3. Further, the District requires the Charter School to comply with the following:
 - a. Ongoing credentialing compliance will be overseen by the District or a third party designated by the District, including review of credentials prior to a teacher beginning the instruction of a core-curriculum course.
 - b. The Charter School must provide the District with a comprehensive plan for ensuring compliance with credentialing requirements.

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- c. The Charter School must maintain a current copy of all teaching certificates, permits, or other documents ready for inspection by the District.

The Charter School must comply with all of these measures by December 30, 2008.

V. CRIMINAL BACKGROUND CHECK

Investigation Determined:

The investigation determined that the Charter School failed to require each faculty and staff member to undergo a criminal background check and fingerprinting conducted by the local police department and the FBI, as well as a child-abuse registry check.

Facts:

1. Kathy Pehl told the investigator that she was not fingerprinted when she began working at the Charter School. Mr. Tschang stated that she began working during the middle of the year and that this might have been the reason she was not fingerprinted.
2. Further, during a site inspection for documents, the District found that Marisa Isabel Lorenzo, Craig Armstrong, and Teresa Lopez had not undergone a fingerprint background check prior to beginning employment at the Charter School.

Law/Charter Violated:

This is in violation of the Charter which requires that "All faculty and staff will undergo a criminal background check and fingerprinting to be conducted by both the local police department and the FBI, as well as a child abuse registry check."

California Education Code Section 45125 provides in pertinent part:

- (a)(1) Except as provided in Section 45125.01, the governing board of any school district shall require each person to be employed in a position not requiring certification qualifications, except a secondary school pupil employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school attended by the pupil, to have two fingerprint cards bearing the legible rolled and flat impressions of the person's fingerprints

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together with a personal description of the applicant prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit the cards, together with the fee required by subdivision (f), to the Department of Justice; except that any district, or districts with a common board, may process the fingerprint cards if the district so elects.

(2) As used in this section, "local public law enforcement agency" includes any school district and as used in Section 45126 requires the Department of Justice to provide to any school district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district.

(b)(1) Upon receiving the fingerprint cards, the Department of Justice shall ascertain whether the applicant has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department and forward the information to the employing agency submitting the applicant's fingerprints no more than 15 working days after receiving the fingerprint cards. The Department of Justice shall not forward records of criminal proceedings that did not result in a conviction but shall forward information on arrests pending adjudication.

(2) Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the Department of Justice shall ascertain the information required pursuant to this subdivision within three working days. If the Department of Justice cannot ascertain the information required pursuant to this subdivision within three working days, the department shall notify the school district that it cannot so ascertain the required information. This notification shall be delivered by telephone or electronic mail to the school district. If a school district is notified by the Department of Justice that it cannot ascertain the required information about a person, the school district may not employ that person until the Department of Justice ascertains that information.

(3) In the case of a person to be employed in a position not requiring certification qualifications who is described in subparagraph (A) or (B), the school district shall request the Department of Justice to forward one copy of the fingerprint cards to the Federal Bureau of Investigation for the purpose of obtaining any record of previous convictions of the applicant.

(A) The person has not resided in the State of California for at least one year immediately preceding the person's application for employment.

(B) The person has resided for more than one year, but less than seven years, in

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the State of California and the Department of Justice has ascertained that the person was convicted of a sex offense where the victim was a minor or a drug offense where an element of the offense is either the distribution to, or the use of a controlled substance by, a minor.

(c) The governing board of a school district shall not employ a person until the Department of Justice completes its check of the state criminal history file as set forth in this section and Sections 45125.5 and 45126, except that this subdivision does not apply to secondary school pupils who are to be employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school they attend.

(d) The governing board of each district shall maintain a list indicating the number of current employees, except secondary school pupils employed in a temporary or part-time position by the governing board of the school district having jurisdiction over the school they attend, who have not completed the requirements of this section. The Department of Justice shall process these cards within 30 working days of their receipt and any cards in its possession on the date of the amendment of this section by Assembly Bill 1610 of the 1997-98 Regular Session within 30 working days of that date. School districts that have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

(e) A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(f)(1) The school district shall provide the means whereby the fingerprint cards may be completed and may charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of the fee shall be forwarded to the Department of Justice with the required copies of applicant's fingerprint cards. The governing board may collect a reasonable fee payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. In no event shall the fee exceed the actual costs incurred by the agency.

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(2) The additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, the fee may be reimbursed to the applicant. Funds not reimbursed to applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

(g) This section applies to substitute and temporary employees regardless of length of employment.

(h) Subdivision (c) of this section shall not apply to a person to be employed if a school district determines that an emergency or an exceptional situation exists, and that a delay in filling the position in which the person would be employed would endanger pupil health or safety.

(i) Where reasonable access to the statewide, electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprints and related information required by this section.

(j) A school district shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(k) All information obtained from the Department of Justice is confidential. Each agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708, inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender

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record information is the responsibility of the entity receiving the information from the Department of Justice.

(l) Notwithstanding any other provision of law, the Department of Justice shall process pursuant to this section all requests from a school district, an employer, or a human resource agency for criminal history information on a volunteer to be used in a school.

California Education Code Section 45125.1 establishes in relevant part:

- (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:
 - (1) School and classroom janitorial.
 - (2) Schoolsite administrative.
 - (3) Schoolsite grounds and landscape maintenance.
 - (4) Pupil transportation.
 - (5) Schoolsite food-related.
- (b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.
- (c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district has made this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

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(d) A school district may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 45125.2 and the entity's employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district makes this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school district requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision.

(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(i) For purposes of this section, a charter school shall be deemed to be a school district.

California Education Code Section 45122.1 provides:

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be employed by a school district pursuant to this chapter. A school district shall not retain in employment a current classified employee who has been convicted of a violent or serious felony, and who is a temporary, substitute, or a probationary employee who has not attained permanent status.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c)(1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

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(2) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the school district by first-class mail.

(e) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(f) Notwithstanding subdivision (e), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(g) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone that a current temporary, substitute, or probationary employee who has not attained permanent status, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(h) Notwithstanding Section 47610, this section applies to a charter school.

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California Education Code Section 44830.1 provides:

(a) In addition to any other prohibition or provision, no person who has been convicted of a violent or serious felony shall be hired by a school district in a position requiring certification qualifications or supervising positions requiring certification qualifications. A school district shall not retain in employment a current certificated employee who has been convicted of a violent or serious felony, and who is a temporary employee, a substitute employee, or a probationary employee serving before March 15 of the employee's second probationary year. If any conviction is reversed and the formerly convicted person is acquitted of the offense in a new trial, or the charges are dismissed, this section does not prohibit his or her employment thereafter.

(b) This section applies to any violent or serious offense which, if committed in this state, would have been punishable as a violent or serious felony.

(c)(1) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

(2) For purposes of this section, a plea of nolo contendere to a serious or violent felony constitutes a conviction.

(3) For purposes of this section, the term "school district" has the same meaning as defined in Section 41302.5.

(d) When the governing board of any school district requests a criminal record summary of a temporary, substitute, or probationary certificated employee, two fingerprint cards, bearing the legible rolled and flat impressions of the person's fingerprints together with a personal description and the fee, shall be submitted, by any means authorized by the Department of Justice, to the Department of Justice.

(e) When the Department of Justice ascertains that an individual who is an applicant for employment by a school district has been convicted of a violent or serious felony, or for purposes of implementing the prohibitions set forth in Section 44836, any sex offense, as defined in Section 44010, or any controlled substance offense, as defined in Section 44011, the department shall notify the school district of the criminal information pertaining to the applicant. The notification shall be delivered by telephone or electronic mail to the school district. The notification to the school district shall cease to be made once the statewide electronic fingerprinting network is returning responses within three

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working days. The Department of Justice shall send by first-class mail or electronic mail a copy of the criminal information to the Commission on Teacher Credentialing. The Department of Justice may charge a reasonable fee to cover the costs associated with processing, reviewing, and supplying the criminal record summary required by this section. In no event shall the fee exceed the actual costs incurred by the department.

(f) Notwithstanding subdivision (a), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a violent or serious felony if the person has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) Notwithstanding subdivision (f), a person shall not be denied employment or terminated from employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is a resident.

(h) Notwithstanding any other provision of law, when the Department of Justice notifies a school district by telephone or electronic mail that a current temporary employee, substitute employee, or probationary employee serving before March 15 of the employee's second probationary year, has been convicted of a violent or serious felony, that employee shall immediately be placed on leave without pay. When the school district receives written electronic notification of the fact of conviction from the Department of Justice, the employee shall be terminated automatically and without regard to any other procedure for termination specified in this code or school district procedures unless the employee challenges the record of the Department of Justice and the Department of Justice withdraws in writing its notification to the school district. Upon receipt of written withdrawal of notification from the Department of Justice, the employee shall immediately be reinstated with full restoration of salary and benefits for the period of time from the suspension without pay to the reinstatement.

(i) An employer shall request subsequent arrest service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(j) Notwithstanding Section 47610, this section applies to a charter school.

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(k) This section shall not apply to a certificated employee who applies to renew his or her credential when both of the following conditions have been met:

(1) The employee's original application for credential was accompanied by that person's fingerprints.

(2) The employee has either been continuously employed in one or more public school districts since the issuance or last renewal of his or her credential or his or her credential has not expired between renewals.

(l) Nothing in this section shall prohibit a county superintendent of schools from issuing a temporary certificate to any person described in paragraph (1) or (2) of subdivision (k).

(m) This section shall not prohibit a school district from hiring a certificated employee who became a permanent employee of another school district as of October 1, 1997.

(n) All information obtained from the Department of Justice is confidential. Every agency handling Department of Justice information shall ensure the following:

(1) No recipient may disclose its contents or provide copies of information.

(2) Information received shall be stored in a locked file separate from other files, and shall only be accessible to the custodian of records.

(3) Information received shall be destroyed upon the hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations.

(4) Compliance with destruction, storage, dissemination, auditing, backgrounding, and training requirements as set forth in Sections 700 through 708 inclusive, of Title 11 of the California Code of Regulations and Section 11077 of the Penal Code governing the use and security of criminal offender record information is the responsibility of the entity receiving the information from the Department of Justice.

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Remedial Action Required:

To cure this material violation of the Charter, the Charter School must:

1. Provide the District with documentation that each non-credentialed faculty and staff member of the Charter School has been fingerprinted and has had a criminal background check conducted by the local police department and the FBI, as well as a child-abuse registry check; and
2. Non-credentialed faculty or staff members that have not undergone the above-mentioned background checks cannot be allowed on school grounds until the background checks have been conducted.

VI. STATE MANDATED TESTING

Investigation Determined:

The investigation determined that the Charter School failed to administer all state and national tests for grades five through eight as determined by the state and national testing schedule, according to the regulations established by the state, to ensure the security and integrity of test and assessment questions and materials for the 2005-2006 and 2006-2007 STAR testing sessions. The investigation determined the following:

1. During the 2005-2006 STAR testing session, completed state tests were stored in a location where students and parents had access to the tests;
2. The Charter School failed to abide by mandated testing procedures, and the test site coordinator failed to report testing irregularities for the 2005-2006 STAR testing session;
3. During the 2006-2007 STAR testing session, the Charter School failed to abide by mandated testing procedures; and
4. The test site coordinator for the 2006-2007 STAR testing session failed to report testing irregularities.

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Facts:

1. In 2006, completed state tests were stored in a location where students and parents had access to the tests. Two of the Charter School's former teachers, Kim Kutzner and Marcella Mayfield, stated that they witnessed violations of the testing procedures.
 - a. They stated that tests were not placed in a secure environment.
 - b. State tests were stacked in boxes around the school's office, tests were not returned promptly by teachers after the closing of that day's testing, and tests were left in classrooms, the principal's office, and the school's office.
2. Robert Hawke, a teacher at the Charter School, stated in an interview that in the beginning, the teachers left the tests in their classrooms overnight, but that someone brought this to their attention and they started locking them up.
3. Craig Armstrong, a staff member at the Charter School, admitted that administration of the test was not perfect in 2006, but he stated that any violation was not willful.
4. Robin Sosa, a teacher at the Charter School, stated in an interview that in the first couple of years, tests may have been left out during the day and the tests were stored in Mr. Tschang's office, but that they have since corrected this.
5. Joseph Yrigollen, another teacher at the Charter School, stated that for the first couple of years, the tests were kept in Mr. Tschang's office, but that for the last year, they moved the tests into a back room that locked.
6. Kim Kutzner and Marcella Mayfield stated that the school adopted a policy that students were required to check their answers again and again after they had finished their tests and were not allowed to do other activities.
7. Ms. Kutzner also witnessed teachers record students' answers during testing, review students' tests, and tell students which page to correct.

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8. Chi Tschang, as the test site coordinator for 2006, also admitted that in a couple of cases, teachers forgot to bring the tests back.
9. Mr. Tschang stated that he possibly gave students extra time on more than one day on a test that was to be completed in a single sitting.
10. In a staff meeting in May of 2006, Ms. Kutzner, who had five years of experience as a test-site coordinator, reviewed with the entire staff the violations that she had witnessed during testing and presented the written testing protocol materials to Mr. Tschang. The staff actively opposed any changes in procedures which would potentially lower test scores, and Mr. Tschang and Mr. Hawke stated that the legal and ethical requirements for testing were, in fact, only guidelines that could be ignored.
11. In April of 2006, Mr. Yrigollen, in front of another teacher, told students that he would rip students' books up if they took books out after finishing testing.
12. In May of 2007, Mr. Yrigollen demanded that a student put her book away after she finished her test and continue to check her work.
13. In a staff meeting in April of 2007, Ms. Kutzner emphasized the importance of following the state testing protocols and that teachers were to read the instructions as they were written in the testing manuals. In response, Mr. Hawke asked if he could remind his students to continuously rework their tests while they were taking the tests. Ms. Kutzner told him that he could not do that; however, Ms. Kutzner found that most teachers continued to require students to repeatedly check their answers, rework tests, and look over students' tests after testing periods.
14. The Charter School Board also recognized testing procedures as an area of concern, and in an October 2007 statement, recommended that the Charter School utilize a third-party proxy to educate the staff on testing procedures and be on site for state administered tests.

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15. The violations were knowingly in disregard of state testing procedures in that Mr. Tschang signed the STAR Test Security Agreement and the Charter School's teachers signed the STAR Test Security Affidavit in which they agreed to the conditions designed to ensure test security. Mr. Tschang also failed to report the testing irregularities to the District STAR Coordinator.

Law/Charter Violated:

California Education Code § 47605(c)(1) requires charter schools to meet all statewide standards and conduct the pupil assessments required pursuant to §§ 60605 and 60851 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools. The Charter also provides that the Charter School, "shall administer all state and national tests for grades five through eight as determined by the state and national testing schedule." Title 5 of the California Code of Regulations § 853 establishes that:

The designated achievement test, standards-based achievement tests and designated primary language test shall be administered and returned by school districts in accordance with the manuals or other instructions provided by the contractor for administering and returning the tests unless specifically provided otherwise in this subchapter including instructions for administering the test with variations, accommodations, and modifications specified in section 853.5. The procedures shall include, but are not limited to, those designed to insure the uniform and standard administration of the tests to pupils, the security and integrity of the test content and test items, and the timely provision of all required student and school level information.

Title 5 of the California Code of Regulations § 859 requires that:

- (a) All STAR district and test site coordinators (coordinators) shall sign the STAR Test Security Agreement set forth in subdivision (b) before receiving any designated achievement test, standards-based achievement tests, or designated primary language tests or test materials.

The STAR Security Agreement states:

- (1) I will take all necessary precautions to safeguard all tests and test materials by limiting access to persons within the school district with a responsible, professional interest in the tests' security.

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(2) I will keep on file the names of all persons having access to tests and test materials. All persons having access to the materials shall be required by the coordinator to sign the STAR Test Security Affidavit that will be kept on file in the school district office.

(3) I will keep the designated achievement test, the standards-based achievement tests, and the designated primary language test and test materials in a secure, locked location and will deliver tests and test materials only to those persons who have executed STAR Test Security Affidavits, on actual testing dates as provided in section 859(d).

(4) I will keep the alternate assessment materials in a secure locked location when not being used by examiners to prepare for and to administer the assessment. I will adhere to the contractor's directions for the distribution of the assessment materials to examiners.

(5) I will not copy any part of the tests or test materials without written permission from the Department to do so.

(6) I will not disclose, or allow to be disclosed, the contents of, or the test instrument. I will not review any test questions, passages, or other test items with any other person before, during, or after the test administration.

(7) I will not review test questions, develop any scoring keys or review or score any pupil responses except as required by the contractor's manuals.

The STAR Security Affidavit states in pertinent part:

(4) I will limit access to the test(s) and test materials by test examinees to the actual testing periods when they are taking the test(s).

(5) I will collect and account for all materials following each period of testing and will not permit pupils to remove test materials from the room where testing takes place.

(6) I will not review any test questions, passages, or other test items with pupils or any other person before, during, or following testing.

(10) I will administer the test(s) in accordance with the directions for test administration set forth in the contractor's manual for test administration.

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The 2006 and 2007 STAR District and Test-Site Coordinator Manual establishes in bold that a test-site coordinator must, “**Maintain test security and confidentiality at all times!**” (STAR Manual 2006, p.10) The manual further states that test examiners and proctors must, “ensure the security of test materials.” (STAR Manual 2006, p. 11) Test site coordinators are to “[s]ecure all materials in central, locked storage,” and that, “[t]he test site coordinator is responsible for immediately reporting any security violation to the district STAR coordinator.” The manuals also state, “[i]t is the responsibility of each person participating in the STAR Program to report immediately any violation or suspected violation of test security or confidentiality.”

Test examiners and proctors must, “plan quiet activities not related to the test being taken for students who finish early.” Test coordinators are also trained to review and stress, “all directions in ‘SAY’ boxes must be read to students exactly as they are written.” Further, the manuals provide that only students with testing accommodations specified in their IEP or Section 504 Plan can be tested over more than one day for a test or test part to be administered in a single sitting.

The manuals provide that test-site coordinators must report any testing irregularities that “may compromise the reliability and validity of test results, and if more than 5 percent of the students tested are involved, could affect a school’s Academic Performance Index (API).” Categories of testing irregularities include coaching and security breaches. Examples of coaching include, but are not limited to, “guiding students in marking correct answers,” and “discussing questions with students during testing.” Security breaches include failure to maintain test security.

Remedial Action Required:

In order to cure these material violations of the Charter and of state law, the Charter School must take the following actions:

1. The Charter School must use a qualified test coordinator designated by the District to educate the staff on the proper procedures for administering state-mandated tests and the test coordinator will monitor the administration of the state-mandated tests for subsequent state-mandated tests;

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2. The Charter School must use qualified test examiners and proctors designated by the District for subsequent state mandated tests;
3. The STAR District Coordinator will be informed with the results of this investigation identifying the irregularities and the failure to report the irregularities; and
4. The Charter School must comply with whatever actions the STAR District Coordinator recommends in regard to past testing irregularities.

VII. RIGHT TO PRIVACY

Investigation Determined:

The investigation determined that the Charter School disclosed students' information, including addresses and phone numbers, without informing parents about the existence of a directory or providing reasonable time to request information not be disclosed in a directory in violation of the Family Education Rights and Privacy Act of 1974 (FERPA) 20 USCA 1232g. Further, Mr. Tschang invaded students' and parents' privacy through his disciplinary methods.

Facts:

1. Mr. Tschang gave [REDACTED] the addresses of students and their parents in order to send an apology letter for his inappropriate touching of female students during class in May of 2008.
2. The information was provided to the student without consulting the parents of the other students.
3. One of the parents, [REDACTED], stated, "the problem I have with this is Mr. Chung [*sic*] giving out my personal information, my home address without my permission. I don't feel comfortable with him feeling free or that it is OK for him to do that."
4. Mr. Tschang admitted that he provided the information to the student and also admitted that the Charter School did not have a student directory.

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5. [REDACTED] was back-talking Mr. Tschang, and as punishment, he called [REDACTED] mother and put her on speakerphone so that the whole cafeteria could hear [REDACTED] mom yell at her. Mr. Tschang's response to this incident was, "I don't remember the specifics, but I did call [REDACTED] in the cafeteria and put her on speaker phone. My philosophy is, and continues to be, if you misbehave in public, I will discipline in public; if in private, then I will discipline in private."
6. [REDACTED] was a student who was disciplined for inappropriately touching another student. Mr. Tschang used what happened to [REDACTED] as an example to another student who inappropriately touched a female student. [REDACTED] stated that, "He wanted me to talk to him and tell him what consequences he might face afterward. He told me to tell [REDACTED] about me and my situation. He wanted me to tell him what the parents call me: sexual predator, a nasty kid, and a pervert." Mr. Tschang responded to this by saying, "The reasoning is that we look out for each other at our school, and we learn from each other's mistakes . . . the older student was passing on advice to the younger student about his mistakes made." When discussing the incident, [REDACTED] stated that, "It made me feel uncomfortable, but I only did it so I could go back to class. I also felt betrayed by Mr. Tschang and used. I was the example."
7. Another allegation concerning privacy occurred when an anonymous survey was sent out to parents and students. After the surveys were filled out, Mr. Tschang added the names to the surveys and then circulated the surveys to the staff. Mr. Tschang responded to this allegation that the surveys were not anonymous and that is why the names were identified with the surveys.
8. Mr. Tschang called an assembly to tell the entire school about the students who were caught shoplifting.

Law/Charter Violated:

The Charter states that "[t]he school will comply with all applicable federal, state, and local laws."

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The Family Education Rights and Privacy Act of 1974 section (a)(5)(B) establishes that:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

"Directory information" relating to a student includes: the student's name, address, and telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most-recent previous educational agency or institution attended by the student. 20 U.S.C.A. 1232g(a)(5)(A). The statute further provides:

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(I) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

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(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted--

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if--

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student. [FN1]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any

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person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Remedial Action Required:

To remedy this violation of the Charter and Federal law, the Charter School must:

1. Cease and desist dissemination of any directory information unless the school develops a public directory of student information in compliance with the Act.

VIII. TRANSPORTING STUDENTS OFF CAMPUS WITHOUT PARENTAL PERMISSION.

Investigation Determined:

The investigation determined that Mr. Tschang suspended students and sent them home in taxi cabs when parents could not pick students up at school. In at least one instance, no parents or guardians were notified.

Facts:

1. [REDACTED], mother of student [REDACTED], stated during the investigation that her daughter was suspended and sent home for not stopping a fight that occurred between two other students in April of 2008.
2. [REDACTED] was undergoing [REDACTED] when Mr. Tschang called her cell phone.
3. [REDACTED] friend answered the phone and Mr. Tschang told her that someone needed to pick up [REDACTED] from school. [REDACTED] friend stated that she did not want to leave the [REDACTED] to pick up [REDACTED] daughter.

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4. Mr. Tschang asked [REDACTED] friend if he could send [REDACTED] to the [REDACTED] in a cab, and her friend said yes.
5. [REDACTED] friend was not listed on the emergency card and not allowed to give this type of authorization. [REDACTED] subsequently arrived at the hospital in a taxi.
6. [REDACTED], a student who was disciplined for inappropriately touching another student. Mr. Tschang used what happened to [REDACTED] as an example to another student who inappropriately touched a female student. [REDACTED] stated that, "He wanted me to talk to him and tell him what consequences he might face afterward. He told me to tell [REDACTED] about me and my situation. He wanted me to tell him what the parents call me: sexual predator, a nasty kid, and a pervert." Mr. Tschang responded to this by saying, "The reasoning is that we look out for each other at our school, and we learn from each other's mistakes . . . the older student was passing on advice to the younger student about his mistakes made." When discussing the incident, [REDACTED] stated that "It made me feel uncomfortable, but I only did it so I could go back to class. I also felt betrayed by Mr. Tschang and used. I was the example."
7. Another allegation concerning privacy occurred where an anonymous survey was sent out to parents and students. After the surveys were filled out Mr. Tschang added the names to the surveys and then circulated the surveys to the staff. Mr. Tschang responded to this allegation that the surveys were not anonymous and that is why the names were identified with the surveys.

Law/Charter Violated:

California Education Code § 35350 establishes, "No governing board of a school district shall require any student or pupil to be transported for any purpose or for any reason without the written permission of the parent or guardian." This statute is incorporated into the Charter because the Charter School used transportation to effectuate a disciplinary measure and the Charter requires, "[a]ll disciplinary actions taken by KIPP Academy Fresno will strictly comply with California Education Code, KIPP Academy Fresno School policies and procedure, and applicable federal law."

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Remedial Action Required:

To remedy this material violation of the Charter the Charter School must:

1. Cease and desist transporting students to and from school without written parental permission.

IX. COPYING WRITTEN SCHOOL MATERIALS: FAILURE TO PROVIDE DOCUMENTS DEMONSTRATING COMPLIANCE WITH COPYRIGHT LAWS

Investigation Determined:

The investigation determined that Charter School failed to provide documentation demonstrating compliance with federal Copyright laws.

Facts:

1. Kim Kutzner stated in her declaration that teachers routinely violated copyright laws by copying textbooks and other materials to be used in class.
2. Marcella Mayfield stated that there were no textbooks for 5th and 7th grade science during the 2006-2007 school year and no textbooks for 7th grade science during the 2007-2008 school year.
3. Ms. Mayfield was given a CD by another staff member that had the approved 7th grade science textbook and ancillary materials on it, from which Ms. Mayfield copied chapters and worksheets.
4. Christopher Ammon, a teacher at the Charter School, stated in his interview, "Individual teacher sometimes copy from textbooks, and a variety of other sources such as teacher resource material or off the internet, or books that we already have."
5. Joseph Yrigollen, a teacher at the Charter School, stated in his interview that he copied assignments and guided practice problems.
6. In his second interview, Mr. Tschang stated that the school routinely copied from textbooks, workbooks, sheet music, and other educational references.

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7. Mr. Tschang stated that the books that were copied allowed the school to make copies for instructional purposes, and some explicitly stated that they could be copied for instructional purposes only.
8. However, the Charter School failed and refused to produce the documents stating that the textbooks could be copied when asked to produce them during the investigation.

Law/Charter Potentially Violated

The Copyright Act of 1976, 17 U.S.C.A. § 101 *et. seq.*, establishes in pertinent part that “the owner of copyright under this title has the exclusive right to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords . . .” (17 U.S.C.A. 106). 17 U.S.C.A. § 107 provides limitations on the exclusive rights of copyright holders and establishes:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

In order to facilitate the fair-use doctrine, Congress established guidelines for the copying of materials for classroom use under the fair-use doctrine of § 107. The guidelines establish that creating multiple copies for classroom use is permissible if the copying meets three tests. The first is the test of “brevity” and “spontaneity.” “Brevity” is defined for prose as, “[e]ither a

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complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or . . . 10% of the work, whichever is less . . .” (H.R.Rep. 94-1476 (1976) at 68, U.S.Code Cong. & Admin. News 1976, p. 5682. There is also a definition for “brevity” for “special works.” “Special works” are works:

“which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience.” The guidelines establish that “‘special works’ may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.” *Id.*

The guidelines establish that “spontaneity” is required. *Id.* “Spontaneity” is established if, “[t]he copying is at the instance and inspiration of the individual teacher and . . . [t]he inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would not be unreasonable to expect a timely reply to a request for permission.” *Id.*

The second test that must be met is the “cumulative effect” which requires that:

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, not more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term. *Id.*

The final test is that each copy includes a notice of copyright. *Id.*

However, notwithstanding this fair use guideline, Congress further provided that:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
- B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises,

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standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:

- a. substitute for the purchase of books, publishers' reprints or periodicals;
- b. be directed by high authority;
- c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying. *Id.*

Remedial Action Required:

In order to remedy the violation of federal law, the Charter School must:

1. Provide the District with, in writing, which textbooks, worksheets, exercises, and music were copied, the authorization to copy the materials, and the extent to which teachers repeatedly copied the same items from term to term.

X. FAILURE TO REPORT ALLEGED SEXUAL ABUSE

Investigation Determined:

The investigation determined that Charter School teachers and administrators failed to report incidents of sexual abuse to the proper authorities as required by law.

Facts:

1. On April 21, 2008 student [REDACTED] reported being touched inappropriately by another student, [REDACTED], to teacher Ms. Nguyen and Mr. Tschang. [REDACTED] also stated that there were four other girls who had been inappropriately touched in the same fashion.
2. [REDACTED] mother, [REDACTED], contacted the police about the incident on April 22, 2008.

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3. [REDACTED] said that the officer that contacted her, Officer McLelland, personally told Mr. Tschang that he was a mandatory reporter.

4. On Wednesday, May 21, 2008, [REDACTED] wrote:

First, Mr. Tschang wanted me to talk to a student named [REDACTED]. He, Mr. Tschang, told me that [REDACTED] touched a girl's butt. He wanted me to talk to him and tell him what consequences he might face afterward. He told me to tell [REDACTED] about me and my situation. He wanted me to tell him what the parents call me: a sexual predator, a nasty kid, and a pervert. He also wanted me to tell him about the other investigation I was in.

5. This incident was not reported to the police.

Law/Charter Violated

The Child Abuse and Neglect Reporting Act, California Penal Code section 11164 *et seq.* establishes in pertinent part:

§ 11165.1. Sexual abuse; sexual assault; sexual exploitation

As used in this article, "sexual abuse" means sexual assault or sexual exploitation as defined by the following:

(b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:

(4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

§ 11165.6. Child abuse or neglect

As used in this article, the term "child abuse or neglect" includes physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, the willful harming or injuring of a child or the endangering of the person or health of a child, as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer.

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§ 11165.7. Mandated reporter

(a) As used in this article, "mandated reporter" is defined as any of the following:

- (1) A teacher.
- (2) An instructional aide.
- (3) A teacher's aide or teacher's assistant employed by any public or private school.
- (4) A classified employee of any public school.
- (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

§ 11165.9. Reports of suspected child abuse or neglect

Reports of suspected child abuse or neglect shall be made by mandated reporters, or in the case of reports pursuant to Section 11166.05, may be made, to any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department. Any of those agencies shall accept a report of suspected child abuse or neglect whether offered by a mandated reporter or another person, or referred by another agency, even if the agency to whom the report is being made lacks subject matter or geographical jurisdiction to investigate the reported case, unless the agency can immediately electronically transfer the call to an agency with proper jurisdiction. When an agency takes a report about a case of suspected child abuse or neglect in which that agency lacks jurisdiction, the agency shall immediately refer the case by telephone, fax, or electronic transmission to an agency with proper jurisdiction. Agencies that are required to receive reports of suspected child abuse or neglect may not refuse to accept a report of suspected child abuse or neglect from a mandated reporter or another person unless otherwise authorized pursuant to this section, and shall maintain a record of all reports received.

§ 11166. Report; duty; time; method

(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when

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appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe

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neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

Remedial Action Required

To Remedy the violations of the law the Charter School must:

1. Provide a written policy to educate the staff on mandated reporting to the District for approval;
2. Provide a written protocol for reporting child abuse or neglect to the District for approval; and
3. Train the staff on mandated reporting by December 30, 2008 and annually train the staff on mandated reporting.

These measures must be implemented by December 30, 2008.

XI. FAILURE TO COOPERATE WITH THE DISTRICT'S INVESTIGATION

Investigation Determined:

The investigation determined that the Charter School failed to cooperate with the District's investigation by failing and refusing to produce requested documentation related to the investigation.

Facts:

During the investigation, the Charter School administration was asked for documents which it failed and refused to produce. Despite being asked repeatedly for production of documentation relating to the investigation, Mr. Tschang refused to produce the following documents:

1. Copies of signed suspension reports for the years 2007-2008 and for the remaining years of 2004-2005, 2005-2006, 2006-2007;
2. Copies of utility bills for a house on school grounds that Mr. Tschang allowed a student's family to live in;
3. Board minutes evidencing the multiple resignations of Board members;

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4. A signed copy of the agreement between KIPP California and the KIPP Academy Fresno; and
5. Copies of the authorizations allowing the Charter School to copy copyrighted materials.

Law/Charter Violated

California Education Code Section 47604.3 states:

A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority . . . and shall consult with the chartering authority . . . regarding any inquiries.

Remedial Action Required:

To remedy these violations of the law the Charter School must:

1. Produce the documents requested above by December 30, 2008; and
2. Keep accurate documents relating to student discipline, board meetings, agreements and contracts, financial records, and authorizations to copy copyrighted materials, including, but not limited to, the documents listed above, available for inspection at any time by the District.

COMPLIANCE WITH NOTICE TO CURE AND CORRECT IS MANDATORY

The District requires the Charter School to comply with all provisions of this NOTICE TO CURE AND CORRECT. Any failure on the part of the Charter School to conform to the remedial measures by the above-listed dates will result in the District taking further action.