



CSIS California School Information Services

Sacramento County Office of Education Extraordinary Audit of the Highlands Community Charter School

May 31, 2018

Michael H. Fine
Chief Executive Officer







May 31, 2018

David Gordon, Superintendent
Sacramento County Office of Education
10474 Mather Boulevard
Mather, CA 95655

Dear Superintendent Gordon:

In December 2016, the Sacramento County Office of Education and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement for FCMAT to conduct an Assembly Bill (AB) 139 Extraordinary Audit to determine if fraud, misappropriation of funds or other illegal fiscal activities may have occurred. Specifically, the agreement states that FCMAT will perform the following:

- A. Review the enrollment and attendance accounting and reporting procedures at the Highlands Community Charter School to determine whether the charter school is acting in violation of the approved charter petition, memorandum of understanding and/or Education Code by doing the following:
 1. Limiting enrollment to students age 22 or older and/or not offering services to students in all grade levels served by the authorizing school district as required by Education Code section 47605(a)(6), (d)(2)(A).
 2. Avoiding the requirement to provide additional services and support to students with disabilities by serving only students age 22 and older.
 3. Misreporting average daily attendance (ADA) by claiming an entire year of ADA for credit recovery programs that require less than a year to complete.
 4. Mischaracterizing attendance for adult students age 22 and older as required elementary and secondary student attendance.
 5. Mischaracterizing instructional minutes for adults age 22 and older as required elementary and secondary grade level instructional minutes, and possible lack of compliance with instructional minute requirements specified in Education Code section 47612.5.
 6. Reporting all students as being in grades K-2 or grade 9 to avoid standardized tests.
 7. Conferring diplomas to students who do not advance beyond grade 9.

FCMAT

Michael H. Fine, Chief Executive Officer

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8. Charging fees for enrollment in violation of Education Code section 47605(d).
9. Operating at multiple locations outside of the district boundaries of Twin Rivers. [Education Code section 47605(a)(1), (5), 47605.1; Anderson Union High School District v. Shasta Secondary Home School (October 17, 2016 4 Cal.App.5th 262 (2016))]

This final report contains the study team's findings and recommendations.

FCMAT appreciates the opportunity to serve you and extends thanks to all the staff of the Sacramento County Office of Education, the Twin Rivers Unified School District and Highlands Community Charter School for their cooperation and assistance during fieldwork.

Sincerely,



Michael H. Fine
Chief Executive Officer

Table of Contents

About FCMAT	iii
Introduction	1
Background.....	1
Fieldwork	2
Scope and Procedures	5
Study Team.....	6
Fraud, Occupational Fraud and Internal Controls	7
Findings and Recommendations.....	11
Adult Charter Schools: Students, Exclusive Partnerships and Locations	11
Grade Level Placement and Standardized Testing	23
Average Daily Attendance	27
Instructional Minutes and Days.....	29
Student Completions and Accountability	33
Charging Fees	39
Items Outside the Study Scope.....	41
Brown Act Violation	41
Board Member Conflict of Interest.....	41
Independent Contractor Status	43
Gambling	44
Gifts to Board Members/Employees/Students	45
Hiring Practices	46
Sexual Harassment	47

AB 139 Extraordinary Audit Report Summary - Potential Fraud ..49

Appendices 53

A – Study Agreement..... 55

B – CDE’s Suggestions for Successful Partnerships..... 61

About FCMAT

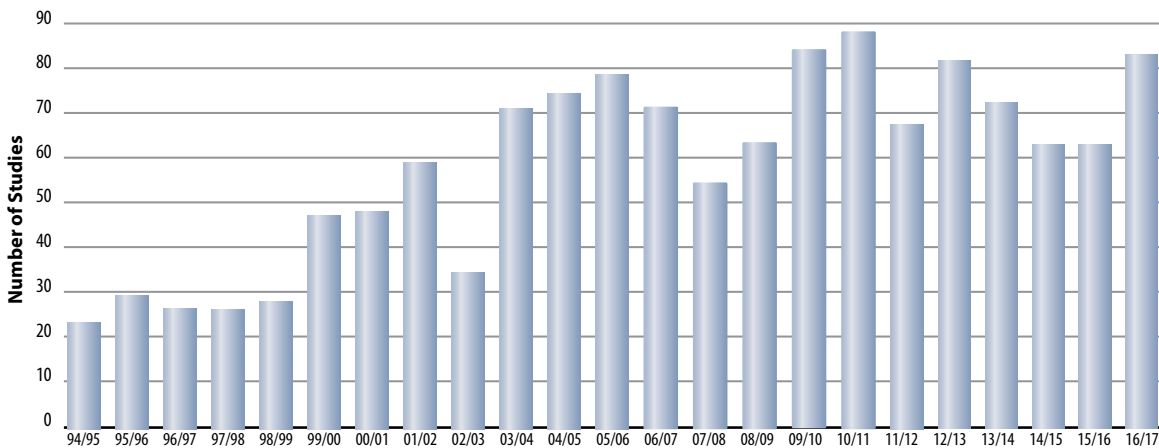
FCMAT’s primary mission is to assist California’s local K-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT’s fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT’s data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state Superintendent of Public Instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of K-14 LEAs and the implementation of major educational reforms.

Studies by Fiscal Year



FCMAT also develops and provides numerous publications, software tools, workshops and professional development opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website (www.ed-data.org) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1992 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its state-wide data management work. AB 1115 in 1999 codified CSIS’ mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, Senate Bill 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

Since 1992, FCMAT has been engaged to perform more than 1,000 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Michael H. Fine, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

Highlands Community Charter School (HCCS) is operated under the Highlands Community Charter and Technical School (HCCTS), a public benefit corporation incorporated on February 6, 2013 and registered with the California Secretary of State as a domestic nonprofit corporation on May 21, 2013.

HCCTS, on behalf of HCCS, submitted to the Twin Rivers Unified School District (the district) a charter petition to serve students 22 years of age or older who had not attained a U.S. high school diploma. The district approved HCCTS' petition on March 4, 2014 for a five-year period ending June 30, 2019. The district also provided, and continues to provide, an adult education program. On June 17, 2014, the district, HCCTS and HCCS entered into a memorandum of understanding to document "the arrangement and agreement between the parties regarding HCCS' funding and programs." HCCS opened for classes on August 18, 2014.

HCCS serves students in a classroom setting that offers programs for students to earn their high school diploma, learn to speak English, receive career technical education, learn about jobs, and learn how to become a U.S. citizen. Its audited financial statements for the period ending June 30, 2016 state that its mission is:

serving the unserved, by providing the education for a high school diploma to our students, along with elective courses leading to a Certificate of Completion in one of our Career and Technical Education courses, thereby giving our students all of the tools necessary to obtain a livable wage job, and a future for themselves and their family.

California Education Code Section 47600- 47664, also known as the Charter Schools Act of 1992, was enacted "to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure." Charter schools are part of the public school system but differ from traditional public schools because they are exempt from many state laws relating to specific educational programs. Specific goals and operating procedures are detailed in an agreement, or charter, between the authorizing agency and the charter school organizers. Charter schools may elect to operate as corporations organized under the Nonprofit Public Benefit Corporation Law of the Internal Revenue Code [26 U.S.C. Section 501(c)(3)].

Although charter schools offer a more flexible school governance model, their accountability for student achievement and fiscal management is similar to that of traditional public schools. The charter authorizing agency is responsible for adequate and appropriate oversight of the charter; the authorizer can be a school district, county office of education, or the California State Board of Education. Education Code sections 47604.32 and 47604.33 set forth the chartering authority's duties and the charter's financial reporting obligations. Having a contact person and visiting the charter at least annually are indicators of duties over the academic program but are not sufficient in and of themselves to provide adequate direction and oversight. HCCTS' petition includes provisions for an annual performance report to the district, which would include data on its staff, policies, admissions practices, disputes and complaints, and student outcomes using test data. It would also allow the district to conduct an annual review of all HCCS programs offered and their effectiveness and student achievement.

HCCS has reported significant enrollment gains in each of the three years it has been operating, including a 150% increase from 2014-15 to 2015-16 and a 145% increase from 2015-16 to 2016-17. Although HCCS primarily serves students over 22 years of age who have not earned a U.S. high school diploma, it has taken a unique approach in serving its students by applying parts of the traditional K-12 educational system, such as using the Local Control Funding Formula (LCFF), and parts of the adult education system, such as use of the Comprehensive Adult Student Assessment Systems (CASAS) testing, and merging them into its own system.

Concerns regarding HCCS' operations were brought to the attention of the Sacramento County Office of Education (county office) because of the following:

- The unique nature of HCCS as described above
- The large increases in its student enrollment
- Reports of efforts to eliminate services to specific grades and students with special needs
- Reports of misreporting of average daily attendance (ADA)
- Reports of mischaracterization of attendance and instructional minutes
- Reports of HCCS charging fees
- Concerns regarding operation of locations outside of the district's boundaries

Therefore, the county office requested FCMAT to provide for the assignment of professionals to conduct an AB 139 extraordinary audit to study specific aspects of alleged fraud, misappropriation of funds or other illegal fiscal practices that may have occurred at HCCS.

Fieldwork

FCMAT provides a variety of services to school districts, charter schools and county offices of education upon request. Education Code Section 1241.5(b) and (c) permits a county superintendent of schools to review or audit the expenditures and internal controls of any school district or charter school in that county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. According to the Education Code, the review or audit conducted by the county superintendent will focus on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and is to be conducted in a timely and efficient manner. This is in accordance with Education Code Section 42638(b), which states:

If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.

Investigating allegations of fraud requires a number of steps, including interviews with potential witnesses and gathering evidence from internal and external sources. The FCMAT study team conducted initial county office and district interviews in January 2017, then visited the HCCS main campus located on Grand Avenue in Sacramento in April and July 2017 to review student files. Additional interviews of current and past HCCTS board members and HCCS administrators and staff were conducted in September 2017, with some follow-up conversations in November and December. One HCCTS founder declined to be interviewed on multiple occasions, citing medical appointments that interfered with such requests. Documents were collected from the district and HCCS both before and after FCMAT's April 2017 visit to HCCS to obtain

information related to HCCS' enrollment and attendance practices as well as its negotiations with Greater Sacramento Urban League (GSUL).

Specifically, FCMAT reviewed, analyzed and tested the following:

- Board meeting agendas, packets and meeting minutes.
- Business records including general ledger activity, cash receipts, cash disbursements, financial reports, board policies and administrative regulations, and internal documents from various departments and independent sources.
- Student attendance detail reports by site for 2014-15, 2015-16, and 2016-17.
- Monthly attendance summary reports for 2014-15.
- Individual student files held in various counselors' offices.
- Enrollment and attendance records generated via read-only access to HCCS' student information systems.
- Attendance reports for students in multiple tracks for 2014-15 and 2015-16.
- First principal apportionment period (P-1), second principal apportionment period (P-2) and annual attendance reports for 2014-15, 2015-16 and 2016-17.
- School calendars, attendance calendars and bell schedules for 2014-15, 2015-16 and 2016-17.
- HCCS' instructional minutes calculations for 2014-15, 2015-16 and 2016-17.
- Course outlines for all high school diploma, English language development and English as a second language courses of study offered by HCCS.
- CASAS student testing reports for 2014-15, 2015-16, and 2016-17.

The fieldwork focused on determining whether there is sufficient information to indicate fraud including the following: misappropriation of state funds; violations of the Education Code by failing to serve only students over the age of 22 and failing to serve only students who have not earned a high school diploma, failing to serve students with special needs, charging fees for enrollment, operating locations outside of the district's boundaries, misreporting ADA, or mischaracterizing attendance and instructional minutes of adult students as that of students in elementary or secondary grades; reporting students in grades K-2 or grade 9 to avoid standardized testing; and awarding diplomas to students who have not advanced beyond the ninth grade.

There are many different types of fraud; however, all fraud has common elements, including the following:

- Knowingly making an untrue representation or a false claim of a material fact
- Intent to deceive, or concealment of the act
- Reliance on untrue information
- Damages or a loss of money or property

This report is the result of FCMAT's fieldwork and review as described above and is divided into the following sections:

- Introduction
- Background

- Fieldwork
- Scope and Procedures
- Study Team
- Fraud, Occupational Fraud and Internal Controls
- Findings and Recommendations
- Adult Charter Schools: Students, Exclusive Partnerships and Locations
- Grade Level Placement and Standardized Testing
- Average Daily Attendance
- Instructional Minutes and Days
- Student Completions and Accountability
- Charging Fees
- Items Outside the Study Scope
- Brown Act Violation
- Board Member Conflict of Interest
- Independent Contractor Status
- Gambling
- Gifts to Board Members/Employees/Students
- Hiring Practices
- Sexual Harassment
- Appendices

In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon and capitalizes relatively few terms.

Scope and Procedures

Fraud investigations consist of gathering adequate information about specific allegations and performing test procedures to determine whether fraud may have occurred; evaluating the loss associated with possible fraud; and determining who may be involved and how it may have occurred.

The primary focus of this review is to determine whether there are reasonable assurances, based on testing, that adequate management controls are in place for the charter's reporting and monitoring of student enrollment, support of students with disabilities, ADA, instructional minutes and days, avoidance of standardized tests, conferral of diplomas, charging fees, or operating multiple sites, and whether fraud, misappropriation of funds or other illegal activities may have occurred in these areas.

During interviews, FCMAT team members asked specific questions regarding the following aspects of HCCS:

- Partnership with GSUL
- Job responsibilities
- Enrollment and testing policies and procedures
- Grade placement policies and procedures
- Mastery of high school courses
- High school graduation requirements
- Application of transcripts and high school equivalency examinations toward graduation requirements
- Attendance policies and procedures
- Instructional minutes calculations
- Receipt of cash from outside parties, fee collections and cash handling
- Establishment and operation of HCCS locations
- Student achievement data and accountability
- Open-ended questions designed to elicit information about other possible irregularities related to the scope of work

To accomplish this study's objectives, FCMAT developed several test procedures to provide an in-depth analysis and understanding of the allegations and potential outcomes. FCMAT was provided read-only access to HCSS' student information systems as well as access to general ledger records, including supporting documentation provided by school personnel and the back-office provider, as well as third-party and publicly accessible documents. FCMAT performed tests and reviews related to enrollment data, attendance records and general ledger transactions, including the following:

- Sorting and working with HCCS' download of its enrollment data into Microsoft Excel to determine:
- The age of its students upon enrollment.
- The population of its students with disabilities. FCMAT then reviewed these students' files to confirm documentation was present regarding whether a disability exists.

- The population of its students who had graduated. FCMAT then reviewed a sample of these students' files and work products to determine if they met HCCTS' graduation requirements.
- Reviewed student attendance information in student files and compared it to the information in the electronic student information system.
- Traced the information from the electronic student information system to the information reported to the California Department of Education (CDE), which is used to generate principal apportionment payments.
- Reviewed HCCS' student attendance calendar, bell schedules and instructional minutes calculations.
- Reviewed course requirements and student records to determine levels of student proficiency.
- Analyzed assessment reports to evaluate competency results.
- Reviewed students' cumulative folders to analyze accountability for graduation requirements and accurate completions of courses.
- Reviewed HCCS' Alternative Schools Accountability Model (ASAM) application and instructions for completion and submittal.
- Compared HCCS' download of its enrollment data with the statistical data used to obtain ASAM approval to determine if anomalies exist.
- Reviewed the general ledger to determine if a record exists of student fees having been collected.

FCMAT's findings and recommendations are the result of the above test procedures.

Study Team

The study team was composed of the following members:

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Bakersfield, CA

*As a member of this study team, this individual was not representing her employer but was working solely as an independent contractor for FCMAT.

Fraud, Occupational Fraud and Internal Controls

Fraud

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts.

A material weakness is a deficiency in the internal control process whereby errors or fraud may occur. Because of the weakness, employees in the normal course of business may not detect errors in time to correct them. A material weakness also can be a violation of law or regulations.

Although all employees have some degree of responsibility for internal controls, the governing board, executive director and senior management are ultimately responsible.

Occupational Fraud

Occupational fraud occurs when owners, executives, managers or employees use their occupation to deliberately misuse or misapply the employer's resources or assets for personal benefit. The three main types of occupational fraud are asset misappropriation, corruption, and financial statement fraud.

Asset misappropriation includes acts such as cash skimming, falsifying expense reports, or forging company checks. Corruption involves an employee(s) using his or her influence in business transactions to obtain a personal benefit that violates that employee's duty to the employer or the organization. Financial statement fraud includes the intentional misstatement or omission of material information in financial statements to misinform the reader about the organization's financial strength.

Occupational fraud is one of the most difficult types of fraud and abuse to detect; however, tips help prevent occupational fraud three times as often as any other detection method. According to the *2016 Report to the Nations* conducted and published by the Association of Certified Fraud Examiners, although asset misappropriation is the largest category of occupational fraud, occurring in 83% of all cases reported, those cases had the lowest median loss at \$125,000 per scheme. Financial statement fraud, on the other hand, was involved in less than 10% of all cases studied but had a much larger median loss: \$975,000 per scheme. There is a direct correlation between the perpetrator's position and authority in an organization and the losses incurred: losses from fraud by owners and executives are four times higher than those from fraud by managers and 11 times higher than those from fraud by employees.

Internal Controls

The accounting industry defines the term "internal controls" as it applies to organizations and school agencies, including charter schools. Internal control is ". . . a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance." (The Committee of Sponsoring Organizations of the Treadway Commission – May 2013) The reference to achievement of objectives refers to an organization's work of planning, organizing, directing, and performing routine tasks relative to operations, and monitoring performance.

An organization establishes control over its operations by setting goals, objectives, budgets, transaction processing, and performance expectations. Several factors influence the effectiveness of internal controls, including the social environment and how it affects employees' behavior, the availability and quality of information used to monitor the organization's operations, and the policies and procedures that guide the organization. Internal controls help an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, producing reliable financial reports, and ensuring compliance with applicable laws and regulations.

Internal controls are the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal controls provide reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

All educational agencies, including charter schools, should establish internal control procedures to accomplish the following:

1. Prevent management from overriding internal controls.
2. Ensure ongoing state and federal compliance.
3. Assure the governing board that the internal control system is sound.
4. Help identify and correct inefficient processes.
5. Ensure that employees are aware of the expectation that proper internal controls will be used.

Internal control elements provide the framework for an effective fraud prevention program. An effective internal control structure includes the policies and procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees. The five interrelated components of an effective internal control structure and their definition are included in the table below:

Internal Control Element	Definition
Control Environment	Commonly referred to as the moral tone of the organization, the control environment includes a code of ethical conduct; policies for ethics; hiring and promotion guidelines; proper assignment of authority and responsibility; oversight by management, the board or an audit committee; investigation of reported concerns; and effective disciplinary action for violations.
Fraud Risk Assessment	Identification and assessment of the organization's objectives to develop a strategy to react in a timely manner.
Control Activities	The development of policies and procedures to enforce the governing board's directives. These include actions by management to prevent and identify misuse of the charter's assets, including preventing employees from overriding controls in the system.
Information and Communication	Establish effective fraud communication. Ensure that employees receive information regarding policies and opportunities to discuss ethical dilemmas. Establish clear means of communication within an organization to report suspected violations.
Monitoring	Conduct ongoing monitoring that includes periodic performance assessments to help deter fraud by managers and employees.

The following is a partial list of deficiencies and omissions that can cause internal control failures:

- Failure to adequately segregate duties and responsibilities related to authorization.
- Failure to limit access to assets or sensitive data (e.g. cash, fixed assets, personnel or student records).
- Failure to record transactions, resulting in lack of accountability and the possibility of theft.
- Failure to reconcile assets with the correct records.
- Failure to follow Generally Accepted Accounting Principles regarding revenue recognition, resulting in recording unearned revenues or premature revenue recognition.
- Unauthorized transactions, resulting in skimming, embezzlement or larceny.
- Lack of monitoring or implementation of internal controls by the governing board and management, or because personnel are not qualified.
- Collusion among employees where little or no supervision exists.

A system of internal controls consists of policies and procedures designed to provide the governing board and management with reasonable assurance that the organization achieves its objectives and goals. Traditionally referred to as hard controls, these include segregation of duties, limiting access to cash, board and/or management review and approval, and reconciliations. Hard controls also include an organization exercising due diligence by performing background and cross checks of bank account numbers, employees' Social Security numbers, and addresses of companies that do business with the organization to prevent conflict of interest. Other types of internal controls include soft controls such as asking employees to disclose any potential conflicts of interest, management tone, performance evaluations, training programs, and maintaining established policies, procedures, ethics training and expected standards of conduct.

The internal control environment establishes the organization's moral tone, commonly referred to as the tone at the top. This is an intangible element that consists of the employees' perception of the ethical conduct displayed by the governing board and executive management.

A strong system of internal controls that includes all five elements can provide reasonable but not absolute assurance that the organization will achieve its goals and objectives.

During FCMAT's interviews with HCCS' administrators and staff, their passion and dedication to the school's mission and its students were clearly evident. HCCTS board members as well as employees demonstrated that same excitement regarding opportunities for the school's students. However, this overwhelming desire to help students reach their goals appears to have led to a marginalization of the charter's internal controls and contributed to weakness and deficiencies in those controls. Examples include, among others, failure to obtain board approval for course outlines, awarding a diploma to a student who never completed a course at HCSS, and awarding credits based on problematic interpretations of the law. This has led to an environment in which there is the potential for fraud, misappropriation and misuse of assets at HCCS.

Findings and Recommendations

Adult Charter Schools: Students, Exclusive Partnerships and Locations

Students

Education Code section 47605(a)(6) states:

... a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

In the case of HCCTS, its petition proposed to serve adults over the age of 22 who had not earned a U.S. high school diploma. Its charter authorizer, the Twin Rivers Unified School District, has a long history of serving adults, and HCCTS' founders came from the district's adult education program.

In reviewing the students HCCS was serving, the question arose as to whether HCCS was serving students who fell outside of the age and diploma parameters set in its petition, its memorandum of understanding (MOU) with the district, and its September 12, 2013 service agreement (partnership agreement) with the Greater Sacramento Urban League (GSUL).

Although adult charter schools may appear to be new, the provisions of Education Code section 47612 related to services to students 19 years of age and older were added pursuant to AB 544 in May 1998. Education Code section 47612(b) states in part the following:

The average daily attendance in a charter school may not, in any event, be generated by a pupil who is not a California resident. To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress towards award of a high school diploma. The state board shall, on or before January 1, 2000, adopt regulations defining 'satisfactory progress.'

Education Code section 47612 provides for "generating charter school apportionments," which under current law means funding through the Local Control Funding Formula (LCFF).

Education Code section 47612.1 was added by AB 1994 in 2002 and further additions were made by Senate Bill (SB) 858 on June 20, 2014. This code section was also amended in 2016 to read as follows:

(a) Except for the requirement that a pupil be a California resident, subdivision (b) of Section 47612 shall not apply to a charter school program that provides instruction exclusively in partnership with any of the following:

- (1) The federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.).
- (2) Federally affiliated Youth Build programs.
- (3) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(4) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Section 14406 or 14507.5 of the Public Resources Code.

(b) This section shall become operative on July 1, 2015.

The Workforce Innovation and Opportunity Act (WIOA) became effective July 1, 2016; the Workforce Investment Act (WIA) was its predecessor. Education Code section 47612.1 previously listed WIA during the years in which it was operative.

Education Code section 47612.1 allows the establishment of special partnerships with charter schools to serve students over the age of 19, provides that those students are no longer required to be continuously enrolled in public school or to have made satisfactory progress toward earning a high school diploma, and allows the charter to collect LCFF apportionments.

HCCTS' petition on behalf of HCCS cites these Education Code provisions in the petition to serve its students. Prior to its charter petition to the district, on September 12, 2013, HCCTS entered into a partnership agreement with GSUL, which HCCTS asserts serves as its exclusive WIOA partnership document required under Education Code sections 47612.1 and 47605.1(g). Under the terms of the partnership agreement, all students "must not possess a U.S. High School Diploma" and "must be age 22 or older (per the definition of non-youth in the Workforce Investment Act)."

There is some debate in the legal community over the exact meaning of the term "exclusive partnership." Some attorneys see this as a law that has an all or nothing interpretation, meaning that if one student violates the terms of the exclusive partnership, then the entire charter school would not be entitled to the age and territorial relief provided by these sections of the law. Other attorneys opine that not all students would be required to be participants subject to the exclusive partnership if the instruction is being provided in accordance with the exclusive partnership and, if that is true, then the charter qualifies for the relief under the law.

There is also the potential for a middle ground, in which a charter school could claim apportionment for students over age 22, with or without continuous enrollment or satisfactory progress, if all such students are participating in a charter program with one or more of the programs cited in Education Code Section 47612.1. That same charter school could also operate a separate program, if so described in its charter, that serves traditional students who are not in one of the 47612.1 special programs. This is FCMAT's interpretation of charter regulation 5 CCR Section 11960(c)(2)(A) and (B), operative since 2004. This two-pronged approach to dealing with the apportionment issue does not appear to apply to HCCS, as the school's charter describes only one program, not two.

The regulation is, by its terms, exclusive, in that every student in a charter school, or every student in a described program of a charter school, must be in the special program. Since the HCCS charter describes only one program, regulation 5 CCR Subsection 11960(c)(2)(A) would apply, indicating the school may serve no other pupils. Given the partnership agreement between HCCTS and the WIOA organization states that it excludes pupils under age 22 and those with a high school diploma, and given the statements made by HCCS staff that the school occasionally served students either under age 22 or holding a high school diploma, it does not appear HCCS was operating within an exclusive partnership agreement, as required in Education Code Section 47612.1.

A case from the San Diego County Superior Court further weighs in on the subject as it relates to the locations of charter schools and Education Code section 47605.1. In the case of *Grossmont*

Union High School District vs. Julian Union School District [(April 11, 2017) Sp. Ct. Case No. 37-2015-00033720-CU-WM-CTL], the court concluded that some of the Julian Union School District's charter school students had been provided instruction "not in partnership with WIOA [Workforce Innovation and Opportunity Act] providers" and concluded that "based on the plain meaning of the language within Section 47605.1(g)(1), instruction at Diego Valley is not provided exclusively in partnership with WIOA providers." The Statement of Decision further states:

The word 'instruction' is modified by the word 'exclusively' requiring the provision of instruction to occur via partnership between a charter school and one or more of the enumerated options in section 47605.1, subd. (g)(105) . . . What is deemed critical in section 47605.1, subdivision (g) is the type of instruction provided, not the status of the students. ***In the instant case, all instruction must be provided 'in partnership' with WIOA providers***, i.e. pursuant to some formal relationship by which the respective parties have allocated their rights, duties and responsibilities.

Although the Grossmont decision is not binding in any jurisdiction outside of San Diego County and relates to locations of charter schools, both exceptions in Education Code for students and locations are nearly identical. Therefore, the San Diego County decision provides insight into how one court ruled on the definition of exclusive partnerships in the area of charter school locations and how other courts may rule in the future if such a question were to be litigated based on age limitations.

FCMAT's analysis of the enrollment information provided by HCCS for its three years of operation identified 51 students who had been admitted to the charter at the age of 21 and 29 students who had been admitted holding a U.S. high school diploma. In answer to FCMAT's questions about its admission practices for those under age 22 and already holding a U.S. high school diploma, HCCS provided the following written statements:

By the terms of our Exclusive Partnership Agreements, required by Education Code §§ 47605.1(g) and 47612.1, students must not qualify for WIOA youth services (or in other words are "non-youth"), and thus must be 22 years of age or older. ***But, on a case by case basis, we have accepted some students who are under the age of 22, and allowed them to participate in the same program as other students, but have not collected any apportionment funding for these students.***"

[Page 1, Potential Student Does Not Meet Age Requirement, emphasis added]

We cannot legally collect any apportionment funding for students who already have a full U.S. High School Diploma. ***On a case-by-case basis we have allowed some students who already have a diploma to participate, but in such cases we have not collected any apportionment funding for these students.***

[Page 1, Potential Student Already Has a U.S High School Diploma, emphasis added]

FCMAT believes that HCCS' statements regarding its enrollment of students under age 22 and students who have a U.S. high school diploma are confirmations of violations of its partnership agreement with GSUL and its charter petition with the district. The above statements indicate that HCCS believes it has the authority to change the terms of these agreements without amendment.

To provide insight into the intent of HCCTS and HCCS as to whom the charter and GSUL planned to serve and whether there is any flexibility in student admission requirements, one can

look at various statements in documents such as the charter petition and the partnership agreement. The HCCTS charter petition makes the following statements:

This petition represents an opportunity for Twin Rivers Unified School District (TRUSD) to revive Career Technical Education services to adults while simultaneously ***assisting them to achieve their high school diploma.***

[Page 2, Preface, emphasis added]

HCCS will ***serve those who don't have a U.S. high school diploma*** and within this set we'll focus on General High School Dropouts, Parents, Immigrants, and Ex-Offenders. [Page 10, Aims and Vision of Our School, emphasis added]

In accordance with California Education Code Sections 47605.1(g) and 47612.1, ***all instruction*** with HCCS ***will be provided exclusively in partnership*** with the Greater Sacramento Urban League, a WIA-funded organization, or other legally allowed exclusive partnership. Adult students ***who meet the terms of the partnership agreement and statutory requirements*** may be served by HCCS.

[Page 15, Educational Program, emphasis added]

Classroom-based individualized learning labs will allow students who are academically high achieving to learn in an accelerated manner, such that they can ***complete their diploma quicker.***

[Page 22, Plan for Students Who Are Academically High Achieving, emphasis added]

Through its exclusive partnership(s) . . .

[Page 22, Inviting Students to Join the School, emphasis added]

Highlands Community Charter School (HCCS) ***shall admit all students*** it is legally allowed to serve, ***who meet the exclusive WIA agreement requirement of being age 22 or older,*** and who submit a timely application . . . assessments may be used in conjunction with other factors to appropriately determine which grade level a student will be enrolled in.

[Page 24, Admissions Requirements, emphasis added]

Per Education Code §§ 47612.1 and 47605.1(g), HCCS ***shall provide instruction exclusively in partnership*** with the Workforce Investment Act of 1998 ***through its partnership agreement*** with the Greater Sacramento Urban League (GSUL) or other WIA organization. As such ***it may only legally serve students who are receiving WIA funded services,*** and do so ***under the terms of a Partnership Agreement.***

[Page 24, Education Exclusively in Partnership with WIA, emphasis added]

HCCS will provide all instruction ***exclusively in partnership with the Greater Sacramento Urban League*** (GSUL). Per Education Code, all education provided by HCCS to GSUL will be provided at no cost to the partner or student. The Greater Sacramento Urban League will inform their clients about their ability to participate in HCCS. ***The Partnership Agreement between HCCS and GSUL will detail the terms required for clients of GSUL to join HCCS.***

[Page 34, Required Exclusive Partnership, emphasis added]

HCCS expects to serve a combination of youth and adult students, with the ***20 to 45*** year old age group making up the greatest percentage of learners.

[Page 45, Student Facility Needs, emphasis added]

Per Education Code §§ 47612.1 and 47605.1 (g), HCCS shall provide instruction exclusively in partnership with the Workforce Investment Act of 1998 by establishing Exclusive Partnership Agreement(s) with WIA funded agencies. ***As such it may only legally serve students who are receiving WIA funded services, and do so under the terms of the Partnership Agreement.***

[Page 121, Admissions Policy, Education Exclusively in Partnership with WIA, emphasis added]

Students who have a U.S. High School Diploma (also known as a “regular high school diploma”) ***will not be admitted*** to Highlands Community Charter School. [Page 121, Admissions Policy, Not Possessing a U.S. High School Diploma, emphasis added]

The partnership agreement between HCCTS/HCCS and GSUL also indicates it will serve those same student populations:

Highlands Community Charter and Technical Schools (HCCTS) agrees that all students from any Sacramento charter schools it operates will exclusively receive services from the Greater Sacramento Urban League (GSUL) for core WIA services. ***All students participating with HCCTS charter schools must do so by terms of this agreement***, in line with California Education Codes §§ 47605.1(g) and 47612.1. All services provided by GSUL would be equal to those provided to the general public for non-youth.

[Page 1, Agreement, emphasis added]

Students must meet the following conditions for enrollment with HCCTS charter schools:

- They must receive basic core services from GSUL
- They must not possess a U.S. High School Diploma
- They ***must be age 22 or older*** (per the definition of non-youth in the Workforce Investment Act.)

[Page 1, Student Qualifications, emphasis added]

This Agreement constitutes the entire agreement between the parties and no oral understanding not incorporated herein shall be binding on any of the parties hereto. [Page 1, Entire Agreement]

Based on the multiple assertions made by HCCTS in these documents, it is clear that HCCTS through HCCS intended to have as its student population all students over the age of 22 who did not hold a U.S. high school diploma.

Although FCMAT was able to confirm HCCS’ assertions that it did not receive apportionment for 21-year-old students and students with U.S. high school diplomas (see Average Daily Attendance section below), HCCS would somehow have had to bear the cost of the education provided to the 80 students in these categories.

HCCS received 99.9% of its funding from federal and state resources during the period under review; these are inarguably public funds. In addition to federal and state funds, HCCS received some local revenues that one could argue are not public funds.

Therefore, as part of this review, FCMAT examined only such local revenues to determine if they could have been used to provide instructional services to these 80 students.

FCMAT's examination of HCCS' 2014-15 and 2015-16 audited financial statements and its 2016-17 second interim report show local revenues of \$101, \$6,588 and \$8,500, respectively. These amounts are not sufficient to support the expenses associated with delivering instruction to 80 students. Consequently, FCMAT believes that, whether intentionally or not, HCCS used public funds for these 80 students, which could be considered a gift of public funds.

Article 16, Section 6 of the California Constitution specifies that the state Legislature cannot authorize any county, city, or other political subdivision to make any gift of public funds to an individual or corporation. Article 16 states that in the absence of a statute granting public local educational agencies (LEAs) the legal authority to make a special expenditure (e.g., for food, clothing, awards and other such items), the legality of any expenditure is determined by the gift of public funds provision in the California Constitution, Article 16, Section 6. This constitutional provision prohibits making any gift of public money to any individual (including public employees), corporation, or other government agency. It states, ". . . the Legislature shall have no . . . power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual . . . whatever ..."

In general, the constitutional prohibition against the gift of public funds is not an issue when a direct and primary public purpose is accomplished so that the public receives a benefit from the expenditure. It is also well established that expenditures of public funds that involve a benefit to private persons (including public employees) are not gifts within the meaning of the California Constitution if those funds are expended for a public purpose. However, if the gift is to an employee or other individual and there is no benefit to the public as a result, it can be considered a gift of public funds. This means that public funds may be expended only if a direct and substantial public purpose is served by the expenditure and private individuals are benefited only incidentally to the promotion of the public purpose. To justify the expenditure of public funds, an LEA's governing board must determine that the expenditure will benefit the education of students in its schools. Expenditures that most directly and tangibly benefit students' education are more likely justified. Expenditures driven by personal motives are not justified, even if they have been a longstanding local custom or are based on benevolent feelings.

The constitutional prohibition of gifts of public funds is designed to obstruct the misuse of public money. If an LEA's governing board has determined that a particular type of expenditure serves a public purpose, courts will almost always defer to that finding. Thus, if HCCTS has a board policy stating that specific items are allowable (e.g., scholarships or donations), there is more certainty that the expenditure might be considered allowable.

FCMAT requested copies of HCCTS' board agendas and board meeting minutes for the 2014-15, 2015-16 and 2016-17 fiscal years to determine if the board had established board policy to serve students under 22 or those who had already earned a U.S. high school diploma. A review of these board agendas and minutes as well as those found on the HCCS website shows that HCCTS' governing board did not take action to allow services to be provided to students under the age of 22. However, on October 6, 2016, the board did approve a resolution to develop a policy to allow HCCS to serve a limited number of students who have a high school diploma. Further review of HCCTS' board minutes showed that no official policy was presented or approved by the board. The board also voted at its November 3, 2016 meeting to develop a proposed charter amendment to allow for the limited admission of high school graduates into career technical programs. However, FCMAT found no subsequent action on the matter. The fact that the board discussed and considered these items is an indication that the HCCTS board

recognized that services provided to high school graduates could be a violation of the charter's current petition and thus necessitated an amendment thereto.

HCCS' practice of accepting on a case-by-case basis students under the age of 22 and those who hold a U.S. high school diploma could also be construed as discriminatory; however, FCMAT did not find that HCCS rejected any student for enrollment, which is in compliance with Education Code section 47605(d)(2)(A).

FCMAT also investigated allegations that HCCS used its student age threshold to avoid providing additional services and support to students with disabilities. FCMAT's examination of downloaded enrollment information provided by HCCS showed that HCCS enrolled 22 students who had provided information regarding a previous Individualized Education Program (IEP) or Section 504 determination. Further, FCMAT's review of HCCTS' board minutes showed that on September 14, 2017 the board adopted a board policy titled Identification and Education Under Section 504.

Based on the above information, FCMAT believes that HCCTS is not operating exclusively in partnership with GSUL, because it has enrolled and served students outside the terms of the partnership agreement and is therefore not entitled to exemption from the provisions of EC 47612.1 regarding continuous enrollment and satisfactory progress. Therefore, HCCS' apportionment funds could be in jeopardy.

FCMAT also believes that HCCTS has violated its charter by serving students outside the parameters listed in the charter. Charter violations could subject HCCTS to revocation of its charter if they are not remedied. However, even though there appear to be violations of both the charter petition and partnership agreement, nothing in FCMAT's review leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Exclusive Partnerships

As discussed above, FCMAT believes that HCCTS violated its partnership agreement with GSUL regarding the students it served. FCMAT's reading of the partnership agreement, review of HCCTS board meeting minutes, and research and consultation with various departments in the California Department of Education (CDE) raise questions as to whether HCCTS entered into its partnership agreement with the correct entity to qualify for the exemption allowed in Education Code section 47612.1.

Prior to its charter petition to the district, HCCTS' September 8, 2013 board minutes include the following discussion regarding HCCTS' need to obtain an exclusive partnership agreement with a WIA entity – the predecessor to WIOA:

Discussion of obtaining an Exclusive Partnership Agreement occurred in conjunction with other discussion of the board. Kirk Williams explained to the board about the issues that had occurred with getting an agreement with the Sacramento Employment and Training Agency (SETA), for reasons that are not fully understood.

There was also a meeting with Kirk Williams, Jacob Walker, and David Thoming (Superintendent of NJESD [New Jerusalem Elementary School District]) with the California Workforce Investment Board, and they said that while this type of partnership sounded like a good idea, that they don't sign statewide agreements, and it is up to the local Workforce Investment Boards.

SETA and Sacramento Council Member Allen Warren both have suggested that HCCS should seek a partnership with the Greater Sacramento Urban League, which is currently having financial issues, and may be interested in building a win-win relationship. A meeting with James Shelby, who is leading the Urban League again, is set for 9/9/13.

The board minutes of the September 8, 2013 meeting also state that the board granted “authorization for Kirk Williams as administrator to make an Exclusive Partnership Agreement with a qualified WIA funded agency such that it may serve adults with the Highlands Community Charter School.”

The instruction from the California Workforce Investment Board was that HCCTS should seek an agreement from the local workforce investment board. In this case, that was SETA. Yet SETA directed HCCTS to seek a partner, such as GSUL, that received WIA funding – an entity in the WIA/WIOA arena known as a one-stop career center or American job center. These are two very different entities, which raises the question of whether the proper entity was included in the partnership agreement.

According to conversations FCMAT has had with officials at the U.S. Department of Labor, the federal agency that administers WIOA, and review of a January 20, 2016 workforce services directive, current partnership agreements or MOUs must be made with local workforce boards. The directive from the California Workforce Investment Board mirrors that provided to HCCTS and recorded in its September 8, 2013 board minutes. According to the information FCMAT received from the CDE’s adult education office and charter schools division, in the past when WIA funding was provided there was no formal information about whom to partner with or guidelines on what should be included in a partnership agreement (e.g., services each partner should provide the other, cost sharing), and the charter schools division stated that this continues to be the case now.

However, FCMAT obtained CDE’s September 4, 2013 “Suggestions for Successful Partnerships” document (CDE Suggestions) through the adult education office. This document states that it was designed to provide “Suggestions for a successful partnership between Workforce Investment Act Title II and Local One Stop System.” This item is attached as Appendix B and was obtained from <https://web.archive.org> but does not state explicitly that it includes adult charter schools. However, both California adult schools and charter schools that serve adults have many of the same educational programs and as such could be construed to be the same.

Review of the 2013 CDE Suggestions shows three areas of importance:

- I. Basics of Good Partnerships, with seven suggestions listed
- II. Suggested Best Practices, with six items in this category
- III. Emerging Practices, with six items listed for entities receiving WIA Title II funds

Most important to this discussion is the first item listed in section II:

Adult education and the Local Work Investment Board (LWIB) develop and sign a Memorandum of Understanding (MOU) covering both literacy and, when available, vocational programs. The MOU delineates roles and responsibilities and establishes measurable outcomes and deliverables.

This suggestion parallels not only the current practice of the Department of Labor but also the directive that HCCTS received from the California Workforce Investment Board in September

2013. The CDE Suggestions document also provides a far more extensive list of what should be included in a partnership agreement than what is included in HCCTS' partnership agreement, which states that GSUL is to provide "basic core services" to all HCCTS students and HCCTS is to provide \$10 per enrolled student to GSUL to help provide these services.

Even assuming that the partnership agreement was entered into with the correct entity, FCMAT was unable to determine that either side performed the duties outlined in that document. FCMAT's interviews with HCCS' current and past administrators and staff revealed that, other than GSUL providing HCCS students with CalJobs or CalWorks numbers, GSUL did not provide any services during fiscal years 2014-15, 2015-16 and 2016-17. GSUL requested and HCCTS agreed to provide a high school program at the GSUL site for fiscal year 2016-17. In this program, GSUL recruited the students and HCCS paid rent for the classroom(s) used and provided teaching staff. Thus even with this arrangement, GSUL was not the entity providing the services.

Further, as discussed above, HCCS has admitted to and is serving students who fall outside the terms of the partnership agreement and charter petition: those under the age of 22 and those who previously obtained a U.S. high school diploma. This calls into question whether an exclusive partnership agreement exists. If not, the charter may not serve any students over the age of 19 who have had a break in enrollment, nor may it serve students in violation of the territorial limitations, as discussed below.

Current HCCS administrators and staff stated in FCMAT interviews that the agreement was, as one administrator stated, "on paper only because we didn't do anything with them" and that it was "really a straw, just paper." However, neither of the former HCCS administrators who had been present and participated in negotiating the agreement seemed to believe that there was anything wrong with the agreement on any level: that they had followed the example of another adult charter school, had not entered into the agreement for any nefarious purposes, and stated that they had performed research to ensure that the partnership agreement met the requirements in the law. One HCCTS founder stated that he believed that a lack of performance to meet the terms of the partnership agreement stemmed more from circumstance than of purposely ignoring the agreement. Another HCCTS founder who was involved in drafting the agreement and the legal research behind it has more recently written a white paper on the subject to provide instruction to other charter schools and meet the requirements in law. Neither seemed to be aware of the CDE Suggestions in existence at the time that the partnership agreement was being negotiated, nor did either have the agreement reviewed by the U.S. Department of Labor.

FCMAT's review of HCCS' general ledger confirmed that HCCS neither paid GSUL reimbursement funds at \$10 per enrolled student nor shared its ADA revenues with GSUL for GSUL-conducted classroom training. Both provisions of funding would have been in accord with the financial obligations paragraph of the partnership agreement. These circumstances seemed to be a surprise to one HCCTS founder; he believed that payments had been made and that HCCTS was abiding by the terms of the partnership agreement.

Even though there are questions about whether the partnership agreement was entered into with the correct entity, whether either side performed the duties in the partnership agreement, and whether serving students outside of the terms of the petition and partnership violates the requirement for an exclusive partnership, nothing in FCMAT's review leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Locations

A charter school petition normally adheres to the provisions of Education Code section 47605(a) (1) regarding its location, which states in pertinent part, “A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographical boundaries of that school district.” As with the age restrictions discussed above, HCCTS used the exceptions in the law to expand its operations to 25 locations at the time of FCMAT’s fieldwork. Education Code section 47605.1 states:

- (a) (1) Notwithstanding any other law, a charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of this part.

[Section (b) not cited]

- (c) Notwithstanding any other law, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

- (1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.
- (2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter school is authorized.

- (d) Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district in which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

- (1) The charter school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the charter school chooses to locate.
- (2) The site is needed for temporary use during a construction or expansion project.

However, as with the exceptions related to students and cited above, Education Code section 47605.1(g) states:

Notwithstanding any other law, the jurisdictional limitations set forth in this section do not apply to a charter school that provides instruction exclusively in partnership with any of the following:

- (1) The federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.).
- (2) Federally affiliated Youth Build programs.

- (3) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.
- (4) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14507.5 or 14406 of the Public Resources Code.
- (5) Instruction provided to juvenile court school pupils pursuant to subdivision (b) of Section 42238.18 or pursuant to Section 1981 for individuals who are placed in a residential facility.

HCCTS cited these Education Code sections in both its petition and the partnership agreement; however, did not specify how many campuses HCCTS would seek to occupy other than the two listed in the charter petition's Appendix F – Facilities Details: 1333 Grand Avenue, Sacramento, CA 95838, and 3701 Dudley Blvd., McClellan, CA 95652.

The petition makes the following statements and citations regarding the locations HCCTS intended to serve:

As the authorized lead petitioner, I . . . hereby certify . . . that the . . . Highlands Community Charter School . . . to be ***located within the boundaries and authority limits*** of the Twin Rivers Unified School District (TRUSD) . . .
[Page 8, Affirmations, emphasis added]

It is on this strong foundation of principles that our petition for a ***multi-campus*** adult-serving charter
[Page 10, Other Beliefs About Education, emphasis added]

In accordance with California Education Code Sections 47605.1(g) and 47612.1, ***all instruction*** with HCCS ***will be provided exclusively in partnership*** with the Greater Sacramento Urban League, a WIA-funded organization, or other legally allowed exclusive partnership. Adult students ***who meet the terms of the partnership agreement and statutory requirements*** may be served by HCCS.
[Page 15, Educational Program, emphasis added]

Per Education Code §§ 47612.1 and 47605.1(g), HCCS ***shall provide instruction exclusively in partnership*** with the Workforce Investment Act of 1998 ***through its partnership agreement*** with the Greater Sacramento Urban League (GSUL) or other WIA organization. As such ***it may only legally serve students who are receiving WIA funded services***, and do so ***under the terms of a Partnership Agreement***.
[Page 24, Education Exclusively in Partnership with WIA, emphasis added]

Per Education Code §§ 47612.1 and 47605.1 (g), HCCS shall provide instruction exclusively in partnership with the Workforce Investment Act of 1998 by establishing Exclusive Partnership Agreement(s) with WIA funded agencies. ***As such it may only legally serve students who are receiving WIA funded services, and do so under the terms of the Partnership Agreement***.
[Page 121, Admissions Policy, Education Exclusively in Partnership with WIA, emphasis added]

The partnership agreement between HCCTS and GSUL included one legal citation regarding locations and resembles the petition in its lack of specificity about its expansion plans; it states the following:

Highlands Community Charter and Technical Schools (HCCTS) agrees that all students from any Sacramento charter schools it operates will exclusively receive services from the Greater Sacramento Urban League (GSUL) for core WIA services. ***All students participating with HCCTS charter schools must do so by terms of this agreement***, in line with California Education Codes §§ 47605.1(g) and 47612.1. All services provided by GSUL would be equal to those provided to the general public for non-youth.

[Page 1, Agreement, emphasis added]

Because both Education Code section 47612.1 and section 47605.1(g) contain the same wording regarding exclusive partnerships in order to qualify for use of the exceptions therein, FCMAT has the same concerns as noted above regarding whether HCCTS' partnership agreement was entered into with the correct entity as well as whether HCCTS was operating pursuant to an exclusive partnership agreement.

Also, applying the standard in the ruling from the *Grossmont Union High School District vs. Julian Union School District* case, as discussed above, would mean HCCTS violated its petition regarding its locations. This typically means the charter cannot have in-county sites outside the territory of its charter authorizer (in this case the Twin Rivers Unified School District) per the decision in *Anderson Union High School District v. Shasta Secondary Home School* (October 17, 2016 4 Cal.App.5th 262 (2016)).

Consequently, although HCCTS was not explicitly clear in its petition about its intent to use the site location exception available in EC 47605.1(g), it has taken full advantage of the exception therein to expand its campus to 25 different locations. In addition, there are questions about whether HCCTS entered into a partnership agreement with an incorrect entity and whether it violated its petition in light of the ruling in the *Grossmont* case. If it did, HCCTS may not operate sites outside of the Twin Rivers Unified School District's boundaries except as allowed by Education section 47605.1(d). However, nothing in FCMAT's review leads to a determination that fraud may have occurred.

Grade Level Placement and Standardized Testing

As noted in the section above, Education Code section 47612 provides for “generating charter school apportionments,” which under current law means funding through the LCFF. There are three components of LCFF funding:

- Adjusted Base Grant is the combined amount of base grant funding by grade span, and grade span adjustment, if applicable, that is provided per student based on that student’s grade level.
- Supplemental grant funding provides 20% of the adjusted base rate based on the LEA’s unduplicated pupil count. The unduplicated pupil count is the number of students in the LEA who are English learners, or foster youth, or who qualify for free or reduced-price meals. If a student qualifies for more than one of these three categories, they are still counted only once for funding purposes.
- Concentration grant funding is provided to LEAs when their unduplicated pupil count exceeds 55%. The LEA receives an additional 50% of the adjusted base rate for each student in the unduplicated pupil count above the 55% threshold.

For fiscal year 2016-17, base grant funding levels were as follows:

LCFF Entitlement Factors				
Entitlement Factors per ADA	TK-3	4-6	7-8	9-12
2016-17 Base Grants	\$7,083	\$7,189	\$7,403	\$8,578
Grade Span Adjustment	\$ 737	\$ ---	\$ ---	\$ 223
2016-17 Adjusted Base Grants	\$7,820	\$7,189	\$7,403	\$8,801

Although the Education Code allows adult charters to operate and use LCFF funding, it does not provide guidance about the grade levels at which students served by adult charters should be placed. This leaves the decision up to each adult charter school and, as can be seen by the amounts above, the grade level determination can make a large monetary difference.

During HCCS’ first three years of operation, its students were reported to the CDE as follows:

Highlands Community Charter School Student Enrollment

	First Grade	Second Grade	Third Grade	Ninth Grade	12th Grade
2014-15	-	16	15	120	56
2015-16	278	38	-	-	202
2016-17	827	34	-	-	407

Source: DataQuest at <http://dq.cde.ca.gov/dataquest>

The CDE provided FCMAT with a list of 44 self-identified adult charter schools, which included HCCS. FCMAT researched the grade levels at which each charter school reported its enrollment

for the past three years to determine if there were similar patterns among the other adult charters. FCMAT's findings were as follows:

- 2014-15:
 - Five adult charters were not operational in this fiscal year, which reduced the comparison group to 39.
 - Of the 39 adult charter schools:
 - Six schools, or 15.38%, reported students in all grades K through 12
 - Seven schools, or 17.95%, reported that they served only 12th grade students
 - Nineteen schools, or 48.72%, reported that they served grades nine through 12
 - Four schools, or 10.26%, reported that they served grades seven through 12
 - Three schools, or 7.7%, reported that they served grades 11 and 12
 - No other school in the comparison group reported serving only grades two, three, nine and 12
- 2015-16:
 - One adult charter was not operational in this fiscal year, which reduced the comparison group to 43.
 - Of the 43 adult charter schools:
 - Six schools, or 13.95%, reported students in all grades K through 12
 - Seven schools, or 16.28%, reported that they served only 12th grade students
 - Eighteen schools, or 41.86%, reported that they served grades nine through 12
 - Two schools, or 4.65%, reported that they served grades seven through 12
 - Six schools, or 13.85%, reported students in grades 11 and 12
 - Two schools, or 4.65%, reported that they served grades 10 through 12
 - Two schools, or 4.65%, reported that they served grades eight through 12
 - No other school in the comparison group reported serving only grades one, two and 12
- 2016-17:
 - One adult charter was not operational in this fiscal year, which reduced the comparison group to 43.
 - Of the 43 adult charter schools:
 - Seven schools, or 16.28%, reported students in all grades K through 12
 - Ten schools, or 23.26%, reported that they served only 12th grade students
 - Seventeen schools, or 39.53%, reported that they served grades nine through 12
 - Three schools, or 6.98%, reported that they served grades seven through 12

- Three schools, or 6.98%, reported students in grades 11 and 12
- Two schools, or 4.65%, reported that they served grades 10 through 12
- One school, or 2.32%, reported that they served grades eight through 12
- No other school in the comparison group reported serving only grades one, two and 12

Not only is there a lack of uniformity among adult charter schools in how they report their students' grade levels, there are also two distinctly different funding mechanisms for adult schools statewide. The first is the Adult Education Block Grant Program (AEBG). Education Code sections 52501, 52502 and 52503 and California Code of Regulations (CCR), Title 5 Section 10560 allow unified or high school districts to establish classes for adults and, if the ADA of the classes reaches 100 or more, an adult school is created to administer the program. The CDE website states, "Students can get a high school diploma, general education diploma (GED), learn about jobs, learn to speak English, and learn how to become a U.S. citizen." Any LEA that participates in the AEBG must also be a member of a consortium to receive funding. Based on CDE's website, the total direct AEBG funding to LEAs, excluding funding provided to community colleges, for 2015-16 and 2016-17 was \$399,426,126 and \$366,847,314, respectively. Using the 297,711 ADA collected in 2008-09 (the last year in which adult education ADA statistics were collected) produces an average dollar amount per ADA for 2015-16 and 2016-17 of \$1,341.66 and \$1,232.23, respectively.

The second funding mechanism being used by adult charter schools is the LCFF (described above). Based on the funding exhibits found on the CDE website, FCMAT gathered the total LCFF state aid and Education Protection Account (EPA) entitlements due to each of the 44 self-identified adult charters from the CDE's list. For fiscal year 2015-16, those 44 adult charter schools' total LCFF and EPA entitlements equaled \$226,422,149 with a total P-2 ADA of 26,965.95 for an average of \$8,396.59 per ADA. For fiscal year 2016-17, these same adult charter schools' total LCFF and EPA entitlements equaled \$263,486,768 with a total P-1 ADA of 29,557.03 for an average of \$8,914.52 per ADA.

Assuming that every AEBG-funded LEA converted to an adult charter school and sought LCFF and EPA funding, and assuming there was no increase or decrease in ADA for the AEBG, the result would be an additional funding draw on LCFF and EPA of approximately \$2 billion annually. Although it is extremely unlikely that all adult education schools would convert to charters, this does point out the inequities between the two funding mechanisms for organizations that are providing the same educational opportunities to adult students.

The above information raises the question of whether HCCS' grade level placement of students was generated by the needs of HCCS' educational program or by the additional funding that would be received by placing HCCS' students in the grade spans that produced the highest per-student amounts.

HCCS provided FCMAT copies of board policies, board resolutions and correspondence it generated to the CDE related to its grade level placement policies, which date back to March 25, 2014. Those documents state that from March 25, 2014 to the present, "a student's grade level will be determined based upon their transcripts of their past coursework, their assessment from the CASAS test, and their age." HCCTS' administrative regulation regarding grade placement states:

English Learners who do not have a U.S. High School Diploma may enroll in Highlands Community Charter School. The grade level they are placed in is dependent upon their CASAS results and whether they are going to take high school level courses, either in their native tongue (bilingual education) or mainstreamed in an English language classroom.

This is evidence that points toward the instructional program generating student grade placement. Both the CDE and HCCTS' administrative regulation have a common thread: the Comprehensive Adult Student Assessment Systems (CASAS) score. However, as discussed below, CASAS test results have not been recorded consistently and accurately, making it difficult to determine if that assessment generated correct grade placement.

FCMAT sought to determine if there were discussions among HCCTS founders and HCCS administrators regarding a financial motive for HCCTS' grade placement policy. FCMAT interviewed HCCTS founders and current and former HCCS administrators, who stated that their rationale for grade placements was related to the educational program in serving adults, wanting to find the right tests for them, and not having their test scores skew the information gathered for students in grades K-12. HCCS personnel reported that they felt the CASAS test was correct for their students because it is widely used in the industry to test and measure the progress of adults.

FCMAT also questioned HCCTS founders and HCCS former administrators about whether there were financial considerations in formulating its grade placement policy; specifically, placing students in the grades that would generate increased funding from LCFF. No individual FCMAT interviewed provided information that those sorts of discussions were held; however, one interviewee stated that having students in first and second grades did decrease the required number of instructional minutes compared to the number required at other grade levels. Having lower instructional minutes requirements allowed HCCS to have two sets of students in any given day — one in the morning and another in the afternoon — and gave it the potential to collect apportionment for both sets of students. However, HCCS employees stated that the flaw in that plan was that adult students do not want to attend school in the afternoon, and HCCS has had difficulty maintaining attendance in its afternoon programs. Consequently, HCCS has changed to a morning schedule for most of its classes, and FCMAT's review of student attendance records did not show any students who were enrolled in both a morning and afternoon class in a single day in which both were reported for apportionment.

Consequently, although there may be a financial benefit to HCCS in its current grade placement policy, nothing in FCMAT's review leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Average Daily Attendance

Attendance accounting serves two purposes: first, it allows schools to comply with California Education Code section 48200, which requires compulsory education for persons between the ages of six and 18; and second, the attendance records it generates are the source documents for recording ADA, which is applied mathematically to the LCFF discussed above to determine principal apportionment payments to schools, including charter schools. Because HCCS does not serve students who are subject to compulsory education, its attendance processes and procedures serve only to generate principal apportionment funding.

One of the allegations made against HCCS states that HCCS claimed an entire year of ADA for credit recovery programs that require less than a year to complete. This would be a violation of Education Code sections 46110 and 46140, which allow no more than one day of ADA to be credited for each day of student attendance. HCCS provided FCMAT with student attendance reports, access to student files held in the counselors' offices, and read-only access to its student information system. FCMAT selected a sample of student files and reviewed their attendance system records. FCMAT traced each sampled student's attendance from the report of individual attendance in their student file to a class report of attendance. Student records showed student absences as well as students who attended only one portion of the year. The attendance system then automatically converted the student attendance numbers into ADA using the following formula:

$$\frac{\text{Total Student Attendance Days}}{\text{Number of Instructional Days}}$$

FCMAT then compared attendance system ADA to the ADA HCCS documented and reported to the CDE. FCMAT found that ADA had been reported accurately for each student sampled and did not find any instances in which an entire year of credit was claimed for attendance of less than a year.

FCMAT also tested data on students identified as being under age 22 or who had already attained a U.S. high school diploma to test HCCS administrators' assertion that no apportionment had been collected for these students. FCMAT found that HCCS had placed these students into a separate track, they were not included in HCCS' calculation of ADA, and HCCS received no apportionment funds for them.

However, as is discussed below, FCMAT found that the instructional course offering for the Manicure and Cosmetology program (Schedule K) did not meet the instructional day requirement. FCMAT reported this to HCCS' executive director, who immediately implemented changes to correct the condition; however, the correction occurred too late in the year to remedy the issue for 2016-17 attendance reporting. Consequently, any reported ADA for those students in all fiscal years prior to and including 2016-17 is invalid because HCCS did not meet this requirement. HCCS will need to submit revised attendance reports that exclude the ADA from this program.

Despite the flaws in the Manicure and Cosmetology program, nothing in FCMAT's review leads to a determination that fraud may have occurred.

Instructional Minutes and Days

Instructional Minutes

Depending on the grade level being served, all schools (including charter schools) are required to offer the following minimum numbers of instructional minutes annually, pursuant to Education Code sections 46112 through 46119 and 46141 through 46147:

Grade Level	Annual Instructional Minute Requirement
TK - K	36,000
1-3	50,400
4-8	54,000
9-12	64,800

Using HCCS' 2016-17 school calendars and bell schedules, FCMAT constructed the following chart that shows the schedules and tracks HCCS operated. FCMAT also used these same documents to calculate the number of minutes per day offered and number of instructional days offered. Multiplying the minutes per day by the instructional days results in the annual instructional minutes.

2016-17 Instructional Schedules and Tracks

Schedule	Tracks	No. of Minutes per Day Offered	No. of Instructional Days offered	Annual Instructional Minutes
A, B, C, E, F, H, I, J	A & E	375	226	84,750
A, B, C, E, F, H, I, J	B	375	204	76,500
A, B, C, E, F, H, I, J	C	375	194	72,750
A, B, C, E, F, H, I, J	D	375	175	65,625
D	A & E	380	226	85,880
D	B	380	204	77,520
D	C	380	194	73,720
D	D	380	175	66,500
G	A	390	226	88,140
G	B	390	204	79,560
G	C	390	194	75,660
G	D	390	175	68,250
G	E	390	226	88,140
K (offered T – F)	A	420	184	77,280
K (offered T – F)	B	420	167	70,140
K (offered T – F)	C	420	160	67,200

K (offered T – F)	E	420	184	77,280
L	A	300	226	67,800
L	E	300	226	67,800
M, O, W, AA, AB, AC, AD	E	240	226	54,240
N	E	360	226	81,360
P, Q, R, S, T, U, V, Y, Z	E	225	226	50,850
X	E	245	226	55,370

HCCS operated grade levels 1-5 and 9-12 during 2014-15, 2015-16 and 2016-17 as shown in the following table (this table also appears above in the Grade Level Placement and Standardized Testing section of this report).

Highlands Community Charter School Student Enrollment

	First Grade	Second Grade	Third Grade	Ninth Grade	12th Grade
2014-15	-	16	15	120	56
2015-16	278	38	-	-	202
2016-17	827	34	-	-	407

Source: DataQuest at <http://dq.cde.ca.gov/dataquest>

HCCS' instructional minutes requirements are 50,400 for grade levels 1-2 and 64,800 for grade levels 9-12. HCCS' 2016-17 instructional minutes calculations provided to FCMAT identify the tracks for English learners, which are grades 1-3 in HCCS' programs, and the high school classes, which are grades 9-12 in HCCS' programs. Using this information, FCMAT converted the instructional schedules in the Instructional Schedules and Tracks table above to grade levels, then compared the legally required instructional minutes to the actual instructional minutes to determine if the requirement was met.

Instructional Minutes Test

Grade Level	Instructional Schedules	Requirement	Requirement Met?
1-3	L & M	50,400	YES
1-3	O – AB	50,400	YES
9-12	A – K	64,800	YES
9-12	N	64,800	YES

Nothing in FCMAT's review and testing in this area leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Instructional Days

Like instructional minutes, schools (including charter schools) have an annual instructional day requirement. Education Code section 41420 sets that requirement at 175 days for schools with a traditional school track, and Education Code section 37670 requires 163 days for schools with multitrack year-round schedules. Although HCCS offers multiple tracks, it is not a year-round school so is required to provide 175 instructional days.

FCMAT compared the instructional days calculated and listed in the Instructional Schedules and Tracks chart above with HCCS' 175-day requirement and found that all schedules and tracks met the instructional day requirement except Schedule K, which is the course offering for HCCS' Manicuring and Cosmetology program. This program offered classes on Tuesdays through Fridays for a total of only 160 instructional days. FCMAT immediately reported this finding to HCCS administrators, and they took steps to provide instruction on Mondays; however, because the change was implemented in May, there was not enough time to recover the additional 15 days needed to reach the annual requirement.

Title 5, section 11960 of the California Code of Regulations states:

The State Superintendent of Public Instruction shall proportionately reduce the amount of funding that would otherwise have been apportioned to a charter school on the basis of average daily attendance for a fiscal year, if school was actually taught in the charter school on fewer than 175 calendar days during that fiscal year.

As a result, any reported ADA for students in the Manicuring and Cosmetology program in all fiscal years, both including and prior to 2016-17, is invalid because HCCS did not meet the instructional day requirement. Revised attendance reports will need to be submitted that exclude ADA reported from this program.

Although this finding will result in a reduction in ADA for prior years, FCMAT believes this was an error, and nothing in FCMAT's review leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Student Completions and Accountability

Schools that serve students in grades K-12 are normally subject to standardized testing; however, HCCS has been able to use CASAS testing for its adult students because it applied to the CDE and was accepted to participate in the Alternative Schools Accountability Model (ASAM). FCMAT's interviews with HCCS administrators revealed that they recognized their obligation to provide some form of standardized testing for their students but also recognized that their testing results would not be indicative of normal students in the grade levels HCCS was using.

The instructions provided to FCMAT that accompanied HCCS' application state that applicants or authorizing entities must agree to the following three items:

- The local district governing board of a non-charter school, or the local governing board that authorized the charter school, must verify the percentage of high-risk students served and listed . . .
- The ASAM applicant must submit a copy of the board minutes showing board approval of the ASAM application. Applications submitted without the board minutes cannot be reviewed, processed, and/or approved.
- The ASAM applicant and/or authorizing charter entity must retain the statistical information that documents the school's enrollment is comprised of at least 70 percent of the high-risk student groups . . .

Although FCMAT found the signature of the Twin Rivers Unified School District superintendent on the application, neither HCCS nor the district were able to provide district board minutes showing their verification of the percentage of high-risk students as required in the first bullet point above. FCMAT compared HCCS' 2014-15 enrollment with a copy of the statistical information HCCS stated it used in the application and found the following anomalies, which could call into question whether the 70 percent threshold for ASAM eligibility had been reached:

- 315 students included in the ASAM record were not included in the 2014-15 enrollment records
- 264 students did not have a grade level listed in their ASAM record
- 170 student identification numbers were missing student information in the ASAM records
- 26 students had no birthdate in the ASAM records
- 3 duplicate students were in the ASAM records

The CDE's Adult Education Office approves the use of CASAS with adult education students as a measurement to determine placement and skill attainment. The use of CASAS with adult students is a standard practice for most adult schools in California, and the WIOA mandates the use of CASAS for reporting skill attainment for adult education providers who receive federal funding in the United States.

CASAS is a comprehensive assessment for adult learners (English language learners, adult basic skills learners, high school diploma candidates, potential and incumbent employees) that measures multiple skills including reading, listening, math, writing, speaking needs and goals. CASAS offers several different assessments approved for measuring educational gain in the National Reporting System for Adult Education for both adult basic education and English as a

second language programs. It also serves students with special needs, including those with intellectual and learning disabilities.

HCCS personnel reported that they use CASAS to measure students' abilities at the time of enrollment and during their HCCS career to measure progress. This is in compliance with the CDE requirement that adult education providers report complete data on each student, including an entry record, update record, pretest score, and aligned post-test score. Adult education providers are to report only students for whom the LEA has acquired a complete data set. This also complies with HCCS' ASAM application and approval to use an alternative testing method.

FCMAT's analysis of documents provided by HCCS and information gathered during interviews with HCCS administrators and staff indicated there is inconsistent practice and application of policies and procedures in the area of student skill evaluation and program completion. Although staff members stated that all students were assessed using the CASAS and course completion was determined through a systematic process, FCMAT did not find this to be the case.

HCCTS' board meeting minutes show that it was aware of CASAS testing and wanted it to be used for placement and evaluation of its students, and that the former principal provided specific information on the testing norms to be used. Specifically, the minutes of the September 4, 2014 board meeting show that the principal reported, "[t]he CASAS Test will be administered to our students, every 80-100 hours of English Language Development classes." In addition, various HCCS administrators and staff reported to FCMAT that all students were tested using the CASAS. However, FCMAT did not find this to be the case in practice. Using a sample of 24 graduated students from a population of 247, FCMAT found only 10 of the sample students' records (or 41.7%) contained CASAS pretest and post-test results; six students scored above a ninth grade equivalency level in reading but none scored above a ninth grade proficiency in mathematics. This calls into question whether these students had mastered math sufficiently to justify awarding of a diploma. In addition, HCCS provided FCMAT with its CASAS student summary test report for program years 2014-15, 2015-16, and 2016-17, which shows that the cumulative percentage of students who completed both pretests and post-tests was 35.5%. Although HCCS personnel reported an increase in CASAS testing results during those three years, the CASAS student summary test report information provided to FCMAT was not broken down by fiscal year. However, analysis of the CASAS data integrity reports shows the following:

CASAS Data Integrity Reports Analysis

Total Number of Students						Testing Results	
Fiscal Year	Enrolled	Administered CASAS Test	Administered Paired Tests (Pre and Post Tests)	With Pretest Scores	With Post Test Scores	Percentage of Enrolled Students Administered CASAS Test	Percentage of Students Administered Paired Tests (Pre and Post Tests)
2014-15	207	156	6	143	6	75.36%	3.85%
2015-16	518	569	42	538	42	109.85%	7.38%
2016-17	1,269	1,740	548	1,659	548	137.12%	31.49%

As shown in the above table, HCCS was increasing the number of students whose pretests and post-tests had been recorded. However, the table also shows that either HCCS pretesting and post-testing was not being completed consistently or that the testing results were not entered into the software.

English language development or noncredit course outlines provided to FCMAT stated that student evaluation methods were to include informal tests, instructor observations, self-evaluations, and standardized tests. HCCS administrators and staff stated that the CASAS post-test results were used to indicate course completion. Unfortunately, the CASAS data integrity reports do not segregate the ELD data. However, they do confirm that not all students take the completion test. Therefore, course completion cannot be verified by standardized test results.

Review of the CASAS data integrity reports also shows that although HCCS personnel stated that the CASAS is used to meet the standardized testing requirement for ASAM, the practices in place do not result in adequate use of a testing system and may call into question whether HCCS should have been accepted into the ASAM program.

The academic course outlines provided to FCMAT state a variety of evaluation methods to measure whether students meet requirements; these include teacher evaluation, self-assessment, publisher tests, and samples of work such as homework or portfolio.

However, HCCS' course outlines were not approved by the HCCTS governing board. The curriculum and instruction section of HCCS' administrative regulations states, "The School Board shall...adopt the School curriculum and courses of study to be offered." However, no evidence of approval or adoption of courses of study by the HCCTS governing board, the district's governing board, or other oversight entity was provided to FCMAT. FCMAT informed HCCS administrators of their responsibility, pursuant to their administrative regulation, to bring course outlines to the board for approval. HCCS administrators reported that this would be done in the future; however, FCMAT's review of HCCTS' board agendas and minutes through January 11, 2018 did not find that any such outlines were presented to the HCCTS board. This calls into question the veracity of the HCCS administrators' statements on the subject.

Although no longer required, the California High School Exit Exam was used previously in some courses to indicate skill proficiency and completion. In interviews, HCCS staff indicated that course completion was primarily at the teachers' discretion, and no teachers used an end-of-course completion exam to verify attainment of skills. Staff members also stated that the CASAS was used to verify skill achievement with all students. The gap in testing results discussed above indicates CASAS testing did not provide HCCS with data to determine course completion or skill attainment. This calls into question the ability to determine whether a student qualifies to graduate or to move to the next level of course work.

Credits Awarded Based on Equivalency Test Results

HCCS awards academic and elective credits to students based on results from the California High School Proficiency Exam (CHSPE), the General Educational Development (GED) test, and the High School Equivalency (HiSET) exam. The latter two are state-approved high school equivalency exams. Students who have passed portions of the exams receive credits toward high school diploma requirements as shown in the table below:

Subject	Pre 2014 English GED	Pre 2014 Spanish or French GED	After 2014 English GED	After 2014 Spanish or French GED	English HiSET	Spanish HiSET	CHSPE
English	20	0	30	0	20	0	30
Pre-Algebra or other Math	10	10	10	10	10	10	10
Algebra I or Higher	0	0	5	5	5	5	10
Biological/Life Science	10	10	10	10	10	10	0
Physical Science	10	10	10	10	10	10	0
World History	5	5	0	0	5	5	0
U.S. History	10	10	10	10	10	10	0
U.S. Government/Civics	5	5	5	5	5	5	0
Economics	5	5	5	5	5	5	0
Foreign Language (CTE/ Electives)	0	20	0	30	0	20	0
Total	75	75	85	85	80	80	50

California Code of Regulations Title 5, Section 1634, entitled Credit to Present or Past Members of the Armed Services, states:

The governing board maintaining a four-year high school or a senior high school may award a diploma of graduation from Grade 12 to a person described in Education Code Section 51440 who meets the graduation requirements adopted by the governing board pursuant to Education Code Section 51225, or their equivalent. The governing board shall keep a permanent record of the credit allowed pursuant to this section. Credit toward graduation may be allowed to such a person in accordance with the following table:

Work Successfully Completed	Maximum Semester Periods of Credit Allowable
(d) General Educational Development Tests (high school level) prepared by the American Council on Education with both:	No Limit
(1) A standard score of 40, or above, on each of the tests in the battery.	
(2) An average standard score of 45, or above.	

Effective 2014, the GED is no longer prepared by the American Council on Education but is now produced and administered by Pearson Vue under the authority of GED Testing Service. Additional California recognized high school equivalency tests include the HiSET and TASC (Test Assessing Secondary Completion). The new GED minimum passing score for each test is 145. The scoring matrix for the new GED includes alignments that suggest college readiness and beyond. However, although college credit hours or Carnegie Units awarded based on GED results are a recommendation of the GED Testing Service, the authority remains with local colleges.

The HiSET equivalency test is also recognized by the CDE and is overseen by Education Testing Service (ETS). The minimum passing score for HiSET is eight for each subtest, with a total point accumulation of 45.

Although California Code of Regulations (CCR) Title 5, Section 1634 appears to be outdated and does not show current GED or other high school equivalency information, it requires that credits from GED results be awarded to past and present military personnel only. HCCS has adopted a practice of extending that policy to all students, which FCMAT finds questionable based on the specific language in CCR section 1634 and which should be discontinued until it is brought to the CDE for a final determination.

Further, the information on the CDE website regarding early graduation provides a response to the question, “If I pass the GED or the CHSPE, can I use those results to satisfy the minimum course requirements for graduation?” The CDE’s response is, “The authority to determine course equivalencies resides with the local school districts. However, in the case of the GED, such use of the test results is prohibited.”

FCMAT inquired of HCCS administrators and staff regarding the authority under which HCCS awarded high school credits using GED and HiSET test results. During interviews, staff and administrators stated that an individual who was an HCCTS founder, former board member and former employee had researched the use of equivalency test results for high school credits and deemed it appropriate. This was confirmed during interviews with this individual, who stated that he determined it would be discriminatory to award high school credits from GED testing only to veterans and active duty members of the military as provided by Title 5 of the California Code of Regulations, section 1634. This determination regarding the law is contrary to what is specifically stated in that section. If HCCS wishes to apply the law in a different manner, it should have the matter reviewed by the CDE to provide an opinion to be used throughout the state.

After evaluating the information provided by GED tests and HCCS’ interpretation of Title 5, the founder, former board member and former employee devised HCCS’ formula for awarding credits based on GED and HiSET results for candidates testing in both English and Spanish. The table above was used to determine the number of credits awarded to students, and HCCS included the table in its student information system and programmed it to automatically assign high school credits when testing scores were entered into the system.

HCCS provided FCMAT with a spreadsheet that contained all students awarded credits from the GED and HiSET. HCCS awarded a total of 15,963 credits to 246 students from August 2014 to September 2017. Forty-two students were able to use credits generated from the GED to meet the requirements for graduation. Of the students who graduated with credits awarded from the GED or HiSET, the range of credits awarded was 3.8 – 85 and the average number of credits awarded was 58.615.

Although HCCS administrators stated that a student could not come to HCCS with a high school equivalency test and immediately exit with a diploma without having also taken at least one HCCS class, FCMAT’s sample of 24 graduated students included one student who graduated from HCCS using credits from the GED without attending HCCS classes.

FCMAT also noted the following anomalies in its review of graduates’ files:

- One student who was able to complete 134 credits in one year with an 8th grade reading level.
- One student whose entry and exit dates were the same.
- One student who passed HCCS’ algebra course even though they failed the GED with a score below the eighth percentile, which is considered extremely low.

- One student whose transcript was missing both world history and biology credits but for whom, when FCMAT questioned why those items were missing, HCCS administrators claimed the information was dropped during the migration of information in the student information system.

Students were also awarded credits (with the exception of English language arts credits) after passing either the English or Spanish version of the GED tests. The physical science course outline states that its prerequisite is a ninth grade proficiency in English, yet HCCS awarded credits for this course from HiSET test results taken in Spanish. No records were provided that verified that the students who took the Spanish version of the test were proficient in English at the level required by the course prerequisite.

FCMAT questioned whether GED and/or HiSET credits were used to award academic or elective credits and whether HCCS could produce a report from its system that would support that information. Unfortunately, transcripts are evaluated by HCCS counselors and credits are awarded from GED and/or HiSET scores on a case-by-case basis, and are categorized as academic or elective credits as needed. Without a review of each student's records, HCCS reported that it was unable to provide FCMAT with a report that showed the total number of academic and the total number of elective credits awarded to students separately.

Thus there are questions regarding whether students completed courses or attained sufficient skills in courses, whether GED credits are awarded in compliance with 5 CCR 1634, whether HCCS followed its own policies in instances where it awarded high school diplomas, and whether it is appropriate to allow a test taken in Spanish to substitute for a prerequisite in English. However, based on the above review, FCMAT believes that while these may be indicators that HCCS' leaders and employees let their passion to help their students override reasonable judgment and adherence to state standards and laws, nothing in the review leads to a determination that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Charging Fees

Article IX, section 5 of the California Constitution provides for a free public school system. Since 1874, the California Supreme Court has interpreted this to mean that students are entitled to be educated at public expense, and any fees charged for educational activities are a violation of this free school system guarantee, including fees for textbooks, materials or supplies. Title 5, California Code of Regulations, section 350, specifically states: “A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”

Charter schools in California are considered public schools, and as such are required to provide educational activities to their students free of charge. Specifically, Education Code section 47605(d) requires that charter schools “shall not charge tuition.”

The Affirmations section of HCCTS’ charter petition indicates that no tuition will be charged, and HCCTS’ board policy titled, “Inviting Students of All Races and Ethnicities,” which was approved by its board on March 25, 2014, affirms the practice of not charging tuition.

To determine if HCCS collected fees for enrollment or tuition, FCMAT reviewed the revenue detail in the general ledger and tested individual transactions. None were found to be related to fees for enrollment or tuition. In addition, HCCS staff and administrators consistently reported that HCCS did not collect fees related to enrollment or tuition.

Consequently, nothing in FCMAT’s review leads to a determination that fees for enrollment or tuition were charged or that fraud may have occurred; however, other illegal fiscal practices may have occurred.

Items Outside the Study Scope

Brown Act Violation

HCCTS' petition states the following on page 32, under the heading Organizational System and Governance Structures: "The HCCTS board will comply with the Brown Act and all other necessary laws." The Brown Act is contained in Government Code sections 54950 and following, which include the following statements:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [Section 54950]

As used in this chapter 'meeting' means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. [Section 54952.2(a)]

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter. [Section 54953(a)]

FCMAT reviewed HCCTS' board meeting minutes and found that the minutes from its meeting on March 8, 2014 stated, "an email vote was taken to accept Linda Fowler as the representative from Twin Rivers Unified School District, pursuant to California Education Code 47604(b) Linda was welcomed by all the board members." The minutes later state, "As Linda Flower was previously voted to be on the board, no additional action was taken." No other board action in open session was taken regarding this appointment to the board, the action was taken via an email ballot, and FCMAT did not see any indication in either agendas or minutes posted to the HCCS website or in the board agendas and minutes provided that this ballot was conducted in an open session. Conducting board business in this manner, via email, appears to be a violation of the Brown Act and therefore presumptively void.

To the extent that any action of the HCCTS board was required to accept the district's appointed board member, the appointment may be invalid, and any action of the HCCTS board requiring the vote of that representative may also be invalid. However, there is a statute of limitations to challenge actions taken in violation of the Brown Act, which may shield prior board actions from challenge, but not future actions involving the same board member's vote.

Board Member Conflict of Interest

As HCCTS' authorizer, Twin Rivers Unified School District oversees the HCCTS charter. Having an individual serve contemporaneously as a voting member of both the Twin Rivers Unified School District board and the HCCTS governing board as well as maintain financial interests in HCCTS (i.e. consultant contract and employment) appears to violate California conflict of interest laws.

The Sacramento County Grand Jury also investigated this matter and issued a report on June 20, 2016, which states:

TRUSD Board bylaws and the HCCTS charter petition include the provision to adhere to conflict of interest laws in GC 1090. In addition, the MOU between TRUSD and the HCCTS Board included provisions to comply with all conflict of interest laws generally applicable to the TRUSD Board.

HCCS provided FCMAT with a copy of its Conflict of Interest Policy in its adopted board policies, which does reference adherence to Government Code section 1090 and the Political Reform Act.

The Twin Rivers Unified School District approved the HCCTS charter petition on March 4, 2014. When the Twin Rivers Unified School District board member/LEA representative was appointed to the HCCTS board on March 8, 2014, she continued to hold a seat on the Twin Rivers Unified School District board and later became the district's board president. Some attorneys take the position that district board members should not be on charter school boards because being on both boards would constitute incompatible activities under Government Code section 1126, as well as possibly violate California conflict of interest laws. Some attorneys also take the position that district and charter school boards are both public offices, and that being on both boards would constitute incompatible offices under Government Code section 1099. A challenge could be made to her seat on the district board because she held that office first and taking office as a charter board member could be deemed an automatic resignation from the district board seat. However, removal would not necessarily be automatic; it would require action from the attorney general or other action. Violations of California conflict of interest laws can also result in severe administrative, civil and criminal penalties.

On September 25, 2014, a contract was brought to the HCCTS board regarding services to be obtained from LAED Consulting, a firm composed of the Twin Rivers Unified School District board member/LEA representative and a partner. Although the board meeting minutes show that the Twin Rivers Unified School District board member/LEA representative abstained from voting on this contract, those minutes also indicate that she was active in the discussion of the contract and provided an opinion on its appropriateness. Specifically, the minutes state, "Linda Fowler suggested that for such a consulting contract as this, there would be some times that there would be more or less work depending upon the time of year, and as such it was appropriate to have such a clause in the contract." The Twin Rivers Unified School District board member/LEA representative should have left the dais or the room to allow the remaining HCCTS board members to discuss the matter outside of her influence. The Twin Rivers Unified School District board member/LEA representative's actions in applying guidance toward a contract in which she was financially interested raises serious conflict of interest issues.

The Twin Rivers Unified School District board member/LEA representative's consulting contract with HCCTS was approved only six months after her appointment to the HCCTS board. Consequently, as a voting member of the Twin Rivers Unified School District board that has oversight responsibilities for HCCTS, there is reasonable suspicion that the Twin Rivers Unified School District board member/LEA representative could have had a financial interest in the granting of the HCCTS charter by the Twin Rivers Unified School District's board.

Because a charter is akin to a contract in many respects, the existence of a financial interest on the part of a board member in the granting of a charter and its operation thereafter could render the issuance of the original charter void as a violation of section 1090 and other conflict of interest laws.

The HCCS board voted on November 10, 2014 to “make an Amendment to LAED Consulting agreement.” That amendment was to remove the Twin Rivers Unified School District board member/LEA representative’s name from the contract. This action makes it clear that the board knew or should have known when it acted on September 25, 2014 that this was a contract for the Twin Rivers Unified School District board member/LEA representative and that she should not have participated in any way during the board’s deliberations.

That same day, November 10, 2014, a newly appointed board member tendered his resignation. FCMAT was provided a copy of his resignation letter, which stated:

The reason for my sudden decision to resign is due to what I consider improper practices by the Board. The consultant contract with Linda Fowler, a member of the Board, that she requested we modify to remove her name is my main reason. She asked that we modify the contract by removing her name for political purposes, but she would still be compensated from a new contract without her name . . . In all good conscience, I cannot continue to serve on this Board where I feel a blatant conflict of interest contract exists and the Board of Trustees knowingly allows it to continue.

The HCCTS board then held a special board meeting on November 16, 2014, during which it revoked its contract with LAED.

Further complicating the issue was undescribed litigation by the Twin Rivers Unified School District board member/LEA representative’s partner. The board minutes for the HCCTS board’s July 28, 2015 special meeting state that the litigation was “taken off the table.” Although the Twin Rivers Unified School District board member/LEA representative was present at the meeting, the minutes do not indicate whether she recused herself from discussion of the matter.

The Twin Rivers Unified School District board member/LEA representative resigned from the board in early 2016; however, board meeting minutes do not memorialize the acceptance of her resignation. The former Twin Rivers Unified School District board member/LEA representative then became an employee of HCCS and currently holds the position of site administrator. Serving as a publicly elected member of a board that oversees an organization in which that board member is employed can also raise conflict of interest issues.

FCMAT is aware that the Fair Political Practices Commission (FPPC) has received a complaint regarding potential conflicts of interest of the Twin Rivers Unified School District board member/former LEA representative for HCCTS and that there is an active investigation of this matter on the FPPC’s calendar.

Independent Contractor Status

FCMAT’s review of HCCS’ general ledger revealed payments to employees outside of their normal salary compensation. Adding to the complexity of the issue, some of the employees were also board members when their consulting contracts were approved, which again raises conflict of interest issues. Although board meeting minutes acknowledged that the initial approval of some of the consulting contracts may have violated the Brown Act because they were approved in closed session, they were eventually brought into open session for action. During that open session, board members abstained from voting on their particular contract. The minutes did not state whether the individuals who abstained left the dais or the room during the discussion and vote on the matter.

The IRS has focused on independent contractors to ensure they are not misidentified as independent contractors when they should be employees. Numerous factors determine whether an individual is an independent contractor or an employee, and no one factor carries more weight than another. The fact that a person has a contract is not in and of itself sufficient to establish independent contractor status. The IRS bases its determination on all the facts and circumstances of a specific situation.

Incorrectly identifying someone as an independent contractor when they should be classified and treated as an employee can result in severe federal penalties. Those can include:

- 1.5% of the wages paid
- 20% of the worker's Social Security/Medicare taxes
- \$250 per Form when no W-2 was sent to the IRS
- \$250 per Form and \$1,000 fine for not furnishing the employee a W-2
- Interest on past due federal tax deposits
- All employment taxes due on the independent contractor payments
- Civil and criminal penalties
- Affordable Care Act penalties

State tax penalties may also apply, and reclassified workers have sued their current employers for benefits they should have received during the time they were misclassified, such as vacation leave, sick leave, pension and health and welfare benefits.

Consequently, it is important that HCCS carefully review payments to board members and employees based on consulting contracts to ensure that they are being processed correctly. Those to true independent contractors should be handled through the accounts payable system, and those for employee services through the payroll process. FCMAT did not request copies of employees' W-2s or board members' 1099s and has no information on whether the payments made based on individual consulting contracts were properly reported to taxing authorities.

Gambling

HCCTS board meeting minutes show that on two occasions the school held a raffle. The principal at the time reported the first raffle at the January 7, 2015 board meeting, and the executive director reported the second at the December 1, 2016 board meeting. Neither meeting's minutes provided details about the raffles being discussed.

Penal Code section 320.5(b) defines a raffle as, “. . . a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes . . .” FCMAT was not able to determine if tickets were sold or if the word “raffle” was being used beyond its legal definition.

It is not permissible for public schools (which includes charter schools) to conduct raffles (Penal Code sections 319 and 320). If such activities are to be held, schools should ensure that an outside organization such as a parent group, booster club or education foundation is the entity conducting such an activity. However, even those organizations must comply with the following rules and conditions in Penal Code section 320.5:

- The entity must be a “private nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701l, 23701t, or 23701w of the Revenue and Taxation Code”
- The eligible organization must register annually with the Department of Justice
- Tickets sold must include a coupon or stub, and both the ticket and the stub must be “marked with a unique and matching identifier.”
- Winners must be determined by a drawing of the coupons or stubs from the detachable tickets sold
- The drawing must be conducted in California and supervised by “a natural person who is 18 years of age or older.”
- “At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for beneficial or charitable purposes, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receiving these funds is itself an eligible organization.”
- Any person receiving compensation for the raffle must be an employee of the eligible organization
- No gaming machines can be used
- The raffle cannot happen within a satellite wagering facility or racetrack or gambling establishment
- The internet cannot be used to operate the raffle, and tickets cannot be sold over the internet

Gifts to Board Members/Employees/Students

FCMAT was provided with an Excel version of HCCS’ general ledgers for fiscal years 2014-15, 2015-16 and 2016-17. During review of those documents, FCMAT found the following payments:

- A \$14,979.03 payment to the law firm of Nielsen Merksamer Parrinello Gross & Leoni, LLP, with a transaction date of November 30, 2016 and described as “Attorney Fees for Linda Fowler.” As discussed above, this person is a former HCCTS board member and current HCCS employee.
 - Current and past HCCTS board members as well as current and former HCCS administrators reported that the matter had been brought to the board for approval. One interviewee recalled that the item was approved in closed session. Although FCMAT found seven board meetings at which the FPPC matter was discussed in closed session, FCMAT was unable to find board meeting minutes that supported the assertion that the HCCTS governing board approved the payment.
- \$1,805.54 for repair of a 2001 BMW 325i including towing, oil change, radiator coolant and the repair of a window regulator, from January 24 through March 28, 2017. FCMAT’s interviews revealed that these payments were made for the maintenance and repair of an employee’s car. This person is a custodian whose job duties required that they

split their time between HCCS sites. One HCCS administrator stated that this person was provided “an old beater truck” and another reported that HCCS also paid mileage to this person. FCMAT’s review of the HCCS general ledger supports the assertion that this employee received mileage reimbursement payments.

As discussed earlier in this report, without a public purpose for the expenditure or board approval, both of the above payments become gifts of public funds, which are not allowed. In addition, these payments are potential conflict of interest violations. Furthermore, any payment HCCS made on behalf of an employee, regardless of whether approved by the board, would be reportable as income on that employee’s W-2. In the case of a board member, who is not an employee, a Form 1099 would be issued to report the compensation. Because the tax year in which the payments for attorneys’ fees and car repairs were made has passed, if these payments were not included in the employees’ W-2s, the W-2s would need to be revised and reissued. FCMAT did not request copies of employees’ W-2s or board members’ 1099s and has no information on whether these were properly reported to taxing authorities.

After fieldwork was completed, FCMAT received information from a confidential informant that HCCS provided gifts such as computers or laptops, \$500 gift cards, big screen plasma televisions and Target gift cards to students to generate attendance. HCCS Policy No. 141016-VII-D, Use of Charter School Funds for Students, states:

A student merit award committee will be created that consists of the Principal, the Student Body President, and the head School Counselor, which may award students who have demonstrated excellence with equipment that does not exceed two hundred dollars (\$200). Students may also be given other awards for excellence decided by the committee, as long as they do not exceed two hundred dollars (\$200) [Ed. Code § 44015]. Examples of excellence may include perfect attendance for a set period of time, high grades, passing an industry recognized exam, etc.

In no other case, except as designated above or in another board policy, shall students be given materials without compensation to the school, as this would be considered a gift of public funds, and is prohibited by the California Constitution.

FCMAT has no information about whether HCCS established a student merit award committee prior to the alleged distribution of these gifts. However, HCCS’ board policy does not allow awards to students to generate attendance. Even if the awards were for perfect attendance, if the dollar amounts and specifics of the awards are true, then some exceed the limits allowed by HCCS’ board policy. FCMAT has provided these allegations to HCCTS’ charter authorizer, the Twin Rivers Unified School District, for further investigation. If the allegations are proven true, this could subject HCCTS to revocation of its charter.

Hiring Practices

HCCTS’ charter petition states in two separate sections, Participants of Schools (page 38) and Health and Safety Policy (page 144), that it will comply with the fingerprinting requirements in Education Code section 44237. After completing its fieldwork, FCMAT received information from two confidential informants.

The first provided information that HCCS has two employees who are convicted felons and considered violent offenders. One of the individuals identified was reported to have been charged with murder but was ultimately convicted of manslaughter. The other had reportedly been convicted of pistol-whipping another person in another state. FCMAT provided these allegations

to HCCTS' charter authorizer, the Twin Rivers Unified School District, for further investigation. The district investigated the matter and found that both individuals who were alleged to be felons had been convicted of violent felonies. The district also discovered that an HCCS administrator was not only aware of the first individual's manslaughter conviction but had in years prior been this person's parole officer. The district has received reports from HCCS that both employees are on paid administrative leave; however, HCCS continues to advocate that they both be allowed to return to employment. The district does not share this opinion.

The second informant alleged that a childcare worker at the Grand Avenue site was a documented gang member and a convicted felon, and was often heard bragging about her gang affiliations. FCMAT provided these allegations to the Twin Rivers Unified School District for further investigation. These circumstances could result in revocation of HCCTS' charter.

Sexual Harassment

After completing fieldwork, FCMAT received information from two confidential informants that several female employees at HCCS were subjected to acts of sexual harassment from HCCS administrators but were unwilling to come forward because of fear of retaliation. One of the confidential informants also alleged that a member of the HCCS custodial staff had a sexual encounter with a student. FCMAT has provided these allegations to HCCTS' charter authorizer, the Twin Rivers Unified School District, for further investigation. If proven true, this could subject HCCTS to revocation of its charter.

AB 139 Extraordinary Audit Report Summary: Potential Fraud

Based on the findings in this report, there is not sufficient evidence to demonstrate that fraud or misappropriation may have occurred with regard to the Highlands Community Charter Technical School's resources and assets related to student enrollment, support of students with disabilities, ADA, instructional minutes and days, avoidance of standardized tests, conferral of diplomas, charging fees, or operating multiple sites; however, other illegal fiscal practices may have occurred.

However, significant material weaknesses in the charter's internal control environment increase the probability of fraud and abuse. FCMAT has identified multiple, serious internal practices that need adjustment or correction, including some that may merit sanctions by state agencies and/or HCCTS' authorizer. These include the following:

- Violation of HCCTS' charter by serving students outside the parameters listed in the charter
- Whether the partnership agreement was entered into with the correct entity and whether serving students outside of the terms of the petition and partnership violates the requirement for an exclusive partnership and whether that also causes violations of its petition in light of the ruling in the *Grossmont* case
- Irregularities in instructional days
- Questionable acceptance for participation in ASAM
- Inconsistent use of CASAS testing, which was the system identified as HCCS' alternative testing system in the ASAM program
- Course outlines not approved by the HCCTS board yet used by the charter as credit toward the award of diplomas
- Lack of verification or data to support attainment of student skills and knowledge, and permitting subjective decisions, potentially subject to personal biases, about skills and knowledge attained
- HCCS' use of CASAS testing results alone to determine whether a student qualified to graduate or to move to the next level of course work
- Problematic interpretation of CCR Title 5, and related granting of high school credits for GED testing to students outside the population identified in that law
- Allowing a test taken in Spanish to substitute for a prerequisite in English
- Conducting board votes via email in violation of the Brown Act
- Conflict of interest issues involving an HCCTS board member who was also a board member of its charter authorizer. When a contract with that board member's firm came before the board, that board member failed to remove herself from the room and offered comment and information about the contract from the dais.
- Conflict of interest and payroll issues related to approval of consultant contracts to individuals who are also employees of HCCS
- Possible violations of the Penal Code by allowing raffles to be held at the charter

- Questionable fiscal practices such as:
 - Payment of personal attorney’s fees for a board member from charter funds without board approval
 - Payment of an employees’ personal car repairs from charter funds and without board approval
 - Providing gifts to students in violation of the charter’s board policy
- Implementing hiring practices in violation of the law, which allowed convicted felons to have access not only to HCCS students and staff but also to the minor children in its child development program
- Allegations of sexual harassment by HCCS administrators

These findings should be of great concern to the charter’s governing board, the Twin Rivers Unified School District, the Sacramento County Office of Education, the Superintendent of Public Instruction and the State Controller’s Office, and require immediate intervention to limit the risk of fraud and/or misappropriation of assets in the future.

Judgments Regarding Guilt or Innocence

The existence of fraud is solely the purview of the courts and juries, and FCMAT will not make statements that could be construed as a conclusion that fraud has or has not occurred.

Education Code Section 42638(b) states that action by the county superintendent shall include the following:

If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.

Education Code Section 1241.5(c) states:

The county superintendent shall report the findings and recommendations to the governing board of the charter school at a regularly scheduled board meeting, and provide a copy of the information to the chartering authority of the charter school, within 45 days of completing the review, audit, or examination. The governing board of the charter school shall, no later than 15 calendar days after receipt of the report, notify the county superintendent and its chartering authority of its proposed response to the recommendations.

Recommendations

The county superintendent should:

1. Notify the governing board of the Highlands Community Charter School that insufficient evidence exists to indicate that fraud, or misappropriation of charter funds and/or assets, may have occurred related to student enrollment, support of students with disabilities, ADA, instructional minutes and days, avoidance of standardized tests, conferral of diplomas, charging fees, or operating multiple sites, and that the county office has concluded its review.
2. Notify the appropriate agencies regarding the material weaknesses and illegal fiscal practices identified above so that suitable actions can be taken. For example:
 - a. Both the CDE and State Controller's Office should be notified regarding the irregularities in instructional days related to HCCS' cosmetology program: the CDE so that apportionments for ineligible students can be returned to the state, and the State Controller's Office so that the work of the auditors can be reviewed.
 - b. A copy of this report should be provided to the FPPC regarding HCCTS' governing board's actions in conducting board business via email votes and the conflict of interest issues detailed in this report.
 - c. Ensure that both the Twin Rivers Unified School District and HCCTS investigate and confirm that the issues raised regarding charter school locations, possible violations of HCCTS' charter petition, hiring practices, gifts to board members, staff and students, holding raffles, awarding consultant contracts to employees, and allegations of sexual harassment have been properly addressed.

Appendices

Appendix A - Study Agreement

Appendix B - CDE's Suggestions for Successful Partnerships



CSIS California School Information Services

**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM
AB139 STUDY AGREEMENT
December 16, 2016**

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as FCMAT or the team, and the Sacramento County Office of Education, hereinafter referred to as the COE, mutually agree as follows:

1. BASIS OF AGREEMENT

The team provides a variety of services to local educational agencies (LEAs). Pursuant to the provisions of Education Code (EC) Section 1241.5(b), a county superintendent of schools may review or audit the expenditures and internal controls of any school in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The extraordinary audits conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner. Under EC 47604.4, a County Superintendent may monitor the operations of a charter school in the county and investigate the operations of the charter school based upon information that justified the investigation.

The COE has requested that the team assign professionals to conduct an extraordinary audit of the Highlands Community Charter School. Per Education Code Section 1241.5(c), the county superintendent has reason to believe an examination is merited to determine whether fraud, misappropriation of funds, or other illegal practices have occurred, and may conduct an audit. Per EC 47604.4, the county superintendent has determined that an audit is justified.

All work shall be performed in accordance with the terms and conditions of this agreement.

2. SCOPE OF THE WORK

A. Review the enrollment and attendance accounting and reporting procedures at the Highlands Community Charter School to determine whether the charter school is acting in violation of the approved charter petition, memorandum of understanding and/or Education Code by doing the following:

1. Limiting enrollment to students age 22 or older and/or not offering services to students in all grade levels served by the authorizing school district as required by Education Code §47605(a)(6), (d)(2)(A).

2. Avoiding the requirement to provide additional services and support to students with disabilities by serving only students age 22 and older.
3. Misreporting average daily attendance (ADA) by claiming an entire year of ADA for credit recovery programs that require less than a year to complete.
4. Mischaracterizing attendance for adult students age 22 and older as required elementary and secondary student attendance.
5. Mischaracterizing instructional minutes for adults age 22 and older as required elementary and secondary grade level instructional minutes, and possible lack of compliance with instructional minute requirements specified in EC §47612.5.
6. Reporting all students as being in grades K-2 or grade 9 to avoid standardized tests.
7. Conferring diplomas to students who do not advance beyond grade 9.
8. Charging fees for enrollment in violation of Education Code section 47605(d).
9. Operating at multiple locations outside of the district boundaries of Twin Rivers. [EC §§ 47605(a)(1), (5), 47605.1; Anderson Union High School District v. Shasta Secondary Home School (October 17, 2016) __ Cal.App.4th __ (2016 WL 6069487; 2016 Cal. App. LEXIS 872)]

B. Services and Products to be Provided

1. Orientation Meeting - The team will conduct an orientation session at the charter to brief management and supervisory personnel on the team's procedures and the purpose and schedule of the study.
2. On-site Review - The team will conduct an on-site review at the charter office and at school sites if necessary; and will continue to review pertinent documents off site.
3. Progress Reports - The team will inform the COE of material issues as the review is performed.
4. Exit Meeting – The team will hold an exit meeting at the conclusion of the on-site review to inform the COE of any significant findings to that point.
5. Draft Report – When appropriate, electronic copies of a preliminary draft report will be delivered to the COE's administration for review and comment on a schedule determined by the team.

6. Final Report - Electronic copies of the final report will be delivered to the COE following completion of the review. Printed copies are available from the FCMAT office upon request.
7. Follow-Up Support – If requested, the team will meet with the COE and/or charter to discuss the findings and recommendations of the report.

3. PROJECT PERSONNEL

The FCMAT study team may also include:

- | | | |
|-----------|-------------------------|-------------------------|
| <i>A.</i> | <i>To Be Determined</i> | <i>FCMAT Staff</i> |
| <i>B.</i> | <i>To Be Determined</i> | <i>FCMAT Consultant</i> |
| <i>C.</i> | <i>To Be Determined</i> | <i>FCMAT Consultant</i> |

Other equally qualified staff or consultants will be substituted in the event one of the above individuals is unable to participate in the study.

4. PROJECT COSTS

The cost for studies requested pursuant to EC 42127.8 (d) (1) shall be:

- A. \$800 per day for each staff team member while on site, conducting fieldwork at other locations, presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.
- B. All out-of-pocket expenses, including travel, meals and lodging.

Based on the elements noted in Section 2A, the total estimated cost of the study will be \$48,000.

- C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT services may be reimbursed from funds set aside for this purpose pursuant to EC 1241.5. Other payments, when deemed necessary, are payable to Kern County Superintendent of Schools - Administrative Agent, located at 1300 17th Street, City Centre, Bakersfield, CA 93301.

5. RESPONSIBILITIES OF THE COE AND/OR CHARTER

- A. The charter will provide office and conference room space during on-site reviews.
- B. The charter will provide the following if requested:
 1. Policies, regulations and prior reports addressing the study request.
 2. Current or proposed organizational charts.

3. Current and two (2) prior years' audit reports.
 4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the charter and sent to FCMAT in an electronic format.
 5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT's online SharePoint document repository where the charter shall upload all requested documents.
- C. The COE's administration will review a preliminary draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The charter shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

<i>Orientation:</i>	<i>To be determined</i>
<i>Staff Interviews:</i>	<i>To be determined</i>
<i>Exit Meeting:</i>	<i>To be determined</i>
<i>Preliminary Report Submitted</i>	<i>To be determined</i>
<i>Final Report Submitted</i>	<i>To be determined</i>

7. COMMENCEMENT, TERMINATION AND COMPLETION OF WORK

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the charter and any other parties from which, in the team's judgment, it must obtain information. Once the team has completed its fieldwork, it will proceed to prepare a preliminary draft report and a final report. Prior to completion of fieldwork, the COE may terminate its request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COE does not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COE will be responsible for the full costs. The COE understands and agrees that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold

preparation, publication and distribution of a report once fieldwork has been completed, and the COE shall not request that it do so.

8. INDEPENDENT CONTRACTOR

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COE. The manner in which FCMAT's services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COE in any manner without prior express written authorization from an officer of the COE.

9. INSURANCE

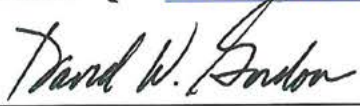
During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by the COE, automobile liability insurance in the amount required under California state law, and workers compensation as required under California state law. FCMAT shall provide certificates of insurance, with Sacramento County Office of Education named as additional insured, indicating applicable insurance coverages upon request.

10. HOLD HARMLESS


FCMAT shall hold the COE, its board, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of its board, officers, agents and employees undertaken under this agreement. Conversely, the COE shall hold FCMAT, its board, officers, agents and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of its board, officers, agents and employees undertaken under this agreement.

11. CONTACT PERSON

Contact: Tamara Sanchez
 Telephone: (916) 228-2551
 E-mail: tsanchez@scoe.net



 David Gordon, Superintendent Date
 Sacramento County Office of Education



 Michael H. Fine Date
 Chief Administrative Officer
 Fiscal Crisis & Management Assistance Team

Suggestions for Successful Partnerships

Suggestions for a successful partnership between Workforce Investment Act Title II and the Local One Stop System.

I. Basics of Good Partnerships	Responsible Partner
Description of adult education services and programs are included in core service materials within and at One Stop service delivery points. Materials are updated regularly and reflect changes in available services. One Stop staff assures distribution of materials.	Adult Education and One Stop
Computer kiosks include links to adult education Internet sites when available.	One Stop Information Technology Staff
Adult education provides an orientation to One Stop staff regarding literacy programs.	Adult Education
One Stop descriptions of core and intensive services include adult education programs.	One Stop
One Stop staff refers participants to adult education for literacy programs.	One Stop Case Managers
Adult education staff refers students to One Stop for career services.	Adult Education Counselors and Staff
Adult education staff refers students to One Stop partners (unemployment insurance, vocational rehabilitation, county social services, etc.)	Adult Education Counselors

II. Suggested Best Practices	Responsible Partner
Adult education and the Local Work Investment Board (LWIB) develop and sign a Memorandum of Understanding (MOU) covering both literacy and, when available, vocational programs. The MOU delineates roles and responsibilities and establishes measurable outcomes and deliverables.	LWIB and Adult Education
Adult education and One Stop staff meet regularly (no less than once per quarter) to keep lines of communication open.	Staff of both Adult Education and One Stop
One Stop partners (Vocational Rehabilitation, Unemployment, etc.) and support service providers (behavioral health, child care, etc.) refer participants to adult education when appropriate.	One Stop and Support Agency Counselors or Case Managers
Adult education vocational programs submit applications to be listed on the Workforce Investment Act (WIA) Eligible Training Provider List (ETPL). Adult education, One Stop operator, and local board explore solutions to ETPL barriers.	Adult Education and LWIB
Adult education staff is co-located at the One Stop sites and One Stop staff is co-located at local adult education sites.	One Stop Operator
Classes are co-located at the One Stop when space is available and enrollment is sufficient to be cost-effective for the adult education provider.	One Stop and Adult Education

III. Emerging Practices	Responsible Partner
Title II funded agencies within an LWIB region develop a coalition to work collaboratively as a continuum of service.	All Title II Funded Agencies
The Title II regional or local coalition refers and enrolls students to the most appropriate adult education provider within the coalition that most closely meets the individual student needs (i.e., specialized program, class time, location easiest for student to attend, etc.).	Adult Education Counselors
The adult education Title II coalition works closely with business partners to identify literacy and vocational needs of the current and emerging workforce.	Adult Education Coalition
The locally developed Title II coalition, representing all Title II programs in the local area or region, collectively enters into a single MOU with local WIB.	Adult Education Coalition and LWIB
The Title II coalition has a representative seated on the LWIB.	Adult Education Coalition and LWIB
Adult education site hosts a One Stop site on the adult education campus.	

Adult Education and One Stop Operator
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Contact Information

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