



Extraordinary Audit of the FAME Public Charter School

Commissioned by the Alameda County Office of Education

April 6, 2009

Joel D. Montero
Chief Executive Officer







CSIS California School Information Services

April 6, 2009

Sheila Jordan, Superintendent
Alameda County Office of Education
313 West Winton Avenue
Hayward, California 94544

Dear Superintendent Jordan:

In June 2008, the Fiscal Crisis and Management Assistance Team (FCMAT) and the Alameda County Office of Education entered into an agreement for FCMAT to conduct an AB 139 extraordinary audit of the FAME Public Charter School. FCMAT provides a variety of services to school districts and county offices of education upon request. Based on Assembly Bill 139 and Education Code Section 1241.5 (c), a county superintendent of schools may review or audit the expenditures and internal controls of any charter 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 review or audit 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. This review is to determine if sufficient evidence exists to further investigate the findings, or if there is evidence of criminal activity that should be reported to the local district attorney's office.

The study agreement specifies that FCMAT will perform the following:

1. Examine the contract and related Personnel Action Transmittal (PAT) for the charter director to confirm the provisions by which the director would be eligible for additional compensation in the form of a stipend(s) or salary increase. Confirm the method of payment for additional compensation, allowances and stipends and whether income taxes and statutory deductions were withheld and processed appropriately. Confirm the approval process for the contract and PAT, which are inconsistent on the area of additional compensation.
2. Examine petty cash and accounts payable disbursements and supporting documentation from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals or entities that may represent a misuse of public funds or be inconsistent with board policies, bylaws, or board authority of the FAME Public Charter School.
3. Examine payments or cash withdrawals from financial accounts held in the name of the FAME Public Charter School from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other

FCMAT

Joel D. Montero, Chief Executive Officer

1300 17th Street - CITY CENTRE, Bakersfield, CA 93301-4533 • Telephone 661-636-4611 • Fax 661-636-4647

422 Petaluma Blvd North, Suite. C, Petaluma, CA 94952 • Telephone: 707-775-2850 • Fax: 707-775-2854 • www.fcmat.org

Administrative Agent: Larry E. Reider - Office of Kern County Superintendent of Schools

individuals or entities that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.

4. Examine credit card records, if applicable, for July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.
5. Examine all forms of payment for compensation or reimbursement to specific current and former employees to confirm if the payments are consistent with authorized employee contracts or goods and services purchased for the direct benefit of the charter school program and its operations.
6. Confirm board policy and operational procedures related to where the authority to approve personnel transactions, including changes in compensation, assignment, work year, etc. are vested; and whether the policies and procedures are followed.
7. Review the charter's policy on conflict of interest and the requirements under the Fair Political Practices Commission related to the disclosure of certain financial interests and sources of income to the public. Confirm whether any actions by the executive director related to changes in the level of compensation or payment to an employee(s) in any form resulted in a personal or financial benefit to the director.

According to Education Code Section 42638 (b), 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.

We appreciate the opportunity to serve you and we extend our thanks to all the staff of the Alameda County Office of Education and the FAME Public Charter School.

Sincerely,



Joel D. Montero
Chief Executive Officer

c: Carlene Naylor, Associate Superintendent, Business Services

Table of Contents

Foreword	iii
Introduction	1
Background	1
Study Guidelines.....	3
Study Team.....	3
Executive Summary	5
Findings and Recommendations.....	9
Cash Flow and Loans.....	9
Executive Director’s Compensation.....	17
Other Expenditures	33
Right Start Foundation	37
Conflict of Interest	39
Board Meetings	45
Appendices	47

Foreword

FCMAT Background

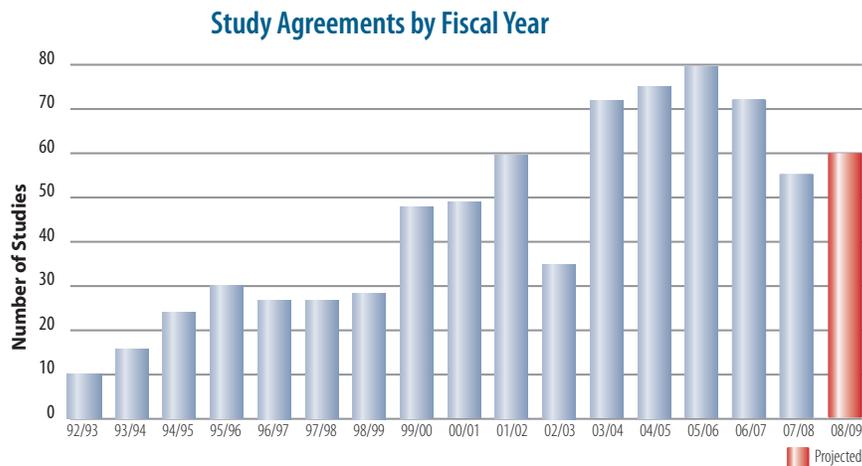
The Fiscal Crisis and Management Assistance Team (FCMAT) was created by legislation in accordance with Assembly Bill 1200 in 1992 as a service to assist local educational agencies in complying with fiscal accountability standards.

AB 1200 was established from a need to ensure that local educational agencies throughout California were adequately prepared to meet and sustain their financial obligations. AB 1200 is also a statewide plan for county offices of education and school districts to work together on a local level to improve fiscal procedures and accountability standards. The legislation expanded the role of the county office in monitoring school districts under certain fiscal constraints to ensure these districts could meet their financial commitments on a multiyear basis. AB 2756 provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans. These include comprehensive assessments in five major operational areas and periodic reports that identify the district’s progress on the improvement plans.

Upon request, FCMAT also provides extraordinary audits in accordance with Assembly Bill 139 and Education Code Section 1241.5 (b) and (c), which authorize county superintendents of schools to conduct or request a review or audit of the expenditures and internal controls of any school district or charter school in their county if there is reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred.

Since 1992, FCMAT has been engaged to perform more than 600 reviews for local educational agencies, including school districts, county offices of education, charter schools and community colleges. Services range from fiscal crisis intervention to management review and assistance. FCMAT also provides professional development training. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The agency is guided under the leadership of Joel D. Montero, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Total Number of Studies.....	711
Total Number of Districts in CA.....	982
● Management Assistance.....	675 (94.9%)
● Fiscal Crisis/Emergency	36 (5.1%)
Note: Some districts had multiple studies.	
● Districts (7) that have received emergency loans from the state.	(Rev. 7/30/08)



Introduction

Background

California Education Code Section 47600, 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 a 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 for a charter school are detailed in an agreement, or charter, between the authorizing agency and the charter school organizers.

Charter schools offer a more flexible school governance model, but remain accountable for student achievement and sound fiscal practices similar to traditional K-12 school agencies. The chartering or sponsoring agency is responsible for adequate and appropriate oversight; this includes determining whether a charter is following prudent fiscal practices and generally accepted accounting principles (GAAP) when accounting for revenues and expenditures and preparing required financial reports.

The Families of Alameda for Multi-Cultural/Multi-Lingual Education (FAME) Public Charter School was authorized in May 2005 by the Alameda County Office of Education (county office). The FAME Public Charter School is a direct-funded charter school governed by a five-member board. The board seat reserved for the county office representative is vacant at this time. The charter school serves approximately 1,422 students in kindergarten through grade 12 in classroom and non-classroom settings.

Education Code Section 1241.5(c) states that a county superintendent may review or audit the expenditures and internal controls of any charter 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 review or audit 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.

In June 2008, the Fiscal Crisis and Management Assistance Team (FCMAT) received a request from the Alameda County Office of Education for an Assembly Bill (AB) 139 extraordinary audit of the FAME Public Charter School. The county office had received complaints and allegations regarding the alleged misuse of public funds and other illegal fiscal practices.

FCMAT and the county office subsequently entered into a study agreement which specifies that FCMAT will perform the following:

1. Examine the contract and related Personnel Action Transmittal (PAT) for the Charter Director to confirm the provisions by which the Director would be eligible for additional compensation in the form of a stipend(s) or salary increase. Confirm the method of payment for additional compensation, allowances and stipends and whether income taxes and statutory deductions

were withheld and processed appropriately. Confirm the approval process for the contract and PAT, which are inconsistent on the area of additional compensation.

2. Examine petty cash and accounts payable disbursements and supporting documentation from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals or entities that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.
3. Examine payments or cash withdrawals from financial accounts held in the name of the FAME Public Charter School from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals or entities that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.
4. Examine credit card records, if applicable, for July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.
5. Examine all forms of payment for compensation or reimbursement to specific current and former employees to confirm if the payments are consistent with authorized employee contracts or goods and services purchased for the direct benefit of the charter school program and its operations.
6. Confirm board policy and operational procedures related to where the authority to approve personnel actions, including changes in compensation, assignment, work year, etc. are vested; and whether the policies and procedures are followed.
7. Review the charter's policy on Conflict of Interest and the requirements under the Fair Political Practices Commission related to the disclosure of certain financial interests and sources of income, to the public. Confirm whether any actions by the Executive Director related to changes in the level of compensation or payment to an employee(s) in any form resulted in a personal or financial benefit to the Director.

Study Guidelines

FCMAT provides a variety of services to local educational agencies upon request. This review is to determine if sufficient evidence exists to further investigate the findings, or if there is evidence of criminal activity that should be reported to the local district attorney's office.

FCMAT visited the Alameda County Office of Education and the FAME Public Charter School in October 2008 to conduct interviews, collect data and review documentation. This report is the result of those activities and is divided into the following sections:

- I. Executive Summary
- II. Cash Flow and Loans
- III. Executive Director's Compensation
- IV. Other Expenditures
- V. Right Start Foundation
- VI. Conflict of Interest
- VII. Board Meetings
- VIII. Appendices

Study Team

The FCMAT study team was composed of the following members:

Diane Branham Fiscal Intervention Specialist FCMAT Bakersfield, CA	Jim Cerreta Fiscal Intervention Specialist FCMAT Bakersfield, CA
Karen Cox* Director, Business Services Standard School District Bakersfield, CA	John Lotze Public Information Specialist FCMAT Bakersfield, CA

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

Reviewed by Frank Fekete

Executive Summary

In June 2008, FCMAT entered into an agreement with the Alameda County Office of Education to conduct an AB 139 extraordinary audit of the FAME Public Charter School. Following completion of phase one of the study agreement, FCMAT conducted on-site visits at the charter school in October and November, 2008. As the report was drafted, FCMAT continued to correspond with the charter school regarding clarification of the documentation provided, and made requests for additional information. On March 4, 2009, the county office provided a copy of the draft report to the charter school. County office representatives and FCMAT team members met with the charter school's executive director on March 16, 2009 to review the draft and answer questions regarding the report. At the executive director's request, the county office provided the charter school five additional business days to provide any factual information related to the report but not provided previously. After reviewing the additional documentation provided by the charter school, FCMAT finalized the report.

The Bay Area School for Independent Study, Inc. (BASIS), a nonprofit Public Benefit Corporation, operated a charter school in the Sunol Glen Unified School District from 2001 through 2005. In 2005, BASIS then applied to the Alameda County Office of Education for a new countywide charter to operate the Families of Alameda for Multi-Cultural/Multi-Lingual Education (FAME) Public Charter School. The charter school began operation in the fall of 2005 for students in grades K-12, with the Alameda County Office of Education as the sponsoring agency.

The charter school leases facilities in the cities of Newark, Dublin, Brentwood, San Leandro and Fremont for administrative services and student programs. The charter school also has an agreement with the Fremont Unified School District for use of school facilities on one of the district's Fremont campuses.

The charter school and the county office entered into an agreement on July 1, 2005 for the county office to provide human resources and payroll processing services to the charter school. A new agreement dated July 1, 2008 and subsequently signed by both parties provided for these services to continue through December 31, 2008. Charter school staff members provide all other administrative functions for the charter.

The charter school has experienced significant enrollment growth since its inception in 2005. The school had 785 students in 2005; enrollment has increased to more than 1,400 students in the 2008-09 school year, resulting in cash flow challenges. State apportionments for the current year are based on prior year average daily attendance (ADA) data until current year ADA is certified in February. Thus, if a local educational agency is growing rapidly, revenues generated from the prior year ADA may not keep pace with current year expenditures.

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.

To meet cash flow needs created by this funding dilemma as well as those created by the charter school's own spending patterns, the FAME charter school solicited loans from many sources, including private individuals. Private individuals who provided short-term loans to the charter included board members, employees and their relatives, and relatives of the executive director. The loan fees and interest rates paid to private individuals were higher than those paid to commercial lenders. The charter school also obtained revenue anticipation notes (RANs) in June 2007 and July 2008. However, a large portion of the proceeds from the RANs were used to pay off prior loans rather than to resolve cash flow issues in the current year. This supports the conclusion that the RAN is being used for operating capital rather than to meet short-term cash flow needs. In addition, other than information provided to the county office regarding the two commercial loans obtained in 2005 and an email sent one business day prior to FAME's governing board approval of the 2008 RAN, FCMAT found no evidence indicating that the charter school complied with the memorandum of understanding (MOU) with the county office, which states that the charter school is to notify the county office in advance of its intent to apply for a loan.

Based on the information provided to FCMAT, two of the 1099 forms filed in the 2006 and 2007 tax years did not report the correct dollar amounts for one private individual who provided loans to the charter school. These forms need to be corrected and re-filed with the federal and state taxing authorities.

Employers are required to track the wages paid and taxes withheld for each employee and provide each employee with a Form W-2 (Wage and Tax Statement) by January 31 of each calendar year. Employers are also required to submit copies of the W-2 to the Social Security Administration and the Employment Development Department by the last day of February, or by March 31 if filing electronically. The charter school did not properly report the wages of its executive director on Form W-2. A number of payments for items subject to federal and state payroll taxes were made to the executive director through the charter school's accounts payable system in 2006, 2007 and 2008, but amounts were not recorded on the 2006 and 2007 forms W-2. These forms need to be corrected and re-filed with the federal and state taxing authorities. The charter school should also ensure that all wages are reported correctly on the 2008 Form W-2 and that wages are paid through the payroll system rather than through accounts payable.

The vehicle provided to the executive director has also not been reported by the charter school on the executive director's 2007 Form W-2. The charter school should work with its independent auditors to determine the value of the vehicle provided to the executive director and the amount that is to be reported on Form W-2, and include this correction on the 2007 Form W-2 when it is re-filed. The charter school should also ensure that the vehicle is included on the 2008 Form W-2.

The executive director's employment agreement includes language regarding when a bonus is to be paid. A December 2007 personnel authorization transmittal (PAT) contained language that was not consistent with the employment agreement. Although the PAT was signed by the board president, FCMAT found no evidence that the bonus was approved at a meeting of the board of directors. While it is within

the discretion of the charter school's governing board to raise salaries, it is not within its discretion to give employees a reward for work already performed because this may constitute a gift of public funds. The charter school should ensure that any bonuses paid to the executive director are consistent with the employment agreement and are approved by the board of directors.

The charter school does not track or report the executive director's leave time for vacation. The charter school needs to develop a policy and procedures requiring that all leaves be documented and tracked. The executive director has been overpaid for vacation accrued during the 2006-07 fiscal year. The charter school needs to reconcile all vacation earned, used and paid to the executive director and recapture any amounts that were overpaid.

Expense claims submitted by employees do not always include itemized supporting documentation. These items should be required on all expenditures to ensure that only appropriate charter school-related expenses are reimbursed. Article 16, Section 6 of the California Constitution prohibits any gift of public funds. The charter school should establish a board policy with guidelines regarding allowable and prohibited expenditures to help ensure that the charter school's expenditures are in accord with the law. The executive director's expense claims contained some questionable expenditures and some duplicate items. The charter school should review the executive director's expense claims and recover any amounts that were paid in error or that did not have a legitimate business purpose.

Statutory provisions, including Government Code Section 1090, and Section 81000 and following, outline California's conflict of interest laws. The executive director may have violated conflict of interest statutes by promoting and raising the salary of an employee who shortly thereafter moved into a home owned by the executive director and was allowed to live in the home in exchange for payments made to the executive director.

The county superintendent of schools should notify the charter school's board of directors and the local district attorney that a violation of Government Code Sections 1090 and 87100 may have taken place. The governing board should ensure that all designated employees and board members complete Form 700 and submit it to the proper county agency. Ethics training is also recommended.

The executive director indicated that the charter school's board of directors held a retreat/conference in Orlando, Florida in October 2008. An agenda was not posted for this event. Board information sessions were also held in Fremont during October and November 2008; agendas were not posted for these meetings. The board of directors should conduct all governing board meetings in accordance with the Ralph M. Brown Act, including meeting within the required geographic boundaries and posting board agendas. The board should also receive training regarding the Brown Act.

During the review, charter school staff stated that they were unable to locate some of the board minutes, including those for October 23, 2007, May 22, 2008 and June 9, 2008. The executive director reported that these minutes had to be reconstructed or

retyped because they, along with other documents, may have been taken by a former employee.

In accordance with Education Code Section 42638 (b), 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.

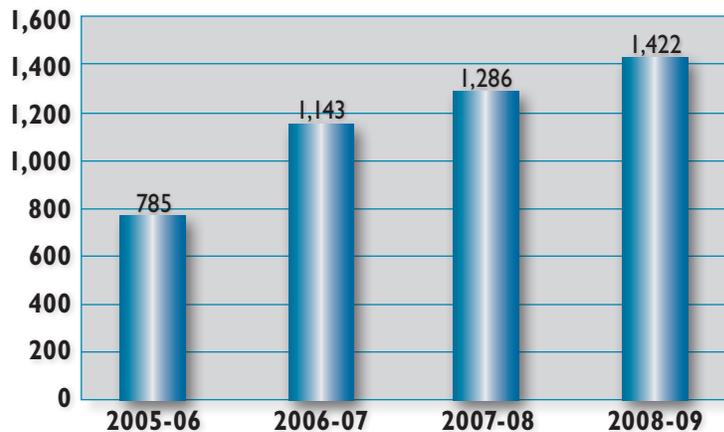
Findings and Recommendations

Cash Flow and Loans

The FAME Public Charter School has experienced significant enrollment growth during its first four years of operation. This situation presents unique challenges because the majority of funding received from the state for the current fiscal year is based on the prior school year's period two (P-2) average daily attendance (ADA). The funding based on the current school year's ADA is not certified until February, following submission of the period one (P-1) report. Thus the funding or revenue schedules by which public schools, including charter schools, receive state apportionments differ from the operating schedules, creating a significant demand on cash.

Table 1 provides the California Basic Educational Data System (CBEDS) student enrollment counts for the charter school since its inception.

Table 1: FAME Public Charter School Enrollment



Source: CDE Dataquest Web site; Source: 2008-09 Charter School

This condition, coupled with the charter school's spending patterns, has continued to place a significant demand on cash. The charter school was forced to seek loans from outside sources to maintain sufficient cash flow to meet its monthly payments. After reportedly being turned down by many lending institutions, the charter succeeded in acquiring loans from private parties and a revenue anticipation note (RAN).

Cash Flow

The purpose of a cash flow statement is to project the timing of receipts and expenses so that an organization can understand its cash needs on a monthly or even daily basis. The cash flow statement reflects the charter's liquidity and ability to meet its current payroll and other required financial obligations. As an analytical tool, the cash flow analysis should not be confused with the charter school's budget and fund balance; it excludes transactions that do not directly affect cash receipts and payments. Any forecast of financial data for cash flow purposes has inherent limitations, including issues such as unanticipated changes in enrollment trends and changing economic conditions at the state, federal and local levels. Therefore, the cash flow

forecasting model should be evaluated as a trend based on certain criteria and assumptions rather than a prediction of exact numbers. Multiyear cash flow projections help provide for more informed decision making and the ability to forecast the fiscal impact of current decisions. The cash flow projections should be updated each month to accurately account for all revenues, expenditures and other changes related to cash.

Despite the use of a RAN, the charter school continues to suffer from cash flow deficiencies.

In reviewing the charter school's 2008-09 cash flow statement, dated October 9, 2008, FCMAT noted that certificated salaries are projected to be the same amount each month from August through June, and classified salaries and all employee benefits are projected to be the same each month from July through June. This is not indicative of local educational agency payroll cycles because costs for salaries and benefits typically vary throughout the year.

It does not appear that the cash flow statement has been updated monthly based on actual revenues received and payments posted to the charter's financial records. However, the largest concern noted on the statement was that the proceeds of \$2 million from the July 2008 revenue anticipation note (RAN) were used to repay prior loans of \$1,398,584. The 2008 RAN matures on September 1, 2009; however, the charter school has only included a repayment amount of \$1.1 million in 2008-09, leaving a balance of \$900,000 to be paid in 2009-10. Given the charter school's projected June 2009 cash balance of \$20,340, it does not appear that the charter school will have sufficient cash resources to repay the loan on time without borrowing additional funds.

This analysis supports the conclusion that despite the use of a RAN, the charter school continues to suffer from cash flow deficiencies. The purpose of a RAN is to provide for cash flow needs when the receipt of revenues does not match expenditures. The RAN should be retired from future revenue receipts and should not be used to provide operating capital. In the charter school's case, approximately \$1.4 million of the \$2 million RAN proceeds for the 2008-09 fiscal year were used to retire the RAN borrowing and other loans from the 2007-08 year, leaving approximately \$600,000 to apply to cash flow needs of the 2008-09 fiscal year. Repayment of the RAN appears to create new cash flow deficiencies, indicating that the loan is being used as operating capital, which is not consistent with the purpose of a RAN.

This condition cannot continue without some adverse effect on the charter school's ability to operate as a going concern. The condition is exacerbated by the current state of the banking and financial industries and the severe tightening of credit markets in the US and around the world. The ability of the charter school to continue borrowing for cash flow or other purposes may be very limited in the future.

The charter school must pay careful attention to its cash flow and monitor it monthly. The economic crisis at the state and national levels and the continued cash deferrals and conditions passed on to local educational agencies by the state, coupled with the dire cash situation at the charter school, make this task extremely important.

Borrowing

As a result of the enrollment growth and other factors noted above, charter school officials reported experiencing significant cash flow deficiencies that necessitated borrowing from outside parties. Charter school officials indicated that they sought numerous loans from a variety of public and private entities. However, the charter school did not apply for a California Charter School Revolving Fund loan from the state.

Two loans totaling \$750,000 were secured from lending institutions during the 2005-06 fiscal year: a \$250,000 line of credit with Placer Sierra Bank and a \$500,000 loan from the Nonprofit Finance Fund. These loans were short-term and set to mature in the fall of 2006. In the meantime, the charter school reportedly continued to solicit new lenders who could provide longer term cash flow financing.

Charter school officials indicated to FCMAT that a number of banks and other lending institutions denied the charter school loans, and thus the school was forced to turn elsewhere to meet its cash flow needs in the fall of 2006 when the outstanding loans were due for repayment. The due dates passed and nearly \$200,000 of these loans remained unpaid. The charter school then solicited loans from a variety of private individuals throughout the 2006-07 fiscal year, including relatives of the executive director, board members, employees and their relatives.

According to the executive director, the board of directors authorized her to secure loans for the school in 2002 when the Bay Area School for Independent Study (BASIS), was initially established. The board minutes of September 19, 2006 indicate that this authority was reauthorized and the director could secure loans for the charter school. The executive director indicated that she was not involved in acquiring loans from private individuals; rather, these were transactions between the charter school board and the individuals. However, no specific approvals of any of the above loans were included in the board meeting minutes provided to FCMAT. Many of the loan payments were authorized by the executive director.

Minutes of the board of directors of B.A.S.I.S. (the previous charter school) dated May 20, 2002 indicate that the board provided authority to the program director to authorize purchases of services and products up to \$5,000 per single order; purchases over \$5,000 would require signature of the board president. Minutes were not provided indicating that this authority was reauthorized for FAME Public Charter School.

Copies of the following loan agreements with private individuals were provided to FCMAT and were signed by the board president on behalf of the charter school:

- MA - September 1, 2006; not to exceed \$300,000 and May 29, 2008; not to exceed \$500,000
- AA - May 15, 2007; not to exceed \$60,000
- SH - April 24, 2008; not to exceed \$250,000
- OA - June 20, 2008; not to exceed \$100,000

In March 2009, the charter school provided the following loan agreements with private individuals; the agreements were signed by the board president on behalf of the charter school:

- JC - November 1, 2006; not to exceed \$500,000
- MA - May 1, 2007; not to exceed \$500,000 and November 1, 2006; not to exceed \$500,000 and October 15, 2006; not to exceed \$400,000 and July 10, 2006; not to exceed \$350,000.

Copies of the following loan agreements with private individuals were provided to FCMAT and were signed by the executive director on behalf of the charter school:

- OA - January 25, 2007; not to exceed \$100,000
- AS - February 6, 2007; not to exceed \$300,000
- SH - February 19, 2007; not to exceed \$100,000

In March 2009, the charter school provided the following loan agreement with a private individual; the agreement was signed by the executive director on behalf of the charter school:

- RC - December 1, 2006; not to exceed \$500,000

A loan agreement was provided to FCMAT for a loan from the spouse of a board member. However, the payments were made in the name of the board member rather than the spouse.

The charter school continued to solicit loans from a variety of lending institutions and on June 29, 2007 secured a \$1.8 million revenue anticipation note (RAN) with Wells Fargo Institutional Securities. The proceeds of this loan were used to retire all of the outstanding loans from private individuals as well as the outstanding balance of the previous short-term loan that had been extended beyond its original due date. Net proceeds remaining from the RAN were approximately \$653,000.

Despite securing the \$1.8 million RAN in 2007, the charter school continued to obtain loans from private individuals during the 2007-08 fiscal year, as indicated above. The charter school was also successful in obtaining a \$2 million RAN in July 2008, but did not provide FCMAT with all of the detail regarding the use of proceeds from this RAN. However, information was provided indicating that \$819,000 was used to pay the remaining principal on the 2007 RAN, and staff indicated that some of the proceeds were used to retire the outstanding balances on loans from private individuals and address the charter school's cash flow needs.

Comparison Loan Data

The terms of the loans from the various private individuals were fairly consistent. Except for one of the loan agreements provided to FCMAT, the agreements specify an annual interest rate of prime plus 2%, with a minimum interest rate of 10%. The documentation provided to FCMAT did not include information about the prime rate in effect at the time payments were made to the lenders. The terms also included a 10% loan/transaction fee, except for one of the private lenders who provided several loans to the charter and whose terms included 1.5-10% loan/transaction fees. Based on the short terms of the loans from private individuals, ranging from 30 days to five months, the loan fees are high compared to the loans from commercial lenders. Table 2 provides a summary of the loans obtained from private individuals, based on loan and payment documentation provided by the charter school.

Table 2: Private Individual Loan Data

Lender	Loan Proceeds	Days Outstanding	Interest Paid	Loan Fees Paid	Interest & Fees Paid
2006-07					
AA	\$58,000	21	\$342	\$5,800	\$6,142
MA (5 loans)	\$1,792,000	39-132	\$41,277	\$104,950	\$146,227
OA	\$65,000	71	\$961	\$6,500	\$7,461
MC	\$50,000	116	\$1,573	\$5,000	\$6,573
RC	\$100,000	29	\$814	\$10,000	\$10,814
SH	\$77,000	130	\$1,220	\$7,700	\$8,920
AS	\$300,000	149	\$11,303	\$30,000	\$41,303
2007-08					
MA	\$400,000	40	\$3,145	\$40,000	\$43,145
OA	\$30,000	32	\$0	\$3,000	\$3,000
SH	\$175,000	82	\$2,551	\$17,500	\$20,051

The above rates compare very unfavorably to interest rates and fees that were paid through the loans from commercial lenders. The terms for the RANS included loan/transaction fees of 3.916-4%. Table 3 provides a summary of the commercial loan terms based on documentation provided by the charter school.

Table 3: Commercial Lender Loan Data

Lender	Type of Loan	Date of Loan	Maturity Date	Principal Amount	Interest Rate	Interest Paid	Loan Fees Paid	Interest & Fees Paid
Placer Sierra Bank	Line of Credit	9/16/2005	9/1/2006	\$250,000	8.11%	Unknown	Unknown	Unknown
Nonprofit Finance Fund	Short Term	9/16/2005	10/1/2006	\$500,000	9.25%	Unknown	Unknown	Unknown
Wells Fargo IS	RAN	6/29/2007	8/1/2008	\$1,800,000	6.25%	\$104,455	\$70,500	\$174,955
Wells Fargo IS	RAN	7/9/2008	9/1/2009	\$2,000,000	5.00%	None to 10/08	\$80,000	Unknown

While the difficulty of acquiring a commercial loan created the need to access funds from private individuals, the differences in interest rates and loan fees between the two sources created a significant increased expense for the charter school while providing the lenders with rates of return that exceeded that of commercial lenders.

Form 1099 Reporting

FCMAT compared reportable interest earnings and loan fees for the loans from the various private individuals to the amounts reported on Form 1099 for the 2006 and 2007 calendar years. FCMAT's review did not include verifying that the Forms 1099 were filed with the federal and state taxing authorities.

Based on information provided by the charter school for the 2006 and 2007 calendar years, six of the seven private individuals received correct 1099 forms, but one did not. One individual received a Form 1099 that overstated their earnings in 2006 and understated their earnings in 2007 by a like amount. Table 4 provides a summary of the 1099 information.

Table 4: Form 1099 Reporting for Loans from Private Individuals

Lender	Calendar Year 2006			Calendar Year 2007			
	Paid	Reported	Difference	Paid	Reported	Difference	
AA	\$0	\$0	\$0	\$6,142	\$6,142	*	\$0
MA	\$46,044	\$69,750	-\$23,706	\$100,183	\$76,477	**	\$23,706
OA	\$0	\$0	\$0	\$7,461	\$7,461		\$0
MC	\$0	\$0	\$0	\$6,573	\$6,573		\$0
RC	\$0	\$0	\$0	\$10,814	\$10,814		\$0
SH	\$0	\$0	\$0	\$8,920	\$8,920		\$0
AS	\$0	\$0	\$0	\$41,303	\$41,303		\$0

* In March 2009 the charter school provided Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with an attached spreadsheet reflecting that \$6,142 was included in the 2007 annual filing. However, a copy of the 2007 Form 1099 was not provided.

** In March 2009 the charter school provided a copy of the 2007 Form 1099.

Section 5, Fiscal Relationships, D, of the memorandum of understanding (MOU) dated August 23, 2005 between the Alameda County Office of Education and FAME Public Charter School, states, in part, the following:

The School shall establish a system for internal fiscal management and a calendar for fiscal services. A written description of this plan/system shall be provided to the County Superintendent within a reasonable time after both parties have signed this Agreement but in no event later than September 30, 2005. This system shall include the following: . . . 7. Prior notification to borrowing and identification and written plan for repayment of loans.

Section 5, Fiscal Relationships, H, goes on to state the following:

The School shall provide advance written notice to the County Board and the County Superintendent specifying its intent to apply for a loan. The School shall also provide advance written notice of deposit of any sums which are loans and the plan for repayment.

FCMAT found no evidence in the charter school board minutes that the charter school complied with these terms of the MOU. The executive director acknowledged

that formal notification regarding many of the loans was not provided to the county office, and provided a copy of an e-mail to the county office dated January 11, 2007 stating that all loans would “be paid down within 24 hours of receipt of our February apportionment.”

Recommendations

The charter school should:

1. Review and update its cash flow analysis at least monthly to reflect the most current information as well as actual receipts and expenditures for prior months.
2. Review spending patterns and expenditure allocations and make adjustments necessary to address the cash flow deficiency so that RAN proceeds can be used for cash flow needs and not as operating capital.
3. Determine if an additional loan from the RAN lender is needed to cover cash flow needs for the remainder of the 2008-09 fiscal year, rather than borrowing from private individuals.
4. If cash flow needs in future years warrant, obtain a RAN or other similar funding sufficient to meet the needs of the charter school without resorting to borrowing from private individuals.
5. If loans from private individuals are necessary for cash flow purposes, offer market-rate loan fees and other terms that reflect an appropriate formal business relationship with lenders.
6. Seek cash flow and other loans from the state of California specifically for charter schools, if the state makes such loans available and if continued assistance with cash flow is needed.
7. File corrected 2006 and 2007 Forms 1099 for the private individual whose information was not reported properly.
8. Follow the terms of the MOU with the Alameda County Office of Education regarding advance written notification of intent to apply for a loan and the repayment plan.

Executive Director's Compensation

The current executive director has been employed by the Bay Area School for Independent Study (BASIS), the charter school's non-profit corporation, since 2002.

BASIS entered into an "at will" contract with the current executive director on April 15, 2002. The title of the position at that time was Program Director, and the contract included the following article regarding compensation:

The School agrees to pay Employee for services rendered pursuant to this agreement, an annual salary of \$88,000 plus performance pay as determined by the Board of Directors on an annual basis. Employee will receive all employee benefits available to any and all employees as determined by the Board of Directors, i.e., STRS, Health, etc. Applicable compensation shall be payable in equal bi-monthly installments according to the Schools' payroll calendar and continue until the termination date of this contract. Payment will be over a 12 month contract cycle beginning annually on July 1 and run on a fiscal year basis. Any compensation received prior to the formal start of the compensation period will be in addition to the salary, not part of the salary.

A separate article stated the following:

This contract is for basic salary only. Any performance and/or incentive pay for this position will be established annually by the Board of Directors and administered under separate performance agreement. Failure to agree on performance/incentive pay will have no effect on the terms of this agreement.

A new employment agreement with the executive director was signed on March 20, 2007 and provides for a four-year term, "...commencing July 1, 2006, and ending June 30, 2010, or the life of the charter, with renewal of this agreement being automatic if the charter is renewed and subject to the terms and conditions set forth herein." Based on the documentation provided to FCMAT, the agreement was signed more than eight months after its effective date. Following are pertinent articles of the agreement.

The article regarding compensation states the following:

For the period of July 1, 2006 through June 30, 2007, the Executive Director's gross base salary per year will be \$120,000 and is to be paid in equal monthly payments, subject to all regular withholdings. For the period of July 1, 2007, to June 30, 2010, the Executive Director's gross base salary will be \$165,000, and is to be paid in equal monthly payments, subject to regular withholdings. Additionally, effective April 1st of each year, should the School meet enrollment and growth expectations and be deemed financially stable, the Executive Director shall receive a bonus in an amount no less than one-month's salary. During the term of this Agreement, following a receipt of a lease for a residence within the Bay Area, the Board shall pay to the Executive Director a rent reimbursement in the amount of \$2,500 per month.

The article regarding benefits states the following:

FAME shall be pay * \$1,000 per month to purchase health and dental benefits of the Executive Director's choice. This is the sole amount provided by the School for this purpose. The Executive Director is entitled to up to eight (8) work weeks (40 days) of paid time off for vacation each school year. Such time off should be requested from the Board President in advance to ensure minimal impact upon the School. These days do accrue or carry over and are paid out as wages if unused, however no more than four weeks per year may be accrued over a two year period. The Executive Director is also entitled to up to (14) days of time off each school year for personal illness/injury. These days do accrue and carry over if unused, but they are not paid out upon termination. FAME shall also pay a monthly fee towards the purchase of an annuity type of life insurance policy that carries a surrender value of no less than \$1,000,000 (based on 30 years).

The Board shall also purchase a vehicle for use by the Executive Director to be selected by the Executive Director, not to exceed a purchase price of \$75,000. The Board may finance the vehicle by paying for it outright or financing it over time. The vehicle shall be titled in the Executive Director's name and the Executive Director shall keep and maintain adequate insurance on the vehicle. However, the Executive Director will be reimbursed for insurance through the school's standard expense reimbursement procedure. If the Executive Director is released from her employment with cause, the vehicle will be surrendered to the President of the Corporation.

* This phrasing is in the original document

The charter school also entered into an independent contractor agreement with the executive director to provide grant writing services, effective July 1, 2007. This agreement ended on June 30, 2008 and provided remuneration to the executive director equal to 10% of the total grant dollars received as a result of her grant writing services. According to the executive director, this was the only independent contractor agreement made between her and the charter school.

Total Compensation

Table 5 provides a summary of the compensation paid to the executive director during the entire 2006-07 and 2007-08 fiscal years, and through November 3, 2008 of the 2008-09 fiscal year, via both the charter school's payroll and accounts payable (operating account) systems.

Table 5: Executive Director Compensation

Fiscal Year	Salary	Bonus	Vacation	Grant Writer Stipend	Mileage Stipend	Housing	In-Lieu Benefits	Total
2006-07	\$131,203	\$ -	\$28,700	\$30,000	\$7,000	\$32,500	\$ -	\$229,403
2007-08	\$165,000	\$13,750	\$41,250	\$ 7,600	\$ -	\$30,000	\$22,000	\$279,600
2008-09*	\$55,000	\$ -	\$27,500	\$32,358	\$ -	\$12,500	\$10,000	\$137,358
Total	\$351,203	\$13,750	\$97,450	\$69,958	\$7,000	\$75,000	\$32,000	\$646,360

*through 11/3/08. • Amounts rounded to nearest dollar.

W-2 and 1099 Reporting

Tables 6 and 7 compare the amounts paid to the executive director via payroll with the amounts reported by the charter school on Form W-2 for the 2006 and 2007 calendar or tax years.

Table 6: Payroll Payments vs. Form W-2, Calendar Year 2006

Payroll Payments - 2006				
Date	Base Salary	Bonus	Vacation Payout	Total
1/31/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
2/28/2006	\$10,000.00	\$20,000.00	\$ -	\$30,000.00
3/31/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
4/28/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
5/31/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
6/30/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
7/31/2006	\$10,000.00	\$ -	\$5,000.00	\$15,000.00
8/31/2006	\$10,000.00	\$ -	\$5,000.00	\$15,000.00
9/29/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
10/31/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
11/30/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
12/29/2006	\$10,000.00	\$ -	\$ -	\$10,000.00
Total 2006	\$120,000.00	\$20,000.00	\$10,000.00	\$150,000.00
Per 2006 W-2 (Medicare Wages & Tips)				\$149,966.19
Difference				\$(33.81)

Table 7: Payroll Payments vs. Form W-2, Calendar Year 2007

Payroll Payments - 2007				
Date	Base Salary	Bonus	Vacation Payout	Total
1/31/2007	\$10,000.00	\$ -	\$ -	\$10,000.00
2/28/2007	\$10,000.00	\$ -	\$ -	\$10,000.00
3/30/2007	\$10,000.00	\$ -	\$ -	\$10,000.00
4/30/2007	\$13,702.53	\$ -	\$ -	\$13,702.53
5/31/2007	\$13,750.00	\$ -	\$ -	\$13,750.00
6/29/2007	\$13,750.00	\$ -	\$ -	\$13,750.00
7/31/2007	\$13,750.00	\$ 13,750.00	\$ -	\$27,500.00
8/31/2007	\$13,750.00	\$ -	\$ -	\$13,750.00
9/28/2007	\$13,750.00	\$ -	\$ -	\$13,750.00
10/31/2007	\$13,750.00	\$ -	\$13,750.00	\$27,500.00
11/30/2007	\$13,750.00	\$ -	\$13,750.00	\$27,500.00
12/31/2007	\$13,750.00	\$ -	\$ -	\$13,750.00
Total 2007	\$153,702.53	\$13,750.00	\$27,500.00	\$194,952.53
Per 2007 W-2 (Medicare Wages & Tips)				\$194,557.37
Difference				\$(395.16)

The difference between the total compensation paid through payroll and the amount reported via form W-2 for 2006 and 2007 is due to the reported nontaxable contributions made to an Internal Revenue Code Section 125 Plan.

Payments via Accounts Payable System

A number of payments for items subject to federal and state payroll taxes were made to the executive director through the charter school's accounts payable system.

Therefore, these amounts were not shown on Form W-2. FCMAT could find no evidence that a Form 1099 was prepared or filed to report these payments to the federal and state taxing authorities in 2006 or 2007. These payments were as follows:

Calendar Year 2006

- Housing Allowance: \$15,000

Calendar Year 2007

- Net Vacation Payout: \$18,700
- Grant Writer Stipend: \$30,000
- Housing Allowance: \$32,500
- In-Lieu Benefits: \$6,000
- Mileage Stipend (one-time): \$7,000

The vacation payout of \$18,700 provided through accounts payable represents the estimated net pay for two months of vacation. The gross amount, \$27,500, should have been paid through the payroll system and reported on Form W-2 (see the section below regarding vacation).

Calendar Year 2008

FCMAT was unable to compare the payments made to the executive director in 2008 to forms W-2 and 1099 because the tax year had not yet ended and the forms were not yet due to the federal and state taxing authorities at the time fieldwork was completed.

According to the Internal Revenue Code, the above payments made via the charter school's accounts payable system are considered taxable income and are subject to applicable income and payroll taxes. Thus these payments should have been reported on the employee's W-2 in the year paid. IRS Publication 15 states the following:

Wages subject to federal employment taxes generally include all pay that you give to an employee for services performed. The pay may be in cash or in other forms. It includes salaries, vacation allowances, bonuses, commissions, and fringe benefits. It does not matter how you measure or make the payments.

FCMAT also observed that a number of other employees received payments via the accounts payable system for salary amounts that should be paid through the payroll system. These payments would then be netted against the payroll check. FCMAT's review did not include confirmation that all of these payments were appropriately netted or reported on each employee's Form W-2.

Charter school staff reported that this practice was necessary as the result of continued difficulty in getting the payroll administrator, the Alameda County Office of Education, to provide timely payroll checks to charter school employees. Alameda County Office of Education staff indicated that the delay in processing payroll

“A number of payments for items subject to federal and state payroll taxes were made to the executive director through the charter school's accounts payable system. Therefore, these amounts were not shown on Form W-2.”

checks was due to poor communication and/or insufficient documentation submitted by the charter school. FCMAT's study did not include determining if these claims are correct.

Salary

The employment agreement effective July 1, 2006 established the executive director's annual salary at \$120,000 for the first year, with an increase to \$165,000 effective July 1, 2007.

A personnel authorization transmittal (PAT) form was prepared and signed by the charter school board president accelerating the effective date of the pay increase to April 1, 2007. The board meeting minutes that staff provided to FCMAT did not contain authorization by the full board of directors for this change.

Bonuses

Explanations of the bonuses paid to the executive director per the PAT forms are not consistent with language in the executive director's employment agreement regarding bonuses. The employment agreement states:

Additionally, effective April 1st of each year, should the School meet enrollment and growth expectations and be deemed financially stable, the Executive Director shall receive a bonus in an amount no less than one month's salary.

A bonus for two months' salary was declared in February 2006; the PAT indicated that this was for "charter writing." Another bonus of one month's salary was declared in July 2007 and was described on the PAT as a "special stipend." Both PAT forms were signed by the charter school board president, and both bonuses were reported on the executive director's Form W-2. FCMAT reviewed the minutes of the board of directors' meetings and found no specific authorization for the July 2007 payment; FCMAT did not review minutes prior to the 2006-07 fiscal year.

In December 2007, a PAT was processed and signed by the board president. Comments on this PAT state: "Board approved stipend equal to two month's salary i.e. \$27,000 for managing the growth of FAME and ensuring a clean audit. Already paid. Make formal entries in payroll over two months." FCMAT did not find specific authorization for this stipend in the board meeting minutes provided by staff. In addition, the language on the PAT authorizing the stipend is inconsistent with the language in the executive director's contract. Therefore, the charter school governing board needs to determine if the bonus as outlined on the PAT is in conformance with the employment contract. The payroll and accounts payable information provided to FCMAT did not indicate that this stipend had been paid as of November 3, 2008. However, correspondence between the charter school and the county office indicates that the executive director was paid twice for two months' vacation pay. The net amount was paid through the accounts payable system on June 12, 2007 for one month and on June 19, 2007 for the second month; the gross amount was paid through the payroll system on October 31, 2007 for one month and on November 30, 2007 for the second month. As reported in the Vacation section of this report,

the executive director was paid twice for the 2006-07 vacation accrual rather than being paid for the vacation accrual and for the December 2007 bonus.

Although it is within the discretion of the charter's governing board to raise salaries, it is not within its discretion to give employees a reward for work already performed, because this may constitute a gift of public funds.

Housing Allowance

As indicated above, the charter school executive director's employment agreement includes a housing allowance.

FCMAT reviewed a residential lease agreement that the executive director provided to the charter school, documenting that the lease commenced August 7, 2006 and terminated September 30, 2007, with a month-to-month provision thereafter. The executive director also claimed and was paid \$2,500 for the month of July 2006; FCMAT was not provided a lease document supporting that month. The executive director reported verbally to FCMAT that she had a rental agreement in place for another location for July 2006.

Two \$2,500 rent reimbursement payments were made to the executive director for the month of January 2008, one on December 4, 2007 and another on January 8, 2008. All housing allowance payments were made through the accounts payable system, and none were reported to the federal and state taxing authorities on either Form W-2 or Form 1099.

Vacation

The executive director's employment agreement contains the following language regarding vacations:

The Executive Director is entitled to up to eight (8) work weeks (40 days) of paid time off for vacation each school year. Such time off should be requested from the Board President in advance to ensure minimal impact upon the School. *These days do accrue or carry over and are paid out as wages if unused, however no more than four weeks per year may be accrued over a two year period.*

(Emphasis added)

In FCMAT's experience, the above italicized language is typically interpreted as providing the executive director with a payout of accrued but unused vacation at termination of the agreement, subject to the maximum specified accrual over a two year period. The interpretation and practice at the charter school has been to provide the executive director with periodic vacation payouts of the amount accrued.

Since 2006, the following payouts of accrued vacation have been made to the executive director:

- July 31, 2006: two weeks
- August 31, 2006: two weeks
- June 12, 2007: four weeks

- June 19, 2007: four weeks
- October 31, 2007: four weeks
- November 30, 2007: four weeks
- June 30, 2008: four weeks
- September 30, 2008: eight weeks

A total of 32 weeks, or four full years of vacation accrual, have been paid to the executive director for the 2005-06, 2006-07, 2007-08 and 2008-09 fiscal years. This represents the entire amount earned during those four years. However, as reported in the Bonuses section of this report, the executive director was paid twice for the 2006-07 vacation accrual rather than being paid for the vacation accrual and for the bonus shown on the December 2007 PAT.

Table 8 summarizes the above information regarding vacation payouts.

Table 8: Vacation Payouts to Executive Director

Year	Date	Amount	Weeks Paid	Accrual for Fiscal Year	Paid via Payroll or A/P	Reported via W-2 or 1099	PAT Authorized By
	7/31/2006	\$5,000.00	2	2005-06	Payroll	W-2	Exec Director
	8/31/2006	\$5,000.00	2	2005-06	Payroll	W-2	Exec Director
	6/12/2007	\$9,350.00	4	2006-07	A/P	No	Board President
	6/19/2007	\$9,350.00	4	2006-07	A/P	No	Board President
2006-07		\$ 28,700.00	12				
	10/31/2007	\$13,750.00	4	2006-07	Payroll	W-2	Duplicate Payment
	11/30/2007	\$13,750.00	4	2006-07	Payroll	W-2	Duplicate Payment
	6/30/2008	\$13,750.00	4	Unknown	Payroll	Not Yet Due	Board President
2007-08		\$41,250.00	12				
	9/30/2008	\$27,500.00	8	Unknown	Payroll	Not Yet Due	Board President
2008-09*		\$27,500.00	8				
Total		\$97,450.00	32				

*Through November 3, 2008

The August 25, 2008 board meeting minutes indicate that the executive director requested "...the board to consider making an exception to her employment contract with the school in the area of in lieu of vacation time" and "...allow her to be paid out the remaining two months of vacation owed to her since 2007," because work

demands made it impossible for her to use all her vacation time. The September 12, 2008 minutes indicate board action to approve "In Lieu of Vacation for the School director."

Staff members reported that the charter school keeps no record of accrued vacation for its executive director, making it impossible to verify vacation used and available balances carried forward from year to year. The executive director's employment agreement also states that vacation time should be requested in advance from the board president and that the executive director shall notify the board of her vacation schedule. The executive director reported that written requests were not submitted for the use of vacation time because a formal vacation was not taken. However, copies of e-mails between the charter school and county office were provided to FCMAT and indicate that the executive director used vacation time.

Expense claim documentation indicates that the executive director spent time away from the charter school during the 2006-07 and 2007-08 fiscal years. The executive director made the following notations on expense claims she submitted to the charter school, which imply that vacation time was used on some of these trips.

- Tampa Bay, Florida
A \$575.10 charge to the executive director's personal VISA card for airline tickets includes the notation "50%," initialed by executive director. The charter school reimbursed \$287.55 in May 2007.
- Tampa Bay, Florida, December 16, 2007 through January 6, 2008
A \$1,863.56 rental car receipt includes the notation, "5 days work - in lieu of pay while in Florida," initialed by the executive director. The charter school reimbursed \$1,863.56.
- Tampa Bay, Florida, March 23, 2008 through April 1, 2008
A \$1,613.13 rental car receipt includes the notation, "reimburse 50% 50-work, 50-pleasure." The charter school reimbursed \$806.57.

The executive director stated that it is assumed that the charter school employee handbook's language regarding holidays applies to both exempt and non-exempt employees. However, the employee handbook provides for 10 holidays for both exempt and non-exempt employees. The handbook further states, "Other days during the school year such as days during the School's "Spring Break" or February or October breaks shall be paid time for all non-exempt employees in active status." The executive director is an exempt employee. In addition, the executive director's employment agreement does not provide for holidays and does not make reference to the employee handbook.

Benefits

As indicated above, the executive director's employment agreement provides for payments to purchase health and welfare benefits and life insurance.

FCMAT's review of the documents provided by the charter school indicates that the payments for these benefits have not been made consistently. The first payment was on December 13, 2007 in the amount of \$6,000, and varying amounts have been paid intermittently since that time. Based on the payments to date, it appears that

the benefits became effective on July 1, 2007; however, the employment agreement does not specify the start date for these benefits. The term of the agreement commenced on July 1, 2006, but it was not signed until March 20, 2007.

The above payments were provided to the executive director via the accounts payable system. None of these payments were reported on her Form W-2, and no Form 1099 was prepared or filed. The executive director indicates she did not purchase any benefits because the payments were provided in lieu of such benefits.

Auto Allowances

As indicated above, the executive director's employment agreement provides for an automobile, not to exceed a purchase price of \$75,000, as well as reimbursement for automobile insurance costs.

The charter school reimbursed the executive director for car rental intermittently during the first year of the agreement, including when her personal vehicle was under repair. In July 2007, the charter school purchased a 2007 Mercedes GL 450 for the executive director's exclusive use, at a cost of \$74,820. The charter school also paid \$1,789 for a four year prepaid maintenance program for the vehicle.

The vehicle is registered in the name of BASIS and the name of the executive director, which is inconsistent with the agreement language. The executive director reported that the title was placed in both names to ensure that the vehicle could be secured by the school should her employment be terminated for cause as cited in the employment agreement language.

No amount indicating the value of the vehicle was reported on the executive director's Form W-2 for the 2007 calendar year.

According to IRS Publication 15-B, the value of a employer-provided fringe benefit, such as a vehicle, is the fair market value of that benefit. That is, the price an employee would incur to buy or lease the benefit in a standard business transaction. Publication 15-B provides several rules an employer can use to determine the value of an employer-provided vehicle. Based on the information provided by the charter school, it appears that the IRS lease value rule applies in this circumstance. Publication 15-B also states, "If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit. However, you can choose to include the entire lease value in the employee's wages."

Table 9 shows that the estimated lease value is \$8,471 for 2007 and \$19,205 for 2008. The 2008 value calculation assumes the vehicle is provided to the executive director for the entire 2008 calendar year. The charter school needs to work with its independent auditors to determine the value of the vehicle provided to the executive director and the amount that is to be reported on Form W-2.

Table 9: Annual Lease Value of Employer-Provided Vehicle

	Calendar Year	
	2007	2008
Purchase Price of Vehicle	\$74,820	\$74,820
Multiply by 25%	\$18,705	\$18,705
Add	\$500	\$500
Total	\$19,205	\$19,205
Number of days provided	161	365
Number of days in calendar year	365	365
Proration factor (days provided/days in year)	0.4411	1
Reportable amount (Proration factor x Total)	\$8,471	\$19,205

In February 2007, the executive director claimed and was provided a one-time \$7,000 mileage stipend for several months' mileage. The stipend covered the following periods:

- January 2006 through June 2006: one lump sum of \$1,000.
- September 2006 through February 2007: \$1,000 per month.

No specific documentation was provided to support the mileage claim; rather, general examples were provided. The executive director indicated in her claim that the request was approved by the charter school board. However, FCMAT found no approval in the board meeting minutes provided by the charter school. The allowances paid were not reported to the federal and state taxing authorities on either Form W-2 or Form 1099.

Payments for gasoline were also made from the petty cash bank account. A total of \$4,520 was disbursed from this account for gasoline from April 5, 2007 through August 31, 2008. Supporting documentation indicates that \$981 was charged by the executive director. The balance of these transactions was not supported by receipts or other documentation identifying the person who made the charge.

Grant Writer Stipends

As noted previously, the executive director and the charter school entered into an independent contractor agreement for July 2007 through June 2008 that provided the executive director with a 10% stipend for successful grants written for the school. The agreement was signed by the board president on June 17, 2008. The following grant payments were made:

- • June 18, 2008
\$76,000 program grant. Stipend amount: \$7,600
- • July 9, 2008
\$273,295 facility grant. Stipend amount: \$27,329.50
- • October 6, 2008
\$50,280 charter school facility grant. Stipend amount: \$5,028

FCMAT reviewed supporting documentation provided by the charter school indicating that the related grants were received. FCMAT was unable to determine who prepared the grant applications. The last two payments were made to the executive director after the term of the independent contractor agreement. The executive director reported that the grant payments were received by the charter school over a two-year period.

None of the payment authorizations were signed by a board member; they contained only notations of unidentified persons. The executive director reported that the board president authorized all such payments. No approval for the independent contractor agreement or any of the above payments was found in the charter school board of directors' meeting minutes provided to FCMAT.

On March 14, 2007, the executive director was also provided a "Grant Property Reimbursement" stipend in the amount of \$30,000. The executive director indicated that this payment was related to the start-up of FAME Public Charter School, but that payment was deferred because of cash flow issues. No supporting documentation to substantiate the purpose or authorization of this payment was provided to FCMAT. While it is within the discretion of the charter school's governing board to raise salaries, it is not within its discretion to give employees a reward for work already performed, because this may constitute a gift of public funds.

All of the payments were made via the accounts payable system and were not subjected to income tax withholding or statutory payroll taxes and were not reported to the federal and state taxing authorities on either Form W-2 or Form 1099.

Except in a few extremely rare and limited circumstances, once an employer-employee relationship is established it is common practice in public schools to treat the employed individual as an employee when compensating them for services provided. This helps ensure that the appropriate employee tax withholdings and employer payroll taxes are reported and paid. Once an individual is an employee, he or she is considered to be under the control and supervision of the employer and can no longer be independent; common legal definitions of an employer/employee relationship are met. Internal Revenue Service Revenue Ruling 87-41 provides further clarification regarding this issue.

The "duties and responsibilities" section of the executive director's job description, provided by the charter school on December 16, 2008, lists the following: "Perform Grant writing as available or manage consultant who perform* such services." This language further indicates that grant writing responsibilities are considered part of the employer-employee relationship between the executive director and the charter.

*This wording is contained in the original document

Expense Claims

FCMAT reviewed expense claims filed by the executive director from January 1, 2006 through November 3, 2008, with a total value of \$39,242. Several claims included questionable expenditures relating to the use of charter school funds. A list and narrative of these items follows.

Vehicle rental

Reimbursement of \$14,701 was provided for 12 car rentals. Notations on the supporting documentation for some of these car rentals indicate that a portion of the time spent on these trips was for the executive director's vacation. As noted in the Vacation section of this report, accrued vacation was paid to the executive director in lieu of time off. In addition, \$3,781, of this reimbursement was for vehicle rentals that occurred after the charter school had provided the executive director with a vehicle. The executive director reported that these vehicles were rented for travel out of town.

Mileage

As noted earlier, a one-time \$7,000 mileage stipend for several months' mileage was paid, and \$1,721 in other mileage was also reimbursed. The latter mileage amount was claimed for periods outside the period of time noted for the \$7,000 reimbursement but was not included in the compensation tables above because it was appropriately documented and paid at or below the IRS mileage reimbursement rate in effect at the time.

Fuel

A total of \$2,391 was reimbursed for fuel for the executive director's vehicle. Some of this fuel was claimed for time periods that were covered by the \$7,000 mileage claim noted above. In addition, \$4,520 in fuel costs was charged to the petty cash account, in part by the executive director, but none of these charges were made during the time period of the \$7,000 mileage reimbursement (see Petty Cash Account section of this report). FCMAT did not observe an overlap in dates between the time gasoline was charged to the petty cash account by the executive director and the receipts for reimbursements to the executive director for expense claims she submitted. The executive director reported that the fuel was for rental vehicles while the director's car was being repaired.

Vehicle repair

A reimbursement of \$450 was provided to settle damages to another party's vehicle as a result of an automobile collision that occurred while the executive director was driving her school-provided vehicle.

Hotels

Reimbursement of \$2,859 was provided to the executive director for the executive director, one other employee and three board members' attendance at a national charter school conference in New Orleans, Louisiana on June 21-24, 2007. Of this, \$2,490 was for hotel rooms. The executive director was also reimbursed for restaurant and telephone charges incurred by the group, and lounge, bar, mini bar, and in-room movie charges to board member's rooms. The executive director indicated that any personal expenses were charged to the school in error when the reimburse-

ment claim was submitted and that these will be billed back to the individuals who made them.

Internet fees

A reimbursement of \$104 was provided for internet fees. According to the executive director, all such fees were incurred for business purposes. The executive director's employment agreement contains no provision for reimbursement of internet fees.

Gift Cards and Cruise

Reimbursement was provided for \$150 worth of gift cards for staff appreciation and \$68 for four persons to take a Hornblower Cruise in San Diego. According to the executive director, these were staff appreciation and team-building activities for charter school staff.

Article 16, Section 6, of the California Constitution provides 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. Charter schools are considered a component of a political subdivision for this purpose. If the expenditure does not fall under one of the two exemptions provided in the Constitution, it may be considered a gift unless the expenditure is for a public purpose.

Credit Card Fees

Reimbursement of \$78 was provided for past due fees on a personal credit card. Errors in preparing the expense claim form resulted in a \$39 fee being reimbursed twice.

Recommendations

The charter school should:

1. File with the federal and state taxing agencies corrected forms W-2 that include all reportable wages for the executive director for the 2006 and 2007 calendar or tax years.
2. Ensure that reportable wages for all employees are paid through the payroll system rather than through accounts payable, and ensure that they are properly reported on Form W-2.
3. Ensure that all compensation changes for the executive director are approved by the board of directors.
4. Ensure that all payment authorizations for the executive director are signed by a member of the board of directors.
5. Ensure that any bonuses paid to the executive director are consistent with the employment agreement and are approved by the board of directors. Specifically, the December 2007 PAT should be reviewed to determine if it is consistent with the terms of the employment agreement.
6. Review the executive director's housing allowance payments and recover any funds that have been paid in error.
7. Reconcile all vacation earned, used and paid to the executive director, and recapture any overpayments.

8. Develop a policy requiring that all accruals and use of vacation, sick leave and any other leaves be tracked for all employees, including the executive director.
9. Require the executive director to comply with the employment agreement regarding notifying the board of directors about vacation time.
10. Determine whether the medical, dental and life insurance benefits referred to in the employment agreement are intended to be provided in lieu of purchase, or if the executive director is to be reimbursed only if benefits are purchased.
11. Ensure that the automobile provided for the executive director in the employment agreement is reported correctly on the executive director's Form W-2.
12. Refrain from entering into independent contractor agreements with the executive director or other charter school employees.
13. Require that all claims for reimbursement include itemized supporting documentation to ensure that only appropriate charter school-related expenses are reimbursed.
14. Review all prior expense claims filed by the executive director and recover any funds that were paid in error or that did not have a legitimate business purpose.
15. Ensure that all expense claims submitted by the executive director are reviewed and authorized by a member of the board of directors.
16. Establish a board policy with guidelines regarding allowable and prohibited expenditures.

Other Expenditures

The charter school has three main bank accounts. The operating account (referred to in this report as accounts payable) is the charter school's primary checking account. The Alameda County Office of Education account is a clearing account used to receive revenues passed through the county office. The petty cash account is operated in a manner similar to a revolving account in that it has a specified account balance, \$3,000, which is periodically reimbursed from the operating account.

Petty Cash Account

The petty cash account was established to provide a convenient way for certain employees to access materials and supplies for the charter school. Employees access the account via bank debit cards issued to them. Charter school staff reported that debit cards are issued to the executive director and the office assistant. FCMAT found no evidence that individual employees' charges against this account were authorized in advance by a charter school administrator. Documents provided indicated that expenditures totaling \$108,139 were charged to this account from July 1, 2006 through August 31, 2008 (excluding an erroneous withdrawal of \$25,000 by the bank, which was later reversed).

Numerous daily operational expenditures were charged to this account. Common practice in public schools is to use this type of account intermittently for small and/or emergency purchases, and to use the accounts payable system for all other expenditures. This helps ensure that proper internal controls are followed.

Effective internal controls are the foundation of sound financial management and allow educational agencies to fulfill their educational mission while helping to ensure efficient operations, reliable financial information and legal compliance. Internal controls also help protect educational agencies from material weaknesses, serious errors and fraud.

All educational agencies should establish internal control procedures that do the following:

1. Prevent internal controls from being overridden by management.
2. Ensure ongoing state and federal compliance.
3. Provide assurance to management that the internal control system is sound.
4. Help identify and correct inefficient processes.
5. Ensure that employees are aware of the expectations for proper internal control.

FCMAT's review of the petty cash documentation provided by the charter school indicates the following questionable expenditures.

ATM Withdrawal

A withdrawal of \$83 was made from an ATM in New Orleans, Louisiana on June 24, 2008, with an additional ATM fee of \$2.50. Documentation indicating the reason for this transaction was not provided to FCMAT. However, the executive

director indicated this was for lunch and other incidentals while at the charter schools conference.

PayPal Payments

Withdrawals of \$998 were made for PayPal payments. According to the executive director, these charges were incurred to pay day laborers who helped move items from the Newark office to storage. The charter school did not want to provide cash directly to the laborers and instead used the PayPal system to make these payments.

Gift Cards

From July 1, 2006 through August 31, 2008, \$310 was withdrawn from the petty cash account to purchase gift cards. The cards were used to reward students for their performance at a spelling bee.

Flowers, Balloons, Gift Baskets, Party Supplies

From July 1, 2006 through August 31, 2008, \$4,097 was spent from the petty cash account for flowers, balloons, gift baskets and party supplies. These items may be considered a gift of public funds. Article 16, Section 6, of the California Constitution provides 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. Charter schools are considered a component of a political subdivision for this purpose.

If a charter school's expenditure does not fall under one of the two exemptions provided in the California Constitution, it may be considered a gift unless the expenditure is for a public purpose. If the funds are to be used for a public purpose, they are not a gift within the meaning of the constitutional prohibition (*California Teachers Assn. v. Board of Trustees* (1978) 146 Cal.Rptr. 850, 855). When an educational agency's board of directors has determined that a particular type of expenditure serves a public purpose, the courts have often deferred to that finding. However, the charter school's board of directors' meeting minutes and board policies provided to FCMAT did not contain any such determination regarding the above-mentioned items.

Meals

From July 1, 2006 through August 31, 2008, \$10,356 was spent from the petty cash account for meals for staff, board members and other individuals. In most cases no detail was provided regarding the number of staff members that participated or their names. In addition, the business purpose of the event was not always indicated.

Airfare, Travel and Professional Development

\$36,437 was spent for various items including conference registrations, lodging, car rentals and airline tickets. One hotel statement also contained charges for in-room movies.

Insufficient Funds Charges

During the period reviewed, \$956 was charged to the petty cash account for insufficient funds charges. Charter school staff stated that the original bank where this account was operated applied insufficient funds charges whenever the account was overdrawn. This occurred from time to time, yet staff members responsible for managing the account were unaware of the overdrafts and did not act to correct them in

a timely manner. After the bank was purchased by a different financial institution in 2007, electronic transfers were allowed to cover overdrafts.

Traffic Citation

In December 2007, \$958.00 was paid for a traffic citation. The executive director indicated that this citation occurred while she was driving her school-provided vehicle. The citation alleged speeding, driving the vehicle without current evidence of insurance, and having a vehicle registration address that did not match either the address on the executive director's driver's license or the address on the expired proof of insurance form. The executive director reported that the board president approved the charter school's payment of the citation because the insurance paperwork was the responsibility of the charter school. FCMAT did not observe any evidence of board approval for payment of the citation.

Other Items

Numerous other expenditures were processed through the petty cash account during the period reviewed, including fuel charges, vehicle repairs and insurance for the vehicle provided to the executive director, computers, furniture, office supplies, instructional materials, postage, shipping and internet fees. Monthly bank statements and reconciliations provided by the charter school did not include itemized receipts for some of the items listed on the statements, making it impossible to determine the purpose for some of the charges.

Credit Card Accounts

Charter school staff reported that the charter school has two credit card accounts: an American Express account through Costco for the administrators at the Dublin site, and an American Express account through jetBlue for the executive director.

The American Express account through Costco was used to purchase items similar to those purchased through the petty cash account, such as gift cards (which notations state were for parent and staff awards), florist charges, shipping charges, a computer, office equipment and supplies, and travel and meals for staff. In addition, the statements reviewed contained five late payment fees. Although two of the statements include a notation indicating that the late payment fee was waived, accounts need to be managed to ensure that late payment fees are not incurred.

Statements for the American Express account through jetBlue showed minimal activity. The last charges made to the account were in April 2008.

Recommendations

The charter school should:

1. Cease using the petty cash account and credit card account for routine operating expenses; pay these expenses using the accounts payable system (operating account).
2. Require that all purchases using petty cash, credit card accounts or operating funds have properly authorized written purchase requisitions, and require itemized receipts and the signature of the employee for each purchase.
3. Assign a designated management employee responsibility for review and authorization of all requisitions against the petty cash and credit card accounts.
4. Prohibit all cash withdrawals from the petty cash account, including those using the PayPal system.
5. Prohibit payment for day labor from the petty cash account. Ensure that all employees, including day laborers, are paid through the payroll system and that IRS regulations and employment laws are followed.
6. Establish a board policy that identifies allowable and prohibited expenditures as well as the public purpose for purchases of items such as gift cards, flowers and gift baskets.
7. Indicate the business purpose and the participants when meals are provided as a part of staff development, staff appreciation or any other activity. Require itemized receipts for all meal purchases.
8. Seek reimbursement from employees for any in-room movie charges paid by the charter school.
9. Ensure that all accounts are managed so that late fees and insufficient funds charges are not incurred.
10. As long as the vehicle provided to the executive director is registered in the name of the charter school, ensure that evidence of the vehicle's insurance is kept in the vehicle and on file at the administrative office at all times.
11. Establish a board policy that prohibits using charter school funds to pay for citations, fines or other penalties incurred by employees.
12. Consider establishing accounts with vendors that accept purchase orders (such as those that provide office supplies) to take advantage of the convenience, controls and cost savings that this arrangement provides.
13. Review shipping charges and consider establishing an account with the US Postal Service to lower costs.

Right Start Foundation

Allegations made to the county office indicate that charter school funds were used to support or contribute to the Right Start Foundation, which was reportedly religious in nature. This raises the question of whether a charter school-sponsored event created a separation of church and state issue for the charter school. The principle of separation of church and state applies to all forms of government in the United States, including public schools because they are political subdivisions of the states. As a public school, the FAME Public Charter School is subject to this principle.

In the course of FCMAT's review, current and past employees of the charter school indicated that the charter school actively promoted a community event sponsored by the Right Start Foundation: a cruise on the San Francisco Bay on November 11, 2007, featuring a speaker from the foundation. According to the charter school executive director, the event was designed to increase awareness, tolerance and understanding among multi-ethnic and multilingual groups and cultures, consistent with the mission of the charter school.

The executive director also reported that the event provided an opportunity for the school to network with a variety of local, state and federal public officials who were interested in the community event. A luncheon funded by the charter school was held at the charter school's administrative offices to help promote the event to these officials. Further, it was hoped this activity would raise awareness of the charter school and its role in promoting multicultural and multilingual appreciation and understanding in the community. The event was reportedly one of several to be conducted in the Bay Area over a two week period.

Financial records indicate that \$6,252.50 in charter school funds was used to pay for the November 11, 2007 event involving the Right Start Foundation. The cost included service charges, port fees, non-alcoholic beverages, and food for 50 people. The Right Start Foundation USA paid \$7,500 to the charter school on January 20, 2008, and the check was deposited on January 23, 2008. According to the charter school's executive director, this payment was to offset costs and provide a donation to the charter school from the activity as a small gesture of appreciation.

No approval of the charter school's participation in this event was included in the charter school's board of directors' meeting minutes provided to FCMAT. However, the January 22, 2008 minutes include the director's report, which states that the director, "...was also happy to announce that FAME has received a \$7,500 dollar donation from the Right Start Foundation earmarked for Arabic curriculum."

Based on the information provided, it does not appear that the event in question violated statutory provisions regarding the separation of church and state, including the First Amendment to the United States Constitution; California Constitution, Article 1, Section 4: Declaration of Rights; California Constitution, Article 9, Section 8: Education; and California Constitution, and Article 16, Section 5: Public Funds, Aid of Religious Purposes or Institutions. There is no evidence of a sectarian purpose, advancement of religion or excessive entanglement of charter school officials in religious activities. However, the governing board and staff of the charter school

need to be aware of these statutory restrictions and avoid anything that would appear to be a violation.

Recommendation

The charter school should:

1. Ensure that administrators and board members are aware of the statutory provisions regarding the separation of church and state, and refrain from any activity that may violate these provisions.

Conflict of Interest

A conflict of interest exists when an individual's private interests, such as outside professional or financial relationships, might interfere with his or her professional obligations to a public employer. Such situations do not necessarily imply wrongdoing or inappropriate activities. When faced with questions involving conflicts of interest caused by the employment or appointment of a public official, such as a board member or an administrator, it is important to consider the legal and ethical issues and to review applicable board policies and statutory mandates.

If a board member or administrator is in a meeting when the board intends to discuss, deliberate or gather information about a contract in which he or she has a personal financial interest, the board member or administrator should remove himself or herself from the meeting and ensure that the abstention and departure are recorded in the minutes. Even if a board member or administrator does not participate in the original contracting process, he or she may violate the law for taking subsequent action on the contract, such as authorizing payment under a contract or negotiating disputes over contract terms. Therefore, the board member or administrator should abstain from all discussions, negotiations and votes related to the contract in which he or she has a personal financial interest.

California Government Code Section 1090 states the following:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

The Political Reform Act of 1974, Government Code section 81000 and following, is the starting point for any consideration of conflict of interest laws in California. The following declaration at the outset of the Political Reform Act forms the foundation of the conflict of interest provisions: "Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them" (Government Code 81001(b)). Chapter 7 of the Political Reform Act (Government Code sections 87100 and following) addresses conflict of interest situations.

The stated intent of the Political Reform Act was to establish a mechanism to identify and avoid conflicts of interest. The Act states: "Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided" (Government Code 81002(c)).

The Fair Political Practices Commission (FPPC) is the agency primarily charged with advising officials, informing the public and enforcing the conflict of interest provi-

sions of the Political Reform Act. In the state of California, state officers and certain state employees are required to file a Form 700, Statement of Economic Interests, issued by the FPPC. Each designated individual is to file an initial statement, a statement when assuming office, an annual statement, and a statement when leaving office. Once filed, the Statement of Economic Interests becomes a public document.

The Political Reform Act (Government Code Section 87100) prohibits public officers and employees from participating in or attempting to influence decisions that have a material effect on their sources of income.

Article IX of the Bylaws of the Bay Area School for Independent Study (BASIS) and the charter school's Board Policy #2005-14 address the charter school's policies regarding conflicts of interest and statements of economic interest in accordance with the Political Reform Act of 1974 and Government Code sections 87100 and following. The charter school's charter petition also states that the charter school will comply with the Political Reform Act.

The Political Reform Act (Government Code Section 87100) prohibits public officers and employees from participating in or attempting to influence decisions that have a material effect on their sources of income. Based on the documentation provided and interviews conducted, the executive director may

have violated the statute regarding conflict of interest because the executive director acted to promote and raised the salary of an employee who shortly thereafter moved into a home owned by the executive director. An additional salary increase was also approved by the executive director during the time the employee reportedly lived in the home.

Although FCMAT was not provided a rental agreement, the executive director reported that she purchased a condominium in April 2007 and that the employee was allowed to live there in exchange for payments made by the employee to the executive director for home improvements. The executive director reported that the employee lived in the home for approximately one year beginning in April or May of 2007 and made inconsistent payments totaling approximately \$2,500 per month. The employee's 2007 Form W-2 indicates that the employee's home address was that of the condominium owned by the executive director.

According to the bylaws of BASIS, Article VII, Section 2, the board of directors has the power to "appoint and remove, at the pleasure of the Board of Directors, all corporate officers, agents, and employees; prescribe powers and duties for them as are consistent with the law, the articles of incorporation, and these bylaws; fix their compensation; and require from them security for faithful service."

According to the September 19, 2006 board minutes, the board of directors delegated to the executive director the authority to hire and dismiss staff and perform other human resources functions. The executive director is a member of the board, and the minutes indicate that all board members voted in favor of this agenda item.

Personnel authorization transmittals (PATs) related to the aforementioned employee and signed by the executive director include the following:

Position Title: Office Clerk
Date Service to Begin: 9/28/2006 (Late Start)
Location: Fremont
Type of Position: Full-time, classified, 12 months per year
Comments: \$15 an hour. See Late Start.
Base Salary: \$15 per hour

Position Title: Office Clerk
Date Service to Begin: 2/1/2007
Location: Fremont
Type of Position: Full-time, classified, 12 months per year
Comments: Status Change to Full Time.
Base Salary: \$35,000

Position Title: Office Manager
Date Service to Begin: 2/1/2007
Location: Fremont
Type of Position: Full-time, classified, 12 months per year
Comments: Salary adjustment effective February 1, 2007. Please adjust difference for previous month from 35K to 45K annual. (45K annually, 12/12 versus 35K annually, 12/12) and continue correct salary of 45K annual for March 1st and beyond.
Base Salary: \$45,000

Position Title: Admin Assistant
Date Service to Begin: 8/1/2007
Location: Newark
Type of Position: Full-time, classified
Comments: Additional monthly stipend of \$1,000 besides salary. This is based on additional work being completed in the accounting department, specifically processing and managing insurance.

An additional PAT was provided which was signed by the board president and shows the following:

Position Title: Office Manager
Date Service to Begin: 7/1/2007
Location: Fremont
Type of Position: Full-time
Comments: Special Stipend of \$1,000 to be paid in month of July 2007.

According to a PAT dated June 11, 2008, and signed by the executive director, the employee was terminated.

In March 2009, the charter school provided FCMAT with a document titled List of Employees for Budget 2008, dated May 8, 2007. The document lists the above-referenced employee as an office clerk with a current and revised gross salary of \$45,000.

The May 8, 2007 board minutes indicate that the board took action “to approve the hires and positional changes” with a vote of 4 to 0.

Board Policy #2005-14 states that each designated employee, including governing board members, shall file an annual statement of economic interest. However, the executive director reported that statements have not been filed for 2006, 2007 or 2008.

Board Policy #2005-14, VI, Disqualification, states, in part, the following:

No designated employee shall make, participate in making, or try to use his/her official position to influence any Charter School decision which he/she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on: A. Any business entity or real property in which the designated employee has a direct or indirect investment or interest worth one thousand dollars (\$1,000) or more. B. Any source of income totaling two hundred fifty dollars (\$250) or more provided or promised to the designated employee within twelve months prior to the decision.

Board Policy #2005-14, VII, Manner of Disqualification, states, in part, the following:

B. Governing Board Member Designated Employees. Governing Board members shall disclose a disqualifying interest at the meeting during which consideration of the decision takes place. This disclosure shall be made part of the Boards’ official record. The Board member shall then refrain from participating in the decision in any way (i.e., the Board member with the disqualifying interest shall refrain from voting on the matter and shall leave the room during Board discussion and when the final vote is taken) **and** comply with any applicable provision of the Charter School bylaws (see, Article IX, Contracts With Directors).

In reviewing the board minutes provided for the 2006-07, 2007-08, and 2008-09 fiscal years, FCMAT found no indication that the executive director had disclosed her interest in the real property or refrained from participating in the decision to increase the salary and promote the employee who paid to live at the real property.

Recommendations

The county superintendent should:

1. Notify the governing board of the charter school and the local district attorney that a violation of Government Code sections 1090 and 87100 may have taken place.

The charter school should:

2. Ensure that all employees and board members who are in the classifications which require them to complete Form 700 do so and submit the form to the proper county agency.
3. Ensure that the board members and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Fair Political Practices Act.

Board Meetings

California Government Code Section 54950 and following, known as the Ralph M. Brown Act, regulates how meetings of public agencies are to be conducted and states, “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.”

Government Code Section 54952.2(a) states, “As used in this chapter, ‘meeting’ includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” Section 54953(a) goes on to state, “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.”

The government code also states that regular and special meetings of the legislative body are to be held within the boundaries of the territory over which the local agency exercises jurisdiction, with some noted exceptions, and that agendas must be posted at least 72 hours before a regular meeting and 24 hours before a special meeting. Action or discussion may not occur on any item which is not on the agenda, except under limited circumstances.

The Bylaws of BASIS, Article VII, Section 14, Place of Board of Directors Meetings, states, “Meetings shall be held at the principal office of the corporation. The Board of Directors may designate that a meeting be held at any place within California that has been designated by resolution of the Board of Directors or in the notice of the meeting. All meetings of the Board of Directors shall be called, held and conducted in accordance with the terms and provisions of the Ralph M. Brown Act, California Government Code Sections 54950, et seq., as said chapter may be modified by subsequent legislation.”

The charter school’s charter petition and the memorandum of understanding with the Alameda County Board of Education and the Alameda County Superintendent of Schools also state that the charter school will comply with the Brown Act.

Information from the charter school executive director indicated that the charter school governing board held a one-week retreat/conference in Orlando, Florida in October of 2008. An agenda was not posted for this event. Topics reportedly included information regarding board governance, presented by a consultant who was present for a portion of the time. Other topics included strategic planning, objectives of evaluating positions, evaluation of the current charter, and orientation for a new board member. It was reported that a lender also joined the board during the retreat/conference.

When a majority of the governing board meets to discuss matters concerning the charter school, it is considered a meeting under the Brown Act.

In addition, board information sessions were reportedly held in Fremont during October and November of 2008, but board agendas were not posted for these meetings.

When a majority of the governing board meets to discuss matters concerning the charter school, it is considered a meeting under the Brown Act. There is no basis for a distinction to be made between a meeting and sessions referred to as conferences, retreats, or workshops, unless the conference/workshop is put on by third parties and attendance is open to people outside the charter school, such as at the annual California School Boards Association (CSBA) conference. At such a conference, however, it is still not permissible for members of the charter school board to discuss matters concerning the charter school which they govern.

Recommendations

The charter school should:

1. Conduct all governing board meetings in accordance with the Ralph M. Brown Act, including meeting within the required geographic boundaries and posting board agendas.
2. Ensure that the governing board members receive training regarding the Ralph M. Brown Act from an agency that has expertise in this area, such as the CSBA.

Appendix A

Study Agreement

FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

CSIS California School Information Services

FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM STUDY AGREEMENT

June 19, 2008

Amended September 2, 2008

The FISCAL CRISIS AND MANAGEMENT ASSISTANCE TEAM (FCMAT), hereinafter referred to as the Team, and the Alameda 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 school districts and county offices of education upon request. Based on the provisions of Education Code Section 1241.5 (c), a County Superintendent of Schools may review or audit the expenditures and internal controls of any charter 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 review or audit 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.

The COE has requested that the Team provide for the assignment of professionals to study specific aspects of the Fame Public Charter School. These professionals may include staff of the Team, County Offices of Education, the California State Department of Education, school districts, or private contractors. All work shall be performed in accordance with the terms and conditions of this Agreement.

2. SCOPE OF THE WORK

A. Scope and Objectives of the Study

The Alameda COE has provided the Fiscal Crisis and Management Assistance Team with a list of eight areas of concern related to the FAME Public Charter School and requested the Team to conduct an AB 139 review to validate the sufficiency of evidence in each of the areas. FCMAT will conduct the work plan for this request in two phases.

Phase One:

As requested by the COE, the Team will work with its legal counsel to review legal requirements for charter schools in the following areas: Contractual agreements, employee/employer relations, the use of public and donated funds, and the delivery of special education services to Charter students with disabilities.

Legal counsel will assist the Team in separating the areas within the list of concerns between when charter schools are required to comply in the same manner as school districts and when they are not.

The Team will identify which of the areas included in the list of concerns meets the definition of fraud, misappropriation of funds, or other illegal fiscal practices as per E.C. 1241.5 (c). The COE may be eligible for reimbursement of the costs associated with a review of these areas under AB 139. Reimbursement claims are reviewed and approved by the Department of Education and Department of Finance.

Areas included on the COE list that are determined not to meet the definition of E.C. 1241.5 (c) can be conducted as a FCMAT Management Assistance review for the COE. (note - CDE has previously opined that the cost of county office oversight of charter schools is not eligible for reimbursement of 25% of the cost under AB 1200.)

FCMAT representatives will meet with the COE to confirm the findings of phase one prior to beginning phase two. At that time, the COE can determine whether or not to continue with the AB 139 and/or Management Assistance reviews.

Phase Two

The Team will conduct interviews, request and analyze supporting documentation, and prepare a full report with its findings and recommendations, where applicable, in the following areas:

1. Confirm the existence of audit findings in the Charter's most recent independent audit and the Charter's response to the Department of Education.
2. Review the Personnel Action Transmittal forms and Charter board actions related to the payment of a stipend to the Charter Director, and verify the calendar year in which the payment to the Director should be reported as compensation.
3. Review the employment contract for the Charter Director and other employees, bank records of the Charter, and Charter employee W-2's to confirm if compensation for other stipends, car, or housing allowances were paid and reported as income.
4. Review the delivery of Special Education services to FAME students by the Charter former Special Education Director and report on whether these services are in compliance with state and federal requirements for services to students with disabilities.

5. Set up a process to interview individuals who wish to come forward, at a safe location, and provide information to the Team, including but not limited to the following areas: wrongful termination, general intimidation, handling of internal complaints, use of public funds, and use of public employee time.

Amended Scope of Work – September 2, 2008

Phase Three

As a result of the evaluation completed in Phase One of this agreement, the COE requests FCMAT to bypass Phase Two and conduct the AB 139 review as restated in the following areas:

1. **Examine the contract and related Personnel Action Transmittal (PAT) for the Charter Director to confirm the provisions by which the Director would be eligible for additional compensation in the form of a stipend(s) or salary increase. Confirm the method of payment for additional compensation, allowances and stipends and whether income taxes and statutory deductions were withheld and processed appropriately. Confirm the approval process for the contract and PAT, which are inconsistent on the area of additional compensation.**
2. **Examine petty cash and accounts payable disbursements and supporting documentation from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals or entities that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.**
3. **Examine payments or cash withdrawals from financial accounts held in the name of the FAME Public Charter School from July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals or entities that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.**
4. **Examine credit card records, if applicable, for July 1, 2006 to the present. Identify any purchases, payments, donations, contributions, or reimbursements to current or former employees or other individuals that may represent a misuse of public funds or be inconsistent with the board policies, bylaws, or board authority of the FAME Public Charter School.**

5. **Examine all forms of payment for compensation or reimbursement to specific current and former employees to confirm if the payments are consistent with authorized employee contracts or goods and services purchased for the direct benefit of the charter school program and its operations.**
6. **Confirm board policy and operational procedures related to where the authority to approve personnel actions, including changes in compensation, assignment, work year, etc. are vested; and whether the policies and procedures are followed.**
7. **Review the charter's policy on Conflict of Interest and the requirements under the Fair Political Practices Commission related to the disclosure of certain financial interests and sources of income, to the public. Confirm whether any actions by the Executive Director related to changes in the level of compensation or payment to an employee(s) in any form resulted in a personal or financial benefit to the Director.**

B. Services and Products to be Provided

- 1) **Orientation Meeting** - The Team will conduct an orientation session at the COE to brief COE management and supervisory personnel on the procedures of the Team and on the purpose and schedule of the study.
- 2) **On-site Review** - The Team will conduct an on-site review of documentation at the COE office and at the Charter 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) **Draft Reports** - Sufficient copies of a preliminary draft report will be delivered to the COE administration for review and comment.
- 6) **Final Report** - Sufficient copies of the final study report will be delivered to the COE following completion of the review.
- 7) **Follow-Up Support** - Subsequent to the completion of the study, the Team will meet with the COE as requested by the COE to discuss the findings and recommendations of the report

3. PROJECT PERSONNEL

The study team will be supervised by Anthony L. Bridges, Deputy Executive Officer, Fiscal Crisis and Management Assistance Team, Kern County Superintendent of Schools Office. The study team may also include:

Phase One

- A. Diane Branham, FCMAT Fiscal Intervention Specialist
- B. Legal Counsel

Phase Two – To be determined

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

Amended Phase Three

Diane Branham, FCMAT Fiscal Intervention Specialist
Jim Cerreta, FCMAT Fiscal Intervention Specialist
FCMAT Fiscal Consultant
Legal Counsel for review

4. PROJECT COSTS

The cost for studies requested pursuant to E.C. 42127.8 (d) (1) shall be:

- A. \$500.00 per day for each Team Member while on site, conducting fieldwork at other locations, preparing and presenting reports, or participating in meetings.
- B. All out-of-pocket expenses, including travel, meals, lodging, etc. Based on the elements noted in section 2 A, the total cost of phase one of the study is estimated at \$3,000. An amendment to this agreement will be provided to recognize the cost of conducting phase two of the scope of work, if necessary. The COE will be invoiced at actual costs, with 50% of the estimated cost due following the completion of the on-site review and the remaining amount due upon acceptance of the final report by the COE.

Amended Cost – Phase Three

The estimated cost for Phase Three of the amended agreement is \$12,000. Any additions to this phase will result in a revised cost estimate.

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

Payments for FCMAT services are payable to Kern County Superintendent of Schools-Administrative Agent.

5. RESPONSIBILITIES OF THE COE

- A. The COE will provide office and conference room space while on-site reviews are in progress.

B. The COE will provide the following (if requested):

- 1) A map of the local area
- 2) Existing policies, regulations and prior reports addressing the study request
- 3) Current organizational charts
- 4) Current and four (4) prior year's audit reports
- 5) Any documents requested on a supplemental listing
- 6) Assistance in obtaining documents from FAME Public Charter School

C. The COE 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 Charter pupils. The COE and Charter shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for key study milestones.

Phase Three estimated timeline:

Orientation:	October 2008
Staff Interviews:	October 7 – 9, 2008
Exit Interviews:	October 9, 2008
Preliminary Report Submitted	(Estimated) November 21, 2008
Final Report Submitted	To be determined
Board Presentation	To be determined

7. CONTACT PERSON

Please print name of contact person: Carlene Naylor, Associate Superintendent, Business Services. Teresa Kapellas is the contact for Phase Three activities.

Telephone 510.670-4271 or 670-4272 FAX 510.670-4572

Internet Address cnaylor@acoe.org or tkapellas@acoe.org

Sheila Jordan 9/11/08
Sheila Jordan, Superintendent /Date
Alameda County Office of Education

Barbara Dean June 19, 2008
Barbara Dean, Deputy Administrative Officer Date
Fiscal Crisis and Management Assistance Team

Amended Agreement September 2, 2008

Sheila Jordan 9/11/08
Sheila Jordan, Superintendent Date
Alameda County Office of Education

Barbara Dean September 10, 2008
Barbara Dean, Deputy Administrative Officer Date
Fiscal Crisis and Management Assistance Team

Appendix B

The FAME Charter School has provided responses to FCMAT's findings and recommendations and they are included in this appendix and made part of this report for informational purposes only. FCMAT's scope of our work was not sufficient to enable FCMAT to express an opinion on the attached responses from the FAME Charter School referred to in the appendix section.

FAME Charter School's Responses



39899 Balentine Dr., Suite 335
Newark, CA 94560

April 26, 2009

Superintendent Sheila Jordan,
President Jackie Fox Ruby and Members of the Alameda County Board of Education
ALAMEDA COUNTY OFFICE OF EDUCATION
313 W. Winton Avenue
Hayward, CA 94544

Re: FCMAT Review of FAME Public Charter School

Dear Superintendent Jordan, President Ruby, and Members of the Alameda County Board of Education:

This letter provides the response of FAME Public Charter School to the FCMAT review (referred to in this letter as FCMAT Review) noted above, dated April 6, 2009, and sent to FAME by email with a letter from Superintendent Jordan on April 10, 2009. The first portion of this letter summarizes the FAME response and the second portion provides a detailed response to each of the findings and recommendations in the FCMAT review.

EXECUTIVE SUMMARY

FAME Charter School

FAME serves a diverse population of students in Alameda County in both classroom-based and independent study programs. Since FAME opened in 2005, the school has welcomed outside review of its operations and educational success. FAME's record includes:

- Certification by the California Charter Schools Association in 2005;
- Accreditation by WASC;
- Three clean independent audits in three years with no exceptions or "going concern" comments, each certified by the California State Controller;
- No negative ACOE findings regarding annual performance reports; and
- No negative findings on State fiscal reports.

FAME has been successful in its academic efforts, as evidenced by its vibrant and committed community of families and its improving test scores. Though initially a smaller school, from 2006 through 2008 FAME's enrollment nearly doubled from 785 students to 1,422 students. FAME added school sites and resource centers and hired 26 additional employees to serve this growing student population. During this growth,

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 2 of 29

FAME's focus was and continues to be on serving its diverse and unique student population, with a high percentage of English Learners and special education students, as well as a large percentage of children new to the United States. Test score growth illustrates the effectiveness of FAME's academic program. Student test scores increased from 709 in 2006 to 731 in 2008, and FAME met all of its subgroup growth targets in 2008.

Implementation of FCMAT Review

Superintendent Jordan's letter says she requested a FCMAT review of FAME because of several serious "concerns/complaints" brought to the Alameda County Board of Education's attention. ACOE did not inform FAME that it had received concerns/complaints at any time prior to the FCMAT review even though the FAME charter and its MOU with ACOE require ACOE to inform FAME of any concerns/complaints. ACOE also did not share details about these concerns/complaints with FAME during the FCMAT review, though FAME requested this information many times. As a result, FAME was expected to provide information to the FCMAT team without knowing if its information fully responded to the issues FCMAT was reviewing. Nonetheless, Superintendent Jordan's letter notes with appreciation that the FAME Executive Director and all FAME staff responded to all requests from the FCMAT team with cooperation and assistance.

FAME Cash Flow Financing

FAME's response explains why FAME's use of funding sources typically sought by new and growing businesses to finance its rapid growth in enrollment was a necessary and strategic business practice, and describes FAME's current strong financial relationship with commercial lenders. The response notes that FAME provided accurate and up-to-date records to all its lenders and to FCMAT when FCMAT requested those records. Having navigated its growth period, FAME is prepared to weather the fiscal storms facing school districts and county offices of education across California.

FAME Fiscal Accounting

Following several months of inspection, FCMAT's review did not document any criminal activity, fraud, misappropriation of funds, or other illegal fiscal activity. The FCMAT Review instead described some accounting discrepancies caused by human error, unclear communication, and evolving FAME and ACOE systems. As the following pages explain in detail, FAME has corrected its errors and taken major steps to continue to improve the quality of its accounting, payroll and human resource communications. FAME also confirms that all amounts paid to the Executive Director were consistent with the law and her employment contract and were approved by the Board, and that all amounts described in the FCMAT Review were expended for FAME business-related purposes.

FAME Board & Administration

The FCMAT review focused on FAME Board and management practices that could improve. As the school grew from its initial size to its maximum-chartered capacity,

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 3 of 29

FAME's administrative team remained roughly the same size and thus its administrative capacity was stretched at all levels. Even before the FCMAT report was issued, the Board recognized the need for tighter management practices and an expanded administrative team to support its purpose of providing a first-class education to these students.

During the past year, the FAME Board added a new member with significant additional business experience, held Board training sessions, increased its involvement with management, and sharpened its focus on strategic planning. The Board also recently hired a Chief Operating Officer, Liane Zimny, with significant experience in school district and charter school operations, to share the Executive Director's workload.

The FAME Board is committed to the ongoing stability and success of FAME as an operation, as well as the continued educational success of its students. The FAME Board appreciates the opportunity that the FCMAT audit has provided to review and reflect on its administrative operations and governance. FAME has already implemented many of the FCMAT recommendations as part of its continuous effort to improve the quality and success of FAME Public Charter School operations. By June 30, 2009, the FAME Board anticipates that it will have implemented all agreed-upon recommendations contained in the FCMAT Review. FAME invites the FCMAT team to return, at FAME's expense, one year after FCMAT's initial visit for a follow-up review.

Conclusion

All parties to this Review are obligated to prepare a fair and accurate presentation of facts. As set forth below, the FAME Board takes this opportunity to respond to and clarify the findings contained in the FCMAT Review, as well as to address each of FCMAT's management assistance recommendations.

Sincerely,

The FAME Board

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 4 of 29

DETAILED RESPONSE

CASH FLOW AND LOANS

CASH FLOW

Certificated Salaries: The FCMAT Review claims that it is not appropriate for certificated salaries to be projected to be the same amount each month from August through June, or for benefits to be projected to be the same from July through June because “this is not indicative of school payroll cycles...”

FAME explained to FCMAT in detail via email on March 19, 2009 and its correspondence to FCMAT on March 23, 2009 that these salary and benefits projections are in fact appropriate and correct because FAME’s certificated teachers work August¹ through June, and are off in July – which is why they are paid the same amount from August through June. They also receive benefits all year, even in July when they are not working. FAME’s classified staff also work the entire fiscal year of twelve months, and receive pay in equal installments for every month. If certain schools in California operate on a different schedule, this does not mean that FAME must operate on the same schedule.

Cash Flow Reports: The FCMAT Review states that “it does not appear that the cash flow statement has been updated monthly based on actual revenues received and payments posted to the charter’s financial records.”

As explained in detail by FAME in its email to FCMAT on March 19, 2009 and its correspondence to FCMAT on March 23, 2009, in fact FAME’s cash flow statements are often updated daily, and are always updated on at least a weekly basis.

Moreover, FAME would note that its MOU with ACOE requires FAME to provide cash flow reports twice a year: on December 15th of each year, or with the first interim report, and on March 15, with the second interim report. In addition, ACOE asked for the cash flow reports for the first time during the 1st interim report of 2008-09. Upon receipt of the request, FAME requested a template from ACOE so that the information could be sent. ACOE indicated a template would be sent, but FAME did not receive anything. As a result, FAME sent the cash flow report with its 2nd interim financial reports using the template it also uses for its yearly audit report. Last week FAME received a template from ACOE, which it will use in the future.

¹ FAME teachers engage in professional development and set up their classrooms, and independent study teachers meet with their families all in August, and school actually commences at the end of August.

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 5 of 29

Revenue Anticipation Note ("RAN")²: The FCMAT Review claims that FAME will not be able to repay its RAN without borrowing additional funds.

As referenced in emails to FCMAT dated March 19, and March 20, 2009 and its correspondence to FCMAT on March 23, 2009, the cash flow report that FCMAT reviewed to make this determination was from June, 2008. Per the Board's understanding, FCMAT requested a cash flow report that had been created at the time of budget approval. The cash flow report included projections that were made at the time the budget was approved by the Board in early June, which was during the previous fiscal year. However, by the inception of the FCMAT review, three months of actual data (vs. projected data) from the new fiscal year had been recorded and was available for review. Further, by the time the audit had concluded in January, 2009, at least six months of actual data was available for review.

In December 2008, approximately \$300,000 in cost savings measure had brought the school's estimated RAN paydown from \$1.1 million to \$1.4 million dollars. In addition, recent confirmation of the award of \$577,000 in the form of a State Facilities Grant will further enhance FAME's ability to pay down the RAN. The cash flow report reviewed by FCMAT therefore did not accurately reflect the financial status of the school at that time or the current financial status of the school.

FAME also submits monthly income statements to ACOE. FCMAT had access to those statements both in the FAME office and from ACOE. Had FCMAT reviewed these reports, the report would have reflected that FAME staff worked diligently during the new fiscal year, effective July 1, 2008 to initiate cost savings measure in preparation for prospective State budget cuts. Monthly income statements would have addressed many of the concerns about FAME's ability to pay back its outstanding loans noted in the Draft Report. FAME's prior correspondence to FCMAT also documented a commitment from Wells Fargo Bank to provide refinancing options and written confirmation of their intention to support FAME going forward. FCMAT had access to this information, and yet did not take this information into consideration when questioning FAME's ability to operate as a going concern.

Yet the documentation provided by FAME to FCMAT demonstrates that in fact FAME does not suffer from cash flow deficiencies, and that due to its careful and responsible fiscal planning, FAME will operate as a going concern for the foreseeable future, and has a very specific process in place to respond to any cash flow issues. As a matter of fact, FAME now projects that it will pay down the entire \$2,000,000.00 RAN by September 1, 2009. Unlike many school districts and county offices of education, FAME's expenditures do not exceed its anticipated revenues.

BORROWING

² Please note that RANs are similar in concept and purpose to Tax Revenue Anticipation Notes, frequently used by district and county boards of education.

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 6 of 29

First and foremost, the cash flow information used by FCMAT to make its finding that “repayment of the RAN appears to create new cash flow deficiencies, indicating that the loan is being used as operating capital, which is not consistent with the purpose of a RAN” is not accurate, as set forth above.

In addition, the FCMAT Review appears to raise a concern that the Charter School did not apply for a Charter School Revolving Loan Fund. However, the Charter School Revolving Loan Fund is a one-time loan program with limited resources that only provides for loans up to \$250,000, which at the time was not sufficient to cover the school’s cash flow needs. As a result, it was not possible, nor would it have made fiscal sense, for the Charter School to rely on the Charter School Revolving Loan Fund for its fiscal needs.

Authorization of Loan Payments: FAME received a number of loans from 2002 through 2006 as it was establishing itself and growing its enrollment. The FCMAT Review alleges that “many of the loan payments were authorized by the executive director.”

This statement is misleading. The Executive Director authorized loan agreements under authority granted to her by the FAME Board for loans not provided by her relatives (and on the same fair and reasonable terms as those offered to the Executive Director’s relatives), as documented by the FCMAT Review. Any loans involving relatives of the Executive Director were negotiated, and the loan documents signed, by Board members – the Executive Director recused herself and left the room during these considerations.

Comparison Loan Data: The FCMAT Review claims that “the difference in interest rates and loan fees between the two sources create a significant increased expense for the charter school while providing the lenders with rates of return that exceeded competitive or normal standards in the banking industry.”

As referenced in emails to FCMAT dated March 19, and March 20, 2009 and its correspondence to FCMAT on March 23, 2009, this statement is misleading – the loans acquired by FAME in 2006 and 2007 did not provide lenders with rates of return that exceeded the rates available to FAME in the commercial market.

Specifically, despite having information to the contrary, the FCMAT Review fails to acknowledge a critical factor in charter school finance: charter schools that are not established and that have not been in existence long enough to form a longer-term relationship with larger commercial lenders simply do not have access to low interest loans to cover their cash flow needs. As noted in an email from FAME on March 19, 2009, as well as in conversations during FCMAT’s site visits, this is perfectly exemplified by FAME’s efforts in 2006 to secure short term funding: typical commercial lenders would not give loans to FAME, or, when these lenders called ACOE for

confirmation of FAME's cash flow, ACOE never returned their calls.³ This resulted in these lenders refusing to lend money to FAME. Furthermore, other entities were charging exorbitant rates: EdTec offered FAME a loan with a total cost of 26% of the total loan amount as well as a daily fee. Another charter school lender offered a similar deal with a cost of 21% of the total loan amount. As a result, in order to avoid paying exorbitant loan costs, FAME sought out short-term loans from private individuals, some at lower interest rates than were commercially available (see Table 2). The fact is that by doing so, FAME saved money both in the short term and in the long run; any implication to the contrary in the FCMAT Review is inappropriate and inaccurate.

In addition, Table 2 in the FCMAT Review actually documents that the loan fees and interest paid to "MA" are approximately 8.2 %⁴, whereas the loan fees and interest on the Wells RAN ranges from 9-10%, depending on the size of the loan. It is unclear, therefore, why the FCMAT Review deems the terms of the loans from MA to have been "very unfavorable." The other loans, too, offered rates far lower than the 26% and 21% rates other lenders were demanding, and thus were not "unfavorable." In addition, the private lenders who loaned FAME money received no security or collateral for their loans, unlike commercial lenders, all of whom demanded at a minimum some type of security in the form of access to FAME's accounts receivable monies.

In the interests of accuracy, FAME notes that the categories used by FCMAT in Tables 2 and 3 to compare loans are also presented in a misleading way. Specifically, the categories in the two tables are different, though they are intended to compare the same type of items: the chart used to describe the private loans has a column that lists interest and loan fees earned, while the commercial loans chart does not include this information (listed as "Unknown"), giving the impression that there is a huge difference in actual interest earned. It also appears that the column describing interest for the commercial loans does not include the days the amounts were outstanding. Therefore, it does not provide an accurate comparison of the information contained in the two tables and may mislead a reader.

Moreover, FAME notes that given the different lengths of time that all of these loans were outstanding, direct comparisons might not provide an accurate comparison. Instead, FAME has revised the tables to provide additional information the two kinds of loans, and demonstrates that in fact the private loans received by FAME do not compare unfavorably to the commercial loans available to them at the time of the private loans, and are not significantly different from the commercial loans received later. In addition, please see Exhibit A, which breaks down each of the loans to more clearly and accurately outline the fees and interest paid for all loans.

³ For example, United Bank, after having already agreed to provide FAME with a commercial loan in December 2006, withdrew its offer after Carlene Naylor, Associate Superintendent for Business Services at ACOE, failed to return several telephone calls from the bank asking her to confirm FAME's P-1 count.

⁴ Adding loan fees and interest earned, and then dividing this total by total amount of loan.

Table 2 (revised)

Lender	Loan Proceeds/ Loan Amount	Days Outstanding	Interest Paid	Loan Fees Paid	Interest and Fees Paid
2006-07					
AA	\$58,000	21	\$342	\$5,800	\$6,142
MA ⁵ (5 loans)	\$1,792,000	39-132	\$17,657	\$128,571	\$146,228
OA	\$65,000	71	\$961	\$6,500	\$7,461
MC	\$50,000	116	\$1,573	\$5,000	\$6,573
RC	\$100,000	29	\$814	\$10,000	\$10,814
SH ⁶	\$77,000	130	\$1,220	\$7,700	\$8,920
AS	\$300,000	149	\$11,303	\$30,000	\$41,303
2007-08					
MA	\$400,000	40	\$3,145	\$40,000	\$43,145
OA ⁷	\$30,000	32	\$0	\$3,000	\$3,000
SH	\$175,000	165	\$2,551	\$17,500	\$20,051

Table 3 (revised)

Lender	Loan Proceeds/ Loan Amount	Days Outstanding	Interest Rate	Interest Paid	Loan Fees Paid	Interest and Fees Paid
Until June, 2007						
Placer Sierra Bank ⁸	250,000	34	8.11% - 9.9%			
		See footnote 8				
	200,000	36	8.11% - 9.9%			
	250,000	400	8.11% - 9.9%			
				\$16,920	\$750	\$17,670

⁵ Please note that the FCMAT Review contained incorrect amounts paid for Interest and Loan Fees to MA. Also, the loan fees for MA were 1.5% for the first loan, were changed to 5.0% for the next two loans, and then were 10.0% for the last loans.

⁶ One loan of \$9,000 was obtained from SH without any loan fee or interest.

⁷ No interest was paid to OA for this loan.

⁸ This line of credit was used until June of 2007. Initially, this line of credit required repayment of the full outstanding balance as soon as apportionment was received. Interest was revised periodically, and thus as of January 2007 the interest rate was increased to 9.89%

Nonprofit Finance Fund ⁹	500,000	See footnote 9	9.25%-9.89%	\$51,014	\$7,500	\$58,514
2007						
Wells Fargo	1,800,000		6.25%	\$107,584	\$70,500	\$178,084
2008						
Wells Fargo	2,000,000		5.00%	\$114,444	\$80,000	\$194,444

Lastly, these monies were also sought when FAME needed funds to retrofit its facilities, a requirement imposed by the City of Fremont, and not an expense that FAME could avoid or control the timing of. At the end of the day, the faith FAME's private lenders had in FAME enabled the school to succeed and grow both academically and operationally. As a result of its growth, FAME was and is able to attract strong and committed long term commercial investors. FAME is disappointed that FCMAT chose not to include this information in the FCMAT Review.

In sum, while the FCMAT Review raises some concerns, its concerns should be based on standard charter school practice, not on standard practice for school districts or county offices of education, which operate in a far different fiscal situation, impacted by their status as long-standing public agencies. Charter schools in California simply do not have the same status, and must build their financial reputation from the ground up. This has been exacerbated by a number of charter schools (specifically Prosser Creek Charter School and Gateway Charter School) defaulting on loans. As a result, charter schools like FAME must initially seek out less traditional, and potentially more costly, sources of financing. Please note that over the course of its existence, FAME has built up a strong and positive long-term relationship with more traditional funders like Wells Fargo, and has significantly reduced its reliance on private loans as public loans become available to it. Therefore, the findings in the FCMAT Review are misleading and presented without a full recognition of the facts.

FORM 1099 REPORTING

Form 1099's: The FCMAT Review claims that one individual who loaned money to FAME "received a Form 1099 that overstated their earnings in 2006 and understated their earnings in 2007 by a like amount."

FCMAT was provided with correct and timely 1099s for all individuals who made loans to FAME, including correct 1099s for the individual that FCMAT claims received incorrect 1099s. Please see attached as Exhibit B the 1099s that were provided to

⁹ This line of credit was used until June of 2007. Initially, this line of credit required repayment of the full outstanding balance as soon as apportionment was received. Hence, the first three withdrawals from this line of credit were repaid in or less than one month.

FCMAT as well as supporting documentation for the loan amounts received. These documents demonstrate that individual MA gave 1,792,000 in 2006 and 400,000 in 2007, and the 1099s received correctly reflect these amounts.¹⁰

Please note that the FCMAT Review states that the 1099s were provided to them in March, 2009. While FCMAT asked FAME for many items as it performed its review, it did not inform FAME of the full scope or nature of the audit until the first draft was released. Moreover, a number of items that were referenced in the FCMAT Review, including the 1099s, were not requested by FCMAT during the initial audit; as soon as FAME reviewed the FCMAT Review, it provided the documentation which FCMAT claimed it had not received.

RECOMMENDATIONS

1. Review and update its cash flow analysis at least monthly to reflect the most current information as well as actual receipts and expenditures for prior months.

As noted above, FAME does update its cash flow on a weekly basis. Per request of Superintendent Jordan in correspondence dated February 17, 2009 (regarding the second interim report), in addition to the two cash flow reports required by the MOU (with interim financial reports), FAME will now forward actual to-date cash flow reports to ACOE on a monthly basis.

2. Review spending patterns and expenditure allocations and make adjustments necessary to address the cash flow deficiency so that RAN proceeds can be used for cash flow needs and not as operating capital.

As noted above, the current RAN will be paid down by September of 2009. All RAN proceeds going forward will be used for cash flow needs. Please note that this statement is based on the current schedule of state deferrals and may need to be updated.

3. Determine if an additional loan from the RAN lender is needed to cover cash flow needs for the remainder of the 2008-09 fiscal year, rather than borrowing from private individuals.

FAME may need additional loans from Wells Fargo (the RAN lender) to cover cash flow needs for the remainder of the 2008-09 fiscal year due to the current State Budget Crisis and State deferrals. As noted above, FAME's careful financial planning has ensured that after the existing RAN is paid down, its cash flow needs will be covered by current revenue and the ongoing

¹⁰ Please see Exhibit B. It appears that FCMAT added a loan from March 29, 2007 to the 2006 amounts to arrive at the incorrect number.

RAN. Given FAME's strong fiscal position and careful financial planning, it does not anticipate seeking loans from private individuals in the future.

4. If cash flow needs in future years warrant, obtain a RAN or other similar funding sufficient to meet the needs of the charter school without resorting to borrowing from private individuals.

Going forward, FAME intends to rely on loans from commercial lenders, and primarily Wells Fargo, with whom it has established a strong relationship, for its borrowing needs. Given FAME's strong fiscal position and careful financial planning, it does not anticipate seeking loans from private individuals in the future.

5. If loans from private individuals are necessary for cash flow purposes, offer market-rate loan fees and other terms that reflect an appropriate formal business relationship with lenders.

As noted above, given FAME's strong fiscal position and careful financial planning, it does not anticipate seeking loans from private individuals in the future. However, FAME will ensure that should such loans become necessary, the terms of these loans will continue to reflect an appropriate and formal business relationship with lenders.

6. Seek cash flow and other loans from the state of California specifically for charter schools, if the state makes such loans available and if continued assistance with cash flow is needed.

Should it become necessary, and assuming FAME qualifies for these kinds of loans and the State makes such loans available, FAME will seek Charter School Revolving Loan Fund monies. However, this is the only cash flow or other loans currently available from the state of California specifically for charter schools, and the FCMAT Review did not identify any other sources of funding available for this purpose.

7. File corrected 2006 and 2007 Forms 1099 for the private individual whose information was not reported properly.

As noted above, the 2006 and 2007 Form 1099s have already been correctly filed, so no re-filing is necessary.

8. Follow the terms of the MOU with the Alameda County Office of Education regarding advance written notification of intent to apply for a loan and the repayment plan.

Going forward, FAME will provide the Alameda County Office of Education with advance written notification of its intent to apply for any loans as well as the repayment plan requested for each loan. FAME has already provided this notification to ACOE on April 6, 2009 in preparation for its next RAN. In addition, FAME staff is scheduled to meet with ACOE staff on April 29, 2009 to discuss the new RAN.

EXECUTIVE DIRECTOR COMPENSATION

TOTAL COMPENSATION

As also noted in correspondence from FAME to FCMAT dated March 23, 2009, Page 19 of the FCMAT Review, in the section entitled “Total Compensation” contains incorrect housing stipends in the summary table. This mistake also appears on page 23 in the “Housing Allowance” section. Although total amounts appear to be correct, the Executive Director was correctly reimbursed \$30,000 during 2006-07, not \$32,500. In 2007-08, the Executive Director was reimbursed \$32,500, not \$30,000. This error was corrected in December, 2008 by FAME’s Director of Finance by withholding the Executive Director’s final monthly housing stipend for that year. This resulted in the correct total of \$27,500 for the 2008 tax year.

As also noted in correspondence from FAME to FCMAT dated March 23, 2009 and in an email from FAME to FCMAT on March 20, 2009, Table 7 on page 23 erroneously lists transactions of \$13,750.00 on October 31, 2007 and of \$13,750.00 on November 30, 2007 as vacation payouts. These should be listed as bonuses approved by the FAME Board of Directors.

Specifically, because FAME’s auditors required that FAME make all vacation payouts in the year the vacation was earned, FAME submitted vacation payouts for fiscal year 2007 to ACOE on June 6, 2007. This payout was signed by the President of the Board, Dr. Robert Chisholm. ACOE had notified FAME staff that any payroll adjustments would have to be received early due to reduced staffing at ACOE offices in the summer. Rather than the usual deadline of the 15th of each month, FAME was told ACOE would not process any payments after the 10th of the month for June. Despite receiving the PAT (Personnel Authorization Form) on June 6, 2009, ACOE staff did not process it. ACOE informed FAME that the payouts would not be processed until after June 30, 2007 (after the end of the fiscal year in which the vacation was earned).

As a result, FAME’s Director of Finance, with the agreement of the FAME Board of Directors, issued checks for the vacation payouts through the accounts payable system before June 30, 2007. In addition, in April 2007 the Executive Director was awarded her contractual bonus of one month’s salary for meeting enrollment goals; however, due to cash flow shortages, the bonus was not paid at that time. ACOE did not process the vacation payouts it received in June until September and October, 2007 – upon receiving these payouts, the Executive Director agreed to write a check to FAME for the amounts

received in June. However, at the same time, the FAME Board of Directors awarded bonuses of one month's salary to the Director of Finance and to the Executive Director for ensuring a clean audit, and also directed that the Executive Director be paid her April bonus. Since ACOE had already issued the Executive Director the erroneous vacation payouts, the Executive Director did not return the vacation payouts, and instead sent a PAR to ACOE noting the bonus awards, but asking ACOE to not actually issue the bonus payments because the erroneous vacation payouts already covered these amounts (see PAR attached as Exhibit C). However, ACOE refused to process this PAR, so the Executive Director did not write the check to FAME because ACOE did not process the bonus payments approved by the Board. In sum, the two weeks of "vacation" paid to the Executive Director were actually bonuses, and should be listed as such.

Furthermore, page 22 of the FCMAT Review claims that "correspondence between the charter school and the county office of education indicates that the executive director was paid twice for two months' vacation pay," emails and other communications between FAME and ACOE (available upon request) confirm the opposite to be true. In fact, ACOE, by not processing the vacation payments in a timely manner, did duplicate payments, but then refused to make two months of other bonus payments. As a result, the compensation should accurately be defined as eight (8) weeks of vacation, and eight (8) weeks of bonus, not sixteen (16) weeks of vacation.

Errors to the same effect are included on page 23, in the last paragraph: "Since 2006, the following payouts of accrued vacation have been made to the executive director.....October 31, 2007: four weeks." As noted above, those four weeks were a bonus payout, not a vacation payout. Also, on page 24 the FCMAT Review lists "...November 30, 2007: four weeks." This was also a bonus, not a vacation payout.

Page 24 also contains a similar error, stating that "A total of 32 weeks, or four full years of vacation accrual, have been paid to the executive director for the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 fiscal years." However, as noted above, a total of only twenty-four weeks (eight weeks per year, per the Executive Director's contract) has been paid out for vacation for 2005-06, 2006-07, and 2007-08 – the other eight weeks were the bonus payouts. Table 8 on page 24 also reflects this error; under school year 2006-2007, it erroneously reflects two duplicate vacation payout payments; however, as set forth above, these were bonus payouts.

Lastly, page 22 states that "Alameda County Office of Education staff indicated that the delay in processing payroll was due to poor communication and/or insufficient documentation provided by the charter school." The FCMAT Review notes that FCMAT's review did not include determining if these claims are correct. However, pursuant to emails submitted to FCMAT on March 19 and 20, a number of the findings in the FCMAT Review were due to ACOE's failure to properly process payroll, and to process payroll in a timely manner. As a result, FCMAT did have a fiduciary duty to

review evidence from FAME that supports its claims, given that ACOE's actions were responsible for several findings in the FCMAT Review.

PAYMENTS VIA ACCOUNTS PAYABLE SYSTEM

As further described below, FAME is working with ACOE to immediately re-issue the Executive Director's W-2 forms for the years in question, to reflect the amounts paid through the accounts payable system. As soon as the W-2's are received, the Executive Director will amend and re-file her tax returns for the relevant years. In addition, on April 14, 2009 the Executive Director paid to the Internal Revenue Service and the State of California all estimated amounts owed for 2008 based on the revisions to the W-2s noted in the FCMAT Review.

BONUSES

On page 22, the FCMAT Review claims that the December 2007 bonus for "managing the growth of FAME and ensuring a clean audit" is inconsistent with the language in the Executive Director's contract. However, it is not clear what inconsistency FCMAT believes exists; neither the Executive Director's contract nor anything in California law forbid the Board from granting employees additional bonuses for any number of results, including achieving goals or results. In the case of the December bonus, the Board awarded this bonus to the Executive Director due to exceptional circumstances that required a significant amount of additional work on the part of the Executive Director, specifically that, as a result of hiring a new Director of Finance shortly before the beginning of the audit, the Executive Director had to work with the new Director of Finance to familiarize him with school systems and programs while the audit was ongoing, which required a significant additional time commitment from her outside of her regular duties.

VACATION

The FCMAT Review implies that the Executive Director has taken vacation time even though she received vacation payouts for unused vacation.

First, the FAME Employee Handbook (available upon request) specifically states that "Full-time exempt and non-exempt employees may receive the following annual paid holidays:

New Year's Day
Martin Luther King, Jr., Birthday
President's Day
Memorial Day
Labor Day
Thanksgiving Day

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 15 of 29

Friday after Thanksgiving

Day before and after Christmas

Christmas Day

In addition, the FAME Employee Handbook goes on to explain that “other days during the school year such as days during the school’s “Spring Break” or February or October Breaks¹¹ shall be paid time for all non-exempt employees in active status.” FAME’s practice has also been that exempt employees may exercise discretion and take these vacation days if their presence is not needed on site. FAME’s trend has been for employees to take no more than two days off for these breaks, and since two days fall within an exempt employee’s discretion to be absent unless he or she is assigned to work a location that is open, it is assumed that exempt employees also have the discretion to take these days off if his or her location is not open for business. The fact that county offices of education or other public agencies do not have the same schedule is not relevant.

The only exception to the above is noted on the final sentence of page 21, which reads “employees on any leave of absence do not earn holiday pay.”

The FCMAT Review appears to assert that the Executive Director was therefore paid for vacation time that was actually taken. However, at all times that the Executive Director was out of town on vacation, she was also available for employees to contact with questions, and was engaged in work every day that she was out of town. The fact that emails to ACOE referred to vacation does not mean that the Executive Director was not engaged in work while out of town, which she was. For example, in July/August of 2008, while in Florida for both work-related and personal reasons, the Executive Director spent a significant amount of her time there dealing with negotiation for a Proposition 39 facilities allocation by Fremont Unified School District, and dealing with issues related to hiring of new staff, processing of new enrollments, and ordering educational materials. Furthermore, in May of 2007, FAME was bringing on an additional special education services provider and the Executive Director had to address numerous issues related to this transition while in Florida, as well as working with the City of Fremont to address issues related to FAME’s Kearney Street facility. In addition, during December, 2007 and January 2008, the Executive Director was working with contract staff to upgrade the fire systems at the Kearney Street facility, interviewing new Arabic teachers, and completing planning for the independent study program for the new semester. Lastly, in March and April 2008, the Executive Director was dealing with issues relating to the termination of FAME’s special education coordinator, updating course schedules for the Brentwood Learning Center, and setting up new plans to implement the Response to Intervention program.

¹¹ These break times change in line with the school calendar, and cover the major Islamic Holidays. Please note that FAME’s calendar also accommodates for all major Christian and Jewish Holidays.

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 16 of 29

In addition, winter and spring breaks and other vacations were provided to all employees and thus were not counted against the Executive Director's allotted vacation time. As an employee of FAME the Executive Director is subject to the terms of the Employee Handbook; the fact that her employment contract does not reference it is irrelevant.

BENEFITS

The FCMAT Review claims that payment by FAME to the Executive Director for benefits "have not been made consistently." While this claim is correct, FAME noted in its correspondence of March 23, 2009, and wishes to reiterate here, that the Executive Director only collected benefit payments when the school's cash flow allowed. Thus, there were some months when the Executive Director did not receive benefits payments, nor were these missed payments ever paid.

AUTO ALLOWANCES

The Executive Director's W-2s will be revised to correctly reflect the value of the vehicle FAME purchased for the Executive Director's use.

The FCMAT Review notes that mileage reimbursements were made to the Executive Director, but "no specific documentation was provided to support the mileage claim." As noted by FAME's letter to FCMAT dated March 23rd, 2009, the Executive Director specifically requested mileage reimbursements from the Board, and all mileage reimbursements were approved by the Board, though not in formal Board action. As FAME communicated to FCMAT, the mileage reimbursements were entirely for business-related travel between FAME's Bay Area office and FAME locations in Lodi, Stockton, and Treasure Island to meet with parent groups, as well as to meet with realtors in Brentwood as part of the search for an additional resource center facility. Also included in these estimates was regular mileage driven back and forth between San Leandro, Fremont, Dublin and the Brentwood office.

Page 27 states that "payments for gasoline were also made" and "a total of \$4520 was disbursed....supporting documentation indicates that \$981 was charged by the executive director. The balance of these transactions was not supported by receipts or other documentation identifying the person who made the charge." However, all receipts for gas as paid by the Executive Director's credit card were submitted to FAME staff.

GRANT WRITER STIPENDS

As addressed in FAME's correspondence of March 23, 2009, the FCMAT Review incorrectly implies that the Executive Director was compensated separately for work that was part of her job description; in making this fallacious conclusion, the FCMAT Review failed to use the proper job description.

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 17 of 29

Specifically, the FCMAT Review claims that “Under ‘duties and responsibilities,’ the executive director’s job description lists the following: “Perform Grant writing as available or manage consultant who perform such services.” This language further indicates that grant writing responsibilities are considered part of the employer-employee relationship between the executive director and the charter.” However, the language cited is from the Executive Director’s original contract, and does not appear in the Executive Director’s new contract, which covered the timeline under which the Executive Director wrote the grants and received the grant stipends.

In addition, FAME would note that it was appropriate for the Executive Director to be compensated separately for grant-writing duties. In prior years, FAME hired grant writing contractors do write grants. Not only did the contractors charge a fee equivalent to a portion of the grant, but they also charged hourly fees for preparation. The Executive Director was also forced to spend substantial amounts of time providing the consultants with all the information necessary to draft the grant applications. As a result, it was more financially expedient to have the Executive Director write grants as an independent contractor.

FAME would note that it no longer has an independent contractor arrangement with the Executive Director, and will not enter into any such agreement going forward.

EXPENSE CLAIMS

Vehicle Rental

As noted in FAME’s correspondence to FCMAT of March 23, 2009, because the Executive Director used these rentals for business and work-related purposes while out of state, including traveling to copy centers to fax and receive mail and looking at properties for possible Basis, Inc. charter schools, the Executive Director reimbursed FAME for 50% of the costs of the rentals.

Hotels (Movie Charges)

As FCMAT is aware, the one in-room movie was billed by a Board member in error, and the Board members paid FAME back on December 12, 2008, immediately upon discovering the incorrect billing.

Internet Fees

The FCMAT Review claims that FAME reimbursed the Executive Director for “internet fees,” but that the Executive Director’s contract “contains no provision for reimbursement of internet fees.” However, as FCMAT is aware, all internet fee charges of \$104 were incurred by the Executive Director while the Executive Director was traveling for business related purposes, and the internet access was used by the Executive

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 18 of 29

Director to conduct FAME business. The Executive Director was and is also authorized to expend up to \$5,000 for FAME-related purposes; this might include internet fees. It is therefore unclear why the FCMAT Review includes this item when FCMAT was aware of the actual circumstances.

Gift Cards and Cruise

The FCMAT Review references reimbursement for gift cards as well as a Hornblower Cruise in San Diego. In its correspondence of March 23, 2009, FAME informed FCMAT that these expenditures were for FAME students who won the spelling and geography bees (gift cards), and team-building activities for FAME staff (the Hornblower cruise, during which FAME staff participated in a team meeting). As a result, the insinuation in the FCMAT Review that this represented a gift of public funds is not appropriate – these items or activities were being used for an educational purpose that benefits the public and increases the success of the FAME program. Charter schools are exempt from most provisions of the Education Code pursuant to Education Code Section 46710, yet must comply with the Constitutional rules for gifts of public funds. FCMAT’s own website notes, “awards...for exceptional contributions are authorized by Education Code section 44015.” In addition, the expenditure must provide “a direct and substantial public purpose,” and “the benefit to any individual is merely incidental to the promotion of a public purpose.” In other words, de minimis expenditures for activities that are integral part of a school’s educational program are not gifts of public funds, and no court has found otherwise. Here, the staff appreciation gift cards were for students who won the spelling and geography bees, and the Hornblower cruise included specific team-building activities, including a team meeting at which school business was discussed. As a result, this was a legitimate and de minimis expenditure of public funds.

REVISED CONTRACT

As a final matter, the Board would like to note that at its December, 2008 meeting, the Board voted to amend the Executive Director’s contract to provide for a single comprehensive salary, with no stipends attached thereto. The Board took this action after the Executive Director had recused herself and left the room. The new contract was effective January 1, 2009 and a copy of the contract was forwarded to ACOE Human Resources Department.

RECOMMENDATIONS

1. File with the federal and state taxing agencies corrected forms W-2 that include all reportable wages for the executive director for the 2006 and 2007 calendar or tax years.

FAME will formally request that ACOE re-issue the Executive Director’s W-2 forms for the applicable years, to reflect all reportable wages for 2006 and

2007. As soon as FAME receives the corrected form W-2s from ACOE, the Executive Director will amend and re-file her taxes for those years. In addition, on April 14, 2009 the Executive Director paid to the Internal Revenue Service and the State of California all estimated amounts owed for 2008 based on the revisions to the W-2s recommended in the FCMAT Review.

2. Ensure that reportable wages for all employees are paid through the payroll system rather than through accounts payable, and ensure that they are properly reported on Form W-2.

As on January 1, 2009 FAME ended its relationship with ACOE for payroll services, and has contracted with a professional company, Delta Managed Solutions, to provide its payroll services. Going forward, all reportable wages for all employees will be paid through the payroll system rather than through accounts payable, and will be properly reported on employees' Form W-2s.

3. Ensure that all compensation changes for the executive director are approved by the board of directors.

All compensation changes for the Executive Director have always been and will continue to be approved by the Board of Directors, and all payment authorizations reflecting any changes have always been and will continue to be signed by the Board President. The Board will ensure that these authorizations for changes are reflected in the minutes of the Board meeting. The Board will approve a policy reflecting this no later than June 30, 2009.

4. Ensure that all payment authorizations for the executive director are signed by a member of the board of directors.

All payment authorizations for the Executive Director reflecting any changes have always been and will continue to be approved by the Board President, and will be signed by the Board President going forward. The Board will approve a policy reflecting this no later than June 30, 2009.

5. Ensure that any bonuses paid to the executive director are consistent with the employment agreement and are approved by the board of directors.

All bonuses paid to the Executive Director have always been and will continue to be consistent with the Executive Director's employment agreement and approved by the Board.

6. Specifically, the December 2007 PAT should be reviewed to determine if it is consistent with the terms of the employment agreement.

Please see the explanation above regarding this December 2007 PAT. Pursuant to the information set forth above, the Board has reviewed the December 2007 PAT, which was issued for “managing the growth of FAME and ensuring a clean audit,” and has determined that it was consistent with the terms of the Executive Director’s employment agreement because it was a bonus as a result of exceptional circumstances that required a significant amount of additional work on the part of the Executive Director.

7. Review the executive director’s housing allowance payments and recover any funds that have been paid in error.

The Board has reviewed the Executive Director’s housing allowance payments, and determined that no funds were paid in error because the Executive Director was residing in approved housing throughout the term of her contract. Please note that as of January 1, 2009, the Executive Director’s contract has been amended to reflect that all compensation paid to the Executive Director is paid as a base salary, with no additional stipends.

8. Reconcile all vacation earned, used and paid to the executive director, and recapture any overpayments.

The Board has reviewed all vacation earned, used and paid to the Executive Director, and has determined that because the Executive Director performed work for FAME (often at the Board’s request) every day she was out of town, no overpayments were made.

9. Develop a policy requiring that all accruals and use of vacation, sick leave and any other leaves be tracked for all employees, including the executive director.

FAME has contracted its Human Resources Services to Delta Managed Solutions beginning on January 1, 2009; Delta Managed Solutions will be responsible for tracking all accruals and use of vacation, sick leave and any other leaves for all employees. FAME will also be reevaluating its process for tracking this information, and will adopt a revised formal policy no later than June 30, 2009.

10. Require the executive director to comply with the employment agreement regarding notifying the board of directors about vacation time.

While the Executive Director has always informed the Board when she was going to be out of town, as of January 1, 2009 the Executive Director will

continue to inform the Board and this information will be reflected in Board minutes.

11. Determine whether the medical, dental and life insurance benefits referred to in the employment agreement are intended to be provided in lieu of purchase, or if the executive director is to be reimbursed only if benefits are purchased.

The employment agreement states, and the Board confirms that, the medical, dental and life insurance benefits referred to in the employment agreement were intended to be provided in lieu of purchase. However, as of January 1, 2009, the Executive Director no longer receives a stipend for medical, dental and life insurance benefits and instead receives a single salary.

12. Ensure that the automobile provided for the executive director in the employment agreement is reported correctly on the executive director's Form W-2.

FAME will submit a formal request to ACOE asking ACOE to re-issue the Executive Director's W-2 forms for the applicable years, to reflect all reportable wages for 2006 and 2007. As soon as FAME receives the corrected form W-2s from ACOE, to include the value of the automobile provided for the Executive Director in 2007, the Executive Director will amend and re-file her taxes for those years. In addition, on April 14, 2009 the Executive Director paid to the Internal Revenue Service and the State of California all estimated amounts owed for 2008 based on the revisions to the W-2s noted in the FCMAT Review, including the value of the automobile provided for the Executive Director

13. Refrain from entering into independent contractor agreements with the executive director or other charter school employees.

As of January 1, 2009 the Board terminated all independent contractor agreements with the Executive Director, and going forward will no longer enter into independent contractor agreements with the Executive Director or other full-time FAME employees.

14. Require that all claims for reimbursement include itemized supporting documentation to ensure that only appropriate charter school-related expenses are reimbursed.

The FAME Board will be amending its current policy on reimbursement of expenditures to more clearly outline the process for employee reimbursements, to include a clarification that all reimbursement claims must be accompanied by not only receipts that document the purpose of the

expenditure, and the individual items, but also, if relevant, identify the individuals participating in the event at which funds were expended.

15. Review all prior expense claims filed by the executive director and recover any funds that were paid in error or that did not have a legitimate business purpose.

The FAME Board has reviewed all prior expense claims filed by the Executive Director and has determined that all claims had a legitimate business purpose and thus were not paid in error.

16. Ensure that all expense claims submitted by the executive director are reviewed and authorized by a member of the board of directors.

Per Board-approved policy, the Executive Director is authorized by the Board to expend up to \$5,000 without Board approval. In addition, the revised fiscal control policies and procedures clearly identify the process for verifying expense claims. However, going forward a Board member will review and authorize all expense claims by the Executive Director on a monthly basis.

17. Establish a board policy with guidelines regarding allowable and prohibited expenditures.

As noted above, by June 30, 2009 the FAME Board will approve an amended fiscal control policies and procedures document that will outline all allowable and prohibited expenditures.

OTHER EXPENDITURES

PETTY CASH ACCOUNT

ATM Withdrawals

As FAME indicated to FCMAT during their site visit, this expenditure was for a business-related lunch while staff were at a charter school conference; they discovered the restaurant did not take credit cards or checks. This is the only time that FAME has made this kind of ATM withdrawal.

Flowers, Balloons, Gift Baskets, Party Supplies

With the exception of four flower orders for bereavement, all flowers, balloons, gift baskets, and party supplies were for FAME senior, kindergarten, and eight grade graduation ceremonies and other student activities. FAME received over \$5,000 in

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 23 of 29

private donations; a substantial portion of the money used for these events is parent donation and PTO fund monies, which are not public funds.

Meals

While the names of FAME employees were not always provided with expense claims for meals, all meals had a business purpose and receipts were submitted indicating this purpose. It is not standard accounting practices for non-profit public benefit corporations to provide this much detail in reimbursement claims. However, going forward, FAME will also indicate the number of staff members that participated as well as their names.

Airfare, Travel and Professional Development

As FCMAT was informed via email on March 19 or 20, 2009, the Board member who inadvertently charged an in-room movie during a conference repaid the charges on December 12, 2008.

Other Items

The FAME Board has determined that all expenditures processed through the petty cash account were for a business-related purpose; while itemized receipts for some items were not maintained, going forward, all expenditures will be accompanied by full receipts.

CREDIT CARD ACCOUNTS

The FAME Board has determined that all expenditures using FAME's two credit card account were for business-related purposes; while itemized receipts for some items were not maintained, going forward, all expenditures will be accompanied by full receipts.

RECOMMENDATIONS

1. Cease using the petty cash account and credit card account for routine operating expenses; pay these expenses using the accounts payable system (operating account).

As noted by the new Fiscal Control Policies and Procedures Board Policy, which will be adopted by the Board no later than June 30, 2009, FAME will limit use of the petty cash account going forward, and will use the accounts payable system.

2. Require that all purchases using petty cash, credit card accounts or operating funds have properly authorized written purchase requisitions, and require itemized receipts and the signature of the employee for each purchase.

This recommendation uses incompatible terms, as petty cash and credit card accounts do not use written purchase requisitions. However, FAME will continue to require that itemized receipts and employee signatures be submitted for all reimbursements or expenditures using credit cards, and that written purchase requisitions be submitted for all orders and similar expenses.

3. Assign a designated management employee responsibility for review and authorization of all requisitions against the petty cash and credit card accounts.

The Director of Finance has been and will continue to be the management employee responsible for review and authorization of all requisitions against the petty cash and credit card accounts.

4. Prohibit all cash withdrawals from the petty cash account, including those using the PayPal system.

In FAME's history, only one cash withdrawal has been made from the petty cash account, as described above. As noted by the amended Fiscal Control Policies and Procedures Board Policy, which will be adopted by the Board no later than June 30, 2009, FAME will limit use of the petty cash account, and will not allow for cash withdrawals or PayPal payments from the petty cash account.

5. Prohibit payment for day labor from the petty cash account. Ensure that all employees, including day laborers, are paid through the payroll system and that IRS regulations and employment laws are followed.

All FAME employees are paid through the payroll system and IRS regulations and employment laws are followed; employees are not and never have been paid through the petty cash account. FAME only paid day laborers twice from the petty cash account, and no longer does so.

6. Establish a board policy that identifies allowable and prohibited expenditures as well as the public purpose for purchases of items such as gift cards, flowers and gift baskets.

The amended Fiscal Control Policies and Procedures Board Policy which the FAME Board will adopt by June 30, 2009 will identify allowable and prohibited expenditures as well as the public purpose for purchases of items such as gift cards, flowers and gift baskets.

7. Indicate the business purpose and the participants when meals are provided as a part of staff development, staff appreciation or any other activity.

While FAME already requires that the business purpose of meals be submitted with receipts, going forward, FAME employees and Board members will indicate both the business purpose and the participants when meals are provided as a part of staff development, staff appreciation or any other activity. The amended Fiscal Control Policies and Procedures Board Policy which the FAME Board will adopt by June 30, 2009 will reflect this.

8. Require itemized receipts for all meal purchases.

FAME employees and Board members are already required to provide itemized receipts for all meal purchases. The amended Fiscal Control Policies and Procedures Board Policy which the FAME Board will adopt by June 30, 2009 will reflect this.

9. Seek reimbursement from employees for any in-room movie charges paid by the charter school.

As FAME noted to FCMAT via email on March 19 or 20, the Board member who inadvertently charged a movie to his hotel room while in New Orleans for the Charter Schools conference paid FAME back on December 12, 2008.

10. Ensure that all accounts are managed so that late fees and insufficient funds charges are not incurred.

The late fees referred to in the FCMAT Review were for the credit card issued to the Dublin site, which on two occasions neglected to transmit the bill to the central office in a timely manner. However, as of December, 2008 all credit card bills come directly to the central office for processing and payment. As a result, FAME does not expect this issue to arise again.

As FAME explained in the March correspondence, the insufficient funds issue was related to FAME's relationship with its former bank which did not allow real-time access to account updates, and FAME's internal controls used two different people to view account balances and process receipts. FAME's current bank does allow real-time access to account updates, and the same employee now views account balances and processes receipts. Thus FAME does not expect this issue to arise again.

11. As long as the vehicle provided to the executive director is registered in the name of the charter school, ensure that evidence of the vehicle's insurance is kept in the vehicle and on file at the administrative office at all times.

The vehicle provided to the Executive Director is currently registered in the name of FAME, and evidence of the vehicle's insurance is currently kept in the vehicle and on file at the administrative office at all times.

12. Establish a board policy that prohibits using charter school funds to pay for citations, fines or other penalties incurred by employees.

FAME no longer uses charter school funds to pay for citations, fines or other penalties incurred by employees, and only did so once due to FAME's failure to provide insurance documentation to the Executive Director. The amended Fiscal Control Policies and Procedures Board Policy which the FAME Board will adopt by June 30, 2009 will reflect this.

13. Consider establishing accounts with vendors that accept purchase orders (such as those that provide office supplies) to take advantage of the convenience, controls and cost savings that this arrangement provides.

As FCMAT was informed by FAME via email on March 19 and 20, FAME currently primarily works with vendors who accept purchase orders (for example Office Max), and will continue this relationship going forward.

14. Review shipping charges and consider establishing an account with the US Postal Service to lower costs.

The FAME Board has reviewed shipping charges, and determined FAME's shipping charges are reasonable, and that the use of FedEx is necessary because of its broader business hours. FAME also uses both FedEx and the US Postal Service for its shipping purposes, as the costs are not substantially different.

RIGHT START FOUNDATION

FAME works with local and state cultural organizations, including the Right Start Foundation, to increase awareness, tolerance, and understanding among multi-ethnic and multi-lingual groups and cultures. School districts and county offices of education across the state do the same, in order to benefit their students. The FCMAT Review found no inappropriate purpose or violation of law, and thus FAME does not understand why FCMAT included this item in its FCMAT Review, except to attempt to make FAME appear in a negative light by implication. This is a violation of Generally Accepted Government Auditing Standards.

The FAME Board is quite aware of the statutory provisions regarding the separation of church and state, and has always ensured that FAME does not engage in any activity that may violate these provisions.

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 27 of 29

CONFLICT OF INTEREST

First and foremost, FCMAT was informed by FAME via correspondence on March 23, 2009, while FAME must comply with the Political Reform Act, as a California charter school FAME is not obligated to comply with Government Code 1090, nor did FAME obligate itself to comply with Government Code 1090 in its charter or its MOU with ACOE. As a result, any implication in the FCMAT Review that FAME must comply with Government Code 1090 is not appropriate, nor is the recommendation that ACOE inform the Attorney General that violations of Government Code 1090 “may have taken place.”

All Form 700s were completed and filed with the appropriate agency on April 27, 2009. In addition, FAME submitted an updated conflict of interest policy to the Fair Political Practices Commission for review on April 27, 2009.

Lastly, as FCMAT was made aware via correspondence dated March 23, 2009 and emails dated March 19 and 20, the condominium was purchased by the Executive Director in April of 2007. The employee at issue was hired (September, 2006) and received a salary increase (February, 2007) prior to April, 2007. It is not clear from the FCMAT Review why this implies a violation of conflict of interest rules, when the Executive Director did not know she would be purchasing a condominium, or that the employee would be living in it, when the employee was hired.

Furthermore, the Executive Director specifically disclosed her relationship with the employee to the Board, though she did participate in the salary decisions involving the employee after the employee moved into the Executive Director’s condominium, including the monthly stipend award in August and the July one-time stipend. The Board was made aware by the Executive Director of the employee’s housing arrangements. The Board was also at all times aware of the Executive Director’s interest in the property, and was aware that this would be a temporary arrangement to help an employee who presented herself to be homeless and destitute during the time after she was hired by FAME, and allow her to establish a credit history and look for housing she could afford in areas outside of the City of Fremont.

The Board was also aware that the Executive Director went to great expense, as she has done for another newcomers who have arrived in the community and found themselves homeless, to provide a safe environment in order to help the employee’s children. The Executive Director has a history of opening her home to those who are less fortunate. She supports local organizations such as the Tri-City Homeless Coalition and works worldwide with a Canada-based organization that provides temporary placement for battered and abused woman, orphan children, and victims of the U.S. attacks on Afghanistan (many of them located here in Fremont). As a result, and because the Executive Director recused herself from these deliberations, this was not a violation of the Political Reform Act and thus is not an appropriate finding in the FCMAT Review.

RECOMMENDATIONS

1. Ensure that all employees and board members who are in the classifications which require them to complete Form 700 do so and submit the form to the proper county agency.

All employees and Board members who are in the classifications which require them have completed Form 700s. These Form 700s were submitted to the Fair Political Practices Commission on April 27, 2009, and are kept on file at FAME.

2. Ensure that the board members and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Fair Political Practices Act.

While FAME has received information about conflicts of interest and the Fair Political Practices Act at its Board retreat, FAME will be scheduling formal conflict of interest training with the Law Offices of Middleton, Young and Minney, LLP in June or July. The FAME Board also commits to receiving training in this area on a yearly basis.

BOARD MEETINGS

As a general matter, the FAME Board wishes to note that in 2007, Board members decided the Board needed new leadership in light of the ongoing growth and success of FAME. The FAME Board also realized the Executive Director was overwhelmed with responsibilities and that she was filling the role of multiple persons in the organization in an attempt to save the school money during the construction and development of school sites. Nevertheless, the existing Board structure, with only two positions (other than the Executive Director and the vacant position offered to ACOE) did not offer any necessary macrofinance experience – experience relevant to long-term, strategic financial management – which FAME required more than ever given the imploding economy and prospective state deferrals of education funding. As a result, on April 29, 2008, the FAME Board unanimously voted to elect Dimitrios Kastriotis to the Board of Directors, because the Board would benefit from his expertise as an active member of the local business guild, leader of international companies, and also managing a role as part of the Alameda County Transportation Board.

To support the Executive Director, the FAME Board also decided to transition from a policy board to a management board. To accomplish this transition, they enlisted the support of Gary Borden, former Executive Director of the State Board of Education, and a reputable Georgetown University attorney who is also a recognized charter expert in the State of California. For the first time in FAME's history, the new Board underwent a

To: Superintendent Jordan and ACOE Board Members

Re: FCMAT Review of FAME

Date: April 27, 2009

Page 29 of 29

three-day training process in Florida¹² that involved understanding how charter school boards, as corporate boards, can best operate, and the roles each individual board member can play. Because the Board was not able to complete its information gathering during that time, the Board held follow-up sessions in November and December.

The Fame Board does not dispute that it must comply with the Brown Act in all aspects of its operation, and that with the exception of the sessions noted in the FCMAT Review, the FAME Board has always complied with the Brown Act in posting its meeting agendas. The FAME Board also wishes to note that, during the retreat in Florida, and the two information sessions in October and November, no action was taken by the Board. Going forward, the FAME Board will also ensure that all aspects of its meetings fully comply with the Brown Act.

RECOMMENDATIONS

1. Conduct all governing board meetings in accordance with the Ralph M. Brown Act, including meeting within the required geographic boundaries and posting board agendas.

The FAME Board will conduct all governing board meetings in accordance with the Ralph M. Brown Act, including meeting within the required geographic boundaries and posting board agendas.

2. Ensure that the governing board members receive training regarding the Ralph M. Brown Act from an agency that has expertise in this area, such as the CSBA.

On March 31, 2009, attorney Jerry Simmons from the firm Middleton, Young and Minney LLP provided a complete Brown Act training to the FAME Board. The FAME Board will also have yearly Brown Act training going forward.

CONCLUSION

As set forth in great detail in this response, FAME appreciates FCMAT's efforts to improve FAME's operations. The FAME Board is fully committed to implementing FCMAT's recommendations, and working with FCMAT going forward. Specifically, FAME will be requesting that FCMAT perform reviews of FAME's operations every six months.

¹² The retreat was held in Florida because current lenders and potential future commercial lenders, as well as current FAME vendors, were present in the area at that time as a result of the then upcoming Florida Charter Schools Conference.

Exhibit A

FAME Public Charter School
 Comparison of Loan Data
 4/27/2009 9:42

	Loan amount	Days		Interest rate	Interest	Loan Fee rate	Loan Fee amount	Total
		Outstanding						
Placer Sierra	250,000	34	-				-	-
	200,000	36	#REF!			#REF!	#REF!	#REF!
	250,000	400	#REF!			#REF!	#REF!	#REF!
			8.1% - 9.9%	16,920	Fixed	750.00		17,670

Lending Banks

This line of credit was stretched until June 2007. Originally, repayment of withdrawals was needed as soon as the apportionment was received by FAME. This line carried administrative fees of \$250 / year or for a change in terms. The interest rate was revised periodically. The interest rate since January 2007 until the end of line in June 2007 was 9.89%.

NFF	500,000	25	-				-	-
	200,000	33	#REF!			#REF!	#REF!	#REF!
	400,000	20	#REF!			#REF!	#REF!	#REF!
	500,000	347						
			9.25%	51,014	Fixed	7,500		58,514

The line of credit from NFF was stretched until July 2007. Initially, this line required repayment as soon as the apportionment was received. Hence the first three withdrawals from this line were repaid in or less than a month. This line carried a fee of \$7,500.

Wells Fargo 07	1,800,000	375	6.25%	104,455	Fixed	70,500		174,955
Wells Fargo 08	2,000,000	417	5.00%	114,444	Fixed	80,000		194,444

2006-07									
AA		58,000	21	10.25%	342	10.00%	5,800	6,142	
MA *		1,792,000	39-132	10.25%	17,657	1.5%, 5.00% & 10.00%	128,571	146,228	
OA		65,000	71	10.25%	961	10.00%	6,500	7,461	
JC		50,000	116	10.25%	1,573	10.00%	5,000	6,573	
RC		100,000	29	10.25%	814	10.00%	10,000	10,814	
SH **		77,000	130	10.25%	2,120	10.00%	6,800	8,920	
AS		300,000	149	10.25%	11,303	10.00%	30,000	41,303	

* The loan fee for MA was 1.5% for the first loan, changed to 5.0% for the next two loans and was 10.0% for the rest of the loans. The manner in which FCMAT broke down the interest and loan fees does not match with FAME's records although total is same.

** The break up of interest paid and loan fee for SH does not match with FAME's records although the total is same. It should be noted that one loan of \$9,000 was obtained from SH without any loan fee or interest

2007-08									
MA *		400,000	40	7.00%	3,145	10.00%	40,000	43,145	
OA *		30,000	32	0.00%	-	10.00%	3,000	3,000	
SH **		175,000	165	7.00%	2,551	10.00%	17,500	20,051	

* The interest for this period was reduced for MA and SH and no interest was paid to OA

** The number of days reported in the report are incorrect

FAME Public Charter School
 NFF Credit Line Analysis
 4/27/2009 9:23

Receipts	Payment				Days Outstanding	
	Principal	Interest	Fee	Total		
8/19/2005				3,750	3,750	
8/30/2005				3,750	3,750	
9/2/2005	500,000	-			-	
0927/2005		500,000	2,708		2,708	
10/27/2005			34		34	
11/28/2005			28		28	
				2,771		25
12/29/2005	200,000	-			-	
1/31/2006		200,000	2,266		2,266	
				2,266		33
2/24/2006	400,000	-			-	
3/15/2006		400,000	1,605		1,605	
10/27/2005			664		664	
				2,269		20
5/25/2006	200,000	-			-	6
6/26/2006	300,000					30
6/29/2006		-	1,800		1,800	31
7/28/2006			4,650		4,650	31
9/8/2006			4,188		4,188	30
10/4/2006			3,854		3,854	31
11/9/2006			3,983		3,983	30
12/8/2006			1,670		1,670	31
2/5/2007			10,458		10,458	31
3/5/2007			3,597		3,597	28
3/27/2007			3,983		3,983	31
5/7/2007	-	500,000	3,854		3,854	37
7/11/2007			1,670		1,670	
				43,707		0

FAME Public Charter School
 Placer Sierra Credit Line Analysis
 4/27/2009 9:42

	Receipts	Payment				Days
		Principal	Interest	Fee	Total	
12/21/2005	250,000	-			-	
1/12/2006		100,000	-		-	
1/25/2006		150,000	-		-	
					-	21
2/8/2006	100,000	-			-	
2/13/2006	100,000					
3/15/2006		200,000	1,375	250	1,625	
					1,625	36
5/25/2006	250,000	-			-	
1/25/2007	-			250		
1/25/2007		-	5,688		5,688	
4/6/2007		-	3,750		3,750	
6/14/2007		51,651	-		-	
6/21/2007		-	6,107	250	6,357	
6/29/2007		198,349	15,545	500	16,045	
					5,688	0

Exhibit B

CORRECTED (if checked)

PAYEE'S name, street address, city, state, ZIP code, and telephone no. 39899 Balentine Dr. Suite 336 Newark, CA 94560 (510) 687-8111 Ext. 0000		OMB No. 1545-0115 <h1 style="text-align: center;">2008</h1>		Miscellaneous Income	
PAYER'S federal identification number 68-0498433		RECIPIENT'S identification number 		Form 1099-MISC 4 Federal income tax withheld \$	
PAYER'S name, street address (including apt. no.), city, state, and ZIP code    Account number (see instructions)		1 Rents \$ 2 Royalties \$ 3 Other income \$ 4 Fishing boat proceeds \$ 5 Medical and health care payments \$ 6 Substituted payments in lieu of dividends or interest \$ 7 Nonemployee compensation \$ 43,145.21 8 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient for resale) <input type="checkbox"/> \$ 9 Crop insurance proceeds \$ 10 Excess golden parachute payments \$ 11 State tax withheld \$ 12 Gross proceeds paid to an attorney \$ 13 State/Payer's state no. \$		Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.	
15a Section 409A deferrals \$		15b Section 409A income \$		18 State income \$	

Form 1099-MISC

(keep for your records)

Department of the Treasury - Internal Revenue Service

CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.
 Bay Area School For Independent
 39899 Balentine Dr. Suite 335
 Newark, CA 94560
 (510) 687-9111 Ext. 0000

OMB No. 1545-0115
2007
 Form 1099-MISC

Miscellaneous Income

1 Rents \$	2 Royalties \$	3 Other income \$	4 Federal income tax withheld \$
5 Fishing boat proceeds \$	6 Medical and health care payments \$	7 Nonemployee compensation \$ 76,477.32	8 Substitle payments in lieu of dividends or interest \$
9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> \$	10 Crop insurance proceeds \$	11 \$	12 \$
13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	15 Section 409A deferrals \$	16 State tax withheld \$
15b Section 409A income \$	17 State/Payer's state no. \$	18 State income \$	19 \$

Copy B For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no. Bay Area School For Independent 39899 Balentine Dr. Suite 335 Newark, CA 94560 (510) 687-9111 Ext. 0000		1 Rents \$	OMB No. 1545-0115 2006 Form 1099-MISC		Miscellaneous Income
		2 Royalties \$			
		3 Other income \$	4 Federal income tax withheld \$		Copy B For Recipient
PAYER'S federal identification number 68-0498433	RECIPIENT'S identification number [REDACTED]	5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name, address, and ZIP code [REDACTED]		7 Nonemployee compensation \$ 69,750.37	8 Substitute payments in lieu of dividends or interest \$		This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
		11 [REDACTED]	12 [REDACTED]		
Account number (see instructions)		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2006 Form 1099-MISC		Miscellaneous Income
		2 Royalties \$			
		3 Other income \$	4 Federal income tax withheld \$		Copy B For Recipient
PAYER'S federal identification number	RECIPIENT'S identification number	5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name, address, and ZIP code		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
		11 [REDACTED]	12 [REDACTED]		
Account number (see instructions)		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Peggy

Principal Interest Fees Total

7/11/2006	175,000 ✓	-	-	-
7/12/2006	175,000	-	-	-
8/16/2006	(175,000)	-	-	-
8/28/2006	(35,311)	-	-	-
9/1/2006	200,000 →	-	-	-
10/11/2006	(339,689)	8,255	15,250	23,505
	-	8,255	15,250	23,505

350k {

10/25/2006	350,000 ✓			
10/31/2006	35,000 ✓			
11/13/2006	(301,294)	1,995	19,250	21,245
11/29/2006	365,000 →	-	-	-
12/27/2006	-	3,904	21,096	25,000
3/29/2007	(448,706)	-	23,775	23,775
	-	5,900	64,121	70,020

69%

this is a new year

5/14/2007	200,000 ✓			
6/13/2007	92,000 ✓			
6/20/2007	200,000 ✓	3,502	49,200	
	-	3,502	49,200	52,702

17,657 128,571 146,228

Exhibit C

FAME Charter School
 39899 Balentine Drive, Suite 335, Newark, CA 94560

Alameda County Office of Education
 Human Resource
 313 W. WINTON AVENUE
 HAYWARD, CA 94544-1136

Date Typed: 9/27/2007

- | | |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> Classified | <input type="checkbox"/> Certificated |
| <input checked="" type="checkbox"/> Full-Time | <input type="checkbox"/> Part-Time |
| | <input type="checkbox"/> Part-Year |

PAYROLL CHANGE

Effective Date: May '07 & June '07
 Name: Maram Alaiwat
 Address: 3922 Riverbend Terrace
Fremont, CA 94555
 Phone: _____ S.S.# _____
 Birth date: _____ Sex _____

- | | |
|---|---|
| <input type="checkbox"/> Add: | <input type="checkbox"/> Leave Without Pay |
| <input type="checkbox"/> Substitute | <input type="checkbox"/> Transfer |
| <input type="checkbox"/> Probationary | <input type="checkbox"/> Personal Data Change |
| <input type="checkbox"/> Limited-Term | <input type="checkbox"/> Delete |
| <input type="checkbox"/> Provisional | <input type="checkbox"/> Negotiations |
| <input type="checkbox"/> Promotion | <input type="checkbox"/> Step-Increment |
| <input type="checkbox"/> Reclassification | <input checked="" type="checkbox"/> Other |
| <input type="checkbox"/> Salary Change | |

Reason: Pay out vacation for 2 months; 1st payment to be made in October warrant; 2nd payment made in the Nov. warrant in the amount of \$13,750 each warrant.

CLASSIFIED

Classification: BASIS Director
 Division: BASIS
 Department: Administration
 Program: _____
 Location: Newark
 Row: 12 Column: A Annual Salary: \$165,000.00
 Hourly: _____ Time: _____ % Stipend: \$13,750.00
 Status: Active
 Anniversary Date: _____
 Work Year: Days / year: _____ Days / week: _____ Months: _____
 Hours: Per Day: _____ Per Week: _____

CERTIFICATED

Classification: _____
 Division: _____
 Department: _____
 Program: _____
 Location: _____
 Row: _____ Column: _____ Annual Salary: _____
 Total Stipends: _____
 Time: _____ % Prorated Salary: _____
 Status: _____
 Work Year: Days: _____ Months: _____ Months Paid: _____
 Hours: Per Day: _____ Per Week: _____

New position / Replacement: _____

Budget No: _____

Position Control No.: 391

HUMAN RESOURCES

 Authorized Signature 9/27/07

 Date
Jenee Jackson
 Print Name

EMPLOYEE

 Signature _____

 Date
Please sign and return this form to HUMAN RESOURCES. Retain a copy for your records.

Copy Distribution: Employee - 2 copies (1 return to HR); Human Resources - 1 copy; Payroll - 3 copies signed by HR; Supervisor - 1 copy

HUMAN RESOURCES USE ONLY

Employee Selected: _____

Sign-Up Date: _____

Hire Date: _____

PERSONNEL AUTHORIZATION TRANSMITTAL

EMPLOYEE NAME: Maram Alaiwat

POSITION TITLE: CEO / Director

SUPERVISOR'S TITLE: Maram Alaiwat
Director

DATE SERVICE TO BEGIN: May 15, 07 & June 15, 07

LOCATION OF POSITION: Newark

TYPE OF POSITION

- Replacement of: _____
 - Reason for leaving: _____
 - New Position
 - Full-time
 - Part-time
 - Classified OR
 - Certificated: Complete Subject & Grade Level
- Subject: _____
- Grade Level: _____

vacation pay out

Number of months worked per year: _____

Number of months paid per year: _____
 (Summer arrears paid)

TEACHER SALARY SCHEDULE					
EXPERIENCE	HOME-BASED				OAK Center 40 hrs/wk 18-20
	Elementary		High School		
	24-29	30-35	18-22	23-27	
CODE	ELA	ELB	HAS	HSB	OAK
E0	35	1	40	46	41,000
E2	37	43	42	48	43,000
EBA	39	45	44	50	45,000
PRE0	36	42	41	47	42,000
PRE2	38	44	43	49	44,000
CLEAR 0	40	46	45	51	46,000
CLEAR 0 CL	42	48	47	53	48,000
CLEAR 02	42	48	47	53	48,000
CLEAR 02 CL	45	52	50	57	52,000
CLEAR BA	46	53	51	58	53,000
CLEAR BA CL	48	55	53	60	55,000
HOURLY ELEM	PRE CLEAR	\$20	CLEAR	\$25	
HOURLY- H.S.	PRE CLEAR	\$25	CLEAR	\$30	
CLASSIFIED:	SUPPORT	\$15	STUDENT	\$10	
ADMIN.SUPPORT ELEM.		\$25	HIGH SCHOOL	\$35	

E=Emergency, PRE=Preliminary, CLEAR=Clear Credential
 0=No Experience, 02=2+ years HS experience, CL=CLAD
 BA=BASIS Incentive pay based on evaluation score of 3 or better

Comments: Director's in lieu of vacation for school year 2006-2007 to be paid over 2 months, May & June 2007. Eight (8) weeks pay total (4 weeks x 2)

DIRECTOR MUST COMPLETE THIS SECTION BEFORE REQUEST CAN BE PROCESSED. Please Pay \$13,750 x 2 = 27,500.00

Base Salary: \$13,750.00 Base Salary/Experience Definition: AS 15

Additional Stipend: Master's Degree/Admin. Cred. (\$5,000) Permanent Sub (\$5,000) Center Admin. (\$10,000)

SIGNATURE OF PROGRAM DIRECTOR: Robert C. Chastote DATE: 6-6-07

SIGNATURE OF HUMAN RESOURCE SPECIALIST: _____ DATE: _____

Human Resources Use Only

EMPLOYMENT PROCESS CHECKLIST

- Application, Credential, and Resume Appraisal
- Fingerprinting for Criminal History Background Rept.
- Establish Position Control (forward copy)
- Sign-Up/Orientation Paperwork
- Data Entry & Personnel File Set-Up
- Paperwork Sent to Payroll & BASIS

Initial Copy Distribution: ORIGINAL - to ACOE HR Office (Personnel File)
 COPY - Program Director
 COPY - Director of Finance

Handwritten mark

HUMAN RESOURCES USE ONLY

Employee Selected: _____
 Sign-Up Date: _____
 Hire Date: _____

PERSONNEL AUTHORIZATION TRANSMITTAL

EMPLOYEE NAME Maram Alaiwat

DATE SERVICE TO BEGIN 12/11/2007

POSITION TITLE Executive Director

LOCATION OF POSITION Newark

SUPERVISOR'S TITLE Robert Chisholm
President

TYPE OF POSITION

- Replacement of: _____
- Reason for leaving: _____
- New Position
- Full-time
- Part-time
- Classified OR
- Certificated: Complete Subject & Grade Level
- Subject: _____
- Grade Level: _____

Number of months worked per year: _____
 Number of months paid per year: _____
(Summer arrears paid)

E-Emergency; PRE-Preliminary; CLEAR-Clear Credential
 0-No Experience; 02-2+ years IS experience; CL-CLAD
 BA-BASIS Incentive pay based on evaluation score of 3 or better

TEACHER SALARY SCHEDULE					
EXPERIENCE	HOME-BASED				OAK Center 40 hrs/wk 18-20
	Elementary		High School		
	24-29	30-35	18-22	23-27	
CODE	ELA	ELB	HAS	HSB	OAK
E0	35	1	40	46	41,000
E2	37	43	42	48	43,000
EBA	39	45	44	50	45,000
PRE0	36	42	41	47	42,000
PRE2	38	44	43	49	44,000
CLEAR 0	40	46	45	51	46,000
CLEAR 0 CL	42	48	47	53	48,000
CLEAR 02	42	48	47	53	48,000
CLEAR 02 CL	45	52	50	57	52,000
CLEAR BA	46	53	51	58	53,000
CLEAR BA CL	48	55	53	60	55,000
HOURLY ELEM	PRE CLEAR	\$20	CLEAR	\$25	
HOURLY- H.S.	PRE CLEAR	\$25	CLEAR	\$30	
CLASSIFIED:	SUPPORT	\$15	STUDENT	\$10	
ADMIN.SUPPORT ELEM.		\$25	HIGH SCHOOL	\$35	

Comments: **Board approved stipend equal to two month's salary i.e. \$27,000 for managing the growth of FAME and ensuring a clean audit. Already paid. Make formal entries in payroll over two months.**

DIRECTOR MUST COMPLETE THIS SECTION BEFORE REQUEST CAN BE PROCESSED.

Base Salary: _____ Base Salary/Experience Definition: _____

Additional Stipend: Master's Degree/Admin. Cred. (\$5,000) Permanent Sub (\$5,000) Center Admin. (\$10,000)

Robert H. Chisholm
 SIGNATURE OF BOARD PRESIDENT

12/11/2007
 DATE

 SIGNATURE OF HUMAN RESOURCE SPECIALIST

 DATE

Human Resources Use Only

EMPLOYMENT PROCESS CHECKLIST:

- Application, Credential and Resume Approval
- Paperwork for Criminal History Background Report
- Release: Position Control (Incentive copy)
- Sign-Up/Orientation Paperwork
- Data Entry & Personnel File Set-Up
- Paperwork Sent to Payroll & BASIS