

In the Matter of Factfinding )  
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 Between ) FACTFINDING REPORT  
 )  
 THE ACCELERATED SCHOOLS ) AND RECOMMENDATIONS  
 )  
 And )  
 )  
 UNITED TEACHERS LOS ANGELES )  
 )  
 CSMCS Case No. LM-IM-3987 )

FACTFINDING PANEL MEMBERS:

Impartial Chair:

Jonathan S Monat, Ph.D.  
Arbitrator/Factfinder  
Long Beach, CA

Employer Member:

Oliver Yee, Esq.  
Liebert Cassidy Whitmore  
Los Angeles, CA

Union Member:

Glenn Goldstein  
American Federation of Teachers  
Washington, D.C.

APPEARING FOR THE EMPLOYER:

Victoria McDermott, Esq.  
Liebert Cassidy Whitmore  
6033 West Century Boulevard, Suite 500  
Los Angeles, CA 90045

APPEARING FOR THE UNION:

Hong Bui, Esq.  
Area Representative  
United Teachers Los Angeles  
3303 Wilshire Boulevard, 10<sup>th</sup> Floor  
Los Angeles, CA 90010

## BACKGROUND

The Accelerated School (TAS) is a charter school founded in 1994, consisting of three elements: Accelerated Charter Elementary, The Accelerated School and Wallis Annenberg High High School. Located in South Central Los Angeles, virtually all students receive free/reduced lunch. UTLA represents the certificated employees of TAS at all three elements in the broad classification of teacher. As a charter school, TAS is part of LAUSD but administratively independent. Some teachers elected to join TAS and, in doing so, acknowledged that LAUSD and TAS are independent although some working conditions transferred. Teachers hired after the charter was established are solely under TAS rules.

A hearing was scheduled for November 29-30, 2018, at the offices of Liebert Cassidy Whitmore, location by mutual agreement. The hearing was conducted pursuant to California Government Code §3505 under which the Factfinding Panel issues a Factfinding Report and Recommendations to the parties at interest. The findings must consider and weigh all the criteria specified in CGC §3548.2:

1. State and Federal laws that are applicable to the employer;
2. Stipulation of the parties;
3. The interests and welfare of the public and the financial ability of the public school employer;
4. Comparison of the wages, hours, and conditions of employment of the employees involved with the wages, hours and conditions of employment of other employees performing similar services in and with other employees generally in public school employment in comparable communities;
5. The consumer price index for goods and services commonly known as the cost of living;
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and aother excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;
7. Any other facts, not confined to those specified in paragraphs 1 through 6 above which are normally or traditionally taken into consideration in making the findings and recommendations.

The Panel held a conference call prior to the scheduled hearing to establish ground rules for the hearing as well as to review the issues before it. On the day of the hearing, the panel ;met to sent final

ground rules and timetables for the report. The hearing was attended by each party's witnesses and teachers from TAS. Post-hearing 'bullet point briefs' were requested by the Chair. The briefs were received electronically by the Panel on December 14. The Chair prepared a draft recommendation to the other members who responded with written comments. The panel held a conference call on December 20, 2018, to discuss the draft. The Chair prepared the final report, sending it to the panel on December 24 for their concurrence or exception. Each member had until December 28 to return their concurrence or opposition, at which time the report was forwarded to the advocates.

The final proposals submitted to factfinding by the parties acknowledged and applied the above criteria which came after an extensive number of negotiations sessions which the parties began in April 2017, ending with three (3) issues the parties were unable to resolve through mediation. An impasse was declared on May 4, 2018. The remaining issues for the factfinding panel include:

1. Article VIII, Grievance Procedure;
2. Article IX: Discipline and Employment Status; and
3. Benefits.

It is noted that TAS, in its opening statement, stated clearly that TAS was not taking the position that it did not have the ability to pay. Johnathan Williams, Chief Executive Officer, testified emphatically that educational/student objectives framed TAS's proposals to the Union.

The one significant concern of the panel is in the selection by the Union and by the Employer of the comparable employers. The Employer excluded Los Angeles Unified School District from its comparable employers list because of its sheer size. LAUSD employees over 32,000 certificated teachers while all the charter schools together employ just over 1,400 teachers. All of the Union's comparison schools employ between 20 and 181 teachers with one outlier (Green Dot) employing 574. In one sense, Green Dot is not the best comparison employer, either. The factors the Union considered to be primary were the common pool from which the students were drawn, the same pool of LA-area residents

for student enrollment and educator staffing, and because all the Union's comparison schools are represented by UTLA (8) or CTA (4).

TAS selected its comparable schools based upon similar size, similar communities served, more likely to be alternative choices to TAS based on commutability, and because two schools (Osgood and San Carlos Charters) set the model standards advocated by the California Charter School Association. TAS excluded LAUSD from its list of comparable employers. There is no overlap of the list of comparable charter schools. Furthermore, TSA argued against the Union's selections because some of them were conversion schools from LAUSD. The list used by TSA included only start up charter schools.

The Panel Chair takes the position that LAUSD should not be considered a comparable school. In and of itself LAUSD comprises close to 90% of the enrolled students and a similar percentage of certificated teachers. LAUSD is administratively different in many respects even though it operates with a collective bargaining agreement. Even though the Union did not weight LAUSD in its statistical calculations, the sheer volume is sufficient to skew the data away from valid comparisons. Additionally, when a LAUSD teacher agrees to join a charter school, she is administratively under the charter school and not under LAUSD policies with some exceptions. The Union included LAUSD in its comparables list since it is 100% UTLA and all the Union's comparables operate with a collective bargaining agreement.

With respect to charter school comparables, the most appropriate approach is to combine the lists of each party into one list. While not a perfect match, these schools are similar by most of the criteria specified under statute. It is unclear how to apply the factor of percentage of students receiving a free or subsidized lunch. This item is covered by grants from other sources. It is noted that the comparators offered by TAS are all at-will employers while TAS is covered by a collective bargaining agreement. Hence, it is reasonable and fair to use a combined comparables list with an implied weighting favoring comparisons that are geographically closer to TAS..

## ISSUES AT IMPASSE

### Article VIII - Grievance Procedure

The final TAS offer at impasse was the status quo, meaning non-binding, advisory arbitration. TAS uses a model of “performance-based accountability systems,” not the traditional rule-based model. UTLA’s proposal would give an employee a right to which the Education Code for chart school employment does not entitle. The Education Code does not require charter schools to comply with the same due process regulations that apply to traditional public school employers. A unit member has yet to file a grievance under the grievance procedure. Among TAS’s comparison charter schools, there is no binding arbitration. The Board of Trustees should remain as the final decision maker in disciplinary matters.

The Union’s final offer was binding arbitration as the final resolution after all steps in the grievance procedure have been exhausted. TAS is the only charter school in the Union’s comparison group that does not have binding arbitration as a final step in the grievance procedure in its CBA. Binding arbitration will enhance the fairness of the grievance procedure, according to UTLA.

The Panel Chair notes that Articles VIII and IX bear some relationship to each other. Article IX, as proposed by TAS, professes to provide fair treatment with no right of appeal. The testimony of CEO Williams was clear that TAS was an ‘at will’ employer which does not require any reason to end an employment relationship and does not want to be “handcuffed.” Furthermore, maintaining independence is fiscally prudent. However, the Board of Trustees, of which Mr. Williams is an *ex officio* member, is made up of members of the community and three parents elected by the parent body of TAS’s three units. The composition of the Board suggests there is little, if any, expertise on employment matters.

The Panel Chair recommends a hybrid form of grievance procedure in that issues related to termination/dismissal for egregious conduct per the Education Code remain subject to advisory arbitration before an impartial arbitrator, the arbitrator’s recommendation going to Board of Trustees for a final decision. All other grievances would be resolved through binding arbitration before an impartial arbitra-

tor. This recommendation satisfies the CEO's concerns about serious misconduct and is consistent with the Education Code. This recommendation is not intended to make the Education Code as the required process. Rather it is intended only to incorporate the types of misconduct considered to be egregious and the basis for termination without progressive discipline.

#### Article IX - Employment Status

Teachers employed by TAS are contract employees in an at will context. Each teacher is offered a limited term contract for each academic year, renewal at TAS discretion. In practice, there has been little involuntary turnover. TAS retains complete discretion on the decision to renew the one-year contracts. In order to maintain direct accountability of teachers for student performance. By maintaining discretion by the CEO in extending contracts, TAS retains more control of its ability to have its charter renewed every five (5) years. TAS stated that students and parents demand more than just "satisfactory" from their teachers.

Testimony at the hearing established that the performance of a teacher was either 'satisfactory' or something less than satisfactory. When a teacher was rated less than satisfactory, she would be placed up a Performance Improvement Plan (PIP). Both the evaluation and the PIP are considered confidential under statute. TAS wants to retain total administrative flexibility while the Union's interest is to provide teachers with a sense of stability. The turnover problem is primarily at the high school. TAS argued that 90% of the teachers are renewed each year but notice of renewal comes very late in the school year.

TAS is an at-will employer. CGC §44932 relates to dismissal of permanent employees which would not apply to TAS since it has no permanent certificated employees, by definition. This section applies to offenses of 'egregious misconduct.' The only basis for appeal of a written notice of suspension or dismissal is to the governing body of the charter; in this case of TAS, the Board of Trustees. Any teacher who receives such a written notice is subject to the financial burden of appealing through the Education Code process which requires a substantial time period. TAS stated that there have been no

grievances and the great majority of teachers who left did so voluntarily. The TAS proposal is arbitrary and lacks fairness in the resolution of employment disputes.

Based upon the above, the Chair recommends UTLA's proposal for Article IX - Employment Status. This recommendation is consistent with the Education Code allowing charter schools to offer up to a four-year contract and does not create permanent employees with job entitlements. The UTLA proposal provides some stability and predictability for established teachers without creating a rigid hierarchy of tenured teachers. Teacher retention remains based upon satisfactory performance, a fundamental concern of CEO Williams. It is noted that most of the teachers at TAS are relatively long-term with satisfactory performance records, suggesting that the CEO's fiscal concerns will not be realized. UTLA's proposal provides teachers with satisfactory performance some predictability and stability without creating tenure. The Chair does not recommend creation of a performance standard 'exceeds standards.' The existing conventions have been in place for some time. Adding another level will increase the potential for arbitrary classification of performance.

#### Article XIV - Benefits

Although TAS has not cited an inability to pay, it stated that UTLA's arguments for increased benefit contributions ignored the cumulative affects of the increased costs and used incorrect data about the number of teachers covered. TAS's analysis shows the actual cost is double the estimate by UTLA, about \$160,807 on an annual basis. TAS argued its health insurance benefits to teachers and dependents is top tier among its comparable charter schools at 97% and 95%, respectively. It is fiscally responsible for TAS to budget reserves to support student needs. UTLA compared schools which are not true comparable schools. TSA's current benefits allocation exceeds the allocations offered by its comparable schools. A small percentage of teachers use health benefits for self and/or family. and many do not use health benefits at all.

UTLA argued its benefits proposal was reasonable and within TSA's ability to pay. TAS is at

the low end of the comparably group on percentage of outgo spent on health benefits. Benefits costs were overestimated by TSA. Historically, its total revenues have exceed total costs. There is a large cash reserve , unrestricted fund balance having increase to over \$91 million cash and capital assets. TSA typically spends less than budgeted for health care annually. UTLA conducted a survey of TAS teachers purporting to show benefits was a significant factor in turnover. Also, the survey show great dissatisfaction with CEO Williams and administrative pay.

The Chair recommends that the TAS proposal on benefits be accepted with the modification that TAS include a cost of living factor in teacher benefit costs in order to account for benefits cost increases over the term of the collective bargaining agreement. TSA benefits by services provided ranks at or near the top of its comparables. The more realistic comparison is benefits provided rather how TSA ranks among comparables on dollars spent of health benefits. Two other factors impact this recommendation. The parties used different lists of comparables based on divergent criteria, a conundrum that is not easily resolved.. Reasonable comparisons are difficult. Also, there is an unresolvable dispute of accounting for the projected costs of each party's proposal. For these reasons, the Chair recommends that the TAS proposal be accepted with the stipulation that a cost of living factor based on the cost of health care be incorporated over the term of the collective bargaining agreement.

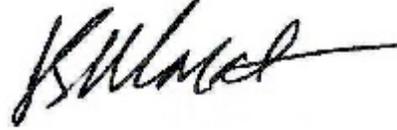
#### Summary of Recommendations

For all the above reasons after a careful study of the record, comments by panel members and panel discussions via conference calls, the Panel Chair recommends the parties agree to the three modified proposals for the credential teachers unit represented by UTLA:

1. Article VIII - Grievance Procedure: Accept UTLA's proposal with certain modifications; namely, all grievances except those for termination for egregious conduct be subject to binding arbitration. Termination for egregious conduct shall be subject to advisory arbitration with the final decision by the Board of Trustees.
2. Article IX - Employment Status: The Chair recommends the adoption of UTLA's proposal retaining the 'satisfactory-not satisfactory' rating scale.

3. Article XIV - Benefits: Accept TAS's proposal with the addition of a health care cost of living factor for the term of the collective bargaining agreement.

Respectfully Submitted,



Jonathan S Monat, Ph.D.  
Chair, Factfinding Panel

/ I concur

/ I dissent

/ Opinion attached

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Oliver Yee, Esq.  
TAS-Appointed Panel Member

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Glenn Goldstein  
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5. The consumer price index for goods and services commonly known as the cost of living;
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The Panel Chair recommends a hybrid form of grievance procedure in that issues related to termination/dismissal for egregious conduct per the Education Code remain subject to advisory arbitration before an impartial arbitrator, the arbitrator’s recommendation going to Board of Trustees for a final decision. All other grievances would be resolved through binding arbitration before an impartial arbitra-

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grievances and the great majority of teachers who left did so voluntarily. The TAS proposal is arbitrary and lacks fairness in the resolution of employment disputes.

Based upon the above, the Chair recommends UTLA's proposal for Article IX - Employment Status. This recommendation is consistent with the Education Code allowing charter schools to offer up to a four-year contract and does not create permanent employees with job entitlements. The UTLA proposal provides some stability and predictability for established teachers without creating a rigid hierarchy of tenured teachers. Teacher retention remains based upon satisfactory performance, a fundamental concern of CEO Williams. It is noted that most of the teachers at TAS are relatively long-term with satisfactory performance records, suggesting that the CEO's fiscal concerns will not be realized. UTLA's proposal provides teachers with satisfactory performance some predictability and stability without creating tenure. The Chair does not recommend creation of a performance standard 'exceeds standards.' The existing conventions have been in place for some time. Adding another level will increase the potential for arbitrary classification of performance.

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The Chair recommends that the TAS proposal on benefits be accepted with the modification that TAS include a cost of living factor in teacher benefit costs in order to account for benefits cost increases over the term of the collective bargaining agreement. TSA benefits by services provided ranks at or near the top of its comparables. The more realistic comparison is benefits provided rather how TSA ranks among comparables on dollars spent of health benefits. Two other factors impact this recommendation. The parties used different lists of comparables based on divergent criteria, a conundrum that is not easily resolved.. Reasonable comparisons are difficult. Also, there is an unresolvable dispute of accounting for the projected costs of each party's proposal. For these reasons, the Chair recommends that the TAS proposal be accepted with the stipulation that a cost of living factor based on the cost of health care be incorporated over the term of the collective bargaining agreement.

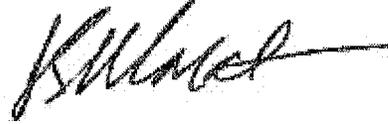
#### Summary of Recommendations

For all the above reasons after a careful study of the record, comments by panel members and panel discussions via conference calls, the Panel Chair recommends the parties agree to the three modified proposals for the credential teachers unit represented by UTLA:

1. Article VIII - Grievance Procedure: Accept UTLA's proposal with certain modifications; namely, all grievances except those for termination for egregious conduct be subject to binding arbitration. Termination for egregious conduct shall be subject to advisory arbitration with the final decision by the Board of Trustees.
2. Article IX - Employment Status: The Chair recommends the adoption of UTLA's proposal retaining the 'satisfactory-not satisfactory' rating scale.

3. Article XIV - Benefits: Accept TAS's proposal with the addition of a health care cost of living factor for the term of the collective bargaining agreement.

Respectfully Submitted,



Jonathan S Monat, Ph.D.  
Chair, Factfinding Panel

I concur

I dissent

Opinion attached



Oliver Yee, Esq.  
TAS-Appointed Panel Member

I concur

I dissent

Opinion attached

Glenn Goldstein  
UTLA Appointed Panel Member

## **TAS Panel Member's Concurrence in Part and Dissent in Part to the Factfinding Report and Recommendations**

As the representative of The Accelerated Schools ("TAS") to the Factfinding Panel, I respectfully concur in part and dissent in part to the Factfinding Report and Recommendations issued by Panel Chair Jonathan S. Monat, Ph.D ("Panel Chair").

### **COMPARABLE EMPLOYERS FOR FINDINGS AND RECOMMENDATIONS**

Government Code section 3548.2(b) provides that the panel should consider comparable employers in arriving at its findings and recommendation. I concur in part and dissent in part to the position taken by the Panel Chair on the appropriate comparable employers to be relied upon for the findings and recommendations of the panel. The Panel Chair recommends excluding Los Angeles Unified School District (LAUSD) from the list of comparable employers. I concur with this finding and recommendation. LAUSD is not a charter school and should not be considered a comparable employer. I disagree and dissent, however, to the Panel Chair's position on combining the lists of comparable charter schools submitted by the parties, and assert that only TAS' list of comparable charter schools should be relied upon for findings and recommendations of the panel.

TAS submitted the following charter schools as comparable charter schools.

<u>School</u>	<u>Location</u>	<u>Students Receiving Free/ Reduced Lunch</u>	<u>Charter</u>
TAS	116 E Martin Luther King Blvd, Los Angeles, CA 90011	98%	Start-up
New Heights Charter School	2202 W. Martin Luther King Blvd., Los Angeles, CA 90008 <i>(3.7 miles from TAS)</i>	99%	Start-up
Endeavor College Prep	1263 S Soto St, Los Angeles, CA 90023 <i>(3.2 miles from TAS)</i>	94%	Start-up
Magnolia Science Academy- 8 (Bell)	6411 Orchard Ave, Bell, CA 90201 <i>(3.2 miles from TAS)</i>	88.5%	Start-up
Inner City Education Foundation (ICEF) Public Schools	3855 W Slauson Ave, Los Angeles, CA 90056 <i>(6.8 miles from TAS)</i>	95.5%	Start-up

<u>School</u>	<u>Location</u>	<u>Students Receiving Free/ Reduced Lunch</u>	<u>Charter</u>
San Carlos Charter	San Carlos – California Charter School Association Model	1.3%	Start-up
Osogood Charter	California Charter School Association Model	Not applicable	Not applicable

These charter schools are comparable to TAS because: (1) they are similar-sized charter schools; (2) they are traditional start-up charter schools; (3) they serve similar communities; (4) they are the likely alternative options to TAS teachers for employment based on mission, student make up and commutability; and (5) in the case of San Carlos Charter and Osogood Charter, set the model standards advocated by the California Charter School Association. With the exception of San Carlos and Osogood, each of the charter schools selected by TAS are within a 10 mile radius of TAS. Most serve a student body where at least 94% of students receive free or reduced lunch. Thus, these charter schools should have been exclusively relied upon by the Panel as comparable employers.

UTLA submitted the following charter schools as comparable charter schools.

<u>School</u>	<u>Location</u>	<u>Students Receiving Free/ Reduced Lunch</u>	<u>Charter</u>
Birmingham Community Charter High School	17000 Haynes St, Van Nuys, CA 91406 <i>(25.9 miles from TAS)</i>	84.3%	Conversion
Camino Nuevo Charter Academy	3435 W. Temple Street, Los Angeles, CA 90026 <i>(6 miles from TAS)</i>	100%	Start-up
El Camino Real Charter HS	5440 Valley Cir Blvd, Woodland Hills, CA 91367 <i>(33.4 miles from TAS)</i>	31.6%	Conversion
Global Education Collaborative	4141 South Figueroa St. Los Angeles, CA <i>(1.9 miles from TAS)</i>	96.7%	Start-up
Granada Hills Charter HS	10535 Zelzah Ave. Granada Hills, CA 91344 <i>(32.4 miles from TAS)</i>	48.8%	Conversion
Green Dot Public Schools	Various Locations	Depends on location	Operates both start-ups and conversions

Ivy Academia Entrepreneurial Charter School	7353 Valley Cir. Blvd. West Hills, CA 91304 <i>(36.4 miles from TAS)</i>	69.8%	Start-up
Los Angeles Leadership Academy	234 East Avenue 33 Los Angeles, CA 90031 <i>(7 miles from TAS)</i>	58%	Start-up
Montague Charter Academy	13000 Montague St. Pacoima, CA 91331 <i>(23.7 miles from TAS)</i>	90.9%	Conversion
Ocean Charter	12606 Culver Blvd, Los Angeles, CA 90066 <i>(15.9 miles from TAS)</i>	25.6%	Start-up
Pacoima Charter Schools	11016 Norris Ave. Pacoima, CA 91331 <i>(26.3 miles from TAS)</i>	83.2%	Conversion
Los Angeles Unified School District	Various locations	Depends on location	Not a charter school

These charter schools are not comparable to TAS. Half of the charter schools in UTLA's comparison list are conversion charters. For conversion charter schools, the hallmarks of the traditional district school model were already in place when the school converted to a charter school, and these vestiges of district school employment were carried over in the conversion process. Six of the charter schools in UTLA's comparison list are located more than 20 miles from TAS. Six of the charter schools in UTLA's comparison list serve a student body where less than 90% of the students receive free or reduced lunch. Thus, the charter schools on UTLA's comparison list should not be relied upon by the panel as comparable employers.

As will be discussed in greater detail below, when the appropriate comparable charter schools are considered, it is abundantly clear that TAS' positions on the three issues in dispute closely align with the existing terms and conditions of employment of teachers at the comparable charter schools.

### **ISSUES IN DISPUTE**

#### **1. Article IX – Employment Status**

I dissent to the recommendation by the Panel Chair to adopt UTLA's proposal for Article IX – Employment Status. At present, and for the last 24 years, TAS offers teachers employment contracts at its discretion. TAS proposes to maintain the status quo. As long as teachers continue to perform well, they will continue to have a position at TAS. TAS' interest is to retain teachers who excel. UTLA's proposal, and the Panel Chair's recommendation, radically changes this employment process so that TAS no longer maintains discretion in the employment contract renewal decision. More specifically, UTLA proposes that should the teacher's performance be

deemed “satisfactory,” the teacher would automatically receive an employment contract and essentially hold guaranteed employment.

The change to the employment contract renewal process proposed by UTLA and recommended by the Panel Chair does not align with TAS’ mission. I agree with the following observation of the Panel Chair, “TAS stated that students and parents demand more than just “satisfactory” from their teachers.” (Report at p. 6.) Indeed, this expectation of excellence over mere satisfactory is embedded in TAS’ mission. TAS is committed to the best interests of its students, which include setting and maintaining very high standards of excellence for its students. The performance evaluation system for TAS teachers currently in place has an “exceeds standards” metric. TAS expects excellence of its students. Thus, it is entirely reasonable for TAS to aspire to more than just “satisfactory” from its teachers.

In addition, the change to the employment contract renewal process proposed by UTLA and recommended by the Panel Chair does not align with the existing employment processes at the comparable charter schools to TAS. ***Each and every comparable charter school*** on TAS’ list of comparable charter schools (New Heights Charter School; Endeavor College Prep; Magnolia Science Academy- 8 (Bell); ICEF Public Schools; San Carlos Charter; Osogood Charter) maintains ***at-will employment*** for its teachers, meaning a teacher may be released from employment by the charter school with or without cause. The current employment process for teachers at TAS is even more lenient than the comparable charter schools. Should a TAS teacher receive an employment contract, the teacher may not be terminated during the term of the contract “at the will” of TAS, but rather may only be terminated “for cause.” TAS should not be expected to make a radical change to its employment process in a manner that is out of line with the comparable charter schools that surround it.

Accordingly, I do not recommend adoption of UTLA’s proposal and the Panel Chair’s recommendation regarding Article IX – Employment Status, and assert that the status quo should remain.

## **2. Article VIII – Grievance Procedure**

I dissent to the recommendation by the Panel Chair regarding Article VIII – Grievance Procedure. The existing grievance procedure provides for advisory arbitration, meaning that an arbitrator’s decision would not be binding on TAS’ Board of Trustees, but only advisory to them. The Board of Trustees holds the final decision making authority on a grievance. TAS proposes to maintain the status quo.

UTLA proposes adopting binding arbitration as the final stage of the grievance procedure so that the final say in the grievance process is an arbitrator. The Panel Chair agrees with UTLA, with the exception of issues related to termination for egregious conduct, which would remain subject to advisory arbitration. The change proposed by UTLA and recommended by the Panel Chair runs against the inherent purpose of a grievance procedure. A grievance procedure is an ***internal*** dispute resolution process. Thus, the final say in this process should also be an internal one, *i.e.* TAS’ governing body, the Board of Trustees. Indeed, the Board of Trustees has the necessary familiarity and understanding of TAS’ mission, goals and internal processes in order to adequately decide an internal grievance matter. Yet, UTLA proposes and the Panel Chair

recommends that this decision be left to an arbitrator, *i.e.* an external decision maker, who may only have as little as half a day to get to know and understand TAS before making a critical and impactful decision. With only limited time, an arbitrator may draw conclusions that are not supported by the facts. In the report, the Panel Chair notes that TAS' CEO is "an *ex officio* member" of the Board of Trustees. (Report at p. 5.) This is incorrect. On the contrary, the CEO position is not a member of the Board of Trustees. The Panel Chair also notes that because the Board of Trustees is comprised of members of the community and three TAS parents, "the composition of the Board suggests there is little, if any, expertise on employment matters." (Report at p. 5.) This is also incorrect. The Board of Trustees is comprised of individuals who have a wealth of expertise in employment matters through their management experience at the highest level of diverse and complex organizations.<sup>1</sup> The Board of Trustees also includes individuals who understand the internal workings and dynamics of TAS through the critical lens of a parent of a TAS student. Thus, the Board of Trustees is more than sufficiently equipped to be the final decision maker on a grievance matter.

In addition, the change to the grievance procedure proposed by UTLA and recommended by the Panel Chair does not align with the existing grievance procedures at the comparable charter schools to TAS. ***Each and every comparable charter school*** on TAS' list of comparable charter schools (New Heights Charter School; Endeavor College Prep; Magnolia Science Academy- 8 (Bell); ICEF Public Schools; San Carlos Charter; Osogood Charter) maintains an ***internal decision maker*** as the final decision maker in their grievance procedure. Not a single comparable charter school provides for binding arbitration. TAS should not be expected to make a radical change to its grievance procedure in a manner that is out of line with the comparable charter schools that surround it.

Accordingly, I do not recommend adoption of the Panel Chair's recommendation regarding Article VIII – Grievance Procedure, and assert that the status quo should remain.

### **3. Article XIV – Benefits**

I concur in part and dissent in part to the recommendation by the Panel Chair regarding Article XIV – Benefits. At present, TAS provides top tier health insurance benefits to teachers and their dependents, contributing 97% of employee only coverage and employee plus one coverage and 95% of family coverage. Under TAS' proposal, TAS would increase benefits and contribute 98% of employee coverage, 97% of employee plus one coverage, and 95% of family coverage.

The Panel Chair recommends adopting TAS' proposal with the modification that TAS include a cost of living factor to account for benefits cost increases over the term of the collective bargaining agreement. I concur with the Panel Chair's recommendation to adopt TAS' proposal but dissent on the proposed modification to include a cost of living factor. TAS submitted evidence to the panel that TAS provides health benefits that are at the top of the

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<sup>1</sup> The Board of Trustees includes an educator who is a former director of a county office of education; a partner of an international law firm; a director of an international real estate brokerage firm; a senior vice-president of an international commercial bank; and a principal of an international accounting firm.

market, with TAS' allocation for coverage exceeding the allocation of comparable charter schools by \$5,634 on average per year per employee. *UTLA failed to submit any data to the panel on the comparison of health benefits with other charter schools.* Because TAS teachers already enjoy top tier health insurance benefits, additional increases to the employer health benefits contributions would not be fiscally responsible.

Accordingly, I concur with the Panel Chair's recommendation to adopt TAS' proposal regarding Article XIV – Benefits. But, I do not recommend adoption of the Panel Chair's recommendation to include an additional cost of living increase component over the term of the collective bargaining agreement.

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For all of the reasons stated above, I do not recommend adoption of the Panel Chair's recommendations and findings in their entirety. I respectfully concur in part and dissent in part as stated herein.

Respectfully submitted by:



\_\_\_\_\_  
Oliver Yee  
TAS Factfinding Panel Member

12/28/18  
\_\_\_\_\_  
Date

## Concurring and Dissenting Report of Union Panel Member Goldstein

CSMCS Case No. LM-IM-3987

Between The Accelerated Schools and United Teachers Los Angeles

Goldstein, Union Panel Member, concurring in part and dissenting in part:

I understand Chair Monat's position in excluding the Los Angeles Unified School District (LAUSD) from the comparison group, but I must respectfully disagree with his reasons. Chair Monat states, as a reason for excluding LAUSD, that it is "administratively different," from charter schools. While this is partly true, the Union makes no proposals that would require the Employer to adhere to LAUSD's administrative processes—that of the California Education Code, which all California school districts abide by. Instead, related to grievance procedure and employment status/job security, the Union proposes concepts that may be similar in intent to the administrative processes found in the California Education Code, however, these concepts are also generally accepted standards in collective bargaining agreements within and without the education sector. For this reason among many others, I agree with the Union's inclusion of LAUSD in the comparison group.

It is appropriate for the Union to include LAUSD in the comparison group because teachers who work for district schools have much in common with teachers who work for charter schools, even though their schools are "administratively different." They must acquire the same professional degrees, be certified by California's Commission on Teacher Credentialing (CTC), and are held to the same federal and state standards and mandates. Furthermore, written into the California Charter Schools Act, charter schools are public schools and fall under the jurisdiction of the Educational Employment Relations Act (EERA).

Additionally, LAUSD and charter schools compete and draw from the same labor pool to hire teachers. The Union narrows its focus here by including LAUSD in the comparison group, but there is a valid argument that other neighboring school districts should be included as well; for the same reasons LAUSD should be included as stated above. For these reasons, the Union's choice of schools included in the comparison group is more appropriate than the schools the Employer chose to include.

The Employer is a unionized charter school. Yet, none of the charter schools the Employer included in its comparison group are unionized charter schools. Conversely, all of the schools the Union included in its comparison group are unionized and all are charter schools except for LAUSD. Although charter schools may be considered "administratively different" from LAUSD, it is also reasonable to conclude that a unionized charter school is more administratively similar to another unionized charter school. Therefore, the Union's comparison group is more appropriate than that of the Employer's.

Finally, the Union's proposal on the issues of grievance procedure, employment status/job security, and health benefits are standard issues and/or concepts of collective bargaining in any industry. The Union's positions as advanced by its members, the teachers, are intended to improve the educational program for their students. The Employer has agreed with the Union that turnover is a problem; teachers conceived the Union's proposals as a solution to the turnover problem. Not one of the Union's proposals infringe or limit the Employer's autonomy in the areas of curriculum, innovation, or delivery of instruction. In fact, the Union's proposals all relate to implementing common-sense labor standards that are intended to stabilize the retention of the staff needed to enact the school's educational program and vision.

For the aforementioned reasons, I concur in part and dissent in part, as discussed below.

#### Article VIII – Grievance Procedure

I have a mixed opinion regarding Chair Monat's recommendation regarding binding arbitration as the final resolution to the grievance procedure, as proposed by the union. Chair Monat recommends that the Employer adopt binding arbitration except for instances of dismissal/termination due to egregious misconduct as defined by the Education Code, in which arbitration would be advisory and the final decision would lay with the Board of Trustees of the school.

Chair Monat cites, in part, that his reasoning for this compromise is that the Union's proposal would give a charter school employee rights under the Education Code to which s/he is not entitled. This is an inaccurate characterization of the Union's proposal. Under the Education Code, due process as it relates dismissal/termination is clearly outlined and prescriptive, with strict deadlines and clear powers and authority given to the governmental adjudicating body—the Commission on Professional Competence.

The Union does not propose to give its members these same rights under the Commission on Professional Competence. Instead, the Union proposes a just cause standard for dismissal/termination that is adjudicated by a private, independent arbitrator. It is not uncommon for teachers to be accused by students, parents, or coworkers of what could be defined as egregious misconduct. The surest way to provide a fair process for all parties involved is to allow a neutral arbitrator's decision, after s/he has considered the relevant facts, to be binding. Allowing the TAS Board of Trustees to reverse the findings of a neutral process would cast doubt on the entire process. Furthermore, all of the schools, in the Union's comparison group, except one, have binding arbitration for all grievance issues and the Employer has provided no evidence it negatively impacts or would negatively impact a school's education program.

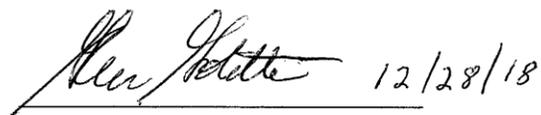
#### Article IX – Employment Status

I concur with Chair Monat's recommendation on this issue. Providing predictability and

stability of continued employment for teachers will help to address the school's turnover problem. Furthermore, the Union's proposal provides a standard, measured by the Employer's own evaluations process, that teachers would have to meet in order to expect continued employment. Creating conditions under which a teacher can be dismissed, that is clearly defined for both the teacher and the Employer, provides consistency and decreases the perception of the Employer's actions as being arbitrary and capricious. Additionally, the lack of reasonable job security protections creates a chilling effect, discouraging teachers from advocating for their students or from having reasonable disagreements with the Employer on matters of instruction and in other aspects of the school's educational program. Lastly, the Union's proposed concept is a right and standard that virtually all unionized workers work under, let alone unionized teachers.

#### Article XIV – Benefits

I concur with Chair Monat's recommendations. Chair Monat recommends that the Employer incorporate cost of living adjustments to its health benefits contributions to employees in order to cover the costs of rising premiums. The Union's proposal seems to have attempted to reach the same solution as Chair Monat's recommendation, albeit with a fixed amount that aimed to predict the rising cost of benefits. However, Chair Monat's recommendation would mean that the Employer absorbs the costs of rising premiums, offsetting any potential for increased out-of-pocket expenses for employees. This will help to address the turnover problem as it would keep the Employer competitive regarding employee health benefits and ensure that employees' regular salary step increases aren't offset by rising health benefits premium increases.

A handwritten signature in cursive script, followed by the date "12/28/18". The signature is written in black ink on a white background.

Glenn Goldstein, American Federation of Teachers

Union Panel Member