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Attachment 8

Written Opposition from Vallejo City Unified School District (VCUSD)

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**Vallejo City Unified School District's Opposition
to Appeal of Denial of Charter Petition to
Establish Caliber: High School to the State
Board of Education letter dated June 10, 2022**



VALLEJO CITY
UNIFIED SCHOOL DISTRICT

William Spalding, Superintendent

GOVERNING BOARD: RALPH A. "TONY" GROSS – PRESIDENT; CHRISTY GARDNER – VICE PRESIDENT; JOHN FOX – TRUSTEE; DR. LATYNA YOUNG – TRUSTEE; DR. TONY UBALDE, JR. – TRUSTEE

June 10, 2022

VIA EMAIL and U.S. Mail
CharterAppeals@cde.ca.gov

Stephanie Farland, Director
Charter Schools Division
California Department of Education
1430 N. Street, Suite 5401
Sacramento, CA 95814

**Re: Vallejo City Unified School District's Opposition to Appeal of Denial of Charter
Petition to Establish Caliber High School to the State Board of Education**

Dear Ms. Farland:

The Vallejo City Unified School District ("District") submits this letter to the State Board of Education ("SBE") as its written opposition to the appeal of the denial of the petition to establish the Caliber High School ("Petition") by both the District Board of Trustees ("District Board") and the Solano County Board of Education ("County Board") pursuant to California Education Code section 47605(k)(2)(C) ("Opposition"). The petitioners for Caliber High School ("Petitioners") filed a written appeal ("Appeal") with the Charter Schools Division of the California Department of Education on May 13, 2022 based on the assertion that the District Board and the County Board abused their discretion in denying the Petition on the grounds that the District is not positioned to absorb the fiscal impact of Caliber High School due to its status of being under state receivership. Petitioners ask the SBE to overturn the unanimous decision of the District Board and the decision of the County Board (voting 6 to 1 to deny the Petition) based on unfounded allegations that both boards engaged in multiple abuses of discretion in denying the Petition to establish Caliber High School. [Documentary Record ("DR") 1641, 2697.]

In their thirty-three (33) page Appeal, Petitioners unequivocally acknowledge that the District remains in state receivership and, therefore, had the authority to deny the Petition based on fiscal impact as set forth in Education Code section 47605(c)(8). Therefore, the District is statutorily presumed, on this ground, to not be in a position to absorb the fiscal impact of Caliber High School. Given that this fact is undisputed, there is no legal basis to conclude that the District Board or the County Board abused their discretion in denying the Petition.

In order to avoid this result, Petitioners attempt to downplay the District's financial condition and state receivership status, recharacterize the law to artificially expand the legal obligations of the District, and create the impression that the "abuse of discretion" standard is easily met so as to warrant the complete dismantling of the valid actions taken by the District Board and its staff. In effect, Petitioners attempt to elevate this Appeal to that of a formal court proceeding and

unnecessarily disrupt the carefully-crafted, thoughtful decisions of the District Board and the County Board—both of which are intimately familiar with the District’s financial condition and whose local decision-making authority over key educational, financial, and operational matters should not be disrupted.

For these reasons and those articulated in further detail below, the District respectfully requests that the SBE uphold the local sovereignty of its Board, and that of the County Board, and deny Petitioners’ Appeal of the denial of its Petition.¹

Relevant Background and Procedural History

The District is a public school district that currently serves as the chartering authority for five independent charter schools and one dependent charter school.² The District and its Board of Trustees are supportive of expanded learning opportunities for all students, including innovative programs and services that promote student engagement and academic and social-emotional growth and progress. In addition, the District recognizes that charter schools are distinctly part of the fabric of the public education system and can offer a non-traditional public school option for interested students and families.

However, at the same time, the District is keenly aware of its past, current, and projected financial position, including the impacts of declining enrollment that continue to jeopardize the District’s ability to overcome its structural budget deficit and avoid further cuts to its programs, services, and staffing.

As the documentary record clearly reveals, the District has been under state receivership since June 2004 and, therefore, is no stranger to significant financial hardship which it has had to weather for nearly two decades now. [DR 817-818, 1621-1623, 1625, 2612-2632, 2644-2669, 2695.] This move to state receivership was triggered in the 2002-2003 fiscal year, when the District experienced financial trouble and carried a negative general fund balance. The District projected significant deficits in its 2003-2004 budget, indicating that it would run out of cash and be unable to pay its bills as soon as June 2004. Consequently, due to its dire financial circumstances, the District entered state receivership under Education Code section 42136 and received an emergency state loan in the amount of \$60 million. This resulted in the *highest degree of state intervention* and the loss of all local governance authority.

In 2013, the District regained some local governance control; however, a State Trustee was appointed to monitor and review the operations of the District, and the State Trustee was given the authority to stay and rescind actions of the District Board pursuant to Education Code section

¹ The District is informed that the County Board intends to submit a written opposition to Petitioners’ Appeal of the denial of its Petition. Therefore, the District’s Opposition is limited to the arguments raised by Petitioners that the District Board abused its discretion.

² Among its authorized charter schools is the Caliber ChangeMakers Academy, which enrolls students in transitional kindergarten through eighth grade and is operated by the Petitioners who filed this Appeal concerning their proposed charter high school program.

41320.1(c). After eighteen (18) years of being under state receivership, however, the District still has an outstanding loan balance which, as of the 2021-2022 First Interim Report, amounted to approximately \$10.5 million. Therefore, the District continues to be under the monitoring of the State Trustee.

Due to persistent declining enrollment, the District has experienced a loss of approximately four percent (4%) of its students annually on average, representing roughly 400 students per year. [DR 2645.] Four of the five District-authorized charter schools operating within its boundaries serve both middle and high school students, and a County Board-authorized charter school located in Vallejo also serves students within the same grade-level span. Consequently, the District must consider the impacts of charter school growth, and the corresponding loss of average daily attendance (“ADA”) funding for those students in ninth through twelfth grade who reside within the District and are eligible to attend one of its high school programs.

The District has served as a chartering authority for over twenty (20) years and has a strong knowledge and understanding of the laws and regulations addressing charter school authorization, operation, renewal, and oversight. This includes the recent amendments to the Charter Schools Act of 1992 (Education Code sections 47600 *et seq.*) resulting from the passage of Assembly Bill (“AB”) 1505. Therefore, when the District received the Petition to establish the Caliber High School on September 8, 2021, it initiated all necessary steps to ensure that the receipt, consideration, and action on the Petition aligned with the procedural and substantive requirements of the law. This included, but was not limited to, convening all required public hearings, providing equal time and opportunities for the Petitioners to address the District Board, receiving public comment, preparing and publishing all required information under the Education Code, and the adoption of written findings of fact to support the District Board’s decision. [DR 1-1667.]

Specifically, on November 3, 2021, the District’s Board held a public hearing to determine the level of support for the Petition by District teachers, other District employees, and parents/guardians. [DR 2-51.] The District also assembled a multi-disciplinary review team comprised of District staff and legal counsel to conduct an extensive review and evaluation of the Petition, including all corresponding supporting documentation. Consistent with Education Code section 47605(b), the District staff’s report, proposed findings of fact, and recommendation on the Petition (“Staff Report”) was published on November 30, 2021—fifteen (15) days in advance of the second public hearing during which the District Board would consider and take action to approve or deny the Petition. [DR 815-825.]

As Petitioners acknowledge in their Appeal, the District’s review team performed a comprehensive evaluation of the Petition, which included an analysis of the proposed educational program, measurable student outcomes, methods for measuring student progress, fiscal and governance structures, student admissions, and legal issues. After completing the review, District staff was of the opinion that the Petition presented a sound educational program model and that the Petition, with some exceptions, generally included a reasonably comprehensive description of the required legal elements under the Education Code. Importantly, on the second page of the Staff Report, District staff dedicated a section to addressing fiscal considerations specifically related to the question of whether the District was not in a position to absorb the fiscal impact of the proposed charter school (the “Fiscal Impact Finding”). (*See* Educ. Code § 47605(c)(8).) [DR 818.] As addressed in more detail below, the Fiscal Impact Finding was recently added to the Education Code via legislative amendment as a ground for denial of a charter petition based on the clear recognition that a subset of school

districts facing financial distress are not in a position to absorb the fiscal impact of a new (or expanding) charter school operating within their boundaries.

The District expressly stated in the Staff Report that it is under state receivership and that it was likely, if not inevitable, that the District would experience a loss of student enrollment from its high schools since Petitioners proposed serving the same grade level spans. This, in turn, would result in a commensurate loss of state apportionment funding, and such loss could undermine the District's ability to build new programs and improve existing resources critical for the District's high school population. District staff expressed its concerns about the potentially adverse impact on the District if the Petition was approved, and noted that the full extent of the fiscal impact was difficult to quantify. This is due to the fact that neither the District nor the Charter School could predict with certainty the number of students who would actually enroll (but who would have otherwise attended a District high school) if the Petition was approved. For this reason, District staff elected to not include a Fiscal Impact Finding in the Staff Report but recognized that it was imperative to raise this very real financial concern. [DR 818.]

On December 10, 2021, the District posted its agenda for the December 15, 2021 District Board meeting—five days prior to the meeting. [DR 826-828.] The District included a detailed Board item describing the purpose of, and general procedures for, the second public hearing on the Petition, a copy of the Staff Report, and two alternative draft resolutions—draft Resolution No. 2997 to approve the Petition and draft Resolution No. 2998 to deny the Petition. [DR 826-861.] In the Board item, District staff explicitly stated the following:

The Staff Report represents the District review team's analysis of the Petition and supporting documents, and includes its opinion that the Petition meets the minimum requirements to qualify for approval. However, District staff recognizes that the Board possesses the ultimate decision-making authority to determine whether to approve or deny a charter petition based on one or more of the legal grounds enumerated under Education Code section 47605. Given the District's status as being in state receivership and the concerns regarding the potential adverse fiscal impacts to the District if the Petition is approved, District staff has prepared both a draft resolution to approve the Petition and a draft resolution to deny the Petition for the Board's consideration and use. [DR 827-828.]

On December 15, 2022, the District Board convened a second public hearing on the Petition to receive information from both District staff and Petitioners, and to consider and take action on the Petition. [DR 826-828, 1640, 1643-1667.] During the public meeting, the District Board provided District staff and Petitioners with equivalent time and procedures to present evidence and testimony to address or respond to the Staff Report, including the proposed findings of fact and recommendation. Notably, the Petitioners spent the vast majority of their allotted time addressing the fiscal impact issue. [DR 1647-1651.] Specifically, after Terrence Johnson, Chief Executive Officer, and Asha Canady, School Leader, of Caliber provided brief statements to the District Board, Markus Mullarkey, Chief Business Officer/Chief Operations Officer for Caliber Public Schools, conducted a detailed slide presentation to address the fiscal impact analysis and considerations related to the District's state receivership status and the Petition. The focus of the presentation was to discredit the potential Fiscal Impact Finding and to present testimony and information supporting Petitioners' stance that, notwithstanding its status of being under state receivership, the District is positioned to fiscally absorb Caliber High School.

Following Petitioners' presentation, the District Board received comments from members of the public who desired to speak. [DR 1651-1662.] Then, members of the District Board engaged in discussion and asked questions of its legal counsel specifically related to the potential Fiscal Impact Finding and the District's state receivership status, position to fiscally absorb the Caliber High School, and the applicable legal standard for the rebuttable presumption of denial. [DR 1666.] After the District Board Trustees made their comments and questions, they unanimously voted to adopt Resolution No. 2998 to deny the Petition, which specifically included the District Board's findings of fact supporting denial of the Petition based on fiscal impact. [DR 1641, 1666-1667.]

Petitioners subsequently appealed the District Board's decision to the County Board. Following an extensive and detailed evaluation of the Petition and Appeal, publication of County staff's report recommending denial of the Petition based, in part, on the Fiscal Impact Finding, which included the full support for such determination by Michael Fine, Chief Executive Officer of the Fiscal Crisis and Management Assistance Team ("FCMAT"), and the required public hearings, the County Board voted in solidarity with the District Board to uphold the denial of the Petition. [DR 1668-2703.]

Petitioners then appealed the decisions of both the District Board and County Board to the SBE on the ground that they each engaged in multiple abuses of discretion in denying the Petition.

The Fiscal Impact Finding

On October 1, 2019, Governor Gavin Newsom signed AB 1505 into law, which made sweeping reforms to the Charter Schools Act of 1992 ("CSA"). The passage of AB 1505 represents one of the most significant overhauls of charter school legislation since the CSA was originally enacted. A key change to the law included the addition of the Fiscal Impact Finding, at issue here, which provides school districts in financial distress with the ability to deny a charter petition if they are not in a position to fiscally absorb the proposed charter school.

Before AB 1505 was enacted, the governing board of a school district was required to approve a charter petition unless it made written factual findings specific to the petition to support one or more authorized grounds for denial, none of which included consideration of the proposed charter school's impact or effect on the school district's operations or financial stability. Now, however, with the addition of Education Code section 47605(c)(8), the governing board of a school district may deny a petition due to fiscal impact under a limited set of circumstances, specifically, Section 47605(c)(8) which provides as follows:

The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

As reflected in the Assembly Committee on Education and Senate Assembly Committee on Education Reports on AB 1505, the law did not previously authorize a school district to deny a

charter school based on the fiscal impact that it would have on the district. Recognizing the financial pressure that charter school enrollment has on districts, given that when students leave traditional public schools to attend charter schools, the school district's finances suffer, the Legislature created a specific carve out in the law to provide financially-struggling districts with the authority to deny a charter petition irrespective of whether the charter petition otherwise meets the legal requirements for approval. (Exhibits 1-2.)

The legislative intent supporting the addition of the Fiscal Impact Finding was underscored in a December 9, 2021 letter to the District Board from Assembly member Patrick O'Donnell, who notably authored AB 1505. (Exhibit 3) Assembly member O'Donnell explained that he "heard clearly from school districts, county offices of education, and FCMAT that some school districts were struggling to absorb the fiscal impact of charter school expansion in their districts. This was especially clear in school districts with outstanding state emergency loans and appointed trustees, like Vallejo City Unified School District (VCUSD)." He stated that the determination of whether a school district qualifies under the listed criteria in Section 47605(c)(8) is an objective, not subjective, measure—noting that the "fact that VCUSD is under state receivership qualifies the school district to deny a charter school petition for that reason, *without any further justification or analysis.*" (Emphasis added.) Assembly member O'Donnell continued:

When we enacted 47605(c)(8), the Legislative intent was to allow districts that are in fiscal distress to focus on the school district's financial health without additionally having to struggle financially due to an increase in the number of charter schools opening within the district. This provision was explicitly written for districts like VCUSD and any future school districts that receive a state emergency loan[].

Further, the Legislature wanted to ensure that school districts experiencing fiscal distress, that denied charter petitions for that reason, would not be overturned by the county board of education on appeal. Therefore, the bill created a rebuttable presumption of denial for appeals of charter petitions that are denied under Section 47605(c)(8), which means that a county board of education shall deny an appeal petition for a charter school denied under Section 47605(c)(8), if the school district[] meets the listed criteria based on fact. The law was intentionally written to make a high bar for a county board of education to overturn such an appeal.

Thus, for a school district (1) with a qualified interim certification where approving a petition would result in the school district having a negative interim certification, (2) with a negative interim certification, or (3) under state receivership, there is an automatic presumption that the district is not positioned to absorb the fiscal impact of the charter school. Importantly, this provision does not provide every school district with carte blanche to deny a petition due to the potential fiscal impact of a charter school operating within its boundaries. The use of this finding is intentionally limited and reserved for only those that meet one of the above criteria. As one of only four school districts in the State of California that is currently under state receivership—out of the 1,000+ school districts currently operating in the state—the Vallejo City Unified School District's financial status squarely fits within this criteria. Therefore, unless a petitioner presents evidence to rebut the presumption that a school district's financial condition

satisfies one of the three criteria, the decision of the school district governing board (or county board of education, as applicable) must stand.³

Abuse of Discretion Standard

With the passage of AB 1505, the Legislature set up a new appeal procedure for charter petitions that are denied by the governing board of a school district or a county board of education. Recognizing the importance of preserving the sovereignty of local school districts to oversee the charter schools operating within their jurisdictional boundaries, AB 1505 significantly modified the role of the SBE with respect to the appeals process. One of those changes included the removal of the SBE's authority to serve as a charter authorizer of a charter school whose petition was previously denied by the local school district and county board of education. In its place, AB 1505 added Education Code section 47605(k)(2)(E) to provide the SBE with limited authority to reverse a school district or county board of education's denial decision only if it found there was an abuse of discretion. If this were to occur, the SBE would be required to designate, in consultation with the petitioner, either the school district governing board or the county board of education as the chartering authority. This new amendment reflects the Legislature's prerogative to infuse greater local control over public education, as well as the ability of local educational agencies ("LEAs") to oversee and monitor the charter schools within their boundaries to ensure they maintain accountability and transparency in their operations.

The CSA, as amended by AB 1505, however, does not specifically define the phrase "abuse of discretion" for purposes of its application under Education Code section 47605(k)(2)(E) by the SBE. However, this legal standard is addressed in both California and federal case law, and it is widely understood and accepted to require substantial deference to the decisions of another agency. As such, an appellate agency or other review body must give "substantial deference to the decisions of local school districts and boards within the scope of their broad discretion, and should intervene only in clear cases of abuse of discretion." *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1019. The scope of review "is limited out of deference to the agency's authority and presumed expertise." See *Polster v. Sacramento County Office of Education* (2009) 180 Cal.App.4th 649, 668 quoting *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745. Further, this standard presumes that the agency "properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise." *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.

The inquiry is thus "whether the agency in question prejudicially abused its discretion; that is, whether the agency action was arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law." *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 673. In determining whether an abuse of discretion occurred, the review body "may not substitute its judgment for that of the administrative board [citation], and if reasonable

³ Petitioners attempt to apply the rebuttable presumption language not on whether the District is under state receivership, but rather whether, notwithstanding this undisputed fact, the District is nevertheless positioned to absorb the fiscal impact of Caliber High School. The District disagrees with Petitioners' interpretation of the application of the rebuttable presumption, particularly in light of the legislative intent presented and independent support provided by the bill author, as well as the unqualified support provided by the Chief Executive Officer of FCMAT. Nevertheless, even if the SBE were to ascribe the same meaning to, and application of, this term as the Petitioners, Petitioners have still failed to demonstrate that the District is positioned to absorb the fiscal impact of the Caliber High School.

minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation]." *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780. Thus, the abuse of discretion standard is specifically intended to provide an avenue of recourse to overturn decisions that are completely untethered to the underlying facts or applicable law. This standard was never designed or intended to unwind an agency's decision or ruling except in extreme circumstances where there was a clear error of judgment that was prejudicial to the party challenging the decision.

The "errors" cited by the Petitioners to support the basis of their appeal do not, in any way, rise to the level of an abuse of discretion by the District Board. Petitioners attempt to attribute any alleged irregularity in the petition review and consideration process to being tantamount to a prejudicial abuse of discretion that impacted the District Board's decision to deny the Petition. This is not the case and only serves to distort the application of this legal standard by the SBE. If Petitioners had their way, every slight or minor procedural irregularity (or even difference in opinion as to the application of the law to the facts) that had no substantive effect on the outcome would be ripe for reversal on appeal as an "abuse of discretion." This could open the proverbial flood gates for appeals of school district and county board of education denial decisions, which can in no way be considered to be what the Legislature intended when it crafted this new provision. And, the SBE should certainly not be swayed by such an interpretation for purposes of this Appeal.

Application of Abuse of Discretion Standard

Petitioners claim in their Appeal that the SBE's role in applying the abuse of discretion standard is to find that "[a]ny one abuse of discretion by either the District or the County is sufficient to result in the approval of the Petition." See Appeal, p. 7 of 33. In other words, Petitioners take the position that if either the District Board or the County Board "denied [Petitioners] the opportunity for approval due to an abuse of discretion, this means that [Petitioners were] entitled to authorization by either or both of the authorizers below." Consistent with other blanket assertions made by Petitioners throughout the Appeal, their interpretation of how the SBE must apply the abuse of discretion standard is completely misplaced and inconsistent with the plain language of Education Code section 47605(k)(2)(E).

Section 47605(k)(2)(E) states, in no uncertain terms, that:

If the state board hears the appeal, the state board may ***affirm the determination of the governing board of the school district or the county board of education, or both*** of those determinations, or may reverse only upon a determination that there was an abuse of discretion. (Emphasis added.)

This means that the SBE may uphold the decision to deny the Petition by either the District Board or the County Board, or both. It does not state that if either the District Board or County Board, or both, abused their discretion, this triggers an automatic authorization of the Petition, as the Petitioners claim. If the statute were interpreted according to the Petitioners' preference, this would create an outcome that is completely inimical to the purpose and intent of the abuse of discretion standard. Courts have long held that statutes "must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the Legislature, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity." *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 997 quoting *Kotler v. Alma Lodge* (1998) 63 Cal.App.4th 1381, 1390-1391.

Further, “[w]e ‘must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.’” *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977-978 quoting *People v. Jenkins* (1995) 10 Cal.4th 234, 246. If weight were given to Petitioners’ application of the abuse of discretion standard, there are very plausible circumstances that would render the statutory language absurd and lead to unintended results. By way of illustration, we present the following hypothetical scenario:

School District denies a charter petition. Petitioner appeals the denial to the County Board of Education, and the County Board of Education also denies the petition. Petitioner then files an appeal with the SBE on grounds that both School District and County Board of Education abused their discretion in denying the petition. SBE determines that School District did not abuse its discretion, but concludes that the County Board of Education did abuse its discretion.

Here, if Petitioners’ interpretation were accepted, that would mean that the charter petition must be approved by SBE even though School District’s denial decision was found to be legally compliant and defensible and presented sufficient grounds to deny in the first instance. In effect, SBE would be overturning the decisions of both the School District and the County Board of Education, which is illogical and completely frustrates the purpose of the appeals process. Allowing for such an outcome would be equivalent to an automatic approval despite the fact that the School District did not abuse its discretion and was found to have proceeded in accordance with the law. Clearly, the Legislature never intended such an outcome that would strip a school district of its local decision-making authority and control in such circumstances and render its legally-required and defensible work subject to reversal based on potentially nothing more than procedural errors committed on the part of a county board of education that functioned, in this instance, as an appellate body.

Based on the express language of Education Code section 47605(k)(2)(E), the SBE possesses the authority to uphold the decisions of the school district or the county board of education, or both. This language is not mirrored in the statute with respect to overturning a denial based on abuse of discretion. If the Legislature intended for this to be the case, it would have explicitly stated that the SBE may reverse the denial decision upon a showing that *either* the school district or the county board of education, *or both*, abused their discretion. The Legislature did not craft the language in this way, and to recharacterize the statute in the manner advocated by Petitioners is both misleading and without justification.

**The District Satisfied All Procedural and Substantive Requirements
Related to the Review, Consideration, and Action on the Petition**

1. The District’s Staff Report Met All Applicable Legal Requirements.

Petitioners attempt to invalidate the District Board’s decision to deny the Petition because its adoption of a Fiscal Impact Finding in Resolution No. 2998 was not specifically recommended in the Staff Report posted prior to the second public hearing on December 15, 2022. The reasoning offered in their Appeal is this: District staff’s proposed findings of fact and recommendation on the Petition must provide fifteen days of advance notice of the “universe of findings” that may serve as a basis for denying a petition, and “if the published findings do not contain a recommended finding, the chartering authority may not deny a petition on that ground as the required advanced notice of potential denial has not been provided to the petitioner.

School districts must decide whether they will be moving forward with a potential denial based on fiscal impact under Section 47605(c)(8) at the time of publication. There can be no exceptions.” See Appeal, p. 14 of 33. This contention, however, is not only illogical, but a misstatement of the plain language of the statute.

AB 1505 amended Education Code section 47605(b) to add the requirement for the posting of the staff recommendation and proposed findings of fact at least fifteen days prior to the public hearing during which the school district governing board will either grant or deny the petition. This section states, in relevant part:

The governing board of a school district shall publish all *staff recommendations*, including the *recommended* findings and, if applicable, the certification from the county superintendent of schools prepared pursuant to paragraph (8) of subdivision (c), regarding the petition at least 15 days before the public hearing at which the *governing board* of the school district will either grant or deny the charter. At the public hearing at which the *governing board* will either grant or deny the charter, petitioners shall have equivalent time and procedures to present evidence and testimony to respond to the *staff recommendations and findings*. (Emphasis added.)

Drawing from the express language of this provision, district staff—not the governing board—is required to develop draft findings of fact for the governing board’s consideration. In addition, it is district staff—not the governing board—that makes a *recommendation* to the governing board on whether to grant or deny the petition. Nowhere in this provision is there any statement or requirement that a governing board is forced or restricted to adopt the finite set of proposed findings of facts published in a staff report or recommendation. Rather, the governing board is only required to consider the staff’s recommendation and recommended findings but must still reach its own decision on whether to grant or deny the charter petition.

Petitioners, however, would have the SBE assume that governing boards are restricted from considering or making any findings of fact outside of the four corners of the staff recommendation and that anything else constitutes an almost *per se* abuse of discretion. Specifically, a governing board would be prohibited from independently weighing the available information before voting on the matter. Such an interpretation is completely outside the bounds of reason. Governing boards, and not school district staff, function as the decision-making agency for the school district. This is made clear in the context of the governing board’s role in the consideration and action on a charter petition, in which Education Code section 47605(b) states that “[f]ollowing review of the petition and the public hearing, the *governing board of the school district* shall either grant or deny the charter within 90 days of receipt of the petition. . . .” (Emphasis added.) Therefore, any decision to authorize the establishment of a charter school lies solely with the governing board. This function is not within the purview, responsibility, or discretion of school district staff. If we were to give meaning to Petitioners’ interpretation of the law, it would force a governing board to limit its consideration and use of only those recommended findings of fact that staff chose to include in its report, effectively stripping the governing board of its independent decision-making authority and authorizing staff to direct the governing board on what it may and may not consider.

Education Code section 47605(b) states in multiple places that the staff’s function is to provide a *recommendation* and *recommended* findings of fact for the governing board’s consideration. According to the Merriam-Webster Dictionary, the term “recommendation” is defined as “a

thing or course of action suggested as suitable or appropriate.” Therefore, a “recommendation” does not amount to a mandate, directive, or obligation of any kind.

Here, the District published its Staff Report, which included its proposed findings of fact, within the required timeframe. In the Staff Report, District staff opined that the Petition met the minimum requirements for approval. However, the Staff Report also included an entire section that was specifically dedicated to addressing the various fiscal concerns that staff believed could adversely impact the District if the Petition was approved. The Staff Report addressed the fact that the District is under state receivership and that, if the Petition was approved, the District would inevitably experience a loss of student enrollment and a commensurate loss of state apportionment funding. Staff expressed that such reductions in funding resulting from high school students enrolling in Caliber High School (but who would otherwise have attended a District school) could undermine the District’s ability to build new programs and improve existing resources that are critical for the District’s high school population. [DR 817-818.]

Although District staff chose not to include a proposed finding addressing the fiscal impact on the District, it nevertheless made clear that the District’s state receivership status and the loss of state funding due to declining enrollment was a concern that warranted discussion of key fiscal considerations in the Staff Report. Thus, Petitioners cannot take the position that the District’s financial condition came as a surprise since the District both published and provided a courtesy copy of the Staff Report to the Petitioners fifteen days before the second public hearing.

Moreover, Petitioners argue that District staff’s decision to not include a specific proposed Fiscal Impact Finding in the Staff Report was a procedural error that amounted to an abuse of discretion. If the District Board was beholden to District staff and required to adopt all or a part of the recommended findings in the Staff Report—without the right or ability to independently issue its own findings of fact that might diverge from staff’s recommendation—this would amount to a complete usurpation of the District Board’s authority. If the SBE were to treat this contention as true, that would mean that the District Board could never issue a decision on a charter petition that diverged from the staff recommendation. Clearly, if District staff had proposed findings of fact to deny the Petition and the District Board decided to not adopt the staff recommendation and, instead, approve the Petition, such a decision would not be challenged by Petitioners. Petitioners cannot have it both ways.

Further, to the extent that Petitioners claim they were denied due process because the Staff Report did not explicitly recommend a finding based on fiscal impact, such a contention is without factual or legal support. Petitioners were given *every* opportunity afforded under Education Code section 47605 to address the Staff Report. The District made it explicitly clear in its Staff Report that the District is under state receivership and that approval of the Petition would have a negative fiscal impact on the District. The District also published its agenda for the December 15, 2022 Board meeting *five days* in advance of the meeting—well beyond the required 72-hour posting requirement under the Ralph M. Brown Act. [DR 826-828.] As described above, the District provided Petitioners with equivalent time and procedures to address the Staff Report and the posted agenda item that contained two alternative draft resolutions for the District Board’s consideration. As evidenced by the detailed slide presentation and statements regarding the District’s financial condition and Petitioners’ opinion that the District could absorb the fiscal impact of Caliber High School, Petitioners came prepared to the second public hearing to address the Fiscal Impact Finding. (DR District December 15, 2021 Regular Board Meeting Video, 16:40-31:51) Specifically, Petitioners addressed the status of the District’s outstanding state emergency loan, projections by the Legislative Analyst’s Office

(“LAO”) on the cost of living adjustment (“COLA”) and other funding forecasts, the impacts on the District’s budget based on such forecasts, and other details. Therefore, it cannot be said that Petitioners were somehow deprived of due process in their ability to address the District Board and the public on this issue. Further, even if Petitioners could demonstrate that there was a procedural error in this instance, the County Board’s consideration and action on the Petition essentially cured any potential or alleged procedural error since Petitioners’ factual and legal contentions were reviewed and considered by both County staff and the County Board as part of the appeal.

Finally, Petitioners contentions that the District should have posted alternative findings of fact in its Staff Report cut against the express language in the statute. Petitioners suggest two options: (1) the District Board can work with District staff to “ensure that particular proposed findings are included,” or (2) the District Board can “withdraw the published findings, reschedule the decision meeting, and publish revised findings.” *See* Appeal, p. 15 of 33. Again, Education Code section 47605(b) states, in no uncertain terms, that “all staff recommendations, including the recommended findings” must be published, and that the petitioners must be provided the opportunity to “respond to the staff recommendations and findings.” If the governing board of a district could so easily direct staff to craft proposed findings of fact on a petition, this would render the term “staff recommendation” completely meaningless. It would no longer be a *staff* recommendation and, instead, would be transformed into a governing board recommendation to itself. It also bears mentioning that the District Board cannot collectively work with staff outside of a properly-noticed public meeting to provide direction related to a charter petition without violating the open meeting requirements of the Brown Act. Any insinuation on Petitioners’ part that this would be an acceptable option for the District Board to pursue is misguided. In addition, Petitioners’ suggestion that the District Board could use the first public hearing—which is specifically designed for a governing board to determine the level of support for a petition by district teachers, other district employees, and parents/guardians—as a forum to direct staff to develop specific findings before staff has even had an opportunity to complete its full review of the petition is unrealistic and a misuse of the public hearing. Certainly, if a governing board of a school district directed staff during the first public hearing to develop findings of fact supporting a denial for purposes of include such findings in its *staff recommendation*, this would pave the way for the petitioner to allege that the governing board abused its discretion by usurping the role of staff in developing the recommended findings of fact *and* pre-determining the result of the action on the petition before staff had an opportunity to conduct a full review and petitioners were provided an opportunity to address the merits of the proposed findings.

The District urges the SBE to not give weight or consideration to Petitioners’ efforts to sensationalize the issues raised in this Appeal. Petitioners are attempting to rewrite the law to impose legal obligations upon the District Board and its staff that were never intended by the Legislature. Giving any credence to Petitioners’ allegations and their position that even the slightest disagreement concerning the manner in which the District Board and/or staff implemented the procedures set out in the Education Code amounts to an abuse of discretion is improper, and it creates an avenue for every single petition that is denied by a school district or county board of education to be challenged and overturned on appeal. This was *never* the intent of AB 1505 and it would be an abuse of discretion on the part of the SBE to determine otherwise.

2. The District Board Applied the Correct Legal Standard in Denying the Petition.

The District Board acted in a manner that was consistent with the legal requirements applicable to the consideration and action on the Petition. Petitioners claim that the District Board abused

its discretion by not specifically referencing the rebuttable presumption or the specific rebuttal evidence presented by Petitioners in its adopted findings of fact. *See* Appeal, p. 16 of 33. Once again, Petitioners attempt to compel the SBE to inappropriately expand the law and impose legal obligations that are far in excess of what is required under Education Code section 47605.

Education Code section 47605(c) states that “[t]he governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings . . . (8) The school district is not positioned to absorb the fiscal impact of the proposed charter school.” While Section 47605(c)(8) thereafter states that “[c]harter schools shall be subject to a rebuttable presumption of denial,” nothing else in this section (or elsewhere in the CSA) addresses the manner in which a school district governing board is to consider any rebuttal evidence presented in opposition to the Fiscal Impact Finding. Petitioners argue that the District Board was obligated to develop a detailed set of factual findings during the public hearing to address the rebuttal evidence and to articulate why it did not collectively believe such evidence was sufficient to overcome the presumption in favor of denial. However, there is no indication from the express language in the statute or the legislative history of AB 1505 that the Legislature ever intended to commit school district governing boards to such a high standard.

In fact, other than the inclusion of the “rebuttable presumption” reference in Section 47605(c)(8), the statute and the legislative history are completely devoid of any discussion on this legal standard or how a school district governing board is expected to apply it. Therefore, it is improper to tack on additional meaning or impose obligations on a school district governing board to apply the rebuttable presumption in a particular way. To be clear, the public hearing required under Section 47605(b) is not a court proceeding or administrative hearing in which the petitioner is at risk of losing a property right or liberty interest (e.g., the revocation of a medical license or the deprivation of benefits). In those types of proceedings, a judge, hearing officer, or administrative panel analyzes the written briefings of the parties, listens to opening and closing statements, receives witness testimony and documentary evidence, and *following the conclusion of the hearing*, takes the matter under submission and later issues a formal written decision. This is completely distinguishable from a school district governing board’s consideration of a petition to establish a new charter school, which in no way confers a property right on a petitioner since the charter school does not legally exist at that point.

Perhaps the best comparison in the educational context is to a student expulsion hearing. Under Education Code section 48900 *et seq.*, prior to the expulsion of a student from school for committing any of the enumerated expellable offenses, the school district must provide the student with specific due process rights and protections, including the opportunity to request a full evidentiary hearing. Education Code section 48918 includes an extensive and detailed list of rules and procedures applicable to the hearing, including those concerning the presentation and consideration of evidence during the hearing before the governing board, hearing officer, or administrative panel. This section specifically describes the types of evidence that may be introduced, the requirement that any decision to expel shall be supported by substantial evidence, and the content of an expulsion order, among a myriad of other procedures. Understandably, these procedures are both detailed and warranted in order to protect a student’s due process rights before that student is deprived of the right to attend a public school of the district.

The level of specificity and extent of procedural protections applicable to student expulsion cases is in stark contrast to the procedures set out in Education Code section 47605 for the review and consideration of a charter petition and the application of the Fiscal Impact Finding. The law was

simply never intended to create the heightened obligations for a school district governing board in this context, as the Petitioners advocate. Consistent with the law, District Board Resolution No. 2998 included written factual findings supporting a ground for denial, which were tied to the District's status as being under state receivership, the significant remaining balance on its state emergency loan, and the fact that if the Petition was approved, it would have adverse fiscal impacts on the District due to a loss of student enrollment and a commensurate loss of state funding. [DR 1621-1632.] There was nothing more that the District needed to articulate in the resolution because the adopted findings of fact supported the ground for denial of the Petition under Section 47605(c)(8). If the Legislature intended to require a school district governing board to develop and adopt a detailed set of findings that include a full synthesis of the rebuttal evidence presented by the Petitioners, it would have said so. It did not, and SBE should not allow Petitioners to read additional requirements into the law that would arbitrarily expand the District Board's obligations in these circumstances.

Petitioners also make a bold, yet unfounded, assertion that "[t]he record indicates that the District Board did not discuss, consider, or weigh any rebuttal evidence at all at the decision meeting, even if discussion were a substitute for the requirement for written factual findings (they are not)." Petitioners then claim that the District Board "did not actually understand the applicable legal standard under Section 47605(c)(8) at all and that it was obligated to adjudicate the rebuttable presumption." *See Appeal*, p. 16 of 33. Contrary to Petitioners' characterization of the District Board's discussion at this public hearing, the District Board did exactly what it was required to do.

Members of the District Board specifically addressed the potential Fiscal Impact Finding and the rebuttable presumption, even asking its legal counsel to articulate the legal standard to ensure that the entirety of the District Board and members of the public understood the District Board's legal obligation in relation to the consideration of the Fiscal Impact Finding and the rebuttal evidence presented by Petitioners. [DR 1663-1666.] Despite this, to support their contention, Petitioners draw a singular statement from one of five members of the District Board and take it completely out of context in order to paint an image that the District Board refused or somehow failed to consider the rebuttal evidence presented during the public hearing. Specifically, Petitioners reference District Board Trustee Ubalde's comment that "VCUSD can therefore make a finding to deny any charter petition before the school board under 47605(c)(8) without needing to make any additional information or analysis," and noted that this was "completely false." *See Appeal*, p. 16 of 33. Extracting statements from the record without providing appropriate context is misleading and unfair, and represents one of the many red herrings and distraction tactics that Petitioners use to bolster their position that the District Board abused its discretion in taking action to deny the Petition based on the Fiscal Impact Finding.

To be clear, Trustee Ubalde made a lengthy comment following Petitioners' statements to the District Board and public comment. He first referenced the First Interim Report that was presented by the District's Chief Business Officer immediately prior to the public hearing on the Petition and the concern that the District would need to make a total of \$22 million in budget cuts over the next five years. He explained that with declining enrollment, it is his fiduciary responsibility, as well as the fiduciary responsibility of all the trustees, to take care of the District. [DR 1665.] In response to Mr. Mullarkey's statements that the District could anticipate an influx in additional funding based on the LAO forecast, Trustee Ubalde expressed that the next two years would be critical and that "[n]o one can actually predict what the state or the federal government will be doing." [DR 1665] He continued to state that the District is in state

receivership and, as noted in correspondence from Assemblymember O'Donnell, "VCUSD can therefore make a finding to deny any charter petition before the school board under 47605(c)(8) without needing any additional information or analysis. The law was intentionally designed for situations like the one VCUSD currently finds itself." Trustee Ubalde then proceeded to address the rebuttable presumption of denial and concluded that he "didn't hear anything that would help him go otherwise." [DR 1665] Therefore, despite Petitioners' attempt to single out Trustee Ubalde's statement for the purpose of bolstering its argument that he failed to consider the rebuttal evidence, the record clearly demonstrates otherwise.

Likewise, Vice President Gardner specifically addressed the rebuttable presumption of denial and asked District legal counsel to provide a definition of that term to ensure that there was a clear understanding of its meaning and application during the public hearing. She then asked District legal counsel for confirmation that the Fiscal Impact Finding was added to the Education Code so that it could be applied by school districts meeting one of the three listed criteria. Legal counsel confirmed that her understanding was correct and that the District's receivership status created a presumption that it was not positioned to absorb the fiscal impact of the charter school, which was subject to a rebuttable denial. [DR 1664]

Thus, as reflected by the comments made by the District Board members and the questions asked of the District's legal counsel during the public hearing, the District Board *did* understand the applicable legal standard. Irrespective of whether the individual members specifically discussed the rebuttable presumption of denial standard or vocalized their opinion or analysis of the rebuttal evidence presented by Petitioners during the public hearing, it is inappropriate for Petitioners to assume that every member of the District Board "ignore[d] rebuttal evidence" and did not give any weight to this information. *See* Appeal, p. 17 of 33. Essentially, Petitioners are arguing that the District Board members failed to consider or were incapable of engaging in their own independent thinking and decision-making regarding the rebuttal evidence that was presented unless they verbally articulated their analysis and why the rebuttal evidence was insufficient to overcome the presumption of denial. Drawing such conclusions diminishes the role of the District Board and fails to recognize, as Trustee Ubalde aptly stated, that each member has a fiduciary duty to the District Board to uphold the law and act in the District's best interests. This includes the District Board's compliance with, and application of, the requirements of Education Code section 47605 in the review, consideration, and action on a charter petition.

The District Board, therefore, did not abuse its discretion in denying the Petition based on the Fiscal Impact Finding.

Conclusion

Throughout the 33-page Appeal, Petitioners raise a series of contentions and legal arguments against the District Board to give the impression that it is biased, antagonistic to charter schools, and incapable of following the law. This could not be further from the truth. As Petitioners are well aware, the District serves as the chartering authority for Petitioners' Caliber ChangeMakers Academy, and the parties have maintained a positive and professional relationship over the course of several years. Just as it did with the Caliber ChangeMakers petition, the District Board received, reviewed, and considered the Petition for Caliber High School in a manner that comported with the procedural and substantive requirements of the law in effect at that time.

The District is one of only four school districts in the State of California that is under state receivership due to its existing state emergency loan. Petitioners could not, and did not, present rebuttal evidence to the contrary. Even assuming that the rebuttable presumption of denial is tied to whether the District is not positioned to absorb the fiscal impact of Caliber High School, Petitioners failed to demonstrate, through rebuttal evidence, that the District is in fact clearly positioned to absorb this fiscal impact. As District Superintendent Spalding shared during his presentation at the public hearing before the County Board, even if the District were to accept Petitioners' optimistic analysis that the District would experience a loss of 50 students per year to Caliber High School, this would still result in a decline of over \$600,000 per year, for a total of \$2.5 million by the fifth year of its charter term. [DR April 13, 2022 County Board Meeting Video, 43:34-44:00.]

Further, Petitioners assert that the anticipated loss of student enrollment will nevertheless result in a corresponding savings to the District and allow the District to realize other financial benefits including an oversight fee of one percent (1%) of Caliber High School's Local Control Funding Formula ("LCFF") revenue. [DR 2640.] However, this gives the impression that the approval of Caliber High School would serve as a revenue stream for the District, which is incorrect. The District could not collect an oversight fee from Petitioners unless the District Board (and not the County Board) served as the authorizer. In addition, the oversight fee is only designed to cover the *actual costs* of conducting oversight of a charter school, thus rendering this to be at most a "cost neutral" scenario. Petitioners also identified other "District savings" that are completely speculative (e.g., facilities fees, assuming the District were to negotiate a facilities use agreement or lease with Petitioners). [DR 2640.] These types of assumptions are inappropriate and do nothing to minimize the fiscal impact that would result from year-over-year declining enrollment due to District students enrolling in Caliber High School.

To reiterate, the District is not in a position to absorb the fiscal impact of the proposed charter school. The District has certified its budget as being in "qualified" status in both its 2021-2022 First and Second Interim Reports, and remains in state receivership until the balance of its \$60 million loan has been paid in full. The District appears able to meet its short-term financial obligations, but the District nevertheless projects a significant structural deficit that balloons from \$5 million in the 2022-2023 fiscal year to over \$13 million in the 2023-2024 fiscal year. [DR April 13, 2022 County Board Meeting Video, 42:06-43:07; DR 2649.] As communicated by Michael Fine, the Chief Executive Officer of FCMAT, in a February 28, 2022 letter to the County Board and at the public hearing during which the County Board took action on the Petition on appeal, "FCMAT agrees that if the district approved the charter school petition, the district would face an ongoing adverse fiscal impact due to the loss of enrollment.... While the Caliber Public Schools appeal speaks to many points, FCMAT believes there is only one relevant factor appropriate for consideration. The District remains under state receivership. Until the loan is fully repaid, the district is not positioned to absorb the fiscal impact of the proposed charter school." [DR 2631-2632; DR April 13, 2022 County Board Meeting Video, 25:36-28:51.] If any agency is in a position to render an opinion on the District's financial condition and position to absorb the fiscal impact of a charter school, it is FCMAT, which was not only created by the Legislature *for this very purpose*, but has extensive and demonstrated expertise in evaluating and assisting districts in financial distress. The District Board, County Board, author of AB 1505, and FCMAT *all agree* on this same point. It is Petitioners who are the outlier. The District therefore asks the SBE to stand in solidarity with the agencies that are most keenly aware and expertly positioned to determine the District's financial condition.

In sum, Petitioners have failed to demonstrate that the District Board engaged in any procedural or substantive errors in its consideration of, and action on, the Petition. However, even if Petitioners could make a showing that the District Board committed a procedural or other misstep, this does not automatically trigger a determination that there was a prejudicial abuse of discretion. Unless there was a flagrant violation of the law by the District Board that resulted in actual prejudice to Petitioners, the District Board's decision must stand. It is neither legally permissible nor appropriate for the SBE to reweigh the facts and evidence or insert its judgment in the place of the District Board. The Legislature intentionally and unequivocally established an extremely high standard of review to prevent the very type of fact pattern that Petitioners bring forward in their Appeal. Unless no reasonable mind could conclude that the District Board's decision to adopt the Fiscal Impact Finding comported with the law, the SBE must uphold that decision. By eliminating the charter-authorizing function of the SBE and setting a very high bar for overturning charter petition denials, the Legislature made its intentions clear: Deference must be afforded to the decisions of school districts and county boards of education, and preference must be given for local control of public education. The SBE's consideration of this Appeal should be no different.

For the reasons articulated above, the District respectfully requests that the SBE summarily deny the review of the Appeal. In the alternative, should the SBE hear the instant Appeal, the District asks that the SBE affirm the decisions of both the District Board and the County Board and find that there was no abuse of discretion in denying the Petition to establish Caliber High School.

The District appreciates the SBE's consideration of the matters raised in this Opposition. Should the SBE or CDE have any questions, please do not hesitate to contact me at (707) 556-8921, ext. 50002 or by email at wspalding@vcusd.org.

Sincerely,



William Spalding, Superintendent
Vallejo City Unified School District

cc: Members of the VCUSD Board of Trustees
Rosa Loza, Chief Business Officer
Mitchell Romao, Assistant Superintendent, Operations

Enclosures:

Exhibit 1 – Assembly Committee on Education Report (April 10, 2019)
Exhibit 2 – Senate Committee on Education Report (July 5, 2019)
Exhibit 3 – Letter for Assemblymember Patrick O'Donnell to VCUSD Board (December 9, 2021)

288-448/6374595.1

Exhibit 1: Assembly Committee on Education Report (April 10, 2019)

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1505 (O'Donnell, Bonta, McCarty and Smith) – As Amended April 1, 2019

SUBJECT: Charter schools: petitions

SUMMARY: Makes various changes to the process for charter school authorization, appeals, and renewal. Specifically, **this bill:**

- 1) Authorizes the governing board of a school district to grant a charter for the operation of a school if it is satisfied that granting the charter is consistent with sound educational practice. Specifies that the governing board of the school district is not required to approve a petition for the establishment of a charter school, and may deny approval by making written factual findings, specific to the petition.
- 2) Authorizes, if the governing board of a school district denies a petition, the petitioner to appeal that denial to the county board of education. Specifies that the county board of education may consider an appeal only if the appeal alleges that the governing board of the school district committed a procedural violation in reviewing the petition. Requires, if the county board of education finds, by substantial evidence, that the governing board of the school district committed a procedural violation in reviewing the petition, the county board of education remand the petition to the school district for reconsideration. Requires, if the appeal contains new or different material terms, the county board of education to remand the petition to the governing board of the school district for reconsideration.
- 3) Defines “material terms” of the petition to mean the signatures, affirmations, disclosures, documents, and descriptions described in the petition.
- 4) Defines “procedural violation” to mean the failure to meet the requirements and deadlines, and to provide written findings regarding the denial, that are required.
- 5) Specifies that there shall be no appeal of a denial of a charter school petition submitted directly to a county board of education for charter schools that will serve pupils for whom the county office of education (COE) would otherwise be responsible for providing direct education and related services.
- 6) Eliminates the authorization for a petition for the operation of a state charter school to be submitted directly to the State Board of Education (SBE), and the SBE to have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state.
- 7) Eliminates the authorization for a charter school to appeal a revocation decision to the county board of education and for the county board of education to reverse the revocation decision.
- 8) Eliminates the authorization for a charter school to appeal a decision of their chartering authority to grant a renewal of the charter petition.

- 9) Specifies that a petition to establish a charter school may be submitted only to the governing board of the school district or COE within the boundaries of which the charter school proposes to locate.
- 10) Specifies that a charter school operating under a charter approved by the SBE, as the statute read on January 1, 2019, may continue to operate under the authority of that chartering authority only until the date on which the charter is up for renewal, at which point the charter school shall submit a petition for renewal to the governing board of the school district within the boundaries of which the charter school is located.
- 11) Specifies that a charter school operating under a charter approved by a county board of education as the statute read on January 1, 2019, may continue to operate under the authority of that chartering authority and may submit a petition for renewal to that chartering authority or the governing board of the school district within the boundaries of which the charter school is located.
- 12) Authorizes a chartering authority to grant a charter school one or more subsequent renewals for a period of between two and five years for each renewal. Specifies that if a charter school has been identified for differentiated assistance (technical assistance) from the chartering authority, the charter school shall be renewed for less than five years.
- 13) Requires the chartering authority to consider during renewal whether the charter school maintains sound management of its business and financial operations, and whether the school is expected to meet its financial obligations for the current and two subsequent fiscal years.
- 14) Eliminates the requirement for a chartering authority to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal.
- 15) Specifies that, notwithstanding any other law, the following applies to charter schools:
 - a) Requires the evaluation rubrics and performance criteria adopted by the SBE to be applied equally to both school districts and charter schools.
 - b) If the governing body of a charter school requests technical assistance, requires the chartering authority to provide technical assistance as specified. If a charter school has not been identified for technical assistance and if the service requested creates an unreasonable or untenable cost burden for the chartering authority, the chartering authority may assess the charter school a fee not to exceed the cost of the service.
 - c) If a chartering authority does not approve a local control and accountability plan (LCAP) or annual update to the LCAP approved by a governing body of a charter school, requires the chartering authority to provide technical assistance focused on revising the LCAP or annual update so that it can be approved.
 - d) For any charter school for which one or more pupil subgroups meets the specified criteria, the chartering authority shall provide technical assistance focused on building the charter school's capacity to develop and implement actions and services responsive to pupil and community needs, including, but not limited to, any of the following:

- i) Assisting the charter school to identify its strengths and weaknesses in regard to the state priorities. Requires that include working collaboratively with the charter school to review performance data on the state and local indicators included in the California School Dashboard and other relevant local data, and to identify effective, evidence-based programs or practices that address any areas of weakness.
 - ii) Working collaboratively with the charter school to secure assistance from an academic, programmatic, or fiscal expert or team of experts to identify and implement effective programs and practices that are designed to improve performance in any areas of weakness identified by the charter school. The chartering authority, in consultation with the charter school, may solicit another service provider, which may include, but is not limited to, a school district, COE, or charter school, to act as a partner to the charter school in need of technical assistance.
 - iii) Obtaining from the charter school timely documentation demonstrating that it has completed the specified activities, or substantially similar activities, or has selected another service provider to work with the charter school to complete the specified activities, or substantially similar activities, and ongoing communication with the charter school to assess the charter school's progress in improving pupil outcomes.
 - iv) Requesting that the California Collaborative for Educational Excellence provide advice and assistance to the charter school.
 - e) Upon request of a chartering authority or a charter school, a geographic lead agency may provide technical assistance. A geographic lead agency may request that another geographic lead agency, an expert lead agency, a special education resource lead, or the California Collaborative for Educational Excellence provide the assistance.
 - f) A charter school shall accept the technical assistance provided by the chartering authority. For purposes of accepting technical assistance provided by the chartering authority, a charter school may satisfy this requirement by providing the timely documentation to, and maintaining regular communication with, the chartering authority.
 - g) A charter school is not precluded from soliciting technical assistance from entities other than the chartering authority at its own cost.
- 16) Requires the Superintendent of Public Instruction (SPI) to make recommendations to the Legislature, by September 1, 2020, regarding charter school student academic achievement criteria that shall prohibit a charter school from being renewed, charter school student academic achievement criteria that may warrant a charter school not to be renewed, and charter school student academic criteria that may warrant charter revocation.
- 17) Requires a school district to hold a hearing no later than 60 days after receiving a petition, rather than 30 days in current law, and requires the school district to either grant or deny the charter within 90 days of receipt of the petition, rather than 60 days in current law.
- 18) Requires a charter school petition to describe the means by which the charter school will achieve a balance of pupils receiving special education services, and a balance of English learner pupils, that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

- 19) Requires a charter school petition to provide a clear explanation of why the proposed model cannot be accomplished within the school district structure of neighborhood public schools.
- 20) Specifies that a charter authorizer may deny a charter school petition if a charter school would have a negative financial, academic, or facilities impact on neighborhood public schools, the COE or the school district.
- 21) Requires teachers in charter schools to hold the Commission on Teacher Credentialing certificate, permit, or other document required for the teacher's certificated assignment, and eliminates the Legislative intent language that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.
- 22) Specifies that a county board of education may only approve a new petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county, and that provides instructional services that are not generally provided by a county office of education, if the petitioner has first obtained approval from each of the school districts where the charter school petitioner proposes to operate a facility. Specifies the petitioner shall submit the same petition and supporting documentation to the school districts where the charter school proposes to operate a facility and to the county board of education.
- 23) Requires that, after receiving approval of its initial petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education first obtain approval from the school districts where those sites will be located before submitting a request for a material revision of its charter to the county board of education.

EXISTING LAW:

- 1) Establishes the Charter Schools Act of 1992 which authorizes a school district, a county board of education or the SBE to approve or deny a petition for a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved student learning, increased learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as academically low achieving, holding charter schools accountable for meeting measurable student outcomes, and providing the schools with a method to change from rule-based to performance-based accountability systems.
- 2) Establishes a process for the submission of a petition for the establishment of a charter school. Authorizes a petition, identifying a single charter school to operate within the geographical boundaries of the school district, to be submitted to the school district. Authorizes, if the governing board of a school district denies a petition for the establishment of a charter school, the petitioner to elect to submit the petition to the county board of education. Authorizes, if the county board of education denies the charter, the petitioner to submit the petition to the SBE. Authorizes a school that serves a countywide purpose to submit the charter petition directly to the county office of education. Authorizes a school that serves a statewide purpose to apply directly to the SBE.

- 3) Authorizes a charter school to be granted for not more than five years, and to be granted one or more renewals for five years. Requires the renewals and material revisions of the charter to be based upon the same standards as the original charter petition.
- 4) Requires that teachers in charter schools hold a Commission on Teacher Credentialing (CTC) certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. Requires that these documents be maintained on file at the charter school and be subject to periodic inspection by the chartering authority. States the intent of the Legislature that charter schools be given flexibility with regard to noncore, non-college preparatory courses. (Education Code 47605)
- 5) Requires teachers in countywide charter schools to be required to hold a CTC certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. Requires that these documents be maintained on file at the charter school and be subject to periodic inspection by the chartering authority. (Education Code 47605.6)
- 6) Requires a charter school to transmit a copy of its annual, independent financial audit report for the preceding fiscal year to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, (unless the county board of education of the county in which the charter school is sited is the chartering entity) and the CDE by December 15 of each year.
- 7) Requires, commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever date occurs later, a charter school to meet at least one of the following criteria prior to receiving a charter renewal:
 - a) Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.
 - b) Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.
 - c) Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.
 - d) The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.
 - e) Has qualified for an alternative accountability system.
- 8) Requires the authority that granted the charter to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal.

- 9) Requires, if a charter school fails to improve outcomes for three or more pupil subgroups, or, if the charter school has less than three pupil subgroups, all of the charter school's pupil subgroups, in regard to one or more state or school priorities identified in the charter, in three out of four consecutive school years, all of the following shall apply:
- a) Using an evaluation rubric adopted by the SBE, the chartering authority shall provide technical assistance to the charter school.
 - b) At the request of the chartering authority, the California Collaborative for Educational Excellence may, after consulting with the SPI, and with the approval of the SBE, provide advice and assistance to the charter school.
- 10) Requires a chartering authority to consider for revocation any charter school to which the California Collaborative for Educational Excellence has provided advice and assistance and about which it has made either of the following findings, which shall be submitted to the chartering authority:
- a) That the charter school has failed, or is unable, to implement the recommendations of the California Collaborative for Educational Excellence.
 - b) That the inadequate performance of the charter school, based upon an evaluation rubric adopted, is either so persistent or so acute as to require revocation of the charter.
- 11) Requires the chartering authority to consider increases in pupil academic achievement for all pupil subgroups served by the charter school as the most important factor in determining whether to revoke the charter.
- 12) Prohibits a charter school from appealing a revocation of a charter. (Education Code 47607.3)

FISCAL EFFECT: Unknown

COMMENTS: This measure makes reforms to charter school authorization, appeals, and renewals in the following ways:

- Authorizes, rather than requires, school districts to approve charter school petitions and extends the timeline by which the authorizer must act on the petition.
- Allows school districts and COEs to consider the academic, fiscal and facilities impact of a charter school during the petition process.
- Authorizes county-wide benefit charters subject to local district approval.
- Eliminates state-wide benefit charters.
- Establishes a limited appeal process only to the county office of education for charter petitions.
- Requires charter schools authorized by the SBE to apply for renewal with their local school district.
- Authorizes charter renewals of 2-5 years and requires schools identified for technical assistance to be renewed for less than 5 years.
- Requires consideration of a charter school's financial stability during renewal.

- Eliminates the requirement that academics be the highest priority during renewal and revocation.
- Requires charter school teachers to hold the CTC credential required for their assignments.
- Requires charter schools to be identified for technical assistance, and receive technical assistance, from the charter authorizer on the same timeline as school districts.
- Requires the SPI to make recommendations on academic criteria relating to charter renewals and revocations.

According to the Author: “The Charter Schools Act has largely been untouched since it was enacted in 1992. School districts have been required to approve charter schools unless the charter petition fails to adequately address the required elements. This has led to unprecedented growth of charter schools in California. Today, charter schools outnumber school districts in this state. School districts currently have limited options in regards to authorizing, renewing, and revoking charter schools. This bill seeks to strengthen the ability of charter authorizers to hold charter schools accountable for both academic and fiscal outcomes.

It is time for a correction in state law to return charter school authorization and oversight to communities where the charter schools are located. This measure ensures that charter schools are authorized and overseen by school districts and county offices of education, who are the elected officials that best understand the educational needs of their local students, thus improving proper oversight. The bill gives school districts greater authority to choose which charter schools are approved in their community, and to consider the fiscal impact of the charter school on the current students in the district. Further, this bill clarifies oversight responsibilities by requiring districts to consider the financial stability of the charter school during renewal. Lastly, the bill corrects an inconsistency in the law, and requires that charter schools receive valuable technical assistance on the same timeline as currently provided for school districts, when they are facing academic challenges.”

Background on Charter Schools: According to the California Department of Education (CDE), in the 2018-19 academic year there were 1,317 charter schools in California, with an enrollment of over 630,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization. Charter schools are authorized by school district boards, county boards of education or the SBE. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the sponsoring board and charter organizers.

Changing Authorization from “Shall to May:” This bill authorizes, rather than requires, charter authorizers to approval charter school petitions. Further, the bill continues to require charter authorizers to make written factual findings when the authorizer denies a charter petition.

In 1992, when the Charter Schools Act was first enacted by SB 1448 (Hart), school districts were authorized, rather than required, to approve charter petitions. At the time, the law read: “A school district governing board may grant a charter for the operation of a school under this part if it determines that the petition contains the number of signatures required by subdivision (a), a

statement of each of the conditions described in subdivision (d), and descriptions of all of the following...”

This bill returns the statute to the original intent of the law, where school districts have the authority to grant charter schools, but are not required to do so.

Renewal Timeline: Existing law requires that charter renewals be granted for five years. This bill allows a charter authorizer to grant a charter renewal for between two and five years. By giving authorizers more flexibility to grant renewals for between two and five years, authorizers will be able to more closely monitor charter schools that are struggling. For example, if a charter authorizer has reservations about renewing a charter school for fiscal mismanagement, the authorizer would have the flexibility to renew the charter school for a shorter period of time enabling the authorizer to examine the schools fiscal stability earlier than the current five year renewal model.

Charter School Enrollment Diversity: According to the CDE, “while overall enrollment in non-charter schools is decreasing between 2014–15 and 2018–19, enrollment in charter schools has increased from 9.2 percent to 10.6 percent of the public school population statewide. Charter schools tend to have a smaller percentage of their enrollment who belong to disadvantaged student subgroups, such as English learners, foster youth, homeless youth, migrant students, students with disabilities, and socio-economically disadvantaged. The difference is most pronounced for the English learner subgroup. In 2018–19, 15.1 percent of charter school students are identified as English learners, while 19.8 percent of non-charter school students are similarly identified.” This bill requires the charter petition to contain a description of how the school will achieve a balance of English Learners and special education students compared to the local school district.

Charter School Enrollment and Financial Pressure on School Districts: The following research demonstrates the financial pressure that charter school enrollment has on school districts.

- Lafer 2018: “Charter schools play a role in financial pressures on school districts. In Spring of 2018, as California school boards finalized their mandatory three-year financial plans—more than 250 school districts were preparing for budget cuts in the upcoming year, with at least 250 more projecting deficits to hit in 2019-20.

By 2016-17, charter schools were costing the Oakland Unified School District a total of \$57.3 million per year—a sum several times larger than the entire deficit that shook the system in the fall of 2017. Put another way, the expansion of charter schools meant that there was \$1,500 less funding available per year for each child in a traditional Oakland public school. In San Diego, the net cost of charter schools in 2016-17 totaled \$65.9 million—more than enough to have avoided the 2018 cuts and restored services lost in earlier years. And in East Side, the net impact of charter schools amounted to a loss of \$19.3 million per year, more than enough to avoid the planned round of staff layoffs. In recent years, a growing number of school officials have pointed to increasingly dire fiscal conditions caused by the continued unchecked expansion of charter schools.

Charter schools make it extremely difficult for districts to consolidate schools in the face of falling enrollment. As soon as the district closes a school, a charter school operator is free to open a new school in the same location, or at minimum intensify recruitment efforts targeting the newly dislocated students.

Charter schools themselves are often risky endeavors, and this forces districts to maintain sufficient space to be prepared for potential closures. In the past two decades, over 400 California charter schools have closed; 44 shuttered their doors in 2017-18 alone. And when charter schools close, school districts are legally required to accommodate their students. Thus, the volatility inherent to the charter sector forces school districts to maintain at least a modest cushion of surplus capacity.

For those districts where the overall student population is shrinking, the last thing rational planners would normally do is open more schools. Because the current charter authorization law allows for unlimited expansion even in times of shrinking population, it makes a difficult situation much more dire.”

Charter Facilities Impact on School Districts: This bill requires school districts and COEs to consider the facilities impact that a new charter petition will have on the neighborhood school, school district and the COE. The California Teachers Association (CTA) writes in support, “Moving towards democratic control of a school district, elected members of the school board should not be forced to do things with their facilities that they do not think is in the best interest of the students in their community. One example is when a district feels obligated to co-locate a charter school on a neighborhood public school. There may be times this is voluntary, but the flaw in current law is that sometimes it is not something the school board wants, and represents an unwanted imposition. Last year, a group of students from Eastside High School District in San Jose came to the State Board of Education to discuss how co-locations are impacting their educational experience (they were opposed to approval of the third charter intending to co-locate on their high school campus): (1) One discussed the fact that they are on the track team. They used to use the track every day. Now because of co-locations, they can only use the track one day per week. This is not really fiscal or academic - it is about the use of the facilities. (2) One discussed the fact that they love and live theater. However, because students at a co-located charter are now sharing the performing arts theater, they do not know what time to tell their parents to pick them up, often late into the evening. Similar conversations occur about the cafeteria, or the library, or surplus property that some districts want to sell to gain fiscal solvency. This is unfortunately a very contentious issue, especially in Los Angeles where 10% of their schools are co-located. The district should be able to consider how facilities will be impacted by a new charter school petition. The bill allows districts to consider whether the district has facilities available to offer the charter, and consider any co-location issues, before it is approved. Once it is approved they are required to provide facilities if the charter requests them, our point is that the district should take into consideration the facilities impact before it’s approved.”

Charter School Appeals: Between 2011 and the Spring of 2019, the SBE approved 33 charter school petitions on appeal. The SBE also approved 2 charter schools on appeal for non-renewal decisions. As of this year, there are 28 SBE-authorized charter schools and one statewide benefit charter school in operation.

According to the LA Times, “A Times analysis of the state board’s decisions has found that, over the last five years, it has sided with charters over local school districts or county offices of education in about 70% of appeals. ‘There are wildly different levels of attention being paid to these schools, and charter schools are finding ways to shop around for the weakest oversight,’ said Greg Richmond, president of the National Assn. of Charter School Authorizers. Charter schools approved by the state board ‘win by losing,’ said Thomas Saenz, a civil rights attorney who sits on the L.A. County Board of Education and voted to revoke Today’s Fresh Start’s charter. ‘They lose in front of the school district or the county, but they win because they get the state as an overseer, and that means they get less oversight.’”

If a charter school petition is denied by a school district, this bill will eliminate the county board of education’s ability to approve the charter school. This bill proposes, instead, to allow a county board of education to consider an appeal only if the appeal alleges that the school district governing board committed a procedural violation and if the county board finds that the school district board committed a procedural violation, the county board may return the petition to the school district to correct the violation. A charter school would no longer be authorized to appeal the decision of a petition to the State Board of Education (SBE). This bill also limits a charter school appeal of a revocation decision in a similar manner and removes the SBE from the appeal process for both petition appeals and revocation appeals. According to the sponsors of the bill, by allowing the SBE or the county board to authorize charter schools despite having been thoroughly vetted through the locally elected bodies, the ability for local communities to set local needs and goals is undermined.

Charter School Oversight: Charter authorizers are responsible for oversight over the charter schools they authorize. This includes site visits, academic monitoring and financial monitoring of the charter school. Charter authorizers that have oversight responsibilities over schools outside their jurisdiction have unique challenges to providing proper oversight. Appropriate oversight is most effective when the authorizer is close to the school they are monitoring. The further the authorizer is from the schools, the less oversight occurs. A significant aspect of the oversight process is to visit the charter school, walk classrooms, observe conditions, observe instruction, etc. A paper review is not sufficient. Requiring a charter authorizer to travel many miles to conduct oversight will likely not result in sufficient oversight. This bill eliminates the SBE as a charter authorizer, and requires existing charter schools that are authorized by the SBE to return to their local district at their next renewal. This will return oversight responsibilities to the local community.

Statewide Benefit Charter Schools. This bill removes the SBE’s authority to approve statewide benefit charter schools. To date, the SBE has authorized three charter schools under the provisions of the statewide benefit charter school law, though only one is still operating.

Recent litigation surrounding statewide benefit charters has been an ongoing source of tension. The suit was filed when the SBE approved Aspire’s statewide benefit charter petition despite the fact that the petition offered no evidence that the school “will provide instructional services of statewide benefit that cannot be provided by a charter school operating only in one district, or in one county.” This directly violated Education Code Section 47605.8. In March 2013, Aspire agreed to surrender its statewide benefit charter status and to be ineligible to seek statewide benefit charter status for five years.

Teacher Credentials at Charter Schools: Current law requires that teachers in charter schools hold a certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold.

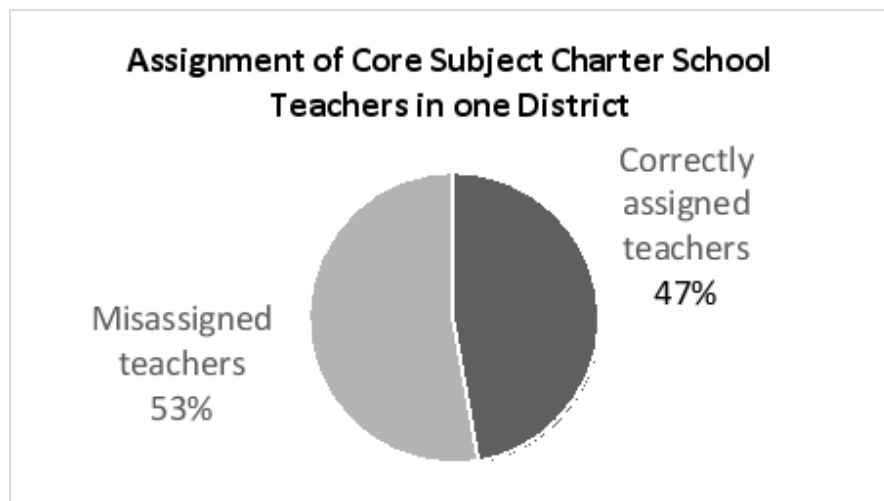
Current law also states the intent of the Legislature that charter schools be given flexibility with regard to noncore, non-college preparatory courses. It appears that, in some charter schools, this intent language has been interpreted to mean that, for subjects other than core and college preparatory courses, charter schools have significant flexibility regarding the credentialing and assignment of teachers, including whether charter school teachers in those subjects must hold any credential at all.

However, the Senate Education Committee analysis of AB 544 (Lempert), Chapter 34, Statutes of 1998, which added this provision, specifically notes that: “*Flexibility*’ has been discussed as the ability to employ guest speakers and instructors with special permits or eminence credentials.”

Due to the confusion about the meaning of existing law, this bill clarifies the law by eliminating this intent language and clearly stating that charter school teachers must hold the CTC permit, certificate or other document required for their assignment.

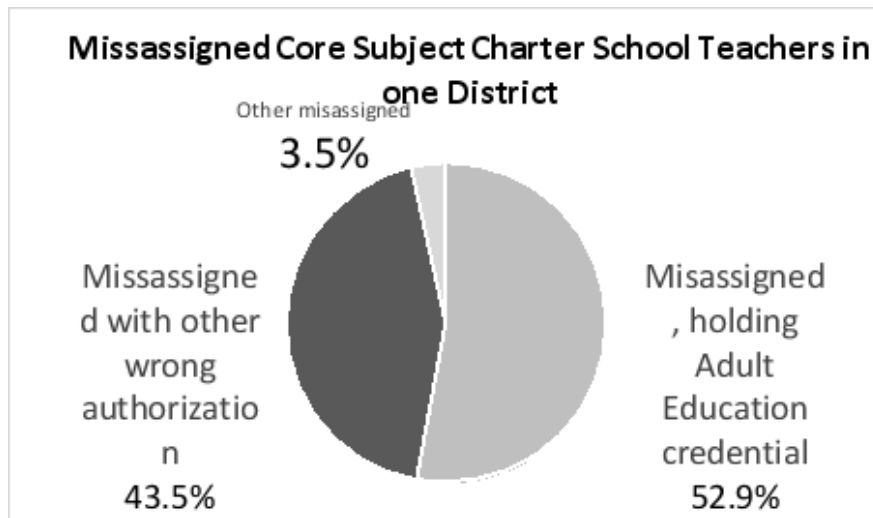
Sample of Charter School Credentialing Problems in One District. Since current law does not require the reporting of charter school misassignment data to the state, the CTC does not have any statewide information on misassignment of teachers in charter schools. However, the CTC has completed a trial of a new automated misassignment monitoring system in the districts which it is responsible for monitoring, and has preliminary data for one district’s charter schools. It should be noted that this data may not be representative of the state as a whole.

The data show that more than half (53 percent) of the teachers in core subject courses were misassigned, and that of the misassigned teachers, nearly 52.9 percent held Adult Education credentials.

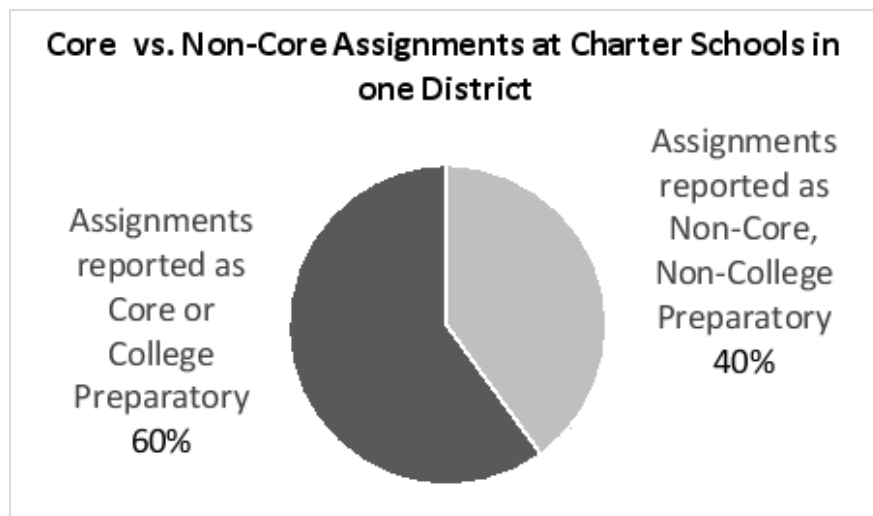


There are several forms of Adult Education credentials, the most common of which is the Designated Subjects Adult Education Teaching Credential, which authorizes instruction in “courses organized primarily for adults.” No education beyond a high school diploma is required

for issuance of this credential unless the holder will teach an academic subject, and no pre-service preparation program is required prior to issuance of the preliminary credential. If a holder of an Adult Education credential is assigned to teach a “core” assignment, as appears to be the case in this district, it is possible that he or she could be teaching an elementary school class.



In addition, nearly 40% of the assignments reviewed from this district were labeled “non-core, non-college preparatory,” for which intent language in the Education Code suggests that there should be “flexibility,” as noted above.



The CTC indicates that “non-core, non-college preparatory” means courses taught not in core subjects (not in English language arts, mathematics, history-social science, and science), courses that are not approved as meeting the admissions criteria for the University of California and the California State University (known as “A-G” courses), and courses not labeled as Advanced Placement (AP) or International Baccalaureate (IB). Obviously, any elementary school assignment would be considered “core” because students are receiving instruction in core subjects, as would any core subject course taught at a middle school.

A review of high school course catalogs from Fresno Unified School District, Davis Joint Unified School District, and San Jose Unified School District suggests that few high school courses meet the “non-core, non-college preparatory” criteria. Nearly all courses listed in those catalogs are either in core subjects, are A-G approved, or are labeled AP or IB. Most of the courses which would be considered non-core, non-college preparatory are courses in physical education, English Language Development (though some are A-G approved) and self-contained special education (for which an Education Specialist credential is required). *The Committee may wish to consider* how 40% of assignments in a district’s charter schools could be considered non-core and non-college preparatory.

In the absence of clarification of the law regarding charter school teachers and the requirement that they hold an appropriate credential for the subject they are teaching, charter schools could continue to employ teachers with no credential, or an adult education credential to teach K-12 coursework.

State System of Support: CDE developed the California School Dashboard (Dashboard) to publicly report performance data on the indicators that the SBE included in the evaluation rubrics. The Dashboard provides parents and educators with meaningful information on local education agencies (LEAs) and school progress so they can participate in decisions to improve student learning. The Dashboard highlights areas where LEAs, schools, and student groups are doing well and areas where they are struggling, to spark conversations and help focus the local planning process.

In adopting the evaluation rubrics, the SBE was also required to establish performance standards within each of the local control funding formula (LCFF) priority areas, including criteria for identifying LEAs in need of additional assistance due to low performance by one or more student groups. The lowest performance level for each of the Dashboard indicators (Red for state indicators and Not Met for Two or More Years for local indicators) generally serve as these criteria.

County offices of education must provide additional assistance to school districts that have one or more student groups in the lowest performance level for indicators in two or more LCFF state priority areas. LEAs may be subject to more intensive state intervention due to persistent low performance by multiple student groups. LCFF also created a new state agency, the California Collaborative for Educational Excellence (CCEE), to provide assistance and support to LEAs. Finally, LCFF gave new responsibilities to CDE to support county offices of education, in addition to CDE’s existing responsibilities to provide guidance and support to LEAs related to the state accountability system.

This collaborative process led to a focused System of Support for LEAs and schools, with three levels of assistance. The goal at all three levels is to help LEAs and their schools meet the needs of each student, with a focus on building capacity to sustain improvements and address student opportunity and outcome gaps.

- ***Support for All*** (Level 1): All school districts and schools can access resources and assistance, such as trainings, conferences, voluntary technical assistance, and various tools. This support builds the overall capacity of school districts and schools to improve opportunities and outcomes for all students.

- ***Differentiated Assistance*** (Level 2): County offices of education are required to provide customized assistance to school districts, also known as technical assistance, that meet eligibility criteria based on student performance.
- ***Intensive Intervention*** (Level 3): The Superintendent of Public Instruction may intervene in school districts if there are persistent performance issues over multiple years.

Academic Accountability: In creating charter schools, the Legislature declared that the intent of charter schools was to provide opportunities for teachers, parents, students and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to, among other things:

- 1) Improve student learning.
- 2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as academically low achieving.
- 3) Hold the schools established under this part accountable for meeting measurable student outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.
- 4) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.

With Legislative intent in mind, this bill provides charter schools with technical assistance with improving student outcomes consistent with the timeline that school districts receive technical assistance. Further, the bill directs the SPI to provide recommendations to the Legislature with regard to academic minimum thresholds by which a charter school should achieve in order to earn renewal. Specifically, the bill requires the SPI to provide recommendations in the following areas:

- charter school student academic achievement criteria that shall prohibit a charter school from being renewed,
- charter school student academic achievement criteria that may warrant a charter school not to be renewed, and
- charter school student academic criteria that may warrant charter revocation.

The following research illustrates the effectiveness of charter school academic outcomes.

- The June 2009 Center for Research on Education Outcomes (CREDO) report, “reveals that a decent fraction of charter schools, 17 percent, provide superior education opportunities for their students. Nearly half of the charter schools nationwide have results that are no different from the local public school options and over a third, 37 percent, deliver learning results that are significantly worse than their student would have realized had they remained in traditional public schools. These findings underlie the parallel findings of significant state- by- state differences in charter school performance and in the national aggregate performance of charter schools. The policy challenge is how to deal constructively with varying levels of performance today and into the future.”
- Epple, Ramano and Zimmer 2015: “CREDO found in the 2009 study that 17 percent of charter schools outperformed traditional public schools (TPSs) in math, but this number grew to 29 percent in the 2013 study. On a similar note, CREDO found that 31 percent

performed worse than their TPSs counterpart in the 2009 study, but only 19 percent in the 2013 study. While this suggests some improvement between the timeframes of the studies, the 2013 study's overall national estimate of charter schools suggests little average impact with no statistically significant difference in math and a slight positive effect in reading of 0.01 of a standard deviation. In general, these results have been interpreted in two ways. The more optimistic view is that overall performance of charter schools is improving over time. The more negative view is that many students' performance in many charter schools are still lagging behind students in TPSs and, overall, the results across the two studies do not show a pattern of systematic improvement."

Arguments in Support: According to the San Bernardino County District Advocates for Better Schools, "Charter schools play an important role in our public school system, but their recent unmitigated growth has taken a toll on neighborhood schools and the students they serve. California public schools are experiencing ongoing declines in attendance, increased special education costs, and unmet facilities and technology needs. These are real issues that require strategic solutions and meaningful investments, but they are exacerbated when local boards cannot consider whether a charter school will actually improve services and programs offered to students, or whether a charter school will draw resources away from already strapped neighborhood schools. We fully support AB 1505's mission to return power to local school boards in all matters impacting the public schools in their jurisdiction. The school board is elected to make decisions in the best interest of the children living in their district, and if voters disagree with the decisions their school board members make, they have recourse at the ballot box. We believe AB 1505 supports sensible and long-needed charter school reform that will strengthen both neighborhood and charter schools."

Arguments in Opposition: According to the Charter Schools Development Center, "This bill repeals the entire appeals process for charter schools and would place all charter-granting authority solely in the hands of local school district boards, making charter-granting a discretionary act, eliminating the current right of appeal of denials of charter petition and charter renewals. Under current law, schools districts are nominally compelled to grant charters unless they can make specified findings, charter petitioners may appeal denials to both the county and state boards of education, and may also appeal denials of renewals. This bill would eliminate all such rights of appeal, unless the issue for appeal is procedural, leaving charter petitioners subject to the sole discretion of local districts, who would no longer need to make specified findings to justify denial of a charter. This bill also amends the current law calling for charter renewals to last five years, allowing for renewals as short as two years, and imposing various renewal restrictions and intervention requirements based on the state's new California School Dashboard indicators."

Committee Amendments: *Staff recommends* the following amendments:

- 1) Require charter petitions to include a description of the governance structure of the school, including the process for parental involvement and the names of the charter school governing body members.
- 2) Clarify that a COE cannot consider a charter school petition on appeal if there are new or different material terms than the original petition submitted to the school district.
- 3) Prohibit the provisions in this bill to be waived by the SBE.

Related and Prior Legislation: AB 1506 (McCarty) from this Session would establish a statewide and local cap on the number of charter schools that can operate.

AB 1507 (Smith) from this Session would eliminate the authorization for charter schools to be located outside the boundaries of their authorizer in specified instances; and, authorize nonclassroom-based charter schools to establish one resource center within the jurisdiction of the school district where the charter school is located.

SB 808 (Mendoza) from 2017, which was held at the request of the author in the Senate Education Committee, would have required all charter school petitions to be approved by the governing board of the school district in which the charter school is located, prohibited a charter school from locating outside of its authorizer's district boundaries, and limited the current charter appeal process to claims of procedural violations. Further, the bill specified that charter schools previously approved by a county board or the state and charter schools operating outside of their authorizer's district boundaries may continue to operate until the charter is required to be renewed.

SB 1362 (Beall) from 2018, which was never heard by the Senate Education Committee, would have expanded the existing oversight requirements of, and increased the oversight fees that can be charged by, charter school authorizers; changed the charter petition review process for school district and county office of education governing boards; added special education and fiscal and business operations content to the information that must be included in a charter petition; expanded the authority of a governing board to deny charter petitions; and, required the Legislative Analyst to submit a report to the Legislature on special education services by charter schools.

SB 808 (Mendoza) from 2017, which was held in the Senate Education Committee, would have required all charter school petitions to be approved by the governing board of the school district in which the charter school is located, prohibited a charter school from locating outside of its authorizer's district boundaries, and limited the current charter appeal process to claims of procedural violations. Further, the bill specified that charter schools previously approved by a county board or the state and charter schools operating outside of their authorizer's district boundaries may continue to operate until the charter is required to be renewed.

AB 950 (Rubio) from 2017, which was held on the Assembly Appropriations Suspense File, would have expanded the role of a county board of education and the State Board of Education (SBE) in authorizing charter schools; authorized countywide charter schools to hire non-credentialed teachers for noncore courses; and, authorized countywide charter schools to appeal the denial of an application to the SBE.

AB 1224 (Weber), from 2017, which was held in the Assembly Education Committee, would have established a County Chartering Pilot Program for three county offices of education (COEs) to authorize up to five new charter schools in their county or the neighboring counties; authorized existing charter management organizations (CMOs) to consolidate up to 10 existing schools, located anywhere in the State, under a county office of education as part of the Pilot Program; and, exempted these charter management organizations from existing requirements pertaining to the citing of resource centers which would allow an unlimited number of resource centers anywhere in the State.

SB 329 (Mendoza) from 2015, which was held on the Senate Appropriations Suspense file, would have required a school district or county office of education, as part of its review of a charter petition, to consider 1) a report assessing its capacity to conduct oversight of the charter school and 2) a report of the anticipated financial and educational impact on the other schools for which the school district has oversight obligations.

SB 1290 (Alquist), Chapter 572, Statutes of 2012, requires the authority that grants a charter school to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal or whether to revoke a charter school; and, requires a charter school to achieve its Academic Performance Index (API) growth target for schoolwide and numerically significant pupil subgroups for renewal, as specified.

AB 1172 (Mendoza) from 2012, which failed passage in the Senate Education Committee, would have authorized a school district to deny a petition for the establishment of a charter school if it finds the charter school would have a negative fiscal impact on the school district.

AB 440 (Brownley), from 2011, which was moved to the inactive file on the Senate Floor, would have established academic and fiscal accountability standards related to charter schools.

AB 1950 (Brownley), from 2010, which was held in the Senate Education Committee, would have established academic and fiscal accountability standards related to charter schools.

AB 2320 (Swanson), from 2010, which failed passage in the Senate Education Committee, would have added new requirements to the charter school petition process, deleted the authority of a charter school petitioner to submit a petition to a County Board of Education to serve pupils that would otherwise be served by the County Office of Education, and eliminated the ability of the State Board of Education to approve charter school petition appeals.

AB 8 X5 (Brownley) from 2009, proposed comprehensive changes to the Education Code consistent with the federal Race to the Top (RTTT) program; this bill addressed the four RTTT policy reform areas of standards and assessments, data systems to support instruction, great teachers and leaders and turning around the lowest-achieving schools. Deleted the statewide charter school cap; proposed enhanced charter school fiscal and academic accountability standards. This bill was held in the Senate Education Committee at the request of the author.

AB 3 X5 (Torlakson) from 2009, deleted the statewide charter school cap and proposed changes to the measurable student outcomes, renewal and revocation procedures for charter schools. This bill was introduced but was not referred to a committee.

AB 2954 (Liu) from 2006, which was vetoed by the Governor, would have added "negative fiscal impact" as a reason for a school district to deny a charter school petition and authorizes a condition for approval of a petition as it relates to providing free and reduced priced meals. Governor's veto message:

While I understand the plight of school districts faced with fiscal challenges of declining enrollment and other management issues, I cannot condone allowing them to deny parents and students their rights to petition for the establishment of a charter school. In essence, this bill would grant school districts the authority to punish charter petitioners

because of problems caused by their own fiscal management issues or their unwillingness to make tough decisions, or both.

In addition, allowing school districts to require, as a condition of approval, that the petition describe how the charter school will provide free and reduced-priced meals to eligible pupils would simply provide districts with another pretext on which to deny a charter. Charter schools are generally exempt from most laws and regulations governing school districts and they should continue to be exempt from this one.

In sum, this bill runs counter to the intent of charter schools, which is to provide parents and students with other options within the public school system and to stimulate competition that improves the quality not only of charter schools, but of non-charter schools as well.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation Of State, County And Municipal Employees, Afl-Cio
California Association Of School Business Officials (Casbo)
California Federation Of Teachers
California Labor Federation, Afl-Cio
California School Employees Association
California State Association Of Electrical Workers
California State Pipe Trades Council
California Teachers Association
Educators For Democratic Schools
Newhall School District
Oakland Unified School District
Public Advocates Inc.
San Bernardino County District Advocates For Better Schools
San Diego Unified School District
San Francisco Unified School District
Santa Barbara Unified School District
Small School Districts Association
Stand With Public Education
Western States Council Sheet Metal, Air, Rail And Transportation
Individuals

Opposition

Able Charter Schools
Ace Charter Schools
Aerostem Academy (Charter School)
Alliance College-Ready Public Schools
Alma Fuerte Public School
Alpha Public Schools
Alta Public Schools

Apex Academy
Aplus+
Aspire Public Schools
Audeo Charter School
Baypoint Preparatory Academy
Bella Mente Montessori Academy
Bright Star Schools
Bullis Charter School
Caliber Schools
California Charter Schools Association
California Connections Academy
California Pacific Charter Schools
Camino Nuevo Charter Academy
Champs Charter High School Of The Arts
Charter Schools Development Center
Chico Country Day School
Chime Institute
Citizens Of The World Charter School
City Charter Schools
Collegiate Charter High School Of Los Angeles
Community School For Creative Education
Core Butte Charter School
Core Charter School
Da Vinci Connect
Da Vinci Schools
Desert Trails Preparatory Academy
Ednovate
Education For Change
Edvoice
El Sol Science And Arts Academy
Endeavor College Prep
Environmental Charter Schools
Envision Education
Epic Charter School
Escuela Popular
Excelencia Charter Academy
Excelsior Charter Schools
Extera Public Schools
Fenton Charter Public Schools
Forest Charter School
Gabriella Charter Schools
Gateway College And Career Academy
Girls Athletic Leadership Schools Los Angeles
Goals Academy
Granada Hills Charter High School
Green Dot Public Schools California
Grimmway Schools
Grossmont Secondary School
Guajome Schools

Hawking Steam Charter School
Heritage Peak Charter School
High Tech Los Angeles
Icef Public Schools
Ilead California Charter Schools
Inspire Charter Schools
International School For Science And Culture
Isana Academies
Ivy Academia Entrepreneurial Charter School
James Jordan Middle School
John Muir Charter Schools
Julian Charter School
Kairos Public Schools
Kavod Charter School
Kinetic Academy
Kipp Bayview Academy
Kipp Bayview Elementary
Kipp Bridge Academy
Kipp La Public Schools
La Verne Elementary Preparatory Academy
Language Academy Of Sacramento
Larchmont Charter School
Lashon Academy
Leadership Public Schools
Learn4life Assurance Learning Academy
Leonardo Da Vinci Health Sciences Charter School
Libertas College Preparatory Charter School
Lighthouse Community Public Schools
Literacy First Charter Schools
Los Angeles Academy Of Arts And Enterprise
Los Angeles International Charter School
Los Angeles Leadership Academy
Los Feliz Charter School For The Arts
Magnolia Public Schools
Mirus Secondary School
Multicultural Learning Center
Navigator Schools
New Academy Of Sciences And Arts
New Horizons Charter Academy
New Los Angeles Charter Schools
New West Charter
Norton Science And Language Academy
Nova Academy Early College High School
Oakland Unity High School
Odyssey Charter Schools
Olive Grove Charter School
Orange County Academy Of Sciences And Arts
Orange County Educational Arts Academy
Pacific Charter Institute

Pacoima Charter School
Palisades Charter High School
Para Los Ninos
Partnerships To Uplift Communities Schools
Perseverance Prep
Phoenix Charter Academy
Pivot Charter Schools
Plumas Charter School
Puente Charter School
Resolute Academy
Rio Valley Charter School
Rocketship Public Schools
Rocklin Academy Family Of Schools
Sacramento County Board Of Education
Samueli Academy
San Diego Cooperative Charter Schools
San Diego Global Vision Academy
San Jose Conservation Corps & Charter School
Santa Rosa Academy
Scholarship Prep Charter School
Shasta Charter Academy
Sherman Thomas Charter School
Siatech, Inc.
Silicon Schools Fund
Soar Charter Academy
Soleil Academy
Springs Charter School
St Hope Public Schools
Stem Prep Schools
Summit Leadership Academy High Desert
Summit Public Schools
Sutter Peak Charter Academy
Sweetwater Secondary School
Sycamore Academy Of Science And Cultural Arts
Sycamore Creek Community Charter School
Taylion Academy
Teach Public Schools
The Academies
The Charter School Of San Diego
The Foundation For Hispanic Education
The Preuss School Ucsd
Thrive Public Schools
Twin Ridges Home Study Charter School
University High School
University Preparatory Academy
Urban Discovery Academy
Valley Charter School
Valley View Charter Prep
Village Charter Academy

Visions In Education
Vista Charter Public Schools
Voices College Bound Language Academies
Vox Collegiate Of Los Angeles
Western Sierra Charter Schools
Westlake Charter School
Wish Charter Schools
Yes Charter Academy
Youth Policy Institute Charter Schools
Youthbuild Charter School Of California
Individuals

Analysis Prepared by: Chelsea Kelley / ED. / (916) 319-2087

Exhibit 2: Senate Committee on Education Report (July 5, 2019)

SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2019 - 2020 Regular

Bill No: AB 1505 **Hearing Date:** July 10, 2019
Author: O'Donnell
Version: July 5, 2019
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: Charter schools: petitions

SUMMARY

This bill makes various changes relating to charter school authorizations, appeals, and renewals, clarifies the teacher credentialing requirements of charter schools teachers, and places a two-year moratorium on nonclassroom-based charter schools.

BACKGROUND

Existing law:

- 1) Establishes the Charter Schools Act of 1992, providing for the establishment of charter schools in California for the purpose, among other things, of improving student learning and expanding learning experiences for pupils who are identified as academically low achieving.
- 2) Authorizes anyone to develop, circulate, and submit a petition to establish a charter school, and requires charter developers to collect certain signatures in support of the petition, as specified. A governing board must grant a charter if it is satisfied that the charter is consistent with sound educational practice. A governing board is precluded from denying a petition unless it makes written factual findings that the petition fails to meet one or more of the following:
 - a) The charter school presents an unsound educational program.
 - b) The petitioners are demonstrably unlikely to successfully implement the program described in the petition.
 - c) The petition does not contain the number of required signatures.
 - d) The petition does not contain an affirmation it will be nonsectarian, nondiscriminatory, shall not charge tuition, and other affirmations, as specified.
 - e) The petition does not contain reasonably comprehensive descriptions of the 16 required elements of a charter petition.
- 3) Authorizes a petitioner to submit a petition directly to a county board of education to establish a charter school that will serve pupils for whom the county office of

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education would otherwise be responsible for providing direct education and related services.

- 4) Authorizes a county board of education to approve a petition for the establishment of a countywide charter school that operates at one or more sites within the geographic boundaries of the county that provides instructional services that are not provided by a county office of education.
- 5) Establishes an appeals process for charter schools. Under current law, if a school district governing board denies a petition, a petitioner may appeal to the county board of education. If the county board of education also denies the petition, the petitioner is authorized to submit the petition to the State Board of Education (SBE) for approval.
- 6) Authorizes the SBE to approve petitions for state charter schools that operate at multiple sites throughout the state.

ANALYSIS

This bill:

- 1) Extends the timeline to approve or deny a new charter school petition an additional 30 days.
- 2) Specifies that a charter petition is deemed received by a school district or county board of education when the petitioner submits the complete petition.
- 3) Requires the governing board of a school district or county board of education to publish all staff recommendations regarding a charter petition at least 15 days before the public hearing at which the board will either grant or deny the charter. Specifies that petitioners shall have an opportunity to present evidence and testimony to the governing board.
- 4) Requires all charter petitions to include:
 - a) The names and relevant qualifications of all persons whom the petitioner nominates to serve on the charter governing board for schools operated by, or as, a nonprofit public benefit corporation.
 - b) A clear explanation of why a new or expanding charter school's proposed model cannot be accomplished within the school district structure of neighborhood public schools.
- 5) Allows school districts to deny a petition to create or expand a charter school if the charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. A finding under this provision must detail specific facts and circumstances that analyze and consider both of the following:

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- a) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings, including consideration of the fiscal impact of the proposed charter school.
 - b) Whether the proposed charter school would duplicate a program currently offered within existing neighborhood schools and the existing program has sufficient capacity for the pupils proposed to be served.
- 6) Allows school districts to deny a petition to create or expand a charter school if the district is not positioned to absorb the fiscal impact of the proposed charter school, which includes any of the following circumstances:
- a) The district has a qualified interim certification and the county superintendent of schools, in consultation with the Fiscal Crisis Management and Assistance Team, certifies that approving the charter school would result in the district having a negative interim certification.
 - b) The district has a negative interim certification.
 - c) The district is under state receivership.
- 7) Specifies that a charter petition submitted to a county board of education on appeal containing new or different “material terms” shall be immediately remanded back to the denying school district for reconsideration within 30 days. If the school district denies the petition, the petitioner may elect to resubmit the petition on appeal to the county board of education.
- 8) Defines “material terms” to mean the signatures, affirmations, disclosures, documents, and descriptions included in the charter petition, but does not include administrative updates due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law.
- 9) Allows a petitioner denied by the county board of education to appeal that denial to the SBE within 30 days, as specified. If the appeal contains new or different material terms, the SBE shall remand the petition back to the county board of education.
- 10) Requires the SBE’s Advisory Commission on Charter Schools to hold a public hearing to review the appeal and submit a recommendation to the SBE whether there is sufficient evidence to hear or summarily deny review of the appeal. Upon hearing an appeal, the SBE may reverse the determination of the county board of education upon a determination that there was an abuse of discretion. If the denial of a charter petition is reversed by the SBE, the county board of education shall become the chartering authority.
- 11) Requires charter school teachers to hold a Commission on Teacher Credentialing (CTC) certificate, permit, or other document required for the teacher’s certificated assignment, unless the teacher holds a certificate of clearance and does not teach a course in English, math, science, social science,

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elementary school, or in certain special education settings. Exempts teachers employed by a charter school before January 1, 2020 assigned to teach noncore, noncollege preparatory courses from this requirement.

- 12) Requires the CTC to develop a certificate of clearance or other equivalent document for noncore, noncollege preparatory courses in charter schools.
- 13) Eliminates the authority to establish a statewide benefit charter school and specifies that an existing statewide benefit charter school may continue to operate until the date on which the charter is up for renewal, at which point the charter school shall submit a petition for renewal to the governing board of the school district within the boundaries of which the charter school is located.
- 14) Establishes additional charter renewal criteria based on the performance of the charter school on the state and local indicators included in the state's evaluation rubrics. Specifically:
 - a) The chartering authority shall not deny renewal of a charter school, and may renew the charter for a period of between five and seven years, if the charter school received, for two consecutive years immediately preceding the renewal decision, the two highest performance levels on all the state indicators and the chartering authority does not make an adverse finding based on the renewal charter petition.
 - b) The chartering authority shall not renew a charter school if the charter school received, for two consecutive years immediately preceding the renewal decision, the two lowest performance levels on all the state indicators, unless the chartering authority makes a written factual finding that continued operation of the charter school is in the best interest of pupils and the charter school is making meaningful steps to address the underlying cause of low performance. Upon making such a determination, the charter school may be renewed for a period of two years.
 - c) The chartering authority shall consider denying a charter renewal if the charter school received, for four consecutive years immediately preceding the renewal decision, the two lowest performance levels on all the state indicators, unless the chartering authority makes a written factual finding that continued operation of the charter school is necessary based on an identified extraordinary need in the community and the charter school is making meaningful steps to address the underlying cause of low performance, as reflected in a written plan adopted by the charter governing board. Upon making such a determination, the charter school may be renewed for a period of two years.
 - d) For all other charter schools, the chartering authority shall consider the performance of all groups of pupils served by the charter school on the state and local indicators and provide greater weight to performance on measurements of academic performance. The chartering authority may deny a renewal upon making a written finding that closure of the school is in the best interest of pupils and that its decision provided greater weight

to performance on measurements of academic performance. An approval of a renewal shall be for a period of five years.

- 15) Prohibits the approval of a petition for the establishment of a new nonclassroom-based charter school from January 1, 2020 to January 1, 2022 with the following exceptions:
- a) Except for a nonclassroom-based charter school that was granted approval of its petition and was providing educational services to pupils before July 1, 2019 under either of the following circumstances:
 - i) If Assembly Bill 1507 becomes operative and the charter school is required to submit a petition to the governing board of a school district in an adjacent county in which its existing resource center is located, or to retain current program offerings and enrollment.
 - ii) If a charter school is required to submit a petition to a school district in which a resource center is located in order to comply with the court decision in Anderson Union High School District v. Shasta Secondary Home School, and the petition is necessary to retain current program offerings or enrollment.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The Charter Schools Act has largely been untouched since it was enacted in 1992. School districts have been required to approve charter schools unless the charter petition fails to adequately address the required elements. This has led to unprecedented growth of charter schools in California. Today, charter schools outnumber school districts in this state. School districts currently have limited options in regards to authorizing, renewing, and revoking charter schools. This bill seeks to strengthen the ability of charter authorizers to hold charter schools accountable for both academic and fiscal outcomes.

It is time for a correction in state law to return charter school authorization and oversight to communities where the charter schools are located. This measure ensures that charter schools are authorized and overseen by school districts and county offices of education, who are the elected officials that best understand the educational needs of their local students, thus improving proper oversight. The bill gives school districts greater authority to choose which charter schools are approved in their community, and to consider the fiscal impact of the charter school on the current students in the district. Further, this bill clarifies oversight responsibilities by requiring districts to consider the financial stability of the charter school during renewal. Lastly, the bill corrects an inconsistency in the law, and requires that charter schools receive valuable technical assistance on the same timeline as currently provided for school districts, when they are facing academic challenges.”

- 2) ***Charter school overview.*** Charter schools are public schools that provide instruction in any combination of grades kindergarten through 12. In 1992, the

state enacted legislation allowing charter schools in California to offer parents an alternative to traditional public schools and encourage local leaders to experiment with new educational programs. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to school districts. Generally, all charter schools must (1) provide nonsectarian instruction, (2) charge no tuition, and (3) admit all interested students up to school capacity. To both open and continue operating, a charter school must have an approved charter setting forth a comprehensive vision for the school.

Over the last decade, charter school enrollment has grown steadily. In 2006, 560 charter schools served about 200,000 students (3.5 percent of the state's K-12 enrollment). By 2016, over 1,200 charter schools served about 580,000 students (almost 10 percent of the state's K-12 enrollment). Most charter schools are small, compared to traditional public schools, and located in urban areas. The median charter school enrolls about 250 students, whereas the median traditional public school enrolls about 525 students. Together, nine Bay Area counties, Los Angeles County, and San Diego County account for more than 60 percent of all charter schools and charter school enrollment in the state.

Charter schools can be conversions of existing public schools or new startup schools. About 15 percent of charter schools are conversions, with the remaining 85 percent being startups. Of these, about 80 percent offer traditional, classroom-based instruction and 20 percent offer some form of independent study, such as distance learning or home study.

- 3) **Charter school authorization.** Groups that are interested in creating a charter school must adhere to a state prescribed application process. A charter petition must be signed by a sufficient number of interested teachers or parents and must set forth a comprehensive vision for the school, including its educational program, student outcome measurements, student discipline policy, employee policies, governance structure, and fiscal plans. Petitions must be submitted to an authorizer, which in most cases is the school district in which the charter school will be located. Groups can also submit petitions to the county office of education or the state for charter schools that will serve multiple districts or multiple counties.

Existing law requires an authorizer to approve a charter application, unless it makes a written finding that: (1) the proposed educational program is unsound, (2) the petitioners are unlikely to successfully implement their program, (3) there are insufficient signatures, (4) the proposed school violates one of the three basic requirements for all charter schools, or (5) the petition does not include a reasonably comprehensive vision for the school. A charter school that is rejected by its district may appeal to its county office of education, and if rejected there, may appeal to the state.

- 4) **Charter school oversight.** A charter school must promptly respond to all reasonable inquiries from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction. Each chartering authority is also required

to: (1) identify at least one staff member as a contact person for the charter school, (2) visit each charter school annually, (3) ensure that each charter school complies with reporting requirements, (4) monitor the fiscal condition of each charter school under its authority, and (5) provide timely notification to the State Department of Education if an existing charter is renewed, revoked, or ceased. Charter schools must annually submit reports to its chartering authority and county superintendent of schools including budget information, interim financial reports, and audits. The chartering authority is tasked with using any financial information it obtains from the charter school to assess the fiscal condition of the charter school.

5) ***Findings and recommendations from recent informational hearing.*** On October 23, 2017, this Committee held an informational hearing on charter school authorization in California. The hearing covered the authorization process, with perspectives shared by charter school practitioners, charter authorizers, the Legislative Analyst, and the state's Fiscal Crisis Management and Assistance Team. Notable findings and recommendations from the panelists were as follows:

- a) *California has many authorizers each overseeing few charter schools, making it difficult to develop systemic authorizer expertise.* California represents 1/3 of all authorizers and 18 percent of all charter schools in the nation. Of the state's authorizers, 90 percent are school districts, with 85 percent overseeing five or fewer charter schools (half oversee only one charter school).
- b) *Charter schools usually close for fiscal reasons.* More than 80 percent of charter school closures are due to financial mismanagement.
- c) *Current oversight fee levels do not support meaningful oversight.* For most authorizers, the oversight fees paid by charter schools do not provide substantial resources, because most authorizers oversee fewer than five charter schools that tend to be small. This prohibits most authorizers from staffing full-time charter offices, resulting in oversight engagement that is sporadic, distracted, and a contributor to staff turnover for the authorizer.
- d) *Charter schools have changed over time, but the approval process has not.* The growth of the charter school sector has brought multi-school networks operated by charter management organizations and more blended learning models. Yet, the charter petition and the approval process has not changed. The content found in petitions has become "boilerplate", undermining the purpose and value of the approval process. Further, petitions lack sufficient financial, operational, and governance information for authorizers to effectively determine which petitioners are "demonstrably unlikely to successfully implement the program".
- e) *Meaningful upfront charter evaluations are critical because schools that do not start strong rarely improve.* Research shows that charter schools that begin with unclear plans and insufficient resources almost never improve.

However, the schools may not be forced to close for two or three years, exacerbating the negative impact on students, parents, and taxpayers. This makes the quality of the information in petitions and the capacity of authorizers to do meaningful evaluations on the front end even more important.

- f) *Charter authorizers can face timeline challenges.* To evaluate a petition effectively, authorizers need staff with knowledge about education, assessments, special education, English-learners, school finance, human resources, and governance. With no control of when petitions will be submitted, meeting the current review timelines can be challenging for authorizers. For example, a petition that is submitted in early November gives an authorizer roughly 20 working days to arrange its multi-disciplinary team, review the petition, and present a report to its board.
 - g) *Charter renewal process does not reconcile initial promises with results.* When a charter school applies for renewal, it simply updates its original petition, even though what is most important is how well the charter school performed on the promises that were made. This represents a disconnect between the statutory standard for charter renewal and the state's new continuous improvement accountability structure.
 - h) *Conflicts of interest can influence charter petition decisions.* When evaluating charter petitions, district officials can, at times, be motivated by retaining or recapturing student enrollment, even if their district schools are underperforming. This inherent conflict speaks to the value of the current appeal process.
 - i) *Capacity interviews should be required.* While some authorizers already conduct capacity interviews, panelists stated that the increasingly boilerplate nature of charter petitions warrants that these interviews be part of the statutory process. These interviews are now viewed as the only effective way of truly assessing petitioner capacity.
 - j) *The functions of annual oversight should be clarified in law.* Existing law requires authorizers to monitor the fiscal condition of charter schools, but it does not say how. Because the details are left to be determined by each authorizer, there is wide variety in what oversight looks like throughout the state. Some authorizers are quite involved (bordering on intrusive) and others do little more than process paperwork.
- 6) ***Charter growth correlates with poverty in California.*** Even though only about 10 percent of California's 6.2 million public school students attend a charter school, the state's charter school enrollment has more than doubled over the last ten years. While charter school growth is often portrayed as a statewide fight over students and territories, charter enrollment data appears to show that most charter growth has occurred in very specific regions of the state. In fact, over the last ten years, more than half of California's school districts authorized no new charter schools at all. The areas of the state in which charter growth has been

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most substantial tend to be areas where most students are from low-income families, with particular charter concentration occurring in big urban areas.

- 7) ***Charter School Task Force report.*** The Governor has previously stated that rising charter school enrollments in some urban districts are having real impacts on those districts' ability to provide essential support and services for their students. The Governor requested the Superintendent of Public Instruction (SPI) to convene a group of experts to closely examine the impact of charter school growth on district budgets and to provide a report and recommendations by July 1, 2019. The task force included 11 individuals—5 representing school labor groups, 4 representing charter schools, and 2 LEA superintendents.

On June 6, 2019, the SPI submitted the California Charter School Policy Task Force Report to the Governor. The report includes the following recommendations for which there was unanimous support:

- a) Extend the timeline to approve or deny a new charter school petition an additional 30 days.
- b) Create a statewide entity to develop standards for providing oversight to charter schools and provide training for authorizers.
- c) Include students transferring to charters schools in the average daily attendance "hold harmless" calculation for school districts.
- d) Provide additional discretion when considering a new charter school authorization and amend the role of CDE in oversight.

The report also includes the following recommendations for which there was majority support:

- a) Enact a one-year moratorium on the establishment of virtual charter schools.
- b) Remove the California State Board of Education from hearing appeals of charter petition denials.
- c) Limit the authorization of new charter schools to local districts with an appeals process that takes place at the County Board of Education only when there was an error by the district governing board.
- d) Prohibit districts from authorizing charter schools located outside of district boundaries.
- e) Allow authorizers to consider fiscal impact as part of the authorization process.
- f) Establish clear guidelines for use by authorizers and by charter applicants for new charter petitions.

- g) Update Education Code requirements to reflect current state accountability.

The report also notes that amending current law such that school districts “may” approve charter petitions instead of school districts “shall” approve charter schools, as specified, was not supported by the majority.

- 8) ***How will a charter petitioner know the extent to which their program can or cannot be accomplished within the school district structure?*** Current law allows charter school authorizers to any petition that does not contain reasonably comprehensive descriptions of various aspects directly pertaining to the proposed charter school—the education program and its goals, the measurable pupil outcomes to be used, the school’s governance structure, its health and safety procedures, admissions policies, auditing practices, student disciplinary procedures, employee rights, dispute resolution, and procedures to be used if the charter school closes. There is only one description that must be included that does not directly pertain to the charter school itself—the public school alternatives for pupils residing within the school district who choose not to attend charter schools.

This bill would add a second required description that does not directly pertain to the charter school—a clear explanation of whether and to what extent the proposed model cannot be accomplished within the school district structure of neighborhood public schools. Is it reasonable to expect a charter petitioner to be able to provide a comprehensive explanation about the capabilities and/or willingness of a school district to offer a specific type of program? Given that every school district has unique circumstances affecting their ability to offer courses (e.g. fiscal constraints, other local priorities, lack of qualified personnel, etc.), and that the variables affecting each individual program differ, it seems that few charter petitioners will be able to meet this standard. Should not meeting this standard be a basis for denying an otherwise strong charter petition?

- 9) ***Should a school district be able to deny a charter school based on its fiscal impact both objectively and/or subjectively?*** Existing law does not authorize a school district to deny a charter petition solely because of the fiscal impact that the charter school would have on the district. Given that state funding for LEAs is based on the number of students served, there is no question that when students leave traditional public schools to attend charter schools, the school district’s finances suffer.

As currently drafted, this bill would establish two options for school districts to deny a charter petition based on the financial impact to the district—an objective option and a subjective one.

Based on objective criteria, all school districts submit interim financial reports to their county superintendent about their ability to meet their financial obligations in the current and two subsequent budget years. This bill would allow a school district to deny a charter school if the district: (1) has a qualified interim certification and the county superintendent of schools, in consultation with FCMAT, certifies that approving the charter school would result in the district

having a negative certification, (2) has a negative interim certification, or (3) is in state receivership.

Second, the bill would allow a school district to deny a charter school based on, in part, the extent to which the fiscal impact of the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings. Because the bill does not establish what, at minimum, "substantially undermining" means, it is likely that denials on this basis would be highly subjective.

Given the inherent conflict between school districts and charter schools as it relates to student attendance and financial resources, and that lack of clarity around charter authorization criteria is a common critique, would a subjective option for denial based on fiscal impact make tensions even worse in this area? Further, would the option of denying a charter school based on a subjective assessment of the fiscal impact to the school district render most, if not all, charter petitions deniable? The Committee may wish to consider whether expanding the objective criteria for denial based on financial impact to include districts that have a positive interim certification and demonstrate that approving a charter school would result in them having a qualified certification would be a more balanced approach, in lieu of creating a subjective financial impact denial option.

- 10) ***Limiting the generous appeals process at the state level and prohibiting charter petitioners from changing their application throughout the process.*** Compared to the rest of the nation, California's charter school authorization laws are generally described as robust and relatively generous. While the vast majority of charter schools are authorized by districts, the appeals process is exercised frequently. From 2003 to 2017, for example, the Santa Clara County Office of Education approved 17 of the 25 charter petitions it received on appeal from districts. Further, the SBE has granted nearly three-quarters of the petitions it's received on appeal to date.

While it is difficult to know why so many appeals have been approved over the years, part of the reason is likely that state law does not require county boards or the SBE to review whether school district governing boards wrongfully denied a petition in deciding whether to grant it. Instead, it allows petitions to be considered as though they were being seen for the first time, and for prospective charter school operators to include new information and address some of the flaws that contributed to the original denial.

By requiring charter petitions submitted on appeal that contain new or different materials terms to be immediately remanded back to the school district for reconsideration, this bill will ensure that districts, counties, and the state are all evaluating the same petition with access to the same information. Further, by only allowing the SBE to reverse the determination of a county board of education upon determining that there was an abuse of discretion, this bill will align charter appeals at the state level with other more typical appeals, such as those pertaining to student expulsions and student transfers.

- 11) ***Treatment of charter school teacher misassignments moving forward.*** Current law requires that teachers in charter schools hold a certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold and expresses the intent of the Legislature that charter schools be given flexibility with regard to noncore, non-college preparatory courses. However, current law does not define what noncore, non-college preparatory courses include.

Based on sample data of specific charter schools, it appears that charter school teacher misassignments have never been monitored in a meaningful or systematic way. It would seem that lack of clarity within state law about which charter school teachers must hold certificates, what the equivalent of a certificate required by a public school teacher means, and how often charter school authorizers must verify charter school teacher assignments is at least partly to blame. This bill would provide much needed clarity by specifying that charter school teachers must hold a CTC certificate, permit, or other document required for the teacher's certificated assignment. Further, the bill clarifies the intent of Legislature related to charter school noncore, non-college preparatory courses by specifying that individuals not teaching English, math, science, social science, most elementary school courses, or teaching in certain special education settings must hold at least a certificate of clearance.

However, as currently drafted this bill would not apply to any charter school teacher employed before January 1, 2020 assigned to teach a noncore, noncollege preparatory course. Would providing a transition period for existing charter school teachers to obtain the proper credentials by a certain date be a better approach?

- 12) ***The state should take a pause to better understand nonclassroom-based charter schools.*** Nonclassroom-based charter schools are unique in that they deliver instruction outside of the traditional classroom setting. Nonclassroom-based instruction includes home-schooling and various forms of independent study, such as computer-based instruction distance-learning. These schools tend to serve nontraditional students compared to those enrolled in classroom-based charter schools, including students seeking personalized instruction and a pace tailored to their needs.

As stated in the California Charter School Policy Task Force Report, a temporary freeze "...on new virtual charter schools will give advocates time to study issues related to the establishment of virtual charter schools, such as their operational practices and performance, and to make further recommendations to ensure students are receiving appropriate full-time instruction, supervised by a certificated teacher."

Notwithstanding the benefit that these schools can have for certain students, there are clear examples of misuse of public funds by these schools due to the nature of the instruction they provide. For example, the California Virtual Academies and three Insight Schools were found to be improperly accounting for Common Core education funds, to the tune of \$2 million. Given these concerns, a pause on further expansion of these models is warranted.

- 13) ***Updating the charter renewal criteria is long overdue, but is the K-12 accountability system designed to encourage continuous improvement and innovation or punish under-performing schools?*** Charter schools are required by law to renew the charter term by the entity that approved the charter petition for a period not to exceed five years. As part of the state's transition to a new standards-based assessments, the SBE suspended the calculation of the Academic Performance Index (API) in March 2014, and the Legislature later repealed the requirement for the API to be calculated moving forward.

In determining whether or not to grant a charter renewal, a charter authorizer must consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor. Several factors for determining pupil academic achievement are based on the old API, rendering them inoperative for charter renewals at this time.

This bill would establish charter school renewal criteria based on state and local indicators under the state's K-12 accountability system—specifically the evaluation rubric as displayed by the California School Dashboard.

While updating the charter renewal criteria is long overdue, using the state's accountability system as the basis for determining whether a charter school will be renewed or forced to close down is a departure from how the system has been characterized to date. Since its inception, the stated goal of the school accountability system has been to use a more comprehensive set of student performance measures in a way that is focused on innovation, continuous improvement, and support. Does using this system as the basis for closing down under-performing charter schools square with that goal? Given that charter schools were created, in part, to increase school choice, should their student outcomes be compared to those of the other neighborhood schools in the community when considering their renewal? Would placing such high stakes on the academic performance of charter school students exacerbate concerns of charter schools targeting students with the highest performance?

SUPPORT

California School Employees Association (co-sponsor)
California Teachers Association (co-sponsor)
California Labor Federation (co-sponsor)
American Federation of State, County and Municipal Employees
Berkeley City Council
California-Hawaii State Conference of the NAACP
California State Association of Electrical Workers
California State Pipe Trades Council
California State PTA
Democratic Party of Orange County
Educators for Democratic Schools
Orange County Department of Education
San Diego Unified School District
Santa Ana Unified School District

AB 1505 (O'Donnell)

Wellstone Democratic Renewal Club
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

Able Charter Schools
Academia Avance
Ace Charter Schools
Aerostem Academy Charter School
Afisha Media Group
Alder Grove Charter School
Alliance College-Ready Public Schools
Alma Fuerte Public School
Alpha Public Schools
Alta Public Schools
Anahuacalmecac World School
Apex Academy
APlus+
Ari Community Services
Arts in Action Community Charter Schools
Aspire Public Schools
Audeo Charter School
Bach Viet Association
Barona Band of Mission Indians
Baypoint Preparatory Academy
Bella Mente Montessori Academy
Bright Star Schools
Bullis Charter School
Cahuilla Band of Mission Indians
California Black Chamber of Commerce Foundation
Caliber Schools
California Charter Schools Association
California Connections Academy
California Pacific Charter Schools
Camino Nuevo Charter Academy
Campo Band of Kumeyaay Indians
Champs Charter High School of the Arts
Charter Schools Development Center
Chemehuevi Indian Tribe
Chico Country Day School
Chime Institute
Citizens of the World Charter School
City Charter Schools
Collegiate Charter High School of Los Angeles
Community School for Creative Education
Core Charter School
Creative Arts Charter School
Da Vinci Connect
Da Vinci Schools
Desert Trails Preparatory Academy

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Ednovate
Education for Change
Eel River Charter School
El Sol Science and Arts Academy
Elk Grove Charter School
Endeavor College Prep
Environmental Charter Schools
Envision Education
Epic Charter School
Escuela Popular
Ewiiapaayp Band of Kumeyaay Indians
Excelencia Charter Academy
Excelsior Charter Schools
Extera Public Schools
Fenton Charter Public Schools
Forest Charter School
Gabriella Charter Schools
Gateway College and Career Academy
Gateway Community Charters
Girls Athletic Leadership Schools Los Angeles
Global Education Collaborative
Gorman Learning Charter Network
Greater Bakersfield Chamber of Commerce
Green Dot Public Schools California
Grimmway Schools
Grossmont Secondary School
Growth Public Schools
Guajome Schools
Hawking STEAM Charter School
Heritage Peak Charter School
high Tech Los Angeles
Highlands Community Charter School
Icef Public Schools
Iipay Nation of Santa Ysabel
Ilead California Charter Schools
Inaja-Cosmit Band of Indians
Ingenium Schools
Inspire Charter Schools
International School for Science and Culture
Isana Academies
Ivy Academia Entrepreneurial Charter School
James Jordan Middle School
Jamul Indian Village a Kumeyaay Nation
John Muir Charter Schools
Julian Charter School
Kairos Public Schools
Kavod Charter School
Kid Street Learning Center Charter School
Kinetic Academy
KIPP Bay Area Public Schools

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KIPP Bayview Academy
KIPP Bayview Elementary
KIPP Bridge Academy
KIPP LA Public Schools
La Jolla Band of Luiseño Indians
La Posta Band of Mission Indians
La Verne Elementary Preparatory Academy
La Vida Charter School
Language Academy of Sacramento
Larchmont Charter School
Lashon Academy
Leadership Public Schools
League of California Cities
Learn4Life Assurance Learning Academy
Leonardo da Vinci Health Sciences Charter School
Libertas College Preparatory Charter School
Lighthouse Charter School
Lighthouse Community Public Schools
Literacy First Charter Schools
Los Angeles Academy of Arts and Enterprise
Los Angeles International Charter School
Los Angeles Leadership Academy
Los Coyotes Band of Cahuilla and Cupeño Indians
Los Feliz Charter School for the Arts
Magnolia Public Schools
Making Waves Academy
Manzanita Band of the Kumeyaay Nation
Mesa Grande Band of Mission Indians
Mirus Secondary School
Multicultural Learning Center
National Action Network
Navigator Schools
New Academy of Sciences and Arts
New Designs Charter School
New Horizons Charter Academy
New Los Angeles Charter Schools
New West Charter
Norton Science and Language Academy
Nova Academy Early College High School
Oakland Unity High School
Odyssey Charter Schools
Olive Grove Charter School
Orange County Academy of Sciences and Arts
Orange County Educational Arts Academy
Pacific Charter Institute
Pacific Community Charter School
Pacoima Charter School
Pala Band of Mission Indians
Palisades Charter High School
Partnerships to Uplift Communities Schools

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Pauma Band of Luiseño Indians
Perseverance Prep
Pivot Charter Schools
Plumas Charter School
Public Safety Academy of San Bernardino
Puente Charter School
Redwood Academy of Ukiah
Redwood Preparatory Charter
Resolute Academy
Rex and Margaret Fortune School of Education
Rincon Band of Luiseño Indians
Rio Valley Charter School
Rocketship Public Schools
Rocklin Academy Family of Schools
Ross Valley Charter School
Sacramento Area League of Associated Muslims
Sacramento Black Chamber of Commerce
Sacramento Music Summit "The Creative Exchange"
Sacramento Valley Charter School
Samueli Academy
San Diego Cooperative Charter Schools
San Diego Global Vision Academy
San Jose Charter Academy
San Jose Conservation Corps & Charter School
San Pasqual Band of Mission Indians
Santa Rosa Academy
Santa Rosa Band of Cahuilla Indians
Scholarship Prep Charter School
Sebastopol Independent Charter
Shasta Charter Academy
Sherman Thomas Charter School
SIATech
Silicon Schools Fund
SOAR Charter Academy
Soleil Academy
Southern California Tribal Chairmen's Association
Springs Charter School
St Hope Public Schools
STEM Prep Schools
Stream Charter School
Summit Leadership Academy High Desert
Summit Public Schools
Sutter Peak Charter Academy
Sweetwater Secondary School
Sycamore Academy of Science and Cultural Arts
Sycamore Creek Community Charter School
Sycuan Band of the Kumeyaay Nation
Taylion Academy
Teach Public Schools
The Academies

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The Charter School of San Diego
The Foundation for Hispanic Education
The New School of San Francisco
The Preuss School UCSD
Thrive Public Schools
Tree of Life Charter School
Twin Ridges Home Study Charter School
University High School
University Preparatory Academy
Urban Discovery Academy
Valley Charter School
Valley Industry and Commerce Association
Vaughn Next Century Learning Center
Ventura Charter School of Arts and Global Education
Viejas Band of Kumeyaay Indians
Village Charter Academy
Visions in Education
Vista Charter Public Schools
Voices College Bound Language Academies
Vox Collegiate of Los Angeles
Western Sierra Charter Schools
Westlake Charter School
Willits Charter School
Willow Creek Academy
Wish Charter Schools
Yes Charter Academy
Young, Minney & Corr, LLP
Youth Policy Institute Charter Schools

-- END --

**Exhibit 3: Letter for Assemblymember Patrick
O'Donnell to VCUSD (December 9, 2021)**

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

California Legislature

December 9, 2021

Dr. Tony Ubalde, Jr., President
Vallejo City Unified School District Board of Education

Members, Vallejo City Unified School District Board of Education

William Spalding, Superintendent
Vallejo City Unified School District

Dear Dr. Ubalde, Jr., Vallejo City Unified Board Members, and Superintendent Spalding:

As the author of the bill that made many changes to the charter school authorization process, AB 1505, which took effect only last year, I would like to offer what I hope is helpful and clarifying information as you implement the new law.

While working on the bill, I heard clearly from school districts, county offices of education, and FCMAT that some school districts were struggling to absorb the fiscal impact of charter school expansion in their districts. This was especially clear in school districts with outstanding state emergency loans and appointed trustees, like Vallejo City Unified School District (VCUSD). Therefore, we added two new tools for authorizers to use in determining the fiscal impact of new charter schools (or the expansion of existing charter schools) to a school district, as follows:

- Education Code Section 47605(c)(7): The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school, including an analysis of the extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings; as well as whether the charter school would duplicate a program currently offered within the school district.



- Education Code Section 47605(c)(8): The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has any of the following:
 - A qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131,
 - Has a negative interim certification pursuant to Section 42131, or
 - **Is under state receivership (districts with an outstanding state loan).**

Charter schools proposed in a school district satisfying one of these conditions **shall be subject to a rebuttable presumption of denial.**

VCUSD has the authority to deny a charter petition under both Section 47605(c)(7) or Section 47605(c)(8). Given VCUSD's status under state receivership, denial of a charter school under Section 47605(c)(8) is straight forward because this section does not require an analysis of the fiscal impact of the charter school on the district. **Under Section 47605(c)(8), a charter school petition is subject to a rebuttable presumption of denial, which means that if a school district meets one of the criteria, it is presumed the charter school will be denied.** Determining if a school district qualifies under the listed criteria in Section 47605(c)(8) is an objective measure, not a subjective measure. **The fact that VCUSD is under state receivership qualifies the school district to deny a charter school petition for that reason, without any further justification or analysis.**

When we enacted 47605(c)(8), the Legislative intent was to allow districts that are in fiscal distress to focus on the school district's financial health without additionally having to struggle financially due to an increase in the number of charter schools opening within the district. This provision was explicitly written for districts like VCUSD and any future school districts that receive a state emergency loans.

Further, the Legislature wanted to ensure that school districts experiencing fiscal distress, that denied charter petitions for that reason, would not be overturned by the county board of education on appeal. Therefore, the bill created a rebuttable presumption of denial for appeals of charter petitions that are denied under Section 47605(c)(8), which means that a county board of education **shall deny** an appeal petition for a charter school denied under Section 47605(c)(8), if the school districts meets the listed criteria based on fact. The law was

intentionally written to make a high bar for a county board of education to overturn such an appeal.

Again, the **only** requirement for denying a charter petition under Section 47605(c)(8) is that the district meets one of the three categories listed - which VCUSD clearly does by virtue of being in state receivership. VCUSD can, therefore, make a finding to deny any charter petition before the school board under 47605(c)(8) without needing any additional information or analysis. The law was intentionally designed for situations like the one VCUSD currently finds itself.

My staff, Chelsea Kelley, who assisted me in drafting the language in AB 1505, is available to answer any detailed questions you might have. Chelsea can be reached at chelsea.kelley@asm.ca.gov or by phone at 916-319-2087.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick O'Donnell". The signature is fluid and cursive, with the first name "Patrick" written in a larger, more prominent script than the last name "O'Donnell".

Patrick O'Donnell
Assemblymember, 70th District