



OFFICE OF THE SUPERINTENDENT OF SCHOOLS

Pomona Unified School District

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December 2, 2015

The School of Arts and Enterprise
Attn: Ms. Lucille Berger
295 N. Garey Ave.
Pomona, CA 91767

Re: Renewal of Charter Petition for
School of Arts & Enterprise

Enclosed please find Resolution No. 15(2015-16) Denial of Charter School Petition and Findings of Fact and the extract of the minutes of the Board meeting for November 18, 2015.

If you have any questions please contact our office at (909) 397-4800 ext. 23882.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Martinez'.

Richard Martinez
Superintendent of Schools

Enclosures

RM:arg

POMONA UNIFIED SCHOOL DISTRICT
Resolution No. 15 (2015-16)
Denial of Charter School Petition and Findings of Fact
The School of the Arts and Enterprise

- WHEREAS, The Charter Schools Act (California Education Code section 47600 et seq.) (the "Charter Schools Act") requires the governing board of a school district to review charter petitions to determine whether granting or renewing the charter is consistent with sound educational practice; and
- WHEREAS, On October 6, 2015, a charter school petition (the "Petition") was submitted by various individuals named therein (collectively, "Petitioner") to the Board of Education ("Board") of the Pomona Unified School District ("District") for the renewal of a charter for the school called "The School of Arts and Enterprise;" and
- WHEREAS, On October 14, 2015, pursuant to Education Code 47605(b), the Board held a public hearing on the Petition at which time the Board received public comment regarding the Petition, including comments from the lead representative for the Petition, and considered the level of support for the Petition by District employees and parents/guardians; and
- WHEREAS, The Board has complied with all the procedural requirements set forth in the Charter Schools Act relating to the receipt and review of the Petition; and
- WHEREAS, Education Code sections 47605 and 47607 require the governing board of a school district that denies a charter petition to make written factual findings specifying the basis for denial in accordance with one or more of the grounds set forth in Education Code sections 47605(b) or 47607(b).

NOW THEREFORE, BE IT RESOLVED THAT the Board of Education of the Pomona Unified School District ("the Board") denies the Petition on the grounds that the Petition presents an unsound educational program for the pupils to be enrolled in the school or, in the alternative, that Petitioner is demonstrably unlikely to successfully implement the program as set forth

in the Petition. The Board hereby adopts as its findings the deficiencies and concerns identified by Mundell, Odlum and Haws, LLP "Factual Findings Of The Pomona Unified School District Regarding The Petition For Renewal Of Its Charter Submitted By Lucille Berger With Respect To The School Of Arts And Enterprise," which is attached hereto.

Dated this 18th day of November 2015

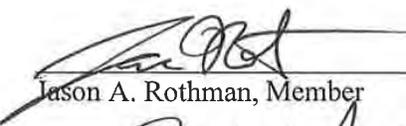
POMONA UNIFIED SCHOOL DISTRICT
MEMBERS, BOARD OF EDUCATION AND SUPERINTENDENT

Andrew S. Wong, President



Roberta A. Perlman, Member

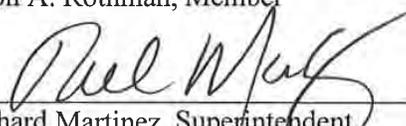
Adrienne Konigar-Macklin, Vice President



Jason A. Rothman, Member



Frank Guzman, Member



Richard Martinez, Superintendent
and Secretary, Board of Education

9. Special Action Items

Subject 9.02 Adoption of Resolution No. 15(2015-16) to Grant or Deny Charter Petition for The School of Arts and Enterprise (REVISED)

Meeting Nov 18, 2015 - Regular Board Meeting

Access Public

Type Action

The School of Arts and Enterprise (SAE) is seeking approval of its petition from Pomona Unified School District to renew its charter. Pursuant to AB 544 (Chapter 34, Statutes of 1998; Board Policy 0420.4, and Administrative Regulation 0420.4) the Board of Education has conducted a public hearing to hear public comment and has considered the level of support for the charter school petition.

It is recommended that the Board of Education adopt Resolution No. 15(2015-16) to grant or deny the petition in accordance with the law.

Rationale:

The Governing Board of the Pomona Unified School District is required to administer the provisions of the California state law regarding charter schools.

Following the review of the petition and the public hearing, the Board of Education shall either grant or deny the petition at a public meeting. The response to the charter petition request prepared by Mundell, Odlum & Haws, LLP will be available for review in the Office of the Superintendent in advance of the Board of Education taking action on the petition.

The Board of Education has reviewed the petition and the response thereto and the public hearing has been conducted. The Board of Education must now take action to grant or deny the petition.

File Attachments

[SCHL OF ARTS-Granting Petition \(mohlaw revised\).doc \(35 KB\)](#)

[SCHL OF THE ARTS-Denying Petition \(mohlaw revised\).doc \(36 KB\)](#)

Motion & Voting

The item was moved by Mr. Rothman to deny the petition, seconded by Mr. Guzman, and approved by members present.



Motion by Jason Rothman, second by Frank Guzman.
Final Resolution: Motion Carries
Yea: Jason Rothman, Roberta Perlman, Frank Guzman
Nay: Andrew S Wong

**FACTUAL FINDINGS OF THE POMONA UNIFIED SCHOOL
DISTRICT REGARDING THE PETITION FOR RENEWAL OF
ITS CHARTER SUBMITTED BY LUCILLE BERGER WITH RESPECT
TO THE SCHOOL OF ARTS AND ENTERPRISE**

The governing board of Pomona Unified School District (“PUSD”) hereby makes the following findings of fact in accordance with California Education Code §§ 47605(b) and 47607¹ as the basis for denial of the petition for a renewal of the charter for the School of Arts and Enterprise (the “Petition”).

I. Background Regarding The Charter Petition

On October 6, 2015, Lucille Berger submitted the Petition to PUSD seeking a renewal of the charter for the School for Arts and Enterprise (the “School”).

Pursuant to Education Code § 47605(b), PUSD conducted a Public Hearing on October 14, 2015, to hear comment and to “consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents” for the Petition.

PUSD calendared a vote on whether to approve or to deny the petition at the meeting of PUSD’s Board of Education (“the Board”), which is scheduled for November 18, 2015.

The firm of Mundell, Odlum & Haws, LLP (“Reviewer”) reviewed and analyzed the Petition to determine whether it complies with the requirements of the Education Code §§ 47605, 47607, and PUSD’s policies, including Policy Number 0420.4 AR (collectively “the Charter School Laws”).

¹ All references to the “Education Code” herein are to California’s Education Code.

II. The Risks Associated With Substituting PUSD In Place Of The State Board Of Education And Having PUSD Immediately Assume Oversight Of The School

Education Code § 47607(a)(2) provides that petitions for renewals of charters are “governed by the standards and criteria” contained in Education Code § 47605.

Education Code § 47605(b)(1) and (b)(2) provide that PUSD may deny the Petition if it determines that the School presents an “unsound education program for the pupils enrolled in the charter school” or if PUSD determines that “the petitioners are demonstrably unlikely to successfully implement the program” set forth in the Petition.

The School has operated successfully for 12 years under the oversight of the State Board of Education (the “SBE”). School reports that it has a successful and cooperative relationship with SBE which is in place. PUSD and School have begun discussions on a potential assumption by PUSD of the oversight responsibilities. While PUSD and the School are striving to discuss and agree upon parameters for the oversight, they need additional time to do so, and PUSD needs time to resolve its concerns related to the School. Accordingly, while PUSD may soon be ready to approve a charter for the School and to assume oversight responsibility for the School, rushing that process and substituting PUSD in place of the SBE, which has successfully overseen the School for 12 years, is premature at this time and, as a result, may jeopardize the School’s ability to provide a sound educational program for its pupils and the petitioner’s ability to successfully implement the program set forth in the Petition.

III. The Petition Provides Insufficient Information To Allow PUSD To Evaluate The Increase In The Academic Achievement Of Those Pupils At The School Who Are Members Of Numerically Significant Subgroups

California Education Code § 47607(a)(3) provides as follows:

“(A) The authority that granted the charter shall 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.*

(B) For purposes of this section, “all groups of pupils served by the charter school” means a numerically significant pupil subgroup, as defined by paragraph (3) of subdivision (a) of [Education Code] Section 52052, served by the charter school.”

(Emphasis added).

The Petition fails to provide any information bearing on the academic achievement for the numerically significant pupil subgroups at the School (i.e., Hispanic/Latino students, English Learner students, and socioeconomically disadvantaged students) during the most recent school year, the 2013/14 school year.

While Petitioner was unable to submit Academic Performance Index (“API”) scores for the numerically significant pupil subgroups at the School for the 2013/14 school year, Petitioner could have provided other forms of information bearing on the academic achievement of those pupil subgroups, including, for example, grade point averages or class rank of those subgroups, a report of detailing the academic achievements of those subgroups, etc. Petitioner did not do so.

The Petitioner provided the graduation rates of *some* of the above-referenced subgroups (i.e., Hispanic/Latino students and socioeconomically disadvantaged students), *see* Appendix “C” to the Petition, but those rates are not sufficient to allow PUSD to evaluate the academic achievement of the above-referenced subgroups. Moreover, there is no information relating to the academic achievements of the School’s English Learner students, which was an extremely large pupil subgroup (i.e., 40%), *see* Page 42 of the Petition, during the 2013/14 school year.

Admittedly, Education Code § 52052(e)(4) provides that, with respect to the School’s *overall* API score, the School may carry its most recent 2012/13 API score forward into 2013/14, but Education Code § 52052(e)(4) does *not* provide that the School may “carry forward” outdated API scores related to the numerically significant pupil subgroups at the School into 2013/14.

Because the evaluation of the increases in pupil academic achievement for the numerically significant pupil subgroups at the School is “the most important factor in determining whether to grant a charter renewal” and because the Petition provides insufficient information about the academic achievements of those subgroups during the most recent 2013/14 school year, PUSD hereby denies the Petition. Additionally, the risk associated with substituting PUSD to immediately assume oversight has the potential to jeopardize the School’s ability to provide a sound education program for its pupils.

IV. Conclusion

Based on the factual findings stated above, the Reviewer submits that Petition is deficient and should be denied.



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO ■ WALNUT CREEK

DECEMBER 11, 2015

VIA: HAND DELIVERY

REPLY TO SACRAMENTO OFFICE

PAUL C. MINNEY
JAMES E. YOUNG
LISA A. CORR
JERRY W. SIMMONS
CHASTIN H. PIERMAN
JANELLE A. RULEY
SARAH J. KOLLMAN

Cindy Chan, Director
Charter Schools Division
California Department of Education
1430 N Street, Suite 5401
Sacramento, CA 95814

**Re: The School of Arts and Enterprise Response to Findings of Fact
for Denial of Charter Renewal Petition**

KIMBERLY RODRIGUEZ
MICHELLE A. LOPEZ
SARAH K. BANCROFT
MEGAN M. MOORE
RACHAEL B. TILLMAN
KATHLEEN M. EBERT
DREW K. RYMER
BARBARA E. HAGBERG
MARVIN H. STROUD
DANIEL W. ROBERTSON
MATEJKA M. HANDLEY
S. EDWARD SLABACH
KRISTOPHER L. CARPENTER
ROGER L. SCOTT
KEVIN M. TROY
BRINKLEY E. WILSON
CASEY L. HAZELHOFFER
PATRICIA CANO
MARYSIA S. OKREGLAK
BRIAN T. GEREMIA

Dear Ms. Chan:

The purpose of this letter is to respond to the Pomona Unified School District's (the "District") resolution and findings of fact for denial (memorialized in Resolution No. 15/2015-16) of The School of Arts and Enterprise ("SAE" or the "Charter School") charter petition and to demonstrate that the District's findings of fact do not constitute sufficient legal grounds to deny the renewal of the SAE charter.

At the outset, we point out that the Education Code provides specific guidance to governing boards to approve the establishment of charter schools. (These standards and criteria are also applicable to renewal charters pursuant to Education Code Section 47607(a)(2).) Education Code Section 47605(b) states:

In reviewing petitions for the establishment of charter schools . . . the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. (Emphasis added.)

Education Code Section 47605(b) also enumerates and limits the legal bases for the denial of a charter petition as follows:

The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written

OF COUNSEL

WILLIAM J. TRINKLE

Re: *The School of Arts and Enterprise Response to Findings of Fact for Denial of Charter Renewal Petition*

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factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- (3) The petition does not contain the number of signatures required by subdivision (a) [of Education Code Section 47605]. (Not applicable for renewal charters, pursuant to Title 5, California Code of Regulations Section 11966.4(a)(2)(A).)
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (d) [of Education Code Section 47605].
- (5) The petition does not contain reasonably comprehensive descriptions of [16 described Elements]. (Emphasis added.)

Accordingly, the law is written so the default position is for a school district to approve a charter petition unless it makes written factual findings, specific to the particular petition, to support a denial.

In this case, the District's findings of fact do not meet the legal standard for denial of a charter petition. For some findings, the District failed to link them to specific elements of the charter petition. For other findings, the District ignored data supporting increases in academic achievement provided in the petition. Further, the District states a general concern with assuming oversight of SAE, but fails to articulate specific concerns.

Below is a summary of each District finding, including its heading (in *italicized text*), followed by the Charter School's response, in plain text.

District Finding No. 1

II. The Risks Associated With Substituting PUSD In Place Of The State Board Of Education And Having PUSD Immediately Assume Oversight Of The School

The School has operated successfully for 12 years under the oversight of the State Board of Education [].

While PUSD and the School are striving to discuss and agree upon parameters for the oversight, they need additional time to do so, and PUSD needs time to resolve its concerns related to the School.

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Accordingly, while PUSD may soon be ready to approve a charter for the School . . . rushing that process and substituting PUSD in place of the SBE, which has successfully overseen the School for 12 years, is premature at this time and . . . may jeopardize the School's ability to provide a sound educational program for its pupils and the petitioner's ability to successfully implement the program set forth in the Petition.

SAE's Response

As quoted above, Education Code Section 47605(b)(5) requires the District Board to make findings of fact specific to the particular petition when deciding to grant or deny the charter. The law is exceedingly clear that the decision to deny a charter petition may only be based upon the merits of the petition itself.

In this finding, the District fails to reference The SAE's charter renewal petition at all when claiming that the Charter School may provide an unsound educational program or may be unable to successfully implement the program set forth in the petition. Rather, the District bases this finding on its own hesitancy to assume oversight of the Charter School, claiming the Charter School should continue to operate under the SBE, where it has enjoyed 12 years of successful operation.

The District's hesitancy and the Charter School's prior success operating under the SBE are not permissible grounds for denying a charter petition and provide no evidence to conclude the program is unsound or the Charter School cannot successfully implement the charter.

The District claims it needs additional time to resolve concerns related to the Charter School, but does not articulate what any of those specific concerns might be, and it does not refer to particular concerns regarding the content of the charter renewal petition. The District states it does not want to "rush" its decision, yet acknowledges the Charter School's prior success, over the past 12 years. The District has had three separate chances to approve The SAE's charter petition over a 12 year period. In no way could the instant renewal review be deemed rushed. Further, any concerns the District had could have been addressed through communication with the Charter School or in a memorandum of understanding ("MOU") between the parties. Indeed, The SAE presented a draft MOU to PUSD during a meeting between the parties following submission of the renewal charter.

When the District denies a charter petition because of its own misgivings without making findings specific to the actual petition, its action ignores the Legislative intent to encourage the establishment of charter schools and also ignores the plain meaning of statutory requirement to base its decision on the petition. This finding is an impermissible basis for denial of the charter renewal petition.

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District Finding No. 2

III. The Petition Provides Insufficient Information to Allow PUSD To Evaluate The Increase In The Academic Achievement Of Those Pupils At The School Who Are Members Of Numerically Significant Subgroups

The Petition fails to provide any information bearing on the academic achievement for the numerically significant pupil subgroups at the School (i.e., Hispanic/Latino students, English Learner students, and socioeconomically disadvantaged students) during the most recent school year, the 2013/14 school year.

[Graduation rates] are not sufficient to allow PUSD to evaluate the academic achievement of the above referenced subgroups.

[T]here is no information relating to the academic achievements of the School's English Learner students, which is an extremely large pupil subgroup.

Education Code § 52052 does not provide that the School may "carry forward" outdated API scores related to the numerically significant pupil subgroups at the School into 2013/14.

SAE Response

The District's chief concern here appears to be that The SAE did not provide student subgroup data for the 2013-14 school year. The Charter School points out that state testing did not occur during the spring of 2014, so no public school has Academic Performance Index ("API") data for 2013-14.

Recognizing the importance of communicating the academic achievement of student subgroups, on page 19 of the charter renewal petition, The SAE included 3 separate tables documenting subgroup performance from the last 3 years for which API data was available. (We note the typographical error in the 3rd table on this page; the header should indicate 2010-11.) In 2012-13, The SAE's student subgroups made the following API growth:

- Hispanic or Latino: 60 points (target of 6)
- Socioeconomically Disadvantaged: 31 points (target of 6)
- English Learners: 17 points (target of 9)

Additionally, in the absence of API scores for 2013-14, the Charter School made a reasonable estimate of appropriate information to showcase the academic achievement for SAE students.

The Charter School submitted following information with its charter renewal petition: (1) 2014 Cohort Graduation Rate with Subgroups; (2) 5-year Graduation Rate Cohort Rates with

Subgroups; (3) Graduation Rate Comparison; (4) College/University Acceptance; and (5) CDE DataQuest Reports, 2011-2013. (See Appendices C and E.)

Therefore, the District's claim that the Charter School provided no information bearing on the academic achievement of numerically significant pupil subgroups is unfounded. Further, the Charter School provided information authorized by law. Education Code Section 52052(a)(4)(A) states that the API score includes various metrics, including results of the achievement test, attendance rates, and graduation rates. Additionally, Education Code Section 52052(a)(4)(H) provides:

It is the intent of the Legislature that the state's system of public school accountability be more closely aligned with both the public's expectations for public education and the workforce needs of the state's economy. It is therefore necessary that the accountability system evolve beyond its narrow focus on pupil test scores to encompass other valuable information about school performance, including, but not limited to, pupil preparedness for college and career, as well as the high school graduation rates already required by law. [Emphasis added.]

Pursuant to these sections, the Charter School submitted SAE's 2014 graduation rates, which show high percentages schoolwide and for numerically significant groups. In every year since 2011, SAE's schoolwide graduation rate outperformed comparison schools, in some cases by ten percent. The Charter School also submitted a full list of colleges that accepted SAE students, comprising 49 colleges and universities, including six University of California schools, and 22 arts colleges. These metrics constitute valid factors for the District to consider when assessing academic achievement.

The District cites Education Code Section 52052(e)(4) to show the Charter School cannot use its most recent API score to show academic achievement of numerically significant pupil subgroups. Yet section 52052(e)(4) is silent regarding numerically significant pupil groups and provides the following:

(4) Schools and school districts that do not have an API calculated pursuant to subparagraph (F) of paragraph (2) shall use one of the following:

(A) The most recent API calculation.

(B) An average of the three most recent annual API calculations.

(C) Alternative measures that show increases in pupil academic achievement for all groups of pupils schoolwide and among significant subgroups. (Emphasis added.)

The Charter School complied with this requirement by submitting its most recent 2012-13 API calculation, graduation rates, and a full list of colleges that accepted SAE students (see Appendices C and E). The law does not suggest these metrics are insufficient to show academic achievement for numerically significant subgroups. As noted previously, these

Re: The School of Arts and Enterprise Response to Findings of Fact for Denial of Charter Renewal Petition

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constitute valid metrics for the District to consider when assessing academic achievement.

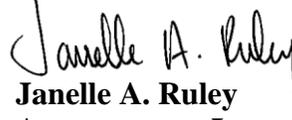
Finally, the District's concern regarding the lack of available data could have been addressed through communication with the Charter School or in an MOU.

Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

* * *

As the District's findings are legally impermissible, The SAE's charter renewal petition was improperly denied. Please feel free to contact me, or the Lead Petitioner, Lucille Berger ((909) 622-0699; lberger@thesae.k12.ca.us) if you have any questions.

Sincerely,
**LAW OFFICES OF
YOUNG, MINNEY & CORR, LLP**


Janelle A. Ruley
ATTORNEY AT LAW