



Fillmore Unified School District

Office of the Superintendent

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Date: November 6, 2009
To: Board of Education
From: Jeff Sweeney, Superintendent
Re: Board Resolution No. 09-10-9 Denying the Petition for Piru Charter School

BACKGROUND

On or about September 16, 2009, petitioners for the Piru Charter School submitted to the Fillmore Unified School District (“District”) a charter school petition for the Piru Charter School.

Pursuant to Education Code 47605, the Governing Board of the District shall hold a public hearing on the provisions of the Charter, at which time the Governing Board shall consider the level of support for the petition from teachers employed by the District, other employees of the District, and parents. In order to fulfill this requirement, at a Board Meeting on October 21, 2009, a public hearing was held by the District Governing Board of Trustees. Approximately 200 people attended the hearing. The petitioners (including all nine teachers who signed the Charter Petition) and two of their consultants, Jessica Norman of ExED and Yvette King-Berg of California Charter School Alliance, appeared as representatives of the Charter and made a presentation regarding the Charter at the public hearing. Additionally, five members of the public, including three parents, made public comments in favor of the Charter, and a small minority of the audience appeared to be present in a show of support for the Charter. Twenty-seven members of the public, including nine teachers of the District, nine other employees of the District, and numerous parents/guardians spoke in opposition to the Charter, and some members of the public donated their speaking time to these speakers. Additionally, a significant majority of the audience appeared to be present in a show of opposition to the Charter.

The District administrative staff has been given the responsibility of providing the Governing Board of Trustees with a comprehensive recommendation regarding the Piru Charter School proposal. The proposal has been assessed against the standards and requirements, as set forth in the California Education Code, in order to develop final recommendations.

Pursuant to Education Code Section 47605(b), the governing board of a school district shall not deny a petition for the establishment of a charter school unless it is not satisfied that granting the charter is consistent with sound educational practice and it makes written 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 include the required number of signatures.
- (4) The petition does not contain required non-discrimination and enrollment affirmations.
- (5) The petition does not contain reasonably comprehensive descriptions of sixteen (16) required elements.

Working as a collaborative professional team, District administration and legal counsel from the law firm of Atkinson, Andelson, Loya, Ruud and Romo submit that the recommendation to the Governing Board of the District is well-documented and based upon solid criteria. Furthermore, the staff recommendation and subsequent Governing Board action falls within the required timeline parameters, as set forth in the California Education Code and applicable state and federal laws.

District administrative staff has noted a number of issues and concerns. Several of the most significant of the concerns noted by the District administrative team and legal counsel are included as proposed findings in the recommended Resolution of Denial (attached). The specific factual findings in the recommended Resolution are within the following statutory findings for denial of the Charter:

- (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 reasonably comprehensive descriptions of sixteen (16) required elements.

FISCAL IMPLICATIONS:

Financial impact is dependent upon action taken by the Governing Board.

RECOMMENDATION:

Having fully considered and extensively reviewed the elements of the Piru Charter School Charter Petition, the District administrative staff hereby recommends that the Governing Board of Trustees of the Fillmore Unified School District take action to adopt the attached Board Resolution No. 2009-10-09 denying the Charter Petition.

Resolution No. 09-10-09
Denying the Charter School Petition for
the Piru Charter School
by the Governing Board of the
Fillmore Unified School District

WHEREAS, pursuant to Education Code Section 47600 *et seq.*, the Governing Board of the Fillmore Unified School District (“District Board”) is required to review and consider authorization of charter schools;

WHEREAS, the petitioners for Piru Charter School (“PCS” or “Charter School”) submitted a Charter School Petition, incorporated herein by this reference, on or about September 16, 2009, for the establishment of the Piru Charter School, a proposed conversion of Piru Elementary School;

WHEREAS, in reviewing the Petition for the establishment of this Charter, the District Board has been cognizant of 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;

WHEREAS, a public hearing on the provisions of the Charter was conducted on October 21, 2009, pursuant to Education Code Section 47605, at which time the District’s Governing Board considered the level of public support for this Charter by teachers employed by the District, other employees of the District, and parents. The District estimates that approximately 200 members of the public attended the public hearing;

WHEREAS, the District Board finds that at that public hearing the petitioners, a PCS consultant from California Charter School Alliance, and five members of the public, including three parents, spoke in support of the Petition. Additionally, the District Board finds that a small minority of the other persons who were present at the hearing were there in a show of support for the Charter;

WHEREAS, the District Board finds that at the public hearing 27 persons spoke in opposition to the Petition, and a number of other opponents of the petition gave their time to some of these speakers. Of these speakers nine were teachers employed by the District, nine were other employees of the District, and many were parents/guardians (a number of the speakers fit in to more than one of these categories of speakers). Additionally, the District Board finds that a substantial majority of the persons attending the hearing were there in a show of opposition to the Charter Petition.

WHEREAS, the District staff, working with District legal counsel, has reviewed and analyzed all information received with respect to the Charter Petition, including information related to the operation and potential effects of the proposed PCS, and made a recommendation to the District Board that the Charter be denied based on that review;

WHEREAS, the District Board has fully considered the Charter submitted for the establishment of PCS and the recommendation made by District staff;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Governing Board of the Fillmore Unified School District finds the above listed recitals to be true and correct and incorporates them herein by this reference.

BE IT FURTHER RESOLVED AND ORDERED that the Governing Board of the Fillmore Unified School District, having fully considered and evaluated the Petition for the establishment of PCS, hereby finds the Petition not to be consistent with sound educational practice, based upon grounds and factual findings including, but not limited to, the following, and hereby denies the Petition pursuant to Education Code Section 47605:

- A. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. [Education Code Section 47605(b)(2)]
- B. The Charter presents an unsound educational program for the pupils to be enrolled in the Charter School. [Education Code Section 47605(b)(1)]
- C. The Petition does not contain reasonably comprehensive descriptions of all of the elements required by law. [Education Code Section 47605(b)(5)]

BE IT FURTHER RESOLVED AND ORDERED that the Governing Board of the Fillmore Unified School District hereby determines the foregoing findings are supported by the following specific facts:

- I. **THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION.**
[Education Code Section 47605(b)(2)]
 - A. The Charter proposes the conversion of Piru Elementary School, a popular and increasingly successful school of the District, and specifically proposes educating the same population of students who currently attend Piru Elementary School. As a conversion school targeting the current student population, it is imperative that PCS have support from the families of the current students. The overwhelming sentiment expressed by such families at the public hearing, and through subsequent actions such as the picketing of a Charter informational meeting, is that the families who currently attend Piru Elementary School and live within its attendance boundaries are opposed to the proposed conversion to PCS. The number of opponents present at the public hearing represents a large proportion of the families who currently attend Piru. A number of such parents/guardians have specifically indicated that they would not send their children to PCS should it be converted to this proposed charter school.
 - 1. The District received petitions signed by 93 people (representing 107 of the 347 current Piru Elementary School students) opposing the Charter and/or requesting that their student's names be removed from intent to

enroll forms for PCS because they do not intend to send their children to the proposed PCS.

2. Piru Elementary School is located in a remote and rural location which is unlikely to attract large numbers of students from other areas, and thus it is unlikely that the student enrollment from outside of the Piru area will offset the loss of enrollment from those students who will not be enrolling from the Piru area.

B. The budget documents are overly optimistic, inaccurate and unworkable.

1. The budget appears to be based on statewide or general estimates, but not the actual costs of running *this* school, resulting in an underestimation of expenses. For example, in calculating certificated salaries, the budget uses some type of “average” salary of \$58,250. Several of the petitioners who are anticipated to serve in certificated positions are extremely senior and on the upper end of the District salary schedule, and since the Charter proposes paying its employees at least as much as the District currently pays these employees, these much higher than average salaries would need to be taken in to account when calculating expenses.
2. The budget assumes that the State of California will grant a Cost of Living Adjustment (“COLA”) over the next two years. According to most reports and analysis, the State of California’s revenues continue to fall short of budget estimates and the temporary increase in California state sales tax is scheduled to sunset next year. It is unlikely that California will grant a COLA, therefore the revenues are overstated.
3. The anticipated enrollment at PCS is significantly overstated, with the result that the anticipated revenues are overstated. Using a cohort survivability forecast model, similar to the method employed by the Office of Public School Construction, Piru Elementary School, if not converted to PCS, will yield an enrollment of 355 students for the 2010-2011 school year. Additionally, as explained above, the target student population has indicated strong opposition to the conversion to PCS and further indicated that should the school be so converted, many current Piru Elementary students would not attend PCS. Specifically the District has received a petition from current Piru parents/guardians stating that if the Charter is approved, their children will not be attending PCS. The signatures represent 76 students who currently attend Piru Elementary, but would not attend PCS if the Charter is granted. Thus, even the most optimistic enrollment picture for PCS, taking into account the more realistic 355 student starting figure, and reducing it by only the 76 students who have specified in writing that they would not attend PCS, would reduce the PCS projected enrollment to only 279 students. Given the strong and broad statements of opposition to the Charter by current Piru Elementary School parents/guardians, it is likely that the actual enrollment at PCS would be

much lower than that 279 student figure. Thus, the petitioners' forecast of 386 students is overstated by at least 38 percent (279 vs. 386 students), consequently the revenues are overstated by at least \$739,550 in just the first year of operations.

4. The budget is premised on the receipt of a \$30,000 Newhall Foundation Grant each year, but there is no guarantee that PCS would receive such a grant or method for replacing such proposed funds if PCS does not receive the grant.
- C. The rhetoric regarding the transportation plan is incongruent with the budget and with the population the Charter proposes to serve. The budget assumes that the District will be giving PCS a bus, which it will not, and the budget does not provide for the costs of obtaining such a bus, which would be necessary for its transportation plan. Further, neither the budget nor the Charter itself provide for the responsibilities and expense of licensing a bus depot. The transportation budget is far too low to allow PCS to provide bus transportation to students outside of the current Piru Elementary attendance area (such as Fillmore and/or Santa Clarita), as has now been indicated.
- D. If Piru Elementary School were to be converted to PCS, Migrant Education Services for migrant students may be interrupted. Twenty-seven percent of current Piru Elementary students are eligible for Migrant Education Services (not 41 percent as reported in the Charter). According to information provided by Dr. Joe Mendoza, the Ventura County Office of Education Special Population Director, and Dr. Ernesto Ruiz, State Director of Migrant Education of the California Department of Education, if the Charter were to be granted PCS would have to apply for Migrant Education Funds as a new school/LEA. PCS may receive Migrant Education Funding, but it depends on whether or not there is a District Service Agreement ("DSA") with the County, such as the District has with the Ventura County Office of Education - Region 17, to provide supplemental services for identified and eligible migrant education students. The application and approval process may take up to two years. A DSA must include 13 elements, plus a budget, outlining in detail how the migrant population would be served. None of these elements were mentioned in the Charter, nor does the Charter mention a DSA or plans for applying for and obtaining Migrant Education Funds.
1. The Charter's plan for migrant students does not outline any specific curriculum, activities, or special programs that are supplementary beyond the regular school day. The only information included in the Charter is taken directly from the California Department of Education website listing the purpose and goals of Migrant Education as outlined in Title 1, part C of the federal No Child Left Behind Act. The Charter does not discuss how such purpose and goals would actually be addressed at PCS.

2. The Charter does not identify who will be responsible for overseeing Migrant Education Services and how those services are delivered so as to supplement and not supplant the regular education program.
- E. At the public hearing, when explaining what PCS would offer that is different from what is currently being offered by Piru Elementary School, the lead petitioner stated words to the effect that the Charter would “bring the school back to the community” and allow the parents to participate on many committees and “collaborate in a very powerful way.” The petitioners in developing and submitting the Charter to the District for consideration, however, failed to include parents and families in the process or decision in any way. Numerous parents and other community members informed the District that they were afforded no opportunity to provide information or input into the Charter, or even given information about the Charter. Many parents have communicated that they believe that the petitioners have not been forthcoming about the Charter and the process, and as such they do not feel that they will be able to trust the petitioners in the future. This does not indicate a collaborative approach to running the proposed PCS.
- F. At the public hearing the lead petitioner stated words to the effect that one of his “biggest regrets” regarding the Charter Petition is that “parent involvement was short-circuited.” He went on to state words to the effect that his “fear for years was if [the petitioners] got the parents involved, they would get ahead of the staff and the staff would dig in their heels and not want the charter, so there could be no conversion.” Thus it appears that the lead petitioner feared that if the parents were involved in the decision and process for conversion of the school which their children attend, that the parents and staff would not be in agreement regarding the Charter and what it should include, so the parents were effectively and intentionally excluded from the process. As a result, the Charter requesting the conversion of Piru Elementary School to PCS represents the desires and needs of the nine teacher petitioners and a few hand-picked supporters, and not the majority of the students and families that the school should exist to serve and educate.
- G. The Charter Petition fails to address adequately how the Charter will comply with Section 504 of the Rehabilitation Act of 1973 (“Section 504”). First, the Charter Petition fails to identify an employee with the specific responsibility of ensuring compliance with Section 504, such as a 504 Coordinator. Second, although the Charter Petition indicates that the 504 team shall include qualified persons knowledgeable about the meaning of evaluation data, the Charter Petition does not currently provide for any employees who would meet that requirement. Moreover, the Charter Petition does not explain how it could provide related services, should they be required for a student eligible under Section 504, either with its own staff or by contracting out. Further, the budget does not provide any funds for the provision of related services pursuant to Section 504. In the District’s experience, such services can be very costly and the failure to plan for them could negatively impact the operations of the School.

- H. The specific findings of fact set forth in paragraphs II.A through III.E, below, are restated and incorporated herein by reference. Said specific facts evidence that the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- II. THE CHARTER SCHOOL PRESENTS AN UNSOUND EDUCATIONAL PROGRAM FOR THE PUPILS TO BE ENROLLED IN THE CHARTER SCHOOL. [Education Code Section 47605(b)(1)]
- A. As explained more fully above, the majority of people who have provided input to the District regarding the Charter, including District employees and parents, specifically a number of parents that appears to represent a significant proportion of the students who currently attend the school proposed for conversion, oppose the PCS Charter. Many such families have stated that they will not send their children to PCS. Many Piru Elementary students are the children, grandchildren, nieces, and nephews of Piru Elementary alumni, and this is a school with a long history and strong community ties. It is also the only school in Piru. Piru Elementary School is making great improvements in its performance, as evidenced by significant increases in its standardized test scores. It is educationally unsound for the current students and future students of this school to disrupt a popular school that is making great strides in achievement, causing large numbers of students to be removed from this, their neighborhood school and bussed to another town in order to meet the aims of some of the current teaching staff and a small group of supporters. Any school, including a charter school, should be for the benefit of the *students*, and instead this Charter represents an unwanted educational disruption and displacement of students, potentially resulting in educational and psychological harm to the students.
- B. The Charter offers very little new or innovative, beyond offering yoga and the possibility of reduced class size in a few grades, and even the reduction in class sizes is not a commitment in the Charter. Instead, the entire proposal centers on continuing the program that is currently in place at Piru Elementary School. In the Charter the petitioners attempt to take full credit for the successes that have been achieved over the past several years at Piru Elementary School, discounting the fact that these successes have been achieved as a District school. The petitioners have argued that conversion to PCS is the necessary next step in order to continue on the school's current successful path. Piru Elementary School's current successes, however, are the product of the admirable combined efforts of the teaching staff – certainly including the teachers who support the Charter, but also including the rest of the teachers who oppose the Charter – the other certificated staff at the School, the classified staff, the students, the parents/guardians, and the District. Given the strong opposition to the Charter by the majority of these stakeholder groups, if PCS were approved, it would lose the support and involvement of these groups. Thus, rather than the team who has achieved so much at Piru Elementary to date continuing on that path, as the Charter implies, only a small portion of that team would likely remain in place at PCS.

III. THE PETITION DOES NOT CONTAIN *REASONABLY COMPREHENSIVE* DESCRIPTIONS OF THE FOLLOWING ELEMENTS REQUIRED BY LAW.
[Education Code Section 47605(b)(5)]

A. THE GOVERNANCE STRUCTURE OF THE SCHOOL, INCLUDING PROCESS TO ENSURE PARENTAL INVOLVEMENT. [Ed. Code §47605(b)(5)(D)]

1. The Charter proposes to be operated by a nonprofit public benefit corporation, and mentions the bylaws which are central to the corporation's operations, but does not include a copy of the bylaws. As the Charter provides that the nonprofit is to be governed in accordance with the bylaws, the failure to include these materials impedes the District's ability to review and assess the manner in which the proposed PCS will be governed.
2. The Charter does not make specific allowance for a District representative on the corporation's governing board, as required by Education Code Section 47603, and the Charter's statement that if there is such a District representative he/she will be non-voting violates that statutory requirement.
3. The Charter's discussion of insurance and indemnification of the District is not adequate to protect the District from potential liability for PCS's acts or omissions, despite the fact that PCS will constitute itself as a 501(c)(3) nonprofit public benefit corporation. The Charter must identify specific types and levels of insurance, not merely general statements that insurance will be acquired. Further, the statement that PCS and the District will enter into a "mutual indemnification hold harmless agreement" in the future is inadequate to protect the District from potential liability related to the Charter, as there are no guarantees as to what the parties could agree upon or when such negotiations would be completed.
4. The Charter raises significant concerns related to potential conflicts of interests. The Charter makes general reference to conflicts of interests, and even mentions both the Political Reform Act of 1972 ("PRA") and Government Code Section 1090 *et seq.*, but it does not actually commit PCS or its corporate governing entity to comply with necessary and appropriate conflict of interest laws, including the PRA or Section 1090. In fact, the terms of the Charter make clear that it will be operated in violation of those provisions.
 - a. Employees of the Charter School will also be members of the governing board, charged with ultimate employment and compensation decisions over themselves.

3. The Charter does not identify a position responsible for the program for English Language Learners, nor include any qualifications for such a position.

C. ADMISSION REQUIREMENTS, IF APPLICABLE. [Ed. Code §47605(b)(5)(H)]

The admission preferences violate the Charter Schools Act of 1992. The Act specifies that in the case of a public school converting to a charter school, the charter school must “adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.” PCS has made this group, which is statutorily guaranteed admission preference, fourth in line of priority behind siblings of current students, founding group members’ children, and employees’ children.

D. A DESCRIPTION OF THE RIGHTS OF ANY EMPLOYEE OF THE SCHOOL DISTRICT UPON LEAVING THE EMPLOYMENT OF THE SCHOOL DISTRICT TO WORK IN A CHARTER SCHOOL, AND OF ANY RIGHTS OF RETURN TO THE SCHOOL DISTRICT AFTER EMPLOYMENT AT A CHARTER SCHOOL. [Ed. Code §47605(b)(5)(M)]

The discussion of the rights of District employees to work at the Charter School is misleading. The Charter states that such rights will be outlined in a Memorandum of Understanding between the District, the Charter School, and the applicable unions. The District, however, has no obligation to enter into an agreement with the Charter School regarding such rights. Further, the District has received numerous reports that petitioners have represented to District employees that if they go to work at PCS they will have guaranteed rights to return to District employment. The District does not believe that it is in the interest of its students or employees who continue to work for the District to grant any special return rights to employees who choose to leave their District jobs to work at the proposed charter school. A guarantee of such return rights would force the District to hold open positions for those former employees. This would mean the District would either have to fill positions with temporary employees, or potentially release or layoff new teachers and other employees in order to return former employees to the positions they voluntarily left. The District believes that this would be detrimental for students, detrimental for employees, and detrimental for the District as a whole.

E. A DECLARATION WHETHER OR NOT THE CHARTER SCHOOL SHALL BE DEEMED THE EXCLUSIVE PUBLIC SCHOOL EMPLOYER OF THE EMPLOYEES OF THE CHARTER SCHOOL FOR THE PURPOSES OF CHAPTER 10.7 (COMMENCING WITH SECTION 3540) OF DIVISION 4 OF TITLE 1 OF THE GOVERNMENT CODE. [Ed. Code §47605(b)(5)(O)]

The Charter provides that PCS will be the exclusive employer for purposes of the Educational Employment Relations Act (“EERA”), and acknowledges that PCS

employees have the right to organize and be represented in accordance with state law. The Charter, however, also includes the following statement: "The employer voluntarily recognizes the Fillmore Unified Teachers Association (FUTA) as the exclusive representative of the Piru Charter School employees." This shows a fundamental lack of understanding of the rights and obligations of the employer under the EERA, despite the statement that PCS will be the employer thereunder. First, it will be a decision for the employees whether or not to organize, and if the employees so choose, PCS, as the employer, will be obligated to enter into a collective bargaining agreement with the employees' chosen representative. The process for establishing a bargaining unit and recognizing an exclusive representative is outlined in the EERA and appropriate regulations of the Public Employment Relations Board, and the Charter statement purporting simply to "voluntarily recognize" FUTA as the exclusive representative of all PCS employees does not comport with those legal requirements. Further, this language regarding the FUTA ignores PCS's non-certificated employees and their rights to organize in the association of their choosing. Despite the lead petitioner's statement at the public hearing that PCS is attempting to offer classified employees the opportunity to join a "wall-to-wall" union with the teachers (which appears to violate the EERA itself), the Charter actually purports to dictate that FUTA will be the only employee representative.

BE IT FURTHER RESOLVED AND ORDERED that the terms of this Resolution are severable. Should it be determined that one or more of the findings and/or the factual determinations supporting the findings is invalid, the remaining findings and/or factual determinations and the denial of the Charter shall remain in full force and effect. In this regard, the Governing Board of the District specifically finds that each factual determination, in and of itself, is a sufficient basis for the finding it supports, and each such finding, in and of itself, is a sufficient basis for denial.

The foregoing resolution was considered, passed, and adopted by this Board at its special meeting of November 9, 2009.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

AYES IN FAVOR OF SAID RESOLUTION:

John Garnica
Liz Wilde
Virginia DeLacruz
John Lee
John Garnica

NOES AGAINST SAID RESOLUTION:

ABSTAINED:

Dated: 11/9/09

By: John Garnica
John Garnica
President, Governing Board
Fillmore Unified School District

Dated: 11/9/09

By: Liz Wilde
Liz Wilde
Clerk, Governing Board
Fillmore Unified School District



LAW OFFICES OF MIDDLETON, YOUNG & MINNEY, LLP

JANUARY 13, 2010

Via Facsimile and US Mail
(805) 524-6060

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MICHAEL S. MIDDLETON
LISA A. CORR
AMANDA J. MCKECHNIE

Jeff Sweeney, Superintendent
Fillmore Unified School District
627 Sespe Avenue
Fillmore, CA 93015

**Re: Fillmore Unified School District's Resolution and Findings to Deny
the Piru Charter School Charter Petition**

JESSICA ADAMS ROBISON

JERRY W. SIMMONS

CHASTIN H. PIERMAN

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OF COUNSEL

SUZANNE A. TOLLEFSON

Dear Superintendent Sweeney:

This office represents the Piru Charter School ("PCS" or the "Charter School") in its charter appeal submission to the Ventura County Board of Education upon denial from the Fillmore Unified School District ("FUSD" or the "District"). As you know, on November 6, 2009 the District Board, by a 5-0 vote, denied PCS's charter petition. That decision was based upon "Resolution 2009-10-09 Denying the Charter School Petition for the Piru Charter School by the Governing Board of the Fillmore Unified School District" (the "Resolution").

This letter serves as a detailed response to the FUSD Resolution. We have excerpted relevant portions the Resolution language in text boxes below, following the order set forth in the Resolution. Our response follows in *italicized* text below each text box.

As an initial matter, we point out that the Education Code sets out specific requirements for a school district's review and ultimate decision on any charter petitions it may receive. Education Code Section 47605(b) states, "[i]n reviewing petitions for the establishment of charter schools pursuant to this section, 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 the establishment of charter schools should be encouraged. ... The 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..." (Emphasis added.) The District's Resolution fails to meet the requirements of Education Code Section 47605; we disagree that Fillmore Unified School District had any legal basis to support its denial of the charter petition.

* * *

Jeff Sweeney, Superintendent

Re: Fillmore Unified School District's Resolution and Findings to Deny the Piru Charter School Charter Petition
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- Finding I(A)(1)-(2): Demonstrably Unlikely to Succeed: Community Opposition

I.(A) The overwhelming sentiment expressed by such families at the public hearing, and through subsequent actions such as the picketing of a Charter informational meeting, is that the families who currently attend Piru Elementary School and live within its attendance boundaries are opposed to the proposed conversion to PCS. The number of opponents present at the public hearing represents a large proportion of the families who currently attend Piru. A number of such parents/guardians have specifically indicated that they would not send their children to PCS should it be converted to this proposed charter school.

I.(A)(1) The District received petitions signed by 93 people (representing 107 of the 347 current Piru Elementary School students) opposing the Charter and/or requesting that their student's [sic.] names be removed from intent to enroll forms for PCS because they do not intend to send their children to the proposed PCS.

I.(A)(2) Piru Elementary School is located in a remote a rural location which is unlikely to attract large numbers of students from other areas, and this it is unlikely that the student enrollment from outside of the Piru area will offset the loss of enrollment from those students who will not be enrolling from the Piru area.

Charter School Response:

In 5 CCR 11967.5.1, the State Board of Education ("SBE") set forth criteria for the review and approval of charter school petitions by the SBE. This section clearly defines and sets forth the content of a meritorious charter petition. In particular, it lists factors that the SBE considers when determining whether charter petitioners are demonstrably unlikely to successfully implement the program. Those factors include: (1) if the petitioners have a past history of involvement in charter schools or other educational institutions, the history is one that the SBE regards as unsuccessful; (2) the petitioners are unfamiliar with the SBE's judgment with the content of the petition or the requirements of law that would apply to the proposed charter school; (3) the petitioners have presented an unrealistic financial and operational plan; or (4) the petitioners lack the necessary background in several areas critical to the charter school's success. 5 CCR 11967.5.1(c).

With the finding above, the District has cast aside guidance from the SBE and instead crafted its own rationale for finding the petitioners to be demonstrably unlikely to successfully implement the program: a perceived lack of public support. This finding is not supported by charter school law or regulation as one on which a denial of a charter petition may properly be based and is based on conjecture, not actual fact, and thus cannot support a denial.

Furthermore, it is our understanding that the District engaged in a community-wide campaign against the creation of the Charter School. Individuals reported receiving misinformation and feeling intimidated by the District during the charter petition process. The



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District brings up the alleged lack of parental and community support for the Charter School. However, it fails to put its allegations in context, including any discussion of the District's actions attempting to mute the voices of PCS supporters. Any claim by the District that the Charter School will not be able to enroll a sufficient number of students or that parents are requesting that their students' names be removed from intent to enroll forms is unsupported by fact. In a short period of time, the Charter School was able to gather Intent to Enroll forms representing 140 in-District students, without any official outreach or an actual approved charter in-hand and in spite of the negative environment in we understand the District created. This speaks volumes to the Charter School's ability to enroll its entire projected enrollment of 386 in the 2010-2011 school year.

- Finding I(B)(1)-(4): Budget Documents

I.(B) The budget documents are overly optimistic, inaccurate, and unworkable.

I.(B)(1) The budget appears to be based on statewide or general estimates, but not the actual costs of running *this* school, resulting in an underestimation of expenses.

I.(B)(2) The budget assumes the State of California will grant a Cost of Living Adjustment ("COLA") over the next two years.

I.(B)(3) The anticipated enrollment at PCS is significantly overstated, with the result that the anticipated revenues are overstated.

I.(B)(4) The budget is premised on the receipt of a \$30,000 Newhall Foundation Grant each year, but there is no guarantee that PCS would receive such a grant or method for replacing such proposed funds if PCS des not received the grant.

Charter School Response:

The District failed to provide a basis for its statement that the budget appears not to reflect the costs of running PCS. If the District had requested further information about the budget, the Charter School would have made clear that all salaries are based on the actual staff employed at the Piru Elementary School right now: their actual salaries, plus a 3% increase for next year. In addition, PCS can provide a spreadsheet with the individuals and their salaries. The average salary was merely an average of all of the salaries - it was not the basis for the total number. Regardless, it is the actual average of all teachers of varying levels. Expenses other than salaries and benefits are based on the petitioners' intimate knowledge of the existing school, its needs, and the costs to run it, in addition to ExED's, the back office services provider, knowledge of costs for charter schools in Southern California (which in many cases are probably higher than in Piru). If there are questions about other specific items, PCS would be glad to explain and defend them.

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COLAs for revenue used in the budget are based on the School Services of California estimates, which provides the most accurate revenue estimates for all public schools in California. The Charter School agrees that there may be no COLA next year but at this point it is speculation and it used the best information at the time to put together the budget. Furthermore, since this budget was submitted, it was determined by ExED that the General Purpose Revenue rates should actually be \$253/ADA higher than estimated because the \$253/ADA cut that was taken this year (2009-10) is intended to only be a one-time cut and will hopefully be restored next year. Therefore the revenue could actually be higher than budgeted.

Piru Charter School projects 386 students for next year. Piru Elementary School currently has approximately 350 students enrolled and PCS has received interest in enrollment from over 40 families whose children currently do not attend Piru, and even more if PCS factors in the interest from parents of students at the Little Red School House, seeking a sixth grade option for their children, besides Fillmore Middle School. Add to that the fact that it has been confirmed at the Piru Neighborhood Council that the Cabrillo Economic Development Corporation, which built and operates our Rancho Sespe Community, is building at least 60 additional farm worker family housing units right in the town of Piru, (there is already a waiting list for these units which exceeds capacity) and plans to open them this Fall. In light of this new development the Charter School believes it likely that its enrollment projections are too low, rather than too high.

Piru Elementary has been receiving a Newhall Grant for over 20 years. The Charter School does not anticipate a sudden change in that entity's generosity. PCS has every reason to believe that the Newhall Grant will actually increase the amount of its annual grant as it reaches out to support a school of choice.

- Finding I(C): Transportation Plan

<p>The rhetoric regarding the transportation plan is incongruent with the budget and with the population the Charter proposes to serve.</p>

Charter School Response:

The District's finding here is factually inaccurate. There is a pupil transportation line item in the budget (row 113) that allocates funds for a school bus. The cost for transportation services includes the bus driver.

- Finding I(D): Migrant Education Services



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I.(D) If Piru Elementary School were to be converted to PCS, Migrant Education Services for migrant students may be interrupted.

I.(D)(1) The Charter's plan for migrant students does not outline any specific curriculum, activities, or special programs that are supplementary beyond the regular school day.

I.(D)(2) The Charter does not identify who will be responsible for overseeing Migrant Education Services and how those services are delivered so as to supplement and not supplant the regular education program.

Charter School Response:

Education Code Section 47605 states that a denial of a charter petition may only be based upon "...written factual findings, specific to the particular petition, setting forth specific facts..." Here, the District is challenging the Charter School's plan for migrant education because it does not exactly match the District's own plan. This challenge is not a fact. Charter schools are not required to provide migrant education, yet nevertheless, PCS will.

It is PCS's choice as to whether to apply for Migrant funds. If the Charter School decides not to do so, that would not be a problem because, again, PCS is not required to. These funds were not budgeted because of the known barriers to receiving them.

Piru Charter School has already been in contact with both County and State Migrant Education professionals and will apply for migrant funds according to appropriate guidelines. PCS plans to have a migrant coordinator on site and will expand the current migrant program at Piru Elementary School as PCS reaches out to offer more support to migrant students and families. These services will be provided with or without migrant funding.

Accordingly, this finding is not a legal basis for denial of the charter petition.

- **Finding I(E): Parent Participation**

The petitioners in developing and submitting the Charter to the District for consideration, however, failed to include parents and families in the process or decision in any way.

Charter School Response:

The District asserts as fact that parents were not involved in the development and submission of the charter petition. The District is wrong. During the public hearing, the petitioners pointed out many ways in which PCS would improve upon what is currently being offered by Piru Elementary including parent, staff, and community collaboration. During the last three years, parents and families communicated many concerns with the petitioners and these areas of improvement have been included in the charter petition, such as lower class sizes; a



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Lesson One, the ABCs of Life training will continue with introducing Level Two; and local control with parents on the PCS Board of Directors and planning committee.

Accordingly, this finding is not factual and thus not a legal basis for denial of the charter petition.

- Finding I(F): Lack of Majority Support

As a result, the Charter requesting the conversion of Piru Elementary School to PCS represents the desires and needs of nine teacher petitioners and a few hand-picked supporters, and not the majority of students and families that the school should exist to serve.

Charter School Response:

Education Code Section 47605 states that a denial of a charter petition may only be based upon "...written factual findings, specific to the particular petition, setting forth specific facts..." Here, DUSD is challenging the Charter School's alleged lack of community support because the school "should" exist to serve the majority. This challenge is not a fact, and it is not accurate. The charter petition was signed by the statutorily required number of permanent status teachers, which is not less than 50% of those teachers currently employed by Piru Elementary School. To represent that parents were thus not involved in the charter petition process is wholly based upon conjecture, and, as stated above, is incorrect. Instead, it is the Charter School's belief that the District has misrepresented the amount of parent support for the Charter School.

As above, because of the smear campaign undertaken by the District and its outrageous intimidation tactics, petitioners were regretful that in the final stages of writing the charter petition, a more transparent approach with parents was not available. The District intentionally misinterpreted what the petitioner said at the public hearing to make it seem that the petitioner feared parent involvement; this could not be further from the truth. Many of the petitioners have been successfully working with Piru parents for over ten years and have a history of working effectively with them. The majority of current Piru Elementary School parents and students respect the petitioners and are looking forward to being involved in Piru Charter School.

- Finding I(G): Section 504

The Charter Petition fails to address adequately how the Charter will comply with Section 504 of the Rehabilitation Act of 1973. ... Further, the budget does not provide any funds for the provision of related services pursuant to Section 504.

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Charter School Response:

Education Code Section 47605(b)(5) requires charter petitions to contain “reasonably comprehensive” descriptions of 16 required elements. The PCS charter contains a comprehensive discussion of serving students with disabilities under Section 504. The District found that the charter document does not identify a 504 coordinator. However, on page 27 of the charter petition, PCS provides for a 504 Coordinator. The District’s finding that the charter does not provide for employees knowledgeable about the meaning of evaluation data is similarly inaccurate. Finally, the District’s finding that the budget does not contain a line-item for Section 504 strains all notions of reasonableness. Section 504 costs are included in the special education costs reflected in the budget. No charter school budget prepared by ExED for any of its charter school clients specifically delineates Section 504 costs as separate from special education costs (understanding that the special education revenue itself is restricted).

Furthermore, Education Code Section 47605.7(a) states that “[a] petition for the establishment of a charter school shall not be denied based on the actual or potential costs of serving individuals with exceptional needs....” Accordingly, this finding is not a legal basis for denying the charter petition.

- Finding I(A)(1)-(2): Unsound Educational Program: Community Opposition

...[T]he majority of people who have provided input to the District regarding the Charter ... oppose the PCS Charter. ... It is educationally unsound for the current students and future students to this school to disrupt a popular school that is making great strides in achievement, causing large numbers of students to be removed from this, their neighborhood school and bussed to another town in order to meet some of the aims of some of the current teaching staff and a small group of supporters. ... [T]his Charter represents an unwanted educational disruption resulting in educational and psychological harm to the students.

Charter School Response:

As a preliminary matter, the SBE regulations governing the review of charter petitions by the SBE define “unsound educational program.” That definition states: “a charter petition shall be an ‘unsound educational program’ if it is either of the following: (1) A program that involves activities that the State Board of Education determines would present the likelihood of physical, educational, or psychological harm to the affected pupils; (2) A program that the State Board of Education determines not to be likely to be of educational benefit to the pupils who attend.” 5 CCR 11967.5.1(b).

The District’s finding here appears to anticipate the SBE’s regulatory guidance on unsound educational program. Yet the District neglects entirely to provide any factual support whatsoever to demonstrate how any harm at all, let alone educational and psychological harm, would befall students should the PCS charter be approved. Without any factual support, bare

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speculation does not amount to a legal basis for denial of the charter petition under Education Code Section 47605.

- Finding II(B): Lack of Innovation

The Charter offers very little new or innovative, beyond offering yoga and the possibility of reduced class size in a few grades.... Given the strong opposition to the Charter by the majority of these stakeholder groups, if PCS were approved, it would lose the support and involvement of these groups.

Charter School Response:

As above, the SBE has defined an unsound educational program. It does not include a "lack of innovation" in a charter petition. Charter schools, by their very nature, are innovative. A public school that is independently operated is unique. Specifically, PCS did offer innovative educational elements in its petition, including: project based learning will be utilized at PCS, which is not implemented at any school in the District; a systemic plan for aerobic exercise and physical education activity which triggers brain stimulation. The District here provides no facts to support its claim that the PCS charter lacks innovation (in fact, with this claim, the District appears to be stating that the program it operates at Piru Elementary School lacks innovation, too). Again, the District speculates that various stakeholders would not support or be involved in the Charter School if it is converted, without any factual data or anecdotes to back up the claim. Accordingly, this finding is merely a matter of opinion and is not a legal basis for denial of the charter petition.

- Finding III(A)(1)-(5): Not Reasonably Comprehensive: Governance Structure

(1) The Charter ... does not include a copy of the bylaws.

(2) The Charter does not make specific allowance for a District representative on the corporation's governing board, as required by Education Code Section 47603 [sic.]...

(3) The Charter's discussion of insurance and indemnification of the District is not adequate to protect the District from potential liability for PCS's acts or omissions, despite the fact that PCS will constitute itself as a 501(c)(3) nonprofit public benefit corporation. The Charter must identify specific types and levels of insurance, not merely general statements that insurance will be required.

(4) The Charter ... does not actually commit PCS or its corporate governing entity to comply with necessary and appropriate conflict of interest laws, including the PRA or Section 1090.

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Charter School Response:

PCS is a nonprofit benefit corporation and has the appropriate paper work to document its status. PCS does not have a final version of its corporate bylaws because it has not yet appointed a Board of Directors to approve such bylaws. Bylaws are not required by law to be submitted with charter petitions. Had the District expressed this concern in a timely manner, PCS could have produced draft bylaws for the District's review.

By virtue of the existence of Education Code Section 47604(b) (not Education Code Section 47603, which the District erroneously cites to), PCS does not have to declare in its charter that the District may seat a representative on the PCS board. That is, because Education Code Section 47604(b) gives the governing board of a school district that grants a charter to a charter school a single representative on the nonprofit board of directors, the District is permitted this seat regardless of whether the Charter School specifically affirms such. Furthermore, the District has incorrectly interpreted this Section. Education Code Section 47605(b) does not specify whether the District's representative is a voting or non-voting member. Our office takes the position that the choice between voting and non-voting lies with the District.

The District neglects to provide facts as to how PCS's description of insurance and indemnification of the District is inadequate to protect the District from PCS's acts and omissions. Accordingly, this does not constitute a specific factual finding under Education Code Section 47605. Additionally, the District states that the charter petition must identify specific types and levels of insurance; yet, the budget does provide for the acquisition of insurance, and as the District is likely aware, the types and amounts are generally negotiated as part of a memorandum of understanding. The Charter School would have gladly entered into a productive and cooperative discussion with the District in order to determine the insurance types and levels necessary to make the District feel secure in its protection.

It is our legal opinion that Government Code Section 1090 does not apply to charter schools. We believe the District has reached this conclusion based upon an erroneous interpretation of the relevant law.

Pursuant to Education Code Section 47610, charter schools are exempt from "the laws governing school districts," with only a few minor exceptions, not applicable here. This Section is known as the "mega-waiver." School districts themselves are not directly governed by Government Code Section 1090. Absent Education Code Section 35233, which directs school district governing boards to comply with Government Code Section 1090, the provisions of Section 1090 would not apply to school districts.

As it is only through Education Code Section 35233 that Government Code Section 1090 applies to school districts, charter schools are necessarily exempt from Section 1090 by virtue of the "mega-waiver" described above. Since Education Code Section 35233, by its terms, does not apply to charter schools, and no other California statute states that Section 1090 applies to charter schools, there is no statute that applies Government Code Section 1090 to charter



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schools. The Legislature is presumed to have been aware of Education Code Section 35233 when it enacted the Charter Schools Act. It made no exception in the "mega-waiver" for Section 1090 when it adopted Education Code Section 47610, although it expressly made a number of other exceptions. Thus, Section 1090 is not applicable to charter schools.

Finally, the District asserts that the charter petition does not adequately provide for the involvement of parents. The charter does, though, provide a reasonably comprehensive description of parental involvement. The description may not be exhaustive, but it does meet the reasonably comprehensive requirement of the Education Code. Therefore, the District's findings with regard to the governance element are not legal bases on which the charter may be denied.

• Finding III(B)(1)-(3): Employee Qualifications

(1) There is no requirement that any or all teachers have CLAD or BCLAD certification.

(2) The Charter provides that noncore, noncollege preparatory teachers will have "flexibility" regarding certification requirements, but does not explain what PCS intends by such flexibility, what qualifications must be met by such teachers, and how such flexibility will actually be implemented.

(3) The Charter does not identify a position responsible for the program for English Language Learners, nor include any qualifications for such a position.

Charter School Response:

Nothing in the Education Code, or in any of the implementing regulations of the Charter Schools Act, states that teachers in a charter school must have CLAD or BCLAD certifications. Effective July 1, 2009, AB 1871 provides that the California Commission on Teacher Credentialing cease issuing CLAD certificates. English Language Development is authorized with most prerequisite credentials or certificates. Accordingly, PCS did not place such a requirement in the charter. All teachers serving English Learners will have a CLAD or BCLAD or the equivalency currently issued by the California Commission on Teacher Credentials.

With regard to flexibility for noncore, noncollege preparatory teachers, PCS is simply following the requirements of Education Code Section 47605(1). This constitutes a reasonably comprehensive description of employee qualifications.

The charter petition contains a thorough plan for English Learners. It is not required by law or regulation to identify a person responsible for administering this program.

Accordingly, these findings, in whole or in part, do not constitute legal bases on which the charter petition may be denied.



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- Finding III(C): Admission Requirements

The admission preferences violate the Charter Schools Act of 1992. The Act specifies that in the case of a public school converting to a charter school, the charter school must “adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.”

Charter School Response:

The District misapplies the law in this finding. Education Code Section 47605(d)(1) states: “...an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.” PCS does give preference to students residing in the former attendance area of Piru Elementary School. The law does not specify that a conversion school must give highest priority to students residing in the former attendance area. The preferences above the statutorily required preferences are narrower and thus logically come before the broader preferences containing more applicants. Any preferences beyond the statutorily required preference must be approved by the authorizer. As such, if the District was concerned, it could have resolved the concern by denying the additional preferences as opposed to denying the charter outright without legal justification. Accordingly, the charter meets the legal requirement and this finding is an impermissible basis for denial.

- Finding III(D): Employee Return Rights

The discussion of the rights of District employees to work at the Charter School is misleading.

Charter School Response:

The charter petition, on page 63, makes a clear distinction between employee return rights prior to and following conversion. The District willfully ignores this distinction in order to make the finding above. The charter petition explicitly states that after conversion, employees shall be employees of PCS. It is only before conversion that the rights of employees will be outlined in a Memorandum of Understanding. The charter also states that employee return rights are governed by District policy and collective bargaining agreements; the Charter School has no say over employee return rights. The charter petition presents a reasonably comprehensive description of employee return rights, and consequently this finding is not a legal basis on which the charter may be denied.

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- Finding III(E): Exclusive Public School Employer

The Charter provides that PCS will be the exclusive employer for purposes of the Educational Employment Relations Act ("EERA"), and acknowledges that PCS employees have the right to organize and be represented in accordance with state law. The Charter, however, also includes the following statement: "The employer voluntarily recognizes the Fillmore Unified Teachers Association (FUTA) as the exclusive representative of the Piru Charter School employees." This shows a fundamental lack of understanding of the rights and obligations of the employer under EERA, despite a statement that PCS will be the employer thereunder.

Charter School Response:

In compliance with Education Code Section 47605(b)(5)(O) and the Educational Employment Relations Act ("EERA"), the Charter School clearly states that it shall be the exclusive public school employer for the employees of PCS. The District's concern regarding the recognition of the Fillmore Unified Teachers Association ("FUTA") as the representative of PCS teachers is now moot. FUTA has decided to forgo representation of PCS teachers. Teachers in the Charter School have expressed interest in joining the California Teachers Association, forming their own local union, and negotiating a separate collective bargaining agreement directly with the Charter School.

During the charter drafting stage, teachers explicitly expressed their desire for continued representation by FUTA. Accordingly, under a "successor employer" theory, PCS previously intended to recognize FUTA as the exclusive representative of Charter School teachers. At that time, it was the Charter School's understanding that the School and its teachers would not need to engage in the formal recognition process through PERB since the teachers requested to remain part of FUTA and the School intended to voluntarily recognize FUTA as the teachers' exclusive representative.

The charter petition contains an inadvertent error regarding FUTA representing classified employees. FUTA would only be recognized to represent the group of teachers it is certified to represent.

Finally, it is doubtful that any of the petitioners used the term "wall-to-wall" during the public hearing. Regardless, PCS intended to convey that classified employees could be represented, as well as teachers, in their own bargaining unit or by their own union. The petitioners never intended to convey that FUTA, or any teachers union, would represent classified employees in the same bargaining unit as certificated employees. The Charter School is aware that while a teachers union may represent both certificated and classified employees, such employees cannot be represented in the same bargaining unit.

As noted above, PCS would be the exclusive public school employer of the employees of the Charter School. PCS's stated intent is to comply with any employee desires for representation, and with applicable law in this regard.



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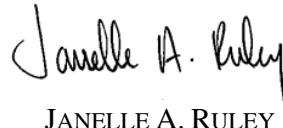
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The above response has been submitted to the District in an effort to demonstrate the inaccuracy and lack of sufficiency of the District's findings. Should the District wish to meet to engage in a meaningful discussion about the creation of Piru Charter School, the petitioners would agree to do so. In the meantime, PCS will continue to pursue its appeal.

Sincerely,

LAW OFFICES OF

& MINNEY, LLP



JANELLE A. RULEY
ATTORNEY AT LAW

Cc: Richard Durborow, Lead Petitioner
Ventura County Board of Education

