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Charter Schools Division
California Department of Education
1430 N. Street
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Re: New West Charter Middle School Response to District Findings for Denial of Charter Renewal Petition

Dear Ms. Zachry:

Our office represents New West Charter Middle School (“New West” or the “Charter School”) in its charter renewal petition first submitted to the Los Angeles Unified School District (the “District”) and then to the State Board of Education (“SBE”). As you are aware, the District denied New West’s charter renewal petition on February 1, 2011. The purpose of this letter is to respond to the District’s findings for denial of the charter renewal petition so that the California Department of Education (“CDE”) has a complete picture of the charter renewal petition and New West’s attempt at renewal by the District.

The District Board meeting to deny the charter renewal petition was very unorthodox. A representative of the Associated Administrators of Los Angeles (“AALA”), with no connection to the Charter School, stated that New West is not held to the same standards as other charter schools within the District. The representative twice highlighted that New West was not treated the same as other District charter schools and that the District’s practice of approving other charters based upon different standards is unfair. Additionally, one District Board member stated that New West was a private school and that she did not want to have anything to do with the Charter School. This defamatory and inflammatory statement was made in public and with the full knowledge that it was untrue and likely deliberately designed to undermine the success of New West. Another District Board member indicated that the District staff report contained inaccuracies about the Charter School, which staff acknowledged, and yet the District Board elected to approve the contents of the report knowing it contained wrong information. Immediately after the unanimous vote to deny the charter petition, another District Board member requested an update on litigation between the Charter School and the District (which, had the update been given during open session, would have been a violation of the Brown Act as it was not agendized as such). There was seemingly no attempt to provide New West with a fair or impartial vote. All of this is

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captured on the video tape of the District Board meeting, which will be mailed under separate cover.

For ease of reference for the CDE, this letter follows the order of the District's findings for denial, and uses the same headings as those used by the District. The District's findings are enclosed within text boxes, with the Charter School's responses immediately following.

DEMONSTRABLY UNLIKELY TO SUCCEED

Finding #1

Petitioner did not submit board member questionnaires and declined to complete documents necessary for the Office of the Inspector General to perform due diligence background checks to determine whether any concerns exist with regards to the petitioners' operations of a publically-funded charter school.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language nor follow processes of the District that are outside of legal requirements. There is no legal requirement that the Charter School submit board member questionnaires or complete other documents beyond the charter as demanded by the District. The only mandatory process for renewal is set forth in Education Code Sections 47607 and 47605, which describe the standards and criteria for renewal, including the requirements for the content of the charter which are present in the New West charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #2

In order to evaluate New West's ability to fiscally implement their educational program and the school's financial stability, ICSD requested the petitioner to submit copies of the school's 2009-2010 audit, 2010-2011 projections, 2011-2012 projections, and the current financials for the school. New West only submitted budgets and cash flows for the 2012-2013 school year and represent projections. The petitioner declined the ICSD's request to submit the other projections and fiscal audits which New West would have been required to produce to the State Board of Education pursuant to Education Code section 47605(m).

As required by law, New West submitted budget information, including cashflow projections and assumptions, along with three-year projections. New West submits its annual audit to the CDE each year, and a copy is on file at the Charter School. New West complied with legal requirements regarding the submission of budgetary documents in accordance with Education Code Section 47605(g), and therefore this finding is an impermissible basis for denial.

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Finding #3

The petition fails to state an enrollment capacity for the school and instead only vaguely states that there is a demand for their school and an anticipated enrollment of over 600 students for the 2011-2012 school year. Without a specific stated enrollment capacity, New West's petition fails to support a finding that the school is demonstrably likely to implement the program since ICSD is unable to meaningfully evaluate essential matters such as the budgetary and fiscal viability of the school to operate at the size and scope of the educational program proposed in the charter. Insurance policies, grants/loans, and other related matters that directly and materially affect the charter school's fiscal viability would necessarily need a specific enrollment capacity. In addition, there are other legal and practical considerations related to the charter school that require a clear and specific enrollment capacity. New West has annually submitted facilities requests pursuant to Education Code section 47614 (Proposition 39), and a failure to have a clearly defined enrollment capacity renders it impossible for LAUSD to meaningfully analyze New West's enrollment projections in future facilities requests.

No law requires that a charter petition state with specificity its enrollment capacity; particularly as capacity is largely dependent upon facilities; and facilities are ultimately dependent upon the projection of students who wish to attend. Indeed, Education Code Section 47605(d) recognizes that enrollment capacity is not necessarily a static number. The charter renewal petition clearly states that the New West Board of Directors will determine capacity.

New West addresses its enrollment capacity on page 54 of the charter renewal petition. As explained in the charter, New West is looking to expand its facilities in order to accommodate student demand, which could rise to approximately 1500 students over the term of this renewal. Accordingly, because the Charter School cannot predict with certainty what its enrollment capacity will be for the term of the renewal charter, it accurately stated the annual demand from students to attend the Charter School. As of now, halfway through the open enrollment period for the 2011-12 school year, over 1000 students have attended open house events to express an interest in attending the Charter School.

THE PETITION DOES NOT CONTAIN THE REQUIRED AFFIRMATIONS



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Finding #4

Although the petition contains an assurance that a charter school shall admit all pupils who wish to attend the school pursuant to Education Code section 47605(d)(2)(A), Element H of the petition regarding Admission Requirements and the New West Application Packet contain statements that contradict this assurance. Specifically, the Application Packet contains several pre-admission and other mandated requirements that may be a deterrent to admission which contravene the Charter Schools Act provision that a charter school shall admit all pupils who wish to attend the school. For example, New West requires a parent to submit their child's STAR report as part of the application. Requiring a STAR report prior to enrollment is a prerequisite to admission regardless of the school's intent. While the Application Packet states that test scores will not be used for enrollment purposes, it also states that, "New West recommends that applicants have at least basic grade level skills in reading, writing, and mathematics to be successful with New West's middle school curriculum." These statements in New West's Application Packet indicate that there are prerequisites to admission which are in violation of the assurance that a charter school shall admit all pupils who wish to attend the school.

This finding relies exclusively on the content of an appendix to the charter renewal petition, which was intended as an example (see page 50), and not the language of the charter renewal petition itself. Therefore, it is an impermissible basis for denial of the charter renewal petition. As stated by the District, the New West charter renewal petition does contain the required affirmations as specified in Education Code Section 47605(d)(2)(A), and, mostly importantly, New West does not, in practice, have any admission requirements. Furthermore, the District engages in pure speculation and conjecture to make a baseless assumption about how the STAR report is utilized by the Charter School.

The Charter School does request that parents submit a STAR report as part of the application process. The application packet states: "No admission tests are not required. However, you must submit your child's latest STAR Student Report with the application. ... New West is interested in the CSTs because they reflect how well your child has mastered the California state content standards. All information is used post-lottery." (Emphasis added.)

As indicated in the charter, New West admits students from all over the greater Los Angeles region – covering over 50 unique zip codes. The Charter School has a very difficult time obtaining cumulative files for its students from the sending school districts; to date, New West has not been able to obtain cumulative files for some of its students this year, five months into the school year. The District in particular has repeatedly denied parents a copy of their student's STAR report. New West receives several complaints from parents every year that District schools are refusing to provide them with STAR testing information despite their understanding that this is their right. The Charter School requests the STAR report as one way to evaluate an admitted student's academic performance to date, and to help teachers prepare to teach individual students. New West absolutely does not utilize or review STAR reports prior to the public random drawing as a basis for making enrollment decisions, but only utilizes them once students have been enrolled.

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LACKS A REASONABLY COMPREHENSIVE DESCRIPTION OF REQUIRED ELEMENTS

Element A

Finding #5

Although the petition states that New West adheres to all applicable State and Federal law and Southwest SELPA policies and procedures regarding special education, the Special Education program as described in the renewal petition does not adequately describe what supports will be given to students with moderate to severe disabilities in order for these students to be successful with the college preparatory curriculum of the school.

This finding exceeds the requirements of law for a reasonably comprehensive description. New West is a member in good standing of the Southwest SELPA, as affirmed by SELPA Director Bob Farran in a letter (Appendix J to the charter). The charter language does not single out how students with any particular disability are served, but rather affirms that highly qualified personnel capability of meeting students' needs teach students with disabilities. Given the unqualified support from the SELPA and the longstanding, legally-compliant service of students with disabilities at the Charter School, this finding lacks any factual basis and thus is an impermissible basis upon which to deny the charter.

Finding #6

There is no assurance in the petition that New West would be subject to the full terms and requirements of the *Chanda Smith* Modified Consent Decree if it were to be authorized by LAUSD.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Element D

Finding #7

Although the petition contains a statement that New West will comply with the Brown Act, it does not include specifics to indicate how New West will comply with the requirements of the law (notice of meetings, recording of meetings, making minutes available, teleconferencing procedures, etc., to assure participation by the public). For example, New West's bylaws states that "the Board of Directors may designate that a meeting be held at any place within California that has been designated by resolution of the Board of Directors or in the notice of the meeting." All meetings of the New West governing board must be conducted within the jurisdictional boundaries of where the school is located to ensure that parents, pupils and the community have access to attend and participate in the meetings.

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The Charter School's Bylaws, attached to the renewal charter as Appendix M, set forth all of the information contained in this finding. The Bylaws also state (Article VII, Section 15, page 5) that Board of Director meetings shall be held at the principal office of the corporation (which is the school site). The District appears to be concerned that the New West Board may hold a meeting outside of District boundaries. While highly unlikely to occur (indeed, the Charter School has never held a meeting off-site), such would be lawful, because, as it is a charter school, New West does not have jurisdictional boundaries like a school district does. Because charter schools must admit any student who resides in California, its jurisdiction is arguably the entire state.

Accordingly, this finding is an impermissible basis for denial of the charter renewal petition. However, should the SBE request an amendment to the Bylaws to limit jurisdiction for purpose of Board meetings, the Charter School would comply with this request.

Finding #8

While the charter states that the school intends to set up advisory committees, the document fails to identify the composition of each committee, delineate the responsibilities of each committee, and provide assurance that committee meetings will be held and noticed pursuant to the Brown Act.

As identified in the charter on page 39, the New West committee structure evolves and changes each year, based upon needs identified during the annual strategic plan Board retreat. The advisory committees which result from the strategic plan are oriented toward the Charter School's goals for a particular year, for example fundraising or charter renewal. The committees are truly advisory in nature: the members collect information and report back to the Board in a duly noticed Board meeting which complies with the Brown Act. There is no legal requirement that a charter identify the composition, etc. of such advisory committees; accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #9

Home-School Contract: New West's petition states that "agreement to the contract by parents is one of the terms of admission and enrollment each year for students who want to attend New West." Requiring parents to agree and sign the Home-School Contract contravenes Education Code section 47605(d)(2)(A) which requires a charter school to admit all pupils who wish to attend the school. Admission to New West cannot be contingent upon a parent signing the Home-School Contract.

Pursuant to a legal opinion issued by the CDE, charter schools may require parents to complete volunteer hour requirements. At New West, the Home-School Contract is a cornerstone of the educational program, and a key factor contributing to the Charter School's laudable academic success. In its eight years of operation, the Charter School has never encountered any difficulty with a parent of an admitted student not wishing to sign the Home-School Contract. No student has ever been penalized in any way or denied admission due to his or her parent not completing the volunteer hour requirement, and no student will ever be so penalized or denied admission. New West offers myriad opportunities to complete the volunteer hour requirement, including opportunities offered after school, in the evening, on weekends, and during the work day. The

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Charter School makes individual modifications were needed or requested. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #10

Parent Volunteer Requirements: Petition does not address whether the parent volunteering requirement is a condition of enrollment/continued enrollment. The petition fails to describe whether there are alternative means by which parents can satisfy their volunteer commitment or otherwise opt out of or reduce the commitment due to hardship. The petition contains statement that “New West pays special attention to ensuring that this volunteer requirement does not result in a loss of a diversity of students (i.e. race, ethnicity, or socio-economic),” yet does not explain how this is achieved. In light of the school’s declining ethnic diversity particularly in African American enrollment, this point is especially relevant. New West’s Application Packet requires parents to perform 16 hours of voluntary hours. This could be tantamount to charging tuition. Parents should be encouraged and not mandated to volunteer. Further, the petition should assure that pupils will not be expelled if parents do not fulfill volunteer requirements.

Please see response to Finding #9 immediately above.

The District here points out the Charter School’s “declining ethnic diversity ... in African American enrollment,” but fails to mention that it is also experiencing a decline in African American enrollment in its schools. In fact, for its 2010 API growth report, the District’s student population was only 10% African American. New West enrolls a higher percentage of African American students than the District does. Furthermore, due to the public random drawing that it must conduct due to substantial interest in admission to the Charter School, New West is very likely losing some of its diversity because of the public random drawing, which could disproportionately impact population subgroups by random chance.

Finding #11

Conflict of Interest Policy. The petition (pg. 46) and Bylaws (pg. 4) provide for “Interested Persons” to sit on the Board. The Bylaws “Article IX – Contracts with Directors” also allows New West to enter into a contract with a director. These provisions conflict with California Government Code Section 1090, which prohibits governing board members from being financially interested in any contract made by them in their official capacity, or by the board of which they are members. A conflict of interest in a contract per Section 1090 results in a void contract and the steps the board may take per the Bylaw Sections will not cure that conflict. An interested board member is conclusively presumed to have “made” the contract for purposes of Section 1090 because he/she is on the board, resulting in a void contract would prohibit any “interested person” from serving on the Board.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

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Additionally, it is the legal opinion of our counsel that Government Code Section 1090 does not apply to charter schools. We believe that District staff 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 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.

Further, the Legislature attempted to make the substantive requirements of Section 1090 applicable to charter schools by voting to approve Assembly Bill (“AB”) 572 in the most recent legislative session. However, on September 23, 2010, Gov. Arnold Schwarzenegger vetoed AB 572, which would have made the Ralph M. Brown Act (or, in some instances, the Bagley-Keene Open Meeting Act), California Public Records Act (“CPRA”), the Political Reform Act of 1974, and California Government Code section 1090 expressly applicable to charter schools. The Governor noted in his veto message, “Repeatedly, charter schools with high proportions of disadvantaged students are among the highest performing public schools in California. Any attempt to regulate charter schools with incoherent and inconsistent cross-references to other statutes is simply misguided. ... Legislation expressing findings and intent to provide ‘greater autonomy to charter schools’ may be well intended at first glance. A careful reading of the bill reveals that the proposed changes apply new and contradictory requirements, which would put hundreds of schools immediately out of compliance, making it obvious that it is simply another veiled attempt to discourage competition and stifle efforts to aid the expansion of charter schools.”

Had it been the case that Government Code Section 1090 clearly applied to charter schools, then the Legislature would not have drafted or passed AB 572. We believe it is even clearer now, after the veto of AB 572, that Section 1090 does not apply to charter schools.

Finding #12

Governance is further complicated by an examination of the 2009 IRS Form 990 for the organization. Principal/Executive Director Sharon Weir signs the form as an officer but does not appear on the list of board members, officers and employees earning more than \$50,000.



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New West's fiscal and financial reporting processes are guided by the advice of two external auditors. In eight years of operation, the Charter School has always achieved a clean financial audit. The Executive Director/Principal is the *de facto* Chief Executive Officer of the Corporation, and, as such, is an officer. The Charter School will review its processes with its auditors to ensure compliance with IRS regulations.

Finding #13

Petition does not contain a statement that the members of New West's executive board, any administrators, managers or employees, and any other committees of the School shall comply with federal and state laws, nonprofit integrity standards and LAUSD's Charter School policies and regulations regarding ethics and conflicts of interest.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #14

The petition does not contain a grievance procedure for parents for the prompt and equitable resolution of complaints.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Element E

Finding #15

While the petition describes qualifications for teachers, the Executive Director/Principal and Assistant Principals of the charter school, the petition fails to identify the general qualifications for other categories of employees the school anticipates to be employed by the charter school. For instance, there is no description of the qualifications of office personnel and other classified staff identified in the petition.

A charter petition must contain employment qualifications for *key* charter school employees pursuant to Section 11967.5.1 of Title 5 of the California Code of Regulations. The New West charter meets this requirement. The Charter School's employee handbook, which is on file at the school site and available for inspection, contains qualifications for all employees. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

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Finding #16

The petition fails to sufficiently acknowledge that the charter school will not discriminate against qualified applicants or employees on the basis of race, color, religion, sex, gender identity, sexual orientation, pregnancy, national origin, ancestry, citizenship, age, marital status, physical disability, mental disability, medical condition, or any other characteristic protected by California or federal law and that equal employment opportunity shall be extended to all aspects of the employer-employee relationship, including recruitment, hiring, upgrading, training, promotion, transfer, discipline, layoff, recall, and dismissal from employment.

- The petition fails to clearly identify staff selection, hiring, and evaluation processes.
- The petition fails to describe grievance procedures/or rights for employees.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Element F

Finding #17

Although the petition contains a statement that New West will follow the same procedures used by the District, it does not include an explanation of the District's health and safety procedures to indicate an understanding of how New West will provide a safe environment for its students and staff.

The charter renewal petition only states that New West will follow the same procedures used by the District with regard to child abuse reporting. The statement in no way applies to any other facet of health and safety policies and procedures. A summary of health and safety procedures is provided on pages 45-47 of the charter, and the full policies and procedures are on file at the Charter School site. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #18

The petition fails to assure that the school's staff will be trained annually on safety procedures outlined in its policies.

An assurance that the staff of a charter school will be trained annually on safety procedures is not a required element of a charter petition. Nevertheless, New West does conduct annual training for its staff. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #19

The petition does not include District's provisions regarding Insurance and Indemnification to protect the charter school and the District from claims which may arise from its operations.

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This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition.

Nevertheless, on page 66 of the renewal charter, New West states that it will enter into an MOU with the authorizer whereby it will indemnify the authorizer for the actions of the Charter School under the charter. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #20

Facilities: The petition does not completely state health and safety assurances:

- The petition fails to state that New West shall comply with all applicable building codes, standards and regulations adopted by the city and/or county agencies responsible for building and safety standards for the city in which the charter school is to be located, and the Americans with Disabilities Act (ADA). Applicable codes and ADA requirements shall also apply to the construction, reconstruction, alteration of or addition to the proposed charter school facility.
- The petition does not state that it will comply with the Healthy Schools Act, California Education Code Section 17608, which details pest management requirements for schools.
- The petition fails to state that the charter school will comply with the asbestos requirement as cited in the Asbestos Hazard Emergency Response Act (AHERA), 40CFR part 763. AHERA requires that any building leased or acquired that is to be used as a school or administrative building shall maintain an asbestos management plan.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Element G

Finding #21

The petition fails to assure that the charter school shall comply with all requirements of the Crawford v. Board of Education, City of Los Angeles court order and the LAUSD Integration Policy adopted and maintained pursuant to the Crawford court order, and fails to describe the charter school's written plan outlining how it would achieve and maintain the LAUSD's ethnic goal of 70:30 or 30:70 ratio.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School

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include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #22

The petition fails to describe how its outreach efforts will attain a racial and ethnic balance at the charter school that is reflective of LAUSD. The petition makes reference to partnering with community groups/agencies on past recruitment efforts but does not provide examples.

The contents of Element 7 of the charter renewal petition are reasonably comprehensive and thus meet legal requirements. New West does make a concerted effort every year to reach out to underserved communities; indeed, documentation of these efforts are on file at the school site. It bears mention that the District has apparently instructed its elementary schools to prohibit New West from attending information or recruiting events at their sites. The District bars the Charter School from access to students, which could have an impact on New West's overall diversity.

Finding #23

The petition fails to provide specifics of how the charter school provides recruitment brochures in multiple languages to ensure outreach to non-English speaking community members.

This finding exceeds the requirements of law, and is therefore an impermissible basis for denial of the charter renewal petition. New West does have Spanish language interpreters on staff who provide assistance for families as needed.

Finding #24

The petition does not contain a statement that New West would accommodate public school choice traveling students under NCLB.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #25

The lack of specificity and assurance in the petition for achieving racial and ethnic balance is critical given New West's decline in ethnic diversity particularly in African American enrollment as documented in the California Department of Education's Dataquest website.

Please see response to "Parent Volunteer Requirements" above. The New West charter renewal petition meets the requirements of law in this, and all other areas.

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Element H

Finding #26

The petition fails to include a reasonably comprehensive description of the manner in which New West will implement a public random drawing in the event that applications for enrollment exceed school capacity. Specifically, the petition fails to address the method the school will use to verify that lottery procedures are fairly executed, the timelines under which the open enrollment period and lottery will occur, the day of the week, date and time lotteries will occur so most interested parties will be able to attend, and the records the school will keep on file to document the fair execution of lottery procedures.

This finding exceeds the requirements of law for a reasonably comprehensive description. As all of the occurrences in the District's example are likely to change or evolve on an annual basis, they are items better left to an admissions policy or Application Packet, which is what New West does. The Application Packet, attached as Appendix N, details the process for the public random drawing. The Application Packet is available at the school site for any interested families, and it is distributed at all enrollment events. Additionally, the Charter School produces a podcast, posted on its website, to describe the admissions and enrollment process. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #27

Lottery exemptions and preferences fail to adhere to Education Code section 47605(d)(2)(B):

- The petition lists the category of continuing students as a preference even though continuing students are exempted from the lottery pursuant to Education Code section 47605(d)(2)(B). The petition also imposes requirements in order to "maintain eligibility for this preference" and be deemed an "existing pupil."
- The petition fails to affirm that in the event a public random drawing is implemented, admission priority preference shall be extended to students who reside within LAUSD. Preference for residents of the District is second to the last in order of admission preferences which violates section 47605(d)(2)(B).
- Sibling preferences and Children of Employees are listed as having more priority than LAUSD District students in violation of section 47605(d)(2)(B).
- The petition states that preference for enrollment will be available to applicants who attend or live in the attendance area of Brockton Elementary School and that New West may be available to receive funds through SB 740 Charter School Facility Grant Program if students attend this particular school. Since New West has not produced any documentation that it is eligible to receive these funds including showing that it gives enrollment preference to an elementary attendance area in which less than 50 percent of pupil enrollment is eligible for free or reduced price meals, this preference is inappropriate.

This finding misinterprets applicable law. While Education Code Section 47605(d)(2)(B) does require an admissions preference in the event of the lottery for residents of the District, it does not specify that such preference must exceed all other admissions preferences. Given the extraordinary demand for admission to New West, if the Charter School gave top admission

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preference to residents of the District, it is very likely that siblings of enrolled students would not gain admission, thus splitting up families and creating a burden that the law did not intend. All other preferences would get swallowed by the larger District preference. Furthermore, the Charter does give, and has given, an admissions preference for the purposes of SB 740. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #28

The Application Packet contains several pre-admission and other mandated requirements that may be a deterrent to admission which contravene the Charter Schools Act provision that a charter school shall admit all pupils who wish to attend the school. (See Education Code section 47605(d)(2)(A).) For example, New West requires a parent to submit their child's STAR report as part of the application. New West must accept all pupils who wish to attend, so requiring a STAR report prior to enrollment is a prerequisite to admission regardless of the school's intent. While the Application Packet states that test scores will not be used for enrollment purposes, it also states that, "New West recommends that applicants have at least basic grade level skills in reading, writing, and mathematics to be successful with New West's middle school curriculum." These statements in New West's Application Packet indicate that there are prerequisites to admission which are in violation of Education Code section 47605(d)(2)(A).

Please see response to Finding #3 above.

Element I

Finding #29

The petition fails to state that the charter school will at all times maintain a funds balance (reserve) of its expenditures as required by section 15450, Title 5 of the California Code of Regulations.

New West maintains a more than adequate budgetary reserve, as identified in its budget, attached to the charter as Appendix P. No law requires that a charter petition must state that a charter school will at all times maintain a funds balance. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #30

The petition fails to acknowledge the right of LAUSD to audit the charter school's books, records, data, processes and procedures through the LAUSD Office of the Inspector General or other means pursuant to LAUSD's oversight responsibility and fails to assure that the charter school shall cooperate fully with such audits.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

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Element J

Finding #31

The petition fails to provide a reasonably comprehensive description of the charter school's student discipline procedures necessary to afford the charter school's students adequate due process. Clearly described/outlined procedures are necessary to avoid inconsistent, capricious, and unfair student disciplinary practices and necessary to afford students adequate due process. For instance, the petition fails to identify offenses for which students must be suspended/recommended for expulsion, fails to identify student expulsion procedures, and fails to sufficiently address student suspension and expulsion appeal rights.

The District makes a number of findings regarding the Charter School's suspension and expulsion policy and procedures. This response addresses all such findings. Charter schools are not required to comply with Education Code Section 48900, which address pupil suspension and expulsion from traditional public schools, but charter schools must provide due process to students facing discipline. New West has duly adopted a suspension and expulsion policy which legally comports with due process requirements. In addition, the Charter School has implemented a multi-step process for student discipline which is spelled out and memorialized in a series of forms which are given to parents at each stage in the process. This procedure also meets legal requirements for due process and all requirements of Section 11967.5.1 of Title 5 of the California Code of Regulations. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Element M

Finding #32

The petition contains vague statements as to the return rights of a District employee who chooses to work at New West. The following statement renders an unclear statement to prospective employees:

“Charter School employees shall have any right upon leaving the District to work in the Charter School that the District may specify, any rights of return to employment in a school district after employment in the school that the District may specify, and any other rights upon leaving employment to work in the Charter School that the District determines to be reasonable and not in conflict with any law.”

The quoted language above has been approved by school districts and county offices of education all around the state, as well as by the State Board of Education, as legally sufficient. Despite the District's assertion to the contrary, the charter language is understandable and reasonably comprehensive. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

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Element N

Finding #33

The dispute resolution procedures described in the petition fail to conform with procedures the District deems necessary for the reasonable resolution of any disputes arising from provisions of the charter, including, but not limited to, written notification of a dispute, scheduling of issue conferences, and mediation and arbitration procedures.

The charter language in this element has been approved by school districts and county offices of education all around the state, as well as by the State Board of Education, as legally sufficient. Despite the District's assertion to the contrary, the charter explicitly addresses written notification of a dispute, conferences, and mediation, all on page 58 of the charter renewal petition. Accordingly, this finding is an impermissible basis for denial of the charter renewal petition.

Element P

Finding #34

The petition does not contain or describe applicable procedures regarding charter school revocation.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b), and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

Finding #35

The closure procedure in the charter does not sufficiently include procedures for the transfer and maintenance of school and student records, including personnel records.

This finding is exclusively based on the fact that the New West charter renewal petition did not contain District boilerplate language. There is no legal requirement that the Charter School include boilerplate language demanded by the District. The only mandatory language within a charter petition is that set forth in Education Code Section 47605(b) and with regard to closure as required in the California Code of Regulations, and all of those requirements are present in the charter renewal petition. Therefore, this finding is an impermissible basis for denial of the charter renewal petition.

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Given the District Board's treatment of New West as described above, and the myriad legally impermissible findings for denial prepared by District staff, it is clear that the District is vehemently opposed to serving as the authorizer for the Charter School. New West has been a model State Board of Education approved charter school since 2003, with its exceptional academic performance, status as a California Distinguished School, and ongoing cooperative relationship CDE staff, and looks forward to continuing this positive relationship.

Should you have any questions, please do not hesitate to contact our office.

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

LISA A. CORR
ATTORNEY AT LAW

JANELLE A. RULEY
ATTORNEY AT LAW

