

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ssb-csd-sep18item05

# California State Board of Education September 2018 Agenda Item #16

## Subject

Promise Academy: Consider a Material Revision of the Charter to Change from Opening 2018–19 to 2019–20.

## Type of Action

Action, Information, Public Hearing

## Summary of the Issue(s)

Promise Academy (PA) a State Board of Education (SBE)-authorized charter school, is seeking a material revision of its charter to postpone opening until 2019–2020 because it was unable to secure a facility to open as originally proposed for the 2018–19 school year.

PA was approved by the SBE on January 19, 2018, as a transitional kindergarten (TK) through grade eight school for a five-year term effective July 1, 2018, through June 30, 2023, upon fulfillment of the following (Attachment 7, p. 1):

* By June 15, 2018, the PA Board will provide a revised budget with positive three-year ending funding balances. The California Department of Education (CDE) notes that this condition has been met.
* By June 15, 2018, the PA Board will provide a revised petition that reflects the SBE as authorizer. The CDE notes that this condition has been met.
* By June 15, 2018, the PA Board will provide a fully executed facilities lease agreement. The CDE notes that this condition has not been met.

On May 29, 2018, the CDE received a submission for a material revision to delay the opening of PA by one year due to PA’s inability to negotiate a facilities agreement with the local school district (Attachment 5, p. 1).

## Recommendation

The CDE proposes to recommend that the SBE hold a public hearing to approve the request for a material revision of the PA charter petition to change from opening  
2018–19 to 2019–2020, under the oversight of the SBE, based on the CDE’s findings pursuant to *Education Code* (*EC*) sections47605(b)(5), and Title 5, *California Code of Regulations* (5 *CCR*) Section 11967.5.1.

The CDE finds that the PA petition is consistent with sound educational practice and the petitioners are demonstrably likely to successfully implement the intended program set forth in the petition provided they secure funding as stated in the petition.

The CDE finds that the PA petition does provide a reasonably comprehensive description of most of the required elements. If approved by the SBE, as a condition for approval, the PA petitioner will be required to revise the petition and include the necessary language for the following required charter elements: description of educational program, measurable pupil outcomes (MPOs), governance structure, and suspension and expulsion procedures.

The meeting notice for the August 14, 2018, Advisory Commission on Charter Schools (ACCS) meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice081218.asp>.

## Educational Program

The PA petition states that PA will target diverse groups of pupils within San Jose Unified School District (SJUSD), seeking to enroll the same or higher percentages of pupils with disabilities, pupils who are English learners (ELs), pupils identified as homeless or foster youth, and pupils identified as low-income or at-risk in accordance with the demographics of SJUSD (Attachment 3, pp. 30–36). The petition describes a TK through grade eight program that includes multi-age cohorts that span two traditional grade levels. This structure allows PA instructional staff to spend two consecutive years with pupils. For approximately two hours each day, pupils will participate in structured and standards-driven academic rotations. The petition states that these rotations will offer strategic, small-group instruction that blends sound instructional practice with an effective adaptive software program. Each set of academic rotation stations will have, at a minimum, one teacher and one teacher’s assistant to facilitate pupil learning. Two days each week, the focus of academic rotations will be based on English language arts and history, and two days will be based on mathematics (Attachment 3, pp. 46−52).

## Advisory Commission on Charter Schools Recommendation

The ACCS considered the request for a material revision to the PA charter petition at its August 14, 2018, meeting. The ACCS moved CDE staff recommendation to approve the request for a material revision to the PA charter petition. The motion passed unanimously.

## Ability to Successfully Implement the Intended Program

### Fiscal Analysis

The CDE finds that the PA petitioner is demonstrably unlikely to successfully implement the intended program as the petitioner has presented an unrealistic financial and operational plan for the proposed charter school. The CDE concludes that the PA multi-year financial plan is not fiscally viable due to the negative ending fund balances of $166,895; $247,321; and $215,440 with no reserves for fiscal years (FYs) 2019–2020 through 2021–22, respectively.

However, upon submitting the material revision to the SBE, the petitioner has secured a commitment letter from Silicon Schools Fund dated July 11, 2018, in the amount of $300,000 for FY 2018–19 and $200,000 for FY 2019–2020. The CDE finds that the petitioners are demonstrably likely to implement the program set forth in the petition, provided they secure the funding from Silicon Schools Fund.

### Budget

The PA multi-year projected budget includes the following:

* A planning year in 2018–19
* 210 TK through grade two and grade five to grade six pupils in 2019–2020
* 280 TK through grade three and grade five to grade seven pupils in 2020–21
* 350 TK through grade eight pupils in 2021–22 and 2022–23

### Facility

PA intends to operate within the boundaries of the SJUSD, close to the downtown area of the SJUSD, primarily within zip code 95112 or 95116. In 2018−19, PA will have the following facility needs:

* A facility with approximately 20,000 square feet to house the following:
  + Eight to ten classrooms that can accommodate 35 pupils and two teachers
  + One multiple purpose room
  + Seven to nine bathrooms
  + One private office space for special education
  + Enclosed space for special education testing
  + Office space for teachers
  + Conference room to seat approximately 20−25 adults
  + Office space for three to five administrators and/or office staff
  + Lobby for parents and pupils to wait
  + Collaborative space for approximately 10–12 staff members
  + Outdoor playground area
  + Space to serve hot lunch
  + Computer server room with proper air conditioning
* Additional needs include the following:
  + Space for a photocopier and extra supply storage
  + Space for locked cumulative file storage
  + Teacher mailboxes
  + Reception desk with phone
  + Common space with book shelves for a library
  + Space for laptop storage or desktop computer use
  + Space for family members to use computers

The CDE notes that the PA petition did not include a plan for acquiring and securing a facility during the 2018–19 planning year.

## Charter Elements

The CDE finds that the PA petition does not provide a reasonably comprehensive description of the following required charter elements (Attachment 1, p. 4).

### Measurable Pupil Outcomes

The PA petition does not provide sufficiently detailed MPOs capable of being used readily to evaluate the effectiveness of and to modify instruction for individual pupils and for groups of pupils. *EC* sections 52060 and 52052 state that schools will provide MPO goals for all pupils and numerically significant pupil subgroups. The PA petition identifies potential pupil enrollment of numerically significant pupil subgroups as Hispanic or Latino, and socio-economically disadvantaged (Attachment 2, Table 1).

### Governance Structure

The petition does not present a reasonably comprehensive description of PA’s governance structure with respect to PA’s School Site Council (SSC), English Language Advisory Committee (ELAC), and internal fiscal controls.

### Suspension and Expulsion Procedures

The PA petition does not present a reasonably comprehensive description of suspension and expulsion procedures. The PA petition is not compliant with Federal law regarding interim alternative educational placement. The petition states that when an appeal relating to the placement of the pupils or the manifestation determination has been requested by either the parent or PA, the pupils shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period provided for in an interim alternative educational setting, unless the parent and PA agree otherwise (Attachment 3, p. 187). 20 United States Code (U.S.C.) Section 1415(k)(3)(ii)(II) allows a hearing officer to order a change in placement of a child with a disability to an appropriate interim alternative setting for no more than 45 days if the hearing office determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. PA’s policy, which allows placing a pupil in an interim alternative setting for a 45 day period prior to a determination by a hearing officer that the current placement of such pupil will result in injury to the pupil or others, violates 20 U.S.C. Section 1415(k)(3)(ii)(II). This would deny a pupil’s due process right to be heard prior to placing the pupil in an alternative education setting for 45 days. It should be further noted that under 20 U.S.C. Section 1415(k)(4)(B), the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing. This would allow for a maximum placement in an interim alternative educational setting pending a decision for no more than 30 school days.

## Brief History of Key Issues

PA was approved by the SBE on January 19, 2018, as a TK through grade eight school for a five-year term effective July 1, 2018, through June 30, 2023.

On May 29, 2018, the CDE received a submission for a material revision to delay the opening of PA by one year due to PA’s inability to negotiate a facilities agreement with the local school district.

## CDE Staff Review

In considering the PA petition, CDE staff reviewed the following:

* PA Petition (Attachment 3 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a3.pdf>).
* Educational and demographic data of schools where pupils would otherwise be required to attend (Attachment 2 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a2.xlsx>).
* PA Budget, Financial Projections, and Narrative (Attachment 4 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a4.pdf>).
* Letter requesting for material revision for PA (Attachment 5 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a5.pdf>).
* Letter Describing Changes to the Promise Academy Petition Necessary for Material Revision (Attachment 6 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a6.pdf>).
* CDE Letter Dated February 15, 2018, regarding State Board of Education Approval for the Establishment of Promise Academy for a Term of Five Years, July 1, 2018, through June 30, 2023 (Attachment 7 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a7.pdf>).
* PA Playbook 2019–2023 and can be found at Meeting Notice on the ACCS web page located at (Attachment 8 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a8.pdf>).
* PA Bylaws (Attachment 9 of Agenda Item 04 on the August 14, 2018, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug18item05a9.pdf>).

## Summary of Previous State Board of Education Discussion and Action

Currently, 40 charter schools operate under SBE authorization as follows:

* One statewide benefit charter, operating a total of seven sites
* Seven districtwide charters, operating a total of 18 sites
* 32 charter schools, authorized on appeal after local or county denial

The SBE delegates oversight duties of the districtwide charters to the county office of education of the county in which the districtwide charter is located. The SBE delegates oversight duties of the remaining charter schools to the CDE.

## Fiscal Analysis (as appropriate)

If approved as an SBE-authorized charter school, the CDE would receive approximately one percent of the revenue of the charter school for the CDE’s oversight activities. However, no additional resources are allocated to the CDE for oversight.

## Attachments

* **Attachment 1:** California Department of Education Charter School Petition Review Form: Promise Academy (43 Pages)
* **Attachment 2:** California State Board of Education Standard Conditions on Opening and Operation (4 Pages)