

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education July 2020 Agenda Item #16

## Subject

Petition for the Establishment of a Charter School Under the Oversight of the State Board of Education: Consideration of Pinecrest Expedition Academy, which was denied by the Twain Harte School District and Tuolumne County Superintendent of Schools.

## Type of Action

Action, Information, Public Hearing

## Summary of the Issue

Pinecrest Expedition Academy (PEA) is seeking authorization from the State Board of Education (SBE) to establish a new school serving 52 pupils in transitional kindergarten (TK)/kindergarten (K) through grade eight from 2020–21 through 2024–25.

On September 30, 2019, the petitioner submitted the PEA petition to the Twain Harte School District (THSD). On November 20, 2019, THSD voted to deny the PEA petition by a vote of five to zero. On November 27, 2019, the petitioner submitted the PEA petition to the Tuolumne County Superintendent of Schools. On February 3, 2020, the Tuolumne County Board of Education (TCBOE) voted to deny the PEA petition by a vote of six to zero with one abstention.

The petitioner submitted the PEA petition to the SBE on February 20, 2020.

## California Department of Education Recommendation

The California Department of Education (CDE) recommends that the SBE hold a public hearing to deny the request to establish PEA, a TK/K through grade eight charter school, based on the CDE’s findings pursuant to *Education Code* (*EC*)Section 47605 and *California Code of Regulations*, Title 5 Section 11967.5.1.

The CDE finds that the petitioner does not present a sound educational program and is demonstrably unlikely to implement the program set forth in the PEA petition due to an unrealistic financial and operational plan including negative ending fund balances of $100,914; $127,487; and $116,114 with no reserve for fiscal year (FY) 2020–21 through 2022–23, respectively.

Additionally, the CDE finds that the PEA petition does not contain a reasonably comprehensive description of all of the required elements, including Element 1–Description of Educational Program, Element 2–Measurable Pupil Outcomes, Element 5–Employee Qualifications, Element 10–Suspension and Expulsion Procedures, and Element 14–Dispute Resolution Procedures. The PEA petition also does not address the requirements under Goals to Address the Eight State Priorities.

## Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) considered the PEA petition for renewal at its June 9, 2020, meeting. The ACCS moved CDE staff recommendation to deny the PEA petition by a vote of eight to one.

The notice for the June 9, 2020, ACCS meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>.

## Brief History of Key Issues

PEA will locate within the Pinecrest area, which encompasses the communities of Pinecrest, Leland Meadows, Dardanelle and upper 108, Strawberry, and Cold Springs. The PEA petition states that Pinecrest is a recreation-based area located within the Stanislaus National Forest; tourism and recreation are primarily responsible for the economy in this area.

The petitioner intends to lease a facility located at 30433 Old Strawberry Road, which is within the boundaries of THSD. The facility is owned by the Pinecrest Permittees Association and is the former site of Pinecrest Elementary, which closed in 2012. The petitioner included a Letter of Intent outlining the provisions of the contract (Attachment 9 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>).

Currently, THSD has one school with a population of 257 pupils in a K through grade eight classroom-based educational setting.

**Inability to Successfully Implement the Intended Program**

**California State Budget Impact**

The COVID-19 pandemic has had a tremendous impact on the state budget and the funding that will be provided to local educational agencies (LEAs) in the 2020–21 school year and future school years. The pandemic has led to a large variation between the Governor’s proposed January budget and the proposed May revision, which was discussed at the ACCS meeting on June 9, 2020. On June 23, the Governor; Senate President pro tempore, Toni Atkins; and Speaker of the Assembly, Anthony Rendon announced an agreement on the budget. This agreement has not yet been finalized at the time of the posting of the July SBE meeting agenda, but it is anticipated it will be finalized by the July SBE meeting.

The proposed agreement includes $11 billion of Local Control Funding Formula (LCFF) apportionment deferrals in 2020–21, which will allow LCFF to remain at the 2019–20 level and does not include the 10 percent cut to LCFF proposed at May revision. With deferrals, charter schools and other LEAs will have the burden of fronting cash, maintaining cash flow in the months where monthly apportionments will be deferred, and potential borrowing costs. Deferrals could be especially problematic for new charter schools or existing charter schools that lack the the ability to draw down reserves to access cash.

**Fiscal Analysis**

The PEA multi-year projected budget includes the following projected pupil enrollment (Attachment 4 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

* 52 TK/K through grade eight in 2020–21
* 57 TK/K through grade eight in 2021–22
* 65 TK/K through grade eight in 2022–23
* 65 TK/K through grade eight in 2023–24
* 65 TK/K through grade eight in 2024–25

**Revenue**

The PEA multi-year projected budget, as submitted on February 20, 2020, was calculated using an older version of the Fiscal Crisis and Management Assistance Team (FCMAT) LCFF calculator. Therefore, the CDE used the January 14, 2020, FCMAT LCFF calculator to recalculate the PEA LCFF revenue. The CDE finds that PEA has overstated the LCFF revenue by $112,305; $109,466; and $107,310 for FY 2020–21 through 2022–23, respectively. The CDE adjusted the LCFF revenue for FY 2020–21 through 2022–23 in the budget analysis accordingly.

The PEA multi-year projected budget includes lottery funds for FY 2020–21 through 2022–23. The lottery funds are based on prior year Second Principal Apportionment enrollment, which is overstated by $10,183 and $409 for FY 2020–21 and 2022–23, respectively, and understated by $9,504 for FY 2021–22. The CDE adjusted the lottery funds for FY 2020–21 through 2022–23 in the budget analysis accordingly.

**Expenditures**

The PEA multi-year projected budget does not include expenditures for substitute teachers for FY 2020–21 through 2022–23. The CDE estimated expenditures for substitute teachers to be 1 percent of the LCFF. Per the CDE’s estimates, the expenditures appear to be understated by $4,827; $5,427; and $6,364 for FY 2020–21 through 2022–23, respectively. The CDE adjusted the expenditures for FY 2020–21 through 2022–23 in the budget analysis accordingly.

The PEA petition states that certificated employees at PEA shall participate in the California Teachers’ Retirement System, and that non-certificated full-time staff shall participate in the California Public Employees’ Retirement System (CalPERS) and federal social security. However, the petitioner does not project expenditures in CalPERS in the budget or assumptions.

As noted in the budget narrative and cash flow statement submitted by the petitioner, PEA did not project startup funds. In order to maintain cash flow, PEA intends to apply for $250,000 of the Charter School Revolving Loan Fund in FY 2020–21.

The CDE concludes that the PEA projected budget is not viable with the projected enrollment of 52, 57, and 65 and negative ending fund balances of $116,765; $160,625; and $167,057 with no reserves for FY 2020–21 through 2022–23, respectively.

**Charter Elements**

The CDE finds that the PEA petition does not provide a reasonably comprehensive description of the following required charter elements (Attachment 1 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

**Element 1–Description of Educational Program**

The PEA petition does not, overall, present a reasonably comprehensive description of the educational program. The PEA petition does not include a reasonably descriptive plan for the implementation of a multi-grade-based program nor does it include a reasonably comprehensive description of the home study program. Additionally, the PEA petition does not sufficiently describe how English learners will receive targeted English language development instruction.

Additionally, the school intends to open in August 2020 (Attachment 3 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). The CDE is concerned about the ability of the petitioner to recruit staff, create a high-quality instructional program, and administer two educational programs to successfully operate PEA.

**Element 2–Measurable Pupil Outcomes**

The PEA petition does not present a reasonably comprehensive description of measurable pupil outcomes. The PEA petition includes a table that outlines the actions, measurable outcomes, and method of measurement aligned to each of the eight state priorities (Attachment 3 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). However, the PEA petition does not outline measurable pupil outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils.

**Element 5–Employee Qualifications**

The PEA petition does not present a reasonably comprehensive description of employee qualifications. The PEA petition describes qualifications for the following: core subject and independent study teachers; lead teacher (leader of the charter school); and business development and operations coordinator (Attachment 3 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). However, although the PEA petition states that it will seek to hire noncertificated instructional support staff, it does not describe general specifications and qualifications for noncertificated employees. The PEA petition does recognize, under Assembly Bill 1505, that all charter schools must comply with *EC* Section 47605.6(l) (effective July 1, 2020), which requires teachers in charter schools to hold a Commission on Teacher Credentialing certificate, permit, or other document required for the teacher’s certificated assignment.

**Element 10–Suspension and Expulsion Procedures**

The PEA petition does not present a reasonably comprehensive description of suspension and expulsion procedures. Additionally, the PEA petition does not include the following:

* In accordance with 20 *United States Code* Section 1415(k)(3), if a parent or guardian disagrees with any decision regarding placement, or the manifestation determination, or if PEA believes that maintaining the current placement of the pupil is substantially likely to result in injury to the pupil or to others, the parent or guardian, or PEA may request a hearing.
* In such an appeal, a hearing officer may: (1) return a pupil with a disability to the placement from which the pupil was removed; or (2) order a change of placement of a pupil with a disability to an appropriate interim alternative setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such pupil is substantially likely to result in injury to the pupil or to others.

**Element 14–Dispute Resolution Procedures**

The PEA petition does not present a reasonably comprehensive description of dispute resolution procedures. The petitioner included a letter, dated February 19, 2020, outlining necessary changes to the PEA petition should the SBE become the authorizer of PEA (Attachment 5 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). However, the PEA letter did not include the following:

* Specific provisions relating to dispute resolution that the SBE determines necessary and appropriate in recognition of the fact that the SBE is not an LEA.
* Description of how the costs of the dispute resolution process, if needed, would be funded.
* Recognition that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter in accordance with *EC* Section 47604.5, the matter will be addressed at the SBE’s discretion in accordance with that provision of law and any regulations pertaining thereto.

**Documents Reviewed by the California Department of Education**

In considering the PEA petition, the CDE reviewed the following:

* PEA petition (Attachment 3 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* Educational and demographic data of schools where pupils would otherwise be required to attend (Attachment 2 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* PEA budget and multi-year financial projections (Attachment 4 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* Letter dated February 19, 2020, description of changes to the PEA petition necessary to reflect the SBE as the authorizing entity (Attachment 5 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* THSD findings and petitioner’s response (Attachment 6 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* Tuolumne County Superintendent of Schools findings and petitioner’s response (Attachment 7 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* PEA articles of incorporation, bylaws, and conflict of interest code (Attachment 8 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* PEA appendices and attachments (Attachment 9 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* PEA letters of support (Attachment 10 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)

**Twain Harte School District Findings**

On November 20, 2019, THSD took action and denied the charter petition for PEA based on the following findings (Attachment 6 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

* The proposed charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
* The petition does not contain reasonably comprehensive descriptions of some required elements of a charter.
* The petition does not contain all the information regarding the proposed operation and potential effects of the charter school required by law.

**Tuolumne County Superintendent of Schools Findings**

On February 3, 2020, TCBOE took action and denied the charter petition for PEA based on the following findings (Attachment 7 of Agenda Item 07 on the ACCS June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

* The petition does not contain reasonably comprehensive descriptions of all of the elements prescribed by law.
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
* The petition presents an unsound educational program for the pupils to be enrolled in the charter school.

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

Currently, 33 charter schools operate under the SBE’s authorization as follows:

* One statewide benefit charter, operating a total of nine sites
* Seven districtwide charters, operating a total of 18 sites
* 25 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

If approved as an SBE-authorized charter school, the CDE would receive approximately 1 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: Pinecrest Expedition Academy (39 Pages)
* **Attachment 2:** California State Board of Education Standard Conditions on Opening and Operation (4 Pages)