

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-jul20item06

# California State Board of Education July 2020 Agenda Item #19

## Subject

Petition for the Establishment of a Charter School under the Oversight of the State Board of Education: Consideration of T.I.M.E Community School, which was denied by the Montebello Unified School District and Los Angeles County Office of Education.

## Type of Action

Action, Information, Public Hearing

## Summary of the Issue

T.I.M.E. (Teamwork, Individualization, Mastery, and Extension) Community School (TCS) is seeking authorization from the State Board of Education (SBE) to establish a new school serving 110 pupils in grade nine beginning in 2020–21 and grow to serve 600 pupils in grade nine through grade twelve in 2024–25.

On August 26, 2019, the petitioner submitted the TCS petition to Montebello Unified School District (MUSD). On October 23, 2019, MUSD voted to deny the TCS petition by a vote of four to zero. On November 12, 2019, the petitioner submitted the TCS petition to the Los Angeles County Office of Education (LACOE). On January 14, 2020, the Los Angeles County Board of Education (LACBOE) voted to amend the motion to approve the Superintendent’s recommendation to deny the TCS petition. The California Department of Education (CDE) notes that LACBOE only adopted Finding 2, Indicator 2 (Budget Plan[s] Deficiencies) of the staff report (Attachment 7 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). LACBOE denied the TCS petition by a vote of five to one.

The petitioner submitted the TCS petition to the SBE on March 6, 2020.

## California Department of Education Recommendation

The CDE recommends that the SBE hold a public hearing to deny the TCS petition. In its review, the CDE found the TCS petition to be consistent with sound educational practice and the educational program outlined in the petition to be innovative. However, the CDE has concerns with the lack of start-up funds and the uncertainty of TCS’ ability to implement the program in a fiscally viable manner. Additionally, the CDE finds that the TCS petition does not provide reasonably comprehensive descriptions of all of the required elements.

If approved by the SBE, in the alternative to oversight by the SBE, LACOE has agreed to become the authorizer of TCS as provided by *Education Code* (*EC*) Section47605(k)(1).

## Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) considered the TCS petition at its June 9, 2020, meeting. The ACCS voted to approve the TCS petition with a delay in opening for one year and with the understanding that TCS will be in operation for four years. The motion passed by a vote of seven to two.

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>.

## 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 do not have the ability to draw down reserves to access cash.

**Fiscal Analysis**

The TCS multi-year projected budget includes the following projected pupil enrollment (Attachment 4 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

* 110 grade nine in 2020–21
* 260 grades nine and ten in 2021–22
* 410 grades nine through eleven in 2022–23
* 560 grades nine through twelve in 2023–24
* 600 grades nine through twelve in 2024–25

**Revenue**

The TCS multi-year projected budget, as submitted on March 6, 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 TCS LCFF revenue. The CDE finds that TCS has overstated the LCFF revenue by $8,356; $25,190; and $60,098 for fiscal year (FY) 2020–21 through 2022–23, respectively. The CDE has adjusted the LCFF revenue for FY 2020–21 through 2022–23 in the budget analysis accordingly.

The TCS multi-year projected budget includes Federal Special Education Entitlement funds for FY 2020–21 through 2022–23. The CDE finds that the Federal Special Education Entitlement funds appear to be overstated by $64,595 and $176,725 for FY 2021–22 and 2022–23, respectively. The CDE has adjusted the entitlement for FY 2021–22 and 2022–23 in the budget analysis accordingly.

The TCS 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 $21,404 and $7,783 for FY 2020–21 and 2021–22, respectively. The CDE has adjusted the lottery funds for FY 2020–21 and 2021–21 in the budget analysis accordingly.

**Expenditures**

The TCS multi-year projected budget includes expenditures for health and welfare benefits for FY 2020–21 through 2022–23. The CDE finds expenditures for health and welfare benefits to be understated by $9,625 and $15,924 for FY 2021–22 and 2022–23, respectively. The CDE has adjusted the expenditure for FY 2021–22 and 2022–23 in the budget analysis accordingly.

TCS did not project startup funds. In order to maintain cash flow, TCS will either factor receivables or borrow funds from the Charter School Revolving Loan Fund, a common practice among charter schools within the first three years of operation. The factoring will be $350,000; $600,000; and $1,000,000 for FY 2020–21 through 2022–23, respectively. Although the interest rate was not provided, the total factoring fee is estimated at $22,400; $45,000; and $57,400 for FY 2020–21 through 2022–23, respectively. In addition, TCS will be applying for the Charter School Revolving Loan Fund for an amount of $150,000 in FY 2020–21.

The CDE concludes that the TCS projected budget is viable with the projected enrollment of 110, 260, and 410 and positive ending fund balances of $49,548; $395,906; and $984,320 with reserves of 3.2, 10.8, and 16.5 percent for FY 2020–21 through 2022–23, respectively. However, TCS’s fiscal solvency relies upon the action of heavy borrowing, which will be exacerbated by the new budget deferrals.

The petitioners included a fiscal policy manual adopted by the TCS Governing Board, to ensure that funds are budgeted, accounted for, expensed, and maintained appropriately (Attachment 9 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>).

### Instructional Calendar

Moving away from a traditional school calendar, the TCS instructional calendar will include 185 days with teachers spending an additional 15 days on professional development activities. The TCS instructional calendar is comprised of two semesters, which consist of 18 weeks each. Each semester will consist of two nine-week quarters with a two-week break between each quarter. The TCS instructional calendar is designed to allow for reflection and rest after intensive learning periods, while at the same time maintaining momentum for learning and engagement in school (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>).

The TCS petition outlines a proposed instructional calendar with professional development for teachers beginning in June and instruction beginning the week of   
June 29, 2020 (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). The CDE notes that the appeal of the TCS petition to the SBE will not be considered until the July 8–9, 2020, SBE meeting.

**Charter Elements**

The CDE finds that the TCS petition does not provide a reasonably comprehensive description of the following required charter elements (Attachment 1 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

**Element 2–Measurable Pupil Outcomes**

The TCS petition does not present a reasonably comprehensive description of measurable pupil outcomes. TCS plans to reside within MUSD, which is comprised of 25,409 pupils with 85 percent identifying as socioeconomically disadvantaged, 33 percent identifying as English learners, and 0.8 percent identifying as foster youth. The TCS petition includes a statement that outlines the annual goals, actions, measurable outcomes, and method of measurement aligned to each of the eight state priorities and states that TCS shall meet all statewide standards and conduct the student assessments required, pursuant to *EC* Section 60605, and any other statewide standards authorized in statute, or student assessments applicable to pupils in non-charter public schools (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>); however, the TCS petition does not outline measurable pupil outcomes that address increases in pupil academic achievement both schoolwide and for pupil groups.

**Element 10–Suspension and Expulsion Procedures**

The TCS petition does not present a reasonably comprehensive description of suspension and expulsion procedures for criteria C and E. The language in the TCS petition regarding the automatic placement of a pupil in an interim alternative educational setting is contrary to 20 *United States Code* (*USC*)Section 1415(k)(3), which states that the pupil shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided in 20 *USC* Section 1415(k)(1)(C), whichever occurs first, unless the parent or guardian and TCS agree otherwise.

Addressing evaluation, criteria A, B, and D, the TCS petition states that the pupil suspension and expulsion policy has been established in order to promote learning and protect the safety and well-being of all pupils at TCS. The TCS petition lists discretionary and non-discretionary offenses and procedures for suspension and expulsion (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>). The TCS petition states that no pupil shall be involuntarily removed by TCS for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five school days before the effective date of the action (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>).

Additionally, the TCS petition states that a pupil may be expelled by the neutral and impartial Administrative Panel, to be assigned by the TCS Board of Directors (Board), following a hearing before it or by the Board upon an appeal. The Administrative Panel will not include any of the administrators involved in the pupil’s initial discipline and shall consist of at least three members who are certificated and neither a teacher of the pupil nor a Board member (Attachment 3 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>).

**Element 14–Dispute Resolution Procedures**

The TCS petition does not present a reasonably comprehensive description of dispute resolution procedures. The TCS petition does not directly address policies and procedures specific to the SBE dispute resolution requirements as follows:

* 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.
* Recognize that, because it is not an LEA, the SBE may choose to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, provided that if the SBE intends to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, it must first hold a public hearing to consider arguments for and against the direct resolution of the dispute instead of pursuing the dispute resolution process specified in the charter.
* Recognize 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.
* Recognize that the SBE cannot be pre-bound to a contractual obligation to split the costs of mediation or agree to mediation to resolve disputes.

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

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

* TCS petition (Attachment 3 of the Agenda Item 06 on the 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 the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* TCS budget and multi-year financial projections (Attachment 4 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* Letter dated March 4, 2020, including a description of changes to the TCS petition necessary to reflect the SBE as the authorizing entity (Attachment 5 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* MUSD findings and petitioner’s response (Attachment 6 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* LACOE findings and petitioner’s response (Attachment 7 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* TCS articles of incorporation, bylaws, and conflict of interest code (Attachment 8 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)
* TCS appendices and attachments (Attachment 9 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>)

**Montebello Unified School District Findings**

On October 23, 2019, MUSD took action and denied the TCS petition based on the following findings (Attachment 6 of the Agenda Item 06 on the 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.

In this case, while Assembly Bill 1505 does not bind MUSD at this time, the approval of TCS would substantially undermine existing MUSD services, academic offerings, and/or programmatic offerings given that MUSD is currently experiencing significant declines in enrollment; TCS would only exacerbate MUSD’s fiscal condition and undermine future viability.

**Los Angeles County Office of Education Findings**

On January 14, 2020, LACBOE took action and denied the charter petition for TCS based on the following finding (Attachment 7 of the Agenda Item 06 on the June 9, 2020, Meeting Notice on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.asp>):

* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

## 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
* Twenty-five 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: T.I.M.E. Community School (43 Pages)
* **Attachment 2:** California State Board of Education Standard Conditions on Opening and Operation (4 Pages)