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RESOLUTION NO. 2019-2020-11-02

**RESOLUTION OF THE BOARD OF EDUCATION OF THE
TWIN HARTE SCHOOL DISTRICT DENYING THE PINECREST EXPEDITION
ACADEMY CHARTER PETITION AND ADOPTING WRITTEN
FINDINGS OF FACT**

WHEREAS, pursuant to California Education Code section 47605(a)(1), on September 30, 2019, lead petitioner Heidi Lupo submitted a timely petition to establish the Pinecrest Expedition Academy Charter School to the Twain Harte School District; and

WHEREAS, the Twain Harte School District conducted a public hearing on the provisions of the proposed charter on October 23, 2019, during a meeting of the Twain Harte School District Board of Education at the District Office, and assessed the level of support for the petition from parents, the District, and the community; and

WHEREAS, Twain Harte School District administrators have reviewed and analyzed the petition and supporting documents and have identified deficiencies in and concerns related to the petition, and have recommended that the Twain Harte School District Board of Education deny the petition for the reasons expressed in Exhibit A hereto, Findings of Fact; and

WHEREAS, pursuant to California Education Code section 47605(b)(1), (2), and (5), and section 47605(g), the Twain Harte School District Board of Education finds that granting the petition to establish the Pinecrest Expedition Academy Charter School is not consistent with sound educational practice.

NOW, THEREFORE, it is hereby **RESOLVED** as follows:

Section 1. That the above recitals are all true and correct.

Section 2. That the proposed Findings of Fact attached hereto as Exhibit A are adopted as the final Findings of Fact regarding the factual findings specific to the petition, and support that:

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

Section 3. That the petition to establish the Pinecrest Expedition Academy Charter School is denied.

ADOPTED, SIGNED, AND APPROVED this 20th day of November, 2019.

BOARD OF EDUCATION OF THE
TWIN HARTE SCHOOL DISTRICT

By: _____
President

By: _____
Clerk

CLERK'S CERTIFICATE

I, Chantal Fowler, Clerk of the Board of Education of the Twain Harte School District, hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted at a regular meeting place thereof on the 20 day of November, 2019, of which meeting all of the members of said Board of Education had due notice and at which a majority thereof were present; and that at said meeting said resolution was adopted by the following vote:

AYES: 5

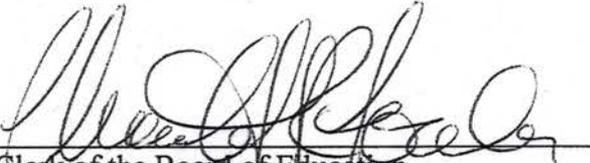
NOES: 0

ABSENT: 0

An agenda of said meeting was posted at least 72 hours before said meeting at Twain Harte, California, at a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office; that the foregoing resolution is a full, true, and correct copy of the original resolution adopted at said board meeting and entered in said minutes; and that said resolution has not been amended, modified, or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: November 20, 2019


Clerk of the Board of Education
of the Twain Harte School District

Proposed Findings of Fact – November 20, 2019

2019 Pinecrest Expedition Academy Charter School Petition

I. Introduction

For the second time in nearly two years, Pinecrest Expedition Academy (“PEA”), a nonprofit charter school operator, has submitted what is essentially the same charter school petition (“2018 Petition” and “2019 Petition,” respectively) to the Twain Harte School District (“District”) for a TK-8 charter school (“Charter School”) to be located at the former site of the District’s Pinecrest School. The 2018 Petition was denied by the District Board of Education/Trustees (“Board”) and the Tuolumne County Board of Education (“TCBOE”). (See 2019 Petition Exhibit Package (“2019 Exhibit Package”), p. 259.) The State Board of Education (“SBE”) refused to agendaize or hear the appeal of the 2018 Petition because of deficiencies therein. (2019 Exhibit Package, p. 259.) The 2019 Petition, which was submitted to the District on September 30, 2019, purports to fix the insurmountable issues that led to the 2018 Petition’s repeated denials (see 2019 Exhibit Package, p. 327), but the 2019 Petition falls short of its intended purpose. Moreover, the 2019 Petition further muddies the waters by providing disjointed and repetitive discussions (see, e.g., 2019 Exhibit Package, pp. 23-37, 57-59, 64-66, careless references to what appears to be the Orange County Department of Education (i.e., “OCDE”) instead of the Tuolumne County Superintendent of Schools Office (“TCSOSO”) (see, e.g., 2019 Exhibit Package, p. 24) and “FUSD” instead of Twain Harte School District (see 2019 Exhibit Package, p. 67), and information that is unreadable (see, e.g., 2019 Exhibit Package, p. 135). Therefore, because the 2019 Petition fails to remedy the multiple deficiencies in the 2018 Petition, and based upon a thorough and careful review of the 2019 Petition as well as public input received at the public hearing held on October 23, 2019, the District recommends that the Board deny the 2019 Petition.

The District continues to recognize and empathize with the situation the Pinecrest area faces due to the lack of a school in that area. Indeed, the District operated the Pinecrest School for over thirty years in order to serve the Pinecrest area, closing at the end of the 2011-2012 school year only because its operation was no longer financially feasible. However, the District has remained steadfast in its commitment to the Pinecrest area since the closure of the Pinecrest School by offering transportation services to Pinecrest area students wishing to take advantage of the excellent academic curriculum available at the Twain Harte School. While Heidi Lupo, the 2019 Petition’s lead petitioner, has argued, as she did with respect to the 2018 Petition, that the 2019 Petition proposes an educationally sound and financially viable alternative to Twain Harte School (2018 Petition Exhibit Package (“2018 Exhibit Package”), pp. 192, 193; see 2019 Exhibit Package, p. 323), the District must respectfully disagree.

The District has concluded that the 2019 Petition should be denied for the reasons summarized below, in keeping with the dictates of Education Code section 47605(b):

Twain Harte School District Findings

and Petitioner's Response

1. The Charter School presents an unsound educational program for the pupils to be enrolled therein. As discussed further in Section V.A. of these Findings of Fact, the Petition does not address how academic development appropriate for each grade level will be accomplished in the context of the Charter School's multi-grade classrooms, does not provide for sufficient days of instruction, and is unsatisfactory in its discussion of the Charter School's special education and independent study programs.
2. Petitioners are demonstrably unlikely to successfully implement the program set forth in the 2019 Petition. As discussed further in Section V.B. of these Findings of Fact, the Charter School's enrollment projections are problematic and its viability is premised on inaccurate revenue projections. In addition, Petitioners have not demonstrated successful experience in operating and managing a charter school and have not developed a comprehensive plan for attracting and retaining the highly trained and experienced personnel called for in the 2019 Petition.
3. The 2019 Petition does not contain reasonably comprehensive descriptions of all 15 elements specified in Education Code section 47605(b)(5). As discussed further in Section V.C. of these Findings of Fact, the 2019 Petition does not contain a reasonably comprehensive description of the Charter School's educational program, the qualifications of Charter School employees, the procedures the Charter School will follow to ensure the health and safety of pupils and staff, the means by which the Charter School will achieve a racial and ethnic balance among its pupils that is reflective of the surrounding general population, and the manner in which staff members of the Charter School will be covered by the State Teachers' Retirement System ("STRS"), the Public Employees' Retirement System ("PERS"), or federal social security.
4. The 2019 Petition does not contain all the information regarding the proposed operation and potential effects of the Charter School required by Education Code section 47605(g). As discussed further in Section V.D. of these Findings of Fact, the 2019 Petition fails to provide adequate or accurate information related to the facilities to be used by the Charter School and complete or convincing information regarding the manner in which the Charter School's administrative services will be provided.

These Findings of Fact elaborate upon the conclusions above and present a final analysis of the 2019 Petition for consideration by the Board. It should be noted, however, that these Findings of Fact only address the most significant areas of concern with respect to the 2019 Petition. They do not exhaustively list every concern regarding, or error, omission, or deficiency in, the 2019 Petition.

Should the Board take action to deny the 2019 Petition, it shall adopt these Findings of Fact in support of its denial.

II. Procedural Overview

A. General Overview and 2019 Petition

Pursuant to Education Code section 47605(b), the governing board of a school district in receipt of a charter petition must hold a public hearing on the provisions of the charter within 30 days of receipt of the petition, at which time the board shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. The Board met this requirement when it held a public hearing on October 23, 2019, 23 days after the District's receipt of the 2019 Petition on September 30, 2019.

Education Code section 47605(b) further requires that the governing board of a school district in receipt of a charter petition either grant or deny the petition within 60 days of its receipt by the school district. The Board will meet this requirement by acting on the 2019 Petition on November 20, 2019, 51 days after the District's receipt of the 2019 Petition on September 30, 2019.

If the Board grants the 2019 Petition, the Charter School becomes a legal entity with the District as its chartering authority. If the Board denies the 2019 Petition, Petitioners may appeal the denial to the TCBOE per Education Code section 47605(j)(1). If the TCBOE grants the 2019 Petition, the Charter School becomes a legal entity, and the TCBOE becomes the supervisory agency over the Charter School. If the TCBOE denies the 2019 Petition, Petitioners may appeal the denial to the SBE per Education Code section 47605(j)(1). If the SBE grants the 2019 Petition, the Charter School becomes a legal entity, and the SBE becomes the supervisory agency over the Charter School (see Education Code section 47605(k)(1)). However, pursuant to Education Code section 47605(k)(1), the SBE may, by mutual agreement, designate its supervisory and oversight responsibilities to any local educational agency in Tuolumne County or to the Board. If either the TCBOE or the SBE, as the case may be, fails to act on the 2019 Petition within 120 days of its receipt, the decision of the Board to deny the 2019 Petition shall be subject to judicial review per Education Code section 47605(j)(4).

B. 2018 Petition

On February 27, 2018, PEA submitted the 2018 Petition to the District. (See 2019 Exhibit Package, pp. 202, 221.) On April 25, 2018, the Board denied the 2018 Petition by a vote of five to zero. (See 2019 Exhibit Package, p. 231.)

On May 11, 2018, the Board's denial of the 2018 Petition was appealed to the TCBOE. (See 2019 Exhibit Package, pp. 237, 238.) On August 13, 2018, the TCBOE conditionally approved the 2018 Petition by a vote of four to three. (See 2019 Exhibit Package, p. 250.) On October 8, 2018, the TCBOE unanimously rescinded the 2018 Petition's conditional approval. (See 2019 Exhibit Package, p. 254.)

On December 3, 2018, the TCBOE's denial of the 2018 Petition was appealed to the SBE. (See 2019 Exhibit Package, p. 259.) On January 14, 2019, the SBE refused to agendaize or hear the appeal of the 2018 Petition because of deficiencies therein. (2019 Exhibit Package, p. 259.)

III. Standard of Review

Education Code section 47605(b) sets forth the following standards for consideration of charter petitions:

First, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.

Second, a school district governing board shall grant a charter for the operation of a charter school if it is satisfied that granting the charter is consistent with sound educational practice.

Third, a school district governing board shall not deny a charter petition unless one or more of the following findings are made:

1. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school. (Education Code section 47605(b)(1).)
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition. (Education Code section 47605(b)(2).)
3. The petition does not contain the number of signatures required by Education Code section 47605(a). (Education Code section 47605(b)(3).)
4. The petition does not contain an affirmation of each of the conditions described in Education Code section 47605(d). (Education Code section 47605(b)(4).)
5. The petition does not contain reasonably comprehensive descriptions of all 15 elements required by Education Code section 47605(b)(5).
6. The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of the Educational Employment Relations Act. (Education Code section 47605(b)(6).)

The review of a charter petition is also guided by the regulations promulgated by the SBE, which expand upon the elements above. (See California Code of Regulations, title 5, sections 11967.5 et seq.)

As summarized in the Introduction to these Findings of Fact, the District has concluded that the 2019 Petition is deficient with respect to items 1, 2, and 5 above.

IV. Staff Team Review

A team of District staff members (“Staff Team”) thoroughly and carefully reviewed the 2019 Petition. Each member of the Staff Team reviewed either the entire 2019 Petition or sections thereof, as relevant to his/her area of expertise.

The following individuals comprised the Staff Team:

- Rick Hennes, Superintendent
- Tonya Royce, Chief Business Official
- Ron Wurz, Maintenance, Operations, and Transportation Director
- Gabe Wingo, Principal
- Laura DeMars, 4th Grade Teacher
- Wendie Roberts, California School Employees Association President and Librarian
- Parker & Covert LLP, Legal Counsel

As stated in the Introduction to these Findings of Fact, the District, through its Staff Team, recommends that the Board deny the 2019 Petition.

V. Discussion

A. The Charter School presents an unsound educational program for the pupils to be enrolled therein.

1. The 2019 Petition does not address how academic development appropriate for each grade level will be accomplished in the context of the Charter School's multi-grade classrooms.

The Charter School will serve students in grades TK-8. (See, e.g., 2019 Exhibit Package, pp. 11, 12, 20.) Students will be instructed in two multi-grade classrooms. (2019 Exhibit Package, p. 12.)

While the Charter School will use what the 2019 Petition describes as an “expeditions and outdoor learning” curriculum (2019 Exhibit Package, p. 7), the 2019 Petition is also very clear that the Charter School will be dedicated to rigorous academic learning (see 2019 Exhibit Package, pp. 17, 18, 74). However, the 2019 Petition is completely silent as to how grade appropriate academic development will take place in classrooms with such varying grade levels, especially given the proposed student-to-teacher ratio (see 2019 Exhibit Package, p. 13), the fact that one of the teachers will provide services for special education and independent study students (2019 Exhibit Package, pp. 12, 64), the fact that the Lead Teacher is tasked with many other responsibilities in addition to teaching (2019 Exhibit Package, pp. 57-58), and the fact that the educational program offered is designed to be personalized and customized (2019 Exhibit Package, pp. 18, 19, 40). Further, the 2019 Petition does not provide how the Charter School will avoid teacher burnout in such a challenging environment, a factor that contributed to the closing of a similar school in the Pinecrest area only a few years ago. (See Section V.B.1.d. of these Findings of Fact.) A thorough discussion of these issues is required in order for Petitioners to present a sound educational program for Charter School pupils.

2. The 2019 Petition does not provide for sufficient days of instruction.

Compounding the serious issues created by the Charter School's two multi-grade classrooms, and contributing to an unsound educational program, is the fact that the 2019 Petition does not provide for sufficient days of instructions. The 2019 Petition provides for 176 days of instruction (2019 Exhibit Package, p. 22) with two snow days (2019 Exhibit Package, p. 106), which is not consistent with the

number of days offered by other school districts, including ours. For instance, the District offers 180 days of instruction with one snow day. The limited number of days of instruction and snow days proposed by the 2019 Petition raises concerns regarding whether the Charter School can provide a sound educational program for the pupils to be enrolled therein, as well as whether the Charter School can successfully implement the program set forth in the 2019 Petition, especially taking into account the inclement weather known to the area.

3. The 2019 Petition is unsatisfactory in its discussion of special education.

The Charter School presents an unsound educational program for special education students to be enrolled therein. The 2019 Petition does expand upon the discussion of special education as compared to the 2018 Petition (see 2018 Exhibit Package, pp. 19-24; 2019 Exhibit Package, pp. 23-37), but it still fails to provide a discussion that cures the special education shortfalls in the 2018 Petition that were raised not only by the Board (see 2019 Exhibit Package, pp. 205-206), but also by the TCBOE (see 2019 Exhibit package, pp. 244-245). For instance, the 2019 Petition provides that the Charter School will adhere to all applicable provisions of law relating to students with disabilities (2019 Exhibit Package, pp. 4, 23, 29), that the Charter School will be solely responsible for compliance with Section 504 of the Rehabilitation Act of 1973 and the American with Disabilities Act (2019 Exhibit Package, p. 32), and that the Charter School will provide and remain responsible for special education as required by the Education Code and the Individuals with Disabilities Education Act (see, e.g., 2019 Exhibit Package, pp. 23). While the 2019 Petition outlines the Charter School's special education responsibilities, it does not explain in sufficient or convincing detail how it plans to carry out these responsibilities.

For instance, the 2019 Petition discusses that the Charter School will hire, train, and employ site staff (e.g., special education teachers, paraprofessionals, and resource specialists) and itinerant staff (e.g., speech therapists, occupational therapists, behavioral therapists, and psychologists) necessary to provide special education services (2019 Exhibit Package, p. 35), identify special education students (see, e.g., 2019 Exhibit Package, p. 25), conduct individualized education program ("IEP") meetings (see, e.g., 2019 Exhibit Package, p. 35), and be solely responsible for selecting, contracting with, and overseeing all non-public schools and non-public agencies used to serve special education students (2019 Exhibit Package, p. 36), but the allocation of monies does not appear to be sufficient to support these assurances.

It is especially concerning that the budget does not allocate for the hiring of a dedicated special education teacher. (See 2019 Exhibit Package, p. 12.) The 2019 Petition provides for three certificated staff members during the Charter School's first five years of operation. (2019 Exhibit Package, p. 13.) This is problematic in and of itself because these three teachers will have to teach up to 65 students in multi-grade classrooms (see 2019 Exhibit Package, p. 13), but is even more problematic because these teachers will also have to serve students of varying degrees of disability and special needs, including attending IEP meetings (2019 Exhibit Package, p. 30), all without specified support available to them in order to fulfill these daunting tasks.

It is also concerning that the 2019 Petition shows an allocation of only \$44,928 in special education encroachment for the 2020-2021 school year (increasing to \$56,160 for the 2024-2025 school year) and zero dollars for special education services for the Charter School's first five years of operation

(2019 Exhibit Package, p. 138), which does not appear to be nearly enough funding to serve special education students in the manner proposed in the 2019 Petition.

Additionally, and of much significance, the 2019 Petition fails to describe how the Charter School will handle complaints related to special education services, including due process complaints, which can be a very expensive endeavor, especially when the hiring of special education attorneys or the provision of compensatory services become necessary. (See 2019 Exhibit Package, pp. 31-32, 37.) The 2019 Petition merely acknowledges the Charter School's responsibility to resolve such disputes (see 2019 Exhibit Package, p. 32) and provides that the Charter School will eventually adopt policies for responding to parental concerns or complaints related to special education services (see 2019 Exhibit Package, p. 37).

Finally, the 2019 Petition provides that the Charter School will apply directly for membership in a Special Education Local Plan Area ("SELPA"). (See 2019 Exhibit Package, p. 24.) Membership in a SELPA requires a detailed memorandum of understanding ("MOU") that clearly delineates the duties and obligations of the Charter School and the SELPA in providing required special education services. However, such an MOU with the Tuolumne County SELPA is likely problematic. The Tuolumne County SELPA reviewed the 2018 Petition's approach to special education and advised that the 2018 Petition failed to meet 11 out of the 16 required elements studied: "Results indicate an inadequate description of a comprehensive plan to meet the needs of students with mild/moderate or moderate/severe disabilities under Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act." (2018 Exhibit Packet, pp. 186-187.) Petitioners failed to successfully rebut the Tuolumne County SELPA's conclusions in 2018. As noted above, the special education discussion in the 2019 Petition (see 2019 Exhibit Package, pp. 23-37) does not cure the defects of the special education discussion in the 2018 Petition (see 2018 Exhibit Package, pp. 19-24), so that an MOU between the Charter School and the Tuolumne County SELPA seems as unlikely in 2019 as it was in 2018.

4. The 2019 Petition is unsatisfactory in its discussion of the Charter School's independent study program.

The 2019 Petition includes an independent study option that was not part of the 2018 Petition. (See 2019 Exhibit Package, pp. 8, 20-22, 324, 327.) Ms. Lupo argues that the independent study option provides the Charter School with the ability to financially sustain its program without grant funds. (2019 Exhibit Package, p. 327.) Not only is this statement suspect, but the 2019 Petition presents an unsound educational program for independent study students and one that will most likely not be successfully implemented.

Historical data does not support the proposition that the Charter School will be successful in enrolling a significant number of independent study students. For instance, the District does not currently have an independent study program. Further, Mountain Oaks was ostensibly an independent study school, and it failed, partly because the parents of students enrolled therein insisted on receiving regular school services. Indeed, Petitioners provide no evidence whatsoever that the Charter School will implement its proposed independent study program successfully, and the 2019 Petition is even devoid of a proposed board policy or a typical work/master agreement in support of the Charter School's independent study program. (See 2019 Exhibit Package, pp. 20-22.)

The Charter School's independent study program suffers from other insurmountable deficiencies, even assuming that enough students will show interest in enrolling therein. First, in light of the inflated enrollment numbers discussed in Section V.B.1 of these Findings of Fact and the resulting overstated revenues, the 2019 Petition contains no evidence that funding will be available in the foreseeable future for a teacher to support an independent study program. (See 2019 Exhibit Package, pp. 63, 64, and 65.) Indeed, the 2019 Petition provides that one of the three teachers at the Charter School will be responsible for both the independent study and special education programs in addition to his or her other teaching duties. (See 2019 Exhibit Package, p. 12.) This teacher will also be expected to meet with independent study students once per week (2019 Exhibit Package, p. 20), or at least once every 20 school days (2019 Exhibit Package, p. 21), depending on which part of the 2019 Petition's two-page discussion of the independent study program one is reading, as one description is not consistent with the other. Second, the 2019 Petition contains no evidence that any internet service or computers will be available in order for independent study students to access the required online learning programs, webcasts, and live streams. (See 2019 Exhibit Package, p. 21.) Third, the 2019 Petition itself acknowledges that the independent study program is in conflict with the Charter School's regular program (see 2019 Exhibit Package, p. 21), thus increasing the likelihood of burnout for the teacher who will have to cover both programs in addition to special education and the likelihood that the independent study program will be unsuccessful.

B. Petitioners are demonstrably unlikely to successfully implement the program set forth in the 2019 Petition.

Because the 2019 Petition presents an unsound educational program, it is demonstrably unlikely that Petitioners will successfully implement said program. Moreover, there are other insurmountable challenges faced by PEA that require the District to deny the 2019 Petition, not least of which is the fact that the Petition fails to explain how the Charter School makes economic sense.

California Code of Regulations, title 5, section 11967.5.1(c) states that a factor to be considered in determining whether charter petitioners are demonstrably unlikely to successfully implement the program set forth in a charter petition is whether the petitioners have presented an unrealistic financial and operational plan for the proposed charter school. Section 11967.5.1(c)(3) provides as follows:

An unrealistic financial and operational plan is one to which any or all of the following applies: . . .

(B) In the area of financial administration, the charter or supporting documents do not adequately:

1. Include, at a minimum, the first-year operational budget, start-up costs, and cash flow, and financial projections for the first three years.
2. Include in the operational budget reasonable estimates of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based, when possible, on historical data from schools or school districts of similar type, size, and location.

3. Include budget notes that clearly describe assumptions on revenue estimates, including, but not limited to, the basis for average daily attendance estimates and staffing levels.
4. Present a budget that in its totality appears viable and over a period of no less than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.
5. Demonstrate an understanding of the timing of the receipt of various revenues and their relative relationship to timing of expenditures that are within reasonable parameters, based, when possible, on historical data from schools or school districts of similar type, size, and location.

The 2019 Petition fails to meet the requirements of Section 11967.5.1(c)(3)(B) – in particular the presentation of a budget that in its totality appears viable – and therefore provides an unrealistic financial and operational plan, as discussed in more detail below.

1. **The Charter School's enrollment projections are problematic.**
 - a. **The number of signatures provided in support of the 2019 Petition inflate the Pinecrest community's interest in Charter School attendance.**

The 2019 Petition is supported by the signature of 39 individuals who “certify that they are parents or guardians who are meaningfully interested in having their children or wards attend the Charter School.” (See 2019 Exhibit Package, pp. 178-186.) The District discovered in the course of reviewing the 2019 Petition that multiple signatures were provided for the same child or children in certain instances, that a number of individuals signed who have no children in the grades to be served by the Charter School, and that some signatories reside outside District boundaries. As a result, the District was able to verify that only 32 students would potentially attend the Charter School during its first year of operation based on an accurate count of the signatures, falling short of the 2019 Petition's projected 52-student enrollment during the Charter School's first year of operation (see 2019 Exhibit Package, pp. 10, 12, 133) by approximately 38%.

The District's review of the 2019 Petition's signature pages included a comparison of the names of parents/guardians, the number of represented children, documentation available through the District's enrollment/student information services databases, and information obtained via telephone calls to signatories. The District discovered the following:

- Shannon and Bret Rimmer both signed, but their certifications likely refer to the same children.
- Ms. Lupo signed twice.
- Charles Hard signed, but he has the same address as Ms. Lupo, so their certifications likely pertain to the same child/children.

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and Petitioner's Response

- Ellen and Eric Brewer both signed, but they have the same address, so their certifications likely pertain to the same children.
- Kamilla E. and David Tingey both signed, but they have the same address, so their certifications likely pertain to the same child.
- Nathan Weltmer signed, but he resides outside District boundaries.
- Melissa Patania signed, but she resides outside District boundaries.
- Haley Russo and Jesse Jones both signed, but they have confirmed via telephone that their certifications pertain to only one child eligible for enrollment in the Charter School.
- Amy and Jason Stringer both signed, but they do not have any children eligible for enrollment in the Charter School.
- Lauren and Anthony Beaird both signed, but they have confirmed via telephone that they only have one child eligible for enrollment in the Charter School for the 2020-2021 school year.
- Jillian and Nathan Rohr both signed, but they have the same address, so their certifications likely pertain to the same child.
- Katie and Jonathan Garcia both signed, but they have the same address, so their certifications likely pertain to the same child.
- Lisa and Dan Sedlmeyer both signed, but they have the same address, so their certifications likely pertain to the same children.
- Whitney and Cody Schlenker both signed, but they have the same address, so their certifications likely pertain to the same children.
- Samantha and Brian Bosque both signed, but they have the same address, so their certifications likely pertain to the same children.
- Mr. and Mrs. Smith both signed, but Mr. Smith's signature indicates that their certifications pertain to the same child.
- Courtney and Chris Sutton both signed, but they reside outside District boundaries.

(See 2019 Exhibit Package, pp. 178-186.) This data confirms that, as stated above, only 32 students would potentially attend the Charter School during its first year of operation based on an accurate analysis of the signatures presented in the 2019 Petition. The number of signatures provided in support of the 2019 Petition therefore inflate the Pinecrest community's interest in Charter School attendance. This becomes even more obvious when considering the fact that, in spite of Ms. Lupo's claim that Petitioners have "very strong support" of the community (2018 Exhibit Package, p. 192; see 2019 Exhibit Package, pp. 7-8), only four individuals who supported the 2018 Petition, in addition to Ms. Lupo and Petitioners' attorney, showed up at the Board's March 19, 2018 public hearing where the fate of the Charter School was hanging in the balance (see 2018 Exhibit Packet, pp. 190-193). Similarly, the Board's October 23, 2019 public hearing was poorly attended by supporters of the 2019 Petition. (See 2019 Exhibit Package, pp. 323-325.) Only eight supporters, in addition to Ms. Lupo, showed up (2019 Exhibit Package, pp. 323-325). Further, in addition to Ms. Lupo, only one individual who signed the 2019 Petition spoke in support thereof on October 23, 2019 – Ms. Sutton – but she resides outside District boundaries, as noted above. (See 2019 Exhibit Package, pp. 178-186, 323-325.)

b. Petitioners base the Charter School's enrollment projections on unsubstantiated optimism.

The following are the 2018 Petition's enrollment projections:

<u>School Year</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>	<u>2021-2022</u>	<u>2022-2023</u>
<u>Grades K-3</u>	13	17	23	27	45
<u>Grades 4-6</u>	9	15	28	28	33
<u>Grades 7-8</u>	3	8	14	18	22
<u>Total Enrollment</u>	25	40	65	73	100
<u>Percent Change Over Prior Year</u>	---	60%	62.5%	12.31%	37%

(See 2018 Exhibit Package, p. 114.)

The following are the 2019 Petition's enrollment projections:

<u>School Year</u>	<u>2020-2021</u>	<u>2021-2022</u>	<u>2022-2023</u>	<u>2023-2024</u>	<u>2024-2025</u>
<u>Grades K-3</u>	23	24	27	27	27
<u>Grades 4-6</u>	19	21	23	23	23
<u>Grades 7-8</u>	10	12	15	15	15
<u>Total Enrollment</u>	52	57	65	65	65
<u>Percent Change Over Prior Year</u>	---	9.62%	14.04%	0%	0%

(2019 Exhibit Package, pp. 133-134.) It should be noted that the enrollment projections above for the Charter School's first, second, and fifth years of operation are likely the result of Petitioners' incorrect mathematics. (See 2019 Exhibit Package, p. 13.) Indeed, if the more detailed figures provided in the 2019 Petition are added correctly, a total of 47 (instead of 52) students are projected to be enrolled in the Charter School during the 2020-2021 school year, 52 (instead of 57) during the 2021-2022 school year, and 64 (instead of 65) during the 2024-2025 school year. (See 2019 Exhibit Package, p. 13.) These discrepancies, as discussed in Section V.B.2 of these Findings of Fact, have a substantially negative impact on the Charter School's projected revenues.

The following are the 2018 Petition's average daily attendance ("ADA") projections:

<u>School Year</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>	<u>2021-2022</u>	<u>2022-2023</u>
<u>ADA</u>	24.00	38.40	62.40	70.08	96.00

(2018 Exhibit Package, p. 115.)

The following are the 2019 Petition's average ADA projections, based on Petitioners' likely incorrect mathematics:

<u>School Year</u>	<u>2020-2021</u>	<u>2021-2022</u>	<u>2022-2023</u>	<u>2023-2024</u>	<u>2024-2025</u>
<u>ADA</u>	49.92	54.72	62.40	62.40	62.40

(2019 Exhibit Package, pp. 130-131.)

Petitioners have substantially reduced the projected enrollment numbers in the 2019 Petition as compared to the 2018 Petition in order to address the concerns with the 2018 Petition's unsupported exponential growth in projected enrollment. This reduction is tantamount to an admission on behalf of Petitioners that the District was correct in its conviction that the 2018 Petition's projected enrollment numbers were – for one reason or another – inflated. Furthermore, the 2019 Petition acknowledges that the population in the Pinecrest area is currently unpredictable and that enrollment in the Charter School will not be large. (2019 Exhibit Package, pp. 11, 13.) Therefore, even the reduced projected enrollment and its limited increase over the first few years of the Charter School's operation presented in the 2019 Petition may be optimistic, as discussed in more detail below. The 2019 Petition goes as far as to reiterate the District's conclusion, stating that the Charter School will “face some unique hurdles due to [its] low enrollment numbers” (2019 Exhibit Package, p. 7). Perhaps the most important of these hurdles is the fact that the reduction in enrollment will necessarily translate into a reduction in revenues.

c. The District's Pinecrest School closure is evidence of declining enrollment not only at the Pinecrest School itself, but also District-wide.

The District's Pinecrest School was inviable due, in part, to declining enrollment, both at the school and District levels. In spite of this reality, PEA is basically proposing to reopen the Pinecrest School, even in the same location.

The numbers speak for themselves:

<u>School Year</u>	<u>Twain Harte School ADA/Enrollment</u>	<u>Pinecrest School ADA/Enrollment</u>	<u>Total District ADA/Enrollment</u>
2007-2008	324.57 / 341	53.34 / 57	377.91 / 398
2008-2009	296.83 / 317	53.74 / 55	350.57 / 372
2009-2010	256.95 / 271	47.19 / 51	304.14 / 322
2010-2011	264.17 / 281	47.69 / 49	311.86 / 330
2011-2012	262.32 / 281	34.52 / 35	296.84 / 316

In addition to declining enrollment, and related thereto, the loss of “necessary small school” funding in 2012, and the resulting loss of extra ADA/Local Control Funding Formula (“LCFF”) funding, were also responsible for sounding the Pinecrest School's death knell. It begs the question then: If the Pinecrest School was “unnecessary” in 2012, what makes the Charter School “necessary” in 2019? Petitioners fail to convincingly answer this vital question.

d. The brief existence of the Mountain Oaks Charter School Pinecrest Campus supports the District's conclusion that the Charter School is doomed to fail.

The fact that the Charter School is unnecessary and, indeed, superfluous, is supported by yet more historical evidence. The Calaveras County Office of Education (“CCOE”) approved the Mountain Oaks Charter School Pinecrest Campus (“Mountain Oaks”) in 2012, shortly after the District closed its Pinecrest School, in order to serve the former Pinecrest School students and at the behest of the Pinecrest area parents. Mountain Oaks was doomed to failure for many of the same reasons

that the Charter School is. Indeed, Mountain Oaks closed its doors in 2014, after only two years of operation. (2018 Exhibit Package, pp. 190-191.) The numbers are, again, revealing:

<u>School Year</u>	<u>District ADA/Enrollment</u>	<u>Mountain Oaks ADA/Enrollment</u>
2012-2013	269.65 / 284	27.97 / 29
2013-2014	275.35 / 291	24.26 / 25

The numbers show that the declining enrollment experienced by the District at the Pinecrest School continued under the auspices of Mountain Oaks. These figures also show that the projected enrollment numbers for the Charter School reflected in the 2019 Petition are much higher than those of Mountain Oaks. (See 2019 Exhibit Package, p. 13.) It is disingenuous to think that the mere six years that will have elapsed from the closing of Mountain Oaks to the opening of the Charter School would translate into a 27-student increase in enrollment. (See 2019 Exhibit Package, p. 13.)

In addition, Petitioners fail to reveal that, while Mountain Oaks was ostensibly an independent study school, the parents of students at Mountain Oaks insisted on receiving regular school services from its two teachers, so that the services to be provided by the Charter School and the services that were in fact provided by Mountain Oaks are comparable. Teacher burnout contributed to Mountain Oaks' closure in 2014, and there is no reason to believe that this will not happen with the Charter School as well.

- e. **The Tuolumne County Superintendent of Schools Office's return of PEA's early2018 countywide charter petition supports the District's finding that the Charter School will not attract students from throughout Tuolumne County but that, rather, the Charter School's very limited student population will be drawn from Pinecrest itself and its immediate environs.**

The 2019 Petition is PEA's third attempt to open a charter school in Pinecrest in nearly two years. Before the submission of the 2018 Petition to the District, PEA submitted a countywide charter petition to the TCSOSO. The TCSOSO returned PEA's countywide charter petition before its consideration by the TCBOE. (See 2018 Exhibit Package, p. 210.) The TCSOSO's return provides additional evidence in support of the District's position.

A countywide charter will only be granted if, in addition to other Education Code requirements, the charter school is found to provide services to a countywide pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. (Education Code section 47605.6(a).) The TCSOSO concluded that PEA's proposed charter school would not offer services to a countywide pupil population that would benefit from those services. The TCSOSO further concluded that PEA's proposed charter school would only offer services of benefit to students within the District's jurisdiction.

The fact that the TCSOSO found that PEA's proposed charter school would not offer services to a countywide pupil population supports the conclusion that only District residents should be expected to enroll in the Charter School. Therefore, Petitioners' reliance on attracting non-resident students to enroll in the Charter School is misplaced. (See 2019 Exhibit Package, p. 7.) This conclusion is underscored by the fact that, while the District offers student transportation, the Charter School would not, as further discussed below.

f. The fact that the Charter School will not offer transportation services further limits the Charter School's enrollment pool.

As noted above, the Charter School's lack of transportation services (2019 Exhibit Package, p. 99) also supports the conclusion that the Charter School will not be successful because its enrollment projections are overstated. While supporters of the 2019 Petition point to the transportation difficulties associated with Pinecrest area students having to travel to Twain Harte School (see Exhibit Package, p. 12), they fail to acknowledge the flip side of that equation, namely, that travel difficulties will negatively impact enrollment at the Charter School as well. It makes complete sense that transportation is an issue in both directions, to and from Pinecrest, especially in light of Petitioners' reliance on the enrollment of out-of-District students (see 2019 Exhibit Package, p. 7). Indeed, lack of transportation was an issue contributing to Mountain Oak's closure. (2018 Exhibit Package, p. 190.) However, while the Charter School will not provide transportation services, the District does provide transportation to Cold Springs and, in inclement weather, to Long Barn (2018 Exhibit Package, p. 193). Students from the Pinecrest area are thus assured safe and convenient transportation to and from Twain Harte School, rendering the Charter School unnecessary.

g. District-wide projections predict a continuing steady decline in enrollment.

As if the evidence above were not sufficient, it is indisputable in light of the numbers below that the steady decline in District enrollment has continued after the closure of Mountain Oaks:

<u>School Year</u>	<u>District ADA/Enrollment</u>
2014-2015	282.2 / 296
2015-2016	267.23 / 274
2016-2017	253.47 / 271
2017-2018	252.57 / 264
2018-2019	246.81 / 254
2019-2020	260.38 / 276

Moreover, the District projects that enrollment will continue to decrease in the foreseeable future, continuing the last decade's trend:

<u>School Year</u>	<u>Projected District ADA/ Enrollment</u>
2020-2021	227.18 / 238
2021-2022	224.85 / 236
2022-2023	224.85 / 236

By extrapolation, this means that Charter School enrollment, far from increasing, as projected by Petitioners, will actually decrease.

2. **The Charter School's viability is premised on inaccurate revenue projections, which are in turn premised on inaccurate enrollment projections, therefore presenting an unrealistic financial and operational plan.**

As noted in Section V.B.1.b. of these Findings of Fact, the 2019 Petition's reduction in projected enrollment as compared to the 2018 Petition will necessarily translate into a reduction in revenues. Furthermore, because even the reduced 2019 Petition's enrollment projections are overstated, it follows that the revenue projections will be even more negatively impacted as well.

For example, and very importantly, Petitioners' LCFF calculations are flawed because they are based on flawed enrollment projections, as explained in detail in Section V.B.1. of these Findings of Fact. The fact that Petitioners' LCFF calculations are flawed is especially concerning because this funding mechanism represents an extremely large portion of the Charter School's proposed revenues: **98%** of the Charter School's proposed revenues for each of the first five years of operation. (See 2019 Exhibit Package, pp. 136-137.)

3. **Petitioners have also presented an unrealistic financial and operational plan for the Charter School because the 2019 Petition fails to include budget notes that clearly describe assumptions on revenue estimates.**

The 2019 Petition fails to include budget notes that clearly describe assumptions on revenue estimates (see 2019 Exhibit Package, pp. 130-162), in violation of California Code of Regulations, title 5, section 11967.5.1(c)(3)(B)(3).

For instance, there is no basis to validate the accuracy of employee salary and benefit projections due to the absence of a salary schedule and benefit package information. (See 2019 Exhibit Package, pp. 133-134, 137-138.) While Petitioners indicate their intention to offer competitive salaries and benefits to hire highly qualified certificated and non-certificated staff (see 2019 Exhibit Package, p. 57), the personnel costs projections on their own are insufficient to support such an intention. (See 2019 Exhibit Package, pp. 133-134, 137-138.)

Even more worrisome, however, is the fact that, due to the carelessness with which the 2019 Petition was prepared and formatted, it is not possible to easily or clearly decipher to what information the assumptions provided belong. (See 2019 Exhibit Package, pp. 140-143.)

4. **Petitioners have not demonstrated successful experience in operating and managing a charter school.**

The 2019 Petition provides information about its "Founding Group," the members of which, with the exception of Ms. Lupo, comprise the initial Charter School Board of Directors. (See 2019 Exhibit Package, pp. 8-9, 55.) None of the information provided shows that any of these individuals possess the required experience to operate a charter school: While Peggy Herndon and Chucker Twining have

experience working for a school district and experience as a school board member, respectively, the 2019 Petition does not discuss any charter school operation experience or experience with the challenges that accompany working with such a small educational organization. While Courtney Sutton has experience working at the college level, she does not have any K-12 educational experience at all. Neither does Mike Yaley. Finally, neither John Cashman nor Ron Berry have experience in the educational field at all.

5. Petitioners have not developed a comprehensive plan for attracting and retaining the highly trained and experienced personnel called for in the 2019 Petition.

The 2019 Petition sets the bar quite high for the qualifications and responsibilities of the Lead Teacher, the Business Development and Operations Coordinator, and the Administrative Assistant. All three will have to wear many hats, but the 2019 Petition does not convincingly explain how these individuals will be attracted and retained, especially in such a small community, and especially when the Charter School will not have the District resources backing it. As a side note, the 2019 Petition does not recognize that this situation could very easily lead to burnout, a factor that contributed to the closing of a similar school in the Pinecrest area only a few years ago. (See Section V.B.1.d. of these Findings of Fact.)

The Lead Teacher, for instance, will not only teach, but also fulfill an extensive administrative role, requiring not only a teaching credential, but also an administrative credential. (2019 Exhibit Package, pp. 57-58, 63-65.) He or she will be responsible for the following administrative duties, among others:

- Ensure the Charter School enacts its mission.
- Supervise and evaluate teachers and staff.
- Communicate with and report to the Board of Directors.
- Participate in and implement professional development workshops.
- Serve or appoint a designee to serve on Charter School committees.
- Interview and recommend employee hiring, promotion, discipline, and/or dismissal.
- Communicate with parents, recruit new families and students, and assure families of academic growth.
- Take steps to ensure student attendance in accordance with policies established by the Board of Directors.
- Complete and submit documents as requested or required by the charter, the Board of Directors, and/or the District.
- Identify the staffing needs of the Charter School and offer staff development.
- Maintain up-to-date financial records.
- Ensure that appropriate evaluation techniques are used for both students and staff.
- Hire qualified substitute teachers.
- Ensure the security of school facilities.
- Encourage and support teacher professional development.
- Manage student discipline and participate in the suspension and expulsion process.
- Participate in IEP meetings.
- Oversee the independent study program, including meeting with students on a weekly basis.

- Coordinate testing.
- Manage the special education program.

(2019 Exhibit Package, pp. 57-58.)

The Business Development and Operations Coordinator will be responsible for the following duties, among others:

- Ensure the Charter School enacts its mission.
- Communicate with and report to the Board of Directors.
- Oversee school finances to ensure financial stability.
- Participate in and implement professional development workshops.
- Communicate with parents, recruit new families and students, and assure families of academic growth.
- Complete and submit documents as requested or required by the charter, the Board of Directors, and/or the District.
- Identify the staffing needs of the Charter School and offer staff development.
- Maintain up to date financial records.
- Ensure that appropriate evaluation techniques are used for both students and staff.
- Establish and maintain a system to handle organizational tasks such as student records, teacher records, teacher credentialing information, contemporaneous attendance logs, purchasing, budgets, and timetables.
- Ensure compliance with all applicable state and federal laws and help secure local grants.
- Interview and recommend employee hiring, promotion, discipline, and/or dismissal.
- Maintain up-to-date financial records.
- Promote the Charter School in the community, promote positive public relations, and interact effectively with the media.
- Attend meetings with the District on fiscal oversight issues as requested by the District.
- Provide all necessary financial reports as required for proper attendance reporting.
- Develop the school annual performance report, the School Accountability Report Card, and the Local Control and Accountability Plan.
- Present an independent fiscal audit to the Board of Directors and, after review by the Board of Directors, submit the audit to the District, the Tuolumne County Superintendent of Schools, the State Controller, and the California Department of Education.
- Manage day-to-day operations and facilities.
- Contract and oversee an independent fiscal audit.

(2019 Exhibit Package, pp. 58-59.)

In turn, the Administrative Assistant will not only fulfill an administrative role, as the title suggests, but will also assist with food service, in classrooms as an instructional aide, with yard duty supervision, and with custodial and janitorial duties. (2019 Petition, p. 59.) As if this were not enough, the 2019 Petition states that additional duties and responsibilities may be assigned to the Administrative Assistant. (2019 Petition, p. 59.)

C. **The 2019 Petition does not contain reasonably comprehensive descriptions of all 15 elements specified in Education Code section 47605(b)(5).**

1. **The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(A) that a charter school petition contain a reasonably comprehensive description of the educational program of the charter school.**

The 2019 Petition does not contain a reasonably comprehensive description of the educational program of the Charter School because it does not address how academic development appropriate for each grade level will be accomplished in the context of the Charter School's multi-grade classrooms and because it is unsatisfactory in its discussion of the Charter School's special education and independent study programs, as discussed in more detail in Section V.A. of these Findings of Fact.

2. **The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(E) that a charter school petition contain a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the charter school.**

The 2019 Petition does not contain a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the Charter School because it does not address what non-instructional staff the Charter School expects to employ and what experience is appropriate for each of those positions, with the exception of the Business Development and Operations Coordinator and the Administrative Assistant (see 2019 Exhibit Package, pp. 58-59). Further, the 2019 Petition indicates that it seeks to employ non-certificated instructional support staff in some cases but does not provide any information whatsoever regarding their qualifications. (See 2019 Exhibit Package, p. 63.) Lastly, the 2019 Petition makes no reference to the qualifications of instructional aides.

3. **The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(F) that a charter school petition contain a reasonably comprehensive description of the procedures that the charter school will follow to ensure the health and safety of pupils and staff.**

The 2019 Petition does not contain a reasonably comprehensive description of the procedures that the Charter School will follow to ensure the health and safety of pupils and staff. As a matter of fact, the 2019 Petition fails to provide a comprehensive description of almost every legally required component of such procedures, such as:

- Routine and emergency disaster procedures.
- Policies pursuant to Education Code section 48915(d) for pupils who committed an act listed in Education Code section 48915(c) and other school-designated serious acts that would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Education Code section 48900 et seq.

- Procedures to notify teachers of dangerous pupils pursuant to Education Code section 49079.
- A discrimination and harassment policy.
- Procedures for safe ingress and egress of pupils, parents, and school employees to and from the Charter School.
- A safe and orderly environment conducive to learning.

(See Education Code section 32282(a)(2)(A)-(H).)

Moreover, the 2019 Petition itself acknowledges that it does not contain a comprehensive health and safety plan but rather only an early draft thereof. (See 2019 Exhibit Package, p. 66.) Instead, the 2019 Petition merely promises that a full draft will be provided in the future, and that the early draft is included in the appendices. (2019 Exhibit Package, p. 66.) However, the appendices are devoid of such an early draft. (See 2019 Exhibit Package, pp. 102-197.) The health and safety information Petitioners do provide is deficient, because it lacks the comprehensive descriptions of the items enumerated above.

4. **The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(G) that a charter school petition contain a reasonably comprehensive description of the means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.**

The 2019 Petition does not contain a reasonably comprehensive description of the means by which the Charter School will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the District. The 2019 Petition fails to state what the racial and ethnic makeup of the area is and therefore how the Charter School will specifically target such racial and ethnic groups to achieve balance among its pupils. (See 2019 Petition, p. 72.)

5. **The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(K) that a charter school petition contain a reasonably comprehensive description of the manner by which staff members of the charter school will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.**

The 2019 Petition does not contain a reasonably comprehensive description of the manner by which Charter School staff members will be covered by STRS, PERS, or federal social security. The 2019 Petition does state that certificated employees shall participate in STRS and that non-certificated full-time staff shall participate in PERS and federal social security. (2019 Exhibit Package, p. 93.) However, the 2019 Petition does not set forth the appropriate arrangements that must be made in conjunction with retirement coverage. (See 2019 Exhibit Package, p. 93.) Additionally, the 2019 Petition fails to reference the notice requirement of Education Code section 47611(b), whereby the Charter School must inform all employment applicants of the retirement system options available,

specifically that accepting employment in the charter school may exclude the applicant from further coverage in the applicant's current retirement system.

C. **The 2019 Petition does not contain all the information regarding the proposed operation and potential effects of the Charter School required by Education Code section 47605(g).**

1. **The 2019 Petition fails to provide adequate or accurate information related to the facilities to be used by the Charter School.**

The 2019 Petition identifies the District's former Pinecrest School as the site for the operation of the Charter School, supported by a letter from the owner of the building, the Pinecrest Permittees Association, indicating a mutual intention to enter into a lease agreement. (2019 Exhibit Package, pp. 98, 164.) However, the 2019 Petition fails to provide much information about the facility, including its current condition and what repairs/maintenance and permits will be required for operation of the Charter School. (See 2019 Exhibit Package, p. 98.) Further, the facility has yet to be secured. (See 2019 Exhibit Package, p. 164.) Indeed, the 2019 Petition contemplates only a July 1, 2019 to June 30, 2020 lease. (2019 Exhibit Package, p. 164.) A renewal by mutual agreement would apply for July 1, 2020 forward (2019 Exhibit Package, p. 164), creating uncertainty with respect to the Charter School's long-term location. The 2019 Petition itself acknowledges the possibility that the former Pinecrest School site may become unavailable, in which case the Charter School would have to be relocated to another facility in the Pinecrest area. (2019 Exhibit Package, p. 99.)

Additionally, the 2019 Petition indicates that the Charter School's lease will be \$18,000 for the 2020-2021 school year. (2019 Exhibit Package, p. 133.) The 2019 Petition does not explain how Petitioners arrived at \$18,000 as compared to the \$72,000 in lease payments projected for the 2020-2021 school year in the 2018 Petition. (See 2018 Exhibit Package, p. 114.) On the one hand, Petitioners may have understated lease payments in the 2019 Petition in order to reduce expenses and thereby compensate for reduced revenue. On the other hand, ironically, this reduction in lease payments in turn results in a reduction in revenue. The financial information provided by Petitioners shows a cash flow of \$250,000 from "Other Sources" for the 2020-2021 school year, which is actually money from a Charter School Facility Grant. (See 2019 Exhibit Package, p. 139.) Charter School Facility Grants are awarded to provide annual assistance with rent and lease expenditures for charter school facilities based on the units of classroom-based ADA, up to 75% of annual facilities rent and lease costs. (2019 Exhibit Package, p. 326.) Because the 2019 Petition provides for \$18,000 in annual lease payments for the 2020-2021 school year, the most the Charter School could receive from the Charter School Facility Grant would be 75% of \$18,000, or \$13,500, which is \$236,500 less than the \$250,000 included in the 2019 Petition's financial information. The 2019 Petition does not indicate where these \$236,500 would otherwise come from.

2. The 2019 Petition fails to provide complete or convincing information regarding the manner in which the Charter School's administrative services will be provided.

The 2019 Petition states that the Charter School will provide or procure administrative services either through its own staff or through an appropriately qualified third party contractor. (2019 Exhibit Package, p. 98.) The 2019 Petition does indicate that the Lead Teacher, the Business Development and Operations Coordinator, and the Administrative Assistant will fulfill administrative roles (2019 Petition, pp. 57-59), but the 2019 Petition does not set forth a specific plan for handling business and/or personnel related services (e.g., retirement system reporting, taxes, withholdings, workers' compensation insurance, credential compliance, W-2 and W-9 processing, etc.).

Further, the Charter School will rely on ICON School Management Services ("ICON"), formerly known as SavantCo Education ("SavantCo") (2019 Exhibit Package, p. 261), to be its back office provider (2019 Exhibit Package, p. 9), but this selection is fraught with problems. First, SavantCo is the back office provider identified in the 2018 Petition (2018 Exhibit Package, p. 9) and to which some of the lack of success of the 2018 Petition was attributed by Petitioners. Second, ICON may not be the most reliable option, even putting aside Petitioners' experience with SavantCo in the context of the 2018 Petition. In 2016, the Fiscal Crisis & Management Assistance Team ("FCMAT") conducted an audit of Hope Academy Charter School, which employed SavantCo, ICON's predecessor, as its back office provider. (See 2019 Exhibit Package, pp. 264-322.) FCMAT considered alleged fraud, misappropriation of funds, and other criminal activity involving SavantCo and concluded that these may all have occurred. (2019 Exhibit Package, pp. 275, 300.) As such, the partnership between the Charter School and ICON further brings into question whether Petitioners can successfully implement the educational program set forth in the 2019 Petition.

VI. Conclusion

Based on the Staff Team's thorough and careful review of the 2019 Petition as well as public input received at the public hearing held on October 23, 2019, the District recommends that the Board adopt these Findings of Fact and deny the 2019 Petition for the reasons detailed above.

To summarize once again, the District recommends that the Petition be denied based on the following conclusions:

1. The Charter School presents an unsound educational program for the pupils to be enrolled therein. As discussed further in Section V.A. of these Findings of Fact, the Petition does not address how academic development appropriate for each grade level will be accomplished in the context of the Charter School's multi-grade classrooms, does not provide for sufficient days of instruction, and is unsatisfactory in its discussion of the Charter School's special education and independent study programs.

Twain Harte School District Findings

and Petitioner's Response

2. Petitioners are demonstrably unlikely to successfully implement the program set forth in the 2019 Petition. As discussed further in Section V.B. of these Findings of Fact, the Charter School's enrollment projections are problematic and its viability is premised on inaccurate revenue projections. In addition, Petitioners have not demonstrated successful experience in operating and managing a charter school and have not developed a comprehensive plan for attracting and retaining the highly trained and experienced personnel called for in the 2019 Petition.

3. The 2019 Petition does not contain reasonably comprehensive descriptions of all 15 elements specified in Education Code section 47605(b)(5). As discussed further in Section V.C. of these Findings of Fact, the 2019 Petition does not contain a reasonably comprehensive description of the Charter School's educational program, the qualifications of Charter School employees, the procedures the Charter School will follow to ensure the health and safety of pupils and staff, the means by which the Charter School will achieve a racial and ethnic balance among its pupils that is reflective of the surrounding general population, and the manner in which staff members of the Charter School will be covered by STRS, PERS, or federal social security.

4. The 2019 Petition does not contain all the information regarding the proposed operation and potential effects of the Charter School required by Education Code section 47605(g). As discussed further in Section V.D. of these Findings of Fact, the 2019 Petition fails to provide adequate or accurate information related to the facilities to be used by the Charter School and complete or convincing information regarding the manner in which the Charter School's administrative services will be provided.

November 26, 2019

VIA HAND DELIVERY

Supt. Cathy A. Parker
Tuolumne County Board of Education
175 Fairview Lane
Sonora CA 95370

Re:	Appeal of the Pinecrest Expedition Academy Charter School Petition on Denial from the Twain Harte School District
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This letter is submitted on behalf of the Pinecrest Expedition Academy (“PEA, the Charter School, or PEA”) charter school petition, specifically rebutting the Twain Harte School District’s (the “District”) findings of fact.

1. The 2018 Petition

The fact that the Charter School submitted a petition in 2018 is, of course, irrelevant and not part of any “procedural history” that can be considered by the Tuolumne County Office of Education or Board of Education. The District has included this information purely as a distraction, and the Ed. Code requirements for review of a charter petition either by the District or on appeal to the County do not bring this alleged “procedural history” into consideration^[H1]. The District’s statement that the operated the Pinecrest School for over thirty years is also inaccurate. The District took over the Pinecrest School in or around July 1995 and closed the school in or around June 2012, a period of seventeen years. The operation of the school prior to that period was through the Columbia School District.

2. The Charter School Presents an Unsound Educational Program for the Pupils to Be Enrolled in the Charter School. [Ed. Code§ 47605(b)(1)]

- a. The 2019 Petition does not address how academic development appropriate for each grade level will be accomplished in the context of the Charter School’s multi-grade classrooms.

The Petition in Elements 2 and 3 clearly define and list the Measurable Student Outcomes and Methods of Assessments of Student Progress. This information clearly outlines the objectives of the programs and the academic achievement goals. This information is intended to align with all applicable State Standards

and Methods of Assessment and will be used in the multi-grade classroom. The Petition also clearly outlines the use of Personalized Learning in a Multi Grade Classroom on pages 18 and 19.

- b. The 2019 Petition does not provide for sufficient days of instruction.

RESPONSE: PEA is offering more days of instruction than is currently required for charter schools. The fact that the District believes they should offer more days when there is a simple delta of four days is hardly evidence to support a “finding” that the number of instructional days is insufficient.

PEA’s instructional calendar meets the requirements of law and is therefore sufficient on its face to meet the requirements of the Charter Schools Act.

- c. The 2019 Petition is unsatisfactory in its discussion of special education.

RESPONSE: Given the small school enrollment proposed in the initial five years of operation, the budget sufficiently accounts for anticipated special education needs. In addition, the school can carry sufficient insurance to provide for more than adequate defense costs should a due process hearing be required. Finally, membership in the Tuolumne County SELPA is not required nor mandated. PEA can apply for membership in other SELPAs with specific expertise in serving special education students.

- d. The 2019 Petition is unsatisfactory in its discussion of the Charter School’s independent study program.

RESPONSE: The discussion of the independent study program is sufficient. PEA has more than sufficient support to ensure that an appropriate board policy and master agreement is adopted and to ensure that the requirements of the program are legally compliant in all respects. The meeting requirements identified in the findings as a “deficiency” are, in fact, simply the requirements of pertinent regulations governing independent study programs.

3. The Petitioner is Demonstrably Unlikely to Successfully Implement the Program Set Forth in the Petition. (Educ. Code§ 47605(b)(2).)

- a. 1. The Charter School’s enrollment projections are problematic.
i. a. The number of signatures provided in support of the 2019 Petition inflate the Pinecrest community’s interest in Charter School attendance.

RESPONSE: Without evidence, the District has arbitrarily invalidated seven parent signatures. Assuming arguendo the District is even correct, the number of validated signatures still meets the first year 50%+ enrollment requirement of law. The signatures must be considered as meeting the requirements of the Charter Schools Act as

a result and cannot be arbitrarily discounted or invalidated by the District.

The District's contention that the number of signatures *which they verified as legally compliant* "falls short" of the 52 first year student enrollment has no merit. That is not the legal standard by which the signatures must be judged. The legal requirement is that "[t]he petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation." *Ed. Code* section 47605(a)(1)(A). The petition *exceeds* this requirement.

- ii. Petitioners base the Charter School's enrollment projections on unsubstantiated optimism.

RESPONSE: By the District's own admission, 32 of the first year projected enrollment of 52 are meaningfully interested parents. As a result, the enrollment projections are not only sufficient as a matter of law but are entirely within reason. The modest growth projections

- iii. The District's Pinecrest School closure is evidence of declining enrollment not only at the Pinecrest School itself, but also District-wide.

RESPONSE: As noted above, the intent to enroll forms reflect 62% of total enrollment in the first year by the District's own admission. As with many small school Districts, declining enrollment could be due to a number of factors that the District has not considered, including the fact that the enrollment may still be present but simply choosing other homeschooling or independent study options. PEA may be a welcome addition to many parents as a result, and the District has offered no evidence otherwise.

- iv. The brief existence of the Mountain Oaks Charter School Pinecrest Campus supports the District's conclusion that the Charter School is doomed to fail.

RESPONSE: Comparing what occurred to a completely different school over 7 years ago is disingenuous at best, but it is also simply irrelevant and provides no evidence of the support that PEA does have in the community at present.

- v. The Tuolumne County Superintendent of Schools Office's return of PEA's early2018 countywide charter petition supports the District's finding that the Charter School will not attract students from

throughout Tuolumne County but that, rather, the Charter School's very limited student population will be drawn from Pinecrest itself and its immediate environs.

RESPONSE: The District's argument is non-sensical. A countywide charter petition must state an entirely different purpose, depending on the .5 or .6 designation, than a District authorized charter school. PEA's petition must be judged on its merits, not by comparison to the requirements for a countywide charter petition.

- vi. The fact that the Charter School will not offer transportation services further limits the Charter School's enrollment pool.

RESPONSE: As noted above, the intent to enroll forms reflect 62% of total enrollment in the first year by the District's own admission. As with many small school Districts, declining enrollment could be due to a number of factors that the District has not considered, including the fact that the enrollment may still be present but simply choosing other homeschooling or independent study options. PEA may be a welcome addition to many parents as a result, and the District has offered no evidence otherwise. The fact that the intent to enroll forms do support more than a majority of the first year enrollment suggest that parent support, notwithstanding any transportation issues, is sufficient to support the projected enrollment in the school.

- vii. District-wide projections predict a continuing steady decline in enrollment.

RESPONSE: Once again, the intent to enroll forms submitted by PEA reflect 62% of total enrollment in the first year by the District's own admission. As with many small school Districts, declining enrollment could be due to a number of factors that the District has not considered, including the fact that the enrollment may still be present but simply choosing other homeschooling or independent study options. PEA may be a welcome addition to many parents as a result, and the District has offered no evidence otherwise.

- b. The Charter School's viability is premised on inaccurate revenue projections, which are in turn premised on inaccurate enrollment projections, therefore presenting an unrealistic financial and operational plan.

RESPONSE: The District must necessarily belabor the enrollment projections because that is the crux of their entire objection to the petition; as stated above, if the enrollment projections are reasonable, which they are, then this finding regarding the revenue of PEA is, ipso facto, unreasonable.

- c. Petitioners have also presented an unrealistic financial and operational plan for the Charter School because the 2019 Petition fails to include budget notes that clearly describe assumptions on revenue estimates.

RESPONSE: All revenue and expense assumptions were disclosed in the Budget Narrative under the budget section hearing. In addition, the petition includes detailed Salaries and Benefits worksheets, which present all assumptions for Object Codes 1000 through 3000.

- d. Petitioners have not demonstrated successful experience in operating and managing a charter school.

RESPONSE: As the District has never operated a charter school, this “finding” is necessarily a reflection of the District’s understanding of the purported lack of experience of the charter petitioners/founders. PEA has enlisted the support of highly qualified experts to assist them in their endeavor and having worked with charter schools for over twenty years our team has seen many different successful charter school implementations from persons with no formal educational training at all.

- e. Petitioners have not developed a comprehensive plan for attracting and retaining the highly trained and experienced personnel called for in the 2019 Petition.

RESPONSE: The job market in California is ever changing. A plan specific to today may be irrelevant in a year. Given the attractive location of the program, homes available for purchase and rental. Higher starting salaries than other programs in the state, PEA is confident that the board can develop an annual plan for staff hiring and recruitment based on needs at the time.

4. The Petition Does Not Contain Reasonably Comprehensive Descriptions of All Elements Required under Education Code Section 47605.6(b)(5).

- a. The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(A) that a charter school petition contain a reasonably comprehensive description of the educational program of the charter school.

RESPONSE: The Petition provides a thorough description of the program in Element 1. The petition lists examples of textbooks to be used, the intention to align each subject to state standards and a summary of each subject. The Petition also includes supplementary information for EL Education in the Appendix and descriptions of project- based learning, personalized learning as well as the inclusion of a Natural Elements philosophy in the curriculum.

The Petition also includes staffing for special education. In addition to contracted special education personnel, page 64 of The Petition States, “ One Independent Study teacher (at minimum) will spend one day per week

providing Special Education services on campus. Thus the Independent Study must possess all needed and applicable licensing and credentials for this purpose.”

As noted above, the discussion of special education and independent study is sufficient for purposes of the Charter Schools Act. This office has extensive experience representing schools in special education matters, as well as schools operating independent study programs. Our support will be more than sufficient to ensure PEA operates in accordance with all applicable legal requirements.

- b. The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(E) that a charter school petition contain a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the charter school.

RESPONSE: The mere fact that the petition does not necessarily include job descriptions for all non-instructional staff and instructional aides is not a deficiency warranting a finding for purposes of the Charter Schools Act. This finding is deficient as a matter of law and should not be considered as evidence of a failure to provide a reasonably comprehensive description of the individuals to be employed by the charter school.

- c. The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(F) that a charter school petition contain a reasonably comprehensive description of the procedures that the charter school will follow to ensure the health and safety of pupils and staff.

RESPONSE: Not a single item listed in this finding is required by law to be included in a comprehensive manner in a charter petition, with the exception of suspension and expulsion procedures, which the petition does address at great length and in complete conformance with the law. In fact, these same suspension and expulsion procedures have been reviewed and approved by numerous Districts, County Board of Education and the State Board of Education.

Notwithstanding this fact, the remaining items are properly addressed in school policies and procedures and/or school safety and risk management plans that are not requirements of a charter petition but are, in fact, adopted by a charter school board after approval of the charter petition.

- d. The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(G) that a charter school petition contain a reasonably comprehensive description of the means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the

general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

RESPONSE: This finding cites erroneously to the requirements of law. As plainly stated in Education Code section 47605(b)(5)(G), this element of a charter petition must address the “means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.” The petition adequately addresses these “means” on page 72 of the charter petition. There is absolutely no requirement under the law to state what the racial and ethnic makeup of the school district actually is.

- e. The 2019 Petition does not meet the requirement of Education Code section 47605(b)(5)(K) that a charter school petition contain a reasonably comprehensive description of the manner by which staff members of the charter school will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.

RESPONSE: As with the previous finding, this finding too cites erroneously to the requirements of law. Nowhere in our experience has a finding ever stated that a charter petition must state the “appropriate arrangements that must be made in conjunction with retirement coverage,” nor the notice requirement of Education Code section 47611(b). These procedural requirements are just the tip of the iceberg with regards to the administrative requirements for establishing and maintaining enrollment in CalSTRS or CalPERS. A charter petition is simply not required to specify the level of procedural detail to which the District refers.

5. The 2019 Petition does not contain all the information regarding the proposed operation and potential effects of the Charter School required by Education Code section 47605(g).
 - a. The 2019 Petition fails to provide adequate or accurate information related to the facilities to be used by the Charter School.

RESPONSE: The charter petition adequately addresses the facility requirements of the Charter Schools Act by providing, as indicated by the letter from the owner of the Pinecrest Permittees Association. The level of the detail the District requires is nowhere required by the Charter Schools Act.

The lease payment was disclosed in the Budget Narrative under the budget section heading in the petition (refer to Section 3.3, Services and Operating expenses). According to the letter of intent, the Charter School will pay \$1,500 per month in the first year, and this amount was projected and budgeted accurately in the budget.

- b. The 2019 Petition fails to provide complete or convincing information regarding the manner in which the Charter School's administrative services will be provided.

RESPONSE: As a matter of first impression (and as is common throughout the District's findings), the District refers to non-existent requirements of the Charter School Act when it implies that a charter petition must include administrative or procedural information concerning retirement system reporting, taxes, withholdings, workers' compensation insurance, credential compliance or W-2 and W-9 processing. Most of these items are managed by a payroll services provider or an insurance company. Credential compliance is not a function of an administrative services provider but is rather a core function of the school administration.

Finally, it is surprising that the District would make what amounts to a defamatory statement about ICON School Management Services based on the FCMAT report referenced. While it is no concern of this office, we find the conclusion the District has reached about this FCMAT report erroneous and, quite frankly, surprising with regarding to ICON School Management Services.

Conclusion

As explained in the responses above, the District has not provided findings of fact that warrant denial of the Pinecrest Expedition Academy charter school petition, and we respectfully ask the Tuolumne County Board of Education consider these responses during its deliberations of the Pinecrest Expedition Academy appeal.

Sincerely,
HANSBERGER & KLEIN
A Professional Law Corporation



Richard J. Hansberger