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## MEMORANDUM

Date: September 16, 2016

To: Karen Janney, Ed.D. Superintendent  
Board of Trustees

From: Joe Fulcher, Ph. D. Asst. Supt., Equity, Culture and Support Services

RE: Charter Petition

Over the past few weeks, two organizations have contacted my office with petitions for new charters. In addition, the Stephen Hawking Charters (both SHC I and II) have submitted their paperwork to initiate the charter renewal process. With these developments in mind, please review this memo for critical information about the charter renewal and charter petition process. Both processes are extensively described below and it is hoped that this document will serve as a reference as these separate processes are being reviewed by district staff. Please contact my office if you have questions.

## 1. The Charter Petition Process

The petition is the first step for the creation of a charter school and typically covers three broad possibilities: (1) Start-Up Charter Schools (a new school, including countywide or statewide charter schools); (2) Conversion of an Existing Public School and; (3) Districtwide Charter Schools.

The timeline for petitions to school districts is as follows: (1) Day 1: Complete petition is submitted; Day 30 – School district must hold a public hearing; Day 60 – School district must either grant or deny the charter (extension of 30 calendar days can be granted if both parties agree).

Other important facts:

- Timelines apply to petitions submitted to school districts or to a CBE for appeal
  - If a petition is submitted to the CBE for appeal, the petition must be received no later than 180 days after the denial by the school district, or the petition shall not be acted upon by the CBE
  - If the CBE does not take action upon a petition appealing the denial within 60 days of receipt, the charter school petitioner may submit the petition for the establishment of a charter school to the SBE (this deadline may be extended by 30 days upon agreement by both parties)
  - If the CBE fails to act on a petition within 120 days of receipt, the decision of the governing board to deny the petition shall be subject to judicial review
- If a charter petition is denied by the CBE upon appeal, a charter school petitioner may appeal to the SBE
  - If a petition is submitted to SBE for appeal, the petition must be received no later than 180 days after the denial by the CBE or the petition shall not be acted upon by the SBE
  - If the SBE does not take action upon a petition appealing denial within 120 days of receipt, the decision for denial by the governing board of the school district is subject to judicial review (this deadline may be extended by 30 days upon agreement by both parties)

Questions to consider about the petition:

- Is the terminology consistent? Are there lots of headers and page numbers?
- Does the petition tell the story of the charter school? For example, why is this charter school needed? What problems will be addressed?
- How do we know the charter school can address the problem?
- It is fine for potential authorizers to have certain expectations, rubrics, or policies beyond what is required by law

The petition should be crafted for the charter school's unique needs, not cut and paste from other petitions.

### Required Elements of the Petition

- Identification of a single charter school that will operate within the geographic boundaries of the school district to which it is submitting the petition
  - A charter school may propose to operate at multiple sites within the school district if each location is identified in the petition
  - Signatures of parents or legal guardians or teachers

“Sweetwater Union High School District programs and activities shall be free from discrimination based on age, gender identity or expression, or genetic information, sex, race, color, religion, ancestry, national origin, ethnic group identification, marital or parental status, physical or mental disability, sexual orientation; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.”

- Reasonably comprehensive descriptions of the “15 Required Elements (A-O Elements)”
- Affirmation of the “Four Conditions”
- Proposed charter
- Required signatures
  - Start-Up Charters
    - Petition must be signed by a number of parents or guardian (who are meaningfully interested in enrolling their children in the charter school during its first year of operation) who represent at least 50% of the expected first-year enrollment; or
    - Signed by a number of teachers (who are meaningfully interested in teaching at the charter school) equal to at least 50% of the number of teachers that the charter school estimates will be employed at the school during the first year of operation
- Consider that the teachers signing the petition need to meet the credential standard for the proposed school, but need not yet be employed by the charter school
- Conversion of an existing public school
  - Signed by not less than 50% of the permanent status teachers currently employed at the public school to be converted

### **Required Elements of the Petition – 15 Elements**

- A. Educational Program (Curriculum)
  - Including annual goals to be achieved in the state priorities pursuant to E.C. 52052, 52060
  - For high schools, proposed transferability of course to other public high schools and the eligibility of courses to meet college entrance requirements
- B. Measurable Pupil Outcomes
  - Need to align with state priorities identified in E.C. 52060
- C. Outcome Measurement
- D. Governance Structure
- E. Employee Qualifications
- F. Health and Safety of Pupils
- G. Racial and Ethnic Balance
- H. Admission Requirements
- I. Annual Audit (Business)
- J. Student Discipline
- K. California State Teachers’ Retirement System, California Public Employees’ Retirement Systems, or Social Security (Business)
- L. Student Attendance Alternatives
- M. Return Rights of District Employees (Human Resources)
- N. Dispute Resolution
- O. ~~Collective Bargaining~~ (Now 6<sup>th</sup> reason for denial)
- P. O. Procedures for Closing

- Ensure final audit of charter school to determine the disposition of all assets and liabilities of the charter school

### **Required Elements of the Petition – Affirming the 4 Conditions**

- Charter school petitions must contain affirmations of the provisions in E.C. 47605(d)
- The charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations
  - Teaching about religion in a neutral way is not prohibited
  - A charter school located in a church, mosque, or synagogue is not necessarily prohibited
- The charter school shall not charge tuition
  - No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition (E.C. 47602{b})
- The charter school shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability
- The charter school shall admit all students who reside in California who wish to attend (up to the school's capacity based upon space, staff, or charter school policy)
  - If the number of applicants exceeds the school's capacity, enrollment shall be determined by a random drawing
  - Conversion schools shall adopt a policy giving "admission preference to pupils who reside within the former attendance area of that public school"
  - Preferences shall also be extended by the charter school to:
    - Pupils currently attending the charter school
    - Pupils who reside in the district
  - Preferences may be permitted by the chartering agency on an individual school basis, if consistent with the law
- Petitioners must provide information regarding the proposed operation and potential effects of the school including, but not limited to:
  - The facilities to be used and their proposed location
  - The manner in which administrative services are to be provided
  - Potential civil liability effects upon the charter school and the district
  - Financial statements that includes the proposed first-year operational budget, including start-up costs, and cash flow and financial projections for the first three years of operation

### **Geographic Limitations**

- New and renewal charter schools must be located in authorizing district (E.C. 47605[a] and [g])
- A new petition must identify a single charter school that will operate within the geographic boundaries of the school district receiving the petition
  - The petition may propose multiple sites within the school district, as long as each location is identified in the charter school petition
- A petition must include a description of the facilities to be used and specify where the charter school intends to locate

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- A charter school that is unable to locate within the geographic boundaries of the authorizing district may establish one site outside the boundaries of the district, but within the county in which the district is located, only if:
  - The school district where the charter school proposes to operate is notified in advance
  - The county superintendent is notified before the charter school commences operations and
  - Either the charter school has attempted to locate the entire program at a single site or facility and such a site or facility is not available within the authorizing district OR the site is temporary
- Nonclassroom-based charter schools
  - A resource center, meeting space, or other satellite facility may be located in a county adjacent to that in which the charter school is authorized if both:
    - The facility is used exclusively for the educational support of independent study pupils
    - The charter school is chartered in the county where a majority of students reside

#### Grade-Level Restrictions

- A school district cannot approve a charter school serving grades not served by the school district, unless the charter school proposes to serve all of the grade levels served by that school district (E.C. 47605[a][6])
  - For example, a K-8 district may approve a K-12 charter school, but not a 7-12 or 9-12 charter school
  - A charter school may phase in additional grades over time

#### Petition Review

##### School District Policy and Regulation on Charter Schools

- It is recommended that a LEA adopt a charter school policy that includes, in addition to statutory requirement, the following:
  - Requiring sufficient information to determine that applicants are likely to succeed
  - Requiring all pertinent information regarding the proposed facility
  - Providing timelines for submission of petition
  - Requiring all reasonable safeguards for the district (e.g., a detailed and sound budget, prudent fiscal management processes in place, insurance, contingency amounts, cash flow requirements)
  - Requiring adherence to conflict-of-interest standards
    - Existing law is not clear with regard to restriction on conflict of interest in charter schools
    - Many feel the simple fact that charter school officials are public officials raises conflict-of-interest issues
- Clear information for applicants can save time for all involved by establishing specific authorizing agency criteria and requirements
  - Better chance of a complete and accurate petition

## **Charter School Review Team**

- Recommendations:
  - Designate and train appropriate staff members before a proposal is received
  - Depending on the district's size and composition, consider including the superintendent and interested board members on this team
  - One individual, a staff member or consultant, should review the entire charter school proposal for compliance with Board Policy, as well as the requirements of law

## **Petition Review**

- Verify validity of provided signatures
  - Type of charter school dictates requirement
- Verify all 15 requiree elements are addressed
  - Will require involvement of most LEA departments
- Verify affirmation of four conditions in E.C. 47605(d)
- Also:
- Facilities
- Administration/Governance
- Financial statements

## **Financial Review**

- Remember, the financial information provided in the petition is a projection
  - Financial statements should include the proposed first-year operational budget, including start-up costs, and cash flow and financial projections for the first three years of operation
- This is the first step in establishing fiscal accountability
- Evaluate the financial documents as you would any new business or enterprise
  - Question assumptions
  - Evaluate merits based upon facts and evidence
  - Are the financial statements complete, reasonable, based upon documented assumptions, and presented according to generally accepted accounting principles?
  - Are the financials provided in sufficient detail and for the required period of time?
  - Are there any assumptions in the financial statements that should be challenged?
  - Is the business and operations strategy clear and acceptable?
  - Are the risks and any mitigating strategies clearly identified?

## **Capacity Interview**

- Interview should occur of the petitioner team and board of directors
  - To gauge experience and expertise
    - Curriculum, instruction, and assessments
    - Business/financial services
    - Administration/governance
    - Special Education

## Findings and Report

- Use factual findings and legal basis for support
  - No opinions
- If appropriate, provide evidence that the charter petition does not meet all requirement, and/or provide evidence that supports one of the six reasons for denial in E.C. 47605(b)(1-6)

## Governing Board Approval

- Initial approval of a charter school may be granted for a period not to exceed five years (E.C. 47605[a][1])
- A governing board may grant “conditional approval” – that is, approval of the charter school to open, but only after certain conditions are met, such as:
  - Finding an acceptable facility
  - Getting additional financing such as a loan, implementation grant, or donations
  - Developing an acceptable MOU
  - Confirmation of becoming an LEA in a Special Education Local Plan Area (SELPA)

## After Approval: Amendments or Revisions

- Material amendments/revisions to the charter
  - May be made only with the approval of the authority that granted the charter (E.C. 47607[a][1])
    - School board policy should address the process by which the charter may be amended/revised
    - All material amendments/revisions must contain a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed” (E.C. 47607[a][2])

## Charter Petition Denial

- Denial of a charter petition must cite facts that support at least one of the six reasons for denial provided in E.C. 47605(b):
  - The 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 the number of signatures required
  - The petition does not contain an affirmation of each of the four conditions
  - The petition does not contain reasonably comprehensive descriptions of the required 15 elements
  - 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 Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code
- A school district cannot use the fiscal impact on the district as a reason to deny, but knowing the impact is still important

## **2. Renewal, Revocation, or Surrender**

### **Renewal of Charter**

- To be renewed, a charter school must meet one of the following requirements (E.C. 47607[b]):
  - Previously, Academic Performance Index (API) analysis was used, but was suspended in 2014 due to implementation of Smarter Balanced Assessments
    - Three alternatives can be used per AB484
      - The most recent API calculation
      - An average of the three most recent annual API calculations, or
      - Alternative measures that show increases in pupil academic achievement for all groups of pupils schoolwide and among significant student groups
  - A positive determination by the authorizer regarding the comparative academic performance of the charter school
  - Qualification by the charter school for an alternative accountability system (E.C. 52052)
  - Upon renewal, additional terms shall be five years
  - Renewals shall be governed by standards and criteria in E.C. 47605
    - Thus, an authorizer engages in the same evaluation on renewal as it does on granting an initial charter – based upon current law, not law in effect when charter was first granted
    - Renewals must include a description of any new legal requirements adopted since charter was granted (E.C. 47607[a][2])
- If within 60 days of receiving the petition for renewal, the district has not made a written factual finding, then the absence of the writing shall be deemed an approval of the petition for renewal – 5 California Code of Regulations (CCR) 11966.4(c) – (an authorizer that refuses to renew a charter for reasons that constitute grounds for revocation should pursue the revocation process)

### **Revocation of a Charter**

- Authorizing district should consider increases in pupil academic achievement as the most important factor in determining whether to revoke a charter
- Revocation can be made by:
  - School district
    - Start-up or conversion charters
    - Districtwide charter
  - CBE
    - Charters for county-operated programs and countywide charters
    - Charters granted by CBE following denial by a district
    - If the CBE revokes a charter it granted, the charter may appeal to the SBE
  - SBE
    - Statewide charter approved by SBE
    - Charters granted following a previous denial
    - Any other charter (E.C. 47604.5)
- Basis for revocation by authorizing agency (E.C. 47607[c][1])

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- A material violation of any of the conditions, standards, or procedures set forth in the Charter Schools Act
  - There are more than 60 conditions, standards, or procedures
- Failure to meet or pursue any of the pupil outcomes identified in the charter
  - Charter should identify such outcomes
- Failure to meet Generally Accepted Accounting Principles or engaging in fiscal mismanagement
- Violation of any provision of law
  - Federal laws such as:
    - Family Educational Rights and Privacy Act (student records)
    - Title VII (employment discrimination)
    - Title IX (gender discrimination)
    - Americans with Disability Act
  - State laws such as:
    - Brown Act
    - Public Records Act
- Due process prior to revocation
  - Prior to revocation, the authority that granted the charter shall:
    - Notify the charter school of any violation and give the school a reasonable opportunity to remedy the violation
    - Provide written notice of intent to revoke and notice of the facts in support of revocation and then hold a public hearing
      - Decision must be based on substantial evidence in support of the findings
- After a charter is revoked by the “authority that granted the charter”
  - The revocation of a district-granted charter may be appealed to the CBE
  - If the CBE fails to act on the appeal, or if the CBE upholds the revocation, the matter may then be appealed to the SBE

### **Revocation of a Charter – LCFF and LCAP**

- With the LCFF and LCAP requirements, a chartering authority shall consider the revocation of a charter school that has received advice from the California Collaborative for Education Excellence and has either:
  - Failed or is unable to implement its recommendations, or
  - Has inadequate performance so persistent or so acute as to require revocation
- The authorizer shall consider increases in pupil academic achievement as the most important factor in determining whether to revoke
- A charter school may not appeal a revocation made pursuant to this Education Code Section

### **Surrender of Charter**

- “Surrender” is the voluntary termination of charter school activities
- No external process is necessary
  - Notify the CDE

- Authorizer should pay attention to potential liability for claims made after the charter has been surrendered: disposition of assets and transfer of pupil records