

**ADDENDUM to the AGENDA FOR THE
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT**

**Regular Meeting of the Board of Education
Community Room
Board of Education Building
777 North F Street
San Bernardino, California**

MICHAEL J. GALLO
Vice President



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Board Member

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Board Member

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Board Member

DALE MARSDEN, Ed.D.
Superintendent

DANNY TILLMAN
Board Member

February 19, 2013

SESSION TEN - Action

10.0 Action Items

- 10.4 Resolution Denying the Charter School Petition for Le Ta'iala International Language Academy
(Prepared by Education Services Division)

**RESOLUTION OF THE BOARD OF EDUCATION
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT,
DENYING THE CHARTER SCHOOL PETITION FOR
LE TA'IALA INTERNATIONAL LANGUAGE ACADEMY**

WHEREAS, pursuant to Education Code section 47605, *et seq.*, the Board of Education of the San Bernardino City Unified School District ("Board" or "District") is required to review and authorize creation and/or renewal of charter schools; and

WHEREAS, Petitioners for the Le Ta'iala International Language Academy ("Le Ta'iala" or "School") submitted to the District a charter school petition, on or about November 15, 2010; and

WHEREAS, on December 7, 2010, a public hearing on the provisions of the Petition was conducted in accordance with the provisions of Education Code section 47605, at which time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Mr. Sane Mataitusi, lead petitioner, spoke in support of the Petition. Several other individuals were in attendance at the hearing in support of the Petition; and

WHEREAS, on January 18, 2011, the Petition was denied by the District Governing Board for the reasons set forth in the resolution of denial; and

WHEREAS, Petitioners for the Le Ta'iala submitted to the District a revised charter school petition ("Petition"), on or about November 14, 2012; and

WHEREAS, by mutual agreement a public hearing was held on January 22, 2013 on the provisions of the Petition in accordance with the provisions of Education Code section 47605, at which time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Dr. Sane Mataitusi, lead petitioner, spoke in support of the Petition. Several other individuals were in attendance at the hearing in support of the Petition; and

WHEREAS, in reviewing the Petition, the Board has been cognizant of 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; and

WHEREAS, in reviewing the Petition, the District staff from the areas of Student Services, Educational Services, Human Resources, and Business Services, working collaboratively with the Superintendent, Dr. Dale Marsden, and with District legal counsel, have reviewed and analyzed all of the information with respect to the Petition, including information related to the operation and potential effects of the proposed charter school and made a recommendation to the District Board that the Petition be denied based on that review; and

WHEREAS, the District Board of Education has fully considered Le Ta'iala's Petition and the District staff's recommendation; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the District Board of Education finds the above recitals to be true and correct and incorporates them herein by this reference; and

BE IT FURTHER RESOLVED AND ORDERED that the District Board of Education, having fully considered and evaluated the Petition for Le Ta'iala, hereby denies the Petition pursuant to Education Code section 47605 as not consistent with sound educational practice based upon the following findings:

1. The Petition does not contain reasonably comprehensive descriptions of all of the required elements. [Education Code section 47605(b)(5)].
 2. Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. [Education Code section 47605(b)(1)].
- I. THE PETITION DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF ALL OF THE REQUIRED ELEMENTS. [Education Code section 47605(b)(5)]**

The Petitioners are required to set forth in the Petition reasonably comprehensive descriptions of sixteen elements as described in Education Code section 47605(b)(5). The District Board of Education finds that there are serious deficiencies/concerns in the several of these required elements as more fully discussed below.

A. The Governance Structure of the Charter School, including, but not limited to, the Process to Ensure Parental Involvement. [Education Code section 47605(b)(5)(D)]

The Petition provides that the Charter School shall be operated by a nonprofit organization pursuant to California law. Articles of Incorporation and Bylaws for a corporation called Le Ta'iala International Language Academy were submitted and the corporation is registered in the state of California.

While the Petition provides that the corporate board will comply with the provision of Government Code section 1090, the corporate Bylaws contain the following statements which are inconsistent with the statement in the Petition that the corporate board will comply with Government Code section 1090:

“Restriction on Interested Directors

Not more than forty-nine percent (49%) of the persons serving on the Board at any time may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it other than those performed as a Director within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise; (b) any shareholder, employee or officer of any corporation, or partner or employee of any partnership, which has rendered compensated services to the Corporation within the previous twelve (12) months; and (c) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, mother-in-law, or father-in-law of any person described in (a) or (b) hereof. Any violation of the provisions of this paragraph shall not, however, affect the validity or enforceability of any transaction entered into by the Corporation.”

The Petition also does not provide an affirmation or assurance that the charter school will comply with the incompatible public office provisions of Government Code section 1126. Legal and administrative considerations, combined with the experience of charter schools operators who have engaged in self-dealing with public funds, lead to a policy of requiring petitions to not only pledge compliance with all conflict of interest laws that govern public agencies generally, but to have written policies and bylaws supporting

the petition that demonstrate actual compliance.

Moreover, while the Petition provides that Le Ta'iala will comply with the Brown Act, many of the provisions contained in the bylaws are contrary to the provisions of the Brown Act. For example, the Bylaws provide that the Board can take action without meeting and can call a meeting at any time, acts which clearly violate the Brown Act.

B. The Procedures to be Used by the District and the Charter School for Resolving Disputes Relating to Provisions of the Charter. [Education Code section 47605(b)(5)(N)]

The dispute resolution process between the School and the District is unacceptable and the District would not agree to the proposed process. The procedure is overly cumbersome in that it involves both mediation and arbitration and is not designed to lead to an expedient resolution of disputes.

Moreover, engaging in these numerous steps, which may take several months to complete, places the safety and health of students needlessly at risk and impedes the District's ability to effectively oversee the School.

Given the significance of opening and operating a charter school and the District's oversight obligations, as well as the issues and problems that have arisen in the operation of some charter schools in California in the past, having a clear and workable dispute resolution process is fundamental to any charter proposal.

C. Petition Does Not Provide a Reasonable Description of "the qualifications to be met by individuals to be employed by the school." (Education Code § 47605(b)(5)(E).)

According to the description of duties, the Executive Director/Principal is not required to have any business and finance education, training or experience, in general, or in public school finance in particular. Public school finance is a complex field that differs significantly from private sector business and finance. Particularly in the current economic crisis facing California's public schools, including charter schools, it is imperative that the individual(s) responsible for a charter school's business and finances have the necessary expertise in this area of specialization. Additionally, the Petition does not provide that the Executive Director must have a teaching or administrative credential. As the Executive Director is intended to be the sole administrator, particularly for the first few years of operations, it is imperative that the Petition identify the need for such qualifications.

The Petition and the budgetary assumptions provide that a "charter fiscal management organization" will be hired by the School. Yet, no information was submitted to explain or describe the type of services and the costs thereof that such an individual/entity might provide to the School.

D. Admission Requirements, If Applicable. [Ed. Code §47605(b)(5)(H)]

The admission preferences are unacceptable and violate the Charter Schools Act of 1992. The Act specifies that if the number of students desiring to attend the school exceeds capacity, preference “shall” be extended to pupils currently attending the school and residents of the school district. The Petition fails to extend this mandatory preference to residents of the school district.

E. A Description of the Procedures to be Used if the Charter School Closes. [Ed. Code §47605(b)(5)(P)]

California Code of Regulations, title 5, section 11962 “Definition of Procedures for School Closure” interprets Education Code section 47605(b)(5)(P) and states that “procedures” as in “description of the procedures to be used if the charter School closes” means, at minimum, each of the following:

“(a) Designation of a responsible entity to conduct closure-related activities.

(b) Notification of the closure of the charter school to parents (guardians) of pupils, the authorizing entity, the county office of education ..., the special education local plan area in which the school participates, the retirement systems in which the school's employees participate ..., and the California Department of Education ...

* * *

(c) Provision of a list of pupils in each grade level and the classes they have completed, together with information on the pupils' district of residence, to the responsible entity designated in subdivision (a).

(d) Transfer and maintenance of all pupil records, all state assessment results, and any special education records to the custody of the responsible entity designated in subdivision (a), except for records and/or assessment results that the charter may require to be transferred to a different entity.

(e) Transfer and maintenance of personnel records in accordance with applicable law.

(f) Completion of an independent final audit within six months after the closure of the school that may function as the annual audit ...

* * *

(g) Disposal of any net assets remaining after all liabilities of the charter school have been paid or otherwise addressed ...

* * *

(h) Completion and filing of any annual reports required pursuant to Education Code section 47604.33.

(i) Identification of funding for the activities identified in subdivisions (a) through (h)." (5 C.C.R. section 11962.)

The process set forth in the Petition for the closure of the School is not reasonably comprehensive. Specifically the Petition does not identify a responsible entity to conduct closure-related activities. Instead, the Petition provides the School will appoint a "point person" should the School cease operations. It is extremely important that the designation be included in the Petition as these types of decisions can be hard to make if a School is in the process of being closed. This is particularly true since most, if not all, tasks will be performed by this individual or entity.

Additionally, the Petition provides that upon closure, the assets of the corporation will be distributed in accordance with the Articles of Incorporation, yet that document contains no discussion of the manner in which the assets will be distributed. Thus, it is not possible to ascertain if the assets will be appropriately distributed.

Clearly this provision is incomplete and therefore, Petitioners have failed to provide an appropriate description of the procedures.

F. Petition Does Not Provide a Description of "the means by which the school will achieve a racial and ethnic balance among pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted." (Education Code 45605(b)(5)(G).

The Charter Schools Act requires the Petitioners to set forth the manner in which practices and policies will be specifically selected to target relevant racial and ethnic subgroups, addressing an appropriate range of potential language, socioeconomic status, and racial concern. The Petition, however, does not make reference to any efforts to reach out and serve appropriately the disabled community nor does it contain a description of the "means" that the School will use to achieve the racial or ethnic balance reflective of the District.

G. Petition Does Not Provide a Reasonable Description of "the procedures the school will follow to ensure that health and safety of pupils and staff." (Education Code § 47605(b)(5)(F).)

Education Code section 47605(b)(5)(F) requires a “petition to *state* the procedures that the School will follow to ensure the health and safety of pupils and staff.” While the Petition does provide that it will adopt certain policies and procedures, the Petition fails to provide that the health and safety policies that address the following issues:

1. The Petition does not include a policy on preventing contact with blood borne pathogens.

2. The Petition does not describe facilities and how the facilities will adhere to Healthy Schools Act.

3. The Petition states the School staff will train for emergencies but does not give specific details on how to react to bomb threats nor does it state employees will be designated “Civil Defense Workers” and are not allowed to leave the site.

Thus, the Petition does not contain a comprehensive description of the procedures for health and safety procedures.

II. THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION. [Education Code section 47605(b)(2)]

The Charter does not include the required description of facilities. The Charter only provides at page 153 that the School is considering locating at the “Banner School,” but fails to provide any information whatsoever as to the appropriateness of that site as a potential location for the School. No lease, cost estimate or ability to acquire that space for use by the School was submitted with the Charter. This facility, located at 2626 Pacific Street in San Bernardino, is now owned by the Salvation Army and is not available for lease as it will be their new headquarters. This calls into question the budget as the lease and facilities’ estimates are not reliable as they are likely premised on the acquisition of a site that is not available for the School’s use.

Although charter schools are not required to comply with the Field Act, they are required to comply with Education Code section 47610, and ensure that all facilities are in compliance with either the Field Act or the California Building Standards Code. In order for the School to receive the necessary permits for use of any facility as a school, the Petitioners must submit a plan for the use to the City of San Bernardino Planning Division for approval. The plan is then reviewed by the City’s design review committees who will gather input from the building department, fire department, police department and school district. During the review, the site is assessed for zoning, set-backs, parking requirements, building codes, and any special permits that are required. It is highly unlikely that all of these steps could be accomplished by the Petitioners in time for the School’s proposed opening in fall 2013.

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BE IT FURTHER RESOLVED AND ORDERED that the terms of this Resolution are severable. Should it be determined that one or more of the findings and/or the factual determinations supporting the findings is invalid, the remaining findings and/or factual determinations and the denial of the Petition renewal shall remain in full force and effect. In this regard, the District Board of Education specifically finds that each factual determination, in and of itself, is a sufficient basis for the finding it supports, and each such finding, in and of itself, is a sufficient basis for denial.

Posted: February 15, 2013