

SOUTHERN KERN UNIFIED SCHOOL DISTRICT
Resolution No. 17-18-18

Denying the Charter Petition for
California Connections Academy @ Central Coast Charter School

WHEREAS, pursuant to Education Code Section 47600 *et seq.*, the Governing Board of Trustees for the Southern Kern Unified School District ("District Board") is required to review and consider authorization of charter schools; and

WHEREAS, on December 6, 2017, a charter school petition ("Charter" or "Petition") for California Connections Academy @ Central Coast Charter School ("CalCA@Central Coast" or "Charter School") was delivered to the District; and

WHEREAS, by mutual agreement, a public hearing on the provisions of the Charter was conducted on February 21, 2018, at which time the District Board considered the level of support for this Charter by teachers employed by the District, other employees of the District, and parents; and

WHEREAS, at that public hearing representatives of CalCA@Central Coast spoke in support of the Charter, but no members of the community, District teachers or other employees of the District, or parents spoke in favor of the Charter; and

WHEREAS, the Charter proposes to be operated by Alpaugh Academies, Inc. ("Alpaugh"), a nonprofit public benefit corporation; and

WHEREAS, the Charter proposes a K-12 program; and

WHEREAS, Alpaugh currently operates two charter schools authorized by school districts in Tulare County and Lake County: California Connections Academy-Central (authorized by Alpaugh Unified School District in Tulare County) and California Connections Academy-North Bay (authorized by Middletown Unified School District in Lake County); and

WHEREAS, in reviewing the Charter for the establishment of this Charter School, the District 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 and analyzing the Charter, the District noted some issues and concerns and determined that certain changes and revisions to the Charter were necessary in order to support the request for Charter approval. The District administration and representatives attempted to work with CalCA@Central Coast representatives towards the resolution of these issues and the implementation of the necessary changes, additions, and revisions into the Charter. While CalCA@Central Coast incorporated some of those changes, additions, and revisions into a revised charter submitted on March 15, 2018. The revised charter did not remediate all of the District's

noted concerns and issues and the comments noted by the Charter School with the revised charter document indicated that the petitioners were unlikely to fully remediate the identified concerns. Accordingly, rather than expending additional scarce resources in communicating the District's concerns to the Charter School and attempting to have the Charter School remediate those deficiencies, the District requested that the Charter School provide a final charter by March 19, 2018, that the District Board would then consider for action at the April 4, 2018 board meeting. The Charter submitted on March 19, 2018, is the same Charter as that submitted on December 17, 2017, and does not include even those revisions that the Charter School had made in response to the District's myriad noted concerns and does not include any further efforts to remediate the deficiencies noted by the District. This, however, is the final Charter submitted by the Charter School and it is that Charter on which the District Board is taking action; and

WHEREAS, charter schools are subject to the requirements of federal law, including, but not limited to, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §1400, *et seq.*, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act; and

WHEREAS, the District staff, working with District legal counsel, has reviewed and analyzed all information received with respect to the Charter and information related to the operation and potential effects of the proposed Charter School, and made a recommendation to the District Board that the Charter be denied based on that review; and

WHEREAS, the District Board has fully considered the Charter submitted for the establishment of CalCA@Central Coast and the recommendation provided by District staff;

WHEREAS, the District Board specifically notes that this Resolution No. 17-18-18 does not include findings relative to every defect in the Charter submitted, but is limited to a few significant issues in the Charter. Not only are the findings set forth herein legally sufficient to support the District Board's denial of the Charter, but also it is imperative, should these petitioners ever decide to propose another charter, either to the District or elsewhere, that such petition establish that the petitioners themselves have the knowledge, understanding, and expertise necessary both to write an educationally, fiscally, and practically sound charter petition and to open and operate a sound charter school, not just respond directly to findings of this Board;

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

BE IT FURTHER RESOLVED AND ORDERED that the District Board, having fully considered and evaluated the Charter for the establishment of CalCA@Central Coast, hereby finds granting the Charter not to be consistent with sound educational practice, based upon numerous grounds and factual findings including, but not limited to, the following, and hereby denies the Charter pursuant to Education Code Section 47605:

- I. The petitioners are demonstrably unlikely to successfully implement the program set forth in the Charter. [Education Code Section 47605(b)(2)]
- II. The Charter does not contain reasonably comprehensive descriptions of all of the required elements. [Education Code Section 47605(b)(5)]

BE IT FURTHER RESOLVED AND ORDERED that the District Board hereby determines the foregoing findings are supported by the following specific facts:

I. THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE CHARTER. [Education Code Section 47605(b)(2)]

A. Charter Petitioners Are Unfamiliar with the Requirements of Law That Would Apply to the Proposed Charter School

The State Board of Education ("SBE") has adopted a regulation for its own consideration and action on charter petitions which defines the various findings for denial of a charter by SBE, which regulation is not binding on the District, but is instructive. That regulation, California Code of Regulations, Title 5, Section 11967.5.1 provides, in pertinent part:

(c) For purposes of Education Code section 47605(b)(2), the SBE shall take the following factors into consideration in determining whether charter petitioners are "demonstrably unlikely to successfully implement the program."

(1) If the petitioners have a past history of involvement in charter schools or other education agencies (public or private), the history is one that the SBE regards as unsuccessful, e.g., the petitioners have been associated with a charter school of which the charter has been revoked or a private school that has ceased operation for reasons within the petitioners' control.

(2) The petitioners are unfamiliar in the SBE's judgment with the content of the petition or the requirements of law that would apply to the proposed charter school.

(3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school. . . .

(Emphasis added.)

In this Board's judgment, the petitioners are unfamiliar with the requirements of applicable law, including the law governing a charter authorizer's right to inspect a charter school under its oversight, as set forth below:

1. Authorizer's Right to Inspect

Education Code section 47607(a)(1) states, in relevant part:

The authority that granted the charter may inspect or observe any part of the charter school *at any time*.

(Emphasis added.)

Despite the District's unequivocal right to inspect or observe any part of the charter school, the Petition imposes a notice period of "at least three working days prior to the inspection or observation unless the school's Governing Board or Executive Director agrees otherwise," demonstrating the petitioner's lack of understanding of both the proposed Charter School's obligations and the authorizer's rights pursuant to the charter Schools Act.. Additionally, the District requested the petitioners revise this section to address the District's concern, yet petitioners failed to make the requested and necessary revision.

B. Admissions Requirements [Ed. Code §47605(b)(5)(2)]

The Charter Schools Act was revised, effective January 1, 2018, and now must include a description of "admission policies and procedures, consistent with subdivision (d)" of Education Code Section 47605. Notably, Education Code section 47605(d)(2)(B)(iv) provides:

In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

Further, Education Code section 47605(n) provides:

A charter school may encourage parental involvement, but *shall notify* the parents and guardians of applicant pupils and currently enrolled pupils that *parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.*

(Emphasis added.)

The Board finds that the substance of the description in the Charter's "Element 8: Admission Requirements" does not comply with the applicable law. Specifically, the Petition states, "CalCA@Central Coast will regularly disclose full details about its program and encourage families to carefully consider its academic and parental involvement **demands** before applying." (Emphasis added.) While parental or guardian participation may be beneficial to students enrolled in non-classroom based instruction and may be encouraged, Education Code section 47605(n) plainly states that charter schools not require parental involvement as a condition of acceptance to or continued enrollment, and so notify the parents and guardians. Of course, this requirement is also mandated by the Free Schools Guarantee of the California Constitution and Education Code Sections 49010-49013. However, rather than complying with these constitutional and statutory requirements, the Charter specifies that parental involvement is **demanded** in order for students to attend CalCA@Central Coast, and that the Charter School will regularly remind parents of this illegal requirement and discourage students from applying or attending the Charter School if they are unwilling to comply with this prohibited requirement.

II. THE CHARTER DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF ALL OF THE REQUIRED ELEMENTS. [Education Code Section 47605(b)(5)]

A. Description of the Governance Structure [Ed. Code §47605(b)(5)(D)]

The Petition indicates the Charter School will comply with the Political Reform Act (Government Code Sections 87000 *et seq.*), stating:

The Board adheres to all applicable laws for non-profit public benefit corporations operating a charter school including, but not limited to the laws regarding interested parties and conflict of interest The Board has adopted and regularly updates a Conflict of Interest Code consistent with the Political Reform Act. The Conflict of Interest Code requires Board members and key employees to annually file financial disclosure statements (known as the Form 700).

Further, regarding the composition of its Board members, the Petition provides:

Any current employee of CalCA@Central Coast will not be eligible to serve on the Governing Board. No employees of Connections are eligible to serve on the Governing Board.

Additionally, Section 4.20 of the Bylaws provides:

Interested Persons

Not more than forty-nine percent (49%) of the directors serving on the Board may be "interested persons." An "interested person" is (a) any person compensated by the corporation for services rendered to it within the previous twelve (12) months whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as a director, and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person. However, any violation of the provisions of this Section shall not affect the validity or enforceability of any transaction entered into by the corporation.

Accordingly, the Charter does not include a reasonably comprehensive description of the Governance element of the Charter because it does not commit CalCA@Central Coast to comply with the requirements of Government Code Section 1090 *et seq.* in order to ensure the transparency and public accountability that are necessary to the Charter School's sound educational program, governance, and operation. The District Board finds that it is necessary that any charter school to operate under the District's oversight must include an unequivocal commitment to comply with both Government Code Section 1090 *et seq.* and the Political Reform Act of 1974– including evidence of a clear understanding of the obligations and

written policies, Bylaws, and other related documents as necessary to ensure compliance—is necessary in order to protect the interests of a charter school’s students, stakeholders, and the public and to allow the District properly to oversee the school’s operations. CalCA@Central Coast’s failure to comply with all of these requirements makes the proposal unsound and the description of the governance structure fatally flawed and incomplete.

B. Admissions Requirements [Ed. Code §47605(b)(5)(H)]

As discussed above, the substance of the description of Element 8 is not in compliance with the law.

C. Annual Independent Financial Audits [Ed. Code §47605(b)(5)(I)]

Education Code section 47605(b)(5)(I) requires the Petition to describe, “[t]he manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and *the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.* (Emphasis added.) However, the Petition states the following regarding audit exceptions and deficiencies, “Any disputes regarding the resolution of audit exceptions will be referred to the dispute resolution process contained in Section V.E.” By purporting to require the District to engage in the dispute resolution process in order to address audit exceptions and deficiencies, this Charter element violates the plain language of Education Code section 47605(b)(5)(I) requiring the Charter School to resolve audit exceptions and deficiencies to the chartering authority’s satisfaction.

D. Procedures by Which Pupils Can Be Suspended or Expelled [Ed. Code §47605(b)(5)(J)]

The Charter Schools Act was recently revised to require clarity regarding the procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. As an initial matter, the Petition fails to provide an affirmation that the suspension and expulsion policy is the only means by which a student may be involuntarily removed from the school through disenrollment, release. Additionally, the Petition does not fully adhere to the new requirements of Education Code section 47605(b)(5)(J).

As discussed above, SBE has adopted regulations for its own consideration and action on charter petitions which regulations are not binding on the District, but are instructive. Specifically, California Code of Regulations, Title 5, Section 11967.5.1(f)(10) provides that, at a minimum, the description of the procedures by which pupils can be suspended or expelled, as required by Education Code section 47605(b)(5)(J), at a minimum:

(A) Identify a preliminary list, subject to later revision pursuant to subparagraph E, of the offenses for which the students in the charter

school must (where non-discretionary) and may (where discretionary) be suspended and, separately, the offenses for which students in the charter school must (where non-discretionary) or may (where discretionary) be expelled, providing evidence that the petitioners' reviewed the offenses for which students must or may be suspended or expelled in non-charter public schools.

(B) Identify the procedures by which pupils can be suspended or expelled.

Although the Petition does contain lists of offenses and procedures for which students **may** be suspended or expelled, the Petition does not identify the offenses for which students in the charter school **must** be suspended or expelled.

Additionally, regarding expulsion procedures, the Petition provides that the Executive Director may request that final expulsions will be decided by the Governing Board or a designated expulsion committee. The Petition provides:

The Expulsion Committee shall be comprised of a minimum of three members; at least one committee member will also be a member of the Board of Directors. Impartial and neutral committee members will also be selected for each instance requiring review of a student's potential expulsion."

As presented, the Petition does not provide sufficient details as to who these individuals might be; if they are even familiar with expulsion procedures/student due process rights; and the requirements for them to be deemed "impartial and neutral," nor how the Executive Director would determine which Board member would serve on the Committee. As such, the failure to accurately and clearly describe how this panel is selected and the qualifications to serve on the panel could deprive students of their due process rights. Further, to the extent that the Petition does not exclude from the expulsion committee administrators, teachers and staff who may have made the initial decision to discipline or the Executive Director or principal who suspended the student, the Petition raises additional concerns about student due process rights.

Specifically, Education Code Section 47605 provides that a charter school shall "Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate."

A hearing panel that may consist of individuals who have already been involved in the prior discipline steps for the particular conduct being considered for expulsion certainly does not meet the standard of a "neutral officer" as required by the Education Code.

E. Rights of Employees [Ed. Code §47605(b)(5)(M)]

Education Code section 47605(b)(5)(M) requires the Petition to describe the manner in which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

Additionally, Education Code section provides, in relevant part:

(b)(1) If a charter school offers its employees coverage by the State Teachers' Retirement System or the Public Employees' Retirement System, or both, the charter school shall inform all applicants for positions within the charter school of the retirement system options for employees of the charter school.

(2) The information *shall specifically include* whether the charter school makes available to employees coverage under the State Teachers' Retirement System, the Public Employees' Retirement System, or both systems, and *that accepting employment in the charter school may exclude the applicant from further coverage in the applicant's current retirement system*, depending on the retirement options offered by the charter of the charter school.

(Emphasis added.)

The Petition fails to provide for the required notice pursuant to Education Code section 47611(b)(2) that accepting employment to the charter school *may* exclude the applicant from further coverage in the applicant's current retirement system.

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 Charter shall remain in full force and effect. In this regard, the District Board 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.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

The foregoing resolution was considered, passed, and adopted by this Board at its regular meeting of April 4, 2018.

AYES IN FAVOR OF SAID RESOLUTION:

J.Vincent Otis

Sandra Kirk

Mario Gutierrez

Patrick Reader

Yolanda Sanchez

NOES AGAINST SAID RESOLUTION:

None

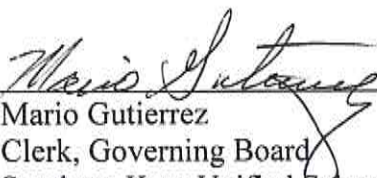
ABSTAINED:

None

Dated: April 4, 2018

By: 
Yolanda Sanchez
President, Governing Board
Southern Kern Unified School District

Dated: April 4, 2018

By: 
Mario Gutierrez
Clerk, Governing Board
Southern Kern Unified School District