

Resolution No. 12-44-24
Denying the Charter School Petition for
Tustin International Charter School
by the Governing Board of the
Tustin Unified School District

WHEREAS, pursuant to Education Code Section 47600 *et seq.*, the Governing Board of the Tustin Unified School District (“District Board”) is required to review and consider authorization of charter schools; and

WHEREAS, on or about September 25, 2024, petitioners delivered to the District Office a Charter School Petition (“Charter”) and a certificate of completeness for the proposed Tustin International Charter School (“TICS”) to be operated and governed by Mandarin Immersion Schools, a nonprofit public benefit corporation. The terms “Mandarin Immersion,” and “Charter School” are used herein collectively, individually, and interchangeably to refer to both Mandarin Immersion Schools and/or the proposed Tustin International Charter School; and

WHEREAS, in accordance with the Charter Schools Act of 1992, the Charter was deemed received on the date of its delivery to the District Office with the certificate of completeness, thereby commencing the timelines for District Board action thereon; and

WHEREAS, the District Board conducted a public hearing on the provisions of the Charter on November 18, 2024, pursuant to Education Code Section 47605, 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. The lead petitioner spoke in favor of the charter school. No parents, District teachers or other District employees spoke in favor of the Charter during the public hearing; and

WHEREAS, in accordance with the requirements of Education Code Section 47605(b), the District published its staff recommendations, including the recommended findings, regarding the Charter, including the proposed resolution of denial (collectively “Staff Recommendations & Findings”), by posting proposed Resolution No. 12-44-24 to the District’s website and providing this information to TICS on December 4, 2024; and

WHEREAS, on or about October 30, 2023, the same petitioners submitted an earlier version of a charter proposing to open Tustin International Charter School (“Charter 1”), and the District Board held a public hearing on the provisions of Charter 1 on December 11, 2023. On January 15, 2024, the District published its staff recommendations, including the recommended findings, regarding Charter 1, whereby District staff recommended that Charter 1 be denied. The District provided a copy of those recommendations and recommended findings to the TICS petitioners. After the denial of Charter 1, the TICS petitioners appealed the decision to the Orange County Board of Education. After the OCBOE public hearing on April 3, 2024, during which the lead petitioner, Mr. Chuang, was asked to explain his role/ address allegations regarding his performance at the Irvine International Academy Charter School in Irvine, California, the TICS petitioners withdrew Charter 1 from further consideration by the OCBOE, so the OCBOE did not act on appeal of the denial of Charter 1; and

WHEREAS, at the time that the District published its staff recommendations and findings recommending that the District Board deny Charter 1, the proposed resolution of denial specified that the resolution “[did] not necessarily include findings relative to every defect in the Charter submitted, and that the findings set forth [therein] are sufficient to support denial of the Charter, and it is the findings set forth and adopted [therein] on which the denial findings are based”; and

WHEREAS, the Charter proposes a TK-5 school that would open with grades TK-4 in the 2025-26 school year, with a total enrollment capacity at full roll out of 436 students, and TICS is seeking a term of July 1, 2025, through June 30, 2030; and

WHEREAS, in reviewing the Charter for the establishment of TICS, the District Board has been 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, and the District Board has considered the academic needs of the students the Charter School proposes to serve; and

WHEREAS, the District Board finds that, given the nature and operational structure of independent charter schools and the necessity that they operate independently outside of the traditional noncharter public school system and the structure of a school district and in accordance with the law, it is imperative that any charter petitioner establishes its capacity to prepare a fully formed and compliant charter petition that comports with the requirements of the Charter Schools Act and establishes that approval is consistent with sound educational practice and the interests of the community where the charter school proposes to locate. The District Board further finds that it is not the role of the District to provide a “roadmap” to approval or substitute the District’s experience and expertise for that of the charter petitioners. Instead, charter petitioners must establish that they will be able to operate the proposed charter school independently and in a manner that serves students and provides them a sound educational experience by providing a clear, complete, fully developed and reasonably comprehensive charter petition that complies with the requirements of the Charter Schools Act; and

WHEREAS, charter schools are subject to the requirements of federal law, including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), and the Americans with Disabilities Act of 1990, as amended (“ADA”); 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 based on that review, prepared and published the Staff Recommendations & Findings, and made a recommendation to the District Board that the Charter be denied by adoption of this Resolution No. 12-44-24 adopting the findings of denial set forth herein; and

WHEREAS, the District Board has fully considered the Charter submitted for the establishment of TICS, statements and information presented at the public hearing, and the Staff Analysis and Recommendations, including the recommended findings set forth in the proposed Resolution No. 12-44-24; and

WHEREAS, the District Governing Board specifically notes that this Resolution No. 12-44-24 does not necessarily include findings relative to every defect in the submitted Charter, and that the findings set forth herein are sufficient to support denial of the Charter, and it is the findings set forth and adopted herein on which the denial findings are based.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Governing Board of the Tustin Unified School District 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 Governing Board of the Tustin Unified School District, having fully considered and evaluated the Charter for the establishment of TICS, pursuant to Education Code Section 47605, hereby denies the Charter and finds that approval of the Charter is not consistent with sound educational practice and with the interests of the community in which the Charter School is proposing to locate, based upon the following grounds and factual findings:

- A. The petitioners are demonstrably unlikely to successfully implement the program set forth in the Charter. [Education Code Section 47605(c)(2)]
- B. The Charter does not include the required number signatures of meaningfully interested teachers. [Education Code Section 47605(c)(3)]
- C. The Charter School presents an unsound educational program for the pupils to be enrolled in the Charter School. [Education Code Section 47605(c)(1)]
- D. The Charter does not contain reasonably comprehensive descriptions of all of the required elements. [Education Code Section 47605(c)(5)]
- E. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school proposes to locate. [Education Code Section 47605(c)(7)]

BE IT FURTHER RESOLVED AND ORDERED that the Governing Board of the Tustin Unified School District 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 PETITION. [EDUCATION CODE SECTION 47605(C)(2)]

- A. Unrealistic Enrollment Projections. The Charter School's enrollment projections do not appear reasonable and lack adequate supporting documentation, including an interest list for prospective students. Petitioner's comments at the November 18, 2024, public hearing provided no legitimate basis for the enrollment projections beyond stating there is "a need" and desire for this type of educational program in the Tustin area. Indeed, TICS did not submit any evidence of student/family interest in or demand for TICS to open in Tustin or the general geographic area. Instead, TICS relied on teacher signatures in submitting the petition and no prospective

parents spoke at the public hearing or otherwise expressed their support for the TICS program to open in Tustin.

The Charter anticipates first year enrollment at 228 students and anticipates growth of more than 30% for the second year of operations, and projects that enrollment will have nearly doubled to 436 students by its fifth year of operations.

These are very large enrollment numbers to start with, and increase at a dramatic rate, with no explanation provided as to the basis for the growth estimates other than the Petitioners statements that there is a need and desire for this type of educational program in the Tustin area. The students who reside within the District are its target population, but the District's non-charter schools are among the top performing in the State of California and the nation, and generally there is a very high degree of satisfaction among residents with the District's schools and programs, thereby providing a limited population from which this untried and unproven Charter School would be drawing.

Furthermore, beginning in 2026-27 Kindergarten enrollment is projected to be 78 students or three classrooms of 26 students, an increase of one classroom as compared to 2025-26. Utilizing a cohort survival methodology, the preceding years TK class of 20 is projected to increase by an additional 58 students. TICS offered no rationale or supporting information to support the tripling of the cohort.

Additionally, the District intends to commence providing a Mandarin Immersion program at the start of the 2025-26 school year that will initially serve approximately 100 students in grades TK-K. The instructional model that the District intends to utilize for its proposed Mandarin immersion program is rooted in well-respected studies and staff research/expertise. Tustin families will of course have first right to enroll in this program and given the size and scope of the District's proposed program, it is unlikely that TICS' program will be a desirable option for Tustin residents, thereby further reducing the population from which TICS would be drawing.

The overestimated projected enrollment indicates that TICS' budget projections are unsound, and the proposal is likely to create an unworkable and unstable educational program for the proposed students. The Charter's budget will rely heavily on the number of students enrolled and their attendance. Alarming, TICS has no contingencies in place should reality fall short of these projections. Unsound and unbalanced budgets lead to charter schools closing or failing to provide the program promised in their charter, at students' expense. To wit, in its June 2023 publication, FCMAT's *Charter School Indicators of Risk* include "Enrollment and/or ADA projections and assumptions not based on historical data, industry standards, and other reasonable considerations."¹

¹ *Charter School Indicators of Risk or Potential Insolvency* (last revised 6/28/23) available at: <https://www.fcmat.org/indicators-risk> and <https://www.fcmat.org/PublicationsReports/Charters%20Indicators%20of%20Risk.pdf> [last visited on 1/10/2024]

- B. TICS' planned salaries are extremely low when compared to the District, and it is unrealistic and unconvincing that TICS will be able to successfully recruit and retain high quality certificated and noncertificated staff at these rates, particularly given the current teacher shortage and the TICS Charter requirement that teachers be bi-literate and bi-lingual in Mandarin Chinese.

In preparing to commence the operations of its own Mandarin immersion program, the District is aware of the extremely small number of qualified Mandarin Chinese teachers and finds it extremely unlikely that these highly sought after teachers would be willing to work at TICS for a far lower salary and range of benefits than work at the District's program or a similar program with much higher salaries. The difficulty of finding qualified language immersion teachers is exemplified by TICS' inability to find a sufficient number of qualified Mandarin teachers to sign the Petition.

- C. The Charter does not provide an alternative cash flow that excludes startup grant funds in the event these funds are not awarded. The TICS budget contains funding from a Charter Revolving Loan in the amount of \$250,000, an initial --- of \$150,000, and a Public Charters School Grant Program in the amount totaling \$600,000 or \$200,000 in each of the first three years. However, there is no description or assurance that these grants have been awarded or the basis for reliance on these funds.
- D. The Charter provisions on insurance and indemnification are not adequate to protect the Charter School or the District from potential liability for TICS' acts or omissions, even though TICS will be operated by a 501(c)(3) nonprofit public benefit corporation. Likelihood of a charter's success depends on whether its petition budgets for "general liability, workers compensations, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance." (Cal. Code of Regs., tit. 5, § 11967.5.1(c)(3)(C).) The insurance levels budgeted by the petitioners are woefully inadequate for the school, and do not comply with current expectations, best practices, and realistic assessments of potential liabilities for a charter school and/or charter management organization. Thus, the District finds that the Charter does not contain adequate assurances that the Charter School will acquire and maintain coverage in amounts and types that comply with the District's standards and expectations to protect the District and its stakeholders, as well as the Charter School and its students, employees, and community members, from potential liabilities created by TICS' operations.

Based on information provided, LCFF revenues appear to be overstated. There is not the requisite detail (LCFF Calculator, UPP assumption, etc.) to determine the accuracy of LCFF and other budgeted revenues (e.g. ELOP).

The budgetary documents reference a startup cash balance of \$150,000, but the source is not clearly delineated and, if the source is donations or competitive grants, there is no alternative cash flow to account for these funds not being received.

The budget submission did not provide a narrative, but did include assumptions- however the assumptions are incomplete (missing Unduplicated Pupil Percentage) and contain inaccurate information (LCFF Base rates, Mandated Block Grant, Lottery, and Special Education). Additionally, there is a lack of supporting calculations (LCFF Calculator) to substantiate requested information.

- E. Facility. The charter petition is required to submit a description of the facility to be used by the charter school, including specifying where the charter school intends to locate, and is also required to include financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation. Together, these budget documents and the description of facilities, in addition to the specified information about the location, necessarily must include terms, budgeted costs (of the facility and improvements) and funding source, minimum attributes required of any facility, and related matters in order for these required documents and information meaning and for them to be reasonable and reliable. The Charter provides only that “Tustin International Charter School will operate within the boundaries of the Tustin Unified School District. If TICS does not secure a private facility, the Charter School reserves the right to request a facility from the District,” pursuant to Proposition 39 (Ed. Code § 47614). Notably, TICS did not submit a Proposition 39 request for District facilities by the November 1, 2024, deadline for the 2025-26 school year.

Thus, TICS does not have any right to use any District facilities for the 2025-26 school year. Inexplicably, on both its website homepage and on its Facebook page, TICS posted pictures of the District’s Lambert Elementary School site. On the website, this District school is identified as the “proposed” location, including a Google map setting forth its specific location.

TICS has no right to use any District facility for the upcoming school year, let alone Lambert Elementary, the particular school that TICS has chosen to spotlight on its website and social media platforms. TICS inclusion of a picture of this District school, plus the notation on the website that Lambert Elementary is TICS’ “proposed location,” is misleading, at best creating confusion and possibly substantial concern and disruption to the school’s students, families, staff, and community as well as any prospective TICS families or staff.

This appears to be an inappropriate attempt to incorrectly convey to the public that TICS will be located in a District site, specifically Lambert. Further, this incorrect information is inconsistent with TICS’ obligations to provide information with its Charter about its facilities, including where the proposed school intends to locate, and indicates, consistent with the lack of facilities information submitted with the Charter Petition, that TICS has not done the necessary work to locate, plan, and budget for an appropriate facility to house the proposed school, which are necessary in order to successfully implement the program.

Moreover, any expression of interest in enrolling or working at the school is necessarily undermined by the fact that any prospective employee, and especially any family contemplating its local school options, was misled and misinformed about the location and nature of the facilities at which TICS would be housed, which are important considerations in deciding whether to seek to enroll a student or work at a school.

II. THE PETITION DOES NOT INCLUDE THE REQUIRED NUMBER SIGNATURES OF MEANINGFULLY INTERESTED TEACHERS. [EDUCATION CODE SECTION 47605(C)(2)]

- A. The teacher signatures supporting the Petition do not appear to reflect teachers who are “meaningfully interested” in teaching at the proposed Charter School, as required by law, because two-thirds of the teachers who signed the Petition are not qualified to teach at the proposed school. When a petition is submitted based on teacher (not parent) signatures, the petition must be “signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.” (Educ. Code § 47605(a)(1)(B).) The petition “shall include a prominent statement that “a signature on the petition ... means that the teacher is meaningfully interested in teaching at the charter school.” (Ed. Code § 47605(a)(3).) In this case, the Petition estimates that ten (10) teachers will be employed at the Charter School in Year 1, so a minimum of five teacher signatures was required.
- B. The Charter specifies that a required qualification for teachers at the proposed school is to be “Bi-lingual and bi-literate in both Mandarin Chinese and English (except for English-only positions). Additionally, the TICS website states: “We will recruit teachers who are certified Mandarin language instructors. They have years of experience and are skilled in making language learning enjoyable and engaging.”

The petitioners submitted signatures from six individuals. Yet, TICS provided no evidence or information establishing that the teachers whose signatures were submitted to comply with this mandatory prerequisite to the Petition submission and/or approval are bi-literate or bi-lingual in Mandarin Chinese or, regardless of their potential language level, that they are properly credentialed to teach in Mandarin Chinese, as is necessary in order to teach in Mandarin as part of the proposed dual-immersion program.

The District retrieved information from the Commission on Teacher Credentialing website and ascertained that only two of the six teachers who signed the Petition and indicated that they are meaningfully interested in teaching at the proposed school have a BCLAD certification in Mandarin. Thus, four signatories do not meet the teacher qualifications specified in the Petition (unless they are interested in the unspecified number of “English- only” positions, thus could not be teachers at TICS

in its first year of operation, so any interest they may have in teaching there is, by definition, not “meaningful.”

It is not enough that the signatures are submitted under the required statement if the evidence clearly indicates the contrary. For these reasons, the District does not accept the teacher signatures as meeting the minimum requirements of Education Code Section 47605(a) for submission or approval of the Charter.

III. THE CHARTER SCHOOL PRESENTS AN UNSOUND EDUCATIONAL PROGRAM FOR THE PUPILS TO BE ENROLLED IN THE CHARTER SCHOOL. [EDUCATION CODE SECTION 47605(C)(1)]

- A. The above-described concerns regarding the inability to successfully implement the program set forth in the Charter are incorporated herein by this reference. These concerns and deficiencies include the issues regarding how TICS would serve students with disabilities in accordance with state and federal law, and the unrealistic enrollment and ADA projections and corresponding budget concerns that would inhibit implementation of the proposed educational program. Each of these concerns establishes that the Charter presents an unsound educational program for the pupils to be enrolled in the proposed TICS Charter School.

The program is described as a one-way Mandarin immersion model which means students will not be required to know Chinese before entering the program. Allowing students to enter starting at the 4th grade will not allow a student to receive enough instruction in Chinese to become a fluent speaker or biliterate.

- B. The Charter Petition does not adequately address the provision of services pursuant to the IDEA. The District is obligated to ensure that a proposed charter school will meet the needs of individuals with exceptional needs in accordance with state and federal law. (Ed. Code § 47605.7(b).) The District has numerous concerns regarding the proposed language in the Charter Petition related to the provision of services pursuant to the IDEA. The following discussion is not meant to provide an exhaustive list of the District’s concerns, but rather to highlight the Charter Petition’s most glaring deficiencies.
- C. The Charter Petition fails to account for the financial implications associated with designation of the Charter as a public school of the District for purposes of special education funding in Year 1. The Charter Petition states that “should TICS not secure SELPA membership in its inaugural year, it will, by default, be classified as a school of the district for special education purposes. . . .” This means that TICS’ special education services will initially be the responsibility of the District, and that in exchange, the District will directly receive the full amount of federal and state special education funding. Yet, according to its budget, TICS assumes \$181,351 of “Special Education – AB 602” state funding for its first year, 2025-2026. Further, charters that operate as schools of their district authorizer must contribute an equitable portion of their block grant funding to support district-wide special education services. (Ed. Code § 47646(c).) While the Charter Petition budgets an

extremely limited amount of projected expenses “Special Education Encroachment” in the 2025-2026, based on the District’s own experience in providing the full continuum of services to District students is woefully inadequate. Therefore, the Charter’s financial projections are miscalculated.

The Charter Petition also indicates that in the event the school opts to remain an arm of the District, it shall enter into an agreement with the District for the provision of special education and related services. It should be noted that once again there is not a draft or proposed MOU attached to the Charter. Therefore, the Charter Petition fails to present a coherent plan for the provision of special education and related services.

IV. THE CHARTER DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF ALL OF THE REQUIRED ELEMENTS. [[EDUCATION CODE SECTION 47605(C)(5)]

A. DESCRIPTION OF THE EDUCATIONAL PROGRAM [Ed. Code §47605(b)(5)(A)]

All of the above-described concerns regarding the unsoundness of the educational program and the inadequacy of the Charter’s description thereof are hereby incorporated herein by this reference.

B. DESCRIPTION OF THE GOVERNANCE STRUCTURE [Ed. Code §47605(c)(5)(D)]

The Charter and bylaws again provide that a majority of Directors then in office constitutes a quorum, and further provide that any act by a majority of the Directors “in attendance” or “present” at a meeting at which there is a quorum is adequate to constitute an act of the Board. The result is that TICS may take any action with approval of ***less than a majority*** of the members of the Board of Directors then in office. For example, TICS currently has five Directors in office, so a quorum is three. Pursuant to the Charter, if three Directors attend a meeting, TICS can take any action – including fiscal, educational, and/or operational decisions – with the approval of only two of the five Directors. Notwithstanding the legal minimum requirements applicable to nonprofit corporations, it is concerning for TICS to provide for action by a minority of the members of the Board of Directors of a public charter school, and the District Board again finds this to be an unacceptable means of governing the proposed public charter school.

It is also unclear who is serving on the Charter Board. The Charter provides at page 135 that Joe Lu, Timothy Jones, Ruby Costea, Anko Hsiao and Sophia Chen are the five individuals currently serving on the Board of Mandarin Immersion Schools, the non-profit corporation that oversees and operates TICS. Yet, at the public hearing on November 18, 2024, Mr. Chuang identified himself as a Mandarin Immersion Board member. It is unclear why Mr. Chuang would represent himself

as a board member of the governing corporation when the petition he submitted does not identify him as such.

C. EMPLOYEE QUALIFICATIONS [Ed. Code §47605(c)(5)(E)]

The TICS Executive Director(s) shall perform all the duties and accept all the responsibilities usually required of a Superintendent as prescribed by the TICS Board. At the public hearing, Mr. Chuang indicated that while he is presently on the Mandarin Immersion Schools Board, he intends to serve as the Principal of the School. The Charter provides that the Executive Director will also act as the Principal of TCIS during the first or second year until the budget allows for the hiring of a Principal, thus presumably Mr. Chuang will serve in both capacities for the first few years of operation. However, there is no requirement that the Executive Director or the Principal have a teaching credential (although it is “preferred” for both positions.). The District Board finds that the job duties of the Executive Director and the Principal position require, at minimum, a teaching credential.

Moreover, the Executive Director duties include “ [S] ubmits to the Board periodic financial and budgetary reports and [A] nnually prepares and submits to the Board the TICS budget for the upcoming year, revises this budget or takes other related actions as the Board designate.

Despite these responsibilities and the complexities of charter school finance issues, the Charter Petition does not require the Executive Director to have any training or experience in finance generally or public or charter school finance specifically. Instead, the Charter provides that training or experience in finance generally or public or charter finance is specifically preferred, but not required.

This lack of required school finance expertise for the individuals who will serve the two top level administrative position for the first two years of operations exacerbates the serious concerns implicated by TICS’ overly optimistic and unrealistic enrollment and ADA projections, given the direct fiscal consequences should TICS fail to meet those projections. Again, the qualifications for these positions are not consistent with the duties of these high-level administrators.

D. STUDENT BALANCE [Ed. Code §47605(c)(5)(G)]

The Charter Schools Act requires that each charter include a reasonably comprehensive description of “[t]he means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, as defined by the evaluation rubrics in Section 52064.5, 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 states that the Charter School shall not discriminate on the basis of the characteristics listed in Education Code § 220, which include actual or perceived

nationality, race or ethnicity. (Petition, pp. 8, 146, 170; Educ. Code § 47605(d)(1).) The Charter Schools Act provides that a charter school “shall admit all pupils who wish to attend the charter school,” subject to space limitations and a nondiscriminatory lottery process. (Educ. Code § 47605(e)(2).) Lottery preferences “shall not result in limiting enrollment access for ... English Learners ... or pupils based on nationality, race, ethnicity, or sexual orientation.” (Educ. Code § 47605(e)(2)(B)(iii).)

In conflict with these laws, the Petition describes an admission process that would require a Mandarin language review of students seeking admission into the 2nd grade or higher. The purpose of the review is to assess the reading, writing and conversation abilities of the student. Although the charter states TICS does not require students to speak or understand Mandarin, and that supports will be provided, such as “tutoring during class time by volunteers, [s]tudying in other classrooms for part of the day” and providing instruction to parents to help their child learn Mandarin, this requirement would preclude many students from attending the charter school and would have a discriminatory effect on students based on their nationality, race or ethnicity. As such, Petitioners are demonstrably unlikely to successfully implement the requirement to have nondiscriminatory admission practices, and to admit all pupils who wish to attend, space permitting.

E. THE PROCEDURES TO BE USED BY THE DISTRICT AND THE CHARTER SCHOOL FOR RESOLVING DISPUTES RELATING TO PROVISIONS OF THE PETITION. [Ed. Code §47605(b)(5)(N)]

The dispute resolution process between the Charter School and the District is unacceptable and the District would not agree to such a process. There are multiple proposed steps of the process which could take many months to complete. Having disputes remain unresolved for such an inordinate amount of time impedes the District’s ability to properly exercise its oversight obligations as required by the Education Code. While the Charter states that it is amenable to changing the process if it is unacceptable to the District, it agrees to only change through the Memorandum of Understanding process to be mutually agreed upon. Thus, the Charter School is not committed to making any changes to this process that are not acceptable to the District and might interfere with its ability to properly oversee the school.

V. THE CHARTER SCHOOL IS DEMONSTRABLY UNLIKELY TO SERVE THE INTERESTS OF THE ENTIRE COMMUNITY IN WHICH THE SCHOOL PROPOSES TO LOCATE. [EDUCATION CODE SECTION 47605(C)(7)]

- A.** The charter school is demonstrably unlikely to serve the interests of the entire community of the Tustin Unified School District, where the school is proposing to

locate as it would undermine and negatively impact the District's proposed academic program.

- B. The District plans to commence providing its Mandarin immersion program beginning in the 2025-26 school year, initially serving approximately one hundred students in grades TK-K, and expanding grade levels and enrollment in subsequent years. The District's Mandarin immersion program will utilize an instructional model that is rooted in well-respected studies and staff research/expertise. The proposed charter school would directly compete with this District program. The District has expended financial and staff resources in the planning and proposed implementation of the program in accordance with best educational practices and local demand, and the opening of the proposed charter would necessarily undermine and negatively impact those efforts.
- C. While the District agrees with TICS that there is interest in a Mandarin immersion program in Tustin, given the District's demographics and its plan to begin operating this program at the same time that the charter school is seeking to open, it is unlikely that there is adequate student interest to sustain both the District program and the proposed charter school's duplicative Mandarin immersion program.

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.

The foregoing resolution was considered, passed, and adopted by this Board at its special meeting of December 19, 2024.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

AYES IN FAVOR OF SAID RESOLUTION:

NOES AGAINST SAID RESOLUTION:

ABSTAINED:

Dated:_____

By:_____
Allyson Muñiz Damikolas
President, Governing Board
Tustin Unified School District

Dated:_____

By:_____
Lynn Davis
Clerk, Governing Board
Tustin Unified School District

STAFF ANALYSIS, RECOMMENDATIONS, AND RECOMMENDED FINDINGS OF FACT REGARDING TUSTIN INTERNATIONAL CHARTER SCHOOL CHARTER PETITION

December 19, 2024, posted December 4, 2024

PROCEDURAL STATUS

The Tustin Unified School District (“District”) received a charter petition (“Charter 2”) on September 25, 2024, seeking approval of Charter 2 for Tustin International Charter School (“TICS”), to be operated and governed by Mandarin Immersion Schools, for a term of July 1, 2025, through June 30, 2030. The terms “TICS” and “Charter School” are used herein collectively and interchangeably to refer to both Mandarin Immersion Schools and/or the proposed Tustin International Charter School. The District Board’s consideration and action on the Charter is governed by the standards, criteria, and procedures set forth in Education Code Section 47605.

On November 18, 2024, per Education Code Section 47605, the District Board held a public hearing on TICS Charter 2, consistent with the requirement to do so within 60 days of receipt of the submission of the Charter petition. During the public hearing, the lead petitioner spoke in favor of Charter 2. No District teachers or other District employees spoke in favor of Charter 2. Action on the Charter will be on the District Board’s December 19, 2024 agenda.

On or about October 30, 2023, the same petitioners submitted an earlier version of a charter proposing to open Tustin International Charter School (“Charter 1”), and the District Board held a public hearing on the provisions of Charter 1 on December 11, 2023. On January 15, 2024, the District published its staff recommendations, including the recommended findings, regarding Charter 1, whereby District staff recommended that Charter 1 be denied. The District provided a copy of those recommendations and recommended findings to the TICS petitioners. The District Board denied Charter 1 on January 29, 2024. Subsequently, TICS appealed the denial to the Orange County Board of Education (“OCBOE”), but petitioners withdrew the appeal before the OCBOE could act on the appeal of the denial.

A copy of the Charter is available for review in the office of Maggie Villegas, Assistant Superintendent, Educational Services, at the District Office.

CRITERIA FOR ACTION ON A CHARTER PETITION

The District analyzes a charter petition against the standards and expectations set forth in the Charter Schools Act. The District believes that, given the nature and operational structure of independent charter schools and the necessity that they operate independently outside of the traditional noncharter public school system and the structure of a school district and in accordance with the law, it is imperative that any charter petitioner establishes its capacity to prepare a fully formed and compliant charter petition that comports with the requirements of the Charter Schools Act and establishes that approval is consistent with sound educational practice and the interests of the community where the charter school proposes to locate. It is not the role of the District to provide a “roadmap” to approval or substitute the District’s experience and expertise for that of the charter petitioners. Instead, charter petitioners must establish that they

will be able to operate the proposed charter school independently and in a manner that serves students and provides them a sound educational experience by providing a clear, complete, fully developed and reasonably comprehensive charter petition that complies with the requirements of the Charter Schools Act.

Part of any assessment and analysis of a charter that has been previously denied by the District is consideration of whether the charter petitioners have presented a legally and educationally appropriate petition and have not simply relied upon or been guided by findings made in prior denials of their charter as a roadmap for approval. For these reasons, the District staff has determined that in recommending denial of TICS's submission of Charter 2 it is most appropriate to limit its analysis, recommendations, and recommended findings to those issues and findings on which basis the District Staff is recommending that the District Board deny Charter 2 at this time. This Staff Analysis will not go through each component and element of Charter 2, but will focus on those matters that form the basis for the recommendations and recommended findings of denial set forth herein.

CRITERIA OF A CHARTER PETITION

In considering charter petitions, the District Board "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 the establishment of charter schools should be encouraged." The District Board shall grant a charter if it satisfied that doing so is consistent with sound educational practice and with the interests of the community in which the school proposes to locate. The District Board shall consider the academic needs of the pupils the school proposes to serve. (Education Code Section 47605(c).)

The District Board shall not deny Charter 2 unless it makes written factual findings, specific to the particular charter, setting forth specific facts to support one or more of the following findings (Education Code Section 47605(c)(1)-(8)):

1. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3. The petition does not contain the number of signatures required by Education Code Section 47605(a).
4. The petition does not contain an affirmation of each of the conditions described in Education Code Section 47605(e).
5. The petition does not contain reasonably comprehensive descriptions of all the required elements.
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 Employees Relations Act (EERA).

7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school proposes to locate.
8. The District is not positioned to absorb the fiscal impact of the proposed charter school.

The District Board is also to require charter petitioners to provide information regarding the proposed operation and potential effects of the proposed school, including, but not limited to:

1. The facilities to be used by the school, including specifying where the charter school intends to locate.
2. The manner in which administrative services of the school are to be operated.
3. Potential civil liability effects, if any, upon the school and the county board of education.
4. Financial statements that include a first-year operational budget, including startup costs, cash flow, and financial projections for the first three years of operation.
5. The names and relevant qualifications of all persons whom the petitioner nominates to serve on the charter school nonprofit corporation's Board of Directors.

REVIEW OF THE TICS CHARTER PETITION

District Staff's recommendations and recommended findings are set forth below and in the attached proposed Resolution No. 12-44-24.

District staff reviewed the Charter using the criteria established in Education Code Section 47605, as described above. The District staff's recommendations and recommended findings are set forth below.

- A. The District Board must hold a public hearing on the provisions of Charter 2 at which it considers the level of support for Charter 2 by District teachers, other TUSD employees, and parents/guardians. (Education Code Section 47605(b).)

The District Board held a public hearing on the provisions of TICS Charter 2 on November 18, 2024. During the public hearing, the lead petitioner spoke in support of TICS Charter 2, but no parents, TUSD teachers, or other TUSD employees spoke in favor of TICS. There were no speakers in opposition to TICS Charter 2.

- B. The District Board shall grant TICS Charter 2 if it satisfied that granting Charter 2 is consistent with sound educational practice and with the interests of the community in which TICS proposes to locate. The District Board shall consider the academic needs of the pupils TICS proposes to serve. The District Board shall not deny Charter 2 unless it makes written factual findings, specific to

Charter 2, setting forth specific facts to support one or more of the findings set forth in Education Code Section 47605(c)(1)-(8).

District administrative staff was given responsibility to make a recommendation to the District Board regarding TICS Charter 2 proposal. In analyzing Charter 2 and developing its recommendations, the District administrative team was 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 and has considered the academic needs of the students the Charter School proposes to serve. District staff reviewed Charter 2 using the criteria established in Education Code Section 47605, as described above, and assessed Charter 2 against the standards and requirements set forth in the California Education Code in order to develop final recommendations.

In Charter 2, District administrative staff has again noted omissions, issues, and concerns supporting the legal findings for denial of a charter petition, which are included as proposed factual findings in the recommended Resolution No. 12-44-24 (attached). For the reasons detailed in that proposed Resolution and supported by the recommended findings of fact set forth therein, District staff recommends that TICS Charter 2 be denied and that the District Board adopt Board Resolution No. 12-44-24. Denying the Charter School Petition for Tustin International Charter School.

District staff note that TICS petitioners did update and revise the Charter 2, primarily to responding directly to the findings in the resolution recommending denial of Charter 1. The District staff, did however, expect TICS to use the information and the process to review the entire Charter and appendices to update the same to address the District and OCBOE's concerns, yet numerous concerns and omissions remain as outlined in the Resolution of Denial.

It must be noted that in order to submit a charter petition to a potential chartering authority, the charter petitioner must submit a signed certification that the petitioner deems the charter petition to be complete, so it is incumbent on the petitioner to submit a complete charter. Moreover, charter schools are exempt from most laws governing school districts, but, instead, are bound by the terms of their approved charter, and not by extraneous statements or representations made by the petitioners. It is appropriate for the potential chartering authority to review the charter as submitted, and the potential authorizer is not obligated to seek further clarification or correction from the petitioners, particularly if they have gone through the petition process with the District.

Moreover, TICS is not an operating school and has submitted a proposal, based on its own projections and speculation. The proposed chartering authority charged with review and evaluation of TICS Charter 2 must also analyze Charter 2 based in some part on projections, taking account of the chartering authority's knowledge, expertise, and experience and the available facts. The findings for charter denial do not require the chartering authority to be able to prove beyond a reasonable doubt that a certain outcome will ensue.

As required by the Charter Schools Act, the staff recommendations, including the recommended findings, were published, as well as provided directly to the TICS petitioners, at least 15 days prior to the meeting at which the District Board will act on Charter 2. As detailed in the attached proposed Resolution, staff's recommendations are based on the following findings:

1. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
2. The petition does not contain the number of signatures required by Education Code Section 47605(a).
3. The petition does not contain reasonably comprehensive descriptions of all the required elements.
4. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
5. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school proposes to locate.

Written factual findings, specific to the particular Tustin International Charter School Charter 2 petition, setting forth specific facts to support each of these statutory findings for denial are set forth in detail in the proposed Resolution No. 12-44-24.

CONCLUSION

The District staff reviewed TICS Charter 2 utilizing the criteria for consideration and action on a charter petition, as set forth in Education Code Section 47605. District staff recommends that TICS Charter 2 be denied and that the District Board adopt proposed Resolution No. 12-44-24. Denying the Charter School Petition for Tustin International Charter School by the Governing Board of the Tustin Unified School District and adopting the specific factual findings of denial set forth therein, in accordance with the requirements of the Charter Schools Act.

PROPOSED MOTION

Move to deny the Tustin International Charter School Charter Petition and adopt Resolution No. 12-44-24, denying the Charter, and adopting the specific factual findings of denial set forth therein.