

**STAFF ANALYSIS, RECOMMENDATIONS, AND RECOMMENDED FINDINGS OF
FACT REGARDING DR. MARGARET HILL ACADEMY CHARTER PETITION**

JANUARY 14, 2025, POSTED DECEMBER 30, 2024

I. PROCEDURAL STATUS

The San Bernardino City School District (“District”) received a charter petition (“Charter”) on October 1, 2024, seeking approval of the Charter for Dr. Margaret Hill Academy (“DMHA”), to be operated and governed by Margaret Hill Academy, a non-profit corporation, for a term of July 1, 2025, through June 30, 2030. The terms “DMHA” and “Charter School” are used herein collectively and interchangeably to refer to the proposed Dr. Margaret Hill Academy. 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 December 17, 2024, per Education Code Section 47605, the District Board held a public hearing on the DMHA Charter, consistent with the requirement to do so within 60 days of receipt of the submission of the Charter petition. During the public hearing, many parents and community members parents spoke in favor of the charter. Many others attended the public hearing to express support for the petition. Action on the Charter will be on the District Board’s January 14, 2025 agenda.

A copy of the Charter is available for review in the office of Ernestine Hopwood, Charter Schools Director.

II. CRITERIA FOR ACTION ON 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 is 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 the Charter 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, the facilities to be used by the school, including specifying where the charter school intends to locate; the manner in which administrative services of the school are to be operated; potential civil liability effects, if any, upon the school and the District; financial statements that include a first-year operational budget, including startup costs, cash flow, and financial projections for the first three years of operation; and the names and relevant qualifications of all persons whom the petitioner nominates to serve on the charter school nonprofit corporation's board of directors.

III. REVIEW OF THE DMHA CHARTER PETITION

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

The District administrative staff was given responsibility to make a recommendation to the District Board regarding the DMHA Charter proposal. In analyzing the Charter 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 the Charter using the criteria established in Education Code Section 47605, as described above, and assessed the Charter against the standards and requirements set forth in the California Education Code and found the following:

A. Sound Education Program

DMHA proposes an educational model based on three foundational pillars: Community-Centric Learning Environment II: Culturally Responsive, Personalized and Challenge-Based Experiential Learning III: College and Career Immersion through Dual enrollment. These pillars serve as the foundation for DMHA's program, which aims to unlock the potential of every student by tailoring the learning experience to meet individual needs, fostering growth among educators, and engaging parents as advocates for their children's education.

DMHA will be a highly personalized learning environment where every student will have an Individualized Vision Plan (IVP), with personal goals established, reviewed, and celebrated across their entire seven years of attending of DMHA, updated four times annually. The IVP will include the results from a collection of periodic assessments designed to help students discover how they learn, explore their natural talents and interests, and learn what areas need strengthening. Advisors will review students' IVPs with them bi-monthly. While the program will hold high expectations for every student's success, it will also provide comprehensive supports through a Multi-Tiered System of Supports (MTSS) program that leverages proactive differentiated universal, targeted and intensive instructional and behavioral/psycho-social strategies to ensure all students are successful. Online, adaptive blended learning programs, many with highly engaging, innovative and immersive interactions, will supplement teacher instruction and provide personalized practice and skill development based on individual student needs.

DMHA commits to serving a predominantly socio-economically disadvantaged student population, with a significant percentage of English learners and students requiring special education services.

District staff noted several areas in the Petition that require further clarification/refinement regarding DMHA's educational program. District staff finds that the Charter contains a sound educational program only if the District staff's concerns are addressed/remedied in an MOU.

B. Special Education

DMHA intends to join Desert Mountain SELPA or LA SELPA and is awaiting word of its acceptance. Thus, DMHA has not provided written verifiable assurances of its acceptance to one of those SELPAs. If accepted into a SELPA, DMHA will operate as an independent Local Educational Agency (LEA) for special education. Such an affiliation will enable the school to receive state and federal funding directly and to ensure compliance with all applicable laws,

including the Individuals with Disabilities Education Improvement Act (IDEA). DMHA states it is committed to providing a free and appropriate public education to all students, regardless of disability, and to working collaboratively with the SELPA to meet these obligations. DMHA also states it is committed to, and has plans and staffing to enable, compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

If DMHA is not able to join the SELPA, 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 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 “MHA shall be its own local educational agency (“LEA”) and shall apply directly for membership in a SELPA in conformity with Education Code section 47641(a).”

However, if DMHA does 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 DMHA’s 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, DMHA assumes Special Education 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 for “Special Education Encroachment” in 2025-2026, based on the District’s own experience in providing the full continuum of services to District students and to other District authorized charter schools, that amount is woefully inadequate. Therefore, the Charter’s financial projections are miscalculated.

Until such time as DMHA can join a SELPA, it must enter into an MOU with the District that delineates the roles and responsibilities as well as the fiscal responsibilities of the District and DMHA, by the deadline specified by the Superintendent or designee.

C. Educational Leadership

The Principal is the educational and instructional leader at DMHA, in addition to being responsible for teacher supervision, evaluation, and providing input and approval of each faculty and staff member. In the DMHA Charter, the Principal is required to possess an administrative credential (or have equivalent experience,

although it is not defined how such experience would be assessed), but is not required to have a valid teaching credential. The lack of this qualification has a potentially substantial effect on the quality of the educational program and teaching at DMHA, impacting the overall soundness and implementation of the program.

The job duties assigned to this administrative position are consistent with the need for at least a valid teaching credential, if not an administrative credential. This is particularly true in light of the mandate that all charter schoolteachers now hold the California Commission on Teacher Credentialing certificate, permit, or other document required for the teacher's certificated assignment. DMHA's Principal should also meet this requirement applicable to the teachers they train, supervise, and evaluate. As such, there is a great need for a teaching credential, and District Staff finds specifically a California teaching credential for this leadership positions is essential.

The lack of a California teaching credential for a person holding this position could negatively impact the quality of educational services provided to DMHA students, and requiring teaching credentials is consistent with the District Board of Education's expressed expectations for charter schools under its oversight in order to help ensure a sound educational program. Additionally, if DMHA administrators "cover" classes for teachers when a substitute is not available, they are required to hold a California teaching credential, or at least a substitute credential. This proposed may result in a situation in which the Principal would be unable to cover classrooms when needed.

D. Ability to Successfully Implement the Program set Forth in the Petition

Staff found facts demonstrating the Petitioners are likely to successfully implement the program only if DMHA resolves the identified requirements, concerns, and conditions through the MOU, as described more fully throughout this Staff Analysis and Findings of Fact.

E. Affirmation of Each of the Conditions Required by Statute

District Staff found the Petition contains the required affirmations. The District's concerns regarding the admission preferences are discussed in further detail below.

F. Reasonably Comprehensive Description of the Required Elements

For the description of each element to be considered "reasonably comprehensive," it is not enough for the Petition to include a description, but, rather, the description in a charter petition must be acceptable to the District and be

consistent with and not contrary to District’s standards and expectations for charter schools under its oversight. The District’s indication that the description of an element is “reasonably comprehensive” should not be interpreted to mean District does not believe additional or different terms relating to an element would need to be agreed to by the Petitioner through the MOU process. Further, while the District may, in this Staff Analysis, make recommendations for remediation in an area or specify issues or terms that have been or will need to be clarified or resolved through the MOU, this does not mean other areas may not need additional correction to be included in the MOU. Further, Staff’s determination that an element is reasonably comprehensive may be premised on noted issues being remediated through the MOU.

The District Staff found, as detailed below, that additional specificity and requirements governing DMHA’s educational program, governance and operations, including its compliance with the required charter elements, will need to be addressed through the MOU among DMHA and the District.

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

a. Prohibited Conflicts of Interest

Charter schools, including the proposed DMHA, are required to comply with the requirements of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Gov. Code §87100, et seq.), specifically including their prohibitions against conflicts of interest. (Ed. Code §47604.1.) As described in the Charter Petition, the lead petitioner, Shinay Bowman, will be the Principal of the proposed DMHA. In accordance with the provisions of the Charter, she will be hired by the DMHA Board and she in turn will “hire, supervise and evaluate the faculty and school site staff.” Also as described in the Charter, Ms. Bowman’s husband, Rimayne Bowman, will be employed by DMHA as the Director of Safety, Culture and Student Services, which is a site staff position over which Ms. Bowman has hiring, supervision, and evaluation authority. Thus, Ms. Bowman will directly hire, supervise, and evaluate her spouse. Collectively, the Bowman’s will receive \$270,000 in the first year of operations for their administrative roles, and ongoing raises throughout the proposed five-year term of the charter.

In California, by virtue of the community property laws, by definition the Bowmans are financially interested in each other’s income, thus Ms. Bowan would be financially interested in any and all decisions related to her spouse’s employment at DMHA for which she would be responsible (e.g., the hiring decision, determining whether the spouse is performing well so should remain employed, should receive a raise, or is performing poorly and should be terminated or demoted, etc.).

Thus, this arrangement appears to violate the provisions of Government Code 1090, et seq., and the Political Reform Act, and this proposal further indicates a fundamental lack of understanding of these legal obligations and prohibitions by the DMHA petitioners.

b. Corporate Bylaws Do Not Align With Legal Requirements

The Petition and corporate bylaws describe the governance structure of the Charter School. However, the bylaws contain certain components that do not align with legal requirements applicable to charter schools, as well as internal inconsistencies. Article VI, Section 3, of the bylaws state: “Not more than 49 percent of the persons serving on the board of directors may be interested persons.” By definition within the bylaws, an “interested person” is (a) any person compensated by the corporation for services rendered to it within the previous 12 months, whether as a full- or part-time employee, independent contractor, or otherwise. . . . 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 such person. The Board may adopt other policies circumscribing potential conflicts of interest.”

Although Education Code section 47604.1 allows an employee of the charter school to serve as a member of the governing body, this authorization does not extend to independent contractors of the Charter School. Permitting independent contractors, who would presumably receive financial compensation from the Charter School, to also serve as members of the Board of Directors could constitute an impermissible financial conflict of interest under Government Code sections 1090 et seq., the Political Reform Act, and other public transparency laws applicable to charter schools.

c. Bylaws Allow for Less Than a Quorum of the DMHA Board to Act for the Board

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 at a meeting at which there is a quorum is adequate to constitute an act of the Board. The result is that DMHA may take any action with approval of *less than a majority* of the members of the Board of Directors then in office. For example, DMHA currently has five Directors in office, so a quorum is three. Pursuant to the Charter, if three Directors attend a meeting, DMHA 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 DMHA to provide for action by a minority of the members of the Board of Directors of a

public charter school, and the District Board finds this to be an unacceptable means of governing the proposed public charter school.

d. Lack of Familiarity with Brown Act

The bylaws also include inconsistent statements that indicate a lack of familiarity with the Brown Act and general charter school governance. For instance, Article I, Section 1, states that the Board of Directors can “Change the principal office or the principal business office in California from one location to another; cause the Corporation to be qualified to conduct its activities in any other state, **territory, dependency, or country; conduct its activities in or outside California** shall fix the location of the principal executive office of the corporation at any place within or outside of the State of California.”

Given that the Charter School would be restricted to operating within the boundaries of the District, it is unclear why the bylaws afford the DMHA nonprofit corporation the ability to establish its principal office outside of California. Similarly, Article VI, Section 8, of the bylaws include contradictory language. The first sentence of this section states that “[a]ny meeting of the board of directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the board or in the notice of the meeting.” Subsequently, in the same section, it states: “Notwithstanding anything in these bylaws to the contrary, for so long as the corporation is authorized to and operates a California charter school, all meetings of the Board of Directors shall be called, held and conducted in accordance with the terms and provisions of the Ralph M. Brown Act and Education Code section 47604.1, as amended from time to time.”

To align with the requirements of the Brown Act, the nonprofit corporation’s regular and special meetings would need to be held within the boundaries over which the governing body has jurisdiction. Therefore, it is unclear why the bylaws include statements about meeting locations outside the State of California. Although the bylaws reference compliance with the Brown Act, the language therein nevertheless reflects a lack of understanding of open meeting laws applicable to charter schools.

The District Staff believes this section includes a reasonably comprehensive description, only if the above issues are clarified and corrected through the MOU process.

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

The DMHA Executive Director(s) shall perform all the duties and accept all the responsibilities usually required of a Superintendent as prescribed by the DMHA Board. In the Charter, Ms.

Bowman, the lead petitioner is identified as the Principal at the proposed school and her spouse, Rimayne Bowman, will be DMHA's Director of Safety, Culture and Student Services. Together they will hold two of the three administrative positions at the proposed charter school. Mr. Bowman will be hired by and directly report to Ms. Bowman. However, there is no requirement that the Principal have a teaching credential (although it is "preferred"). The District Board finds that the job duties of the Principal position require, at minimum, a teaching credential.

Moreover, the Principal duties include:

Develop the annual Charter School budget (including the LCAP) and any necessary revisions in collaboration with the administrative team, back-office services provider and educational partners, and submit to the Board for review and approval.

Oversee operating budgets (as approved by the Board) and continuously review financials including, cash flow; seek and identify sources of income and funding resources for the Charter School.

Despite these responsibilities and the complexities of charter school finance issues, the Charter Petition does not require the Principal to have any training or experience in finance generally or public or charter school finance specifically. Instead, the Charter provides that "knowledge of and skill in effective budgetary processes and charter school finance" is specifically preferred, but not required. Similarly, there is no requirements for the Director of Safety, Culture and Student Services to have any education or experience in public school finance.

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

The District Staff believes this section includes a reasonably comprehensive description, only if the above issues are clarified and corrected through the MOU process.

3. FINANCIAL AUDIT [Ed. Code §47605(c)(5)(I)]

DMHA states in the Petition that the audit will be conducted in accordance with EC Sections 47605.6(b)(5)(I) and 47605.6(m), generally accepted accounting procedures, and with applicable provisions within the California Code of Regulations governing audits of charter schools as published in the State Controller's K-12 Audit Guide. The Petition describes DMHA financial audit procedures, which include how the independent auditor will be selected and retained, the qualifications the independent auditor needs to possess, the timing of the audit, how any deficiencies will be resolved, and how this will be communicated to the necessary outside parties. DMHA has a finance committee that selects the independent auditor.

The District Staff believes that this section includes a reasonably comprehensive description.

4. HEALTH AND SAFETY PROCEDURES [Education Code Section 47605(c)(5)(F)]

The Charter Schools Act requires DMHA to describe the procedures that the charter school will follow to ensure the health and safety of pupils and staff.

These procedures shall require all of the following:

(i) That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(ii) For all schools, the development of a school safety plan, which shall include the safety topics listed in sub paragraphs (A) to (K), inclusive, of paragraph (2) of subdivision (a) of Section 32282. For schools serving pupils in any of grades 7 to 12, inclusive, the development of a school safety plan shall also include the safety topic listed in subparagraph (L) of paragraph (2) of subdivision (a) of Section 32282.

(iii) That the school safety plan be reviewed and updated by March 1 of every year by the charter school.”

DMHA provided an overview of Health and Safety Policies and Procedures and the process for employee fingerprinting and background checks. All staff are expected to comply with *EC* Section 47605.6(b)(5)(g), *EC* Section 44691, and all other legal requirements, and DMHA states it is committed to providing a safe, compliant working environment.

.In order for many of the required policies and procedures to be appropriate, effective, and comply with law, they must be readily available to students, parents, staff, chartering authorities, and the public. As such, District staff recommends that DMHA be required to make these policies and procedures readily locatable on its website to the Superintendent or designee’s satisfaction.

The District Staff believes this section includes a reasonably comprehensive description only if DMHA is required to ensure through the MOU that its policies and procedures, including but not limited to complaint policies and procedures, can be readily located on its website and handbook

5. STUDENT SUSPENSION/EXPULSION PROCEDURES [Ed. Code §47605(c)(5)(J)]

DMHA’s Petition includes its comprehensive suspension and expulsion policies and procedures that reflect current law, in the Student/Parent Handbook attached as Appendix 25 to the Petition, which is attached and fully incorporated by reference into the Petition. As such, these are the

causes for suspension and expulsion and the procedures to be followed by DMHA and may not be substantively revised, except to comport with requirements of law or to track revisions to the causes and procedures applicable to non-charter California public schools, without a determination from the District Superintendent or designee whether the proposed revision(s) is a material revision to the Petition.

These policies and procedures are generally consistent with District's usual practices and with the changes to this portion of the Charter Schools Act. However, there are some internal inconsistencies and confusion in the procedures as described in the Handbook regarding the entity responsible for expulsion decisions and appeals. For example, there are some references to the Board making the decision, which has been delegated to the Academic Affairs Committee, and the discussion of appeal indicates that some expulsion decisions would inexplicably be made by a body other than the Academic Affairs Committee and also refers to the Executive Committee of the Board, which is not identified.

The District Staff believes this section includes a reasonably comprehensive description, only if the above issues are clarified and corrected through the MOU process.

6. EMPLOYEE RETIREMENT SYSTEMS[Ed. Code §47605(c)(5)(K)]

The DMHA Petition states all certificated employees of DMHA shall participate in the State Teachers Retirement System (STRS). A voluntary 403b plan will also be available to certificated and classified staff. Social Security payments will be contributed for all qualifying employees. The Board of Directors will retain the option to consider any other public or private retirement plans and to coordinate such participation with existing programs as it deems appropriate. All full-time eligible employees will be covered by the Federal Social Security program.

The Operations Manager in collaboration with our back-office services provider, will be responsible for ensuring that appropriate arrangements for the retirement coverage have been made.

The District Staff believes this section includes a reasonably comprehensive description.

7. DISPUTE RESOLUTION[Ed. Code §47605(c)(5)(N)]

The Petition includes dispute resolution language. However, the provision entitled "Internal Disputes" as revised in the Petition is partly in conflict with the other provisions of this element. It incorrectly purports to require the District to "refer all disputes not related to a possible violation of the charter or law to DMHA," which is inconsistent with the other language in this element and DMHA cannot limit its chartering entity's authority in this manner.

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, 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.

The District Staff believes this section includes a reasonably comprehensive description with the correction through the MOU of the above-identified concern.

8. STUDENT ADMISSIONS POLICIES AND PROCEDURES [Ed. Code §47605(c)(5)(H)]

DMHA says it has articulated student admission policies and procedures. The school is nonsectarian, tuition free, and does not discriminate against any pupil on the basis of protected characteristics.

With the changes to the Charter Schools Act, the actual policies and procedures for admission – including how DMHA implements the admission preferences, conducts the admission public random drawing (lottery) procedures, adds students to the waitlist, and offers them admission from the waitlist – must be included in the Petition. DMHA has included these items in the petition, though there are a few clarifications needed, as described below.

The Petition requests the District Board approval of admission preferences in cases in which there are more applicants than spaces at a particular grade level. DMHA is seeking approval of the following preferences in the following order:

1. Students residing in the San Bernardino City Unified School District.
2. Siblings of students admitted to or attending the Charter School.
3. Children of teachers, staff and Founding Parents of MHA (up to 10% of enrollment).
4. Foster Youth and/or Homeless Youth.

Admission to the school is not determined by the place of residence of pupils or parents, except in the case of a public random drawing, as allowed by law.

Whether to approve any or all of the requested preferences, other than the preference for residents of San Bernardin City Unified School District, is within the discretion of the District Board, per EC Section 47605.6(e)(2)(B). If the District Board does not approve all the preferences, DMHA would be required to revise this provision of the Charter and its admission policies and procedures accordingly.

The Charter Schools Act has always provided, and continues to provide, that the chartering authority must approve any voluntary/discretionary admissions preferences requested by the

charter school. This provision of law has been modified to include additional requirements for the chartering authority's approval of any such preferences, "including, but not limited to, siblings of pupils admitted or attending the charter school" Thus, the reference in the law to any sibling admissions preference is only by way of example of the types of preferences a particular charter school might seek to provide, but which is not mandatory for the charter school to request nor is the chartering authority required to grant such a preference. As such, the revision to provide admission preference to siblings of students who are admitted to DMHA is a request for the District to approve an additional preference, which is within the District Board's discretion.

DMHA currently has as its second preference siblings of students who are admitted to or currently enrolled at DMHA. The Charter School is seeking to expand that preference to include not only students who are currently enrolled, but students whose siblings are admitted during the particular lottery. In other words, as currently authorized by the District, if a student who is attending DMHA in 2025-26 has a sibling apply during the open enrollment process for admission for 2026-27, that student would be eligible for a sibling preference. As proposed in the Petition, that preference would continue to apply, but, additionally, if two siblings who do not attend DMHA in 2025-26 both apply for admission for 2026-27, immediately upon one of those siblings receiving a place through the lottery, the other sibling would automatically be entitled to an admission preference even though neither of the siblings are current DMHA students. The Petition does not, however, explain the specifics of how the admitted sibling preference would be implemented in practice, particularly if a sibling is drawn in the lottery after their sibling in a lower grade was placed on the waitlist rather than offered admission.

The process for implementing the sibling preference – and ensuring that it is only a preference, not an exemption from the lottery, including if one sibling is admitted during the lottery and another sibling(s) is participating in the same lottery – must be clearly described in the MOU.

District staff recognizes the benefits of allowing families to enroll all of their children at the same school, so it is recommended that the District Board approve the addition of the preference for siblings of students who are admitted to DMHA.

9. RACIAL AND ETHNIC 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 indicates that a preference is provided for children of teachers, staff and founding parents of DMHA (up to 10% of enrollment). The Charter provides that “A Founding Parent will be required to volunteer a significant number of hours (at least 75) prior to the opening of MHA in August 2025, towards MHA’s planning, design and initial implementation.”

Although the Charter includes the required affirmation that parental volunteer hours are not a criterion for admission or continued enrollment per Education Code Section 47605(e)(2)(B)(iv), this provision is directly contradictory to that affirmation. Thus, conveying an enrollment advantage in this manner is in violation of the conditions of Education Code Section 47605(n) that it “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,” and the free schools guarantee of the California Constitution and Education Code Section 49010 et seq.

Additionally, the charter provides that DMHA is working to ensure school enrollment is reflective of the target community in San Bernardino in race/ethnicity, EL status (ELs and reclassified students), SWD, SED status and other characteristics. Yet, the Charter School is legally obligated to serve a student population reflective of the District, not a “target population” selectively chosen by the petitioners to serve. Thus, this provision of the Charter is in direct violation of the provisions of the Education Code.

The Petition specifies, “applications received after the application deadline will be held in abeyance for a subsequent lottery, if needed.” Clarification is needed regarding what occurs if a student applies after the open enrollment period when there is an open space(s) at the requested grade level.

The District Staff recommends that the District Board approve the preferences as proposed by DMHA, except for the preference for Founders.

The District Staff believes these sections include a reasonably comprehensive description only if, through the MOU, the public random drawing procedures, preferences, and recruitment strategies are clarified, as described above.

10. PUBLIC SCHOOL ATTENDANCE ALTERNATIVES [Ed. Code §47605(c)(5)(L)]

District students who choose not to attend DMHA may attend other school district schools. Parents and guardians of each student enrolled in DMHA will be informed their students have no right to admission to a particular school of any local education agency as a consequence of enrollment in DMHA, except to the extent such a right is extended by the local education agency.

The District Staff believes this section includes a reasonably comprehensive description .

11. DESCRIPTION OF THE RIGHTS OF AN EMPLOYEE OF THE DISTRICT UPON LEAVING THE EMPLOYMENT OF THE DISTRICT TO BE EMPLOYED BY THE CHARTER SCHOOL[Ed. Code §47605(c)(5)(M)]

All employees of DMHA will be considered the exclusive employees of DMHA and not of the SBCUSD. DMHA states in this element that no employees of the District are required to work at the charter school. The discussion in this element provides that such employees have no automatic rights of return and only such rights as the District may choose to provide, and that employment at DMHA does not provide any rights of employment at any other entity, including in the case of closure of DMHA.

The District Staff believes this section includes a reasonably comprehensive description.

12. CLOSURE PROTOCOL [Ed. Code §47605(c)(5)(O)]

DMHA outlines a comprehensive process to be used if the charter school closes. Certain provisions such as the storage of student records must be revised as the District does not agree to store all DMHA student records in the event of a school closure.

The District Staff believes this section includes a reasonably comprehensive description if appropriately revised through the MOU process.

G. Required Supplemental Information [Ed. Code §47605(c)(5)(D)]

District Staff reviewed the DMHA Petition, which includes the budget narrative, projected budget, and cash flow for Fiscal Years (FY) 2025-26 through 2029-30. District Staff also reviewed supplemental documents and the public hearing information to assess and provide clarification on DMHA’s financial position.

1. 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 December 17, 2024, public hearing indicated that there is “a need” and desire for this type of educational program in the San Bernardino area, but did not provide significant evidence of student/family interest in or demand for DMHA to open in San Bernardino or the

general geographic area that supports the initial budget projections and growth to 350 students.

The Charter anticipates first year enrollment at 100 students and projects that enrollment will more than triple to 350 (although the budget is premised on 300 students) 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 Petitioner's statements that there is a need and desire for this type of educational program in the San Bernardino area. The students who reside within the District are its target population, but the District's non-charter schools are well respected 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.

The overestimated projected enrollment indicates that DMHA's 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 heavily rely on the number of students enrolled and their attendance. DMHA has limited 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

2. DMHA's planned salaries are extremely low when compared to the District, and it is unrealistic and unconvincing that DMHA will be able to successfully recruit and retain high quality certificated and noncertificated staff at these rates, particularly given the current teacher shortage. A large portion of the budget is allocated to the Principal and Director of – salaries, positions noted in the petition that Mr. and Dr. Bowman will hold.
3. No lease was provided for any proposed facility nor was there a reasonable explanation provided

The District Staff believes this section includes a reasonably comprehensive description, only if the above issues are clarified and corrected through the MOU process.

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]

H. Potential Civil Liability Effects on the School and District

Staff recommends that the District Board require, as it is necessary for the sound operation of DMHA, that DMHA agree to comply with insurance, indemnification, defense, and hold harmless provisions as satisfactory to the District’s risk management team, in its discretion.

The Charter provisions on insurance and indemnification are not adequate to protect the Charter School or the District from potential liability for DMHA’s acts or omissions, even though DMHA 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 DMHA’s operations.

The District Staff believes this section includes a reasonably comprehensive description with the correction through the MOU of the above-identified concern.

I. Exclusive Public Employer

As required by the Charter Schools Act, the Charter specifies DMHA shall be deemed the exclusive public employer of the employees of the Charter School for the purposes of Educational Employment Relations Act (“EERA”).

J. Requirements for Grade-Levels Served, Facility Location, and Students Served

DMHA proposes to serve students in grades 6-12, starting with grades 6-7 in the first year of operation and increasing by grade levels thereafter.

K. 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.

Instead, the Charter provides only that “while we reserve the option to apply for a Proposition 39 co-location, our intent is to occupy a private facility in the Waterman Gardens community near the National CORE affordable housing complexes. We have identified several viable potential facilities, include space from Lady of Hope Catholic Church located at 1000 North Valencia Avenue, San Bernardino, CA 92410, or purchasing and building a new school to replace the closed down 99 cent store and vacant land adjacent at 1003 North Waterman Avenue, San Bernardino, CA 92410.” Notably, DMHA did not submit a Proposition 39 request for District facilities by the November 1, 2024, deadline for the 2025-26 school year. Thus, DMHA does not have any right to use any District facilities for the 2025-26 school year.

The District Staff believes this section includes a reasonably comprehensive description with the correction through the MOU of the above-identified concerns. Namely, DMHA must provide a lease or other contract that specifies when the proposed school will be able to occupy a school site and concurrently provide a certificate of occupancy for that specific site at least sixty days prior to the commencement of instruction.

IV. STAFF RECOMMENDATION

The District Staff reviewed DMHA’s Petition, utilizing the criteria for charter approval set forth in EC Sections 47605.

The District Staff recommends the District Board conditionally approve the request for approval of the Charter for a term of five years (July 1, 2025-June 30, 2030) on the condition and with the requirement imposed necessary for the sound operation of DMHA that DMHA and the non-profit corporation enter into an MOU on or before February 28, 2025, or such later deadline as may be agreed to by the District Superintendent or designee, that addresses to the District’s satisfaction each of Staff’s concerns, including, but not limited to, those identified and reviewed in this Staff Analysis, whether or not specifically recommended as conditions and requirements for approval to be consistent with current law and/or District’s best practices and expectations, as well as any additional conditions or requirements identified by the District Board, with the terms of such MOU to be to the District’s satisfaction, as consistent and necessary to DMHA’s sound operation as a charter school.

Staff further recommends that the District Board effectuate these actions by adopting the proposed resolution entitled: Board Resolution Conditionally Approving for a Term of July 1, 2025, Through June 30, 2030, the Charter for Dr. Margaret Hill Academy Charter School, and, Alternatively, Making Written Factual Findings Supporting Denial and Denying the Dr. Margaret Hill Academy Charter School Charter If the Requirements and Conditions Are Not Met.

V. CONCLUSION

The Board has three options for action regarding an initial charter submission:

- Option 1: Approve the Charter Petition.
- Option 2: Approve the Charter Petition with conditions and adopt a resolution conditionally approving the Charter. The action would result in the approval of the Charter Petition and require execution of a Memorandum of Understanding to address the concerns raised by the Staff and Board and establish appropriate timelines for the petitioners to meet the conditions as specified.
- Option 3: Deny the Charter Petition and adopt a resolution setting forth specific factual findings supporting the denial of the Charter Petition.