

**MT. DIABLO UNIFIED SCHOOL DISTRICT
RESOLUTION 11/12-25**

**RESOLUTION OF THE GOVERNING BOARD OF THE MT. DIABLO UNIFIED SCHOOL DISTRICT
DENYING THE CHARTER FOR THE
ESTABLISHMENT OF THE CLAYTON VALLEY CHARTER HIGH SCHOOL AND WRITTEN
FINDINGS IN SUPPORT THEREOF**

WHEREAS, the establishment of Charter Schools is governed by the Charter Schools Act of 1992, as subsequently amended, Education Code sections 47600 *et seq.* and implementing Title 5 of the California Code of Regulations;

WHEREAS, on or about June 8, 2011, the Mt. Diablo Unified School District (“District”) received the charter Petition (“Petition”) proposing the establishment of the Clayton Valley Charter High School (“Charter School”);

WHEREAS, consistent with Education Code section 47605 subdivision (b), at a meeting on August 9, 2011, the District’s Board of Education (“Board”) held a public hearing on the Petition, at which time the Board considered the level of support for the Petition by teachers employed by the District, other employees of the District, and parents/guardians;

WHEREAS, the intent of the Legislature in enacting the charter school laws were, among other things, to “[e]ncourage the use of different and innovative teaching methods” and to “[p]rovide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system”;

WHEREAS, approvals of charter Petitions are governed by the standards and criteria set forth in Education Code section 47605 and implementing Title 5 of the California Code of Regulations;

WHEREAS, Education Code section 47605 subdivision (b) prohibits the Board from denying a charter Petition unless it makes written factual findings, specific to the particular Charter School, setting forth facts to support one or more findings, which include:

1. The Petition does not contain the number of signatures required by Education Code section 47605 subdivision (a);
2. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition;
3. The Charter School presents an unsound educational program for the students to be enrolled in the Charter School;
4. The Petition does not contain an affirmation of each of the conditions described in Education Code section 47605 subdivision (d); or
5. The Petition does not contain reasonably comprehensive descriptions of all 16 elements required in Education Code section 47605 subdivision (b)(5).

WHEREAS, the Board convened on September 13, 2011, to consider whether to grant or deny the Petition and conditionally granted the charter provided that the petitioners satisfied all conditions by February 2012;

WHEREAS, the District's administration, with assistance from legal counsel, met periodically after September 13th with the petitioners and has reviewed and analyzed additional documentation provided by the latter to demonstrate that they had met the above-referenced conditions; and

WHEREAS, the District's administration has determined that several of the fiscal conditions have not been met; and therefore, recommends that the Board adopt the Findings of Fact, attached hereto as Exhibit "A" and incorporated herein by this reference, and deny the Petition.

THEREFORE, BE IT RESOLVED, that Board of Education of the Mt. Diablo Unified School District hereby denies the Petition to establish the Clayton Valley Charter High School and adopts the Summary of Findings of Fact, attached hereto as Exhibit "A".

APPROVED AND ADOPTED by the Board of Education of the Mt. Diablo Unified School District at the regular meeting of November 8, 2011.

AYES: _____

NOES: _____

ABSENT: _____

Steven Lawrence, Ph.D., Secretary

EXHIBIT "A"

SUMMARY OF FINDINGS OF FACT

THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION BECAUSE THEY HAVE PRESENTED AN UNREALISTIC FINANCIAL AND OPERATIONAL PLAN.

Findings regarding Financial Documents (version 6) submitted by the petitioners for Clayton Valley Charter High School on November 4, 2011, in response to the conditions set forth in Board Resolution #11/12 – 14 of September 13, 2011:

On September 13, 2011, the MDUSD Board of Education approved granting the petition for the formation of Clayton Valley Charter High School with various conditions, including several fiscal ones. Staff has reviewed the financial documents submitted by Marshall Mayotte of ExEd on behalf of Clayton Valley Charter High School to determine whether the conditions set by the Board of Education of the Mt. Diablo Unified School District have been met. As the budget is the school's business plan put to numbers and a tool for reaching its instructional goals, staff reviewed whether the financial statements now submitted support the information provided by the Charter School petitioners as to its operational plan, including the various changes received to the petition in the interim.

The petitioners and their fiscal representative have been most responsive in submitting revisions to the financial documents as they have identified issues and in response to items identified by the District. The petitioners did so during a time when the shifting sands of the State's financing of schools has been very trying for all in the District. In addition to the changes from the State, the petitioners have changed their intent with regard to the providing of various services during the course of the review of the financial statements. Further details of the changes will be delineated in the detailed section below.

As submitted on November 4, 2011, Iteration #6 of the financial documents for Clayton Valley Charter High School does not meet all of the conditions set by the MDUSD Board of Education on September 13, 2011.

The specific conditions as set forth in the Board's September 13, 2011, conditional approval are addressed below.

- (1) Submit evidence that the Charter School's budget supports longer instructional days, a summer program, no furlough days, and a comparable benefit package as stated in the petition.**

This condition has only been partially met.

During the course of discussion, the petitioners informed us that they would not be offering the summer program or extended day during the first year of operation. Between version 1 and 2 of the documents, Teacher Extra Duty & Stipends were decreased from

16.63% of teacher salaries to 10% of teacher salaries across all years of the multi-year projection. As various assumptions have changed between versions 2 and 6, the extra pay stipends have remained at 10% across all three years. Attached to one of the documents, the petitioners indicated that the 10% was for the implementation of longer day and summer program. However, if the costs are going to be incurred during 2012/13, when the program is not being offered, it is apparent that this line item must be covering some other expense. Adding one hour per day to the teacher workday approximates a 14.28% increase in time (from 7 hours to 8 hours per day). It may be that the school plans to negotiate a lower rate of pay for the extra hour per day, but this information has not been disclosed. Nor have sufficient details been provided by the petitioners addressing the staffing of the summer program to determine adequacy of the dollars budgeted to pay for the program. There are no additional costs for personnel in the second and third years of the multi-year projection to indicate the expansion of the program. The only increase appears to be step & column and inflation. It is unclear if there is a sufficient financial implementation plan for the elements of longer instructional day and summer program in the documents during any of the three years of the term of the petition. As such, either the underlying elements of the petition need to be modified if necessary, or the budget aligned to fully incorporate them. The cost of benefits projected appears reasonable to the cost of offering a plan similar in nature to the District's plan.

(2) Submit a budget and multi-year projections in the State's SACS or Charter School's alternative format

This condition has not been met.

While the petitioners have not complied with this element, the multi-year projections that have been submitted have included enough detail for the assessment to be done. As a matter of law, the adopted budget for the first year will have to be in the State's format.

(3) Eliminate revenue sources that are not applicable to the Charter School from revenue projections as identified in the District's staff analysis of the petition

This condition has only been partially met.

Many of the funding sources have been adjusted or eliminated pursuant to information provided during the initial review. In other cases, the school was able to show that it would be able to generate certain forms of revenue that the district had requested be excluded, such as a small allotment of Federal Title funding.

However, as mentioned above, the State's funding model for schools continues to shift. On November 3, 2011, the District received updated assumptions for use in multi-year projections from the Contra Costa County Office of Education with regard to fiscal years 2012/13 and 2013/14. These were shared with the charter school on November 4, 2011. At that time, the petitioners were asked to please review the guidance from the County to

be sure that all elements of the updated guidance were included in the final budget submitted. Later that day, the District received an email indicating that all elements of the First Interim guidance had been included. The County guidance included the following changes to the guidance we had previously received:

Assume no State funding for a COLA in 2012/13 or 2013/14.

Assume the mid-year trigger cuts currently in law for 2011/12 will continue as ongoing cuts for 2012/13 and 2013/14.

In reviewing the documents, the petitioners have correctly included no COLA in 2012/13. However, they have continued to include a COLA for 2013/14. Additionally, the mid-year trigger cuts at the High School District rate of \$300 per ADA have not been included in the revenue assumptions. This equates to overstating revenue by \$533,100 in 2012/13 and \$838,914 in 2013/14. Because the zeroing of the COLA in 2013/14 affects the baseline for calculating 2014/15 revenues, 2014/15 is overstated by either \$314,988 or \$848,088 if the trigger cuts also continue as ongoing. Since the county guidance is silent as to 2014/15 at this time, the District will not hold the charter to rolling the trigger cut forward beyond 2013/14 until the Governor's budget comes out in January and we know more about the specific form it will take, but the petitioners should be aware that it would require an increased level of funding of at least 8.08% to remove the trigger cuts and fund the COLA in 2014/15.

Additionally, the charter school informed the District during the course of discussion that they were changing a significant element of their petition with regard to Special Education. Rather than being a school of the District for the purposes of Special Education, they now intend to be a Local Educational Agency (LEA) under the El Dorado County Charter Special Education Local Plan Area (ChELPA). We have received correspondence from the ChELPA with regard to how much Special Education funding the new charter school would receive as a member of the ChELPA and its timing. The ChELPA informs us that the new school will receive \$415.65 per unit of P2 ADA. The school will receive its first apportionment at the P-1 Certification in February. While the cash flow effects of this will be discussed further below, the revenue will be discussed here. The petitioners have included Special Education revenue of \$826,854. At \$415.65 per ADA, the charter will receive \$738,610. Therefore, revenue in year one is overstated by \$88,244. The charter then assumes a 37% increase in Special Education funding between year 1 and year 2 of the multi-year projection with no explanation as to how this increase would come about. Utilizing no COLA for 2013/14 and a flat number of ADA, the revenue would again be \$738,610. Therefore, revenue is overstated in 2013/14 by \$394,317. In 2014/15 the charter projects a 0% increase, but bases funding on the higher number of 2013/14. Again in 2014/15 this leaves revenue overstated by \$394,317.

As a result of the above, revenue is overstated in the following amounts by fiscal year:

2012/13 \$621,344

2013/14 \$1,233,231

2014/15 \$709,305 or \$1,242,405 if the mid-year trigger cut problem continues to be ongoing

- (4) Submit a financial plan that demonstrates it will have: Adequate cash to meet each month's operating expenditures, with no months indicating the school will be in a negative cash position**

This condition has not been met.

While the documents submitted do not indicate any months with a negative cash balance, and it initially appeared that this condition may be met, upon further analysis, we find that it is not met. As mentioned above in section (3), the school will not begin receiving special education apportionments until after the P-1 certification in February 2013. In analyzing cash for 2012/13, the school has included special education funding beginning in August 2012. Subtracting out those funds that will not appear until February 2013, the school goes into a negative cash position in November 2012 (\$61,063), December 2012 (\$125,220), and January 2013 (\$97,028). This is before taking into account the general purpose revenues and special education revenues overstated as identified in item (3) above. Once those are taken into account, there are also negative cash in the following months: June 2013, July 2013, September 2013, June 2014, July 2014, August 2014, September 2014, November 2014, December 2014, May 2015, and June 2015. This condition shows why the Federal Crisis Management Assistance Team keeps reminding schools and districts that "cash is king". The school is able to have the minimum 3% reserve in its projected ending balances in each of the three years of the projection, yet has significant cash issues even when including a multi-million dollar line of credit.

- (5) Submit a breakdown of all FTE by job type linking all FTE to line items in the budget**

This condition has not been met.

This condition had been met in previous budget submissions, but was not met in the final budget submitted to the District. In the final budget submitted to the District, the petitioners, via Marshall Mayotte of ExEd, indicated the budget had been changed with the following explanation: "I added the cafeteria outsourcing option into the scenario, which eliminates the loss we had built in the previous versions of the financials. Please note that no one has decided to outsource cafeteria yet."

The financial statements submitted indicate the elimination of food services positions, although the positions were still included on the list of FTE. Staff is unable to calculate which positions were eliminated to tie back to the numbers. Staff anticipated an increase in the budget for cost of food in object 4700, as purchasing from an outside source would likely be more expensive than buying raw ingredients and making the food in-house. Staff also anticipated an increase in the budget for Services and Other Operating

Expenditures (object 58xx) for the cost of the contract for the outsourced food workers who would serve the students. While the increase in the cost of food was included in the budget, the cost of the outsourced food workers was not. With the FTE eliminated, but no replacement workers incorporated into the budget it is unclear how the food will be served to the students.

A previous iteration of the financial statements indicated that custodial work would also potentially be outsourced. As of this budget submission, the custodians are still included in the FTE and it is assumed by the District that the school will not be outsourcing custodial services at this time. However, the school has indicated they are reserving the right to outsource this at a later date. Such a change will require an update to the financial statements and the school has been advised accordingly.

(6) A fiscal recovery plan to address the cash shortfall in the existing projection and loss of miscounted revenues

This condition has not been met.

While the various iterations of the budget have made progress in meeting this condition, as identified in items (3) and (4) above, this condition is not yet met.