

**DAVIS JOINT UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 43-14**

Resolution of the Board of Trustees

to Deny the Petition to Establish

the “Montessori Charter School of Davis” Charter School

WHEREAS, a petition for grant of a charter is governed by the standards and criteria set forth in Education Code section 47605; and

WHEREAS, on or about March 6, 2014, lead petitioner Jonathan Feagle (“Petitioner”) submitted a petition (“Petition”) and supporting documentation to the Davis Joint Unified School District (“District”) for the grant of a charter to establish the “Montessori Charter School of Davis” charter school (“Charter School”); and

WHEREAS, a public hearing to determine the level of support for the Petition by teachers, other employees of the District, and parents/guardians was held before the District’s Board of Trustees (“Board”) on April 7, 2014 consistent with Education Code section 47605(b); and

WHEREAS, the Petition is now before the Board for final action at a public meeting taking place within sixty (60) days of receipt of the Petition, in accordance with Education Code section 47605(b); and

WHEREAS, in reviewing the Petition to establish the Charter School, the District’s Board of Trustees is cognizant of the intent of the Legislature that charter schools are, and should become, an integral part of the California educational system, and that establishment of charter schools should be encouraged; and

WHEREAS, the Superintendent, and/or his designees, have reviewed the Petition and supporting documentation submitted by Petitioners.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Trustees of the Davis Joint Unified School District, having fully considered and evaluated the Petition for grant of a charter for the establishment of the Charter School, hereby denies the Petition as not consistent with sound educational practice based upon the following findings:

A. The Petition does not contain reasonably comprehensive descriptions of all of the elements prescribed by law. [Ed. Code § 47605(b)(5).]

B. The Petition presents an unsound educational program for the pupils to be enrolled in the Charter School. [Ed. Code § 47605(b)(1).]

C. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. [Ed. Code § 47605(b)(2).]

D. The Petition does not contain an affirmation of each of the conditions described in subdivision (d). [Ed. Code § 47605(b)(4).]

BE IT FURTHER RESOLVED AND ORDERED that the Board of Trustees of the Davis Joint Unified School District hereby determines the foregoing findings are supported by the following specific facts:

THE PETITION DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF ALL OF THE ELEMENTS PRESCRIBED BY LAW.

[Ed. Code § 47605(b)(5)]

1. Educational Program. [Ed. Code § 47605(b)(5)(A)(1).] The description of the Charter School's educational program is not reasonably comprehensive based on numerous reasons including, but not limited to, the following:

(A) Instructional Minutes and School Calendar. The Petition is internally inconsistent with respect to the number of instructional days students are to receive which results in the instructional minutes calculations to be uncertain. For example, in the narrative paragraph on page 105 describing the Academic Calendar, the Petition states that the Charter School will offer 197 days of instruction with 45 being minimum days. On the same page, Table 15 presents the instructional days in graphical form by month, and states there will be 190 instructional days with 41 of them being minimum days. The Petition states students in Transitional Kindergarten and Kindergarten will receive 300 instructional minutes per full school day and 240 instructional minutes per minimum day, while students in grades 1-6 will receive 330 instructional minutes per full school day and 210 minutes per minimum day. Assuming there are in fact, 190 instructional days, the number of instructional minutes per student would meet the minimums set forth in Education Code section 47612.5(a)(1). However, the Petition also states that lead teachers have "every other whole Friday for preparation, development, team meetings, and other activities of professional teachers." The Petition appears to call these days "Enrichment Days" and states there are 23 of them. If lead teachers are not engaging in instruction on those days, then they cannot count as instructional days for purposes of apportionment and the "instructional" minutes attributed to those days cannot count towards the instructional minute minimums required under Education Code section 47612.5(a)(1). Subtracting those minutes from the totals for each grade-level group, leaves the 1st-3rd grade groups 210 minutes short of the minimum (50,190 minutes instead of 50,400 minutes), and the 4th-6th grade groups 3810 minutes short of the minimum (50,190 minutes instead of 54,000 minutes).

2. Governance Structure. [Ed. Code § 47605(b)(5)(D).] The description of the Charter School's governance structure is not reasonably comprehensive.

(A) Non-Profit Corporation. The Petition states the Charter School will be operated by the "Whole Child Education Foundation" ("WCEF"), a California nonprofit public

benefit corporation. The Petition states that the Charter School will be governed by the WCEF Board of Trustees. The WCEF's Bylaws state the "number of trustees shall be no less than five (5) and no more than twelve (12)." Petitioner's failure to clearly establish a defined number of trustees on the WCEF Board would likely be problematic because the public would not be aware of how many votes were necessary to take action or adopt policy if the number of WCEF Board members fluctuated between the minimum and maximum allowed by the WCEF's Bylaws.

(B) Conflicts of Interest. The Petition states the Charter School "shall adopt a conflicts code which shall comply with the Political Reform Act, Government Code section 87100, and applicable conflict restrictions required by the Corporations Code and/or any Charter School specific conflict of interest regulations adopted by the State Board of Education." This requirement is also found in the WCEF Bylaws.

The Political Reform Act requires public agencies to adopt and promulgate a conflict-of-interest code. Government Code section 87302(a) provides that a conflict of interest code must contain "specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest." With respect to each such position, the conflict of interest code is required to list the "disclosure categories" which are the specific types of investments, interests in real property, and income that must be disclosed. Nevertheless, despite its commitment to adopt a conflicts code in both the Petition and in the Bylaws, the Petition does not contain the conflict of interest code listing the WCEF and Charter School officers and employees who must disclose financial interests, nor does it contain the disclosure categories which must be reported.

The Petition does not state that WCEF and the Charter School are willing to abide by the conflict of interest provisions of Government Code section 1090. Government Code section 1090 prohibits members of public agencies' governing boards from having a direct financial interest in any contract entered into or approved by the governing board, regardless of whether the board member's financial interest is disclosed and the board member does not participate in the decision. Contrary to the strict prohibition of section 1090, the WCEF Bylaws allow contracts in which Trustees have a financial interest, so long as they declare their interest and recuse themselves from participating in the vote on the contract. This disclosure does not cure violations of Government Code section 1090.

(C) School Director. The Petition does not specify whether a School Director has been hired or appointed. Given that the Charter School expects to begin operations in the 2014-2015 school year, it is imperative that a leadership team be already in place.

3. Employee Qualifications. [Ed. Code § 47605.6(b)(5)(E).] The description of the Charter School's employee qualifications is not reasonably comprehensive. The Petition does not require the Charter School's Director to have a valid California Administrative Services credential. However, the "Duties of School Director" listed in the Petition demonstrate that in order to run a successful school, the Director must have extensive administrative experience.

4. Dispute Resolution. [Ed. Code § 47605(b)(5)(N).] The Petition's description of the procedures to be followed by the Charter School and the District to resolve disputes related to the charter are not reasonably comprehensive. The Petition states the parties should attempt to

resolve disputes amicably and reasonably. While the procedure as set forth in the Petition would attempt to resolve disputes informally, final resolution is ultimately left to “any available remedies under the law.” This phrase is both vague and allows for potential drawn out litigation between the parties and provides no assurances of finality in the process within a reasonable amount of time.

The Petition does not provide any information regarding its procedures to resolve internal disputes including notice to the District of any internal dispute between the Charter School and students, parents, etc., of matters within the Board’s oversight responsibilities. In fact, the Petition states: “The School will not, at any time, refer internal complaints to the District.” This would impede the District from properly exercising its oversight responsibilities and thereby safeguard its immunity from liability under Education Code section 47604(c). In order to exercise such oversight responsibilities, the District must be made aware of any serious complaints, especially those involving claims of discrimination, harassment, and bullying, to monitor whether they are being properly investigated and resolved.

5. Facility Location. [Ed. Code § 47605(a)(1) and (g).] The description of the site and/or facility to be used by the Charter School is not reasonably comprehensive. The Petition fails to identify and provide specific information regarding the proposed location of the Charter School and the facility to be utilized by the Charter School as required by Education Code sections 47605(a)(1) and (g), other than to state it will be located in the District and provide a general geographic location within the District. The Petition does not provide any specific information regarding a location for review, including, but not limited to, lease agreements and other documentation regarding the sites’ compliance with legal requirements (e.g., fire life safety, handicap accessibility, building code requirements, etc.). Education Code section 47605(g) states, in relevant part, “The description of the facilities to be used by the charter school shall specify where the school intends to locate.”

6. Operational Budget And Financial Statements. [Ed. Code § 47605(g).] The operational budget and financial statements for the Charter School are not reasonably comprehensive.

(A) Projected Enrollment/ADA. The Petition does not provide any documentation to support its projected enrollment of “120” students in the 2014-15 school year, with projected growth of 36 students per year thereafter. The Petition fails to provide any documentation to support these projections.

(B) Funding Overstated And/Or Expenditures Unsupported. The presumed cash-flow analysis does not appear to be complete or accurately identify funding sources which appear overstated. In addition, some of the listed expenditures are inconsistent with District experience and/or calculations. With respect to start-up costs, since the Petition fails to identify a specific location for the charter school facility, it is impossible to determine whether the cost assumptions for the facility on which the five-year operating budget is based are reasonable. The Petition also fails to take into account the specific costs associated with equipping a Montessori classroom. Such start-up costs per classroom for the full complement of Montessori materials can range from \$17,000 to \$25,000 per classroom. Based on the Petition’s first-year student projections, such costs for materials would total between \$85,000 and \$125,000 in the first year

alone. No allocation for such costs appears to have been made. With respect to Special Education encroachment costs, the Petition's expenditure estimations of \$400 per student are 55% less than the District's actual costs per student. Finally, the budget allocation for legal expenses at \$5,000 for the first year, and \$2,000 in subsequent years is unrealistically low, especially when the expenditure remains constant as the Charter School's enrollment is projected to increase.

The budget documents do not include any information to support projected federal grants and local sources. Additionally, the proposed budget's cash flow lists a beginning cash receipt of \$120,000 during the first month but fails to identify the source of these funds anywhere in the budget documents. Since the source of these funds is unknown, the District cannot evaluate whether their inclusion in the budget is reasonable. With respect to the cash-flow analysis, the three-year cash flow is dependent on one-time sources such that any shortfalls in revenue or overages of expenditures of a combined \$56,000 (or -2%) annually will create a negative cash flow situation.

7. Affirmations. [Ed. Code § 47605(d)(1).] The Petition does not contain valid affirmation of each of conditions described in Section 47605(d)(1). While, the Petition contains the required assurances, including that the Charter School will be nonsectarian in its programs, admissions policies, employment practices, and all other operations, shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability, and shall not charge tuition. This latter affirmation regarding tuition is called into question by the description of the Academic Calendar, in the Petition which contains language suggesting otherwise.

The Academic Calendar section at page 105 of the Petition states that the Charter School will have twenty-three (23) "Enrichment Days" within the Academic Calendar. It appears that these 23 "Enrichment Days" are encompassed within and included in the instructional days offered by Charter School and upon which its funding would be based. However, the Petition states that these Enrichment Days "are offered as an additional service" and that "a small fee to cover the expense of the program may be charged." If the Charter School counts those days as instructional days for purposes of its academic calendar and to claim apportionment funding, then it may not charge students a fee to attend on those days. Such a charge would be an impermissible pupil fee in violation of the California Constitution's free school guarantee. Given, that the Petition is unclear with respect to this issue, the required affirmation that the Charter School will not charge tuition has not been made.

**THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY
IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION**

[Ed. Code § 47605(b)(2)]

8. The specific findings of fact set forth in paragraphs 1 through 6, above, are re-alleged and incorporated herein by reference. Said specific facts evidence that Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition.

**THE PETITION DOES NOT CONTAIN AN AFFIRMATION OF EACH OF THE
CONDITIONS DESCRIBED IN SUBDIVISION (D)**

[Ed. Code § 47605(b)(4)]

9. The specific findings of fact set forth in paragraphs 1 through 8, above, are re-alleged and incorporated herein by reference. Said specific facts evidence that the Petition does not contain an affirmation of each of the conditions described in subdivision (d)

PASSED AND ADOPTED this 1st day of May, 2014 by the Board of Trustees of the Davis Joint Unified School District by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

President of the Governing Board
Davis Joint Unified School District

CERTIFICATION

State of California)
) ss.
County of Yolo)

I certify the above is a true copy of a Resolution adopted by the Board of Trustees of the Davis Joint Unified School District at a regular meeting on Thursday, May 1, 2014.

Dated: May 1, 2014

BOARD OF TRUSTEES OF THE
DAVIS JOINT UNIFIED SCHOOL DISTRICT,
COUNTY OF YOLO,
STATE OF CALIFORNIA

By: _____
Winfred Roberson,
Superintendent