

## **California Department of Education Findings Related to a Petition to Establish the School of Arts and Enterprise**

### **Background**

On April 16, 2002, the California Department of Education (CDE) received a request from the petitioners of the School of Arts and Enterprise (SAE) to authorize a charter school proposed to be located in the Pomona area of Los Angeles County. The petition to establish the charter school was denied by the Pomona Unified School District on January 8, 2002. The petition was not submitted to the Los Angeles County Office of Education.

Pursuant to *Education Code* Section 47605(j), if a governing board of a school district or county office of education denies the petition for the establishment of a charter school, the petitioner may submit the petition directly to the State Board of Education (SBE). The SBE must evaluate the petition according to the criteria and procedures established in law and may only deny the petition if it provides written findings addressing the reasons for the denial. The reasons for denial are limited to the following:

- (1) The charter school presents an unsound educational program
- (2) The petitioners are demonstrably unlikely to successfully implement the program
- (3) The petition does not contain the required number of signatures
- (4) The petition does not contain an affirmation of specified assurances
- (5) The petition does not contain reasonably comprehensive descriptions of 15 required elements of a charter

In addition to consideration of the above stated reasons for denial, a charter-granting agency must hold a public hearing to consider the level of support for the petition by teachers, district employees and parents.

The CDE Charter School Review Team included representatives from the following divisions: School Fiscal Services, Special Education, Professional Development and Curriculum Support and the CDE Legal Office. The review team reviewed the charter petition according to the requirements of law, *California Administrative Code* regulations and CDE procedures for reviewing charter petitions that have been previously denied by a local agency. Attachment 2 contains a checklist with a brief summary of findings related to each of the required elements of the SAE charter petition.

This petition was granted a public hearing and considered by the Advisory Commission on Charter Schools (ACCS) on August 22, 2002. At that meeting, the CDE staff analysis was presented to Commission members and the petitioners provided both written and verbal responses to the CDE findings. The Commission voted 7-1 to recommend approval of the charter petition, with conditions, to the State Board. The following analysis presents findings and concerns, which CDE believes provide sufficient justification for the SBE to deny the petition.

**Finding 1: The SAE charter may present an unsound educational program for students enrolled in the school.**

This charter petition proposes to establish a high school with an arts focus that will serve grades 9-12 eventually. The school expects to open in the fall of 2003 with approximately 120 students and will grow to about 480 students by the fourth year. The school anticipates serving a largely Latino population in the Pomona area that has been historically underachieving. About 60% of all students are English Language Learners (ELL) and over one half of students attending area schools are estimated to be from socio-economically disadvantaged families. SAE proposes a college preparatory academic program with arts and entrepreneurial skills focus. The curriculum will be based on state content standards and will be almost entirely project-based, with after-school programs, placements and internships. The petitioners state that the International Polytechnic High School operated by the Los Angeles County Office of Education has been highly influential in the development of the instructional approach being proposed by the SAE. The school will use the Accelerated Schools model as a foundation for organizing the school.

The charter petition appears to have a strong theoretical foundation and it is evident that the petitioners have spent considerable time reviewing educational theories and research. SAE proposes an ambitious program that will draw a largely Latino and underachieving student population. The petitioners seem to understand whom the target population is that they are trying to reach. Although the petitioners seem well grounded in research and best practices, the petition contains no description of course content for any subject matter or grade level. The petition does state that the academic curriculum will be submitted for UC approval. The petition is also unclear about how many students SAE is projecting to serve and in which grade levels this first year. For example, the charter petition states that the school anticipates an opening enrollment of "120 students in two classes of each grade with a student-to-teacher ratio of 20:1." However, the budget indicates that the school will begin with 160 students in grades 9 and 10, with approximately 27 students in each class. The petitioners verbally indicated at the ACCS meeting in which this petition was considered that the school intends to open with approximately 160 9<sup>th</sup> grade students in the fall of 2003.

The petition also indicates that the long-range plan for the school is to open a sister high school campus with a greater emphasis on math and science and an elementary and middle school. If the State Board approves this petition, we would recommend language be inserted in the petition prohibiting the school from opening new schools or satellite campuses without prior approval of the State Board.

The petitioners seem to have an academic grasp of how the school will meet the needs of English Language Learners (ELL). For example, the school will attempt to hire Bilingual Cross-cultural Language and Academic Development (BCLAD) certified teachers and will implement Specifically Designed Academic Instruction in English (SDAIE) to ensure students have access to content area curriculum. SAE will also collaborate with local universities to provide teachers with professional development opportunities designed to increase their level of understanding of language acquisition stages and effective instructional practices to accelerate achievement of ELL students.

The petition does not specifically address how it will meet the needs of students, other than ELL students, who are not performing at grade level. SAE intends to offer an after school program five

days a week. However, from the description of the program, it appears that most of the activities are enrichment rather than remedial. The school will offer a summer school program that will focus on academic skills. However, experience with other State Board charters, and given the population SAE expects to serve, it is likely that a large number of students will enter the school reading and performing mathematics at below grade level. It is not clear what programs or structures the petitioners have developed in anticipation of this problem.

Finally, of greatest concern is the petitioners' apparently limited understanding of the law and operational aspects of conducting a special education program. The charter petition states that SAE "shall seek to be deemed a public school of the LEA of the district or county office of education depending on origin of the majority of our students." Further, the school proposes to contract with Total Education Solutions (TES) for the first year to provide all of the required special education services and has attached a sample of the boilerplate TES contract. However, TES is not authorized to provide the full range of services necessary for the school to operate a compliant special education program. It is also unclear from the petition whether SAE has contacted a SELPA for information regarding the application process and timeline for becoming a member. The petition indicates that in subsequent years, SAE may work with the district rather than TES for the provision of special education services. However, there is no indication that the district would be willing to provide services.

In summary, it is not clear that the petitioners understand the school must operate within a SELPA structure. In general, we are concerned about the absence of explanation of how students with disabilities will be served in the general education program; the supplementary aides and services available to support students; how special education students will be identified and assessed; the lack of a continuum of services and program options for students with disabilities; and the lack of due process provisions for these students in disciplinary proceedings.

We note that the petitioners provided additional written material from the East San Gabriel Valley SELPA and in their testimony before the ACCS, the petitioners indicated they had spoken with the SELPA director about the process and timelines for applying for SELPA membership.

In conclusion, as a result of the deficiencies and lack of information noted above, we cannot conclude that the petitioners present a sound program that is likely to be of educational benefit to students who may attend the school.

**Finding 2: The petitioners may be unlikely to successfully implement the program**

The Haven Gallery, the non-profit 501(c)(3) organization sponsoring SAE, was established for the purpose of advancing minority and local artists in the visual and performing arts in the Pomona area, and has apparently been involved in the Arts Colony in downtown Pomona since 1993. The Haven Gallery has assembled a broad-based planning team to develop this charter petition. One member of the team has had experience in the administration of a high school; other members are teachers and university faculty members, artists and business leaders. In addition, one member of the board has also participated as a founding board member for two other successful charter schools in the Los Angeles area, The Accelerated School and View Park Preparatory Accelerated Charter School. The school appears to have strong collaborations with community groups such as the local universities, the YMCA, and local business groups and is proactively seeking relationships with other organizations.

The SAE petition proposes to expand the current Board of Directors from five to nine members and will incorporate the Accelerated School Governance Model, which largely involves everyone at the school participating in the governance of the school. The school will operate through a series of cadres, a site council and the School As a Whole. The Board of Directors will include, among others, a parent representative, faculty representative and the Director of SAE. We have some concerns about potential conflict of interest that may arise when employees of the school are also board members. If the State Board approves this charter, we would recommend that the composition of the board be revised to include a teacher or educator who is not an employee of the school. This is consistent with State Board requirements of other State Board-approved charter schools. We would also recommend that the director of the school be an ex officio, non-voting member. Finally, a representative from the Pomona USD is proposed for the board. We would recommend that this representative be replaced with a voting representative of the State Board consistent with previous State Board actions on other charter schools.

The ACCS, at its August 22, 2002 meeting, disagreed with the CDE recommendation that employees of the school be removed from the governing board, and voted to exclude this CDE recommendation from its recommended condition of approval # (h) on page 10 of this analysis. The ACCS members felt that the by-laws of the nonprofit entity provided adequate protection from conflicts of interest and that board members need only recuse themselves when a potential conflict arises. Both the State Board's Chief Counsel and the CDE Legal Office have advised staff that school employees should be excluded from governing boards; therefore, we disagree with the ACCS on this point and continue to recommend that SAE employees be excluded from the school's governing board.

SAE will contract with Excellent Education Development (EXED) for the first year of operation to handle all the business operations of the school, including attendance accounting. Thereafter, the school will review the contract on a yearly basis.

Given the history of involvement of the petitioners in other successful schools, the expertise that apparently has been assembled in the planning team, the number of community collaborations and the proposed adoption of a governance structure that has been successfully implemented elsewhere, we have some level of confidence that the petitioners are likely to be successful in the implementation of the school.

We do have concerns with regard to exactly what facilities will be used for the school. A letter of support from JEVED Management, Inc. (included with the charter petition) indicates that this organization is prepared to "gift or gift-lease" the Historic Wurl Building within the Pomona Arts Colony to the school. Pages 93-94 of the petition describe facilities as being located on 2<sup>nd</sup> street and at 401 Main Street. Presumably one of those is the Wurl Building. The petition also describes various studios and galleries where classes may be held and some space at the Western University of Health Sciences. This needs to be clarified. There is a potential concern about the safety of students going to classrooms located in various areas of the community, as well as the adequacy of the facilities. The petitioners have indicated, in their verbal testimony before the ACCS, that the facility at 401 Main Street is the facility in which "core classes" will be held.

We note that the petition contains inappropriate or technically incorrect references to the SBE as the chartering entity. For example, of greatest concern are those provisions on page 90 that state

SAE will notify the SBE if it wishes to opt for local rather than direct funding, and pages 92-93, which state that SAE will work with the SBE to set up a meal delivery program. There are other references to the SBE and the Pomona Unified School District that are technically incorrect and should be deleted from the petition.

Finally, we note the following concerns with the budget projections:

- The cash flow document assumes receipt of a total of \$350,000 in federal and state grants by October 2002. Assuming SAE is awarded the entire amount, it may be unrealistic to expect receipt of the entire amount by October.
- The budget contains the 1% fee for oversight by the charter-granting agency; however, the amount budgeted for oversight is under budgeted in all years for which projections are provided.
- \$155,000 is budgeted for a Director/Dean of Curriculum in the first year, increasing to \$163,000 by year three. It is unclear whether this is for one or two positions. The narrative does not mention a Dean of Curriculum. Subsequent written material submitted by the petitioners indicate that these are two separate positions. However, there is no description of the responsibilities of the Dean of Curriculum or how the position fits into the overall structure of the school.
- The budget indicates that the school will be funded for special education students at \$385 per ADA in the first year, increasing to \$405 per ADA in year three. Encroachment is projected at \$385 per ADA. Since SAE is not in a SELPA at this time, it is difficult to determine if these amounts are realistic. Subsequent information provided by the petitioners, based on information from the East San Gabriel Valley SELPA director, now estimates that the school will be funded at about \$530 per student.

While we believe the petitioners appear to have a good track record of involvement with other successful charter schools and they seem to have developed collaborative relationships with other organizations in the community, based on our concerns noted above, we cannot categorically conclude without additional information that the petitioners have a realistic financial and operational plan for the proposed school and are, therefore, demonstrably likely to successfully implement the program proposed in the charter petition.

**Finding 5: The SAE petition may not fully comply with Education Code Section 47605 which requires a reasonably comprehensive description of each of 15 elements required to be included in a charter. The review team noted specific concerns related to many elements under Sections 47605(b)(1)(A-O) which are discussed below.**

*Element A: A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an “educated person” in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.*

We have some concerns with the general educational program as described in Finding 1. Of particular concern is the lack of detail regarding how students with disabilities, and other special needs students, will be served in the general program; the supplementary services available to support students; and the absence of a continuum of services and program options for students with disabilities. The petitioners appear to have a limited understanding of the school's responsibilities under the law for special education students.

***Element B: The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.***

The measurable pupil outcomes for the school are a mix of content specific outcomes (for example, in science, each student will "know the scientific method of inquiry and observation") and specific goals for the school (increase standardized test scores of 50% of students above the 60<sup>th</sup> percentile statewide), but the petition does not provide detail about the desired level of performance for the content specific outcomes or a means to determine whether students are making satisfactory progress. Page 35 of the petition indicates that SAE has clearly defined what students should know in each subject at each grade level. However, this information is not part of the petition. Additional clarity on not only what will be measured, but also the level of knowledge or skill expected would be useful.

***Element C: The method by which pupil progress in meeting pupil outcomes is to be measured.***

Some of the language used in the Project Assessment on pages 39-40 of the petition is vague and somewhat ethereal. For example, some of the project dimensions mentioned in this part of the charter are "activity systems," "zones of proximal development" and "focus on sign systems." These concepts need more exposition in order to determine whether they do, in fact, contain credible methods to measure pupil progress. And, to the extent that the charter is a living document that may be referred to by parents and other members of the public not necessarily steeped in educational theories, it would be useful to change some of the language to convey in a more user-friendly manner the concepts described here.

***Element D: The governance structure of the school, including but not limited to, the process to be followed by the school to ensure parental involvement.***

Our concerns are discussed under Finding 2 and generally concern the potential conflict of interest that may arise if school employees are also members of the governing board.

***Element F: Procedures to ensure the health and safety of pupils and staff, including criminal records summary.***

The charter petition states that SAE will adopt and implement a comprehensive set of health, safety, and risk management policies in consultation with the school's insurance carriers. The petition does contain preliminary policies regarding the dispensing of medications, fire and disaster drills, bomb threats, and evacuation plans. However, there is no indication that SAE will provide for the screening of student's vision and hearing and for scoliosis.

***Element I: The manner in which an independent annual financial audit is to be conducted.***

The petition states that SAE Board of Directors will work directly with EXED, the school's contracted management firm, to prepare necessary accounting information and reports for the auditors, and to resolve audit deficiencies. The charter indicates that the auditor selected would be a qualified Certified Public Accountant familiar with school finances and operations. The petition needs to clearly state that a copy of the annual independent audit will be sent to both the SBE and the California Department of Education by December 15 of each year in accordance with law.

***Element J: The procedures by which pupils can be suspended or expelled***

The SAE charter petition indicates that the school will develop, maintain and implement a comprehensive set of student discipline policies that will be reviewed with students and parents when students are admitted to the school and again upon the signing of the parent/student contract. The petition contains preliminary policies regarding the reasons for suspension and expulsion (which follow Education Code Section 48900), processes for suspension and expulsion, and appeals to suspensions or expulsions. There are two concerns with these procedures: (1) the charter does not provide for any differentiated suspension and expulsion procedures for students with disabilities, and (2) it appears that students may be suspended or expelled for "repeated violations of academic expectations." We question the educational appropriateness of this provision and, if the SBE approves this charter, we recommend that this provision be deleted from the charter.

***Element L: The public school attendance for pupils residing in the school district who choose not to attend charter schools.***

This section of the charter needs to specify, in accordance with the regulations governing the review of this petition, that the parent or guardian of each pupil enrolled in the charter school shall be informed that the pupil has no right to admission in a particular school or program of any local education agency as a consequence of enrollment in the charter school, except to the extent that such a right is expended by the local education agency.

***Element M: A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.***

If the SBE approves this charter, we suggest clarifying language be added to this section that specifies that an employee of the charter school shall have the following rights: (1) any rights upon leaving the employment of an LEA to work in the charter school that the LEA may specify; (2) any rights of return to employment in an LEA after employment in the charter school as the LEA may specify; and, (3) any other rights upon leaving employment to work in the charter school and any rights to return to a previous employer after working in the charter school that the SBE determines to be reasonable and not in conflict with any provisions of law that apply to the charter school or to the employer from which the employee comes to the charter school.

***Element N: The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter***

The charter contains language that limits the intervention by the SBE in internal disputes without the consent of the Board of Directors of the Haven Gallery. However, this provision is contrary to the oversight agreement under which the school will operate which allows the SBE to intervene at its discretion if it believes its fundamental interests are at stake. If the SBE approves this petition, we recommend language that limits SBE intervention be eliminated.

Further, this section on disputes should be amended to incorporate the following language: (1) describe how costs of the dispute resolution process, if any, would be funded; (2) acknowledge that because the SBE is not a local education agency, it may choose to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter; and, (3) provide that if the SBE intends to resolve a dispute directly, it must first hold a public hearing to consider arguments for and against the direct resolution of a dispute.

**Summary and Recommendation**

The petitioners are to be commended for their desire and efforts to reach underachieving students, their strong theoretical foundations, and previous work with other successful schools and their collaborations with community partners. Our review of this charter petition indicates that it is lacking sufficient detail in some areas and, as such, we cannot, without reservation, conclude that the charter would result in a successful school. In this report we have noted some areas of concern and areas where the information appears insufficient.

Based on concerns raised in Findings 1,2, and 5 above, we conclude that the SBE has sufficient justification to deny the petitioner's request to approve the SAE charter. At a minimum, we believe that the petition would need further clarification or revision consistent with our findings. The ACCS is recommending conditional approval of this charter.

**Conclusion**

The SBE has three options related to this charter:

- 1) Approve the charter petition. If the SBE approves the charter, the school will be authorized to operate and the SBE will become the responsible oversight entity for the school unless the SBE, by mutual agreement, delegates that responsibility to another local educational agency in Los Angeles County.

If the SBE wishes to approve the charter, we recommend along with the ACCS that it be a conditional approval with the understanding that the school shall not be authorized to operate and approval of the charter is terminated unless the following conditions are satisfied. We note that the ACCS recommended conditions of approval differ from CDE's in one area. In condition (h) the ACCS recommends that language be added to require the petitioners to address all concerns identified by CDE staff, ***except the CDE staff recommendation regarding composition of the SAE governing board.*** This issue is described under Finding 2. With that exception, we are in accord with the ACCS recommendations on the following conditions of approval:

(a) Not later than May 1, 2003, (or such earlier time as SAE may employ individuals or acquire or lease property or facilities for which insurance would be customary), submit documentation of adequate insurance coverage, including liability insurance, which shall be based on the type and amount of insurance coverage maintained in similar settings.

(b) Not later than January 1, 2003, either (a) accept an agreement with the State Board of Education (administered through the California Department of Education) to be the direct oversight entity for the school, specifying the scope of oversight and reporting activities, including, but not limited to, adequacy and safety of facilities; or (b) enter into an appropriate agreement between the charter school, the State Board of Education (as represented by the Executive Director of the State Board), and an oversight entity (pursuant to Education Code Section 47605(k)(1)) regarding the scope of oversight and reporting activities, including, but not limited to, adequacy and safety of facilities.

(c) Not later than February 1, 2003, submit written verification of having applied to a special education local plan area (SELPA) for membership as an local education agency and, not later than June 1, 2003, submit either written verification that the school is (or will be at the time students are being served) participating in the SELPA, or an agreement between a SELPA, a school district that is a member of the SELPA, and SAE that describes the roles and responsibilities of each party and that explicitly states that the SELPA and the district consider SAE's students to be students of the school district in which SAE is physically located for purposes of special education programs and services (which is the equivalent of participation in the SELPA). Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the State Director of Special Education.

(d) Not later than January 1, 2003, submit a description of the curriculum development process the school will use and the scope and sequence for grades 9-12 envisioned by the school; and, not later than July 1, 2003, submit the complete educational program for students to be served in the first year (anticipated to be grade nine students only), including, but not limited to, a description of the curriculum and identification of the basic instructional materials to be used, plans for professional development of instructional personnel to deliver the curriculum and use the instructional materials, identification of specific assessments that will be used in addition to the results of the Standardized Testing and Reporting (STAR) program in evaluating student progress, and a budget which clearly identifies the core program from enrichment activities and reflects only those loans, grants, and lines of credit (if any) that have been secured by the petitioners. Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Deputy Superintendent for Curriculum and Instructional Leadership.

(e) Not later than May 1, 2003, submit for approval the specific means to be used for student attendance accounting and reporting that will be satisfactory to support state average daily attendance claims and satisfy any audits related to attendance that may be conducted. Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Fiscal Services Division.

(f) Not later than January 1, 2003, present a written agreement (a lease or similar document) indicating SAE's right to use the principal school site identified by the petitioners for at least the first year of the school's operation and evidence that the facility

will be adequate for the school's needs. Not later than June 1, 2003, present a written agreement (or agreements) indicating SAE's right to use any ancillary facilities planned for use in the first year of operation. Satisfaction of these conditions should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Facilities Planning Division.

(g) Not less than 30 days prior to the school's opening, present evidence that the facility is located in an area properly zoned for operation of a school and has been cleared for student occupancy by all appropriate local authorities. For good cause, the Executive Director of the State Board of Education may reduce this requirement to fewer than 30 days, but may not reduce the requirement to fewer than 10 days. Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Facilities Planning Division.

(h) Not later than January 1, 2003, present a final charter that includes all provisions and/or modifications of provisions that reflect appropriately the State Board of Education as the chartering authority and otherwise address all concerns identified by California Department of Education staff, and that includes a specification that the school will not operate satellite schools or campuses without the prior written approval of the Executive Director of the State Board of Education based primarily on the advice of appropriate CDE staff.

(i) In the final charter presented pursuant to condition (8), resolve any provisions related to legal issues that may be identified by the State Board's Chief Counsel.

(j) Prior to the employment of any individuals by SAE, present evidence that SAE has made appropriate arrangements for the processing of the employees' retirement contributions to the Public Employees' Retirement System (PERS) and the State Teachers' Retirement System (STRS).

(k) If any deadline specified in these conditions is not met, approval of the charter is terminated, unless the State Board of Education deletes or extends the deadline not met. If SAE is not in operation by September 30, 2004, approval of the charter is terminated.

Finally, if the SAE charter is approved, we recommend that the SBE assign charter number 505 to SAE.

- 2) Deny the charter petition. If the SBE denies the petition, the petitioners are not authorized to operate. The petitioners would not be prohibited from revising the charter and resubmitting it to the original school district or another eligible LEA in the state.
- 3) Take no action on the charter petition. According to *Education Code* Section 47605(j), if the SBE does not act on the petition within 120 days, the decision of the governing board of the school district denying the petition shall be subject to judicial review.