

**Contra Costa County Board of Education
Petition for Establishment of:
Clayton Valley Charter High School
Findings of Fact – January 11, 2012**

Background

The Clayton Valley Charter High School (CVCHS) submitted a conversion charter petition (Petition) to the Contra Costa County Board of Education (County Board) on November 15, 2011. The public hearing for the petition was held on December 7, 2011. The County Board will grant or deny the petition at the regularly scheduled board meeting on January 11, 2012.

The Petition was denied by the Mt. Diablo Unified School District (MDUSD/District) Board of Education on November 8, 2011. This was after a conditional approval by the District Board on September 13, 2011. The final denial of the Petition was based on the determination by the District Board that six conditions were either not met or partially met.

Report of Findings Summary

Contra Costa County Office of Education (CCCOE) staff reviewed the CVCHS petition based on applicable California law and regulations (See Appendix, page 12). The CCCOE staff analysis was based on the most current information including the recently released state assumptions for mid-year trigger cuts which reduced the projected trigger cuts from \$300 to \$11 per student. This single change had a material impact on the CVCHS multi-year and cash flow projections which were negative based on \$300 per student and served as the basis for MDUSD petition denial.

The CCCOE staff has determined, based on its review, that the Petition presents a sound educational program, the budget is balanced, the financial and operation plan is realistic and the Petition contains reasonably comprehensive descriptions of the legally required elements. Accordingly, the CVCHS is demonstrably likely to successfully implement the program set forth in the Petition. CCCOE staff recommends that the County Board conditionally approve the Petition for a term of three years.

CCCOE staff requests that the County Board include as part of its approval the conditions set forth in the Program and Financial section of this Report of Findings. These conditions are also included on page 8 of this document in form of a Memorandum of Understanding between the County Board and CVCHS. Should the County Board approve the Petition, it is recommended that the MOU be adopted and signed by the Board President.

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Petition Requirement Summary

- Petitioner has provided a charter school Petition that includes the required technical documents and affirmations.
- CVCHS has obtained signatures of 61 permanent status teachers currently employed at the school, which is to be converted, and are meaningfully interested in teaching at CVCHS.
- Pursuant to Education Code section 47605.6(d), the Petition affirms that it will meet all statewide standards, conduct statewide assessments, and consult with parents and teachers on a regular basis.
- Pursuant to Education Code section 47605.6(e), the Petition contains clear affirmations that the school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations; shall not charge tuition; and shall not discriminate against any pupil on the basis of race, color, religion, gender, national origin, disability, or any other protected class under federal, state, or local law.
- The Petition states that CVCHS will actively recruit a diverse student population, that admission will be open to any California resident, and that all students will be considered for admission without regard to race, ethnicity, national origin, gender or disability.
- The Petition states that if the number of applications does not exceed the capacity of the charter school, all students who submit "qualified applications" will be enrolled. If the number of students seeking admission to any grade level exceeds capacity, a random public lottery will be held, except for existing pupils.
- The Petition contains reasonably comprehensive descriptions of the required elements in subsections A-P, Education Code section 47605(b)(5). (See Appendix, page 13)

Staff Analysis

A. Program Analysis

Pursuant to Education Code section 47605(b), a petition's failure to include a reasonably comprehensive description of all of the 16 listed statutory elements is grounds for the Board to deny a charter petition.

To be reasonably comprehensive, staff considered whether each statutory element contained a description that includes information that is substantive; that includes elaboration; that addresses all aspects of the required charter petition elements; that is specific to the charter petition being proposed; that describes the program to a sufficient degree; that improves pupil learning; that increases learning opportunities; and for which accountability and legal compliance can be reasonably foreseen and assured.

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Under Education Code section 47605.6(b)(1), the Board may not deny a charter petition unless it finds that it presents an "unsound educational program for the pupils to be enrolled in the charter school." Staff review found that the educational program described in the CVCHS Petition was sound, and included detailed information of how the program would be implemented.

If the Petition is approved, CCCOE staff recommends that the Board impose the following conditions:

- Petitioners shall provide a more detailed plan on how CVCHS will support students not meeting pupil outcomes.
- Petitioners shall add to the current Assessment Plan (Petition pages 620-622) a means for teachers to reflect on and examine student assessment results, i.e., explain how student results will be used to inform instruction.
- Petitioners will submit a summer transition plan that includes a plan for specific targeted instruction for English learners.
- Given the many changes to instruction, accountability, and assessment at the federal and state levels mandated by law over the next three years, Petitioners shall provide a plan for staying current in these areas. The plan should include designated staff that will disseminate information to all site staff.
- If CVCHS elects to continue contracting with the CCCOE for Regional Occupation Program (ROP) Services, CVCHS will agree to maintain the current ROP assignments, with no increase in services.
- Petitioners will submit a revised expulsion policy that includes an appellate process.
- Petitioners will draft an alternate SELPA plan in the event that CVCHS is not accepted into the El Dorado SELPA.
- By July 1, 2012, provide evidence of acceptance as a member of a SELPA.

Two additional concerns that CCCOE staff suggests CVCHS consider:

- CVCHS staff should work with CCCOE staff to explore more appropriate English learner textbooks. The ones currently used (Read 180, System 44) are designed for intervention programs in English-language arts. Although these textbooks are permissible for more proficient English learners, there are more appropriate textbooks that are specific to English Language Development.

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- CVCHS staff should thoroughly research the effects of offering a two-year Algebra course. There is evidence that this plan may actually slow student progress, which has been previously demonstrated by other districts that have implemented this model. Furthermore, the two-year model is not advocated by the California Department of Education Math Standards.

B. Financial Analysis

The Petition includes budget assumptions for expenditure items which were provided on a detailed line item basis. The expenditures appear reasonable for the program described in the Petition. Specific budgeted amounts included in the proposed budget appear to be adequate. Should an unexpected expense be incurred, the projected fund balance should be sufficient to cover such contingencies.

The CCCOE staff requests that the County Board require the completion of the following conditions should the Petition be approved:

- Provide written verification of the proposed \$2 million dollar line of credit.
- Work with the County Treasurer and MDUSD to determine the timing of receipt of local property taxes and general revenue transfers based on state law. Determine the source of these amounts. Prepare a written summary of these items.
- Provide an 18-month cash flow report that shows a positive cash balance for each month beginning with the 2012-13 fiscal year.
- Prepare future financial statements that conform to the general reporting format of State SACS reports including fund reports, revenue limit, student attendance, long-term debts, multi-year and cash flow projections.

Summary of MDUSD Conditions

In its Findings of Fact adopted by the Mt. Diablo Unified School District Board of Education, the District indicated that the petitioners are unlikely to successfully implement the program set forth in the petition because they have presented an unrealistic financial and operational plan (Petition, pages 818-822). The District made this finding based on the determination that six conditions were either partially met or not met. A summary of the CCCOE staff review of these conditions is presented as follows:

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Condition # 1

“The charter school’s budget does not support longer instructional days, a summer program, not furlough days and a comparable benefit package as stated in the petition.” (Petition, page 818)

The District acknowledges that this condition is partially met because “the cost of benefits projected appears reasonable to the cost of offering a plan similar in nature to the District’s plan” (Petition, page 819). However, the District asserts that the budget does not adequately address the extra cost of providing a longer day and a summer program. The District states that Teacher Extra Duty and Stipends were decreased from 16.63% of teacher salaries to 10% of teacher salaries across all years of the multi-year projection; and that the Petition does not provide sufficient details addressing the staffing of the summer program.

There’s no indication in the Petition that CVCHS will offer longer instructional days. On page 39 of the Petition, it states that, “CVCHS may decide to modify the regular day bell schedule from the current bell schedule to meet the needs of students to access necessary or supplemental instruction and the need of staff to collaborate.” It continues to discuss flexibility in scheduling and addressing individualized needs but does not indicate a longer instructional day. On page 40, the Petition states that Petitioners are committed to ensuring that the legally required minimum number of instructional minutes will be offered. Therefore, it’s assumed that the extra pay for teachers is for the summer program. The projected salaries and benefits appear to address the cost of a summer program.

Condition # 2

“Submit a budget and multi-year projections in the State’s SACS or Charter School’s alternative format.” (Petition, page 819)

This is not a required element in charter school petitions. Education Code section 47605(g) provides that the petitioners, “shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs; and cash flow and financial projections for the first three years of operation.” Petitioners have complied with this requirement.

Although this is not a required element of the Petition, CCCOE staff recommends that all future financial statements are submitted in the Standardized Account Code Structure (SACS) format. This will facilitate future financial reviews and standardize future financial reporting for CVCHS. If the Board approves the Petition, CCCOE staff request that this recommendation be incorporated in the Memorandum of Understanding.

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Condition # 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.” (Petition, page 819)

The District states that the First Interim Guidance from the CCCOE recommends that districts do not assume a COLA in 2012-13 or 2013-14 and to continue the mid-year trigger cuts currently in law for 2011-12 as ongoing cuts for 2012-13 and 2013-14. According to the District’s Findings, the Petitioners incorrectly included a COLA for 2013-14 and the mid-year trigger cuts of \$300 per ADA have not been included in the revenue assumptions.

Following the District’s financial analysis, the Department of Finance and the Governor clarified the 2011-12 mid-year cuts, which are now projected at \$11 per ADA, not \$300. Therefore, the negative cash amounts identified by the District were eliminated based on the new information.

The Findings also state that the special education revenue is overstated by \$88,244 and the charter assumes a 37% increase in special education between year 1 and year 2 of the multi-year projections with no explanation as to how this increase will come about.

The increase in special education in year 2 is due to receipt of IDEA (Individual with Disabilities Education Act) funds. This is an appropriate assumption. The \$88,244 overstatement in special education, although correctly based on funding from the El Dorado Special Education Local Plan Area (SELPA), has no significant impact on the overall budget.

Condition # 4

“Submit a financial plan that demonstrates it will have: Adequate cash to meet each month’s operation expenditures, with no months indicating the school will be in a negative cash position.” (Petition, page 821)

The District Findings state that special education funding is indicated in the cash flow report beginning August 2012 but will not be received until after P-1 certification in February 2013. According to the District, this will present a negative cash flow starting in November 2012.

On December 7, 2011, Marshall Mayotte, from ExED stated that CVCHS would have access to a \$2 million line of credit. This is also indicated on the Cash Flow report on page 787. Mr. Mayotte indicated that this line of credit was available to

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address any cash flow issue. IF CVCHS submits evidence of a line of credit, as recommended, then CCCOE staff will be assured that CVCHS will have adequate cash to meet its monthly obligations. Another recommended condition for approval is that CVCHS provide an analysis of the feasibility of an advance of property taxes from the County Treasurer. If such an advance is feasible, this will also address the cash flow issue.

Condition # 5

“Submit a breakdown of all FTE (Full Time Equivalent) by job type linking all FTE to line items in the budget.” (Petition, page 821)

The District Findings state that this condition is not met because the contract cost for outsourced food workers and outsourced custodial work is not included in the budget. However, the custodian position is still included in the FTE list. The District assertion is that they are unable to “calculate which positions tie back to the numbers” (Petition, pg. 821).

The FTE Salary Report on page 718 of the Petition provides sufficient information on staffing. The CVCHS total salary costs are appropriately budgeted. As mentioned above, the budget information provided in the CVCHS petition complies with the legal requirements.

Condition # 6

“A fiscal recovery plan to address the cash shortfall in the existing projection and loss of miscounted revenues.” (Petition, page 821)

The District states that, “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” (Petition, page 822).

CCCOE staff addressed the cash flow issue in its response above to Condition # 4.

Conclusion

Based on the above analysis, CCCOE staff recommends that the Contra Costa County Board of Education conditionally approve the Clayton Valley Charter High School Petition. If the County Board approves the Petition, it is recommended that CVCHS be required to meet the above-mentioned conditions. It is recommended that said conditions be set forth in a Memorandum of Understanding, which follows on page 8.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CONTRA COSTA COUNTY BOARD OF EDUCATION
AND
CLAYTON VALLEY CHARTER HIGH SCHOOL**

This Agreement (or Memorandum of Understanding/MOU) is executed by and between the Contra Costa County Board of Education (County Board) and Clayton Valley Charter High School (CVCHS) collectively referred to as the “Parties.”

RECITALS:

- A. The Contra Costa County Board of Education authorizes the charter for the CVCHS subject to conditions to be set forth and agreed upon in an MOU.
- B. The Parties have negotiated a set of mutually agreed upon conditions to be met prior to operation.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein set forth, the Parties do hereby agree as follows:

AGREEMENTS:

I. TERM AND RENEWAL

- A. This agreement shall commence on the date upon which it is fully executed and shall run concurrently with the three-year term of the approved charter.
- B. Any modification of this Agreement must be in writing and executed by duly authorized representatives of both Parties specifically indicating the intent of the parties to modify this MOU.
- C. The duly authorized representative of the CVCHS is the CVCHS Director, or the Board of Directors of the CVCHS. For purposes of amendment of this MOU, the Board of Directors is required to take action.
- D. The duly authorized representatives of the County Board is the County Superintendent of Schools, or designee. For purposes of amendment of this MOU, the County Board is required to take action.
- E. This MOU will continue in effect until mutually modified in writing except that the MOU shall terminate upon the expiration, rescission, or revocation of the Charter. Amendments to the MOU may be made upon written agreement of both Parties.

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II. CONDITIONS TO BE MET BY MARCH 1, 2012

1. CVCHS will provide a more detailed plan on how CVCHS will support students not meeting pupil outcomes.
2. CVCHS will add to the current Assessment Plan, a means for teachers to reflect on and examine student assessment results.
3. CVCHS will provide summer transition plan that includes a plan for specific targeted instruction for English learners.
4. CVCHS will provide a plan for management, dissemination and compliance of federal and state mandates related to instruction, accountability and assessment.
5. If CVCHS elects to continue contracting with the CCCOE for Regional Occupation Program (ROP) Services, CVCHS will agree to maintain the current ROP assignments, with no increase in services.
6. CVCHS will provide a copy of its revised expulsion policy that includes an appellate process.
7. CVCHS shall provide an alternate SELPA plan in the event that CVCHS is not accepted into the El Dorado SELPA.
8. By July 1, 2012, CVCHS shall provide the County with proof of membership into a qualified special education local plan area. Documentation of this condition shall include the application and written confirmation of membership.
9. CVCHS shall provide written verification of the proposed \$2 million dollar line of credit.
10. CVCHS shall provide a written summary on the timing and amount of local property taxes and general revenue transfers. This will include the sources of these amounts and will clearly state how these amounts are calculated and received.
11. CVCHS shall provide a modified cash flow report that shows positive cash balances for each month beginning with the 2012-13 fiscal year.
12. CVCHS shall provide future financial statements that conform to the general reporting format of State SACS reports including fund reports, revenue limit, student attendance, long-term debts, multi-year and cash flow projections.

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III. SEVERABILITY

The terms of this MOU are severable. In the event that any of the provisions are determined to be unenforceable or invalid for any reason, the remainder of the MOU shall remain in effect, unless mutually agreed otherwise by the County Board and the CVCHS. The Board and CVCHS agree to meet to discuss and resolve any issues or differences relating to provisions in a timely, good faith fashion.

IV. NOTIFICATION

All notices, requests, and other communications under this agreement shall be in writing and delivered to the appropriate parties.

V. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the matters covered hereby, and supersedes any oral or written understandings or agreements between the parties with respect to the subject matter of this agreement. No person or party is authorized to make any representations or warranties except as set forth herein, and no agreement, statement representation or promise by any party hereto which is not contained herein shall be valid or binding. The undersigned acknowledges that she/he has not relied upon any warranties, representations, statements or promises by any of the parties herein or any of their agents or consultants except as may be expressly set forth in this Agreement. The parties further recognize that this agreement shall only be modified in writing by the mutual agreement of the parties.

Dated: _____
Neil McChesney, Co-Lead Petitioner
Clayton Valley Charter High School

Dated: _____
Pat Middendorf, Co-Lead Petitioner
Clayton Valley Charter High School

Dated: _____
Cynthia T. Ruehlig, President
Contra Costa County Board of Education

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APPENDIX

Legal Requirements

The Charter Schools Act of 1992 permits school districts to grant charters for the operation of charter schools. (Education Code section 47600, et. seq.) Charter schools “are part of the Public School System,” but “operate independently from the existing school district structure.” (Education Code section 47615(a)(1), 47601) Charter schools are established through submission of a petition by proponents of the charter school to the governing board of a public educational agency. The governing board must grant a charter “if it is satisfied that granting the charter is consistent with sound educational practice.” (Education Code section 47605(b)) The governing board of the school district can only deny a petition for establishment of a charter school if it finds that the particular petition fails to meet certain enumerated statutory criteria and adopts written findings in support of its decision. Once a governing board has granted a petition, a charter school is created as a separate legal entity.

Although charter schools are exempt from many of the laws governing school districts, in return for that exemption the Education Code holds them to a high standard: they must live up to all of the commitments in the charter that they make to school districts, parents, community members, and students concerning pupil instruction, community/parent involvement, fiscal accountability, and student safety.

Procedure

Under Education Code section 47605(j)(1), if the district denies a charter petition, the petitioners may appeal that denial to the County Office of Education. The County Office must also analyze the charter(s) in the areas provided in Education Code section 47605(b). If the County Office grants the charter(s), the County Office becomes the supervisory agency over the charter school(s).

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Review of the Petition

Education Code section 47605(b) sets forth the following guidelines for governing boards regarding the review of charter petitions:

“In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority 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 establishment of charter schools should be encouraged.”

“A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice.”

“The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (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 required number of signatures.
- (4) The petition does not contain an affirmation of each of the conditions required by statute. (See attached Education Code section 47605(d)(1))

In addition, the statute requires a fifth area of review, in which the petition must include “comprehensive descriptions” of sixteen specific elements, noted as items “A” through “P” from Education Code section 47605(b)(5):

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“A - P” requirements in California Education Code Section 47605(b)(5)

- (A) (i) 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 21st 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.
- (ii) If the proposed school will serve high school pupils, a description of the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A" to "G" admissions criteria may be considered to meet college entrance requirements.
- (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.
- (C) The method by which pupil progress in meeting those pupil outcomes is to be measured.
- (D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
- (E) The qualifications to be met by individuals to be employed by the school.
- (F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.
- (G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
- (H) Admission requirements, if applicable.
- (I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.
- (J) The procedures by which pupils can be suspended or expelled.
- (K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
- (L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.
- (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.

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- (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.
- (O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.
- (P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

Affirmations, Education Code Section 47605(d)(1)

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.